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CODE OF PENAL PROCEDURE

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CHAPTER 96

Code of Penal Procedure

[*Assented to 18 December 1987*]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

DIVISION I

INTRODUCTORY PROVISIONS

Application

1. This Code applies with respect to proceedings in view of imposing a penal sanction for an offence under any Act, except proceedings brought before a disciplinary body.

"Act"

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

Jurisdictions

3. The powers and duties conferred upon or assigned to a judge under this Code are exercised by the Court of the Sessions of the Peace, the Provincial Court, the Youth Court, the Labour Court or a municipal court, within the scope of their respective jurisdictions under law, or by a justice of the peace within the limits provided by law and specified in his deed of appointment.

Authority of the judge

4. The judge hearing an application or trying a case has the necessary authority and powers, within the scope of his jurisdiction, to maintain order in the court room.

Persons under 14 years of age

5. No person may be prosecuted for an offence he committed when under fourteen years of age.

Persons under 18 years of age

6. The provisions specially 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 before they were eighteen years of age.

Reception centre

7. Where a judge orders the detention of a person under eighteen years of age, the person must be kept in custody in a reception centre.

Contempt of court

8. 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 of court proceedings under this Code.

DIVISION II

RIGHT TO PROSECUTE

Prosecutors

9. The following may be prosecutors:

(1) the Attorney General;

(2) a prosecutor designated under any Act other than this Code, to the extent determined in that Act;

(3) a person authorized by a judge to institute proceedings.

Authorization to institute proceedings

10. An application for the authorization contemplated in paragraph 3 of section 9 shall be made to a judge having jurisdiction in the judicial district in which the prosecutor may institute proceedings.

Hearing

The judge shall hear the allegations in support of the application. He may hear the sworn depositions of witnesses and, for that purpose, he has the power to compel them to appear and testify.

Authorization

The judge shall authorize the proceedings if he has reasonable grounds to believe that an offence has been committed. The authorization must be entered on the statement of offence and a duplicate of the statement must be transmitted by the clerk to the Attorney General.

Powers of the Attorney General

11. The Attorney General may

(1) intervene in first instance to take charge of a prosecution;

(2) intervene in appeal to take the place of the party who was prosecutor in first instance;

(3) order proceedings stayed before rendering of judgment in first instance;

(4) allow proceedings to be continued within six months of being stayed.

Commencement

The intervention, stay or continuation commences when the representative of the Attorney General notifies the clerk. The clerk shall immediately notify the parties.

Withdrawal of count

12. The prosecutor may withdraw a count at any time before trial. During trial, no count may be withdrawn except with leave of the judge.

Notice

The prosecutor must send a notice of withdrawal to the defendant and to the clerk if either is not present when it is made.

Second prosecution prohibited

13. No defendant may be prosecuted a second time for an offence for which proceedings were not continued within six months of being stayed or in respect of which the count has been withdrawn.

DIVISION III

PRESCRIPTION

Prescription

14. Penal proceedings are prescribed by one year from the date of commission of the offence.

Exception

Notwithstanding the foregoing, another Act may fix a different time limit or provide that prescription begins to run from the date the commission of the offence becomes known or from the date an event determined in the Act occurs.

Interruption

15. Prescription is interrupted by the service of a statement of offence on the defendant.

Attestation of interruption

Upon the application of a prosecutor who establishes that he has attempted unsuccessfully to serve a statement of offence on the defendant, the judge shall declare prescription to be interrupted from the date of the application; he shall attest the date of interruption on the statement of offence.

Prescription not interrupted by lack of authority

16. Prescription is not interrupted where the proceedings were instituted by a prosecutor lacking authority to prosecute or where the person who issued the statement of offence in the name of the prosecutor was not authorized to do so.

DIVISION IV

COMPUTATION OF TIME

Counting of days

17. In computing any period of time under this Code, the day which marks the start of the period is not counted but, except in the case of clear days, the terminal day is counted.

Counting of days

Saturdays and non-juridical days are counted, but when the last day is a Saturday or a non-juridical day, the period is extended to the next following juridical day.

Non-juridical days

18. 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-sixth of December;

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

DIVISION V

SERVICE OF WRITTEN PROCEEDINGS

Service

19. Service of a written proceeding under this Code or the rules of practice may be made by mail or by a peace officer or bailiff.

Service by mail

20. Service by mail is made by sending the proceeding by registered or certified mail to the residence or place of business of the person for whom it is intended or, in the case of a legal person, to its

head office, one of its places of business or the place of business of one of its agents.

Date of service

Service by mail is deemed to be made on the date on which the notice of receipt or delivery of the proceeding is signed by the person for whom it is intended or any other person to whom the proceeding may be delivered under article 21.

Peace officer or bailiff

21. Service by a peace officer or bailiff is made by delivery of the proceeding to the person for whom it is intended. It may also be made at his residence by delivery of the proceeding to a reasonable person living there.

Service on legal persons

Service on a legal person may be made at its head office, one of its places of business or the place of business of one of its agents by delivery of the proceeding to one of its officers or agents or a person in charge of the premises.

Service on persons in detention

22. Service of a written proceeding on a person in detention in a reception centre, detention centre or penitentiary is made by delivery of the proceeding to the person by a peace officer or bailiff.

Service outside Québec

23. A written proceeding may be served outside Québec on a natural person who has no residence in Québec or on a legal person which has neither head office nor place of business in Québec nor any agent having a place of business in Québec; service is made by mail or, where an agreement exists between the Gouvernement du Québec and the government of another province or country, in the manner prescribed by that agreement.

Other method

24. A judge may authorize service otherwise than as in this division where circumstances so require.

Authorization

The prosecutor or the person who must serve the proceeding may obtain the authorization from a judge of the district where service is to be made if it is not the district where the proceeding is issued.

Refusal to be served

25. Where the person being served a written proceeding refuses to receive it, the person serving it shall record the refusal, with the place, date and time of refusal. The proceeding is then deemed to have been served at the time of refusal.

Copy

The person serving the proceeding must then attempt to leave a copy of it by any appropriate means.

Attestation of service

26. A person who serves a written proceeding shall make an attestation of service.

Content

He shall record his name, the name of the person to whom he delivered the proceeding, and the place, date and time of service.

Presumption

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

Notice of receipt

27. Where service is made by mail, the notice of receipt or, as the case may be, the notice of delivery serves as an attestation of service.

Service on parents

28. 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.

Irregularity

29. Service which is irregular in any way remains valid if a judge is satisfied, at any stage of proceedings, that the person for whom it is intended has examined the written proceeding. The judge may make any order which the ends of justice require.

DIVISION VI

MAKING OF APPLICATIONS

Oral application

30. Unless otherwise provided, an application to a judge under this Code or the rules of practice is made orally, without prior notice.

Prior notice

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

Written application

31. A written application must briefly and precisely state the facts and grounds on which it is based and the conclusions sought. It must be accompanied with an affidavit attesting the truth of the facts stated.

Prior notice

Prior notice must be given of the date and place of a written application.

Service

32. Unless otherwise provided, every prior notice and, where such is the case, every written application and affidavit must be served on the adverse party not less than five clear days before the date of the application and must be filed in the office of the court of competent jurisdiction in the place where the application is to be made within the same time unless another time is fixed by the rules of practice.

Contestation

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

Rules of procedure

34. The rules relating to the notice provided for in article 95 of the Code of Civil Procedure, adapted as required, apply in every case where a party alleges that a provision referred to in that article 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).

Exception

Notwithstanding the foregoing, the time prescribed in article 95 of the Code of Civil Procedure need not be observed where a delay in the release of the defendant or a witness might result therefrom.

DIVISION VII

PROCURING ATTENDANCE OF WITNESSES

Summons

35. Each party may, by way of summons, summon his witnesses himself or request a judge or a clerk of the court of competent jurisdiction in the judicial district where the witness is to be heard to make the summons.

Obligations of the witness

A summons requires the witness designated therein by name to attend at the date, time and place indicated to testify and, where such is the case, to bring with him anything mentioned that is relevant to the issue and in his possession or under his control.

Obligations of the witness

36. A witness served with a summons is required to attend at the date, 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.

Signature

37. A summons must be signed by the judge or the clerk or by the attorney of the party who summons the witness.

Authorization of a judge

38. The authorization of a judge is required and must be recorded on the summons where the witness is

(1) a minister or deputy minister of the Government;

(2) a judge;

(3) a person in detention in a reception centre, a detention centre or a penitentiary.

Granting of authorization

The judge may grant the authorization only if he is satisfied that the testimony of the witness is useful 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.

Person in detention

39. Where the witness summoned is a person in detention, the director of the reception centre or the warden of the detention centre or penitentiary must ensure that he is brought to the place indicated in the summons at the date and time indicated therein.

Time of service

40. A summons must be served not less than five clear days before the date of examination of the witness. Where the witness is a judge or a minister or deputy minister of the Government, the summons must be served not less than ten clear days before the date of his examination.

Urgency

41. In case of urgency, a judge or a clerk having authority to sign a summons may, upon an application, reduce the time for service of a summons to not less than twelve hours before the witness is to be examined. However, where the witness is a judge or a minister or deputy minister of the Government, only a judge may authorize a reduction of the time for service.

Reduction of time recorded

The authorization to reduce the time must be recorded on the summons.

Failure to appear

42. A judge before whom a witness is called to appear who finds that the witness has failed to appear before him or has left the place of the hearing without having been released from the obligation of remaining in attendance shall issue a warrant of arrest if he is satisfied that the witness was duly summoned and can give useful evidence.

Warrant of arrest

43. A warrant of arrest shall also be issued by a judge of the judicial district where the witness is to be examined if the judge is satisfied that the witness can give useful evidence and

(1) will not appear to testify even if duly summoned;

(2) is evading service of a summons;

(3) has failed to comply with the conditions determined under article 51.

Content

44. A warrant of arrest must designate the witness by name and state the reason for which it is issued. It is an order to arrest the witness and bring him before a judge. It must be signed by the judge who issues it.

Execution

45. A warrant of arrest is executory at any time, anywhere in Québec, by any peace officer or bailiff.

Nullity and renewal

A warrant of arrest not executed within one year of its issue is null. A warrant of arrest may, however, be renewed before the expiry of that time by the judge who issued it.

Arrest

46. Any person arresting a witness under a warrant of arrest must

(1) state his name and quality to the witness;

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

(3) allow the witness to examine the warrant, or if it is not in his possession, promptly allow him to examine it.

Use of force

He shall not use more force than necessary.

Right of access

47. To execute a warrant of arrest, a person may enter any place where he has reasonable grounds to believe the witness he has been ordered to arrest is to be found, in order to arrest him.

Notice of presence

Before entering the place, he shall give a notice to a person in the place of his presence and of the purpose of his presence, unless he has reasonable grounds to believe that that would allow the witness to abscond.

Witness under 18 years of age

48. A witness under eighteen years of age who is arrested must be committed to the custody of the director of youth protection in the place of the arrest.

Notification of the parents

The director shall see to it that the witness is kept in custody in a reception centre until he is brought before a judge. Moreover, the director shall make every reasonable effort in the circumstances to notify the parents of the witness without delay 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.

Custody of peace officer

49. Except in the case of article 48, a bailiff who makes an arrest under a warrant of arrest must, as soon as possible, commit the arrested person to the custody of a peace officer so that the officer may bring him before a judge.

Time of appearance

50. After his arrest, the witness must be brought, promptly and at the latest within twenty-four hours, before the judge before whom he is to testify or, if he is not sitting, before another judge of the judicial district where he is to testify. If no judge is available within the prescribed time, the witness must be brought before a judge of the district as soon as possible.

Release

51. The judge before whom the arrested witness is brought shall order his release on such conditions as he may determine, particularly the furnishing of security, if he is satisfied that the detention of the witness is not necessary to ensure his attendance at the hearing where his testimony is required; otherwise, the judge shall order that the witness continue to be detained.

Costs

Except where the warrant of arrest was issued under paragraph 1 of article 43, the judge, after giving the witness an opportunity to justify his conduct, may also award against him all or part of the costs arising from his failure to appear or remain in attendance. The amount of the costs is fixed by regulation and the judge shall allow not less than thirty days for payment.

Maximum amount

Notwithstanding the foregoing, in no case may a witness under eighteen years of age be required to furnish or pay security or costs in excess of $100.

Review

52. The order for unconditional or conditional release or for continued detention may, on application, be reviewed by a judge of the Superior Court of the district where the order was made.

One day notice

Prior notice of not less than one clear day of the application must be served on any parties concerned and on the witness concerned by the order.

Warrant of committal

If the judge orders the detention of a witness who has been released, he must issue a warrant of committal against him.

Examination of detained witness

53. Examination of a witness detained in custody must begin without undue delay and not later than the eighth day following his arrest or the order for continued detention made by the Superior Court; otherwise, the witness must be released unconditionally unless he is detained for some other reason.

Detention continued

Where a judge orders the detention of a witness to be continued, he may reschedule the hearing to an earlier date so that examination of the witness may begin within the prescribed time. The clerk must notify the parties accordingly.

DIVISION VIII

ROGATORY COMMISSION

Appointment of commissioner

54. On the application of a party wishing to examine a witness, a commissioner may be appointed to receive the deposition of a witness who is unable to attend to testify because of his state of health or who is outside Québec despite the efforts made to procure his attendance.

Restriction

The judge shall not make such an appointment unless the testimony is essential to the determination of the case.

Judge having jurisdiction

55. Before trial, the application must be made to a judge having jurisdiction to try the case in the judicial district where proceedings have been instituted; during trial, the application must be made to the judge trying the case, with his leave. The judge who hears the application may agree to act as the commissioner.

Notice

Prior notice of the application must be served on the adverse party unless both parties are before the judge. The notice must be filed in the office of the court of competent jurisdiction in the judicial district where proceedings have been instituted or the case is being tried, as the case may be.

Notice

Notwithstanding the foregoing, where the application is made by the defendant, prior notice may be given in accordance with the third paragraph of article 169.

Content of order

56. The order appointing a commissioner shall set out such provisions as are necessary to enable the parties to be present or to be represented when the deposition is received.

Rules of procedure

57. Unless inconsistent with this division or with the rules of practice, the rules provided in the Code of Civil Procedure as to the procedure for the appointment of commissioners, the recording of depositions by commissioners and the attestation and the return of depositions, adapted as required, apply to a commission constituted pursuant to this Code.

Admissible evidence

58. To be admissible in evidence, a deposition received by a commissioner must be supported by an affidavit or oral evidence attesting

(1) that the witness was outside Québec or was unable to attend to testify because of his state of health;

(2) that the deposition of the witness was received in accordance with this division 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 adverse party was given reasonable notice of the time when the deposition was to be received;

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

Re-examination at the hearing

59. A witness whose deposition was received by a commissioner may, with leave of the trial judge, be re-examined at the hearing if he is then able to attend to testify.

DIVISION IX

DEFENSES AND GENERAL RULES OF EVIDENCE

Defenses and justifications

60. The defenses and the justifications and excuses recognized in penal matters or, adapted as required, in criminal matters apply subject to the rules provided in this Code or in any other Act.

Rules of evidence

61. The rules of evidence in criminal matters, including the Canada Evidence Act (R.S.C. 1970, chapter E-10), apply to penal matters, adapted as required and subject to the rules provided in this Code or in any other Act in respect of offences thereunder and subject to article 308 of the Code of Civil Procedure.

Statement of offence

62. The statement of offence or any offence report, in the form prescribed by regulation, has the same value and effect as evidence given under oath by the peace officer or the person entrusted with the enforcement of any Act who issued the statement or drew up the report, if he attests on the statement or report that he personally ascertained the facts stated therein.

Certified copies

The same applies to a copy of the statement or report certified by a person authorized to do so by the prosecutor.

Witness

63. The defendant may require that the prosecutor summon as a witness the person whose statement or report has the same value and effect as evidence.

Costs

The costs, the maximum amount of which is fixed by regulation, shall be awarded against the defendant if he is convicted of the offence

and the judge is satisfied that the statement, report or copy would have afforded sufficient evidence and that the person's testimony added nothing substantial.

Allegation of excuse not required

64. The prosecutor is not required to allege in the statement of offence that the defendant does not have, with respect to the offence, the benefit of an exception, exemption, excuse or justification provided for by law.

Onus of proof

It is incumbent upon the defendant to establish that he has the benefit of an exception, exemption, excuse or justification provided for by law.

Proof of allegation

65. Where the prosecutor alleges that the defendant is the owner or lessee of an immovable, he is not obliged to prove it unless the defendant so requires and notifies the prosecutor accordingly not less than ten days before the appointed date for the beginning of the trial; the prosecutor may waive such notice.

Proof of licence or permit

66. Proof of the issue and content of any certificate, licence, permit or other authorization required by an Act for the carrying on of an activity may be made by producing, before the judge, either the authorization or an attestation signed by the person having the authority to issue such authorization.

Proof of absence of authorization

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

Proof of unrecorded authorization

Notwithstanding the foregoing, where it is alleged that the defendant failed to comply with the obligation imposed by an Act to hold such authorization, he must establish the fact that he holds the authorization if that fact is not recorded in a register kept by the person having the authority to grant such authorization.

Extract from register

67. Any certificate containing extracts from a register kept according to law by a government department or a public body 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.

Probative value of copy

68. A copy of a document has the same probative value as the original if it is certified by the person who is authorized under an Act to issue copies of the document.

Proof of acquittal or conviction

69. Proof of the acquittal or conviction of the defendant, of the withdrawal or of the dismissal of a count, of the judicial stay of proceedings 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, certified by the court clerk, of the judgment, decision or minutes.

Proof of stay of proceedings

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 the court clerk.

Grounds

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

Attorney General's prosecutor

70. 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.

Person acting in the name of the Attorney General

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

Proof of signature

71. The prosecutor is not required to prove the quality or the signature of the following persons, unless the defendant contests their quality or signature and the judge is of opinion that proof thereof must be established:

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

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

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

(4) the person having custody of a register who signed a certificate containing extracts from the register;

(5) the person who certified a copy he is authorized to issue under an Act;

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

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

CHAPTER II

ARREST

Statement of offence

72. A peace officer who has reasonable grounds to believe that a person has committed an offence may require the person to give him his name and address, if he does not know them, so that a statement of offence may be prepared.

Further information

A peace officer who has reasonable grounds to believe that the person has not given him his real name and address may require further information from the person to confirm their accuracy.

Refusal

73. A person may refuse to give his name and address or further information to confirm their accuracy so long as he is not informed of the offence alleged against him.

Arrest

74. A peace officer may arrest without a warrant a person informed of the offence alleged against him who, despite the peace officer's demand, fails or refuses to give him his name and address or further information to confirm their accuracy.

Release

The person so arrested must be released from custody by the person detaining him once he gives his name and address or once their accuracy is confirmed.

Arrest of offender

75. A peace officer who finds a person committing an offence may arrest him without a warrant if that is the only reasonable means available to him to put an end to the commission of the offence.

Release

The person so arrested must be released from custody by the person detaining him once the latter person has reasonable grounds to believe that detention is no longer necessary to prevent, for the time being, the repetition or continuation of the offence.

Security

76. A peace officer may require security from a defendant on whom a statement of offence is being served if he has reasonable grounds to believe that the defendant is about to abscond by leaving the territory of Québec. In no case, however, may he require security from a person under eighteen years of age.

Amount

The security is equal to the amount of the minimum fine prescribed for the offence described in the statement plus the costs fixed by regulation.

Payment

The security is payable in cash or otherwise, as prescribed by regulation.

Amount of security

77. Security in a greater amount than that described in article 76 may be required from a defendant eighteen years of age or over provided it is fixed, upon the application of a peace officer made before service of the statement of offence on the defendant, by a judge of the judicial district where the proceeding may be instituted.

Restriction

The judge shall not order the furnishing of security in a greater amount except where the applicant satisfies him that the amount described in article 76 is insufficient to guarantee payment of the fine and costs requested and that, if security in a greater amount is not required, the defendant will elude justice by leaving the territory of Québec.

Payment

The security is payable in cash or otherwise, as the judge may determine.

Receipt

78. A peace officer who receives the required amount of security shall give the defendant a receipt attesting the payment of the security.

Arrest without warrant

79. A peace officer who has required security may without a warrant arrest a defendant who refuses or neglects to pay it.

Release

A defendant so arrested shall be released from custody by the person detaining him once the amount of the security is paid.

Review

80. A judge of the judicial district where proceedings were instituted may, on the application of a defendant who has paid the security required under article 76, review the exigibility of the security and, as the case may be, confirm or change the amount of the security to make it correspond to the exigible amount.

Notice

Prior notice of not less than one clear day of the application must be served on the prosecutor.

Review

81. A judge of the Superior Court in the judicial district where proceedings have been instituted may, on the application of a defendant who has paid the amount of the security required under article 77, review the exigibility of the security and, as the case may be, confirm or change the amount or mode of payment thereof.

Notice

Prior notice of not less than one clear day of the application must be served on the prosecutor.

Grounds of arrest

82. A peace officer who makes an arrest shall declare his name and quality to the person he is arresting and inform him of the grounds for his arrest.

Use of force

He shall not use more force than necessary.

Access prohibited

83. No peace officer may, for the purposes of this chapter, enter any place that is not accessible to the public, except in the cases provided for in articles 84 and 85.

Exigent circumstance

84. A peace officer may enter a place that is not accessible to the public if he has reasonable grounds to believe that a person there is committing an offence which may result in danger to human life or health or the safety of persons or property and that arresting him is the only reasonable means available to him to put an end to the commission of the offence.

Notification of presence

Before entering the place, the peace officer shall, if possible, depending on whether persons or property need to be protected, give a notice of his presence and of the purpose thereof to a person in the place.

Pursuit

85. A peace officer who has reasonable grounds to believe that a person is fleeing from arrest may pursue him into the place where he is taking refuge.

Notification of presence

Before entering the place, the peace officer shall give a notice of his presence and of the purpose thereof to a person in the place, unless he has reasonable grounds to believe that that might allow the person to be arrested to abscond.

Use of force

86. A peace officer shall not use more force than necessary to enter a place.

Powers of peace officers

87. The powers conferred on peace officers by this chapter and the duties imposed on them are also assigned to persons responsible under any Act for the enforcement of that Act or any other Act.

Conditions to make an arrest

A person responsible as in the first paragraph

(1) shall not arrest, pursuant to article 75, a person who is committing an offence except in the case of an offence that may result in danger to human life or health or to the safety of persons or property;

(2) shall not require security from the defendant pursuant to article 76;

(3) shall, as soon as possible when making an arrest, except in the case of article 88, commit the person he has arrested to the custody of a peace officer if he cannot release him from custody pursuant to article 74, 75 or 79.

Person under 18 years of age

88. A person under eighteen years of age who is arrested and who cannot be released from custody pursuant to article 74 or 75 shall be committed to the custody of the director of youth protection in the place where the arrest was made; in such a case, the director of youth protection shall comply with the second paragraph of article 48.

Appearance before a judge

89. Every arrested person who has not been released from custody must be brought promptly before a judge in the judicial district where he was arrested or where proceedings were instituted and at the latest within twenty-four hours after his arrest. If no judge is available within that time, the person must be brought as soon as possible before a judge in one of those districts.

Name and address

90. The judge before whom a person arrested under article 74 appears may order that person to give his name and address or any information to confirm their accuracy.

Statement of offence

If the arrested person complies with the order, the judge shall allow a statement of offence to be served on the person forthwith; if the person fails to comply with the order, the judge may convict him of contempt of court.

Plea

91. The judge shall give every arrested person appearing before him and on whom a statement of offence has been served the opportunity to plead guilty or not guilty. The person may, however, avail himself of the time specified in the statement to enter a plea.

Effect of plea

If the person pleads guilty, the judge shall convict him of the offence and impose a sentence on him according to law. If the person pleads not guilty, the judge shall set a date for the trial.

Release

92. The judge before whom an arrested person appears shall release him from custody if he is satisfied that the detention of the person is no longer justified under article 74, 75 or 79; otherwise, he shall order that his detention be continued.

Security

The judge may require, as a condition for release from custody, security in the amount he determines in accordance with article 76 or 77. He shall not order a person under eighteen years of age to furnish security in excess of $100.

Review

93. The order for conditional or unconditional release from custody or for continued detention may, upon an application, be reviewed by a judge of the Superior Court in the district where the order was made.

Notice

Prior notice of not less than one clear day of the application must be served on the adverse party.

Warrant of committal

If the judge orders the detention of a person who has been released from custody, he shall issue a warrant of committal against him.

Trial

94. The trial of proceedings instituted against a defendant whose detention is continued shall begin without undue delay and not later than the eighth day following his arrest or the order of the Superior Court; otherwise, the defendant must be released from custody unconditionally unless he has caused the trial to be delayed or unless he is detained for some other reason.

CHAPTER III

SEARCH

DIVISION I

GENERAL PROVISIONS

Search

95. A search is the exploration of a place with a view to seizing therein an animate or inanimate thing

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

(2) the possession of which constitutes an offence;

(3) which was obtained, directly or indirectly, by the commission of an offence.

Authorization

96. A search is authorized by a warrant. It may be authorized by a telewarrant where the circumstances, such as the time or distance

that would be involved in obtaining a warrant, are likely to prevent the search. No search may be made without a warrant or telewarrant except where the person in charge of the premises agrees to the search, or in exigent circumstances.

Exigent circumstances

Circumstances are exigent where the time necessary to obtain a warrant or even a telewarrant may result in danger to human health or to the safety of persons or property or in the disappearance, destruction or loss of the thing searched for. However, no search without a warrant or telewarrant may be made in a dwelling except in an emergency where the person making the search has reasonable grounds to believe that the health or safety of a person is in danger.

Search without warrant

97. A person who proposes to make a search without a warrant or telewarrant must also have reasonable grounds to believe that an offence has been committed and that the thing searched for is located in the place where he proposes to make the search.

Application for search warrant

98. An application for a search warrant or telewarrant may be made by a peace officer or person responsible under an Act for the enforcement of that Act or of some other Act.

Affidavit

99. An application for a search warrant must be supported by an affidavit; an application for a search telewarrant must be supported by an oral statement submitted by telephone or other means of telecommunication and is deemed to be made under oath.

Sources of information

The statement of the applicant may omit the names of persons who constitute sources of information or facts that may lead to the disclosure of such sources.

Telewarrant

100. The judge to whom an application for a search telewarrant is made shall record the applicant's statement verbatim either in writing or by mechanical means.

Duties of the judge

If the judge issues the telewarrant,

(1) he shall complete the original, indicating the number of the telewarrant, the name of the person from whom he received the statement and the place, date and time of issue of the telewarrant, and sign it;

(2) he shall, where necessary, cause the recording of the statement to be transcribed, certify the conformity of the transcript and indicate the place, date and time of transcription;

(3) he shall promptly cause to be filed with the clerk of the Court of the Sessions of the Peace in the district where the search is to be made the original of the telewarrant and the record or transcript of the recording.

Duties of applicant

101. The person who applied for a telewarrant shall prepare a duplicate thereof. He shall indicate thereon the number of the telewarrant, the fact that the telewarrant was issued on the faith of his statement and that his statement was deemed made under oath, the name of the judge who issued it and the place, date and time of its issue, and shall sign it.

Issue of search warrant

102. A search warrant may be issued at any time by a judge having jurisdiction in the judicial district where the search is to be made or in the district where the offence was reportedly committed. It must be signed by the judge who issues it.

Search telewarrant

A search telewarrant may be issued at any time by a judge and in a district designated by the chief judge of the Court of the Sessions of the Peace.

Sufficient grounds

103. No search warrant or telewarrant may be issued unless the judge is satisfied that the person applying therefor has reasonable grounds to believe that an offence has been committed and that the thing searched for is located in the place where he proposes to make the search. In the case of a telewarrant, the judge must also be satisfied that circumstances make it impossible for the person to apply for a warrant.

Content of warrants

104. The search warrant or telewarrant must indicate, by name or in general terms, who is in charge of the search; it must also indicate the place, vehicle or receptacle authorized to be searched and the things searched for therein; the warrant or telewarrant must be numbered and mention the obligation to make a report of the search.

Execution

105. The search warrant or telewarrant is executory throughout Québec.

Time of execution

106. The execution of a search warrant or telewarrant cannot commence more than fifteen days after it is issued nor, without the written authorization of the judge who issued it, before seven a.m. or after eight p.m., or on a non-juridical day.

Search

107. A search may be made by a peace officer, a person responsible under an Act for the enforcement of that Act or another Act or any

other person authorized by the judge who issued the warrant or telewarrant.

Identification and production of warrant

108. A person making a search shall, if there are persons present on the premises where the search is made,

(1) declare his name and quality to them;

(2) specify the offence giving rise to the search to the person on whose premises the search is made or, in his absence, the person who declares that he is in charge of them;

(3) allow that person or the person in charge, as the case may be, to examine the warrant or telewarrant;

(4) ask that person or the person in charge, as the case may be, to hand over the things searched for.

Right of access

109. A person making a search may enter the place wherein he is authorized to search for a thing.

Seizure

He may seize, in addition to the thing searched for, any thing in plain view described in article 95.

Personal search

He may also search any person present on the premises where the search is made if he has reasonable grounds to believe that the person has the thing searched for on his person.

Use of force

If the person must use force in making the search, he shall not use more force than necessary.

Minutes of seizure

110. Where a person makes a seizure during a search, he shall record the seizure in minutes containing

(1) indication of the place where the seizure was made;

(2) the date and time of the seizure;

(3) the number of the search warrant or telewarrant or the reasons for which the seizure was made without a warrant or telewarrant;

(4) a summary description of the thing seized;

(5) if they are known, the name of the person from whom the thing was seized and the name of the person on whose premises the search was made or, in his absence, the name of the person in charge of them;

(6) any information by which the person entitled to the thing seized may be identified;

(7) the name and quality of the seizor.

Copy of minutes

111. The seizor shall remit a duplicate of the minutes to the person from whom the thing was seized or to the person in charge of the premises, as the case may be; if the premises are unoccupied, the seizor shall promptly file a duplicate at the office of the Court of the Sessions of the Peace in the judicial district where the search was made.

Notice of search

112. Where a search is made when no one is on the premises, the person making the search shall affix in a conspicuous place on the premises a notice indicating that a search has been made there.

Content in case of seizure

If a thing was seized, the notice must also indicate in which court office the duplicate of the minutes of seizure will be filed and where to inquire to find out where the thing seized will be detained.

Report

113. A person who has executed a search warrant or telewarrant or who, if it was not executed, applied therefor, shall make a written report thereon.

Report and documents filed with judge

The report must be filed, along with the warrant or the duplicate of the telewarrant and, where a seizure was made, the minutes of seizure, with a judge having jurisdiction to issue a search warrant in the judicial district where the warrant was issued or where the original of the telewarrant was filed, as the case may be.

Time of filing

The report must be filed within fifteen days of the expiry of the period for executing the warrant unless the judge grants an extension for the filing.

Report on warrantless search

114. A person who has made a search without a warrant or telewarrant shall promptly report thereon to a judge having jurisdiction to issue a search warrant in the judicial district where the search was made.

Affidavit

He shall then file with the judge an affidavit setting forth his grounds for deciding to make a search in that place, the thing he was searching for and, where such is the case, the exigent circumstances that prevented him from applying for a warrant or telewarrant or the name of the person who consented to the search and the manner in which that person's consent was given.

Minutes of seizure

Where a thing was seized, the seizor shall also file with the judge the minutes of seizure either at the time he reports on the search or within fifteen days of the seizure, unless the judge grants an extension.

DIVISION II

SEARCH IN RESPECT OF CONFIDENTIAL INFORMATION

Professional secrecy

115. A person who makes a search in respect of confidential information held by a person bound by law to professional secrecy, by a priest or by any other minister of religion shall give him, before beginning to search for such information, a reasonable opportunity to object to the examination of anything that may lead to the disclosure of such information, unless the person entitled to the confidentiality of the information consents to the search.

Objection to the seizure

116. If an objection is raised, the person making the search shall, in the presence of the objector and without examining or copying the thing, place it in a package, seal and identify the package, and deliver it promptly to the clerk of the Court of the Sessions of the Peace in the judicial district where the search was made.

Examination of the thing seized

117. The objector or the person entitled to the confidentiality of the information may, with the leave of a judge of the Court of the Sessions of the Peace or, in the absence of such a judge, a judge of the Provincial Court, examine the thing seized. The objector may also copy the thing seized upon payment of the costs fixed by regulation.

Protection of confidentiality

The examination or copy shall be carried out in the presence of the judge or, on his order, in the presence of the clerk of the court. The judge shall take whatever measures are required to ensure the confidentiality of the information.

Determination of confidential nature

118. On the application of the objector or of the person entitled to the confidentiality of the information, a judge of the court where the thing seized was filed or, in the absence of such a judge, a judge of the Provincial Court shall rule on the confidentiality of the information.

Notice

Prior notice of not less than one clear day of the application must be served within fifteen days of the return of the thing seized to the clerk on the seizor and the prosecutor as well as on any other person entitled to make such an application. Failing prior notice within the time prescribed, the thing seized must be returned to the seizor or to the prosecutor, depending on whether or not proceedings have been instituted.

In camera hearing

119. The judge shall hear the application *in camera*. He may summon witnesses, examine the thing seized and allow the attorneys to examine it. He shall, however, take whatever measures are required to ensure the confidentiality of the information.

Declaration of confidentiality

120. If the judge declares all the information that the thing may disclose to be confidential, he shall order that the thing be returned to the objector; in the opposite case, he shall order it to be returned to the seizor or the prosecutor, depending on whether or not proceedings have been instituted.

Removal of confidential information

If the judge declares only part of the information to be confidential, he may order that the thing seized be returned to the prosecutor or the seizor, as the case may be, provided that the confidential information be removed and returned to the objector.

Execution

121. The decision on the confidentiality of information is executory only after the expiry of fifteen days, unless the parties waive that time.

DIVISION III

EXAMINATION OF THINGS SEIZED AND OF DOCUMENTS RELATED TO SEARCH

Examination and copy

122. Every person who has an interest in a thing seized may, with leave of a judge having jurisdiction to issue a search warrant in the judicial district where the thing is detained, examine the thing and, upon payment of the costs prescribed by regulation, obtain a copy thereof.

Notice

Prior notice of not less than one clear day of the application must be served on the custodian of the thing seized and on the prosecutor.

Documents open to examination

123. After a search has been made, any person may, unless an order restricting access thereto has been made, examine the following documents:

(1) the search warrant and the written statement;

(2) the original and the duplicate of the search telewarrant and the record or transcript of the oral statement;

(3) the statement setting forth the reasons for which a search was made without a warrant or telewarrant;

(4) the report of execution of the warrant or telewarrant;

(5) the minutes of seizure.

Partial disclosure

124. On the application of a person who proposes to make or has made a search, or of the prosecutor, the judge may, in the interests of justice, make an order

(1) to allow the removal, from a document referred to in article 123, of the names of persons who constitute sources of information or facts that may lead to the disclosure of such sources;

(2) to temporarily prohibit access to a document referred to in article 123 but only until it is submitted as evidence in proceedings, where the examination of the document may interfere with an investigation in progress relating to the commission of an offence.

Conditional disclosure

125. Where a document referred to in article 123 contains information the disclosure of which may result in danger to human life or safety, the judge may, upon an application, make an order to determine conditions prior to the examination of such information or to temporarily or permanently prohibit the examination thereof.

Notice

Where the application is made by a person other than the person who made the search or the prosecutor, prior notice of not less than one clear day must be served on the latter persons.

Conditions of examination

126. On the application of a person who has an interest in a document referred to in article 123, the judge may, having regard in particular to the interests of justice and the right to privacy, make an order to determine conditions prior to the examination of a document or part thereof or to temporarily prohibit access to it but only until the document is submitted as evidence in proceedings.

Right of access

The order must not, however, prevent the exercise of the right of the person who made the search, the prosecutor, the person on whose premises the search was made, the person from whom a thing was seized or the defendant to have access to the document and to examine it.

Notice

Prior notice of not less than one clear day of the application must be served on the person who made the search and on the prosecutor.

Order to restrict access

127. An application to restrict access to a document referred to in article 123 shall be made to a judge having jurisdiction to issue a search warrant in the judicial district where the warrant was issued, the original of the telewarrant was filed or the statement relating to the search without a warrant was filed, as the case may be. Where the application concerns only the minutes of seizure, it can also be made to a judge having jurisdiction to issue a search warrant in the judicial district where the duplicate was filed.

Review

128. Any decision respecting access to a document referred to in article 123 may be reviewed by a judge of the Superior Court in the judicial district where it was rendered.

Notice

Prior notice of not less than one clear day of an application for review must be served on the parties in first instance.

DIVISION IV

CUSTODY, DETENTION AND DISPOSITION OF THINGS SEIZED

Custody

129. The seizor shall have custody of the thing seized; where it is submitted in evidence, the clerk shall become the custodian thereof.

Detention

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

Sale

130. Where the thing seized is perishable or likely to depreciate rapidly, the judge may, on the application of the custodian, authorize the sale of the thing.

Notice

Prior notice of not less than one clear day of the application must be served on the person from whom the thing was seized and on the persons who claim to have a right in the thing. However, the judge may exempt the custodian from service if deterioration of the thing seized is imminent.

Conditions of sale

The sale shall be made on the conditions fixed by the judge. The proceeds of sale shall be deposited with the Ministère des Finances in accordance with the Deposit Act (R.S.Q., chapter D-5).

Destruction

131. Where the thing seized presents a serious danger to human health or safety or to the safety of property, a judge may, on the application of the custodian, authorize the destruction of the thing.

Notice

Prior notice of not less than one clear day of the application must be served on the person from whom the thing was seized and on the persons who claim to have a right in the thing.

Imminent danger

Where the danger is imminent, the custodian may destroy the thing without authorization from a judge, but he shall promptly report the destruction to a judge and notify it to the person from whom the thing was seized and, if known, the persons who may have had rights therein.

Period of detention

132. The seizor has no right to detain the thing seized or the proceeds of the sale thereof for a period of more than ninety days from the date of seizure unless proceedings have been instituted or except in the cases provided for in articles 133 to 137.

Extension

133. The seizor may, before the expiry of the ninety-day period, apply to a judge for further detention for a period of not more than ninety days.

Additional extension

To obtain any additional further detention period, the seizor must apply therefor before the expiry of the first such period to a judge of the Superior Court in the judicial district where the first order for further detention was made. In such a case, the judge shall fix the conditions and specify the period of detention.

Requirements

Where the seizor applies for a further detention period, he must prove that further detention is necessary, having regard to the complexity of the evidence or to the difficulty of examining the things seized.

Notice

Prior notice of an application for further detention must be served on the person from whom the thing was seized and on the persons who claim to have a right in the thing seized or in the proceeds of the sale thereof.

Release of thing seized

134. The thing seized or the proceeds of the sale thereof must be returned as soon as possible

(1) once the seizor has been informed that no proceedings will be instituted in respect of the thing or the proceeds or that the thing will not be submitted in evidence;

(2) at the expiry of the period during which the seizor is entitled to detain the thing or the proceeds; or,

(3) where an order to return the thing or the proceeds has become executory.

Dispute as to possession

135. Where a thing seized or the proceeds of the sale thereof could be returned but for a dispute as to the possession thereof, the judge may, on the application of the seizor, the prosecutor, the person from whom the thing was seized or any person who claims to have a right therein, order the thing or the proceeds detained on the conditions he fixes or, if the existence of the dispute is not proved, designate the person to whom the thing or the proceeds shall be returned.

Notice

Prior notice of the application must be served on the persons entitled to make such an application.

Thing seized retained for other proceedings

136. Where a thing seized or the proceeds of the sale thereof could be returned but for being required in other proceedings, the prosecutor proposing to institute the other proceedings, the seizor or the prosecutor in the initial proceedings may apply to a judge to order detention of the thing or proceeds and to entrust him with the custody thereof. The judge shall in such a case fix the conditions and specify the period of detention.

Notice

Prior notice of the application must be served on the person from whom the thing was seized and on the other persons entitled to make such an application.

Unlawful possession

137. Where a thing seized or the proceeds of the sale thereof cannot be returned as a result of unlawful possession to the person from whom the thing was seized or to a person who claims to have a right therein, the judge shall, on the application of the seizor or the prosecutor, order the forfeiture of the thing or the proceeds; if unlawful possession is not proved, the judge shall designate the person to whom the thing or the proceeds may be returned.

Notice

Prior notice of the application must be served on the person from whom the thing was seized and on the other person entitled to make such an application.

Confiscation

Unless otherwise specially provided, the thing seized belongs to the Crown on being forfeited and shall be delivered to the public curator; if it is sold before the order for forfeiture, the proceeds of the sale shall be paid into the consolidated revenue fund.

Return of thing seized

138. On the application of a person who claims to have a right in the thing seized, a judge shall order the thing seized or the proceeds of the sale thereof to be handed over to the person if he is satisfied that the person is entitled thereto, that the return thereof will not hinder the course of justice and that detention or forfeiture thereof is not required under article 135, 136 or 137.

Notice

Prior notice of the application must be served on the seizor, the prosecutor, the defendant and the person from whom the thing was seized if he does not make such an application.

Return of thing seized

139. Where a thing seized or the proceeds of the sale thereof must be returned, the thing or proceeds shall be returned to the person from whom the thing was seized or to any other person who is entitled thereto.

Public curator

Notwithstanding the foregoing, where the person to whom the thing must be returned is unknown or cannot be found, a judge may order, on the application of the seizor or the prosecutor, that it be delivered to the public curator.

Execution

140. An order for the return or forfeiture of a thing seized or the proceeds of the sale thereof is executory only on the expiry of thirty days, unless the parties waive that time.

Jurisdiction of the judge

141. Any judge having jurisdiction to issue a search warrant in the judicial district where the thing seized is detained or in that where the thing was detained before being sold has jurisdiction to exercise the powers conferred on a judge by this division.

Jurisdiction of the judge

Where the thing seized has been submitted in evidence but no judgment has been rendered, the judge who is to render judgment on the proceedings has jurisdiction to order the return of the thing.

CHAPTER IV

INSTITUTION OF PROCEEDINGS

DIVISION I

LOCATION OF THE PROSECUTION

Place of prosecution

142. Penal proceedings shall be instituted, as the prosecutor may elect, in the judicial district where the defendant

(1) committed the offence;

(2) has his residence or, in the case of a legal person, has its head office or one of its places of business;

(3) is in detention, where such is the case.

Place of prosecution

Penal proceedings may also be instituted in any other judicial district, with the consent of the defendant.

Judicial districts

143. An offence committed within a distance of two kilometres from the boundary of two or more judicial districts, upon any water crossed by such a boundary, or in a vehicle in the course of a journey that crosses several districts, or an offence begun in one judicial district and ended in another, is deemed to have been committed in one or the other of those districts.

DIVISION II

STATEMENT OF OFFENCE

§ 1.—*General provisions*

Statement of offence

144. Penal proceedings shall be instituted by way of a statement of offence.

Prescribed form

145. The form of the statement of offence, which may vary according to the offence, shall be prescribed by regulation.

Content

146. A statement of offence is deemed to have been made under oath and shall contain the following particulars:

(1) the name and address of the prosecutor;

(2) the name and address of the defendant or, in the case of an offence served pursuant to article 158, the description and registration of the vehicle;

(3) the judicial district where the proceedings are instituted;

(4) the date of service of the statement and, where such is the case, any other date which interrupts prescription;

(5) the description of the offence;

(6) the obligation of the defendant to enter a plea of not guilty or of guilty;

(7) the defendant's right to make a preliminary application;

(8) the minimum statutory sentence for a first offence under the legislative provision infringed by the defendant;

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

Name and quality of issuer

147. The statement of offence shall indicate, where such is the case, the name and quality of the person who, with the authorization of the prosecutor, issued the statement.

Sufficient grounds

The person who issues the statement, just as the prosecutor himself, need not personally have witnessed the offence, but must have reasonable grounds to believe that the offence was committed by the defendant.

Request for sentence

148. The statement of offence shall also contain, in a separate section, a request for sentence indicating

(1) the minimum sentence requested by the prosecutor;

(2) where the sentence requested is a fine,the amount of the costs fixed by regulation payable by the defendant if he transmits a plea of guilty and the total amount of the fine and costs;

(3) a summary statement of the reasons for requesting, where such is the case, a greater sentence than the minimum sentence, particularly in the case of a second or subsequent conviction;

(4) the defendant's right, if he enters a plea of guilty, to contest the sentence requested if it is greater than the minimum sentence.

Examination after conviction

The judge shall not examine the request for sentence unless he has convicted the defendant.

Minimum and maximum sentence

149. The indication of the minimum sentence and of the sentence requested must take into account, where applicable, the rules prescribed in Division II of Chapter VII.

§ 2.—*Description of the offence*

One or several offences

150. The statement of offence may include several offences but each must be described in a separate count.

Nature of offence

151. An offence may be described by using the terms of the legislative provision creating the offence or similar terms; the description of the offence may be completed by a reference to the provision. However, where the reference is not in accordance with the description, the description determines the nature of the offence.

Description of each count

152. Each count must be sufficiently detailed as to the offence and the circumstances in which it was committed to allow the defendant to know what he is accused of and to obtain a full and complete defence.

Validity

153. A count is not invalidated by the sole fact that it does not precisely designate a person, place or thing or that it omits certain details, such as the name of the person injured, the name of the owner of a thing or the means used to commit the offence.

Number of offences

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

Number of offences

155. Where an offence has continued for more than one day, it 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 and the offences may be described in a single count.

DIVISION III

SERVICE OF STATEMENT OF OFFENCE

Commencement of proceedings

156. Every penal proceeding shall commence with service of a statement of offence.

Service

157. Service of a statement of offence may be made at the time of the commission of an offence. A duplicate of the statement shall in such a case be delivered to the defendant by the prosecutor or the person authorized to issue a statement on his behalf.

Service

Service of the statement may also be made after the commission of the offence, in accordance with Division V of Chapter I.

Parking violation

158. In the case of a parking violation, service of a statement of offence may be made by affixing a duplicate of the statement in a conspicuous place on the vehicle.

Service on parents

159. Where the defendant is under eighteen years of age, a duplicate of the statement of offence must also be served on his parents, unless they are unknown or cannot be found or except in the case of a parking violation.

CHAPTER V

PROCEDURE PRIOR TO THE TRIAL

DIVISION I

TRANSMISSION OF PLEA

Plea

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

Plea of guilty

161. A defendant who enters a plea of guilty shall transmit with his plea the whole amount of the fine and costs requested; otherwise, he could be liable to pay an additional amount of costs fixed by regulation.

Intention to contest

A defendant on whom a greater sentence than the minimum sentence is requested is not required to transmit with his plea of guilty the amount requested if the plea includes an indication of his intention to contest the sentence.

Presumption

162. A defendant who transmits the whole amount of the fine and costs requested without entering a plea is deemed to have transmitted a plea of guilty.

Presumption

163. A defendant who transmits neither a plea nor the whole amount of the fine and costs requested is deemed to have transmitted a plea of not guilty.

Partial payment deemed security

164. Any partial payment transmitted with or without a plea is deemed to be security for payment of the fine and costs in case of conviction.

Deemed conviction

165. Where the defendant has transmitted or is deemed to have transmitted a plea of guilty without indicating his intention to contest the sentence imposed on him, he is deemed to have been convicted of the offence.

Judicial district

The judgment is deemed to be rendered, and the sentence and the costs requested in the statement are deemed to be imposed in the judicial district in which the proceedings were instituted, at the time of the receipt of the plea or payment of the whole amount of the fine and costs requested.

Notification

166. The clerk of the court of competent jurisdiction in the judicial district in which the proceedings were instituted shall advise the defendant and the prosecutor of the place, date and time set

(1) for the pronouncement of conviction and the hearing on the contestation of the sentence where the defendant has transmitted a plea of guilty with an indication of his intention to contest the greater sentence imposed on him;

(2) for trial of the proceedings where the defendant has transmitted a plea of not guilty.

Onus of proof

167. It is incumbent upon the defendant to establish that he has, at the place indicated in the statement and within the prescribed time, transmitted a plea and, where such is the case the amount requested or a plea of guilty including an indication of his intention to contest the greater sentence imposed on him, where any of such facts is contested.

DIVISION II

PRELIMINARY APPLICATIONS

Preliminary application

168. The fact that a defendant has transmitted a plea of not guilty does not prevent him from making a preliminary application.

Time

169. A preliminary application may be made before the date set for the trial to a judge having jurisdiction to try the proceedings in the judicial district where proceedings were instituted or, during trial, to the presiding judge, with his leave.

Notice

Prior notice of such an application must be served on the adverse party unless both parties are present before the judge. The notice must be filed in the office of the court of competent jurisdiction in the judicial district where proceedings were instituted.

Service

Notwithstanding the foregoing, where the application is made by the defendant, the notice transmitted with the plea to the place indicated in the statement of offence has the same value and effect as the service and filing.

Date of trial

170. The judge to whom a preliminary application is made may, if need be, set a new date for trial of the proceedings.

Deferral of decision

171. The judge to whom a preliminary application is made shall not defer his decision until after the trial except in the case of

(1) an application contemplated in subparagraph 8 of the first paragraph of article 184;

(2) any other application contemplated in article 184 made during the trial.

Late application

172. The costs fixed by regulation may be awarded against a party who makes a preliminary application after being advised of the date set for the trial or after the trial has begun, even if the application is granted, where the judge is satisfied that the application could have been made earlier and that the delay caused unnecessary attendance of witnesses.

Unfounded application

173. Where the judge dismisses a preliminary application, he may do so with the costs fixed by regulation if he is satisfied that the application is dilatory or clearly unfounded.

Objects of preliminary application

174. A preliminary application may be made

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

(2) to have the proceedings tried in another judicial district;

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

(4) to have a count amended;

(5) to have the statement of offence amended;

(6) to have the counts contained in a statement of offence tried separately, or to have counts contained in more than one statement tried jointly;

(7) to allow a defendant to obtain a separate trial;

(8) to obtain the dismissal of the proceedings.

Transfer for lack of jurisdiction

175. On the application of either party, where the judge in charge of the record of the proceedings does not have jurisdiction to try them, he shall order it transferred to a judge having such jurisdiction.

Transfer in the interest of justice

176. On the application of either party, the judge may order, in the interests of justice, that the trial be held in another district. The clerk shall thereupon transmit the record to the office of the court of competent jurisdiction in the district designated in the order.

Order of transfer

177. Where an application for transfer is made by the defendant and is to the effect that the trial be held in the district of his residence, a judge having jurisdiction to try the proceedings in that district shall make the order for such transfer if he is satisfied that the change applied for is in the interests of justice, taking into account the costs of attendance that the witnesses to be summoned by the prosecutor as well as by the defendant will incur as a result of the change.

Service of the application

In addition, prior notice of the application must be served on the clerk of the court of competent jurisdiction in the judicial district where proceedings were instituted. Where the order is made, it shall be served on the said clerk, who shall then transmit the record to the office of the court designated in the order.

Application for further details

178. On the application of the defendant, the judge shall order the prosecutor to furnish further details as to the offence and the circumstances in which it was committed if he is satisfied that such details are necessary to allow the defendant to know what he is accused of and to prepare a full and complete defence.

Application to amend a count

179. On the application of the prosecutor, the judge, on such conditions as he determines and if he is satisfied that no injustice will result therefrom, shall allow him to amend a count so as to add a detail or correct an irregularity, and in particular to include in it, in express terms, 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.

Application to amend the statement of offence

180. On the application of either party, the judge shall, on the conditions he determines, allow a statement of offence to be amended to clarify a detail or correct an irregularity not related to the count.

Separate trial

181. On the application of the defendant, the judge may order, in the interests of justice, that a separate trial be held on each of several counts in a statement of offence.

Joinder of counts

182. On the application of either party, the judge may order, in the interests of justice, that a joint trial be held on several counts described in separate statements of offence issued against the same defendant.

Severance of accused

183. On the application of one of several defendants jointly accused of having committed the same offence, the judge may order, in the interests of justice, that a separate trial be held for that defendant.

Notice

Prior notice of the application must be served on all the parties to the case.

Dismissal of a count

184. On the application of the defendant, the judge shall order the dismissal of a count if he is satisfied that

(1) the defendant has already been acquitted or convicted of the offence described in the statement of offence or been in jeopardy for the 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 issue the statement on behalf of the prosecutor was not so authorized by him;

(5) the prosecutor does not have the authority to institute the proceedings;

(6) one count, not excepted under article 155, pertains to more than one offence;

(7) the count corresponds to no offence created by any Act in force at the time the facts described in the count occurred;

(8) the provision that creates 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 or in respect of the Charter of human rights and freedoms.

Amendment to the statement of offence

Notwithstanding the foregoing, where an amendment to the statement of offence can correct the irregularity that has been

established, the judge, rather than ordering the dismissal of the count, shall, on such conditions as he determines and if he is satisfied that no injustice will result therefrom, allow the prosecutor to make the amendment. In no case may the judge allow one defendant to be substituted for another or one offence to be substituted for another.

New proceedings

185. Dismissal of a count on grounds described in subparagraphs 4 and 5 of the first paragraph of article 184 does not prevent a prosecutor having the authority to take proceedings from instituting new proceedings for the same offence, provided it is not prescribed.

Costs

186. No defendant who 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.

CHAPTER VI

TRIAL

Place of trial

187. Where the defendant has transmitted a plea of not guilty, the proceedings shall be tried, subject to article 175, 176 or 177, by a judge of the judicial district where they were instituted.

Place of trial

Where the defendant is deemed to have transmitted a plea of not guilty, the proceedings may in addition be tried and judgment rendered by a judge in the judicial district where the place to which the plea and, as the case may be, the amount of the fine and costs are to be sent, unless the prosecutor indicates that the proceedings must be tried by a judge in the judicial district in which they were instituted.

Absence of defendant

188. Where a defendant on whom a statement of offence was duly served is deemed to have transmitted a plea of not guilty, the proceedings shall be tried and judgment rendered even in the absence of the defendant.

Proceedings *ex parte*

Where, in addition, the prosecutor fails to attend the trial, the judge may either try the proceedings in the absence of the parties if the evidence is in the record and render judgment by default, or adjourn the trial.

Judgment by default

189. Where the defendant fails to attend the trial although he was duly convened, but the prosecutor is present, the judge may, on proof that the defendant was convened, either adjourn the trial or, on the application of the prosecutor, allow the proceedings to be tried and judgment to be rendered by default.

Absence of prosecutor

190. Where the prosecutor fails to attend the trial although he was duly convened, but the defendant is present, the judge may, on proof that he was convened, either adjourn the trial or dismiss the proceedings.

Proceedings *ex parte*

191. 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 proceedings in the absence of the parties if the evidence is in the record and render judgment by default, or adjourn the trial.

Attorney or representative

192. The prosecutor and the defendant may act in person or through an attorney. A legal person may act through a representative or an attorney.

Plea admitted or rejected

193. The judge may admit or reject a plea of guilty entered before him by a defendant before judgment is rendered. If he admits it, he shall render judgment; if he rejects it, he may either adjourn or proceed with the trial.

Open court

194. The trial shall be held in open court unless the presiding judge orders that it be held *in camera* in the interests of good morals or public order.

Trial judge

195. The trial judge shall render judgment on the proceedings. Should the judge be unable to complete the trial or to render judgment by reason of illness or for any other serious reason, another judge of the same jurisdiction shall resume the trial.

Act performed by other judge

Notwithstanding the foregoing, where, after rendering his decision in respect of the conviction of the defendant or the dismissal of the proceedings, the judge is unable for any reason mentioned in the first paragraph to impose a sentence or to make an order, another judge of the same jurisdiction may take his place for the performance of that act.

Decision of other judge binding

196. The trial judge need not be the judge who rendered a decision in respect of the proceedings before trial, but the judge trying the proceedings is bound by any decision on a preliminary application taken before trial by another judge.

Payment of costs

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

Person under 18 years of age

198. 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, as the case may be, where the notice of his arrest has not been given to them, the judge may either try the proceedings and render judgment or order that the statement be served on them or that the notice be given to them and adjourn the trial for that purpose.

Defendant in detention

199. Where the defendant is in detention, no adjournment of his trial may exceed eight days without his consent unless he is detained for some other reason.

Earlier date

200. A judge who adjourns a trial may, on the application and with the consent of the parties, continue the trial on a date prior to that fixed at the time of the adjournment if he is satisfied that fixing a new date for the trial will facilitate the administration of justice.

Conduct of proceedings

201. The prosecutor has complete freedom within the limits prescribed by law in the conduct of the proceedings and the defendant has a right to a full and complete defence.

Evidence and rebuttal

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

Hearing of witnesses

203. The trial judge shall hear the witnesses summoned or the persons present at the trial whose testimony may be required by the prosecutor or the defendant.

Obligation to testify

The judge may order the persons to testify if he is satisfied that their testimony may be useful. They cannot refuse to testify on the ground that they were not duly summoned.

Taking of evidence

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

Translator

The judge may allow an interpretor he considers qualified to translate testimony where required.

Transcription

205. Testimony may 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.

Oath

The witness need not sign the transcript of his testimony, but the person having made the transcript must attest its accuracy under oath and sign it.

Transfer for lack of jurisdiction

206. Where the trial judge discovers that he lacks jurisdiction in respect of the offence or the defendant, he shall raise that fact of his own motion and, on conditions he deems just and reasonable, order the transfer of the record to the judge having jurisdiction.

Dismissal of a count

207. Where the trial judge discovers any ground for dismissal of a count, he shall raise that fact of his own motion. He then has the powers and obligations of a judge having a preliminary application before him for dismissal of a count.

Questions reserved for decision

208. Subject to article 171, the trial judge may reserve his decision on the questions of law raised during the trial, but in case of an objection to the admissibility of any evidence and on the application of either party, he shall render his decision before the party who intended to submit that evidence declares his proof closed.

Amendment of a count

209. On the application of the prosecutor, the judge, on such conditions as he determines and if he is satisfied that no injustice will result thereby, shall allow him to amend a count to make it correspond to the evidence submitted if the count and the evidence submitted are different. The judge shall not, however, allow the substitution of defendants or of offences.

Application for acquittal

210. After the prosecutor has declared his proof closed, the defendant may apply for acquittal by reason of the total absence of proof of an essential element of the offence.

New fact

211. The judge, upon an application, shall allow a party to submit proof of a new fact or of a fact that he inadvertently omitted to prove, even after the parties have declared their proof closed, if he is satisfied that no injustice results thereby.

Address

212. Unless he has made a defence, the defendant shall make his address after that of the prosecutor. The judge may allow the party who made his address first to reply.

Defendant mentally unfit

213. Where the behaviour of the defendant 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 mentally unfit to stand trial, the judge shall adjourn the trial until he renders a decision on the fitness of the defendant to stand trial.

Psychiatric examination

214. Before deciding on the fitness of the defendant to stand trial, the judge may require that the defendant be given a clinical psychiatric

examination and order him to submit to such an examination in accordance with the Mental Patients Protection Act (R.S.Q., chapter P-41).

Suspension of proceedings

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

Mental fitness

216. On the application of either party, the judge may, during the year of suspension, render another decision on the fitness of the defendant to stand trial and, for that purpose exercise the powers contemplated in article 214.

Notice

Prior notice of the application must be served on the adverse party.

Continuation of the trial

217. 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 continuation of the trial; otherwise, the suspension shall continue.

Continuation after suspension

218. The trial of proceedings cannot be continued where more than one year has elapsed from the date of suspension of proceedings.

Second prosecution prohibited

A defendant cannot be prosecuted a second time for an offence for which proceedings were suspended and not continued or for an offence resulting from the same facts or the same event.

CHAPTER VII

JUDGMENT

DIVISION I

GENERAL PROVISIONS

Verdicts

219. The judge who renders judgment may acquit the defendant, convict him or dismiss the proceedings.

Several counts

220. Where a statement of offence contains several counts arising from the same facts or the same events, 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.

Judgment postponed

Notwithstanding the foregoing, where the judge convicts the defendant of an offence, he shall, unless he is satisfied that the lawgiver did not intend to prevent a conviction in respect of one of the other counts, postpone judgment on the other counts. The clerk shall enter that fact in the record of the judgment.

Lesser offence

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

Disposal of thing seized

222. When rendering judgment, the judge shall, where applicable, in accordance with Division IV of Chapter III, adapted as required, make an order for the disposition of things seized or the proceeds of the sale thereof that are still in detention, and of things submitted in evidence. The order is executory only after the expiry of thirty days, unless the parties waive that period.

Order

The judge may also make any other order provided for by law.

Jurisdiction

In the case described in article 165, orders provided for by law may be made by a judge having jurisdiction to make them in the judicial district where proceedings were instituted.

Judgment as to costs

223. When rendering judgment, the judge may

(1) order the defendant to pay the costs fixed by regulation where he convicts him of an offence and imposes a fine on him;

(2) order the prosecutor to pay to the defendant the costs fixed by regulation if he considers the proceedings to be an abuse or clearly unfounded;

(3) order the defendant or the prosecutor, as the case may be, to pay the costs fixed by regulation where it has been decided that they would be determined upon judgment on the proceedings.

Representations by the parties

224. Before imposing sentence, ordering payment of the costs or making any other order, the judge rendering judgment shall give each party present an opportunity to be heard in that regard.

Final judgment

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

Recording

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

Date of judgment

227. A judgment rendered orally is deemed rendered on the date it is pronounced, while a judgment rendered in writing or for which the reasons are given in writing is deemed rendered on the date of filing of the writing in the court record.

Date of judgment

228. Where sentence is imposed on a date subsequent to that of the judgment of guilty, the judgment is deemed rendered on the date of sentence. However, if the sentence is imposed or the reasons therefor are given in writing, the judgment is deemed rendered on the date of filing of the writing in the court record.

DIVISION II

SENTENCE

Sentence

229. Where a judge convicts a defendant of an offence, he shall impose upon him a sentence within the limits prescribed by law, taking into account in particular the special circumstances relating to the offence or to the defendant and any period of detention served by the defendant in respect of the offence.

Continued offence

230. Where an offence continued for more than one day, the judge is not bound to impose a sentence for each day or part of a day for which the offence continued if he is satisfied that the prosecutor unduly delayed to institute proceedings.

Imprisonment excluded

231. Except as otherwise prescribed in this Code and except in the case of contempt of court, imprisonment cannot be prescribed for offences under the statutes of Québec.

Inconsistent provision

Any provision inconsistent with this article is without effect unless it states that it is applicable notwithstanding this article.

Fine

232. Where no sentence is prescribed in an Act for an offence, the sentence shall be a fine of $50 to $2 000.

Person under 18 years of age

233. Where the defendant is under eighteen years of age, no fine to which he is liable may exceed $100, notwithstanding any provision to the contrary.

Legal person

234. Where the defendant is a legal person, a fine of $500 to $10 000 shall be substituted for any compulsory term of imprisonment prescribed as a sentence for the offence committed by that defendant.

Minimum sentence

235. Where a fine or a term of imprisonment may be imposed according to law for an offence, the fine shall be considered the minimum sentence.

Fixed amount fine

Where the prescribed sentence is a fine of a fixed amount, it shall be considered the minimum sentence.

Minimum amount

Where the prescribed sentence is a fine and no minimum amount is fixed, that amount shall be $50; where the maximum amount of the fine is less than $100, the minimum amount shall be equal to one-half of that maximum amount and, if it contains a fraction, it shall be rounded off to the next lower whole number.

Subsequent offence

236. Where an Act prescribes a greater sentence in the case of a second or subsequent conviction, that sentence cannot be imposed unless the offence takes place within two years after conviction of the defendant for an offence under the same provision as that under which the greater sentence is requested.

Execution

237. A judgment imposing a fine or the payment of costs is not executory before the expiry of at least thirty days, except where the person required to pay it waives that period, and it cannot include any order for recovery of the fine or costs. However, where the judge is satisfied that the defendant will abscond, he shall direct that, failing immediate payment of the sum due under the judgment, the defendant shall be imprisoned for the period he determines in accordance with articles 350 to 353.

Imprisonment

238. Where a judge imposes imprisonment, he shall give the reasons for the conviction and the sentence in writing, except in the case of article 237.

Execution

239. A term of imprisonment is executory upon sentence.

Period of detention

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

Interruptions

240. A term of detention is interrupted for the whole time that the defendant is released from custody according to law or is unlawfully at large. It begins to run again upon his reimprisonment to finish serving his sentence.

Consecutive terms

241. Where the defendant is already in detention, the judge, in sentencing him to a new term of imprisonment, may order that the terms be served consecutively. Sentences of imprisonment imposed under this Code in default of payment of a sum due, where there is more than one sum due, must be served consecutively.

Intermittent detention

242. Where the judge imposes a sentence of imprisonment for not over 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.

CHAPTER VIII

RECTIFICATION OF JUDGMENT

Rectification

243. Every judgment or decision rendered under this Code may be rectified

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

(2) to bring the sentence imposed or the content of an order into conformity with the law;

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

Rectification by the judge

244. The rectification may be made by the judge who rendered the judgment or decision, of his own motion, so long as execution has not been commenced. The judge may notify the parties if he deems it advisable.

Application

On the application of either party, the rectification may also be made at any time, if there is no appeal, by that judge or, if he is not available, by a judge having jurisdiction to render the judgment or decision in the judicial district where the judgment was rendered. Where the judgment was rendered in the district contemplated in the second paragraph of article 187, the application may also be made in the district where proceedings were instituted.

Court of Appeal

In the case of the Court of Appeal, the rectification shall be made by a judge who took part in the judgment or the decision of the Court or by the judge who rendered the decision or, if such a judge is not available, by another judge of that Court.

Execution

245. An application for rectification does not stay execution of the judgment or decision unless the judge so orders upon an application.

Notice

246. Prior notice of the application for rectification or for stay of execution shall be served on the adverse party, except on a defendant found guilty by default or under article 165.

Stay of execution

In case of urgency, the judge may order a stay of execution even if a prior notice of the application has not been served on the adverse party.

Stay of execution

247. The person responsible for execution of the judgment or decision 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 stay of execution.

Appeal

248. The time for appeal from a rectified judgment or decision begins to run from the date of rectification.

Dismissal of application

249. A judge dismissing an application for rectification may do so with or without costs in the amount fixed by regulation.

CHAPTER IX

REVOCATION OF JUDGMENT

DIVISION I

REVOCATION UPON APPLICATION OF THE DEFENDANT

Defendant convicted by default

250. Where a defendant convicted by default was, for a serious reason, prevented from submitting his defence, he may apply for revocation of judgment to the judge who rendered it or, if he is not available, to a judge having jurisdiction to render such a judgment in the judicial district where the judgment was rendered.

Judicial district

Where the judgment was rendered in the district contemplated in the second paragraph of article 187, the application for revocation of judgment may also be made in the district where proceedings were instituted.

Application

251. An application for revocation of judgment must be in writing and state, in addition to the grounds for the application, that the defendant contests the merits of the judgment.

Oral application

Notwithstanding the foregoing, the application may also be made orally if the defendant appears at the hearing after the judge has rendered judgment, provided that the judge and the prosecutor are still present in the court room.

Filing

252. The written application must be filed within fifteen days after the defendant acquires knowledge of the judgment convicting him.

Late filing

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

Granting of application

253. The judge shall grant the application for revocation of judgment if he is satisfied that the grounds alleged are serious and that the defendant has a ground for contesting the merits of the judgment.

Effect of granting

Where the application is granted, the parties are 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.

Dismissal of application

254. Where the judge dismisses an application for revocation of judgment, he may do so with or without costs, in the amount fixed by regulation. Where he grants the application, he may do so without costs or order that the amount of the costs be determined, if advisable, at the time of the judgment on the proceedings.

Execution

255. An application for revocation of judgment does not stay execution of judgment unless the judge so orders upon an application by the defendant.

Notice

Prior notice of the application must be served on the prosecutor unless he is present when it is made. In cases of urgency, however, the judge may order a stay of execution even if prior notice of the application has not been served on the prosecutor.

Stay of execution

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

DIVISION II

REVOCATION UPON APPLICATION OF THE PROSECUTOR

Conviction through administrative error

257. Where a prosecutor discovers that, as a result of an administrative error, the defendant has been convicted by default, he shall, unless an appeal has been filed, make an application for revocation of the judgment to the judge who rendered it or, if he is not available, to a judge having jurisdiction to render such a judgment in the judicial district where judgment was rendered.

Judicial district

Where judgment was rendered in the district contemplated in the second paragraph of article 187, the application for revocation of judgment may also be made in the district where proceedings were instituted.

Oral application

258. The application for revocation of judgment shall be made orally.

Notice

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

Sufficient grounds

259. The judge shall grant the application for revocation of judgment if he is satisfied that the grounds invoked for setting it aside justify a new trial.

New trial

Where the application is granted, the parties are 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.

Stay of execution

260. An application for revocation of judgment stays execution of judgment.

Stay of execution

The person responsible for the execution of a judgment must stay execution and immediately return the order of execution to the office of the court upon being informed that an application for revocation of judgment has been made.

DIVISION III

REDUCTION OF COSTS

Parking violation

261. A defendant who has been convicted by default of a parking offence after a duplicate of the statement of offence was served on him by being affixed in a conspicuous place on his vehicle may demand that the costs be reduced to the minimum amount fixed by regulation even if he pleads guilty to the offence.

Reduction of costs

262. The application for reduction shall be made in writing to the judge who rendered judgment or, if he is not available, to a judge having jurisdiction to render such a judgment in the judicial district where judgment was rendered.

Judicial district

Where judgment was rendered in the district contemplated in the second paragraph of article 187, the application for reduction may also be made in the district where proceedings were instituted.

Granting of application

263. The judge shall grant the application without costs if he is satisfied that it was not possible for the defendant to be aware, without negligence on his part, that the statement of offence had been served on him. If he dismisses the application, the judge may award the costs fixed by regulation against the defendant.

Provisions applicable

264. Articles 252, 255 and 256, adapted as required, apply to this division.

CHAPTER X

EXTRAORDINARY REMEDIES AND HABEAS CORPUS PROCEEDINGS

Procedure

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

Remedies not available

Notwithstanding the foregoing, no remedy under the said articles may be exercised in the case of a judgment or decision that is or was appealable by operation of law or with leave.

Costs

Where the judge dismisses an application for an extraordinary remedy or *habeas corpus* proceedings, he may do so with or without costs, in the amount fixed by regulation. Where he grants the application, he may do so without costs or order that the amount be determined, if advisable, at the time of the judgment on the proceedings.

CHAPTER XI

APPEAL TO THE SUPERIOR COURT

DIVISION I

GENERAL PROVISIONS

"judgment rendered in first instance"

266. 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 or denied at the time of the judgment;

(2) a decision directing the dismissal of a count;

(3) a judicial stay of proceedings;

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

(5) a judgment finding the defendant mentally unfit to stand trial;

(6) an order directing that a thing seized or the proceeds of the sale thereof be detained, forfeited or returned.

Appeal

267. An appeal from a judgment rendered in first instance may contemplate only the sentence or an order or only the conviction or acquittal.

Notice of appeal

Where the appeal contemplates both the sentence or an order and the conviction or, as the case may be, the acquittal, it must be brought by way of the same notice of appeal.

Persons who may appeal

268. 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.

Right of appeal not waived

269. A person does not waive 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

Judicial district

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

Judicial district

Where judgment was rendered in the district contemplated in the second paragraph of article 187, the appeal may also be brought in the judicial district where proceedings were instituted.

Time for filing appeal

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

Time for filing appeal

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

Notice

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

Content

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

Transmission of notice

273. On receiving 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 to the judge of first instance who rendered the judgment.

Transmission of record

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

Written appearance

274. The respondent shall, within ten days of the filing of the notice of appeal in the office of the Superior Court, file a written appearance in the same office.

Filing

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

Notice

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

Entry on roll

275. The clerk of the Superior Court must enter an appeal on the roll once it is ready for hearing.

Stay of execution

276. The filing of the notice of appeal stays the execution of the judgment rendered in first instance, except a judgment by which the defendant is imprisoned.

Conditional release

277. Upon an application by a defendant appealing the judgment by which he is imprisoned, a judge of the Superior Court of the judicial district where the appeal is brought shall release the defendant from custody on the conditions he determines, particularly the furnishing of a security, unless he believes that the defendant will abscond or will not keep the peace while awaiting judgment on the appeal; the judge ordering continuation of the detention of the defendant shall make any order to expedite the hearing of the appeal.

Notice

Prior notice of at least one clear day of the application for release from custody must be served on the prosecutor.

Security

278. To guarantee execution of the judgment on the appeal, the judge may, on a written application by the respondent, order that the appeal be heard on condition that the appellant, except the Attorney General, furnish security in the amount and on the terms and conditions of payment determined by the judge.

Dismissal of appeal

279. On a written application by the respondent, the judge shall dismiss any appeal he considers to be frivolous or clearly unfounded.

Costs

If the judge dismisses the appeal, he may award the costs fixed by regulation against the appellant. If he dismisses the application of the respondent, he may award the costs fixed by regulation against the respondent.

Abandonment

280. The appellant may abandon his appeal by filing a notice of abandonment at the office of the Superior Court where the appeal is brought. In that case, the judge of that court may award the costs fixed by regulation against the appellant.

Notice

The notice of abandonment must be served by the appellant on the respondent.

Documents

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

DIVISION III

HEARING OF APPEAL AND JUDGMENT

Hearing of appeal

281. The hearing of an appeal shall be based on the record prepared in accordance with the rules of practice.

New hearing

Notwithstanding the foregoing, on the application of one of the parties, the appeal may be heard by way of a new hearing where, because of the state of the record or for any other cause, the judge considers it preferable in the interests of justice to hear the appeal in the form of a new hearing.

Application

282. The application for an appeal by way of a new hearing must be filed in writing within ten days of the appearance of the respondent.

Costs

If the judge dismisses the application, he may award the costs fixed by regulation against the applicant.

Procedure

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

Evidence

The judge hearing the appeal may allow any testimony given in first instance, in writing or on magnetic tape, to be submitted in evidence unless he is satisfied that a party will suffer prejudice thereby.

Oral or written presentation

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

Powers of the judge

285. The judge hearing an appeal on the record may exercise all the powers conferred by this Code to the judge who rendered judgment in first instance.

New evidence

The judge may, in particular, admit any new evidence, order the production of anything connected with the case, order the summons of any compellable witness, who may then be examined or cross-examined, as the case may be, by the parties, and make any order in the interests of justice.

Granting of appeal

286. 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.

Error in law

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 shows that, but for that error, the judgment would have been different.

Appeal dismissed

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

New judgment

287. The judge may, if he grants the appeal on the record, quash, in whole or in part, the judgment rendered in first instance. He shall then render the judgment that should have been rendered in first instance or order a trial before a judge other than the judge who rendered judgment in first instance.

Conditional release

288. Where the judge orders that a trial be held, he may, upon application, release from custody, on the conditions he determines, in particular, the furnishing of security, a defendant who has been detained under the judgment rendered in first instance unless he is satisfied that the defendant will abscond or will not keep the peace until judgment is rendered on the new trial; a judge ordering continuation of the detention of the defendant shall make any order to expedite the new trial in first instance.

Costs

289. If the judge dismisses the appeal on the record, he may, in accordance with article 223, award the costs fixed by regulation for the trial in first instance and the appeal against the appellant.

Transmission of documents

290. 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 must be sent to the office of the court where the judgment was rendered in first instance.

CHAPTER XII

APPEAL TO COURT OF APPEAL

DIVISION I

GENERAL PROVISIONS

Appeal on a question of law

291. The appellant and respondent in Superior Court and the Attorney General, even if he was not a party to the proceedings, may, if he shows that he has a sufficient interest in a question of law alone, bring an appeal before the Court of Appeal, with leave of a judge of that court, from a judgment

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

(2) granting or dismissing an application for *habeas corpus* or extraordinary remedies.

Objection to the evidence

292. 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 of information disclosed through a thing seized may also be appealed immediately.

Place of appeal

Such appeal takes place with leave of a judge of the Court of Appeal, where the objection to the evidence has been admitted or where the confidentiality of the information 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.

Appeal by operation of law

The appeal takes place by operation of law where the objection to the evidence has been denied or where the nonconfidentiality of the information 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 contemplated by the objection or permit access to the information or render judgment on the proceedings until the appeal from the interlocutory judgment is decided.

Preference

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

Payment of fine not a waiver

293. A person does not waive 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

Place of appeal

294. An appeal shall be brought before the Court of Appeal sitting at Montréal or at Québec according to where an appeal from a judgment in a civil matter would lie, or, also, where the judgment was rendered in the judicial district contemplated in the second paragraph of article 187, according to where the appeal from the judgment would lie if it had been rendered in the district where proceedings were instituted.

Number of judges

295. The sitting of the court shall be composed of three judges, but the chief justice may increase that number where he considers it advisable.

Referral to the court

A judge of the Court of Appeal may refer to the court any application addressed to him under this chapter.

Application for leave to appeal

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

Time of filing

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 expiry of the period of thirty days.

Stay of execution

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

Conditional release

298. On the application of a defendant who has served an application for leave to appeal from the judgment under which he is imprisoned, a judge of the Court of Appeal shall release him from custody on the conditions he determines, particularly the furnishing of security, unless he is satisfied that the defendant will abscond or will not keep

the peace while awaiting judgment on the appeal; the judge ordering continuation of the detention of the defendant shall make any order that may expedite the hearing in appeal.

Notice

Prior notice of at least one clear day of the application for release from custody must be served on the prosecutor.

Payment of security

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

Costs

Where the judge refuses leave to appeal, he may award costs fixed by regulation against the appellant.

When appeal brought

300. 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.

Copy of judgment

301. 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.

Transmission to the office of the court

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

Transmission to the Court of Appeal

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

Written appearance

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

Time of filing

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

Notice

Prior notice of at least one clear day of the application must be served on the appellant.

Factum

304. Within sixty days of the judgment granting leave to appeal, the appellant shall file a factum at the office of the Court of Appeal together with proof of its service on the respondent.

Time of filing

305. Within sixty days of the filing of the factum of the appellant, the respondent shall file a factum at the office of the court together with proof of its service on the appellant.

Content of factums

306. 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.

Factums not filed

307. Upon an 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

Prior notice of the application must be served on the adverse party.

Entry on roll

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

Appeal submitted orally

308. Upon the joint application of the parties, a judge of the Court of Appeal may, if he sees fit, exempt the parties from filing a factum and authorize them to submit the appeal orally.

Entry on roll

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

Special roll

310. If, within one year from the date on which it was brought, the appeal is not ready to be entered on the roll, 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.

Abandonment

If, on the date specified by the clerk, the appeal is not ready for hearing, a judge of the Court of Appeal may, after giving the parties an opportunity to be heard, declare the appeal abandoned, unless a valid reason is presented by one of the parties. The judge may in that case make any order he sees fit.

Notice of abandonment

311. The appellant may abandon his appeal by filing a notice of abandonment. The judge may award the costs fixed by regulation against the appellant.

Service

Notice of the abandonment must be served on the respondent by the appellant.

Transmission to the office of the court

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

of the notice of abandonment must be returned to the office of the court where the appealed judgment was rendered.

DIVISION III

HEARING OF THE APPEAL AND JUDGMENT

Powers of the court

312. The court which hears the appeal may exercise all the powers conferred by this Code on the judge whose judgment is appealed.

New evidence

The court may, in particular, admit any new evidence, order the production of anything connected with the case, order the summons of any compellable witness, who may then be examined or cross-examined, as the case may be, by the parties, and make any order in the interests of justice.

Provisions applicable

313. Articles 286 to 290 apply, adapted as required, to the judgment on the appeal.

Sentencing

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

Application for release

314. An application for release from custody for the duration of the appeal to the Supreme Court of Canada must be addressed to a judge of the Court of Appeal and articles 297 and 298, adapted as required, apply to the application.

CHAPTER XIII

EXECUTION OF JUDGMENTS

Recovery of sums due

315. All sums due from a party to a proceeding or witness under an order given by a judge in accordance with this Code shall be recovered in accordance with the provisions of this chapter.

Recovery of sums due

All sums due from a witness shall be recovered in the same manner as the sums due from a defendant.

Powers of the judge

316. The powers conferred on a judge under this chapter may be exercised by the judge who made the order to pay or, if he is not available, by a judge having jurisdiction to make such an order in the judicial district where the order was made.

Judicial district

Where the order was made in the district contemplated in the second paragraph of article 187, the powers described in the first paragraph may also be exercised by a judge having jurisdiction in the district where proceedings were instituted.

Costs

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

Costs

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

Ownership of sums due

318. Unless otherwise provided, all sums due from a defendant and all things forfeited upon judgment belong to the Crown; the sums due shall be paid into the consolidated revenue fund and the things forfeited shall be delivered to the public curator.

Sums due from the Crown

319. Where a sum is due from the Crown, the Minister of Finance shall pay it after receiving a certified copy of the document containing the order of payment. He shall take the sum necessary for the payment out of the consolidated revenue fund or out of the budget allocated to that purpose.

Order of payment

320. 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 involved.

Payment out of security

321. The sums due from a defendant shall be paid out of the security where the defendant furnished security and where it has not been forfeited. Where the amount of the security exceeds the sum due, the balance shall be returned to the person who paid it.

Return of security

Where the defendant owes no money, the amount of the security shall be remitted to the person who paid it.

Collectors

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

Demand for payment

Unless judgment has been satisfied, the collector shall without delay send a notice of judgment to the defendant and, where such is the case, a demand for payment of the sum due within the time indicated.

Access to information held by the Government

323. Where an order to pay an amount of money becomes executory, a judge may, on the motion of the collector and if the defendant cannot be found, order a department or governmental body to provide the collector with available information as to the residence or place of employment of the defendant in default and, if need be, allow a person employed by such department or body designated by

the judge to be examined for that purpose before him or any other judge of the same jurisdiction.

Professional secrecy

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

Warrant of arrest

324. Where the defendant cannot be found and where he did not pay the sums due, the collector may, in order to recover the sums in accordance with this chapter, apply to the judge to issue a warrant ordering that the defendant be arrested and brought before the collector.

Default of payment

Where the defendant cannot be brought forthwith before the collector, the person who arrested him shall release him from custody providing he gives his address or, if necessary, any information confirming the accuracy thereof, and undertakes to appear before the collector on the day specified in the recognizance; where the defendant refuses to comply with these requirements, he shall be brought before the judge who issued the warrant of arrest or a judge having jurisdiction to issue such a warrant within the same judicial district. Where the defendant persists in his refusal, the judge shall order his imprisonment and issue a warrant of committal in default of payment of the sums due.

Payment and receipt

325. The defendant may pay the sums due in whole or in part to the person entrusted with the execution of the warrant of arrest. Such person shall give a receipt to the defendant as evidence of payment and remit the amount paid to the collector.

Suspension of execution

Payment of the total amount due suspends execution of the warrant.

Content of warrant

326. The warrant of arrest shall contain the name of the defendant and describe the grounds on which it is issued. It shall order that the defendant be arrested and brought before the collector to pay the sums due and shall be signed by the judge who issues it. Articles 45 to 47 and, where the defendant is not released from custody, articles 48 to 50 apply, adapted as required, to the execution of the warrant.

Extension

327. On application by 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.

Payment by instalments

328. 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.

Seizure

329. 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.

Procedure

330. 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 for 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, no advance to meet the costs of custody or the disbursements rendered necessary by the execution of the writ may be required by the seizing officer;

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

Writs of seizure

331. 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.

Jurisdiction

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

Seizure of immovable

332. Before making a seizure of immovable property, the collector shall obtain the authorization of a judge, who shall

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

(2) in exceptional circumstances and where he is satisfied that the interests of justice so require, authorize the collector to proceed with the seizure but only if the defendant refuses or neglects to carry out compensatory work.

Compensatory work

333. Where a collector has reasonable grounds to believe that seizure does not or will not permit the recovery of the sums due from the defendant, he may offer the defendant the option of paying the

sums due by means of compensatory work, depending in particular on the availability of compensatory work programs.

Nature of the work

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

Person under 18 years of age

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.

Payment through work

335. 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.

Written agreement

The agreement shall be in writing.

Duration

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

Fraction rounded off

Where the total number of compensatory work hours 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.

Limit of hours

337. In no case may the defendant agree to carry out more than 1 500 compensatory work hours.

Maximum

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 amount.

12-month limit

338. 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.

Report

339. Upon completion of the work, the collector shall send a report of the carrying out of the work to a judge.

Release

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

Provisions not applicable

340. 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 (R.S.Q., chapter B-1.1), 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, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) do not apply when compensatory work is carried out under this chapter.

Provisions applicable

341. 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.

Employer and contributions

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.

Payment before work begins

342. 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.

Balance

343. The defendant may, while carrying out compensatory work, pay the balance of the sums due to the collector.

Reduction

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 hours already carried out or paid and the number of hours to be carried out at the time of the agreement.

Payment

344. 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.

Reduction

The payment reduces the number of compensatory work hours 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.

Reduction

345. Even if the defendant ceases to carry out compensatory work before completing it, the amount of the sums due at the time of the agreement is reduced proportionately to the ratio between the number

of hours already carried out or paid and the number of hours to be carried out at the time of the agreement.

Warrant of committal

346. Where the defendant fails to honour his agreement to appear before the collector, where it has not been possible to offer compensatory work or where the defendant refuses or neglects to carry out such work, and if the sums due have not been paid, the collector may apply to a judge for an order of imprisonment and a warrant of committal of the defendant.

Notice

Prior notice of the application shall be served on the defendant. The judge may, however, hear the application if it has not been possible to serve the prior notice on the defendant despite reasonable efforts to do so.

Person under 18 years of age

The collector shall, if the defendant is a person under eighteen years of age, serve prior notice of the application on the person's parents. If the parents have not been notified, the judge may proceed against the defendant or adjourn the hearing of the application on the conditions he determines, and order that prior notice be served on the parents.

Issue of warrant

347. The judge may order imprisonment and issue a warrant of committal if 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.

Reasons

The reasons for ordering imprisonment shall be given in writing.

Term of imprisonment

348. 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.

Fraction rounded off

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.

Maximum term

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

Uninterrupted detention

349. Each sentence of imprisonment in default of payment of a sum due must be served without interruption.

Beginning of term of imprisonment

350. Where a defendant is sentenced both to imprisonment and to payment of a sum of money, imprisonment in default of payment of the sum of money begins to run at the expiry of the term of imprisonment to which he was sentenced.

Consecutive terms

351. Where the defendant is already in detention, the judge, in imposing imprisonment in default of payment of sums due, may order that the terms be served consecutively. Sentences of imprisonment imposed under this Code in default of payment of a sum due, where there is more than one sum due, must be served consecutively.

Term of imprisonment

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

Time of issue and execution

353. A warrant may be issued and executed at any time. It may be executed anywhere in Québec by a peace officer or a bailiff.

Expiry and renewal

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 time by the judge who issued it or by a judge in the same judicial district.

Arrest

354. The person who arrests a defendant under a warrant of committal shall

(1) state his name and quality to the defendant;

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

(3) allow the defendant to examine the warrant, or if it is not in his possession, promptly allow him to examine it;

(4) inform the defendant of the amount due in the case of imprisonment in default of payment of a sum due.

Use of force

The person shall not use more force than necessary.

Right of access

355. To execute a warrant of committal, a person may enter any place where he has reasonable grounds to believe the defendant he has been ordered to arrest is to be found, in order to arrest him.

Notification of presence

Before entering the place, he shall give a notice to a person in the place of his presence and of the purpose of his presence, unless he has reasonable grounds to believe that that would allow the defendant to abscond.

Custody of warden

356. The person who arrests a defendant under a warrant of committal must deliver him into the custody of the warden of the house of detention indicated therein or, if the defendant consents thereto, the warden of the house of detention at the place of arrest.

Person under 18 years of age

If the defendant is under eighteen years of age, he must be delivered into the custody of the director of youth protection having jurisdiction at the place of arrest.

Attestation of defendant's condition

The warrant of committal must be delivered as soon as possible to the person into whose custody the defendant is delivered. That person shall issue an attestation of the condition of the defendant when he receives him.

Warrant against detainee

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

Person under 18 years of age

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

Payment and receipt

358. The defendant may pay the sums due or part thereof to the person entrusted with the execution of a warrant of committal. The person shall give a receipt to the defendant as evidence of payment and remit the amount paid to the collector.

Suspension of execution

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

Payment before beginning term

359. The defendant may, before beginning his term of imprisonment, pay to the director or warden of the establishment where he has been conveyed the full amount of the sums due.

Balance

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

Reduction

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 at the time of imprisonment.

Payment

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

Reduction

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.

Receipt

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

Release

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

Application to costs

363. Where a sentence in the form of a fine has been imposed on the defendant and he makes payment of a sum due, carries out compensatory work or serves a term of imprisonment in default of payment, the sum, work or term of imprisonment is applied first to payment of the costs related to the fine.

Application to costs

Where more than one sentence in the form of a fine has been imposed on the defendant, the sum, work or term of imprisonment is applied first to the payment of the costs related to the smallest fine, and then to that fine.

Suspension of driver's licence

364. Where a defendant has not paid the sum due at the expiration of the time indicated under article 322 or agreed under article 327 or 328, or where, at the expiration 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 so that the driver's licence or learner's licence of the defendant be suspended or his right to obtain such be refused by the Régie.

Notice

The collector shall give a notice to the Régie only in case of an offence under the Highway Safety Code (1986, chapter 91) or a traffic by-law passed by a municipality, other than a parking infraction.

Other measures of recovery

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

Notice to the Régie de l'assurance automobile

365. The collector, if he has given a notice under article 364, 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 article 339 or has served the term of imprisonment ordered in default of payment of a sum due.

Payment to prosecutor

366. 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 article 9 who disbursed sums of money to prosecute.

CHAPTER XIV

REGULATIONS

Regulations

367. The Government may, by regulation,

(1) prescribe the form of statements of offence and offence reports;

(2) fix the court fees payable under this Code;

(3) fix the costs that may be awarded against a party in first instance or in appeal;

(4) fix the fee exigible for the issue of a copy of a thing seized or document;

(5) determine the obligations of a person who receives security while awaiting its disposition pursuant to this Code;

(6) fix, for the purposes of the security contemplated in section 76, the amount of costs added to the amount of the minimum fine and determine how it may be paid;

(7) fix the allowances payable to witnesses;

(8) fix the amount of costs that may be awarded against a defaulting witness;

(9) fix the costs that may be imposed upon dismissal of an application for rectification of judgment or reduction of costs or upon the granting or dismissal of an application for revocation of a judgment addressed by the defendant;

(10) fix the costs for an application for an extraordinary remedy or *habeas corpus* proceedings;

(11) fix the costs of execution of the judgment that may be awarded against a party;

(12) determine the conditions on which part of the costs recovered may be remitted to the prosecutor under article 366;

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

Rules of practice

368. 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 adopt, for the exercise of their respective

jurisdictions, the rules of practice judged necessary for the proper carrying out of this Code.

Adoption

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

Approval of the Government

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

CHAPTER XV

FINAL PROVISIONS

Minister of Justice

369. The Minister of Justice is responsible for the administration of this Code.

Coming into force

370. The provisions of this Code will come into force on the date or dates 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

(Articles 336 and 348)

For the portion of the sums due between:	One day of imprisonment is equivalent to:	One compensatory work hour is equivalent to:
$1 and $5 000 :	$25	$10
$5 001 and $10 000:	$50	$20
$10 001 and $15 000:	$75	$30
$15 001 and $20 000:	$100	$40
$20 001 and $25 000:	$125	$50
$25 001 and $30 000:	$150	$60
$30 001 and $35 000:	$175	$70
$35 001 and $40 000:	$200	$80
$40 001 and $45 000:	$225	$90
$45 001 and $50 000:	$250	$100
$50 001 and over:	$400	$160

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