

PROCEEDINGS BEFORE GRAND JURY.

504. Every person who appears before a grand jury to give evidence in support of a bill of indictment shall be examined touching the matters in question upon oath to be administered by the foreman of the grand jury or by any member who acts on his behalf. Evidence under oath.

505. The name of every witness who is examined or whom it is intended to examine shall be endorsed on the bill of indictment and submitted to the grand jury by the prosecutor, and no other witnesses shall be examined by or before the grand jury unless the presiding judge otherwise orders in writing. Endorsing bill of indictment.

506. The foreman of the grand jury or any member of the grand jury who acts on his behalf shall write his initials against the name of each witness who is sworn and examined with respect to the bill of indictment. Foreman to initial names.

PROCEEDINGS WHEN PERSON INDICTED IS AT LARGE.

507. (1) Where an indictment has been found against a person who is at large, and that person does not appear or remain in attendance for his trial, the court before which the accused should have appeared or remained in attendance may, whether or not he is bound by recognizance to appear, issue a warrant for his arrest. Bench warrant

(2) A warrant issued under subsection (1) may be in Form 15 and may be executed anywhere in Canada. Execution

CHANGE OF VENUE.

508. (1) A court before which an accused is or may be indicted, at any term or sittings thereof, or a judge who may hold or sit in that court, may at any time before or after an indictment is found, upon the application of the prosecutor or the accused, order the trial to be held in a territorial division in the same province other than that in which the offence would otherwise be tried if Application, how made.

- (a) it appears expedient to the ends of justice, or
- (b) a competent authority has directed that a jury is not to be summoned at the time appointed in a territorial division where the trial would otherwise by law be held.

(2) The court or judge may, in an order made upon an application by the prosecutor under subsection (1), prescribe conditions that he thinks proper with respect to the payment of additional expenses caused to the accused as a result of the change of venue. Conditions as to expense.

Transmission
of record.

(3) Where an order is made under subsection (1), the officer who has custody of the indictment, if any, and the writings and exhibits relating to the prosecution, shall transmit them forthwith to the clerk of the court before which the trial is ordered to be held, and all proceedings in the case shall be held or, if previously commenced, shall be continued in that court.

Idem.

(4) Where the writings and exhibits referred to in subsection (3) have not been returned to the court in which the trial was to be held at the time an order is made to change the place of trial, the person who obtains the order shall serve a true copy thereof upon the person in whose custody they are and that person shall thereupon transmit them to the clerk of the court before which the trial is to be held.

Order is auth-
ority to remove
prisoner.

509. An order that is made under section 508 is sufficient warrant, justification and authority to all sheriffs, keepers of prisons and peace officers for the removal, disposal and reception of an accused in accordance with the terms of the order, and the sheriff may appoint and authorize any peace officer to convey the accused to a prison in the territorial division in which the trial is ordered to be held.

AMENDMENT.

Amending
defective
indictment
or count.

510. (1) An objection to an indictment or to a count in an indictment for a defect apparent on the face thereof shall be taken by motion to quash the indictment or count before the accused has pleaded, and thereafter only by leave of the court or judge before whom the trial takes place, and a court or judge before whom an objection is taken under this section may, if it is considered necessary, order the indictment or count to be amended to cure the defect.

Amendment
where
variance.

(2) A court may, upon the trial of an indictment, amend the indictment or a count thereof or a particular that is furnished under section 497, to make the indictment, count or particular conform to the evidence, where there appears to be a variance between the evidence and

(a) the charge in a count in the indictment as found;
or

(b) the charge in a count in the indictment

(i) as amended, or

(ii) as it would have been if it had been amended in conformity with any particular that has been furnished pursuant to section 497.

(3) A court shall, upon the arraignment of an accused, or at any stage of the trial, amend the indictment or a count thereof as may be necessary where it appears

- (a) that the indictment has been preferred
 (i) under another Act of the Parliament of Canada instead of this Act, or
 (ii) under this Act instead of another Act of the Parliament of Canada: Indictment under wrong Act.
- (b) that the indictment or a count thereof
 (i) fails to state or states defectively anything that is requisite to constitute the offence, Amending defective statement
 (ii) does not negative an exception that should be negatived,
 (iii) is in any way defective in substance, Defect in substance.
 and the matters to be alleged in the proposed amendment are disclosed by the evidence taken on the preliminary inquiry or on the trial; or
- (c) that the indictment or a count thereof is in any way defective in form. Defect in form.
- (4) The court shall, in considering whether or not an amendment should be made, consider What to be considered.
 (a) the matters disclosed by the evidence taken on the preliminary inquiry,
 (b) the evidence taken on the trial, if any,
 (c) the circumstances of the case,
 (d) whether the accused has been misled or prejudiced in his defence by a variance, error or omission mentioned in subsection (2) or (3), and
 (e) whether, having regard to the merits of the case, the proposed amendment* can be made without injustice being done.
- (5) Where, in the opinion of the court, the accused has been misled or prejudiced in his defence by a variance, error or omission in an indictment or a count thereof, the court may, if it is of opinion that the misleading or prejudice may be removed by an adjournment, adjourn the trial to a subsequent day in the same sittings or to the next sittings of the court and may make such an order with respect to the payment of costs resulting from the necessity for amendment as it considers desirable. Adjournment if accused prejudiced.
- (6) The question whether an order to amend an indictment or a count thereof should be granted or refused is a question of law. Question of law.
- (7) An order to amend an indictment or a count thereof shall be endorsed on the indictment as part of the record and the trial shall proceed as if the indictment or count had been originally found as amended. Endorsing indictment.
- (8) A mistake in the heading of an indictment shall be corrected as soon as it is discovered but, whether corrected or not, is not material. Mistakes not material.

Limitation (9) The authority of a court to amend indictments does not authorize the court to add to the overt acts stated in an indictment for treason or for an offence against any provision in sections 49, 50, 51 and 53.

Amended indictment need not be presented to grand jury.

511. Where a grand jury returns a true bill in respect of an indictment and the indictment is subsequently amended in accordance with section 510, it is not necessary, unless the judge otherwise directs, to present the amended indictment to the grand jury, but the indictment, as amended, shall be deemed to be as valid in all respects for all purposes of the proceedings as if it had been returned by the grand jury in its amended form.

INSPECTION AND COPIES OF DOCUMENTS.

Right of accused.

512. An accused is entitled, after he has been committed for trial or at his trial,

To inspect.

(a) to inspect without charge the indictment, his own statement, the evidence and the exhibits, if any; and

To receive copies.

(b) to receive, on payment of a reasonable fee not to exceed ten cents per folio of one hundred words, a copy

(i) of the evidence,

(ii) of his own statement, if any, and

(iii) of the indictment,

but the trial shall not be postponed to enable the accused to secure copies unless the court is satisfied that the failure of the accused to secure them before the trial is not attributable to lack of diligence on the part of the accused.

Delivery of documents in case of treason, etc.

513. (1) An accused who is indicted for treason or for being an accessory after the fact to treason is entitled to receive, after the indictment has been found and at least ten days before his arraignment,

(a) a copy of the indictment,

(b) a list of the witnesses to be produced on the trial to prove the indictment, and

(c) a copy of the panel of jurors who are to try him, returned by the sheriff.

Details.

(2) The list of the witnesses and the copy of the panel of the jurors referred to in subsection (1) shall mention the names, occupations and places of abode of the witnesses and jurors respectively.

Witnesses to delivery

(3) The writings referred to in subsection (1) shall be given to the accused at the same time and in the presence of at least two witnesses.

(4) This section does not apply to the offence of treason by killing Her Majesty, or to the offence of treason where the overt act alleged is an attempt to injure the person of Her Majesty in any manner or to the offence of being an accessory after the fact in such a case of treason. Exception

514. (1) A judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction may, on summary application on behalf of the accused or the prosecutor, after three days' notice to the accused or prosecutor, as the case may be, order the release of any exhibit for the purpose of a scientific or other test or examination, subject to such terms as appear to be necessary or desirable to ensure the safeguarding of the exhibit and its preservation for use at the trial. Release of exhibits for examination or test.

(2) Every one who fails to comply with the terms of an order that is made under subsection (1) is guilty of contempt of court and may be dealt with summarily by the judge or magistrate who made the order or before whom the trial of the accused takes place. Disobeying order.

PLEAS.

515. (1) An accused who is called upon to plead may plead guilty or not guilty, or the special pleas authorized by this Part and no others. Pleas permitted

(2) Where the accused refuses to plead or does not answer directly the court shall order the clerk of the court to enter a plea of not guilty. Refusal to plead

(3) An accused is not entitled as of right to have his trial postponed but the court may, if it considers that the accused should be allowed further time to plead, move to quash, or prepare for his defence or for any other reason, adjourn the trial to a later time in the session or sittings of the court, or to the next or any subsequent session or sittings of the court, upon such terms as the court considers proper. Allowing time to plead.

516. (1) An accused may plead the special pleas of Special pleas.
 (a) *autrefois acquit*,
 (b) *autrefois convict*, and
 (c) pardon.

(2) An accused who is charged with defamatory libel may plead in accordance with sections 520 and 521. In case of libel.

(3) The pleas of *autrefois acquit*, *autrefois convict* and pardon shall be disposed of by the judge without a jury before the accused is called upon to plead further. Disposal.

(4) When the pleas referred to in subsection (3) are disposed of against the accused he may plead guilty or not guilty. Pleading over.

Statement
sufficient.

(5) Where an accused pleads *autrefois acquit* or *autrefois convict* it is sufficient if he

- (a) states that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count to which the plea relates, and
- (b) indicates the time and place of the acquittal or conviction.

Evidence
of identity
of charges.

517. Where an issue on a plea of *autrefois acquit* or *autrefois convict* is tried, the evidence and adjudication and the notes of the judge and official stenographer on the former trial and the record transmitted to the court pursuant to section 462 on the charge that is pending before that court, are admissible in evidence to prove or to disprove the identity of the charges.

What
determines
identity.

518. (1) Where an issue on a plea of *autrefois acquit* or *autrefois convict* to a count is tried and it appears

- (a) that the matter on which the accused was given in charge on the former trial is the same in whole or in part as that on which it is proposed to give him in charge, and
 - (b) that on the former trial, if all proper amendments had been made that might then have been made, he might have been convicted of all the offences of which he may be convicted on the count to which the plea of *autrefois acquit* or *autrefois convict* is pleaded,
- the judge shall give judgment discharging the accused in respect of that count.

Allowance of
special plea
in part.

(2) The following provisions apply where an issue on a plea of *autrefois acquit* or *autrefois convict* is tried, namely,

- (a) where it appears that the accused might on the former trial have been convicted of an offence of which he may be convicted on the count in issue, the judge shall direct that the accused shall not be found guilty of any offence of which he might have been convicted on the former trial, and
- (b) where it appears that the accused may be convicted on the count in issue of an offence of which he could not have been convicted on the former trial, the accused shall plead guilty or not guilty with respect to that offence.

Circum-
stances of
aggravation.

519. (1) Where an indictment charges substantially the same offence as that charged in an indictment on which an accused was previously convicted or acquitted, but adds a statement of intention or circumstances of aggravation tending, if proved, to increase the punishment, the previous conviction or acquittal bars the subsequent indictment.

(2) A conviction or acquittal on an indictment for murder bars a subsequent indictment for the same homicide charging it as manslaughter or infanticide, and a conviction or acquittal on an indictment for manslaughter or infanticide bars a subsequent indictment for the same homicide charging it as murder.

Effect of previous charge of murder or manslaughter.

(3) A conviction or acquittal on an indictment for infanticide bars a subsequent indictment for the same homicide charging it as manslaughter, and a conviction or acquittal on an indictment for manslaughter bars a subsequent indictment for the same homicide charging it as infanticide.

Effect of previous charge of infanticide or manslaughter.

520. (1) An accused who is charged with publishing a defamatory libel may plead that the defamatory matter published by him was true, and that it was for the public benefit that the matter should have been published in the manner in which and at the time when it was published.

Libel, plea of justification.

(2) A plea that is made under subsection (1) may justify the defamatory matter in any sense in which it is specified in the count, or in the sense that the defamatory matter bears without being specified, or separate pleas justifying the defamatory matter in each sense may be pleaded separately to each count as if two libels had been charged in separate counts.

Where more than one sense alleged.

(3) A plea that is made under subsection (1) shall be in writing, and shall set out the particular facts by reason of which it is alleged to have been for the public good that the matter should have been published.

Plea in writing.

(4) The prosecutor may in his reply deny generally the truth of a plea that is made under this section.

Reply.

521. (1) The truth of the matters charged in an alleged libel shall not be inquired into in the absence of a plea of justification under section 520 unless the accused is charged with publishing the libel knowing it to be false, in which case evidence of the truth may be given to negative the allegation that the accused knew that the libel was false.

Plea of justification necessary to try truth.

(2) The accused may, in addition to a plea that is made under section 520, plead not guilty and the pleas shall be inquired into together.

Not guilty, in addition.

(3) Where a plea of justification is pleaded and the accused is convicted, the court may, in pronouncing sentence, consider whether the guilt of the accused is aggravated or mitigated by the plea.

Effect of plea on punishment.

522. Any ground of defence for which a special plea is not provided by this Act may be relied upon under the plea of not guilty.

Plea of not guilty.

DEFENCE OF INSANITY.

Insanity of accused when offence committed.

523. (1) Where, upon the trial of an accused who is charged with an indictable offence, evidence is given that the accused was insane at the time the offence was committed and the accused is acquitted,

Special finding.

(a) the jury, or
(b) the judge or magistrate, where there is no jury, shall find whether the accused was insane at the time the offence was committed and shall declare whether he is acquitted on account of insanity.

Custody after finding.

(2) Where the accused is found to have been insane at the time the offence was committed, the court, judge or magistrate before whom the trial is held shall order that he be kept in strict custody in the place and in the manner that the court, judge or magistrate directs, until the pleasure of the Lieutenant-Governor of the province is known.

Insanity at time of trial.

524. (1) A court, judge or magistrate may, at any time before verdict, where it appears that there is sufficient reason to doubt that the accused is, on account of insanity, capable of conducting his defence, direct that an issue be tried whether the accused is then, on account of insanity, unfit to stand his trial.

Trial of issue.

(2) For the purposes of subsection (1), the following provisions apply, namely,

(a) where the accused is to be tried by a court composed of a judge and jury,

(i) if the issue is directed before the accused is given in charge to a jury for trial on the indictment, it shall be tried by twelve jurors, or in the Province of Alberta, by six jurors, and

(ii) if the issue is directed after the accused has been given in charge to a jury for trial on the indictment, the jury shall be sworn to try that issue in addition to the issue on which they are already sworn; and

(b) where the accused is to be tried by a judge or magistrate, he shall try the issue and render a verdict.

If sane, trial proceeds.

(3) Where the verdict is that the accused is not unfit on account of insanity to stand his trial, the arraignment or the trial shall proceed as if no such issue had been directed.

If insane, order for custody

(4) Where the verdict is that the accused is unfit on account of insanity to stand his trial, the court, judge or magistrate shall order that the accused be kept in custody until the pleasure of the Lieutenant-Governor of the province is known, and any plea that has been pleaded shall be set aside and the jury shall be discharged.

Subsequent trial.

(5) No proceeding pursuant to this section shall prevent the accused from being tried subsequently on the indictment.

525. Where an accused who is charged with an indictable offence is brought before a court, judge or magistrate to be discharged for want of prosecution and the accused appears to be insane, the court, judge or magistrate shall proceed in accordance with section 524 in so far as that section may be applied.

Insanity of accused to be discharged for want of prosecution.

526. Where an accused is, pursuant to this Part, found to be insane, the Lieutenant-Governor of the province may make an order for the safe custody of the accused in the place and in the manner that he may direct.

Custody of insane persons.

527. (1) The Lieutenant-Governor of a province may, upon evidence satisfactory to him that a person who is insane, mentally ill, mentally deficient or feeble-minded is in custody in a prison in that province, order that the person be removed to a place of safe-keeping to be named in the order.

Prisoner mentally ill.

(2) A person who is removed to a place of safe-keeping under an order made pursuant to subsection (1) shall, subject to subsections (3) and (4), be kept in that place or in any other place of safe-keeping in which, from time to time, he may be ordered by the Lieutenant-Governor to be kept.

Custody in safe-keeping.

(3) Where the Lieutenant-Governor is satisfied that a person to whom subsection (2) applies has recovered, he may order that the person

Order for imprisonment or discharge.

(a) be returned to the prison from which he was removed pursuant to subsection (1), if he is liable to further custody in prison, or

(b) be discharged, if he is not liable to further custody in prison.

(4) Where the Lieutenant-Governor is satisfied that a person to whom subsection (2) applies has partially recovered, he may, where the person is not liable to further custody in prison, order that the person shall be subject to the direction of the Minister of Health for the province, or such other person as the Lieutenant-Governor may designate, and the Minister of Health or other person designated may make any order or direction in respect of the custody and care of the person that he considers proper.

Order for transfer to custody of Minister of Health

(5) In this section, "prison" means a prison other than a penitentiary, and includes a reformatory school or industrial school.

"Prison".

CORPORATIONS.

528. Every corporation against which an indictment is found shall appear and plead by counsel or agent.

Appearance by attorney.

529. (1) The clerk of the court shall, where an indictment is found against a corporation, cause a notice of the indictment to be served upon the corporation.

Notice to corporation.

Contents of
notice.

(2) A notice of an indictment referred to in subsection (1) shall set out the nature and purport of the indictment and advise that, unless the corporation appears and pleads within seven days after service of the notice, a plea of not guilty will be entered for the accused by the court, and that the trial of the indictment will be proceeded with as though the corporation had appeared and pleaded.

How served.

(3) Where a corporation to which this section applies
(a) is a municipal corporation, the notice shall be served by delivering it to the mayor, treasurer or clerk of the corporation, or
(b) is a corporation other than a municipal corporation, the notice shall be served by delivering it to the manager, secretary or other executive officer of the corporation or of a branch thereof.

Procedure on
default of
appearance

530. Where a corporation does not appear in the court in which an indictment is found and plead within the time specified in the notice referred to in section 529, the presiding judge may, on proof by affidavit of service of the notice, order the clerk of the court to enter a plea of not guilty on behalf of the corporation, and the plea has the same force and effect as if the corporation had appeared by its counsel or agent and pleaded that plea.

Trial of
corporation

531. Where the corporation appears and pleads to the indictment or a plea of not guilty is entered by order of the court pursuant to section 530, the court shall proceed with the trial of the indictment and, where the corporation is convicted, section 623 applies.

RECORD OF PROCEEDINGS.

How
recorded.

532. (1) It is sufficient, in making up the record of a conviction or acquittal on an indictment, to copy the indictment and the plea that was pleaded, without a formal caption or heading.

Record of
proceedings.

(2) The court shall keep a record of every arraignment and of proceedings subsequent to arraignment.

Form of
record in
case of
amendment.

533. Where it is necessary to draw up a formal record in proceedings in which the indictment has been amended, the record shall be drawn up in the form in which the indictment remained after the amendment, without reference to the fact that the indictment was amended.

JURIES.

Qualification
of juror.

534. (1) A person who is qualified and summoned as a grand or petit juror according to the laws in force for the time being in a province is qualified to serve as a grand or petit juror, as the case may be, in criminal proceedings in that province.

(2) Where the panel of grand jurors is not more than thirteen, seven grand jurors may find a true bill. Seven may find bill.

MIXED JURIES.

535. (1) In those districts in the province of Quebec in which the sheriff is required by law to return a panel of petit jurors composed one-half of persons who speak the English language and one-half of persons who speak the French language, he shall in his return specify in separate lists those jurors whom he returns as speaking the English language and those whom he returns as speaking the French language, and the names of the jurors summoned shall be called alternately from those lists. Mixed juries in Quebec.

(2) In any district referred to in subsection (1) the accused may, upon arraignment, move that he be tried by a jury composed entirely of jurors who speak the language of the accused if that language is English or French. Motion by accused.

(3) Where a motion is made under subsection (2), the judge may order the sheriff to summon a sufficient panel of jurors who speak the language of the accused unless, in his discretion, it appears that the ends of justice are better served by empanelling a mixed jury. Order for panel.

536. (1) Where an accused who is arraigned before the Court of Queen's Bench for Manitoba demands a jury composed of at least half of persons who speak the language of the accused, if that language is either English or French, he shall be tried by a jury composed of at least one-half of the persons whose names stand first in succession upon the general panel and who, not being lawfully challenged, are found, in the judgment of the court, to speak the language of the accused. Mixed juries in Manitoba.

(2) Where, as a result of challenges or any other cause there is, in proceedings to which this section applies, a deficiency of persons who speak the language of the accused, the court shall fix another time for the trial, and the sheriff shall remedy the deficiency by summoning, for the time so fixed, the additional number of jurors who speak the language of the accused that the court orders and whose names appear next in succession on the list of petit jurors. When panel exhausted.

CHALLENGING THE ARRAY.

537. Where an objection is taken to the constitution of a grand jury it shall be taken by motion to the court, but an indictment shall be quashed pursuant thereto only if the judge is of opinion that Objection to constitution of grand jury.

- (a) the objection is well founded, and
- (b) the accused has suffered or may suffer prejudice in the circumstances of which he complains.

Challenging the array.	538. (1) The accused or the prosecutor may challenge the array of petit jurors only on the ground of partiality, fraud or wilful misconduct on the part of the sheriff or his deputies by whom the panel was returned.
In writing.	(2) A challenge under subsection (1) shall be in writing and shall state that the person who returned the panel was partial or fraudulent or that he wilfully misconducted himself, as the case may be.
Form	(3) A challenge under this section may be in Form 36.
Trying ground of challenge.	539. Where a challenge is made under section 538, the judge shall determine whether the alleged ground of challenge is true or not, and where he is satisfied that the alleged ground of challenge is true he shall direct a new panel to be returned.

EMPANELLING JURY.

Names of jurors on cards.	540. (1) The name of each juror on a panel of petit jurors that has been returned, his number on the panel and the place of his abode, shall be written on a separate card, and all the cards shall, as far as possible, be of equal size.
To be placed in box.	(2) The sheriff or other officer who returns the panel shall deliver the cards referred to in subsection (1) to the clerk of the court who shall cause them to be placed together in a box to be provided for the purpose and to be thoroughly shaken together.
To be drawn by clerk of court.	(3) Where (a) the array is not challenged, or (b) the array is challenged but the judge does not direct a new panel to be returned, the clerk of the court shall, in open court, draw out the cards referred to in subsection (2) one after another, and shall call out the name and number upon each card as it is drawn, until the number of persons who have answered to their names is, in the opinion of the judge, sufficient to provide a full jury after allowing for challenges and directions to stand by.
Juror to be sworn.	(4) The clerk of the court shall swear each member of the jury in the order in which the names of the jurors were drawn.
Drawing additional names if necessary	(5) Where the number of persons who answer to their names is not sufficient to provide a full jury, the clerk of the court shall proceed in accordance with subsections (3) and (4) until twelve jurors are sworn.
Challenges by accused in Alberta and Territories.	541. Notwithstanding anything in this Act, six jurors shall be sworn in the Province of Alberta and in the Yukon Territory and the Northwest Territories, and in that province and those Territories the accused is entitled to half

the number of challenges provided for in section 542, and the prosecutor may not direct more than twenty-four jurors to stand by unless the presiding judge, for special cause to be shown, so orders.

542. (1) An accused who is charged with an offence punishable with death is entitled to challenge twenty jurors peremptorily. Peremptory challenges by accused. Twenty in certain cases.

(2) An accused who is charged with an offence other than an offence punishable with death, for which he may be sentenced to imprisonment for more than five years, is entitled to challenge twelve jurors peremptorily. Twelve in certain cases.

(3) An accused who is charged with an offence that is not referred to in subsection (1) or (2) is entitled to challenge four jurors peremptorily. Four in other cases.

543. (1) The prosecutor is entitled to challenge four jurors peremptorily, and may direct any number of jurors who are not challenged peremptorily by the accused to stand by until all the jurors have been called who are available for the purpose of trying the indictment. Challenge by prosecutor. Direction to stand by.

(2) Notwithstanding subsection (1), the prosecutor may not direct more than forty-eight jurors to stand by unless the presiding judge, for special cause to be shown, so orders. Limitation.

(3) The accused may be called upon to declare whether he challenges a juror peremptorily or for cause before the prosecutor is called upon to declare whether he requires the juror to stand by, or challenges him peremptorily or for cause. Accused to challenge first if required.

544. Where an accused who is charged with an offence for which he is entitled to twenty or twelve peremptory challenges in accordance with this Part is to be tried pursuant to section 535 or 536 by a jury composed one-half of persons who speak the language of the accused, he is entitled to exercise one-half of those challenges in respect of the jurors who speak English and one-half in respect of the jurors who speak French. Peremptory challenges in case of mixed jury

545. Where two or more accused persons are jointly charged in an indictment and it is proposed to try them together each may make his challenges in the same manner as if he were to be tried alone. Challenges where tried jointly.

546. A prosecutor other than the Attorney General or counsel acting on his behalf is not entitled, on the trial of an indictment for the publication of a defamatory libel, to direct a juror to stand by. Standing by in libel cases.

Challenge for cause.	<p>547. (1) A prosecutor or an accused is entitled to any number of challenges on the ground that</p> <p>(a) the name of a juror does not appear on the panel, but no misnomer or misdescription is a ground of challenge where it appears to the court that the description given on the panel sufficiently designates the person referred to,</p> <p>(b) a juror is not indifferent between the Queen and the accused,</p> <p>(c) a juror has been convicted of an offence for which he was sentenced to death or to a term of imprisonment exceeding twelve months,</p> <p>(d) a juror is an alien, or</p> <p>(e) a juror is physically unable to perform properly the duties of a juror.</p>
No other ground.	<p>(2) No challenge for cause shall be allowed on a ground not mentioned in subsection (1).</p>
Challenge in writing.	<p>548. (1) Where a challenge is made on a ground mentioned in section 547, the court may, in its discretion, require the party that challenges to put the challenge in writing.</p>
Form	<p>(2) A challenge may be in Form 37.</p>
Denial.	<p>(3) A challenge may be denied by the other party to the proceedings on the ground that it is not true.</p>
Objection that name not on panel.	<p>549. (1) Where the ground of a challenge is that the name of a juror does not appear on the panel, the issue shall be tried by the judge on the <i>voir dire</i> by the inspection of the panel, and such other evidence that the judge thinks fit to receive.</p>
Other grounds.	<p>(2) Where the ground of a challenge is one not mentioned in subsection (1), the two jurors who were last sworn, or if no jurors have then been sworn, two persons present whom the court may appoint for the purpose, shall be sworn to determine whether the ground of challenge is true.</p>
If challenge not sustained. If challenge sustained.	<p>(3) Where the finding, pursuant to subsection (1) or (2) is that the ground of challenge is not true, the juror shall be sworn, but if the finding is that the ground of challenge is true, the juror shall not be sworn.</p>
Disagreement of triers.	<p>(4) Where, after what the court considers to be a reasonable time, the two persons who are sworn to determine whether the ground of challenge is true are unable to agree, the court may discharge them from giving a verdict and may direct two other persons to be sworn to determine whether the ground of challenge is true.</p>
Calling jurors who have stood by	<p>550. (1) Where, as a result of challenges and directions to stand by, a full jury has not been sworn and no names remain to be called, the names of those who have been directed to stand by shall be called again in the order in which their</p>

names were drawn and they shall be sworn, unless challenged by the accused, or unless the prosecutor challenges them or shows cause why they should not be sworn.

(2) Where, before a juror is sworn pursuant to subsection (1), other jurors in the panel become available, the prosecutor may require the names of those jurors to be put into and drawn from the box in accordance with section 540, and those jurors shall be challenged, ordered to stand by or sworn, as the case may be, before the names of the jurors who where originally ordered to stand by are called again.

Other jurors becoming available.

551. (1) Where a full jury cannot be provided notwithstanding that the relevant provisions of this Part have been complied with, the court may, at the request of the prosecutor, order the sheriff or other proper officer forthwith to summon as many persons, whether qualified jurors or not, as the court directs for the purpose of providing a full jury.

Panel exhausted, summoning other jurors.

(2) Jurors may be summoned under subsection (1) by word of mouth, if necessary.

Orally.

(3) The names of the persons who are summoned under this section shall be added to the general panel for the purposes of the trial, and the same proceedings shall be taken with respect to calling and challenging those persons and directing them to stand by as are provided in this Part with respect to the persons named in the original panel.

Adding names to panel.

552. (1) The twelve jurors, or in the province of Alberta, the Yukon Territory and the Northwest Territories the six jurors, whose names are drawn and who are sworn in accordance with this Part, shall be the jury to try the issues of the indictment, and the names of the jurors so drawn and sworn shall be kept apart until the jury gives its verdict or until it is discharged, whereupon the names shall be returned to the box as often as occasion arises, as long as an issue remains to be tried before a jury.

Who shall be jury.

(2) The court may try an issue with the same jury in whole or in part that previously tried or was drawn to try another issue, without the jurors being sworn again, but if the prosecutor or the accused objects to any of the jurors or the court excuses any of the jurors, the court shall order those persons to withdraw and shall direct that the required number of names to make up a full jury be drawn and, subject to the provisions of this Part relating to challenges and directions to stand by, the persons whose names are drawn shall be sworn.

Returning names to box.

Same jury may try another issue by consent.

(3) No omission to follow the directions of this section or section 540 or 550 affects the validity of a proceeding.

Sections directory.

553. (1) Where in the course of a trial a member of the jury is, in the opinion of the judge, by reason of illness or some other cause, unable to continue to act, the judge may discharge him.

Juror unable to continue.

Trial may
continue.

(2) Where in the course of a trial a member of the jury dies or is discharged pursuant to subsection (1), the jury shall, if the prosecutor and the accused consent in writing and if the number of jurors is not reduced below ten, or in the province of Alberta, the Yukon Territory and the Northwest Territories below five, be deemed to remain properly constituted for all purposes of the trial and the trial shall proceed and a verdict may be given accordingly.

TRIAL.

Continuous
trial.

554. (1) The trial of an accused shall proceed continuously subject to adjournment by the court.

Adjournment.

(2) The judge may adjourn the trial from time to time in the same sittings.

Formal
adjournment
unnecessary.

(3) No formal adjournment of trial or entry thereof is required.

Questions
reserved for
decision.

(4) The judge, in any case tried without a jury, may reserve his final decision on any question raised at the trial, and his decision, when given, shall be deemed to have been given at the trial.

Taking
evidence.

555. On the trial of an accused for an indictable offence the evidence of the witnesses for the prosecutor and the accused shall be taken by a stenographer in accordance with the provisions of Part XV relating to the taking of evidence by stenographers at preliminary inquiries.

Separation of
jurors except
in capital
cases.

556. (1) The judge may, at any time before the jury retires to consider its verdict, permit the members of the jury to separate, but this subsection does not apply where an accused is liable, upon conviction, to be sentenced to death.

Keeping in
charge.

(2) Where permission to separate cannot be given or is not given the jury shall be kept under the charge of an officer of the court as the judge directs, and that officer shall prevent the jurors from communicating with anyone other than himself or another member of the jury without leave of the judge.

Saving.

(3) Failure to comply with subsection (2) does not affect the validity of the proceedings.

Empanelling
new jury in
certain cases

(4) Where the fact that there has been a failure to comply with this section is discovered before the verdict of the jury is returned the judge may, if he considers that the failure to comply might lead to a miscarriage of justice, discharge the jury and

(a) direct that the accused be tried with a new jury during the same session or sittings of the court, or

(b) postpone the trial on such terms as justice may require.

(5) The judge shall direct the sheriff to provide the jurors who are sworn with suitable and sufficient refreshment, food and lodging while they are together until they have given their verdict. Refreshment and accommodation.

557. (1) Subject to subsection (2), an accused other than a corporation shall be present in court during the whole of his trial. Accused to be present.

(2) The court may Exceptions.

(a) cause the accused to be removed and to be kept out of court, where he misconducts himself by interrupting the proceedings so that to continue the proceedings in his presence would not be feasible, or

(b) permit the accused to be out of court during the whole or any part of his trial on such conditions as the court considers proper.

(3) An accused is entitled, after the close of the case for the prosecution, to make full answer and defence personally or by counsel. To make defence.

558. (1) Where an accused, or any one of several accused being tried together, is defended by counsel, the counsel shall, at the end of the case for the prosecution, declare whether or not he intends to adduce evidence on behalf of the accused for whom he appears and if he does not announce his intention to adduce evidence, the prosecutor may address the jury by way of summing up. Summing up by prosecutor.

(2) Counsel for the accused or the accused, where he is not defended by counsel, is entitled, if he thinks fit, to open the case for the defence, and after the conclusion of that opening to examine such witnesses as he thinks fit, and when all the evidence is concluded to sum up the evidence. Summing up by accused.

(3) Where no witnesses are examined for an accused, he or his counsel is entitled to address the jury last, but otherwise counsel for the prosecution is entitled to address the jury last. Accused's right of reply.

(4) Notwithstanding subsection (3) the Attorney General or counsel acting on his behalf is entitled to reply. Attorney General's right to reply.

(5) Where two or more accused are tried jointly and witnesses are examined for any of them, all the accused or their respective counsel are required to address the jury before it is addressed by the prosecutor. Prosecutor's right of reply where more than one accused.

559. (1) The judge may, where it appears to be in the interests of justice, at any time after the jury has been sworn and before they give their verdict, direct the jury to have a view of any place, thing or person, and shall give directions as to the manner in which, and the persons by whom, the place, thing or person shall be shown to the jury, and may for that purpose adjourn the trial. View.

Directions to prevent communication.

(2) Where a view is ordered under subsection (1), the judge shall give any directions that he considers necessary for the purpose of preventing undue communication by any person with members of the jury, but failure to comply with any directions given under this subsection does not affect the validity of the proceedings.

Who shall attend.

(3) Where a view is ordered under subsection (1) the accused and the judge shall attend.

Disagreement of jury.

560. (1) Where the judge is satisfied that the jury is unable to agree upon its verdict and that further detention of the jury would be useless, he may in his discretion discharge that jury and direct a new jury to be empanelled during the sittings of the court, or may adjourn the trial on such terms as justice may require.

Discretion not reviewable.

(2) A discretion that is exercised under subsection (1) by a judge is not reviewable.

Proceeding on Sunday, etc., not invalid.

561. The taking of the verdict of a jury and any proceeding incidental thereto is not invalid by reason only that it is done on Sunday or on a holiday.

EVIDENCE ON TRIAL.

Admissions at trial.

562. Where an accused is on trial for an indictable offence he or his counsel may admit any fact alleged against him for the purpose of dispensing with proof thereof.

Evidence of stealing ores or minerals.

563. In any proceeding in respect of theft of ores or minerals, the possession, contrary to any law in that behalf, of smelted gold or silver, gold-bearing quartz, or unsmelted or unmanufactured gold or silver, by an operator, workman or labourer actively engaged in or on a mine, is *prima facie* evidence that the gold, silver or quartz was stolen by him.

Use in evidence of statement by accused.

564. A statement made by an accused under subsection (2) of section 454 and purporting to be signed by the justice before whom it was made may be given in evidence against the accused at his trial without proof of the signature of the justice, unless it is proved that the justice by whom the statement purports to be signed did not sign it.

CHILDREN AND YOUNG PERSONS.

Proof of age.

565. (1) In any proceedings to which this Act applies an entry or record of an incorporated society or its officers who have had the control or care of a child or young person at or about the time the child or young person was brought to Canada is *prima facie* evidence of the age of the child or young person if the entry or record was made before the time when the offence is alleged to have been committed.

(2) In the absence of other evidence, or by way of corroboration of other evidence, a jury, judge, justice or magistrate, as the case may be, may infer the age of a child or young person from his appearance.

Inference from appearance.

CORROBORATION.

566. No person shall be convicted of an offence upon the unsworn evidence of a child unless the evidence of the child is corroborated in a material particular by evidence that implicates the accused.

Unsworn evidence of child.

VERDICTS.

567. Where the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused may be convicted of the attempt.

Full offence charged, attempt proved.

568. (1) Where an attempt to commit an offence is charged but the evidence establishes the commission of the complete offence, the accused is not entitled to be acquitted, but the jury may convict him of the attempt unless the judge presiding at the trial, in his discretion, discharges the jury from giving a verdict and directs that the accused be indicted for the complete offence.

Attempt charged, full offence proved.

(2) An accused who is convicted under this section is not liable to be tried again for the offence that he was charged with attempting to commit.

Conviction a bar.

569. (1) A count in an indictment is divisible and where the commission of the offence charged, as described in the enactment creating it or as charged in the count, includes the commission of another offence, whether punishable by indictment or on summary conviction, the accused may be convicted

Offence charged, part only proved.

(a) of an offence so included that is proved, notwithstanding that the whole offence that is charged is not proved, or

(b) of an attempt to commit an offence so included.

(2) Subject to subsection (3), where a count charges murder and the evidence proves manslaughter or infanticide but does not prove murder, the jury may find the accused not guilty of murder but guilty of manslaughter or infanticide, but shall not on that count find the accused guilty of any other offence.

Conviction for infanticide or manslaughter on charge of murder.

(3) Where a count charges the murder of a child or infanticide and the evidence proves the commission of an offence under section 215 but does not prove murder or infanticide, the jury may find the accused not guilty of murder or infanticide, as the case may be, but guilty of an offence under section 215.

Conviction for concealing body of child where murder or infanticide charged.

No acquittal unless act or omission not wilful.

570. Where a female person is charged with infanticide and the evidence establishes that she caused the death of her child but does not establish that, at the time of the act or omission by which she caused the death of the child,

(a) she was not fully recovered from the effects of giving birth to the child or from the effect of lactation consequent on the birth of the child, and

(b) the balance of her mind was, at that time, disturbed by reason of the effect of giving birth to the child or of the effect of lactation consequent on the birth of the child,

she may be convicted unless the evidence establishes that the act or omission was not wilful.

PREVIOUS CONVICTIONS.

No reference to previous conviction.

571. No indictment in respect of an offence for which, by reason of previous convictions, a greater punishment may be imposed shall contain any reference to previous convictions.

Previous conviction.

572. (1) Where an accused is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, no greater punishment shall be imposed upon him by reason thereof unless the prosecutor satisfies the court that the accused, before making his plea, was notified that a greater punishment would be sought by reason thereof.

Procedure where previous conviction alleged.

(2) Where an accused is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, the court shall, upon application by the prosecutor and upon being satisfied that the accused was notified in accordance with subsection (1), ask the accused whether he was previously convicted and, if he does not admit that he was previously convicted, evidence of previous convictions may be adduced.

Corporations.

(3) Where, pursuant to section 531, the court proceeds with the trial of an accused corporation that has not appeared and pleaded to an indictment, the court may, if the accused is convicted, make inquiries with respect to previous convictions whether or not the accused was notified that a greater punishment would be sought by reason thereof.

Evidence of character.

573. Where, at a trial, the accused adduces evidence of his good character the prosecutor may, in answer thereto, before a verdict is returned, adduce evidence of the previous conviction of the accused for any offences, including any previous conviction by reason of which a greater punishment may be imposed.

574. In any proceedings,

(a) a certificate setting out with reasonable particularity the conviction in Canada of an accused for an indictable offence, purporting to be signed by the person who made the conviction or by the clerk of the court, or

(b) a copy of the summary conviction in Canada of an accused, purporting to be signed by the person who made the conviction or by the clerk of the court to which it was returned,

is, upon proof of the identity of the accused, *prima facie* evidence of the conviction of the accused without proof of the signature or official character of the person by whom it purports to be signed.

Proof of
previous
conviction.

SENTENCE.

575. Where a jury finds an accused guilty, or where an accused pleads guilty, the judge who presides at the trial shall ask the accused whether he has anything to say before sentence is passed upon him, but an omission to comply with this section does not affect the validity of the proceedings.

Accused
found guilty
may speak
to sentence.

Saving.

576. Where one sentence is passed upon a verdict of guilty on two or more counts of an indictment, the sentence is good if any of the counts would have justified the sentence.

Sentence
justified
by any count.

577. (1) A female person who is sentenced to death may move in arrest of execution on the ground that she is pregnant.

Woman
sentenced
to death
while
pregnant.

(2) Where a motion is made under subsection (1), the court shall direct one or more registered medical practitioners to be sworn to examine the female person together or successively and to determine whether or not she is pregnant.

Inquiry
as to
pregnancy.

(3) Where, from the report of a medical practitioner sworn under subsection (2), it appears to the court that a female person to whom this section applies is pregnant, execution shall be arrested until she is delivered of the child or until it is no longer possible in the course of nature that she should be so delivered.

Arresting
execution.

FORMAL DEFECTS IN JURY PROCESS.

578. Judgment shall not be stayed or reversed after verdict upon an indictment

(a) by reason of any irregularity in the summoning or empanelling of the jury, or

(b) because a person who served upon the jury was not returned as a juror by a sheriff or other officer.

Judgment
not to be
stayed on
certain
grounds.

Directions
as to jury
or jurors
directory.

579. No omission to observe the directions contained in any Act with respect to the qualification, selection, balloting or distribution of jurors, the preparation of the jurors' book, the selecting of jury lists, or the drafting of panels from the jury lists, is a ground for impeaching or quashing a verdict rendered in criminal proceedings.

Saving
powers
of court.

580. Nothing in this Act alters, abridges or affects any power or authority that a court or judge had immediately before the coming into force of this Act, or any practice or form that existed immediately before the coming into force of this Act, with respect to trials by jury, jury process, juries or jurors, except where the power or authority, practice or form is expressly altered by or is inconsistent with this Act.

PART XVIII.

APPEALS—INDICTABLE OFFENCES.

- 581.** In this Part,
- "Court of Appeal." (a) "court of appeal" means the court of appeal, as defined by paragraph (9) of section 2, for the province or territory in which the trial of a person by indictment is held;
- "Indictment." (b) "indictment" includes an information or charge in respect of which a person has been tried for an indictable offence under Part XVI;
- "Registrar." (c) "registrar" means the registrar or clerk of the court of appeal;
- "Sentence." (d) "sentence" includes an order made under section 628, 629 or 630 and a direction made under section 638; and
- "Trial court." (e) "trial court" means the court by which an accused was tried and includes a judge or a magistrate acting under Part XVI.

Procedure
abolished.

582. No proceedings other than those authorized by this Part and Part XXIII shall be taken by way of appeal in proceedings in respect of indictable offences.

Right of
appeal of
person
convicted.

583. A person who is convicted by a trial court in proceedings by indictment may appeal to the court of appeal

- (a) against his conviction
- (i) on any ground of appeal that involves a question of law alone,
- (ii) on any ground of appeal that involves a question of fact alone or a question of mixed law and fact, with leave of the court of appeal or upon the certificate of the trial judge that the case is a proper case for appeal, or

- (iii) on any ground of appeal not mentioned in subparagraph (i) or (ii) that appears to the court of appeal to be a sufficient ground of appeal, with leave of the court of appeal; or
- (b) against the sentence passed by the trial court, with leave of the court of appeal or a judge thereof unless that sentence is one fixed by law.

584. (1) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal Right of Attorney General to appeal.

(a) against a judgment or verdict of acquittal of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone, or

(b) with leave of the court of appeal or a judge thereof, against the sentence passed by a trial court in proceedings by indictment, unless that sentence is one fixed by law.

(2) For the purposes of this section a judgment or verdict of acquittal includes an acquittal in respect of a principal offence where the accused has been convicted of an offence included in the principal offence. Acquittal.

585. Where an appeal is dismissed by the court of appeal and a judge of that court expresses an opinion dissenting from the judgment of the court, the formal judgment of the court shall specify any grounds in law upon which the dissent, in whole or in part, is based. Specifying grounds of dissent.

PROCEDURE ON APPEALS.

586. (1) An appellant who proposes to appeal to the court of appeal or to obtain the leave of that court to appeal shall give notice of appeal or notice of his application for leave to appeal, in the manner and within the period after the time of the acquittal, conviction or sentence, as the case may be, as may be directed by rules of court. Notice of appeal.

(2) The court of appeal or a judge thereof may at any time extend the time within which notice of appeal or notice of an application for leave to appeal may be given, but this subsection does not apply where a sentence of death has been imposed pursuant to a conviction. Extension of time.

(3) Where, pursuant to a conviction, a sentence of death or whipping has been imposed, Delay in execution of sentence of death or whipping.

(a) the sentence shall not be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

(b) an appeal or application for leave to appeal from the conviction or sentence shall be heard and determined as soon as practicable, and the sentence shall not be executed until after

- (i) the determination of the application, where an application for leave to appeal is finally refused, or
- (ii) the determination of the appeal.

Effect of certificate.

- (4) The production of a certificate
 - (a) from the registrar that notice of appeal or notice of application for leave to appeal has been given, or
 - (b) from the Minister of Justice that he has exercised any of the powers conferred upon him by section 596,
 is sufficient authority to suspend the execution of a sentence of death or whipping, as the case may be, and where, pursuant to such suspension, a new time is required to be fixed for execution of the sentence, it may be fixed by the judge who imposed the sentence or any judge who might have held or sat in the same court.

Bail.

587. The chief justice or the acting chief justice of the court of appeal or a judge of that court to be designated by the chief justice or acting chief justice may admit an appellant to bail pending the determination of his appeal.

Report by judge.

588. (1) Where, under this Part, an appeal is taken or an application for leave to appeal is made, the judge or magistrate who presided at the trial shall furnish to the court of appeal, in accordance with rules of court, a report giving his opinion upon the case or upon any matter relating thereto.

Transcript of evidence.

- (2) A copy or transcript of
 - (a) the evidence taken at the trial,
 - (b) the charge to the jury, if any, and
 - (c) the reasons for judgment, if any,
 shall be furnished to the court of appeal, except in so far as it is dispensed with by order of a judge of that court.

Notes of proceedings.

- (3) A copy of the charge to the jury, if any, and any objections that were made to it shall, before the copy or transcript is transmitted to the court of appeal pursuant to subsection (2), be submitted to the judge who presided at the trial, and if the judge refuses to certify that the charge and objections are accurately set out, he shall immediately certify to the court of appeal
 - (a) the reasons for his refusal, and
 - (b) the charge that was given to the jury, if any, and any objections that were made to it.

Copies for interested parties.

- (4) A party to the appeal is entitled to receive, upon payment of any charges that are fixed by rules of court, a copy or transcript of any material that is prepared under subsections (2) and (3).

Copy for Minister of Justice.

- (5) The Minister of Justice is entitled, upon request, to receive a copy or transcript of any material that is prepared under subsections (2) and (3).

589. (1) For the purposes of an appeal under this Part the court of appeal may, where it considers it in the interests of justice,

- (a) order the production of any writing, exhibit, or other thing connected with the proceedings; Court may order.
Production of documents.
- (b) order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial, Attendance of witnesses
- (i) to attend and be examined before the court of appeal, or
- (ii) to be examined in the manner provided by rules of court before a judge of the court of appeal, or before any officer of the court of appeal or justice of the peace or other person appointed by the court of appeal for the purpose;
- (c) admit, as evidence, an examination that is taken under subparagraph (ii) of paragraph (b); Admission of evidence.
- (d) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness; Reception of evidence
- (e) order that any question arising on the appeal that
- (i) involves prolonged examination of writings or accounts, or scientific or local investigation, and
- (ii) cannot in the opinion of the court of appeal conveniently be inquired into before the court of appeal,
- be referred for inquiry and report, in the manner provided by rules of court, to a special commissioner appointed by the court of appeal; and Reference to commissioner.
- (f) act upon the report of a commissioner who is appointed under paragraph (e) in so far as the court of appeal thinks fit to do so. Acceptance of report.

(2) In proceedings under this section the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under paragraph (e) of subsection (1), are entitled to be present during the inquiry and to adduce evidence and to be heard. Parties entitled to adduce evidence and be heard.

(3) A court of appeal may exercise in relation to proceedings in the court any powers not mentioned in subsection (1) that may be exercised by the court on appeals in civil matters, and may issue any process that is necessary to enforce the orders or sentences of the court but no costs shall be allowed to the appellant or respondent on the hearing and determination of an appeal or on any proceedings preliminary or incidental thereto. Other powers.

(4) Any process that is issued by the court of appeal under this section may be executed anywhere in Canada. Execution of process.

Legal assistance for appellant.

590. A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal aid and where it appears that the accused has not sufficient means to obtain that aid.

Summary determination of frivolous appeals.

591. Where it appears to the registrar that a notice of an appeal against a conviction, which purports to be on a ground of appeal that involves a question of law alone, does not show a substantial ground of appeal, the registrar may refer the appeal to the court of appeal for summary determination, and, where an appeal is referred under this section, the court of appeal may, if it considers that the appeal is frivolous or vexatious and can be determined without being adjourned for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the respondent on the hearing.

POWERS OF THE COURT OF APPEAL.

592. (1) On the hearing of an appeal against a conviction, the court of appeal

Allowance of appeal against conviction.

- (a) may allow the appeal where it is of the opinion that
- (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
 - (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
 - (iii) on any ground there was a miscarriage of justice;

Dismissal.

- (b) may dismiss the appeal where
- (i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment,
 - (ii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a), or
 - (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (ii) of paragraph (a) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred;

Wrong conclusion on special verdict.

- (c) may refuse to allow the appeal where it is of the opinion that the trial court arrived at a wrong conclusion as to the effect of a special verdict, and may order

the conclusion to be recorded that appears to the court to be required by the verdict, and may pass a sentence that is warranted in law in substitution for the sentence passed by the trial court; or

(*d*) may quash a sentence and order the appellant to be kept in safe custody to await the pleasure of the Lieutenant-Governor where it is of the opinion that, although the appellant committed the act or made the omission charged against him, he was insane at the time the act was committed or the omission was made, so that he was not criminally responsible for his conduct. Insanity.

(2) Where a court of appeal allows an appeal under paragraph (*a*) of subsection (1), it shall quash the conviction and Order to be made.

(*a*) direct a judgment or verdict of acquittal to be entered, or

(*b*) order a new trial.

(3) Where a court of appeal dismisses an appeal under subparagraph (i) of paragraph (*b*) of subsection (1), it may substitute the verdict that in its opinion should have been found and affirm the sentence passed by the trial court or impose a sentence that is warranted in law. Substituting verdict.

(4) Where an appeal is from an acquittal the court of appeal may Appeal from acquittal.

(*a*) dismiss the appeal; or Dismissal.

(*b*) allow the appeal, set aside the verdict and Allowance.

(i) enter a verdict of guilty with respect to the offence of which, in its opinion, the accused should have been found guilty but for the error in law, and pass a sentence that is warranted in law, or

(ii) order a new trial.

(5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the following provisions apply, namely, New trial under Part XVI.

(*a*) if the accused, in his notice of appeal or notice of application for leave to appeal, requested that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall be held accordingly;

(*b*) if the accused, in his notice of appeal or notice of application for leave to appeal, did not request that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall, without further election by the accused, be held before a judge or magistrate, as the case may be, acting under Part XVI, other than a judge or magistrate who tried the accused in the first instance, unless the court of

appeal directs that the new trial be held before the judge or magistrate who tried the accused in the first instance; and

(c) if the court of appeal orders that the new trial shall be held before a court composed of a judge and jury it is not necessary, in any province of Canada, to prefer a bill of indictment before a grand jury in respect of the charge upon which the new trial was ordered, but it is sufficient if the new trial is commenced by an indictment in writing setting forth the offence with which the accused is charged and in respect of which the new trial was ordered.

Additional powers.

(6) Where a court of appeal exercises any of the powers conferred by subsection (2) or (4) it may make any order, in addition, that justice requires.

Powers of court on appeal against sentence.

593. (1) Where an appeal is taken against sentence the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may upon such evidence, if any, as it thinks fit to require or to receive,

(a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted, or

(b) dismiss the appeal.

Effect of judgment.

(2) A judgment of a court of appeal that varies the sentence of an accused who was convicted has the same force and effect as if it were a sentence passed by the trial court.

Right of appellant to attend.

594. (1) Subject to subsection (2), an appellant who is in custody is entitled, if he desires, to be present at the hearing of the appeal.

Appellant represented by counsel.

(2) An appellant who is in custody and who is represented by counsel is not entitled to be present

(a) at the hearing of the appeal, where the appeal is on a ground involving a question of law alone,

(b) on an application for leave to appeal, or

(c) on any proceedings that are preliminary or incidental to an appeal,

unless rules of court provide that he is entitled to be present or the court of appeal or a judge thereof gives him leave to be present.

Argument may be oral or in writing.

(3) A convicted person who is an appellant may present his case on appeal and his argument in writing instead of orally, and the court of appeal shall consider any case or argument so presented.

Sentence in absence of appellant.

(4) The power of a court of appeal to impose sentence may be exercised notwithstanding that the appellant is not present.

595. (1) Where an order for compensation or for the restitution of property is made by the trial court under section 628, 629 or 630, the operation of the order is suspended

(a) until the expiration of the period prescribed by rules of court for the giving of notice of appeal or of notice of application for leave to appeal, unless the accused waives an appeal, and

(b) until the appeal or application for leave to appeal has been determined, where an appeal is taken or application for leave to appeal is made.

(2) The court of appeal may by order annul or vary an order made by the trial court with respect to compensation or the restitution of property within the limits prescribed by the provision under which the order was made by the trial court, whether or not the conviction is quashed.

POWERS OF MINISTER OF JUSTICE.

596. The Minister of Justice may, upon an application for the mercy of the Crown by or on behalf of a person who has been convicted in proceedings by indictment,

(a) direct, by order in writing, a new trial before any court that he thinks proper, if after inquiry he is satisfied that in the circumstances a new trial should be directed;

(b) refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person; or

(c) refer to the court of appeal at any time, for its opinion, any question upon which he desires the assistance of that court, and the court shall furnish its opinion accordingly.

APPEALS TO THE SUPREME COURT OF CANADA.

597. (1) A person who is convicted of an indictable offence whose conviction is affirmed by the court of appeal may appeal to the Supreme Court of Canada

(a) on any question of law on which a judge of the court of appeal dissents, or

(b) on any question of law, if leave to appeal is granted by a judge of the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the judge may, for special reasons, allow.

(2) A person

(a) who is acquitted of an indictable offence and whose acquittal is set aside by the court of appeal, or

Where
joint trial.

(b) who is tried jointly with a person referred to in paragraph (a) and is convicted and whose conviction is sustained by the court of appeal, may appeal to the Supreme Court of Canada on a question of law.

Appeal by
Attorney
General.

598. (1) Where a judgment of a court of appeal sets aside a conviction pursuant to an appeal taken under paragraph (a) of section 583 or dismisses an appeal taken pursuant to paragraph (a) of section 584, the Attorney General may appeal to the Supreme Court of Canada

In case of
dissent.

(a) on any question of law on which a judge of the court of appeal dissents, or

On question
of law with
leave.

(b) on any question of law, if leave to appeal is granted by a judge of the Supreme Court of Canada within twenty-one days after the judgment appealed from is pronounced or within such extended time as the judge may, for special reasons, allow.

Terms.

(2) Where leave to appeal is granted under paragraph (b) of subsection (1), the judge may impose such terms as he sees fit.

Notice of
appeal.

599. No appeal lies to the Supreme Court of Canada unless notice of appeal in writing is served by the appellant upon the respondent within fifteen days

(a) after the judgment of the court of appeal is pronounced where the appeal may be taken without leave, or

(b) after leave to appeal is granted, where leave is required,

unless before or after the expiration of that period further time is allowed by the Supreme Court of Canada or a judge thereof.

Order of
Supreme
Court of
Canada.

600. (1) The Supreme Court of Canada may, on an appeal under this Part, make any order that the court of appeal might have made and may make any rule or order that is necessary to give effect to its judgment.

Hearing
of appeal.

(2) An appeal to the Supreme Court of Canada that is not brought on for hearing by the appellant at the session of that court during which the judgment appealed from is pronounced by the court of appeal, or during the next session thereof, shall be deemed to be abandoned, unless otherwise ordered by the Supreme Court of Canada or a judge thereof.

Abandon-
ment.

APPEALS BY ATTORNEY GENERAL OF CANADA.

Right of
Attorney
General of
Canada
to appeal.

601. The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this Part.

PART XIX.

PROCURING ATTENDANCE OF WITNESSES.

APPLICATION.

602. Except where section 446 applies, this Part applies Application. where a person is required to attend to give evidence in a proceeding to which this Act applies.

PROCESS.

603. (1) Where a person is likely to give material Subpoena. evidence in a proceeding to which this Act applies, a subpoena may be issued in accordance with this Part requiring that person to attend to give evidence.

(2) Where it is made to appear that a person who is Warrant in Form 12. likely to give material evidence

(a) will not attend in response to a subpoena if a subpoena is issued, or

(b) is evading service of a subpoena,
a court, justice or magistrate having power to issue a subpoena to require the attendance of that person to give evidence may issue a warrant in Form 12 to cause that person to be arrested and to be brought to give evidence.

(3) Except where paragraph (a) of subsection (2) applies, Subpoena to be issued in first instance. a warrant in Form 12 shall not be issued unless a subpoena has first been issued.

604. (1) Where a person is required to attend to give How subpoena issued. evidence before a superior court of criminal jurisdiction, a court of appeal or a court of criminal jurisdiction other than a magistrate acting under Part XVI, the subpoena directed to that person shall be issued out of the court before which the attendance of that person is required.

(2) Where a person is required to attend to give evidence Who may issue. before a magistrate acting under Part XVI, or a summary conviction court under Part XXIV or in proceedings over which a justice has jurisdiction, a subpoena directed to that person shall be issued

(a) by a justice or magistrate, as the case may be, where the person whose attendance is required is within the province in which the proceedings were instituted, or

(b) out of a superior court of criminal jurisdiction or a county or district court of the province in which the proceedings were instituted, where the person whose attendance is required is not within the province.

Order of judge.	(3) A subpoena shall not be issued pursuant to paragraph (b) of subsection (2), except pursuant to an order of a judge of the court made upon application by a party to the proceedings.
Seal.	(4) A subpoena or warrant that is issued by a court under this Part shall be under the seal of the court and shall be signed by a judge of the court or by the clerk of the court.
Signature.	(5) A subpoena or warrant that is issued by a justice or magistrate under this Part shall be signed by the justice or magistrate.
Form	(6) A subpoena issued under this Part may be in Form 11.
Contents of subpoena.	605. (1) A subpoena shall require the person to whom it is directed to attend, at a time and place to be stated in the subpoena, to give evidence and, if required, to bring with him any writings that he has in his possession or under his control relating to the subject matter of the proceedings.
Witness to appear and remain.	(2) A person who is served with a subpoena issued under this Part shall attend and shall remain in attendance throughout the proceedings unless he is excused by the presiding judge, justice or magistrate.

EXECUTION OR SERVICE OF PROCESS.

Service.	606. (1) Subject to subsection (2), a subpoena shall be served in accordance with subsection (3) of section 441.
Personal service.	(2) A subpoena that is issued pursuant to paragraph (b) of subsection (2) of section 604 shall be served personally upon the person to whom it is directed.
Proof of service.	(3) Service of a subpoena may be proved by the affidavit of the person who effected service.
Subpoena effective throughout Canada.	607. (1) A subpoena that is issued out of a superior court of criminal jurisdiction, a court of appeal or a court of criminal jurisdiction other than a magistrate acting under Part XVI has effect anywhere in Canada according to its terms.
Subpoena effective throughout province.	(2) A subpoena that is issued by a justice or magistrate has effect anywhere in the province in which it is issued.
Warrant effective throughout Canada.	608. (1) A warrant that is issued out of a superior court of criminal jurisdiction, a court of appeal or a court of criminal jurisdiction other than a magistrate acting under Part XVI may be executed anywhere in Canada.
Warrant effective throughout province.	(2) Subject to subsection (3) of section 610, a warrant that is issued by a justice or magistrate may be executed anywhere in the province in which it is issued.

DEFAULTING OR ABSCONDING WITNESS.

609. (1) Where a person is bound by recognizance to give evidence in any proceedings, a justice who is satisfied upon information being made before him in writing and under oath that the person is about to abscond or has absconded, may issue his warrant in Form 13 directing a peace officer to arrest that person and to bring him before the court, judge, justice or magistrate before whom he is bound to appear.

Warrant for
absconding
witness.

(2) Section 447 applies, *mutatis mutandis*, to a warrant issued under this section.

Endorsement
of warrant.

(3) A person who is arrested under this section is entitled, upon request, to receive a copy of the information upon which the warrant for his arrest was issued.

Copy of
information.

610. (1) Where a person who has been served with a subpoena to give evidence in a proceeding does not attend or remain in attendance, the court, judge, justice or magistrate before whom that person was required to attend may, if it is established

Warrant
when
witness
does not
attend.

(a) that the subpoena has been served in accordance with this Part, and

(b) that the person is likely to give material evidence, issue or cause to be issued a warrant in Form 12 for the arrest of that person.

(2) Where a person who has been bound by a recognizance to attend to give evidence in any proceeding does not attend or does not remain in attendance, the court, judge, justice or magistrate before whom that person was bound to attend may issue or cause to be issued a warrant in Form 12 for the arrest of that person.

Warrant
where
witness
bound by
recognizance.

(3) A warrant that is issued by a justice or magistrate pursuant to subsection (1) or (2) may be executed anywhere in Canada.

Warrant
effective
throughout
Canada.

611. Where a person is brought before a court, judge, justice or magistrate under a warrant issued pursuant to subsection (2) of section 603, or pursuant to section 609 or 610, the court, judge, justice or magistrate may order that the person

Order
where
witness
arrested
under
warrant

(a) be detained in custody, or

(b) be released on recognizance in Form 28, with or without sureties,

to appear and give evidence when required.

612. (1) A person who, being required by law to attend or remain in attendance for the purpose of giving evidence fails, without lawful excuse, to attend or remain in attendance accordingly is guilty of contempt of court.

Contempt.

- Punishment.** (2) A court, judge, justice or magistrate may deal summarily with a person who is guilty of contempt of court under this section and that person is liable to a fine of one hundred dollars or to imprisonment for ninety days or to both, and may be ordered to pay the costs that are incident to the service of any process under this Part and to his detention, if any.
- Form.** (3) A conviction under this section may be in Form 34 and a warrant of committal in respect of a conviction under this section may be in Form 22.

EVIDENCE ON COMMISSION.

- Order for, when witness ill or out of Canada** **613.** A party to a proceeding to which this Act applies may apply for an order appointing a commissioner to take the evidence of a witness who
- Application for order when witness ill.** (a) is, by reason of
- (i) physical disability arising out of illness, or
 - (ii) some other good and sufficient cause, not likely to be able to attend at the time the trial is held, or
- (b) is out of Canada.
- Application where witness is ill.** **614.** (1) An application under paragraph (a) of section 613 shall be made
- (a) to a judge of a superior court of the province, or
 - (b) to a judge of a county or district court in the territorial division where the proceedings are taken.
- Evidence of medical practitioner.** (2) An application under subparagraph (i) of paragraph (a) of section 613 may be granted on the evidence of a registered medical practitioner.
- Reading evidence of witness who is ill.** **615.** Where the evidence of a witness mentioned in subparagraph (i) of paragraph (a) of section 613 is taken by a commissioner appointed under section 614, it may be read in evidence in the proceedings if
- (a) it is proved by oral evidence or by affidavit that the witness is, by reason of death or physical disability arising out of illness, unable to attend,
 - (b) the transcript of the evidence is signed by the commissioner by or before whom it purports to have been taken, and
 - (c) it is proved to the satisfaction of the court that reasonable notice of the time for taking the evidence was given to the other party, and that the accused or his counsel, or the prosecutor or his counsel, as the case may be, had or might have had full opportunity to cross-examine the witness.

- 616.** (1) An application that is made under paragraph (b) of section 613 shall be made
- (a) to a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction before which the accused is to be tried, or
 - (b) to a magistrate acting under Part XVI, where the accused is to be tried by a magistrate acting under that Part.
- (2) Where the evidence of a witness is taken by a commissioner appointed under this section, it may be read in evidence in the proceedings.
- (3) Subject to section 618, evidence that is taken by a commissioner appointed under this section may, where the presiding judge directs, be read in evidence before a grand jury.

Application for order when witness out of Canada.

Reading evidence of witness out of Canada.

Reading evidence to grand jury.

- 617.** (1) A judge or magistrate who appoints a commissioner may make provision in the order to enable an accused to be present or represented by counsel when the evidence is taken, but failure of the accused to be present or to be represented by counsel in accordance with the order does not prevent the reading of the evidence in the proceedings if the evidence has otherwise been taken in accordance with the order and with this Part.
- (2) An order for the taking of evidence by commission shall indicate the officer of the court to whom the evidence that is taken under the order shall be returned.

Providing for presence of accused counsel

Return of evidence.

- 618.** Except where otherwise provided by this Part or by rules of court, the practice and procedure in connection with the appointment of commissioners under this Part, the taking of evidence by commissioners, the certifying and return thereof, and the use of the evidence in the proceedings shall, as far as possible, be the same as those that govern like matters in civil proceedings in the superior court of the province in which the proceedings are taken.

Rules and practice same as in civil cases.

EVIDENCE PREVIOUSLY TAKEN.

- 619.** (1) Where, at the trial of an accused, a person whose evidence was given at a previous trial upon the same charge, or whose evidence was taken in the investigation of the charge against the accused or upon the preliminary inquiry into the charge, refuses to be sworn or to give evidence, or if facts are proved upon oath from which it can be inferred reasonably that the person
- (a) is dead,
 - (b) has since become and is insane,
 - (c) is so ill that he is unable to travel, or
 - (d) is absent from Canada,

Evidence on preliminary inquiry may be read on trial in certain cases.

and where it is proved that his evidence was taken in the presence of the accused, it may be read as evidence in the proceedings without further proof, if the evidence purports to be signed by the judge or justice before whom it purports to have been taken, unless the accused proves that it was not in fact signed by that judge or justice or that he did not have full opportunity to cross-examine the witness.

Idem.

(2) Evidence that has been taken on the preliminary inquiry or other investigation of a charge against an accused may be read as evidence in the prosecution of the accused for any other offence upon the same proof and in the same manner in all respects, as it might, according to law, be read in the prosecution of the offence with which the accused was charged when the evidence was taken.

PART XX.

PUNISHMENTS, FINES, FORFEITURES, COSTS
AND RESTITUTION OF PROPERTY.

PUNISHMENT GENERALLY.

"Court."

620. In this Part, except as provided in section 640, "court" means a court, judge, justice or magistrate and includes a person who is authorized to exercise the powers of a court, judge, justice or magistrate to impose punishment.

Degrees of punishment.

621. (1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

Discretion as to punishment.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

Imprisonment in default where term not specified.

(3) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribed the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of imprisonment that is prescribed in respect of the offence.

- (4) Where an accused
- (a) is convicted while under sentence for an offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;
- (b) is convicted of an offence punishable with both fine and imprisonment, and both are imposed with a direction that, in default of payment of the fine, the accused shall be imprisoned for a term certain; or
- (c) is convicted of more offences than one before the same court at the same sittings, and
- (i) more than one fine is imposed with a direction in respect of each of them that, in default of payment thereof, the accused shall be imprisoned for a term certain,
- (ii) terms of imprisonment for the respective offences are imposed, or
- (iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence with a direction that, in default of payment, the accused shall be imprisoned for a term certain,

Cumulative
punishments.

the court that convicts the accused may direct that the terms of imprisonment shall be served one after the other.

622. (1) An accused who is convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any other punishment that is authorized, but an accused shall not be fined in lieu of imprisonment where the offence of which he is convicted is punishable by a minimum term of imprisonment.

Fine in
lieu of
other
punishment.

(2) An accused who is convicted of an indictable offence punishable with imprisonment for more than five years may be fined in addition to, but not in lieu of, any other punishment that is authorized.

Fine in
addition to
other
punishment.

(3) Where a fine is imposed under this section, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed

Imprison-
ment in
default of
payment.

- (a) two years, where the term of imprisonment that may be imposed for the offence is less than five years, or
- (b) five years, where the term of imprisonment that may be imposed for the offence is five years or more.

623. (1) Notwithstanding subsection (2) of section 621, a corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence,

Fines on
corporations.

- (a) to be fined in an amount that is in the discretion of the court, where the offence is an indictable offence, or
- (b) to be fined in an amount not exceeding one thousand dollars, where the offence is a summary conviction offence.

Enforcement. (2) Where a fine that is imposed under subsection (1) is not paid forthwith the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in the superior court of the province in which the trial was held, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Commencement of sentence. **624.** (1) A sentence commences when it is imposed, except where a relevant enactment otherwise provides or the court otherwise orders.

Time pending appeal. (2) The time during which a convicted person
(a) is at large on bail, or
(b) is confined in a prison or other place of confinement, pending the determination of an appeal by that person, does not count as part of any term of imprisonment imposed pursuant to his conviction, but paragraph (b) is subject to any directions that the court appealed to may give.

When time begins to run. (3) Notwithstanding subsection (1), a term of imprisonment, whether imposed by a trial court or by the court appealed to, commences or shall be deemed to be resumed, as the case requires,

(a) on the day on which the appeal is determined, where the convicted person is then in custody, and

(b) on the day on which the convicted person is arrested and taken into custody under the sentence, where he is not in custody,

but paragraph (a) is subject to any directions that the court appealed to may give.

Where fine imposed. (4) Notwithstanding subsection (1), where the sentence that is imposed is a fine with a term of imprisonment in default of payment, no time prior to the day of execution of the warrant of committal counts as part of the term of imprisonment.

Application for leave to appeal. (5) An application for leave to appeal is an appeal for the purposes of this section.

Reduction of imprisonment on part payment. **625.** (1) Where a term of imprisonment is imposed in default of payment of a penalty, the term shall, upon payment of a part of the penalty, be reduced by the number of days that bears the same proportion to the number of days in the term as the part paid bears to the total penalty.

Minimum which can be accepted. (2) No amount offered in part payment of a penalty shall be accepted unless it is sufficient to secure reduction of sentence of one day, or some multiple thereof, and where a warrant of committal has been issued, no part payment shall be accepted until any fee that is payable in respect of the warrant or its execution has been paid.

(3) Payment may be made under this section to the person who has lawful custody of the prisoner or to such other person as the Attorney General directs.

To whom
payment
made.

(4) A payment under this section shall, unless the order imposing the penalty otherwise provides, be applied to the payment in full of costs and charges, and thereafter to payment in full of compensation or damages that are included in the penalty, and finally to payment in full of any part of the penalty that remains unpaid.

Application
of money
paid.

(5) In this section, "penalty" means all the sums of money, including fines, in default of payment of which a term of imprisonment is imposed and includes the costs and charges of committing the defaulter and of conveying him to prison.

"Penalty."

626. (1) Where a fine, penalty or forfeiture is imposed or a recognizance is forfeited and no provision, other than this section, is made by law for the application of the proceeds thereof, the proceeds belong to Her Majesty in right of the province in which the fine, penalty or forfeiture was imposed or the recognizance was forfeited, and shall be paid by the person who receives them to the treasurer of that province.

Fines and
penalties
go to
provincial
treasurer.

(2) Where

Exception.

(a) a fine, penalty or forfeiture is imposed

(i) in respect of a violation of a revenue law of Canada,

(ii) in respect of a breach of duty or malfeasance in office by an officer or employee of the Government of Canada, or

(iii) in respect of any proceedings instituted at the instance of the Government of Canada in which that government bears the costs of prosecution; or

(b) a recognizance in connection with proceedings mentioned in paragraph (a) is forfeited, the proceeds of the fine, penalty, forfeiture or recognizance belong to Her Majesty in right of Canada and shall be paid by the person who receives them to the Receiver General of Canada.

(3) Where a provincial, municipal or local authority bears, in whole or in part, the expense of administering the law under which a fine, penalty or forfeiture is imposed or under which proceedings are taken in which a recognizance is forfeited,

Direction for
payment to
municipality.

(a) the Lieutenant-Governor in Council may, from time to time, direct that the proceeds of a fine, penalty, forfeiture or recognizance that belongs to Her Majesty in right of the province shall be paid to that authority, and

By
Lieutenant-
Governor.

By Governor
in Council.

(b) the Governor in Council may, from time to time, direct that the proceeds of a fine, penalty, forfeiture or recognizance that belongs to Her Majesty in right of Canada shall be paid to that authority.

Province of
Ontario.

(4) Where the proceeds of a fine, penalty, forfeiture or recognizance belong, by virtue of this section, to Her Majesty in right of the Province of Ontario, but a municipal or local authority in that province bears, in whole or in part, the expense of administering the law under which the fine, penalty or forfeiture was imposed or the recognizance was forfeited, the proceeds shall, notwithstanding anything in this section, be paid to that authority.

Recovery of
penalties.

627. (1) Where a fine, pecuniary penalty or forfeiture is imposed by law and no other mode is prescribed for the recovery thereof, the fine, pecuniary penalty or forfeiture is recoverable or enforceable in civil proceedings by Her Majesty, but by no other person.

Limitation.

(2) No proceedings under subsection (1) shall be instituted more than two years after the time when the cause of action arose or the offence was committed in respect of which the fine, pecuniary penalty or forfeiture was imposed.

Compensation
for loss of
property.

628. (1) A court that convicts an accused of an indictable offence may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence of which the accused is convicted.

Enforce-
ment.

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys
found on the
accused.

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Compensation to
bona fide
purchasers.

629. (1) Where an accused is convicted of an indictable offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, upon the application of the

purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings. Enforcement.

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused. Moneys found on accused.

630. (1) Where an accused is convicted of an indictable offence the court shall order that any property obtained by the commission of the offence shall be restored to the person entitled to it, if at the time of the trial the property is before the court or has been detained so that it can be immediately restored to that person under the order. Order for restitution of property.

(2) Where an accused is tried for an indictable offence but is not convicted, and the court finds that an indictable offence has been committed, the court may order that any property obtained by the commission of the offence shall be restored to the person entitled to it, if at the time of the trial the property is before the court or has been detained, so that it can be immediately restored to that person under the order. Where no conviction.

(3) An order shall not be made under this section in respect of When order not to be made.

(a) property to which an innocent purchaser for value has acquired lawful title,

(b) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it,

(c) a negotiable instrument that has, in good faith, been taken or received by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an indictable offence had been committed, or

(d) property in respect of which there is a dispute as to ownership or right of possession by claimants other than the accused.

(4) An order made under this section shall be executed by the peace officers by whom the process of the court is ordinarily executed. By whom order executed.

Saving.

(5) This section does not apply to proceedings against a trustee, banker, merchant, attorney, factor, broker or other agent entrusted with the possession of goods or documents of title to goods, for an offence under section 276, 277, 278 or 282.

Costs to successful party in case of libel.

631. The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court.

How recovered.

632. Where costs that are fixed under section 631 are not paid forthwith the party in whose favour judgment is given may enter judgment for the amount of the costs by filing the order in the superior court of the province in which the trial was held, and that judgment is enforceable against the opposite party in the same manner as if it were a judgment rendered against him in that court in civil proceedings.

IMPRISONMENT.

Imprisonment when no other provision.

633. Every one who is convicted of an indictable offence for which no punishment is specially provided is liable to imprisonment for five years.

Imprisonment for life or more than two years.

634. (1) Except where otherwise provided, a person who is sentenced to imprisonment for life or for a term of two years or more shall be sentenced to the penitentiary designated by or under the *Penitentiary Act* as the penitentiary for the province, territory or district in which he is convicted.

Imprisonment for term less than two years.

(2) A person who is sentenced to imprisonment
(a) for a term of less than two years, or
(b) for two or more terms of less than two years each, to be served one after the other, shall, unless a special prison is prescribed by law, be sentenced to imprisonment in a prison or place of confinement within the province in which he is convicted, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed.

Term less than two years.

(3) Where a person who is sentenced to imprisonment in a penitentiary is, before the expiration of that sentence, sentenced to imprisonment for a term of less than two years, he may be sentenced to serve that term in the same penitentiary, and if he is sentenced accordingly, he shall serve that term in that penitentiary, but if the previous sentence of imprisonment in the penitentiary is set aside, he shall serve that term in accordance with subsection (2).

(4) Where a person is sentenced to imprisonment in a penitentiary while he is lawfully imprisoned in a place other than a penitentiary he shall, except where otherwise provided, be sent immediately to the penitentiary and shall serve in the penitentiary the unexpired portion of the term of imprisonment that he was serving when he was sentenced to the penitentiary as well as the term of imprisonment for which he was sentenced to the penitentiary.

Sentence to penitentiary of person serving sentence elsewhere.

(5) For the purposes of subsection (2) "penitentiary" does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 82 of the *Penitentiary Act*, chapter 206 of the Revised Statutes of Canada, 1952.

Exception.

635. (1) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced, and a reference to hard labour in a conviction or sentence shall be deemed to be a reference to the employment of prisoners that is provided for in the enactments or rules.

Sentence served according to regulations.

(2) A conviction or sentence that imposes hard labour shall not be quashed or set aside on the ground only that the enactment that creates the offence does not authorize the imposition of hard labour, but shall be amended accordingly.

Hard labour improperly ordered.

DELIVERY OF ACCUSED TO KEEPER OF PRISON.

636. A peace officer or other person to whom a warrant of committal authorized by this Act or any other Act of the Parliament of Canada is directed shall convey the person named or described therein to the prison mentioned in the warrant and deliver him, together with the warrant, to the keeper of the prison who shall thereupon give to the peace officer or other person who delivers the prisoner a receipt in Form 39 setting out the state and condition of the prisoner when delivered into his custody.

Execution of warrant of committal.

RECOGNIZANCES TO KEEP THE PEACE.

637. (1) Where a person is convicted of an offence, the court may

Binding over person convicted.

(a) in addition to any sentence that is imposed upon him, in the case of an indictable offence, or

(b) in addition to or in lieu of sentence, in the case of an offence punishable on summary conviction,

order that the person shall, at a time to be fixed by the court, enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a term that does not exceed two years, and in default may, by warrant in Form 20, commit him to prison until the recognizance is entered into or the security is given.

- Form.** (2) A recognizance under this section may be in Form 28.
- Proceedings when in prison two weeks** (3) Where a person who has been ordered to enter into a recognizance under subsection (1) has remained in prison for two weeks because of his default, he may apply to a judge for review of the order of committal.
- Procedure when brought before court.** (4) A judge who receives an application under subsection (3) may order the discharge of the person referred to, forthwith or at a subsequent time, upon notice to such persons as he considers proper, or may make any other order that he considers proper in the circumstances with respect to the number of sureties to be required, the amounts in which they are to be bound and the period during which the person and the sureties are to be bound.
- "Judge."** (5) In this section, "judge" means a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction for the territorial division in which the prison where the person is confined is situated.

SUSPENDED SENTENCE AND PROBATION.

- Suspension of sentence.** **638.** (1) Where an accused is convicted of an offence and no previous conviction is proved against him, and it appears to the court that convicts him or that hears an appeal that, having regard to his age, character and antecedents, to the nature of the offence and to any extenuating circumstances surrounding the commission of the offence, it is expedient that the accused be released on probation, the court may, except where a minimum punishment is prescribed by law, instead of sentencing him to punishment, suspend the passing of sentence and direct that he be released upon entering into a recognizance in Form 28, with or without sureties,
- (a) to keep the peace and be of good behaviour during any period that is fixed by the court, and
- (b) to appear and to receive sentence when called upon to do so during the period fixed under paragraph (a), upon breach of his recognizance.
- Conditions** (2) A court that suspends the passing of sentence may prescribe as conditions of the recognizance that
- (a) the accused shall make restitution and reparation to any person aggrieved or injured for the actual loss or damage caused by the commission of the offence, and
- (b) the accused shall provide for the support of his wife and any other dependents whom he is liable to support, and the court may impose such further conditions as it considers desirable in the circumstances and may from time to time change the conditions and increase or decrease the period of the recognizance, but no such recognizance shall be kept in force for more than two years.

(3) A court that suspends the passing of sentence may require as a condition of the recognizance that the accused shall report from time to time, as it may prescribe, to a person designated by the court, and the accused shall be under the supervision of that person during the prescribed period.

Requiring person to report.

(4) The person designated by the court under subsection (3) shall report to the court if the accused does not carry out the terms on which the passing of sentence was suspended, and the court may order that the accused be brought before it to be sentenced.

Report by designated person.

(5) Where one previous conviction and no more is proved against an accused who is convicted, but the previous conviction took place more than five years before the time of the commission of the offence of which he is convicted, or was for an offence that is not related in character to the offence of which he is convicted, the court may, notwithstanding subsection (1), suspend the passing of sentence and make the direction mentioned in subsection (1).

Suspending sentence of person previously convicted.

639. (1) A court that has suspended the passing of sentence or a justice having jurisdiction in the territorial division in which a recognizance was taken under section 638 may, upon being satisfied by information on oath that the accused has failed to observe a condition of the recognizance, issue a summons to compel his appearance or a warrant for his arrest.

Summons or warrant when recognizance not observed.

(2) A summons under subsection (1) is returnable before the court and an accused who is arrested under a warrant issued under subsection (1) shall be brought before the court or a justice.

Return.

(3) A justice before whom a warrant under subsection (1) is returned may remand the accused to appear before the court or admit him to bail upon recognizance, with or without sureties, conditioned upon such appearance.

Remand for judgment.

(4) The court may, upon the appearance of the accused pursuant to this section or subsection (4) of section 638 and upon being satisfied that the accused has failed to observe a condition of his recognizance, sentence him for the offence of which he was convicted.

Sentence.

(5) Where the passing of sentence is suspended by a magistrate acting under Part XVI or Part XXIV or by a judge, and thereafter he dies or is for any reason unable to act, his powers under this section may be exercised by any other magistrate or judge, as the case may be, who has equivalent jurisdiction in the same territorial division.

Magistrate unable to act.

640. For the purposes of sections 638 and 639, "court" means

"Court."

(a) a superior court of criminal jurisdiction,

(b) a court of criminal jurisdiction,

- (c) a magistrate acting as a summary conviction court under Part XXIV, or
 (d) a court that hears an appeal.

WHIPPING.

Execution of sentence by whipping.	641. (1) Where a person is liable to be sentenced to be whipped, the court may sentence him to be whipped on one, two or three occasions within the limits of the prison in which he is confined.
Number of strokes to be specified.	(2) A sentence of whipping shall specify the number of strokes to be administered on each occasion.
Supervision.	(3) A sentence of whipping shall be executed under the supervision of the prison doctor or, if he is unable to be present, it shall be executed under the supervision of a duly qualified medical practitioner to be named by the Attorney General of Canada, where the sentence is executed in a prison administered by the Government of Canada, or, where the sentence is executed in a prison administered by the government of a province, to be named by the Attorney General of that province.
Instrument to be used.	(4) The instrument to be used in the execution of a sentence of whipping shall be a cat-o'-nine tails, unless some other instrument is specified in the sentence.
When to be used.	(5) A sentence of whipping shall be executed at a time to be fixed by the keeper of the prison in which it is to be executed, but, whenever practicable, a sentence of whipping shall be executed not less than ten days before the expiration of any term of imprisonment to which the convicted person has been sentenced.
Female not to be whipped.	(6) No female person shall be whipped.

CAPITAL PUNISHMENT.

Form of sentence.	642. The sentence to be pronounced against a person who is sentenced to death shall be that he shall be hanged by the neck until he is dead.
Sentence of death to be reported to the Minister of Justice.	643. (1) A judge who sentences a person to death shall appoint a day for the execution of the sentence, and in appointing that day shall allow a period of time that, in his opinion is sufficient to enable the Governor General to signify his pleasure before that day, and shall forthwith make a report of the case to the Minister of Justice for the information of the Governor General.
When judge may grant reprieve.	(2) Where a judge who sentences a person to death considers (a) that the person should be recommended for the royal mercy, or

(b) that, for any reason, it is necessary to delay the execution of the sentence, the judge or any judge who might have held or sat in the same court may, at any time, reprieve the person for any period that is necessary for the purpose.

(3) A judge who sentences a person to death in the Northwest Territories or in the Yukon Territory shall, after appointing a day for the execution of the sentence, in accordance with subsection (1), forthwith forward to the Minister of Justice full notes of the evidence taken at the trial and his report upon the case, and the execution of the sentence shall be suspended until the report is received and the pleasure of the Governor General is signified, and where, pursuant to such suspension, a new time is required to be fixed for execution of the sentence, it may be fixed by the judge who imposed the sentence or any judge having equivalent jurisdiction.

Sentence of death in N.W.T. and Yukon.

644. (1) A person who is sentenced to death shall be confined in a safe place within a prison apart from all other prisoners.

Prisoner to be confined apart.

(2) No person other than the keeper of the prison and his servants, the prison doctor and a clergyman or minister shall have access to a person who is sentenced to death unless permission is given in writing by a judge of the court by which the sentence was imposed or by the sheriff

Who to have access.

645. (1) A sentence of death shall be executed within the walls of a prison.

Place of execution.

(2) The sheriff, the keeper of the prison, the prison doctor and any other persons required by the sheriff shall be present at the execution of a sentence of death.

Who shall attend.

(3) A clergyman or minister who desires to attend and any other person whom the sheriff considers it proper to admit may attend the execution of a sentence of death.

Who may attend.

646. (1) The prison doctor shall, as soon as possible after a sentence of death has been executed, examine the body of the executed person, ascertain the fact of death, and sign and deliver to the sheriff a certificate in Form 40.

Certificate of death.

Form.

(2) The sheriff, the keeper of the prison and any other persons who are present at the execution of a sentence of death shall, if required by the sheriff, sign a declaration in Form 41.

Declaration by sheriff and keeper.

Form.

647. Any duty that is imposed upon a sheriff, keeper of the prison or prison doctor by section 645 may, and in his absence shall, be performed by his lawful deputy or assistant, or by the officer or person who ordinarily acts for him or with him.

Deputies may act.

Coroner's
inquest.

648. (1) A coroner of a district, county or place where a sentence of death is executed shall, within twenty-four hours after the execution of the sentence, hold an inquest on the body of the executed person.

Identity
and death

(2) The jury shall, at the inquest referred to in subsection (1), inquire into and ascertain the identity of the body of the executed person, and whether sentence of death was duly executed.

Inquisition
in duplicate.

(3) The coroner shall prepare the inquisition in duplicate and shall deliver one to the sheriff.

Jurors

(4) No officer of a prison in which a sentence of death is executed and no prisoner confined therein shall be a juror on an inquest referred to in subsection (1).

Where no
coroner
in New-
foundland

(5) Where a sentence of death is executed in a district county or place in the province of Newfoundland in which there is no coroner, an inquiry shall, for the purposes of this section, be conducted without the intervention of a jury by a magistrate having jurisdiction in the district, county or place, and for the purposes of this subsection the provisions of section 649 and subsections (1), (2) and (3) of this section apply, *mutatis mutandis*.

Documents
to be sent to
the Minister
of Justice

649. Where a sentence of death is executed, the sheriff shall, as soon as possible, send the certificates mentioned in section 646 and the inquisition referred to in subsection (3) of section 648 to the Minister of Justice or to the person who, from time to time, is appointed by the Governor in Council to receive them.

Place of
burial.

650. The body of a person who is executed pursuant to a sentence of death shall be buried within the prison in which the sentence was executed, unless the Lieutenant-Governor in Council, the Commissioner of the Yukon Territory or the Commissioner of the Northwest Territories, as the case may be, otherwise orders.

Saving

651. Failure to comply with sections 643 to 649 does not make the execution of a sentence of death illegal where the execution would otherwise have been legal.

Procedure
under other
Acts not
affected

652. Sections 643 to 650 do not apply in so far as they are inconsistent with any other Act of the Parliament of Canada that provides for the imposition and execution of a sentence of death.

Regulations

653. The Governor in Council may make regulations not inconsistent with this Act with respect to the execution of sentences of death.

DISABILITIES.

654. (1) Where a person is convicted of treason or of an indictable offence for which he is sentenced to death or to imprisonment for a term exceeding five years and holds, at the time he is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

Conviction of person holding public office vacates office.

(2) A person to whom subsection (1) applies is, until he undergoes the punishment imposed upon him or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of the Parliament of Canada or of a legislature or of exercising any right of suffrage.

When disability ceases.

(3) No person who is convicted of an offence under section 102, 105 or 361 has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

Disability to contract.

(4) Where a conviction is set aside by competent authority any disability imposed by this section is removed.

Removal of disability.

PARDON.

655. (1) Her Majesty may extend the royal mercy to a person who is sentenced to imprisonment under the authority of an Act of the Parliament of Canada, even if the person is imprisoned for failure to pay money to another person.

To whom pardon may be granted

(2) The Governor in Council may grant a free pardon or a conditional pardon to any person who has been convicted of an offence.

Free or conditional pardon.

(3) Where the Governor in Council grants a free pardon to a person, that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

Effect of free pardon.

(4) No free pardon or conditional pardon prevents or mitigates the punishment to which the person might otherwise be lawfully sentenced on a subsequent conviction for an offence other than that for which the pardon was granted.

Punishment for subsequent offence not affected.

656. (1) The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

Commutation of sentence.

(2) A copy of an instrument duly certified by the Clerk of the Privy Council or a writing under the hand of the Minister of Justice or Deputy Minister of Justice declaring

Notice to authorities

that a sentence of death is commuted is sufficient notice to and authority for all persons having control over the prisoner to do all things necessary to give effect to the commutation.

Remission
by Governor
in Council.

657. (1) The Governor in Council may order the remission, in whole or in part, of a pecuniary penalty, fine or forfeiture imposed under an Act of the Parliament of Canada, whoever the person may be to whom it is payable or however it may be recoverable.

Terms of
remission.

(2) An order for remission under subsection (1) may include the remission of costs incurred in the proceedings, but no costs to which a private prosecutor is entitled shall be remitted.

Royal
prerogative.

658. Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy.

PART XXI.

PREVENTIVE DETENTION.

INTERPRETATION.

- 659.** In this Part,
- "Court." (a) "court" means
- (i) a superior court of criminal jurisdiction, or
 - (ii) a court of criminal jurisdiction;
- "Criminal sexual psychopath." (b) "criminal sexual psychopath" means a person who, by a course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person, and
- "Preventive detention." (c) "preventive detention" means detention in a penitentiary for an indeterminate period.

HABITUAL CRIMINALS.

Application
for preventive
detention.

660. (1) Where an accused is convicted of an indictable offence the court may, upon application, impose a sentence of preventive detention in addition to any sentence that is imposed for the offence of which he is convicted if

- (a) the accused is found to be an habitual criminal, and
- (b) the court is of the opinion that because the accused is an habitual criminal, it is expedient for the protection of the public to sentence him to preventive detention.

(2) For the purposes of subsection (1), an accused is an habitual criminal if

- (a) he has previously, since attaining the age of eighteen years, on at least three separate and independent occasions been convicted of an indictable offence for which he was liable to imprisonment for five years or more and is leading persistently a criminal life, or
- (b) he has been previously sentenced to preventive detention.

Who is habitual criminal.

CRIMINAL SEXUAL PSYCHOPATHS.

661. (1) Where an accused is convicted of

(a) an offence under

- (i) section 136,
 (ii) section 138,
 (iii) section 141,
 (iv) section 147,
 (v) section 148, or
 (vi) section 149; or

(b) an attempt to commit an offence under a provision mentioned in paragraph (a),

the court may, upon application, before passing sentence hear evidence as to whether the accused is a criminal sexual psychopath.

(2) On the hearing of an application under subsection (1) the court may hear any evidence that it considers necessary, but shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the Attorney General.

(3) Where the court finds that the accused is a criminal sexual psychopath it shall, notwithstanding anything in this Act or any other Act of the Parliament of Canada, sentence the accused to a term of imprisonment of not less than two years in respect of the offence of which he was convicted and, in addition, impose a sentence of preventive detention.

Evidence.

Rape.
 Carnal knowledge.
 Indecent assault on female.
 Buggery or bestiality.
 Indecent assault on male.
 Gross indecency.

Evidence of psychiatrists.

Sentence of preventive detention.

GENERAL.

662. (1) The following provisions apply with respect to applications under this Part, namely,

(a) an application under subsection (1) of section 660 shall not be heard unless

- (i) the Attorney General of the province in which the accused is to be tried consents,
 (ii) seven clear days' notice has been given to the accused by the prosecutor specifying the previous convictions and the other circumstances, if any, upon which it is intended to found the application, and

Notice of application.

(iii) a copy of the notice has been filed with the clerk of the court or the magistrate, as the case may be; and

(b) an application under subsection (1) of section 661 shall not be heard unless seven clear days' notice thereof has been given to the accused by the prosecutor and a copy of the notice has been filed with the clerk of the court or with the magistrate, where the magistrate is acting under Part XVI.

Hearing of application

(2) An application under this Part shall be heard and determined before sentence is passed for the offence of which the accused is convicted and shall be heard by the court without a jury.

When proof unnecessary.

(3) For the purposes of section 660, where the accused admits the allegations contained in the notice referred to in paragraph (b) of subsection (1), no proof of those allegations is required.

Evidence of character and repute

663. Without prejudice to the right of the accused to tender evidence as to his character and repute, evidence of character and repute may, where the court thinks fit, be admitted on the question whether the accused is or is not persistently leading a criminal life or is or is not a criminal sexual psychopath, as the case may be.

Commencement of sentence

664. A sentence of preventive detention shall commence immediately upon the determination of the sentence imposed upon the accused for the offence of which he was convicted, but the Governor in Council may, at any time, commute that sentence to a sentence of preventive detention.

Commutation

Where to be served.

665. (1) Notwithstanding anything in this Act or any other Act of the Parliament of Canada an accused who is sentenced to preventive detention shall serve in a penitentiary the sentence for the offence of which he was convicted as well as the sentence of preventive detention.

Prison set apart.

(2) An accused who is sentenced to preventive detention may be confined in a penitentiary or part of a penitentiary set apart for that purpose and shall be subject to such disciplinary and reformatory treatment as may be prescribed by law.

Review by Minister of Justice.

666. Where a person is in custody under a sentence of preventive detention, the Minister of Justice shall, at least once in every three years, review the condition, history and circumstances of that person for the purpose of determining whether he should be permitted to be at large on licence, and if so, on what conditions.

667. (1) A person who is sentenced to preventive detention under this Part may appeal to the court of appeal against that sentence. Appeal

(2) The Attorney General may appeal to the court of appeal against the dismissal of an application for an order under this Part. Appeal by Attorney General

(3) The provisions of Part XVIII with respect to procedure on appeals apply, *mutatis mutandis*, to appeals under this section. Part XVIII applies re appeals.

PART XXII.

EFFECT AND ENFORCEMENT OF RECOGNIZANCES.

668. (1) Applications for the forfeiture of recognizances shall be made to the courts, designated in Column II of the Schedule, of the respective provinces designated in Column I of the Schedule. Applications for forfeiture of recognizances

(2) In this Part,

(a) "clerk of the court" means the officer designated in Column III of the Schedule in respect of the court designated in Column II of the Schedule, and "Clerk of the Court."

(b) "Schedule" means the schedule to this Part. "Schedule."

669. Where a person is bound by recognizance to appear before a court, justice or magistrate for any purpose and the session or sittings of that court or the proceedings are adjourned or an order is made changing the place of trial, that person and his sureties continue to be bound by the recognizance in like manner as if it had been entered into with relation to the resumed proceedings or the trial at the time and place at which the proceedings are ordered to be resumed or the trial is ordered to be held. Recognizance binding.

670. (1) Where an accused is bound by recognizance to appear for trial, his arraignment or conviction does not discharge the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be. Responsibility of sureties.

(2) Notwithstanding subsection (1), the court, justice or magistrate may commit an accused to prison or may require him to furnish new or additional sureties for his appearance until he is discharged or sentenced, as the case may be. Commitment or new sureties.

(3) The sureties of an accused who is bound by recognizance to appear for trial are discharged if he is committed to prison pursuant to subsection (2). Effect of committal.

(4) The provisions of section 669 and subsections (1), (2) and (3) of this section shall be endorsed on any recognizance entered into pursuant to this Act. Endorsement on recognizance.

Effect of
subsequent
arrest.

671. Where an accused is bound by recognizance to appear for trial, his arrest upon another charge does not vacate the recognizance, but it continues to bind him and his sureties, if any, for his appearance until he is discharged or sentenced, as the case may be, in respect of the offence to which the recognizance relates.

Render of
accused by
sureties.

672. (1) A surety for a person who is bound by recognizance to appear may, by an application in writing to a court, justice or magistrate apply to be relieved of his obligation under the recognizance, and the court, justice or magistrate shall thereupon issue an order in writing for committal of that person to the prison nearest to the place where he was, under the recognizance, bound to appear.

Arrest.

(2) An order under subsection (1) shall be given to the surety and upon receipt thereof he or any peace officer may arrest the person named in the order and deliver him with the order to the keeper of the prison named therein, and the keeper shall receive and imprison him until he is discharged according to law.

Certificate
and entry
of render.

(3) Where a judge, justice or magistrate who issues an order under subsection (1) receives from the sheriff a certificate that the person named in the order has been committed to prison pursuant to subsection (2), he shall order an entry of the committal to be endorsed on the recognizance.

Discharge
of sureties.

(4) An endorsement under subsection (3) vacates the recognizance and discharges the sureties.

Render of
accused in
court by
sureties.

673. A surety for a person who is bound by recognizance to appear may bring that person into the court at which he is required to appear at any time during the sittings thereof and before his trial and the surety may discharge his obligation under the recognizance by giving that person into the custody of the court, and the court shall thereupon commit that person to prison until he is discharged according to law.

Rights of
surety
preserved.

674. Nothing in this Part limits or restricts any right that a surety has of taking and giving into custody any person for whom, under a recognizance, he is a surety.

Application
for bail
after render.

675. Where a surety for a person has rendered him into custody and that person has been committed to prison, he may apply to the court, justice or magistrate before whom he was required to appear to be admitted again to bail, and the court, justice or magistrate may

(a) refuse the application, or

(b) allow the application and make any order with respect to the number of sureties and the amount of the bail that is considered proper in the circumstances.

676. (1) Where, in proceedings to which this Act applies, a person who is bound by recognizance does not comply with a condition of the recognizance, a court, justice or magistrate having knowledge of the facts shall endorse or cause to be endorsed on the back of the recognizance a certificate in Form 29 setting out

- (a) the nature of the default,
- (b) the reason for the default, if it is known,
- (c) whether the ends of justice have been defeated or delayed by reason of the default, and
- (d) the names and addresses of the principal and sureties.

(2) A recognizance that has been endorsed pursuant to subsection (1) shall be sent to the clerk of the court and shall be kept by him with the records of the court.

(3) A certificate that has been endorsed on a recognizance pursuant to subsection (1) is *prima facie* evidence of the default to which it relates.

(4) Where, in proceedings to which this section applies, the principal or surety has deposited money as security for the performance of a condition of a recognizance, that money shall be sent to the clerk of the court with the defaulted recognizance, to be dealt with in accordance with this Part.

677. (1) Where a recognizance has been endorsed with a certificate pursuant to section 676 and has been received by the clerk of the court pursuant to that section,

(a) a judge of the court shall, upon the request of the clerk of the court or the Attorney General or counsel acting on his behalf, fix a time and place for the hearing of an application for the forfeiture of the recognizance, and

(b) the clerk of the court shall, not less than ten days before the time fixed under paragraph (a) for the hearing, send by registered mail to each principal and surety named in the recognizance, directed to him at the address set out in the certificate, a notice requiring him to appear at the time and place fixed by the judge to show cause why the recognizance should not be forfeited.

(2) Where subsection (1) has been complied with, the judge may, after giving the parties an opportunity to be heard, in his discretion grant or refuse the application and make any order with respect to the forfeiture of the recognizance that he considers proper.

(3) Where, pursuant to subsection (2), the judge orders forfeiture of the recognizance, the principal and his sureties become judgment debtors of the Crown, each in the amount that he has pledged himself to pay, and the clerk of the

	<p>court or, in the province of Quebec, the prothonotary, shall issue a writ of <i>feri facias</i> in Form 30 and deliver it to the sheriff of the territorial division in which the order was made.</p>
Transfer of deposit	<p>(4) Where a deposit has been made by a person against whom an order for forfeiture of a recognizance has been made, no writ of <i>feri facias</i> shall issue, but the amount of the deposit shall be transferred by the person who has custody of it to the person who is entitled by law to receive it.</p>
Levy under writ.	<p>678. (1) Where a writ of <i>feri facias</i> is issued pursuant to section 677, the sheriff to whom it is delivered shall execute the writ and deal with the proceeds thereof in the same manner in which he is authorized to execute and deal with the proceeds of writs of <i>feri facias</i> issued out of superior courts in the province in civil proceedings.</p>
Costs	<p>(2) Where this section applies the Crown is entitled to the costs of execution and of proceedings incidental thereto that are fixed, in the province of Quebec, by any tariff applicable in the Superior Court in civil proceedings, and in any other province, by any tariff applicable in the superior court of the province in civil proceedings, as the judge may direct.</p>
Committa when writ not satisfied	<p>679. (1) Where a writ of <i>feri facias</i> has been issued under this Part and it appears from a certificate in a return made by the sheriff that sufficient goods and chattels, lands and tenements cannot be found to satisfy the writ, or that the proceeds of the execution of the writ are not sufficient to satisfy it, a judge of the court may, upon the application of the Attorney General or counsel acting on his behalf, fix a time and place for the sureties to show cause why a warrant of committal should not be issued in respect of them.</p>
Notice	<p>(2) Seven clear days' notice of the time and place fixed for the hearing pursuant to subsection (1) shall be given to the sureties.</p>
Hearing	<p>(3) The judge shall, at the hearing referred to in subsection (1), inquire into the circumstances of the case and may in his discretion</p> <p>(a) order the discharge of the amount for which the surety is liable, or</p> <p>(b) make any order with respect to the surety and to his imprisonment that he considers proper in the circumstances and issue a warrant of committal in Form 24.</p>
Warrant of committal	<p>(4) A warrant of committal issued pursuant to this section authorizes the sheriff to take into custody the person in respect of whom the warrant was issued and to confine him in a prison in the territorial division in which the writ</p>

was issued or in the prison nearest to the court, until satisfaction is made or until the period of imprisonment fixed by the judge has expired.

(5) In this section and in section 677, "Attorney General" means, where subsection (2) of section 626 applies, the Attorney General of Canada.

SCHEDULE

Column I.	Column II.	Column III.
Ontario.....	The Supreme Court, in respect of a recognizance for the appearance of a person before that court. A judge of the Court of Appeal in respect of a recognizance for the appearance of a person before that court. A Court of the General Sessions of the Peace in respect of a recognizance for the appearance of a person before that court, a judge acting under Part XVI, a justice or a magistrate.	The Registrar or Local Registrar of the Supreme Court. The Registrar of the Supreme Court. Clerk of the Peace.
Quebec.....	The Superior Court, exercising civil jurisdiction.	The Clerk of the Peace.
Nova Scotia.....	A judge of the Supreme Court in respect of a recognizance for the appearance of a person before the Supreme Court <i>in banco</i> . A judge of the County Court in respect of a recognizance for the appearance of a person before a judge of the Supreme Court, a judge of the County Court, a judge acting under Part XVI, a justice or a magistrate.	The Prothonotary at Halifax. The Clerk of the County Court.
New Brunswick.....	The Supreme Court.....	The Registrar of the Supreme Court.
Manitoba.....	The Court of Queen's Bench.....	The Clerk or Deputy Clerk of the Crown and Pleas.
British Columbia.....	The Supreme Court in respect of a recognizance for the appearance of a person before that court or the Court of Appeal. A County Court in respect of a recognizance for the appearance of a person before that court, a judge acting under Part XVI, a justice or a magistrate.	The District Registrar of the Supreme Court. The Clerk of the County Court.
Prince Edward Island.	The Supreme Court of Judicature.....	The Prothonotary.
Saskatchewan.....	The Court of Queen's Bench in respect of a recognizance for the appearance of a person before that Court or the Court of Appeal. A District Court in respect of a recognizance for the appearance of a person before that Court, a judge acting under Part XVI, a justice or a magistrate.	The Local Registrar of the Court of Queen's Bench. The Clerk of the District Court.
Alberta.....	The Supreme Court in respect of a recognizance for the appearance of a person before that Court or the Court of Appeal, A District Court in respect of a recognizance for the appearance of a person before that Court, a judge acting under Part XVI, a justice or a magistrate.	The Clerk of the Supreme Court. The Clerk of the District Court.
Newfoundland.....	The Supreme Court.....	The Registrar of the Supreme Court.
Yukon Territory.....	The Territorial Court.....	The Clerk of the Court
Northwest Territories..	The Territorial Court.....	The Clerk of the Court.

PART XXIII.

EXTRAORDINARY REMEDIES.

680. This Part applies to proceedings in criminal matters by way of *certiorari*, *habeas corpus*, *mandamus* and prohibition. Application of Part.

681. Where a person, being in custody by reason that he is charged with or has been convicted of an indictable offence, has instituted proceedings to which this Part applies, before a judge or court having jurisdiction, to have the legality of his imprisonment determined, the judge or court may, without determining the question, make an order for the further detention of that person and direct the judge, justice or magistrate under whose warrant he is in custody, or any other judge, justice or magistrate to take any proceedings, hear such evidence or do any other thing that, in the opinion of the judge or court, will best further the ends of justice. Detention of prisoner on inquiry as to legality of imprisonment.

682. No conviction or order shall be removed by *certiorari* Where conviction or order not reviewable.

(a) where an appeal was taken, whether or not the appeal has been carried to a conclusion, or

(b) where the defendant appeared and pleaded and the merits were tried, and an appeal might have been taken, but the defendant did not appeal.

683. (1) No conviction, order or warrant for enforcing a conviction or order shall, on being removed by *certiorari*, be held to be invalid by reason of any irregularity, informality or insufficiency therein, where the court before which or the judge before whom the question is raised, upon perusal of the evidence, is satisfied Conviction or order removable, when.

- (a) that an offence of the nature described in the conviction, order or warrant, as the case may be, was committed,
- (b) that there was jurisdiction to make the conviction or order or issue the warrant, as the case may be, and
- (c) that the punishment imposed, if any, was not in excess of the punishment that might lawfully have been imposed,

but the court or judge has the same powers to deal with the proceedings in the manner that he considers proper that are conferred upon a court to which an appeal might have been taken.

Correcting
punishment.

(2) Where, in proceedings to which subsection (1) applies, the court or judge is satisfied that a person was properly convicted of an offence but the punishment that was imposed is greater than the punishment that might lawfully have been imposed, the court or judge

In case of
fine.

(a) shall correct the sentence,

(i) where the punishment is a fine, by imposing a fine that does not exceed the maximum fine that might lawfully have been imposed,

In case of
imprisonment.

(ii) where the punishment is imprisonment, and the person has not served a term of imprisonment under the sentence that is equal to or greater than the term of imprisonment that might lawfully have been imposed, by imposing a term of imprisonment that does not exceed the maximum term of imprisonment that might lawfully have been imposed, or

Where both
are imposed.

(iii) where the punishment is a fine and imprisonment, by imposing a punishment in accordance with subparagraph (i) or (ii), as the case requires, or

Remitting
matter
to justice.

(b) shall remit the matter to the judge, justice or magistrate and direct him to impose a punishment that is not greater than the punishment that may be lawfully imposed.

Amendment.

(3) Where an adjudication is varied pursuant to subsection (1) or (2), the conviction and warrant of committal, if any, shall be amended to conform with the adjudication as varied.

Sufficiency
of statement.

(4) Any statement that appears in a conviction and is sufficient for the purpose of the conviction is sufficient for the purposes of an information, summons, order or warrant in which it appears in the proceedings.

Irregularities
within
section 683.

684. Without restricting the generality of section 683, that section shall be deemed to apply where

(a) the statement of the adjudication or of any other matter or thing is in the past tense instead of in the present tense,

(b) the punishment imposed is less than the punishment that might by law have been imposed for the offence that appears by the evidence to have been committed, or

(c) there has been an omission to negative circumstances, the existence of which would make the act complained of lawful, whether those circumstances are stated by way of exception or otherwise in the provision under which the offence is charged, or are stated in another provision.

685. (1) A court that has authority to quash a conviction, order or other proceeding on *certiorari* may prescribe by general order that no motion to quash any such conviction, order or other proceeding removed to the court by *certiorari*, shall be heard unless the defendant has entered into a recognizance with one or more sufficient sureties, before one or more justices of the territorial division in which the conviction or order was made, or before a judge or other officer, or has made a deposit to be prescribed with a condition that the defendant will prosecute the writ of *certiorari* at his own expense, without wilful delay, and, if ordered, will pay to the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the practice of the court where the conviction, order or proceeding is affirmed.

General order for security by recognizance.

(2) The provisions of Part XXII relating to forfeiture of recognizances apply to a recognizance entered into under this section.

Provisions for forfeiture of recognizance apply.

686. Where a motion to quash a conviction, order or other proceeding is refused, the order of the court refusing the application is sufficient authority for the clerk of the court forthwith to return the conviction, order or proceeding to the court from which or the person from whom it was removed, and for proceedings to be taken with respect thereto for the enforcement thereof.

Effect of order dismissing application to quash.

687. (1) No order, conviction or other proceeding shall be quashed or set aside, and no defendant shall be discharged, by reason only that evidence has not been given

Conviction, etc., not set aside for want of proof of order in council.

- (a) of a proclamation or order of the Governor in Council or the Lieutenant-Governor in Council;
- (b) of rules, regulations or by-laws, made by the Governor in Council under an Act of the Parliament of Canada or by the Lieutenant-Governor in Council under an Act of the legislature of the province; or
- (c) of the publication of a proclamation, order, rule, regulation or by-law in the *Canada Gazette* or in the official gazette for the province.

(2) Proclamations, orders, rules, regulations and by-laws mentioned in subsection (1) and the publication thereof shall be judicially noticed.

Judicial notice.

688. No warrant of committal shall, on *certiorari* or *habeas corpus*, be held to be void by reason only of any defect therein, where

Warrant of commitment not void for defect in form.

- (a) it is alleged in the warrant that the defendant was convicted, and
- (b) there is a valid conviction to sustain the warrant.

No action
against official
when
conviction,
etc., quashed.

689. Where an application is made to quash a conviction, order or other proceeding made or held by a magistrate acting under Part XVI or a justice on the ground that he exceeded his jurisdiction, the court to which or the judge to whom the application is made may in quashing the conviction, order or other proceeding, order that no civil proceedings shall be taken against the justice or magistrate or against any officer who acted under the conviction, order or other proceeding or under any warrant issued to enforce it.

Saving.

690. Nothing in this Act limits or affects any provision of the *Supreme Court Act* that relates to writs of *habeas corpus* arising out of criminal matters.

Appeal in
mandamus
etc.

691. (1) An appeal lies to the court of appeal from a decision granting or refusing the relief sought in proceedings by way of *mandamus*, *certiorari* or prohibition.

Part XVIII
applies.

(2) The provisions of Part XVIII apply, *mutatis mutandis*, to appeals under this section.

PART XXIV.

SUMMARY CONVICTIONS.

INTERPRETATION.

692. In this Part,

"Informant."
"Information."

(a) "informant" means a person who lays an information;

(b) "information" includes

(i) a count in an information, and

(ii) a complaint in respect of which a justice is authorized by an Act of the Parliament of Canada or an enactment made thereunder to make an order;

"Order."

(c) "order" means any order, including an order for the payment of money;

"Proceedings."

(d) "proceedings" means

(i) proceedings in respect of offences that are declared by an Act of the Parliament of Canada or an enactment made thereunder to be punishable on summary conviction, and

(ii) proceedings where a justice is authorized by an Act of the Parliament of Canada or an enactment made thereunder to make an order;

"Prosecutor."

(e) "prosecutor" means an informant or the Attorney-General or their respective counsel or agents:

"Sentence."

(f) "sentence" includes a direction made under section 638;

- (g) "summary conviction court" means a person who has jurisdiction in the territorial division where the subject matter of the proceedings is alleged to have arisen and who
- (i) is given jurisdiction over the proceedings by the enactment under which the proceedings are taken,
 - (ii) is a justice or magistrate, where the enactment under which the proceedings are taken does not expressly give jurisdiction to any person or class of persons, or
 - (iii) is a magistrate, where the enactment under which the proceedings are taken gives jurisdiction in respect thereof to two or more justices; and
- (h) "trial" includes the hearing of a complaint.

"Summary conviction court."

"Trial."

- 693.** (1) Except where otherwise provided by law, this Part applies to proceedings as defined in this Part.
- (2) No proceedings shall be instituted more than six months after the time when the subject matter of the proceedings arose.

Application of part.

Limitation.

PUNISHMENT.

- 694.** (1) Except where otherwise expressly provided by law, every one who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five hundred dollars or to imprisonment for six months or to both.

General penalty.

- (2) Where the imposition of a fine or the making of an order for the payment of money is authorized by law, but the law does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than six months.

Imprisonment in default where not otherwise specified.

- (3) A summary conviction court may direct that any fine, pecuniary penalty or sum of money adjudged to be paid shall be paid forthwith or, if the accused is unable to pay forthwith, at such time and on such terms as the summary conviction court may fix.

Time for payment.

INFORMATION.

- 695.** (1) Proceedings under this Part shall be commenced by laying an information in Form 2.

Commencement of proceedings.

- (2) Notwithstanding any other law that requires an information to be laid before or to be tried by two or more justices, one justice may

One justice may act before the trial.

- (a) receive the information,
- (b) issue a summons or warrant with respect to the information, and
- (c) do all other things preliminary to the trial.

- Formalities of information.** **696.** (1) In proceedings to which this Part applies, the information
- (a) shall be in writing and under oath, and
- (b) may charge more than one offence or relate to more than one matter of complaint, but where more than one offence is charged or the information relates to more than one matter of complaint, each offence or matter of complaint, as the case may be, shall be set out in a separate count.
- No reference to previous conviction.** (2) No information in respect of an offence for which, by reason of previous convictions, a greater punishment may be imposed shall contain any reference to previous convictions.
- Any justice may act before and after trial.** **697.** (1) Nothing in this Act or any other law shall be deemed to require a justice before whom proceedings are commenced or who issues process before or after the trial, to be the justice or one of the justices before whom the trial is held.
- Two or more justices.** (2) Where two or more justices have jurisdiction with respect to proceedings they shall be present and act together at the trial, but one justice may thereafter do anything that is required or is authorized to be done in connection with the proceedings.
- Adjournment.** (3) Subject to section 698, in proceedings under this Part no summary conviction court other than the summary conviction court by which the plea of an accused is taken has jurisdiction for the purposes of the hearing and adjudication, but any justice may
- (a) adjourn the proceedings at any time before the plea of the accused is taken, or
- (b) adjourn the proceedings at any time after the plea of the accused is taken for the purpose of enabling the proceedings to be continued before the summary conviction court by which the plea was taken.
- Waiving jurisdiction.** (4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings in favour of another summary conviction court that has jurisdiction to try the accused under this Part.
- Idem.** (5) A summary conviction court that waives jurisdiction in accordance with subsection (4) shall name the summary conviction court in favour of which jurisdiction is waived, except where, in the province of Quebec, the summary conviction court that waives jurisdiction is a judge of the sessions of the peace.
- Inability of justice to continue.** **698.** (1) Where a trial under this Part is commenced before a summary conviction court and a justice who is or is a member of that summary conviction court dies or

is, for any reason, unable to continue the trial, another justice who is authorized to be, or to be a member of, a summary conviction court for the same territorial division may act in the place of the justice before whom the trial was commenced.

(2) A justice who, pursuant to subsection (1), acts in the place of a justice before whom a trial was commenced Continuing trial.

(a) shall, if an adjudication has been made by the summary conviction court, impose the punishment or make the order that, in the circumstances, is authorized by law, or

(b) shall, if an adjudication has not been made by the summary conviction court, commence the trial again as a trial *de novo*.

699. Where a defendant is charged with common assault and, before the defendant enters upon his defence, the summary conviction court is, from the evidence, of the opinion Duty of court where common assault is charged.

(a) that the assault complained of was accompanied by an attempt to commit an indictable offence other than common assault or was committed in the course of the commission of an indictable offence other than common assault, or

(b) that the defendant should, for any reason, be prosecuted by indictment,

the summary conviction court shall not adjudicate thereon, but the proceedings shall be continued as for an indictable offence and the defendant shall be informed accordingly.

SUMMONS AND WARRANT.

700. (1) The provisions of Parts XIV and XV with respect to compelling the appearance of an accused before a justice apply, *mutatis mutandis*, to proceedings under this Part. Compelling appearance

(2) Where a warrant is issued in the first instance for the arrest of a defendant, a copy thereof shall be served on the person who is arrested thereunder. Copy of warrant to be served.

DEFECTS AND OBJECTIONS.

701. (1) Sections 492 and 493 apply, *mutatis mutandis*, to informations in respect of proceedings as defined in this Part. Proceedings not objectionable on certain grounds.

(2) The summary conviction court may, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant. Particulars.

- 702.** (1) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information.
- (2) The burden of proving that an exception, exemption, proviso, excuse or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the exception, exemption, proviso, excuse or qualification does not operate in favour of the defendant, whether or not it is set out in the information.
- 703.** No information, summons, conviction, order or process shall be deemed to charge two offences or to be uncertain by reason only that it states that the alleged offence was committed
- (a) in different modes, or
- (b) in respect of one or other of several articles, either conjunctively or disjunctively.
- 704.** (1) An objection to an information for a defect apparent on its face shall be taken by motion to quash the information before the defendant has pleaded, and thereafter only by leave of the summary conviction court before which the trial takes place.
- (2) A summary conviction court may, upon the trial of an information, amend the information or a particular that is furnished under section 701, to make the information or particular conform to the evidence if there appears to be a variance between the evidence and
- (a) the charge in the information, or
- (b) the charge in the information
- (i) as amended, or
- (ii) as it would have been if amended in conformity with any particular that has been furnished pursuant to section 701.
- (3) A summary conviction court may, at any stage of the trial, amend the information as may be necessary if it appears
- (a) that the information has been laid
- (i) under another Act of the Parliament of Canada instead of this Act, or
- (ii) under this Act instead of another Act of the Parliament of Canada; or
- (b) that the information
- (i) fails to state or states defectively anything that is requisite to constitute the offence,
- (ii) does not negative an exception that should be negatived, or
- (iii) is in any way defective in substance,
- and the matters to be alleged in the proposed amendment are disclosed by the evidence taken on the trial; or

- (c) that the information is in any way defective in form. Defect in form.
- (4) A variance between the information and the evidence taken on the trial is not material with respect to Variance not material
- (a) the time when the offence is alleged to have been committed, if it is proved that the information was laid within the prescribed period of limitation, or As to time.
- (b) the place where the subject matter of the proceedings is alleged to have arisen, if it is proved that it arose within the territorial jurisdiction of the summary conviction court that holds the trial. As to place.
- (5) The summary conviction court shall, in considering whether or not an amendment should be made, consider What to be considered.
- (a) the evidence taken on the trial, if any,
- (b) the circumstances of the case,
- (c) whether the defendant has been misled or prejudiced in his defence by a variance, error or omission mentioned in subsection (2) or (3), and
- (d) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.
- (6) Where in the opinion of the summary conviction court the defendant has been misled or prejudiced in his defence by an error or omission in the information, the summary conviction court may adjourn the trial and may make such an order with respect to the payment of costs resulting from the necessity of amendment as it considers desirable. Adjournment if defendant prejudiced.

TRIAL.

705. Every summary conviction court has jurisdiction to try, determine and adjudge proceedings to which this Part applies in the territorial division over which the person who constitutes that court has jurisdiction. Jurisdiction.

706. Where, in proceedings to which this Part applies, the defendant appears for the trial and the prosecutor, having had due notice, does not appear, the summary conviction court may dismiss the information or may adjourn the trial to some other time upon such terms as it considers proper. Non-appearance of prosecutor.

707. (1) Where the prosecutor and defendant appear, the summary conviction court shall proceed to hold the trial. When both parties appear.

(2) A defendant may appear personally or by counsel or agent, but the summary conviction court may require the defendant to appear personally and may, if it thinks fit, issue a warrant in Form 7 for the arrest of the defendant, and adjourn the trial to await his appearance pursuant thereto. Counsel or agent.

- Appearance by corporation.** (3) Where the defendant is a corporation it shall appear by counsel or agent, and if it does not appear, the summary conviction court may, upon proof of service of the summons, proceed *ex parte* to hold the trial.
- Arraignment.** **708.** (1) Where the defendant appears the substance of the information shall be stated to him, and he shall be asked,
 (a) whether he pleads guilty or not guilty to the information, where the proceedings are in respect of an offence that is punishable on summary conviction, or
 (b) whether he has cause to show why an order should not be made against him, in proceedings where a justice is authorized by law to make an order.
- Conviction or order if charge admitted.** (2) Where the defendant pleads guilty or does not show sufficient cause why an order should not be made against him, as the case may be, the summary conviction court shall convict him or make an order against him accordingly.
- Procedure if charge not admitted.** (3) Where the defendant pleads not guilty or states that he has cause to show why an order should not be made against him, as the case may be, the summary conviction court shall proceed with the trial, and shall take the evidence of witnesses for the prosecutor and the defendant in accordance with the provisions of Part XV relating to preliminary inquiries.
- Separating trial of counts.** (4) The summary conviction court may, before or during the trial, where it is satisfied that the ends of justice require it, direct that the defendant be tried separately upon one or more of the counts in the information.
- Admission by defendant.** (5) A defendant may admit any fact alleged against him for the purpose of dispensing with proof thereof.
- Right to make full answer and defence.** **709.** (1) The prosecutor is entitled personally to conduct his case, and the defendant is entitled to make his full answer and defence.
- Examination of witnesses.** (2) The prosecutor or defendant, as the case may be, may examine and cross-examine witnesses personally or by counsel or agent.
- On oath.** (3) Every witness at a trial in proceedings to which this Part applies shall be examined under oath.
- Adjournment.** **710.** (1) The summary conviction court may, in its discretion, before or during the trial, adjourn the trial to a time and place to be appointed and stated in the presence of the parties or their respective counsel or agents, but no such adjournment shall, except with the consent of both parties, be for more than eight days.
- Security for appearance of defendant.** (2) Where the summary conviction court adjourns a trial it may

- (a) permit the defendant to be at large,
 (b) commit him by warrant in Form 14 to a prison within the territorial division for which the summary conviction court has jurisdiction or to such other safe custody as the summary conviction court thinks fit, or
 (c) discharge the defendant upon his recognizance in Form 28,
 (i) with or without sureties, or
 (ii) upon depositing such sum of money as the court directs,
 conditioned for his appearance at the time and place fixed for resumption of the trial.
- (3) Where the defendant does not appear at the time and place appointed for the trial, and service of the summons within a reasonable period before the appearance was required is proved, or does not appear for the resumption of a trial that has been adjourned in accordance with subsection (1), the summary conviction court
 (a) may proceed *ex parte* to hear and determine the proceedings in the absence of the defendant as fully and effectually as if the defendant had appeared, or
 (b) may, if it thinks fit, issue a warrant in Form 8 or 9, as the case may be, for the arrest of the defendant, and adjourn the trial to await his appearance pursuant thereto.
- (4) Where the prosecutor does not appear at the time and place appointed for the resumption of an adjourned trial, the summary conviction court may dismiss the information with or without costs.

Non-
appearance of
defendant.

Proceeding
ex parte.

Warrant.

Non-
appearance
of prosecutor.

ADJUDICATION.

711. When the summary conviction court has heard the prosecutor, defendant and witnesses it shall, after considering the matter, convict the defendant or make an order against him or dismiss the information, as the case may be.

Conviction,
order or
dismissal.

712. (1) Where a defendant is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, no greater punishment shall be imposed upon him by reason thereof unless the prosecutor satisfies the summary conviction court that the defendant, before making his plea, was notified that a greater punishment would be sought by reason thereof.

Previous
conviction.

(2) Where a defendant is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, the summary conviction court shall, upon application by the prosecutor, and upon being satisfied that the defendant was notified in accordance with sub-

Procedure
where
previous
conviction
charged.

Where hearing <i>ex parte</i> .	section (1), ask the defendant whether he was previously convicted, and if he does not admit that he was previously convicted, evidence of previous convictions may be adduced.
Proof of previous conviction.	(3) A summary conviction court that holds a trial pursuant to subsection (3) of section 710 may, if it convicts the defendant, make inquiries with respect to previous convictions, whether or not the defendant was notified that a greater punishment would be sought by reason thereof. (4) For the purposes of this section, a previous conviction may be proved in the manner prescribed by section 574.
Memo. of conviction or order.	713. (1) Where a defendant is convicted or where an order is made against him, a minute or memorandum of the conviction or order may be made, without fee, but whether or not a minute or memorandum is made, the conviction or order shall be drawn up by the summary conviction court in Form 31 or 32, as the case may be.
Forms. Warrant of committal.	(2) Where a defendant is convicted or an order is made against him, the summary conviction court shall issue a warrant of committal in Form 18 or 19, and section 447 applies in respect of a warrant of committal issued under this subsection.
Disposal of penalties when joint offenders.	714. Where several persons join in committing the same offence and upon conviction each is adjudged to pay an amount to a person aggrieved, no more shall be paid to that person than an amount equal to the value of the property destroyed or injured or the amount of the injury done, together with costs, if any, and the residue of the amount adjudged to be paid shall be applied in the manner in which other penalties imposed by law are directed to be applied.
Order of dismissal. Forms.	715. (1) Where the summary conviction court dismisses an information it may, if requested by the defendant, draw up an order of dismissal, and shall give to the defendant a certified copy of the order of dismissal.
Effect of certificate.	(2) A copy of an order of dismissal, certified in accordance with subsection (1) is, without further proof, a bar to any subsequent proceedings against the defendant in respect of the same cause.
Costs	716. (1) The summary conviction court may in its discretion award and order such costs as it considers reasonable and not inconsistent with the fees established by section 744, to be paid
To informant.	(a) to the informant by the defendant, where the summary conviction court convicts or makes an order against the defendant, or
To defendant.	(b) to the defendant by the informant, where the summary conviction court dismisses an information.

(2) An order under subsection (1) shall be set out in the conviction, order or order of dismissal, as the case may be. To be set out.

(3) Where a fine or sum of money or both are adjudged to be paid by a defendant, and a term of imprisonment in default of payment is imposed, the defendant is, in default of payment, liable to serve the term of imprisonment imposed, and for the purposes of this subsection, any costs that are awarded against the defendant shall be deemed to be part of the fine or sum of money adjudged to be paid. Costs are part of fine.

(4) Where no fine or sum of money is adjudged to be paid by a defendant, but costs are awarded against the defendant or informant, the person who is liable to pay them is, in default of payment, liable to imprisonment for one month. Where no fine imposed.

(5) In this section, "costs" includes the costs and charges, after they have been ascertained, of committing and conveying to prison the person against whom costs have been awarded. Definition.

SURETIES TO KEEP THE PEACE.

717. (1) Any person who fears that another person will cause personal injury to him or his wife or child or will damage his property may lay an information before a justice. Where injury or damage feared.

(2) A justice who receives an information under subsection (1) shall cause the parties to appear before him or before a summary conviction court having jurisdiction in the same territorial division. Duty of justice.

(3) The justice or the summary conviction court before which the parties appear may, if satisfied by the evidence adduced that the informant has reasonable grounds for his fears, Adjudication.

(a) order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for any period that does not exceed twelve months, or Recognizance.

(b) commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance. Committal in default.

(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 28 and 20, respectively. Forms.

(5) The provisions of this Part apply, *mutatis mutandis*, to proceedings under this section. Procedura.

718. A person bound by recognizance under section 717 who commits a breach of the recognizance is guilty of an offence punishable on summary conviction. Breach of recognizance.

APPEAL.

- 719.** For the purposes of sections 720 to 732, "appeal court" means
- P.E. Island,
Newfound-
land. (a) in the Provinces of Prince Edward Island and Newfoundland, the Supreme Court,
 - Nova Scotia,
New Brun-
swick, Man-
itoba. (b) in the Provinces of Nova Scotia, New Brunswick and Manitoba, the county court of the district or county where the cause of the proceedings arose,
 - Quebec. (c) in the Province of Quebec, the Superior Court,
 - Ontario. (d) in the Province of Ontario, the county court of the district or county or group of counties where the cause of the proceedings arose,
 - Saskat-
chewan,
Alberta. (e) in the Provinces of Saskatchewan and Alberta, the district court of the judicial district or sub-judicial district in which the cause of the proceedings arose,
 - British
Columbia. (f) in the Province of British Columbia, the county court of the county in which the cause of the proceedings arose, and
 - Territories. (g) in the Yukon Territory and Northwest Territories, a judge of the Territorial Court.
- 720.** Except where otherwise provided by law,
- Appeal.
By
defendant. (a) the defendant in proceedings under this Part may appeal to the appeal court
 - (i) from a conviction or order made against him, or
 - (ii) against a sentence passed upon him; and
 - By informant
or Attorney
General. (b) the informant or the Attorney General in proceedings under this Part may appeal to the appeal court
 - (i) from an order dismissing an information, or
 - (ii) against a sentence passed upon a defendant,
 and the Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this paragraph.
- 721.** (1) In the province of British Columbia, an appeal under section 720 shall be heard at the sittings of the appeal court that is held nearest to the place where the cause of the proceedings arose.
- (2) In the provinces of Alberta and Saskatchewan an appeal under section 720 shall be heard at the sittings of the appeal court that is held nearest to the place where the cause of the proceedings arose, but the judge of the appeal court may, on the application of one of the parties, appoint a place for the hearing of the appeal.
- (3) In the Yukon Territory and the Northwest Territories, an appeal under section 720 shall be heard at the place where the cause of the proceedings arose or at the place nearest thereto where a court is appointed to be held.

722. (1) Where an appeal is taken under section 720, the appellant shall

- (a) prepare a notice of appeal in writing setting forth
- (i) with reasonable certainty the conviction or order appealed from or the sentence appealed against, and
 - (ii) the grounds of appeal;
- (b) cause the notice of appeal to be served upon
- (i) the summary conviction court that made the conviction or order or imposed the sentence, and
 - (ii) the respondent,
- within thirty days after the conviction or order was made or the sentence was imposed; and
- (c) file in the office of the clerk of the appeal court
- (i) the notice of appeal referred to in paragraph (a), and
 - (ii) an affidavit of service of the notice of appeal, not later than seven days after the last day for service of the notice of appeal upon the respondent and the summary conviction court.

(2) In the Northwest Territories, the appeal court may fix, before or after the expiration of the periods fixed by paragraphs (b) and (c) of subsection (1), a further period not exceeding thirty days within which service and filing may be effected.

(3) Where the respondent is a person engaged in enforcement of the law under which the conviction or order was made or the sentence was imposed, the appeal court may direct that a copy of the notice of appeal referred to in subsection (1) be served upon a person other than the respondent, and where the appeal court so directs, that service shall, for the purposes of this section and section 723, be deemed to be service upon the respondent.

723. (1) Where an appellant has complied with section 722, the appeal court shall set down the appeal for hearing at a regular or special sittings thereof and the clerk of the appeal court shall post, in a conspicuous place in his office, a notice of every appeal that has been set down for hearing and notice of the time when it will be heard.

(2) No appeal shall be set down for hearing at a time that is less than ten days after the time when service was effected upon the respondent of the notice referred to in paragraph (b) of subsection (1) of section 722, unless the parties or their counsel or agents otherwise agree in writing.

SECURITY BY APPELLANT.

724. (1) The following provisions apply in respect of appeals to the appeal court, namely,

- (a) where an appeal is from a conviction imposing imprisonment without alternative punishment the appellant shall

- (i) remain in custody until the appeal is heard, or
(ii) enter into a recognizance;
- Where appeal from conviction adjudging imprisonment in default.** (b) where an appeal is from a conviction or order adjudging that a fine or sum of money be paid and imposing a term of imprisonment in default of payment, the appellant shall
- (i) remain in custody until the appeal is heard,
(ii) enter into a recognizance, or
(iii) deposit with the summary conviction court the amount of the fine or the sum of money to be paid and an additional amount that, in the opinion of the summary conviction court, is sufficient to cover the costs of the appeal;
- Where appeal from conviction adjudging fine but not imprisonment.** (c) where an appeal is from a conviction or order adjudging that a fine or sum of money be paid but not imposing a term of imprisonment in default of payment, the appellant shall comply with subparagraph (ii) or (iii) of paragraph (b); and
- Where appeal from dismissal of complaint.** (d) where an appeal is from an order other than an order for the payment of money or is from an order dismissing an information, the appellant shall, unless he is the Attorney General of Canada or of a province, enter into a recognizance in an amount, or deposit with the summary conviction court an amount that, in the opinion of that court, is sufficient to cover the costs of the appeal.
- Formalities of recognizance.** (2) A recognizance under this section
- (a) shall be in Form 28,
(b) shall be entered into before a judge of the county or district court, or a justice having jurisdiction in the territorial division in which the conviction or order was made in such amount as the judge or justice directs,
(c) may be required to be entered into with one or more sureties, and
(d) may, where it is not entered into by one or more sureties, be required to be accompanied by a deposit of such sum of money as the summary conviction court that made the conviction or order has directed.
- Conditions.** (3) The condition of a recognizance under this section shall be that
- (a) the appellant, if he was the defendant in the proceedings before the summary conviction court, will appear personally at the sittings of the appeal court at which the appeal is to be heard,
(b) the appellant, if he was the prosecutor in the proceedings before the summary conviction court, will appear personally or by counsel at the sittings of the appeal court at which the appeal is to be heard,

(c) the appellant will abide the judgment of the appeal court on the appeal, and

(d) the appellant will pay any costs that are awarded against him.

(4) An appeal court has, with respect to a recognizance that appears to it to be insufficient, defective or invalid, the same powers that a superior court has under subsection (5) of section 735. New recog- nizance.

(5) Where an appellant is in custody an order for discharge in Form 35 shall, when a recognizance is entered into under this section, be issued by the person who takes the recognizance. Release of appellant.

725. (1) A person does not waive his right of appeal under section 720 by reason only that he pays the fine imposed upon conviction, without in any way indicating an intention to appeal or reserving the right to appeal. Payment of fine not a waiver of appeal.

(2) A conviction, order or sentence shall be deemed not to have been appealed against until the contrary is shown. Presumption.

PROCEDURE ON APPEAL.

726. (1) Where a summary conviction court is served with a copy of the notice referred to in paragraph (b) of subsection (1) of section 722, that court shall transmit the conviction, order or order of dismissal and all other material in its possession in connection with the proceedings to the appeal court before the time when the appeal is to be heard, or within such further time as the appeal court may direct, and the material shall be kept by the clerk of the court with the records of the appeal court. Transmission of conviction, etc

(2) An appeal shall not be dismissed by the appeal court by reason only that some person other than the appellant failed to comply with the provisions of this Part relating to appeals. Saving.

(3) Where the evidence upon a trial before a summary conviction court has been taken by a stenographer duly sworn, the appellant shall, unless the appeal court otherwise orders, cause a transcript thereof, certified by the stenographer, to be furnished to the appeal court for use upon the appeal. Appellant to furnish transcript of evidence.

727. (1) Where an appeal has been lodged in accordance with this Part from a conviction or order made against a defendant, or from an order dismissing an information, the appeal court shall hear and determine the appeal by holding a trial *de novo*, and for this purpose the provisions of sections 701 to 716, insofar as they are not inconsistent with sections 720 to 732, apply, *mutatis mutandis*. Appeal.

Former
evidence.

(2) The appeal court may, for the purpose of hearing and determining an appeal, permit the evidence of any witness taken before the summary conviction court to be read if that evidence has been authenticated in accordance with section 453, and if

- (a) the appellant and respondent consent,
- (b) the appeal court is satisfied that the attendance of the witness cannot reasonably be obtained, or
- (c) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the appeal court.

Appeal
against
sentence.

(3) Where an appeal is taken against sentence, the appeal court shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may upon such evidence, if any, as it thinks fit to require or receive, by order,

- (a) dismiss the appeal, or
- (b) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted.

General
provisions
re appeals.

(4) The following provisions apply in respect of appeals, namely,

- (a) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant
 - (i) for any alleged defect therein in substance or in form, or
 - (ii) for any variance between the information or process and the evidence adduced at the trial, unless it is shown
 - (iii) that the objection was taken at the trial, and
 - (iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and

(b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect.

Adjournment.

728. The appeal court may adjourn the hearing of the appeal from time to time as may be necessary.

Dismissal
for want of
prosecution.

729. The appeal court may, upon proof that notice of an appeal has been given and that the appeal has not been proceeded with or has been abandoned, order that the appeal be dismissed.

730. Where an appeal is heard and determined or is abandoned or is dismissed for want of prosecution, the appeal court may make any order with respect to costs that it considers just and reasonable.

Costs.

731. (1) Where the appeal court orders the appellant or respondent to pay costs, the order shall direct that the costs be paid to the clerk of the court, to be paid by him to the person entitled to them, and shall fix the period within which the costs shall be paid.

To whom costs payable, and when.

(2) Where costs are awarded against an appellant who has made a deposit to cover costs, the amount of the deposit shall be applied towards payment of costs.

Application of deposit.

(3) Where costs are not paid in full within the period fixed for payment and the person who has been ordered to pay them has not been bound by a recognizance to pay them, the clerk of the court shall, upon application by the person entitled to the costs, or by any person on his behalf, and upon payment of any fee to which the clerk of the court is entitled, issue a certificate in Form 38 certifying that the costs or a part thereof, as the case may be, have not been paid.

Certificate of non-payment of costs.

(4) A justice having jurisdiction in the territorial division in which a certificate has been issued under subsection (3) may, upon production of the certificate, by warrant in Form 23, commit the defaulter to imprisonment for a term not exceeding one month, unless the amount of the costs and, where the justice thinks fit so to order, the costs of the committal and of conveying the defaulter to prison are sooner paid.

Committal.

732. (1) A conviction or order made by the appeal court may be enforced

Enforcement of conviction or order by court of appeal.

(a) in the same manner as if it had been made by the summary conviction court, or

(b) by process of the appeal court.

(2) Where an appeal taken against a conviction or order adjudging payment of a sum of money is dismissed, the summary conviction court that made the conviction or order or a justice for the same territorial division may issue a warrant of committal as if no appeal had been taken.

Enforcement by justice.

(3) Where a conviction or order that has been made by an appeal court is to be enforced by a justice, the clerk of the appeal court shall send to the justice the conviction or order and all writings relating thereto, except the notice of intention to appeal and any recognizance

Duty of clerk of court.

STATED CASE.

733. For the purposes of sections 734 to 742, "superior court" means the superior court of criminal jurisdiction for the province in which the proceedings in respect of which a case is sought to be stated are carried on.

"Court."

Application for stated case.	734. (1) A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, order, determination or other proceeding of a summary conviction court on the ground that
Grounds.	(a) it is erroneous in point of law, or (b) it is in excess of jurisdiction, by applying to the summary conviction court to state a case setting forth the facts as found by that court and the grounds on which the proceedings are questioned.
Rules of court, if any, to apply.	(2) An application to state a case shall be made and the case shall be stated within the period and in the manner directed by rules of court, if any, and where there are no rules of court otherwise providing, the following rules apply, namely,
Time and manner of application.	(a) the application (i) shall be in writing and be directed to the summary conviction court, (ii) shall be served upon the summary conviction court by leaving with that court a copy thereof within seven clear days after the time when the adjudication that is questioned was made;
When case to be stated.	(b) the case shall be stated and signed by the summary conviction court (i) within one month after the time when the application was made, and (ii) after the recognizance referred to in section 735 has been entered into; and
Delivery of stated case.	(c) the appellant shall, within seven clear days after receiving the stated case, (i) give to the respondent a notice in writing of the appeal with a copy of the stated case, and (ii) transmit the stated case to the superior court.
Right of Attorney General of Canada to appeal.	(3) The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this section.
Recognizance by appellant.	735. (1) The appellant shall, at the time he makes the application and before a case is stated, enter into a recognizance in Form 28 before the summary conviction court or a justice having the same jurisdiction, with or without sureties and in an amount that the summary conviction court or the justice considers proper, conditioned to prosecute his appeal without delay and to submit to the judgment of the superior court and to pay any costs that are awarded against him, or in lieu of furnishing sureties, make a cash deposit as the summary conviction court or the justice may direct.

(2) The appellant shall, before the stated case is delivered to him, pay to the summary conviction court or the justice the fees to which they are entitled.

Justice's fees.

(3) Subsections (1) and (2) do not apply where the application is made by the Attorney General of Canada or the Attorney General of a province or by counsel acting on behalf of either of them.

Exception.

(4) Where an appellant is in custody the summary conviction court or the justice shall order that he be released if his recognizance contains a further condition that he will appear before that court or another summary conviction court within ten days after the judgment of the superior court has been given, to abide the judgment, unless the judgment from which the appeal is taken is reversed.

Discharge of appellant from custody.

(5) Where the recognizance appears to the superior court to be insufficient, defective or invalid, the superior court may permit the substitution of a new and sufficient recognizance, to be entered into before it and for that purpose may allow such time and make such examination and impose such terms with respect to the payment of costs as it considers just and reasonable, and the substituted recognizance shall, for all purposes, be as valid and effectual as if it had been entered into at the time the appellant made the application and before the case was stated.

New recognizance.

736. (1) Where, pending an application for a stated case, a justice who was, or was a member of, the summary conviction court dies, quits office or is unable to act, the appellant may, upon giving notice to the respondent, apply to the superior court to state a case, and if a case is thereupon stated it shall be dealt with as if it had been stated by the summary conviction court.

Procedure when justice dies or quits office.

(2) The appellant shall, before a case is stated by the superior court under this section, enter into a recognizance as provided in section 735.

Recognizance.

737. Where a summary conviction court, to which an application to state a case is made, considers that the application is frivolous, it may refuse to state a case and shall, at the request of the appellant, issue to him a certificate of the refusal, but the summary conviction court shall not refuse to state a case where the application is made by or at the direction of the Attorney General of Canada or the Attorney General of a province or counsel acting on behalf of either of them.

Refusal to state a case.

738. (1) Where a summary conviction court refuses to state a case, the appellant may apply to the superior court, upon an affidavit setting out the facts, for an order directing the summary conviction court and the respondent to show cause why a case should not be stated.

Compelling statement of case.

- Order. (2) Where an application is made under subsection (1), the superior court may make the order or dismiss the application, with or without payment of costs by the appellant or the summary conviction court, as it considers appropriate in the circumstances.
- Case to be stated. (3) Where an order is made under this section, the summary conviction court shall, upon being served with a copy thereof and upon the appellant entering into a recognizance pursuant to subsection (1) of section 735, state a case accordingly.
- No *certiorari* required. **739.** No writ of *certiorari* or other writ is required to remove any conviction, order or other determination in relation to which a case is stated for the purpose of obtaining the judgment, determination or opinion of the superior court.
- Powers of court hearing appeal. **740.** (1) Where a case is stated under this Part, the superior court shall hear and determine the grounds of appeal and may
 (a) affirm, reverse or modify the conviction, order or determination,
 (b) cause the case to be sent back to the summary conviction court for amendment and deliver judgment after it has been amended, or
 (c) remit the matter to the summary conviction court with the opinion of the superior court,
 and may make
 (d) any other order in relation to the matter that it considers proper, and
- Costs. (e) any order, with respect to costs, that it considers proper, but except as provided in subsection (2) of section 738, no order for the payment of costs shall be made against a summary conviction court that states a case.
- Authority of judge. (2) The authority and jurisdiction of the superior court to which a case is stated may, where that authority and jurisdiction may be exercised by a judge of that court, subject to any rules of court in relation thereto, be exercised by a judge of the court sitting in chambers as well in vacation as in term time.
- Enforcement of adjudication. **741.** (1) Where the superior court has rendered its decision on a stated case, the summary conviction court in relation to whose adjudication the case has been stated or a justice exercising the same jurisdiction has the same authority to enforce a conviction, order or determination that has been affirmed, amended or made by the superior court as the summary conviction court would have had if a case had not been stated.
- Idem. (2) An order of the superior court may be enforced by its own process.

742. (1) Every person for whom a case is stated in respect of an adjudication of a summary conviction court from which he is entitled to an appeal under section 720 shall be taken to have abandoned all his rights of appeal under that section. Statement of case precludes appeal.

(2) Where it is provided by law that no appeal lies from a conviction or order, no appeal by way of a stated case lies from such a conviction or order. No case to be stated when no appeal.

APPEALS TO COURT OF APPEAL.

743. (1) An appeal to the court of appeal, as defined in section 581 may, with leave of that court, be taken on any ground that involves a question of law alone, against On question of law.

(a) a decision of a court in respect of an appeal under section 727, or

(b) a decision of a superior court in respect of a stated case under section 740, except where the superior court to which the case was stated is the court of appeal.

(2) Sections 581 to 589 apply, *mutatis mutandis*, to an appeal under this section. Sections applicable.

(3) Notwithstanding subsection (2), the court of appeal may make any order with respect to costs that it considers proper in relation to an appeal under this section. Costs.

(4) The decision of the court of appeal may be enforced in the same manner as if it had been made by the summary conviction court before which the proceedings were originally heard and determined. Enforcement of decision.

(5) The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this Part. Right of Attorney General of Canada to appeal

FEEs AND ALLOWANCES.

744. The fees and allowances mentioned in the Schedule to this Part and no others are the fees and allowances that may be taken or allowed in proceedings before summary conviction courts and justices under this Part. Fees and allowances.

SCHEDULE.

FEES AND ALLOWANCES THAT MAY BE CHARGED BY
SUMMARY CONVICTION COURTS AND JUSTICES.

1. Information.....	\$1.00
2. Summons or warrant.....	0.50
3. Warrant where summons issued in first instance.	0.30
4. Each necessary copy of summons or warrant...	0.30
5. Each subpoena or warrant to or for witnesses...	0.30
(A subpoena may contain any number of names. Only one subpoena may be issued on behalf of a party in any proceeding, unless the summary conviction court or the justice considers it necessary or desirable that more than one subpoena be issued.)	
6. Information for warrant for witness and warrant for witness.....	1.00
7. Each necessary copy of subpoena to or warrant for witness.....	0.20
8. Each recognizance.....	1.00
9. Hearing and determining proceeding.....	1.00
10. Where hearing lasts more than two hours.....	2.00
11. Where two or more justices hear and determine a proceeding, each is entitled to the fee authorized by item 9.	
12. Each warrant of committal.....	0.50
13. Making up record of conviction or order upon request of a party to the proceedings.....	1.00
14. Copy of a writing other than a conviction or order, upon request of a party to the proceedings; for each folio of one hundred words.	0.10
15. Bill of costs, when made out in detail upon request of a party to the proceedings.....	0.20
(Items 14 and 15 may be charged only where there has been an adjudication.)	
16. Attending to remand prisoner.....	1.00
17. Attending to take recognizance of bail.....	1.00

FEES AND ALLOWANCES THAT MAY BE ALLOWED
TO PEACE OFFICERS.

18. Arresting a person upon a warrant or without a warrant.....	1.50
19. Serving summons or subpoena.....	0.50
20. Milage to serve summons or subpoena or to make an arrest, both ways, for each mile.....	0.10
(Where a public conveyance is not used, reasonable costs of transportation may be allowed.)	

- | | | |
|-----|--|--------|
| 21. | Mileage where service cannot be effected, upon proof of a diligent attempt to effect service, each way, for each mile..... | \$0.10 |
| 22. | Returning with prisoner after arrest to take him before a summary conviction court or justice at a place different from the place where the peace officer received the warrant to arrest, if the journey is of necessity over a route different from that taken by the peace officer to make the arrest, each way, for each mile.. | 0.10 |
| 23. | Taking a prisoner to prison on remand or committal, each way, for each mile.....
(Where a public conveyance is not used, reasonable costs of transportation may be allowed. No charge may be made under this item in respect of a service for which a charge is made under item 22.) | 0.10 |
| 24. | Attending summary conviction court or justice on summary conviction proceedings, for each day necessarily employed.....
(No more than \$2.00 may be charged under this item in respect of any day notwithstanding the number of proceedings that the peace officer attended on that day before that summary conviction court or justice.) | 2.00 |

FEES AND ALLOWANCES THAT MAY BE ALLOWED
TO WITNESSES.

- | | | |
|-----|---|------|
| 25. | Each day attending trial..... | 4.00 |
| 26. | Mileage travelled to attend trial, each way, for each mile..... | 0.10 |

FEES AND ALLOWANCES THAT MAY BE ALLOWED
TO INTERPRETERS.

- | | | |
|-----|--|-------|
| 27. | Each half day attending trial..... | 2.50 |
| 28. | Actual living expenses when away from ordinary place of residence, not to exceed per day.... | 10.00 |
| 29. | Mileage travelled to attend trial, each way, for each mile..... | 0.10 |

PART XXV.

TRANSITIONAL AND CONSEQUENTIAL.

Repeal. **745.** The *Criminal Code*, chapter 36 of the Revised Statutes of Canada, 1927, is repealed.

Transitional. **746.** (1) Where proceedings for an offence against the criminal law were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, inquired into, tried and determined in accordance with this Act, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force, but where, under this Act, the penalty, forfeiture or punishment in respect of the offence is reduced or mitigated in relation to the penalty, forfeiture or punishment that would have been applicable if this Act had not come into force, the provisions of this Act relating to penalty, forfeiture and punishment shall apply.

Idem (2) Where proceedings for an offence against the criminal law are commenced after the coming into force of this Act the following provisions apply, namely,

(a) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;

(b) if the offence was committed before the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act or by the law that would have applied if this Act had not come into force, whichever penalty, forfeiture or punishment is the less severe; and

(c) if the offence is committed after the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the the penalty, forfeiture, or punishment authorized or required to be imposed by this Act.

Inter-pretation Act. **747.** Section 29 of the *Interpretation Act*, chapter 158 of the Revised Statutes of Canada, 1952, is repealed.

Opium and Narcotic Drug Act. **748.** Section 25 of the *Opium and Narcotic Drug Act*, chapter 201 of the Revised Statutes of Canada, 1952, is repealed and the following substituted therefor:

Except in cases tried before two justices no appeals in cases taken under section 4(1) or (2).

“**25.** Except in cases tried before two justices of the peace sections 719 to 732, inclusive, and subsection (2) of section 742 of the *Criminal Code* do not apply to any con-

viction, order or proceedings in respect of any offence under subsection (1) or (2) of section 4 of this Act.”

749. Subsection (2) of section 4 of the *Canada Evidence Act*, chapter 307 of the Revised Statutes of Canada, 1952, is repealed and the following substituted therefor:

“(2) The wife or husband of a person charged with an offence against section 33 or 34 of the *Juvenile Delinquents Act* or with an offence against any of the sections 135 to 138, 140, 142 to 147, 149, 155, 156, 157, 158, 164, 184, 186, 189, 234 to 236, 241 to 244, 275, paragraph (c) of section 408 or an attempt to commit an offence under section 138 or 147 of the *Criminal Code*, is a competent and compellable witness for the prosecution without the consent of the person charged.”

750. (1) Wherever, in the *Combines Investigation Act*, chapter 314 of the Revised Statutes of Canada, 1952, the expression “section 498 or 498A of the *Criminal Code*” or “section 498 or 498A of the *Criminal Code*, chapter 36 of the Revised Statutes of Canada, 1927,” appears, the expression “section 411 or 412 of the *Criminal Code*” shall be substituted therefor, and wherever in the said Act the expression “section 498 of the *Criminal Code*” appears there shall be substituted therefor the expression “section 411 of the *Criminal Code*”.

(2) Subsection (1) of section 18 of the said Act is repealed and the following substituted therefor:

“**18.** (1) At any stage of an inquiry,

(a) the Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section 32 or 34 of this Act, or section 411 or 412 of the *Criminal Code*, and

(b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry which shall be submitted to the Commission and to each person against whom an allegation is made therein.”

(3) Subsections (1) and (2) of section 40 of the said Act are repealed and the following substituted therefor:

“**40.** (1) Where an indictment is found against an accused, other than a corporation, for any offence against this Act, the accused may elect to be tried without a jury and where he so elects he shall be tried by the judge presiding at the court at which the indictment is found, or the judge presiding at any subsequent sittings of that court, or at any court where the indictment comes on for trial; and in the event of such election being made the proceedings subsequent to the election shall be regulated in so far as may be applicable by the provisions of the *Criminal Code* relating to the trial of indictable offences by a judge without a jury.

Jurisdiction
of courts.

(2) No court other than a superior court of criminal jurisdiction, as defined in the *Criminal Code*, has power to try any offence against section 32 of this Act."

*Extradition
Act.*

751. A reference in item 24 of the First Schedule to the *Extradition Act*, chapter 322 of the Revised Statutes of Canada, 1952, to an offence under a Part of the *Criminal Code*, chapter 36 of the Revised Statutes of Canada, 1927, shall be construed as a reference to the same or the corresponding offence under this Act.

Coming
into force

752. This Act shall come into force on a day to be fixed by the Governor in Council.

PART XXVI.

FORMS.

Forms.

753. (1) The forms set out in this Part varied to suit the case or forms to the like effect shall be deemed to be good, valid and sufficient in the circumstances for which, respectively, they are provided.

Seal not
required.

(2) No justice is required to attach or affix a seal to any writing or process that he is authorized to issue and in respect of which a form is provided by this Part.

FORM 1.

(Section 429.)

Information to obtain a search warrant.

Canada, }
Province of }
(territorial division).

This is the information of A. B., of in
the said (territorial division), (occupation), hereinafter called the informant,
taken before me.

The informant says that (describe things to be searched for and offence
in respect of which search is to be made), and that he has reasonable grounds
for believing that the said things, or some part of them are in the (dwelling
house, etc.), of C. D., of in the said (territorial
division) (here add the grounds of belief, whatever they may be).

Wherefore the informant prays that a search warrant may be granted
to search the said (dwelling house, etc.), for the said things.

Sworn before me }
this day of }
at A.D. , }

.....
Signature of Informant.

.....
A Justice of the Peace in and
for .

FORM 2.

(Sections 439 and 695.)

Information.

Canada, }
Province of }
(territorial division) . }

This is the information of C. D., of ;
(occupation), hereinafter called the informant.

The informant says that (if the informant has not personal knowledge
state that he has reasonable and probable grounds to believe and does believe
and state the offence.)

Sworn before me }
this day of }
at A.D. , }

.....
Signature of Informant.

.....
A Justice of the Peace in and
for .

FORM 3.

(Sections 491 and 501.)

Heading of Indictment.

Canada,
Province of
(territorial division) }

In the (set out name of the court)

Her Majesty the Queen
against
(name of accused)

1. The jurors for Her Majesty the Queen present that
2. The said jurors further present that

FORM 4.

(Sections 478 and 491.)

Heading of indictment.

Canada,
Province of
(territorial division) }

In the (set out name of the court)

Her Majesty the Queen
against
(name of accused)

(Name of accused) stands charged

1. That he (state offence).
2. That he (state offence).

Dated this day of A.D.

at

.....
(Signature of signing officer,
Agent of Attorney General, etc.,
as the case may be).

FORM 5.

(Section 429.)

Warrant to search.

Canada, }
Province of }
(territorial division) }

To the peace officers in the said (territorial division):

Whereas it appears on the oath of A. B., of that there are reasonable grounds for believing that (describe things to be searched for and offence in respect of which search is to be made) are in at hereinafter called the premises;

This is, therefore, to authorize and require you between the hours of (as the justice may direct) to enter into the said premises and to search for the said things and to bring them before me or some other justice.

Dated this day of A.D. at

.....
A Justice of the Peace in and for

FORM 6.

(Sections 441 and 700.)

Summons to a person charged with an offence.

Canada, }
Province of }
(territorial division) }

To A. B., of (occupation):

Whereas you have this day been charged before me that (state offence as in the information):

This is therefore to command you, in Her Majesty's name, to appear before on the day of A.D. at o'clock in the noon, at before any justice for the said (territorial division) who is there, to answer to the said charge and to be dealt with according to law.

Dated this day of A.D. at

.....
A Justice of the Peace in and for

FORM 7.

(Sections 442, 444 and 707.)

Warrant to arrest a person charged with an offence.

Canada, }
Province of }
(territorial division) ; }

To the peace officers in the said (territorial division):

Whereas A. B., of _____, (occupation).
hereinafter called the accused, has been charged that (state the offence as in
the information):

This is, therefore, to command you in Her Majesty's name forthwith
to arrest the accused and to bring him before
or any justice for the said (territorial division), to answer to the said charge
and to be dealt with according to law.

Dated this _____ day of _____
A.D. at .

.....
A Justice of the Peace in and
for _____.

FORM 8.

(Sections 444, 451 and 710).

Warrant where summons is disobeyed or cannot be served.

Canada,
Province of
(territorial division)

To the peace officers in the said (territorial division);

Whereas on the
A.D. , A. B., of
the day of
hereinafter called the
accused, was charged that (state the offence as in the information);

And Whereas a summons to the accused was issued commanding him,
in Her Majesty's name, to appear on
the day of
A.D.,
at
o'clock in the noon, at
before me or any justice who should then be there, to answer to the said charge
and to be dealt with according to law;

And Whereas it appears (* or **);

This is therefore to command you, in Her Majesty's name, forthwith to
arrest the said accused and to bring him before me or any justice in and
for the said (territorial division), to answer to the said charge and to be
dealt with according to law.

Dated this
day of
A.D. at

A Justice of the Peace in and
for

* that the accused has failed to appear at the time and place appointed by the said
summons and it has been proved that the summons was duly served upon him.
** that the said summons cannot be served upon the accused.

FORM 9.

(Sections 451 and 710).

Warrant where accused fails to appear after adjournment.

Canada,	}
Province of	
(territorial division)	

To the peace officers in the (territorial division):

Whereas A. B., of _____, hereinafter called the
accused, appeared before me on the _____ day of _____
A.D., _____, on a charge that (*state the offence as in the information*);

And Whereas the trial (*or inquiry, etc.*) was adjourned to
the _____ day of _____ A.D.
at _____;

And Whereas the accused has failed to appear at the time and place
to which the trial (*or inquiry, etc.*) was adjourned:

This is therefore to command you, in Her Majesty's name, forthwith
to arrest the said accused and to bring him before me or any justice in
and for the said (*territorial division*), to answer to the said charge and to be
dealt with according to law.

Dated this _____ day of _____ A.D.
at _____

.....
A Justice of the Peace in and
for _____

FORM 10.

(Section 456.)

Warrant to convey accused before justice of another territorial division.

Canada, }
Province of }
(territorial division) }

To the peace officers in the said (territorial division):

Whereas A. B., of _____ hereinafter called the
accused, has been charged that (state place of offence and charge);

And Whereas I have taken the deposition of X. Y. in respect of the
said charge;

And Whereas the charge is for an offence committed in the (territorial
division);

This is to command you, in Her Majesty's name, to convey the said
A. B., before a justice of the (last-mentioned territorial division) and to
deliver to him the information, the said deposition and this warrant.

Dated this _____ day of _____ A.D.
at _____

.....
A Justice of the Peace in and
for _____

FORM 11.

(Section 604).

Subpœna to a witness.

Canada, }
Province of }
(territorial division) }

To E. F., of ; (occupation):

Whereas A. B. has been charged that (state offence as in the information), and it has been made to appear that you are likely to give material evidence for (the prosecution or the defence);

This is therefore to command you to attend before (set out court or justice), on the day of A.D. , at o'clock in the noon at to give evidence concerning the said charge.*

Dated this day of A.D.
at ;

.....
A Justice or clerk of the court.

(Seal if required).

* Where a witness is required to produce documents add the following:
and to bring with you any writings in your possession or under your control that relate to the said charge, and more particularly the following: (specify any writings required).

FORM 12.

(Sections 603 and 610.)

Warrant for witness.

Canada, }
Province of }
(territorial division) }

To the peace officers in the (territorial division):

Whereas A. B. of _____, has been charged
that (state offence as in the information):

And Whereas it has been made to appear that E. F. of _____
, hereinafter called the witness, is likely to give material
evidence for (the prosecution or the defence) and that*

This is therefore to command you, in Her Majesty's name, to bring the
witness before (set out court or justice) on _____ the
day of _____, A.D. _____, at _____
o'clock in the _____ noon, at _____ to give evidence
concerning the said charge.

Dated this _____ day of _____ A.D.
at _____ .

.....
A Justice or clerk of the court.

(Seal if required).

* Insert whichever of the following is appropriate:
(a) the said E. F. will not attend unless compelled to do so;
(b) the said E. F. is evading service of a subpoena;
(c) the said E. F. was duly served with a subpoena and has neglected (to attend at the
time and place appointed therein or to remain in attendance).
(d) the said E. F. was bound by a recognizance to attend and give evidence and has
neglected (to attend or to remain in attendance).

FORM 13.

(Section 609.)

Warrant to arrest an absconding witness.

Canada, }
Province of }
(territorial division) }

To the peace officers in the (territorial division):

Whereas A. B. of _____, has been charged
that (state offence as in the information);

And Whereas I am satisfied by information in writing and under oath
that C. D. of _____, hereinafter called the
witness, is bound by recognizance to give evidence upon the trial of the
accused upon the said charge, and that the witness (has absconded or is
about to abscond):

This is therefore to command you, in Her Majesty's name, to arrest
the witness and bring him before (the court, judge, justice or magistrate before
whom the witness is bound to appear) to be dealt with according to law.

Dated this _____ day of _____ A.D.
at _____

.....
A Justice of the Peace in and
for _____

FORM 14.

(Sections 451 and 710.)

Warrant remanding a prisoner.

Canada,
Province of
(territorial division)

To the peace officers in the (territorial division):

You are hereby commanded forthwith to convey to the (prison) at
the persons named in the following
schedule each of whom has been remanded to the time mentioned in the
schedule:

Person charged. Offence. Remanded to.

And I hereby command you, the keeper of the said prison, to receive
each of the said persons into your custody in the prison and keep him safely
until the day when his remand expires and then to have him before me or
any other justice at at o'clock in
the noon of the said day, there to answer to the charge and
to be dealt with according to law, unless you are otherwise ordered before
that time.

Dated this day of A.D.
at

A Justice of the Peace in and
for

FORM 15.

(Section 507).

Warrant for arrest of person against whom indictment has been found.

Canada,
Province of
(territorial division)

To the peace officers in (territorial division):

Whereas an indictment has been found against A. B., hereinafter called
the accused, and the accused has not (appeared or remained in attendance)
to take his trial on the said indictment before (set out court):

You are hereby commanded, in Her Majesty's name, forthwith to arrest
the accused and to bring him before the said court to be dealt with according
to law.

Dated this day of A.D.
at

(Seal):

Clerk of the Court.

FORM 16.

*(Section 457.)**Warrant of committal of witness for refusing to be sworn or to give evidence.*

Canada,	}
Province of	
<i>(territorial division)</i>	

To the peace officers in the *(territorial division)*:

Whereas A. B. of _____, hereinafter called the accused, has been charged that *(set out offence as in the information)*;

And Whereas E. F. of _____, hereinafter called the witness, attending before me to give evidence for *(the prosecution or the defence)* concerning the charge against the accused *(refused to be sworn or being duly sworn as a witness refused to answer certain questions concerning the charge that were put to him or refused or neglected to produce the following writings, namely _____ or refused to sign his deposition)* having been ordered to do so, without offering any just excuse for such refusal or neglect:

This is therefore to command you, in Her Majesty's name, to take the witness and convey him safely to the prison at _____, and there deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the said witness into your custody in the said prison and safely keep him there for the term of _____ days, unless he sooner consents to do what was required of him, and for so doing this is a sufficient warrant.

Dated this _____ day of _____ A.D.

at _____

.....
 A Justice of the Peace in and
 for _____

FORM 18.

(Sections 482 and 713 .)

Warrant of committal upon conviction.

Canada, }
Province of }
(territorial division) .}

To the peace officers in the (territorial division) and to the keeper of the (prison) at :

Whereas A. B., hereinafter called the accused, was this day convicted upon a charge that (state offence as in the information), and it was adjudged that the accused for his offence*

You are hereby commanded, in Her Majesty's name, to take the accused and convey him safely to the (prison) at and deliver him to the keeper thereof, together with the following precept:

You, the said keeper, are hereby commanded to receive the accused into custody in the said prison and imprison him there**

and for so doing this is a sufficient warrant.

Dated this day of A.D. at

(Seal, if required). Clerk of the Court, Justice or Magistrate.

* Use whichever of the following forms of sentence is applicable:
(a) be imprisoned in the (prison) at for the term of ;
(b) forfeit and pay the sum of dollars to be applied according to law, and also pay to dollars the sum of dollars in respect of costs and in default of payment of the said sums (forthwith or within a time fixed, if any) be imprisoned in the (prison) at for the term of unless the said sums and costs and charges of the committal and of conveying the accused to the said prison are sooner paid;
(c) be imprisoned in (prison) at for the term , and in addition (as in (b) above).

FORM 19.

(Section 713.)

Warrant of committal upon an order for the payment of money.

Canada, }
Province of }
(territorial division) ;

To the peace officers in the (territorial division) and to the keeper of the (prison) at :

Whereas A. B., hereinafter called the defendant, was tried upon an information alleging that (set out matter of complaint), and it was ordered that (set out the order made), and in default that the defendant be imprisoned in the (prison) at for a term of ;

I hereby command you, in Her Majesty's name, to take the defendant and convey him safely to the (prison) at and deliver him to the keeper thereof together with the following precept:

I hereby command you the keeper of the said prison to receive the defendant into your custody in the said prison and imprison him there for the term of , unless the said amounts and the costs and charges of the committal and of conveying the defendant to the said prison are sooner paid, and for so doing this is a sufficient warrant.

Dated this day of , A.D.

.....
A Justice of the Peace in and
for .

FORM 22.

(Section 612.)

Warrant of committal for contempt.

Canada, }
 Province of }
 (territorial division) }

To the peace officers in the said (territorial division) and to the keeper of the (prison) at _____ :

Whereas E. F. of _____, hereinafter called the defaulter, was on the _____ day of _____ A.D. _____, at _____, convicted before _____ for contempt in that he did not attend before _____ to give evidence on the trial of a charge that (*state offence as in the information*) against A. B. of _____, although (duly subpoenaed or bound by recognizance to appear and give evidence in that behalf, *as the case may be*) and did not show any sufficient excuse for his default;

And Whereas in and by the said conviction it was adjudged that the defaulter (*set out punishment adjudged*);

And Whereas the defaulter has not paid the amounts adjudged to be paid; (*delete if not applicable*)

This is therefore to command you, in Her Majesty's name, to take the defaulter and convey him safely to the prison at _____ and there deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the defaulter into your custody in the said prison and imprison him there* and for so doing this is a sufficient warrant.

Dated this _____ day of _____ A.D. _____
 at _____

.....
 A Justice or clerk of the court.

(Seal, if required).

* Insert whichever of the following is applicable:

- (a) for the term of _____ unless the said sums and the costs
 (b) for the term of _____ and charges of the committal and of conveying the defaulter to the said prison
 are sooner paid, or
 (c) for the term of _____ and for the term of (*if consecutive so state*) unless the said sums and costs and charges of the committal and of conveying the defaulter to the said prison are sooner paid.

FORM 23.

(Section 731)

Warrant of committal in default of payment of costs of an appeal.

Canada, }
Province of }
(territorial division) }

To the peace officers of (territorial division) and to the keeper of the (prison) at :

Whereas it appears that upon the hearing of an appeal before the (set out court), it was adjudged that A. B., of hereinafter called the defaulter, should pay to the Clerk of the Court the sum of dollars in respect of costs;

And Whereas the Clerk of the Court has certified that the defaulter has not paid the sum within the time limited therefor;

I do hereby command you the said peace officers, in Her Majesty's name, to take the defaulter and safely convey him to the (prison) at and deliver him to the keeper thereof, together with the following precept:

I do hereby command you, the said keeper, to receive the defaulter into your custody in the said prison and imprison him for the term of , unless the said sum and the costs of the committal and of conveying the defaulter to prison are sooner paid, and for so doing this is a sufficient warrant.

Dated this day of A.D.
at

.....
A Justice of the Peace in and
for

FORM 24.

(Section 679.)

Warrant of committal on forfeiture of a recognizance.

Canada, }
Province of }
(territorial division) }

To the sheriff of (territorial division) and to the keeper of the (prison)
at :

You are hereby commanded to take (A. B. and C. D. as the case may be)
hereinafter called the defaulters, and to convey them safely to the (prison)
at and deliver them to the
keeper thereof, together with the following precept:

You, the said keeper, are hereby commanded to receive the defaulters
into your custody in the said prison and imprison them for a period of
or until satisfaction
is made of a judgment debt of dollars due
to Her Majesty the Queen in respect of the forfeiture of a recognizance entered
into by on the day
of A.D. .

Dated this day of A.D. .

(Seal): Clerk of the

FORM 25.

(Sections 429 (2), 447 and 713.)

Endorsement of warrant.

Canada, }
Province of }
(territorial division) }

Pursuant to application this day made to me, I hereby authorize the
execution of this warrant within the said (territorial division).

Dated this day of A.D.
at .

.....
A Justice of the Peace in and
for .

FORM 26.

(Section 451.)

Order for accused to be brought before justice prior to expiration of period of remand.

Canada, }
Province of }
(territorial division) }

To the keeper of the (prison) at :

Whereas by warrant dated the day of A.D. , I committed A. B., hereinafter called the accused, to your custody and required you safely to keep him until the day of A.D. , and then to have him before me or any other justice at at o'clock in the noon to answer to the charge against him and to be dealt with according to law unless you should be ordered otherwise before that time:

Now, therefore, I order and direct you to have the accused before at at o'clock in the noon to answer to the charge against him and to be dealt with according to law.

Dated this day of A.D. at .

.....
A Justice of the Peace in and
for .

FORM 27.

(Section 453.)

Deposition of a witness.

Canada,	}
Province of	
(territorial division)	

These are the depositions of X. Y., of
and M. N., of _____, taken before me, this
day of _____ A.D. _____, at
_____ in the presence and
hearing of A. B., hereinafter called the accused, who stands charged (*state
offence as in the information*).

X. Y., having been duly sworn, deposes as follows: (*insert deposition
as nearly as possible in words of witness.*)

M. N., having been duly sworn, deposes as follows:

I certify that the depositions of X. Y., and M. N., written on the
several sheets of paper hereto annexed to which my signature is affixed,
were taken in the presence and hearing of the accused (and signed by them
respectively, in his presence, *where they are required to be signed by witness*).
In witness whereof I have hereto signed my name.

.....
A Justice of the Peace in and
for _____

FORM 28.

(Sections 451, 461, 463, 611, 637, 638, 669, 670, 710, 717, 724 and 735.)

(N.B. The provisions of sections 669 and 670 (1), (2) and (3) must be endorsed on a recognizance. See section 670 (4)).

Recognizance.

Canada. }
 Province of }
 (territorial division) }

Be it remembered that on this day the persons named in the following schedule personally came before me and severally acknowledged themselves to owe to Her Majesty the Queen the several amounts set opposite their respective names, namely,

Name	Address	Occupation	Amount
A. B.			
C. D.			
E. F.			

to be made and levied of their several goods and chattels, lands and tenements, respectively, to the use of Her Majesty the Queen, if the said A. B. fails in the condition hereunder written.

Taken and acknowledged before me on the _____ day of _____
 A.D. at _____.

.....
 A Justice of the Peace in and
 for _____

* Use whichever of the following conditions is appropriate:

- (a) Whereas the said A. B. has been charged (state offence as in the information);
 Now, therefore, the condition of the above written recognizance is that if the said A. B. appears before the (state court, judge or justice) on the _____ day of _____ A.D. at _____ o'clock in the _____ noon, at (place) to answer to the charge and to be dealt with according to law, the said recognizance is void, otherwise it stands in full force and virtue.
- (b) Whereas the said A. B., hereinafter called the accused, was committed to stand his trial before a judge acting under Part XVI, on a charge that: (set out charge)
 Now, therefore, the condition of the above written recognizance is that if the accused appears before the presiding judge at the time and place fixed for his trial and there surrenders himself and takes his trial on the indictment that is found against him and does not depart the said court without leave, the said recognizance is void, otherwise it stands in full force and virtue.
- (c) Whereas the said A. B., hereinafter called the accused, was committed for trial before (set out court);

Continued next page

FORM 30.

(Section 677.)

Writ of fieri facias.

Elizabeth II by the Grace of God, etc.

To the sheriff of (*territorial division*), GREETING,

You are hereby commanded to levy of the goods and chattels, lands and tenements of each of the following persons the amount set opposite the name of each:

Name	Address	Occupation	Amount
------	---------	------------	--------

And you are further commanded to make a return of what you have done in execution of this writ.

Dated this day of A.D.

at .

(Seal).

.....
Clerk of the

FORM 31.

(Sections 482 and 713.)

Conviction.

Canada, }
Province of }
(territorial division) }

Be it remembered that on the _____ day of _____
at _____, A. B., hereinafter called the accused,
was tried under Part (XVI or XXIV) of the Criminal Code upon the charge
that (state fully the offence of which accused was convicted), was convicted of
the said offence and the following punishment was imposed upon him,
namely,*

Dated this _____ day of _____ A.D.
at _____ .

.....
Clerk of the Court, Justice or
Magistrate.
(Seal, if required).

* Use whichever of the following forms of sentence is applicable:
(a) That the said accused be imprisoned in the (prison) at _____
for the term of _____
(b) That the said accused forfeit and pay the sum of _____ dollars
to be applied according to law and also pay to _____
the sum of _____ dollars in respect of costs and in default of pay-
ment of the said sums (forthwith or within a time fixed, if any) to be imprisoned
in the (prison) at _____ for the term of _____
unless the said sums and costs and charges of the
committal and of conveying the accused to the said prison are sooner paid.
(c) That the said accused be imprisoned in the (prison) at _____
for the term of _____ and in addition forfeit and pay the
sum of _____ dollars to be applied according to law and also pay
to _____ the sum of _____ dollars
in respect of costs and in default of payment of the said sums (forthwith or within
a time fixed, if any) to be imprisoned in the (prison) at _____ for
the term of _____ (if sentence to be consecutive, state
accordingly) unless the said sums and costs and charges of the committal and of
conveying the accused to the said prison are sooner paid.

FORM 32.

(Section 713.)

Order against a defendant.

Canada, }
Province of }
(territorial division) }

Be it remembered that on the _____ day of _____, A. B., of _____, at _____, was tried upon an information alleging that (set out matter of complaint), and it was ordered and adjudged that (set out the order made).

Dated this _____ day of _____ A.D. _____ at _____ .

.....
A Justice of the Peace in and for _____ .

FORM 33.

(Section 482.)

Order acquitting accused.

Canada, }
Province of }
(territorial division) }

Be it remembered that on the _____ day of _____, A. B., of _____, (occupation), was tried upon the charge that (state fully the offence of which accused was acquitted) and was found not guilty of the said offence.

Dated this _____ day of _____ A.D. _____ at _____ .

(Seal, if required).

.....
Magistrate or Clerk of the Court.

FORM 34.

(Section 612.)

Conviction for contempt.

Canada,
Province of }
(territorial division) .]

Be it remembered that on the _____ day of _____
A.D. _____, at _____ in the (territorial divi-
sion), E. F. of _____, hereinafter called the defaulter,
is convicted by me for contempt in that he did not attend before (set out
court or justice) to give evidence on the trial of a charge that (state fully
offence with which accused was charged), although (duly subpoenaed or bound
by recognizance to attend to give evidence, as the case may be) and has not
shown before me any sufficient excuse for his default;

Wherefore I adjudge the defaulter for his said default, (set out punish-
ment as authorized and determined in accordance with section 612).

Dated this _____ day of _____ A.D.
at _____ .

(Seal, if required).

.....
A Justice or clerk of the court
as the case may be.

FORM 35.

(Sections 461, 463 and 724).

Order for discharge of a person in custody.

Canada,
Province of }
(territorial division) .]

To the keeper of the (prison) at _____ :

I hereby direct you to release E. F., detained by you under a (warrant
of committal or order) dated the _____ day of _____
A.D. _____, if the said E. F. is detained by you for no other cause.

(Seal, if required).

.....
A Judge, Justice or Clerk of
the Court.

FORM 40.

(Section 646).

Certificate of execution of sentence of death.

I, A. B., prison doctor of the (prison), at hereby certify that I examined the body of C. D. on whom sentence of death was this day executed in the said prison and that I found that the said C. D. was dead.

Dated this day of
A.D. at .

.....
Prison doctor.

FORM 41.

(Section 646).

Declaration of sheriff and others.

We, the undersigned, hereby declare that sentence of death was this day executed on C. D., in our presence in the (prison) at .

Dated this day of A.D.
at .

Sheriff of

Gaoler of

.....
.....
.....

} Others.

FORM 42.

FIREARM PERMIT.

This permit authorizes of
 to have a
 (Address) (insert type of firearm)
 elsewhere than in his dwelling house or place of
 business for the purpose of
 (insert purpose for which permit is required)

This permit is valid during the period.....

.....
 (Date of issue). (Signature of person authorized to issue
 permits in Form 42.)

FORM 43.

PERMIT TO BUY AND SELL FIREARMS AT RETAIL.

This permit authorizes
 (Insert name of holder of permit)
 of
 to buy and sell firearms at retail.

.....
 (Date of issue). (Signature of person authorized to issue
 permits).

.....
 (Address).

FORM 44

PERMIT TO CONVEY FIREARM.

This permit authorizes..... to convey the firearm described herein from.....

(Place of delivery or place of residence or business)

..... to..... (Local registrar of firearms)

and thence to..... (Place of residence or business)

This permit is valid only during the period.....

(Date of Issue)

(Local Registrar of Firearms)

(Address)

APPLICATION TO REGISTER FIREARM.

Place..... DATE.....

Re..... Certificate No..... (Name of Applicant) (If available) (Please show full Christian names)

Description of Firearm

Table with 7 columns: Make of Firearm, R or A, Cal., Model, Ser. No., No. Shots, Bbl. Lgth.

(NOTE: (R) Revolver (A) Automatic)

Obtained by: Purchase Exchange Gift Found

Obtained from.....

Certificate No..... Address.....

Occupation of Applicant.....

Purpose for which firearm required.....

(Signature of Applicant)

Address:

Registered under the authority of section 93 of the Criminal Code of Canada

(Local Registrar of Firearms)

(Date of issue)

(Address)

TRANSFER COMPLETED

Date..... Initialed by..... Police Department.....

FORM 45.

PERMIT FOR A MINOR TO ACQUIRE FIREARMS.

This permit authorizes.....

of.....

aged.....years, to acquire and have in his possession the firearm,
air-gun, air-pistol or ammunition therefor, described as follows:

.....
.....

This permit is valid during the period.....

.....
Date of Issue.

.....
*(Signature of person authorized to
issue permits).*

.....
(Address).

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954