

## 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; 5
- "Indictment." (b) "indictment" includes an information or charge in respect of which a person has been tried for an indictable offence under Part XVI; 10
- "Registrar." (c) "registrar" means the registrar or clerk of the court of appeal; 15
- "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. 20
- 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.
- 583.** A person who is convicted by a trial court in proceedings by indictment may appeal to the court of 25 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 25 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 sub- 30 paragraph (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 35 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
- (a) against a judgment or verdict of acquittal of a trial court in proceedings by indictment on any ground of 40 appeal that involves a question of law alone, or

**581.** Section 1012.

**582.** Section 1013 (3).

**583.** Section 1013 (1) and (2).

**584.** Section 1013 (2), (4) and (5).

(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.

Acquittal.

(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. 5

Specifying grounds of dissent.

**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. 10

#### PROCEDURE ON APPEALS.

Notice of appeal.

**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. 15

Extension of time.

(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. 20

Delay in execution of sentence of death or whipping.

(3) Where, pursuant to a conviction, a sentence of death or whipping has been imposed, 25

(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 30

(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 35  
(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 40

(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.

**585.** Section 1013 (6).

**586.** Section 1018.

Bail.	<b>587.</b> 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.	<b>588.</b> (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.	5 10
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 by the appellant to the court of appeal, except in so far as it is dispensed with by order of a judge of that court.	15
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.	02 25
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).	30
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).	
Court may order.	<b>589.</b> (1) For the purposes of an appeal under this Part the court of appeal may, where it considers it necessary or expedient in the interests of justice, (a) order the production of any writing, exhibit, or other thing connected with the proceedings; (b) order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial, (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,	35 40
Production of documents. Attendance of witnesses.		45

**587.** Section 1019.

**588.** Section 1020 (1) to (4).

**589.** Section 1021 (1) and (8).

	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;	
Admission of evidence.	(c) admit, as evidence, an examination that is taken under subparagraph (ii) of paragraph (b);	5
Reception of evidence.	(d) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not compellable witness;	
Reference to commissioner.	(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	10 15
Acceptance of report.	(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.	20
Other powers.	(2) 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.	25
Execution of process.	(3) Any process that is issued by the court of appeal under this section may be executed anywhere in Canada.	30
Legal assistance for appellant.	<b>590.</b> 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.	35
Summary determination of frivolous appeals.	<b>591.</b> 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.	40 45

**590.** Section 1021 (4).

**591.** Section 1021 (10).



## 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, 5
  - (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; 10

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, 15
  - (ii) the court is of the opinion that the appellant could on the indictment have been found guilty of an offence other than that of which he was convicted, and that the court, judge or magistrate must have been satisfied of facts that proved the appellant guilty of that other offence, 20
  - (iii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a), or 25
  - (iv) notwithstanding that the court is of the opinion that on any ground mentioned in 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; 30

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 35

Insanity.

- (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. 45

**592.** Sections 1013 (5) in part, 1014 and 1016.

Order to be made.	(2) Where a court of appeal allows an appeal under paragraph (a) of subsection (1), it shall quash the conviction and	
	(a) direct a judgment or verdict of acquittal to be entered, or	5
	(b) order a new trial.	
Substituting verdict.	(3) Where a court of appeal dismisses an appeal under subparagraph (i) or (ii) 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.	10
Appeal from acquittal.	(4) Where an appeal is from an acquittal the court of appeal may	
Dismissal.	(a) dismiss the appeal; or	
Allowance.	(b) allow the appeal, set aside the verdict and	15
	(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.	20
New trial under Part XVI.	(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 new trial shall, without further election by the accused, be held before a judge or magistrate, as the case may be, acting under that part, other than the 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.	25
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.	30
Powers of court on appeal against sentence.	<b>593.</b> (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,	35
	(a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted, or	40
	(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.	45

**593.** Section 1015.

Right of  
appellant  
to attend.

Appellant  
represented  
by counsel.

Argument  
may be  
oral or in  
writing.

Sentence in  
absence of  
appellant.

Restitution  
of property.

Annulling  
or varying  
order.

Powers of  
Minister of  
Justice.

**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.

(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.

(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.

(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

**594.** Sections 1018 (1) in part, 1021 (6) and 1021 (7).

**595.** Section 1017.

**596.** Section 1022 (2).

(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.

Appeal from conviction.	<b>597.</b> (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	5
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.	10
Appeal where acquittal set aside. Where joint trial.	(2) A person (a) who is acquitted of an indictable offence and whose acquittal is set aside by the court of appeal, or (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,	15 20
	may appeal to the Supreme Court of Canada on a question of law.	
Appeal by Attorney General.	<b>598.</b> (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	25
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.	30
Terms.	(2) Where leave to appeal is granted under paragraph (b) of subsection (1), the judge may impose such terms as he sees fit.	35
Notice of appeal.	<b>599.</b> 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	40
	(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,	45

**597.** Sections 1023 (1) and (2) and 1025 (1) in part.

**598.** Sections 1023 (3) and 1025 (1) in part.

**599.** Sections 1023 (4) and 1025 (2).



unless 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 5 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 10 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 15 behalf of that government as the Attorney General of a province has under this Part.

**600.** Section 1024.

**601.** New.

## PART XIX.

## PROCURING ATTENDANCE OF WITNESSES.

## APPLICATION.

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

## PROCESS.

Subpoena. **603.** (1) Where a person is likely to give material 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. 5

Warrant in Form 12. (2) Where it is made to appear that a person who is 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. 15

Subpoena to be issued in first instance.

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

How subpoena issued.

**604.** (1) Where a person is required to attend to give 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. 25

Who may issue.

(2) Where a person is required to attend to give evidence 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 30

(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. 35

This Part is derived from the following sections of the present *Criminal Code*:—  
604A, 655 (3), 663 (in part), 671 to 677, 693, 711 to 713, 716, 788, 789, 841, 842, 971 to 976, 995 to 1000.

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.	5
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.	10
Form.	(6) A subpoena issued under this Part may be in Form 11.	
Contents of subpoena.	<b>605.</b> (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.	15
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.	20

#### EXECUTION OR SERVICE OF PROCESS.

Service.	<b>606.</b> (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.	25
Proof of service.	(3) Service of a subpoena may be proved by the affidavit of the person who effected service.	
Subpoena effective throughout Canada.	<b>607.</b> (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.	30
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.	35
Warrant effective throughout Canada.	<b>608.</b> (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.	40



## DEFAULTING OR ABSCONDING WITNESS.

Warrant for  
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. 5

Endorsement  
of warrant.

(2) Section 447 applies, *mutatis mutandis*, to a warrant issued under this section. 10

Copy of  
information.

(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.

Warrant  
when  
witness  
does not  
attend.

**610.** (1) Where a person who has been served with a subpoena to give evidence in a proceeding does not attend 15 or remain in attendance, the court, judge, justice or magistrate before whom that person was required to attend may, if it is established

(a) that the subpoena has been served in accordance with this Part, and 20

(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.

Warrant  
where  
witness  
bound by  
recognizance.

(2) Where a person who has been bound by a recognizance to attend to give evidence in any proceeding does not 25 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  
effective  
throughout  
Canada.

(3) A warrant that is issued by a justice or magistrate 30 pursuant to subsection (1) or (2) may be executed anywhere in Canada.

Order  
where  
witness  
arrested  
under  
warrant.

**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 35 610, the court, judge, justice or magistrate may order that the person

(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. 40

Contempt.

**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.

- 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. 5
- 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. 10

### 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 15
- 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 20 613 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 25 (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 30 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 35 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 40 counsel, or the prosecutor or his counsel, as the case may be, had or might have had full opportunity to cross-examine the witness.



Application  
for order  
when witness  
out of  
Canada.

**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.

Reading  
evidence of  
witness out  
of Canada.

(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.

Reading  
evidence to  
grand jury.

(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.

Providing  
for presence  
of accused  
counsel.

**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.

Return of  
evidence.

(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.

Rules and  
practice  
same as in  
civil cases.

**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.

#### EVIDENCE PREVIOUSLY TAKEN.

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

**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,

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. 5 10

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. 15

## 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.

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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.

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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.

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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.

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Cumulative  
punishments.

(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,

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**620.** New

**621.** Sections 740, 746, 1028, 1029, 1035 (4), 1054,  
1055 and new.

- (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,

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

Fine in lieu of other punishment.

**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 addition to 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.

Imprisonment in default of payment.

(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

- (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.

Fines on corporations.

**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,

- (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,

**622.** Section 1035 (1) and (2).

**623.** Section 1035 (3). Subclauses (1) *(b)* and (2) are new.

**624.** Section 1054B.

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, 5

(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, 10

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. 15

Application for leave to appeal.

(5) An application for leave to appeal is an appeal for the purposes of this section. 20

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. 25

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. 30

To whom payment made.

(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. 35

Application of money paid.

(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. 40

"Penalty."

(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. 45

**625.** Section 1035A.



Fines and  
penalties  
go to  
provincial  
treasurer.

**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. 5

Exception.

(2) Where

(a) a fine, penalty or forfeiture is imposed 10

(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 15

(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. 25

Direction for  
payment to  
municipality.

(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, 30

By  
Lieutenant-  
Governor.

(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 35

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.

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. 40

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. 45

**626.** Sections 1036 and 1037.

**627.** Sections 1038 and 1141.

Compensation  
for loss of  
property.

**628.** A court that convicts an accused of an indictable offence may, by order, upon the application of a person aggrieved, at the time sentence is imposed, award out of moneys found in the possession of the accused at the time of his arrest, 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. 5

Compensation to  
bona fide  
purchasers.

**629.** 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 by order, upon the application of the purchaser after restitution of the property to its owner, award to the purchaser, out of moneys found in the possession of the accused at the time of his arrest, an amount not exceeding the amount paid by the purchaser for the property. 10 15

Order for  
restitution  
of property.

**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. 20

Where no  
conviction.

(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. 25 30

When order  
not to be  
made.

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

- (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, or
- (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. 35 40

By whom  
order  
executed.

(4) An order made under this section shall be executed by the peace officers by whom the process of the court is ordinarily executed. 45

Saving.

(5) This section does not apply to proceedings against a trustee, banker, merchant, attorney, factor, broker or

**628.** Section 1048.

**629.** Section 1049.

**630.** Sections 1050 and 795.

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  
defendant  
in case of  
libel.

**631.** Where judgment is given for the accused in proceedings by indictment for the publication of a defamatory libel, the accused is entitled to recover from the prosecutor costs in a reasonable amount to be fixed by order of the court. 5

How  
recovered.

**632.** Where costs that are fixed under section 631 are not paid forthwith the accused 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 prosecutor in the same manner as if it were a judgment rendered against him in that court in civil proceedings. 15

#### IMPRISONMENT.

Imprison-  
ment 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.

Imprison-  
ment 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. 20

Imprison-  
ment for  
term less  
than two  
years.

(2) A person who is sentenced to imprisonment 25  
(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. 30

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 40  
serve that term in accordance with subsection (2).

**631.** Section 1045.

**632.** New.

**633.** Section 1052 (1).

**634.** Sections 1006 and 1056.

Sentence to  
penitentiary  
of person  
serving  
sentence  
elsewhere.

(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. 5

Exception.

(5) For the purposes of this section, "penitentiary" does not, until January 1, 1954, include the penitentiary mentioned in section 37 of the *Statute Law Amendment (Newfoundland) Act*, chapter 6 of the Statutes of Canada, 1949, (First Session). 10

Sentence  
served  
according  
to regulations.

**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. 15

Hard labour  
improperly  
ordered.

(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. 20

#### DELIVERY OF ACCUSED TO KEEPER OF PRISON.

Execution  
of warrant  
of commit-  
tal.

**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. 25 30

#### RECOGNIZANCES TO KEEP THE PEACE.

Binding  
over person  
convicted.

**637.** (1) Where a person is convicted of an offence, the court may 35  
(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 40

**635.** New.

**636.** Section 704.

**637.** Sections 748 (1), 1058 and 1059.



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.

Proceedings  
when in prison  
two weeks.

Procedure  
when  
brought  
before court.

"Judge."

(2) A recognizance under this section may be in Form 28.  
(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.

(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.

(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, and in the Northwest Territories or the Yukon Territory, includes a stipendiary magistrate.

#### 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 pay the costs of prosecution or some portion thereof within such period and by such instalments as it may direct,

(b) 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

**638.** Section 1081.

(c) 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. 5

Requiring  
person to  
report.

(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. 10

Report by  
designated  
person.

(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. 15

Suspending  
sentence of  
person  
previously  
convicted.

(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). 20 25

Summons or  
warrant when  
recognizance  
not observed.

**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. 30

Return.

(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. 35

Remand for  
judgment.

(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. 40

Sentence.

(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. 45

Magistrate  
unable  
to act.

(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

**639.** Section 1083 and new.

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.

- "Court." **640.** For the purposes of sections 638 and 639, "court" means 5
- (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. 10

#### 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 15 strokes to be administered on each occasion.
- How to be executed. (3) Every sentence of whipping shall be carried out in accordance with regulations to be made by the Governor in Council.
- Female not to be whipped. (4) No female person shall be whipped. 20

#### 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 Secretary of State. **643.** (1) A judge who sentences a person to death shall appoint a day for the execution of the sentence, and 25 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 Secretary of State for the information of the Governor General. 30
- 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 35 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.

**640.** Section 1026.

**641.** Section 1060.

**642.** Section 1062.

**643.** Section 1063.

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

(3) A judge or magistrate 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 Secretary of State 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 or magistrate who imposed the sentence or any judge or magistrate having equivalent jurisdiction.

Prisoner to  
be confined  
apart.

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

Who to have  
access.

(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.

Place of  
execution.

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

Who shall  
attend.

(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 may  
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.

Certificate  
of death.

**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.

Form.

Declaration  
by sheriff  
and keeper.

(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.

Form.

Deputies  
may act.

**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.

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.

**644.** Section 1064.

**645.** Sections 1065, 1066 and 1067.

**646.** Section 1068.

**647.** Section 1069.

**648.** Section 1070.



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.	5
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).	
Documents to be sent to Secretary of State.	<b>649.</b> 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 Secretary of State or to the person who, from time to time, is appointed by the Governor in Council to receive them.	10 15
Place of burial.	<b>650.</b> 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 otherwise orders.	
Saving.	<b>651.</b> 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.	20
Procedure under other Acts not affected.	<b>652.</b> 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.	25
Regulations.	<b>653.</b> The Governor in Council may make regulations not inconsistent with this Act with respect to the execution of sentences of death.	

#### DISABILITIES.

Conviction of person holding public office vacates office.	<b>654.</b> (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.	30 35
When disability ceases.	(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.	40

**649.** Section 1072.

**650.** Section 1071.

**651.** Section 1073.

**652.** Section 1074.

**653.** Section 1075.

**654.** Sections 159, 162 (part), 434 (3) and 1034.

Disability to contract.

(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.

5

Removal of disability.

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

#### PARDON.

To whom pardon may be granted.

**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.

10

Free or conditional pardon.

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

Effect of free 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.

15

Punishment for subsequent offence not affected.

(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.

20

Commutation of sentence.

**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.

25

Notice to authorities.

(2) A copy of an instrument duly certified by the Clerk of the Privy Council or a writing under the hand of the Secretary of State or Under-Secretary of State declaring 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.

30

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.

35

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.

40

Royal prerogative.

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

**655.** Section 1076.

**656.** Section 1077.

**657.** Section 1080.

**658.** Sections 1084 and 1085.

## 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, 5  
 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 peni- 10  
 tentiary 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 15 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 20 detention.
- Who is habitual criminal. (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 25 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. 30

## CRIMINAL SEXUAL PSYCHOPATHS.

- Evidence. **661.** (1) Where an accused is convicted of  
 Rape. (a) an offence under  
 Carnal knowledge. (i) section 136,  
 Indecent assault on female. (ii) section 138,  
 Buggery or bestiality. (iii) section 141,  
 Indecent assault on male. (iv) section 147, 35  
 Gross indecency. (v) section 148, or  
 (vi) section 149; or

**659.** Sections 575A and 1054A (8).

**660.** Sections 575B and 575c (1).

**661.** Section 1054A (1), (2), (3) and (5).

(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. 5

Evidence of psychiatrists.

(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. 10

Sentence of preventive detention.

(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. 15

#### GENERAL.

Notice of application.

**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 20

(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 25

(iii) a copy of the notice has been filed with the clerk of the court or the magistrate, as the case may be; and 30

(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. 35

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. 40

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. 45

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. 5

Commence-  
ment 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, 10  
commute that sentence to a sentence of preventive detention.

Commuta-  
tion.

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 con- 15  
victed 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 pre- 20  
scribed 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 25  
of determining whether he should be permitted to be at large on licence, and if so, on what conditions.

Appeal.

**667.** (1) A person who is sentenced to preventive detention under this Part may appeal to the court of appeal against that sentence. 30

Appeal by  
Attorney  
General.

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

Part XVIII  
applies re  
appeals.

(3) The provisions of Part XVIII with respect to procedure on appeals apply, *mutatis mutandis*, to appeals under 35  
this section.



**663.** Section 575D.

**664.** Sections 575F, 575G (1) and 1054A (4).

**665.** (1) New.

(2) Section 575G (2) and (3).

**666.** Sections 575H and 1054A (7).

**667.** Section 575E.

## PART XXII.

EFFECT AND ENFORCEMENT OF  
RECOGNIZANCES.

Applications  
for forfeiture  
of re-  
cognizances.

**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.

"Clerk of  
the Court."

(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

"Schedule."

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

Recognizance  
binding.

**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.

Respon-  
sibility of  
sureties.

**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.

Committal  
or new  
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.

Effect of  
committal.

(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  
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

This Part is derived from the provisions of sections  
1086 to 1119 and 886 (2) of the present *Criminal Code*.

Arrest.	committal of that person to the prison nearest to the place where he was, under the recognizance, bound to appear.
Certificate and entry of offender.	(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. 5
Discharge of sureties.	(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. 10
Render of accused in court by sureties.	(4) An endorsement under subsection (3) vacates the recognizance and discharges the sureties. 15
Rights of surety preserved.	<b>673.</b> 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. 20
Application for bail after render.	<b>674.</b> 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. 25
Default to be endorsed.	<b>675.</b> 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. 30 35
Default to be endorsed.	<b>676.</b> (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. 40 45

- Transmission to clerk of court. (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.
- Prima facie* evidence. (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. 5
- Transmission of deposit. (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. 10
- Proceedings in case of default. **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, 15
- Judge to fix time for hearing. (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 20
- Notice of hearing. (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. 25
- Order of judge. (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. 30
- Fieri facias* to issue. (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 court or, in the province of Quebec, the prothonotary, shall issue a writ of *fieri facias* in Form 30 and deliver it to the sheriff of the territorial division in which the order was made. 35 40
- Transfer of deposit. (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 *fieri facias* 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. 45

Levy under writ.

**678.** (1) Where a writ of *fiери facias* 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 *fiери facias* issued out of superior courts in the province in civil proceedings. 5

Costs.

(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 10 in any other province, by any tariff applicable in the superior court of the province in civil proceedings, as the judge may direct.

Committal when writ not satisfied.

**679.** (1) Where a writ of *fiери facias* has been issued under this Part and it appears from a certificate in a return 15 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, 20 direct the issue of a warrant of committal in Form 24.

Confinement.

(2) A warrant issued pursuant to subsection (1) authorizes the sheriff to take into custody the persons in respect of whom the warrant was issued and to confine them in a prison in the territorial division in which the writ was 25 issued or in the prison nearest to the court, until satisfaction is made or until the court makes a further order pursuant to subsection (4).

Return to warrant.

(3) The warrant of committal issued under this section shall be returned by the sheriff at the time when it is made 30 returnable and the sheriff shall state in his return what has been done in execution of the warrant.

Petition and proceedings thereon.

(4) Where a person has been taken into custody under a warrant of committal issued under this section, a judge of the court, on petition of that person, of which notice 35 shall be given to the Attorney General or counsel acting on his behalf, may inquire into the circumstances of the case and may, in his discretion,

(a) order the discharge of the amount for which that person is liable, or 40

(b) make any order with respect to that person and to his imprisonment that he considers proper in the circumstances.

"Attorney General."

(5) In this section and in section 677, "Attorney General" means, where subsection (2) of section 626 applies, the 45 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.

## PART XXIII.

## EXTRAORDINARY REMEDIES.

Application  
of Part.

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

Detention of  
prisoner on  
inquiry  
as to legality  
of imprison-  
ment.

**681.** Where a person, being in custody by reason that he is charged with or has been convicted of an indict- 5  
able 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 10  
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. 15

Where  
conviction  
or order  
not  
reviewable.

**682.** No conviction or order shall be removed by  
*certiorari*

- (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 20  
merits were tried, and an appeal might have been taken,  
but the defendant did not appeal.

Conviction or  
order remedi-  
able, when.

**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, inform- 25  
ality or insufficiency therein, where the court before which  
or the judge before whom the question is raised, upon  
perusal of the evidence, is satisfied

- (a) that an offence of the nature described in the con-  
viction, order or warrant, as the case may be, was 30  
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 35  
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. 40



**680.** New.

**681.** Section 1120.

**682.** Sections 1121, 1122 and 1129.

**683.** Section 1124.

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 5

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 15 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, 20 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. 25

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. 30

Irregularities  
within  
section 683.

**684.** Without restricting the generality of section 683, that section shall be deemed to apply where 35

(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, 40 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 45 provision.

**684.** Section 1125.

General  
order for  
security by  
recognizance.

**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.

Provisions for  
forfeiture of  
recognizance  
apply.

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

Effect of  
order dis-  
missing  
application to  
quash.

**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.

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

**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 of a proclamation or order of the Governor in Council, or of rules, regulations or by-laws made by the Governor in Council under an Act of the Parliament of Canada, or of the publication in the *Canada Gazette* of a proclamation, order, rule, regulation or by-law.

Judicial  
notice.

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

Warrant of  
commitment  
not void  
for defect  
in form.

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

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

**685.** Section 1126.

**686.** Section 1127.

**687.** Section 1128.

**688.** Section 1130.

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 make it a condition of quashing the conviction, order or other proceeding 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. 5 10

Successive  
applications  
for *habeas*  
*corpus* not to  
be made.

**690.** (1) Where proceedings have been taken in respect of any person by way of *habeas corpus* arising out of a criminal matter and the relief sought has been refused, no further proceedings by way of *habeas corpus* arising out of that matter shall be taken in respect of that person before that judge or any other judge. 15

Saving.

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

Appeal in  
*habeas corpus*,  
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 *habeas corpus*, *mandamus*, *certiorari* or prohibition. 20

Part XVIII  
applies.

(2) The provisions of Part XVIII apply, *mutatis mutandis*, to appeals under this section. 25

**689.** Section 1131.

**690.** New.

**691.** New.

PART XXIV.  
SUMMARY CONVICTIONS.

INTERPRETATION.

- 692.** In this Part,
- "Informant."  
"Information."  
"Order."  
"Proceedings."  
"Prosecutor."  
"Sentence."  
"Summary conviction court."  
"Trial."
- (a) "informant" means a person who lays an information; 5
  - (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; 5
  - (c) "order" means any order, including an order for the payment of money; 10
  - (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 15
    - (ii) proceedings where a justice is authorized by an Act of the Parliament of Canada or an enactment made thereunder to make an order;
  - (e) "prosecutor" means an informant or the Attorney-General or their respective counsel or agents; 20
  - (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 35
  - (h) "trial" includes the hearing of a complaint.

Application of part.

Limitation.

- 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. 40

PUNISHMENT.

General penalty.

- 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



**692.** Sections 705, 706, 707, 708 (5) and new.

**693.** (1) Section 706.

(2) Section 1142.

**694.** (1) Section 1052 (2).

five hundred dollars or to imprisonment for six months or to both.

Imprisonment  
in default  
where not  
otherwise  
specified.

(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.

Time for  
payment.

(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 at a time to be fixed by the summary conviction court.

#### INFORMATION.

Commence-  
ment of  
proceedings.  
One justice  
may act  
before  
the trial.

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

(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

- (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 be-  
fore 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.

(2) and (3). Section 739.

**695.** Sections 708 (1) and 710 (in part).

**696.** Section 710 (in part) and new.

**697.** Section 708 (2), (3) and (4).

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.

5

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.

15

Continuing trial.

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

20

- (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*.

25

Duty of court where common assault is charged.

**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

30

- (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,

35

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.

40

#### SUMMONS AND WARRANT.

Compelling appearance.

**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.

45

Copy of warrant to be served.

(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.

**698.** New.

**699.** Sections 709 and 732.

**700.** Section 711.

## DEFECTS AND OBJECTIONS.

Proceedings  
not objection-  
able on  
certain  
grounds.  
Particulars.

**701.** (1) Sections 492 and 493 apply, *mutatis mutandis*, to informations in respect of proceedings as defined in this Part.

(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. 5

Prosecutor  
need not  
negative  
exception, etc.

**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. 10

Burden  
of proving  
exception, etc.,  
on defendant.

(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 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. 15

Process  
not objection-  
able on  
certain other  
grounds.

**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 20

(a) in different modes, or

(b) in respect of one or other of several articles, either conjunctively or disjunctively.

Amending  
defective  
information.

**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. 25

Amendment  
where  
variance.

(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 30

(a) the charge in the information, or 35

(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. 40

(3) A summary conviction court may, at any stage of the trial, amend the information as may be necessary if it appears

Information  
under wrong  
Act.

(a) that the information has been laid

**701.** Section 723.

**702.** Section 717.

**703.** Section 725.

**704.** Section 724.

	(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	5
Defective statement.	(i) fails to state or states defectively anything that is requisite to constitute the offence,	
Exception not negatived.	(ii) does not negative an exception that should be negatived,	
Defect in substance.	(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	10
Defect in form.	(c) that the information is in any way defective in form.	15
Variance not material.	(4) A variance between the information and the evidence taken on the trial is not material with respect to	
As to time.	(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	20
As to place.	(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.	
What to be considered.	(5) The summary conviction court shall, in considering whether or not an amendment should be made, consider	25
	(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	30
	(d) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.	
Adjournment if defendant prejudiced.	(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.	35 40

## TRIAL.

Jurisdiction.	<b>705.</b> 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.	45
Non-appearance of prosecutor.	<b>706.</b> Where, in proceedings to which this Part applies, the defendant appears for the trial and the prosecutor,	



**705.** Section 707.

**706.** Section 719.

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.

- 707.** (1) Where the prosecutor and defendant appear, 5  
the summary conviction court shall proceed to hold the trial.
- (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 10  
fit, issue a warrant in Form 7 for the arrest of the defendant, and adjourn the trial to await his appearance pursuant thereto.
- (3) Where the defendant is a corporation it shall appear by counsel or agent, and if it does not appear, the summary 15  
conviction court may, upon proof of service of the summons, proceed *ex parte* to hold the trial.
- 708.** (1) Where the defendant appears the substance of the information shall be stated to him, and he shall be asked, 20  
(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 25  
justice is authorized by law to make an order.
- (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. 30
- (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 35  
in accordance with the provisions of Part XV relating to preliminary inquiries, but it is not necessary for the witnesses to sign their depositions.
- (4) The summary conviction court may, before or during the trial, where it is satisfied that the ends of justice require 40  
it, direct that the defendant be tried separately upon one or more of the counts in the information.
- (5) A defendant may admit any fact alleged against him for the purpose of dispensing with proof thereof.
- 709.** (1) The prosecutor is entitled personally to conduct 45  
his case, and the defendant is entitled to make his full answer and defence.

**707.** Section 720.

**708.** Section 721.

**709.** Sections 715 and 716 (1).

- 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. 5
- 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 10 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 15 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 20 Form 28,
    - (i) with or without sureties, or
    - (ii) upon depositing such sum of money as the court directs, 25
 conditioned for his appearance at the time and place fixed for resumption of the trial.
- Non-appearance of defendant.** (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 30 of a trial that has been adjourned in accordance with subsection (1), the summary conviction court
- Proceeding *ex parte*.** (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 35
- Warrant.** (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.
- Non-appearance of prosecutor.** (4) Where the prosecutor does not appear at the time 40 and place appointed for the resumption of an adjourned trial, the summary conviction court may dismiss the information with or without costs.

## ADJUDICATION.

- Conviction, order or dismissal.** **711.** When the summary conviction court has heard the prosecutor, defendant and witnesses it shall, after 45

**710.** Sections 718 and 722.

**711.** Section 726.

considering the matter, convict the defendant or make an order against him or dismiss the information, as the case may be.

Previous conviction.

**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. 5 10

Procedure where previous conviction charged.

(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 subsection (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. 15

Where hearing *ex parte*.

(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. 20

Proof of previous conviction.

(4) For the purposes of this section, a previous conviction may be proved in the manner prescribed by section 574. 25

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. 30

Forms. Warrant of committal.

(2) Where a defendant is convicted or an order is made against him, the summary conviction court may 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. 35

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. 40 45

Order of dismissal.

**715.** (1) Where the summary conviction court dismisses an information it may, if requested by the defendant,

**712.** Sections 721A and 753.

**713.** Section 727.

**714.** Section 728.

**715.** Section 730.

Forms.	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.	5
Costs.	<b>716.</b> (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	10
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.	15
To be set out.	(2) An order under subsection (1) shall be set out in the conviction, order or order of dismissal, as the case may be.	
Costs are part of fine.	(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.	20
Where no fine imposed.	(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.	25
Definition.	(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.	30

#### SURETIES TO KEEP THE PEACE.

Where injury or damage feared.	<b>717.</b> (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.	35
Duty of justice.	(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.	40
Adjudication.	(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,	45



**716.** Sections 735 to 738.

**717.** Section 748 (2) to (5).

Recognizance.	(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	
Committal in default.	(b) commit the defendant to prison for a term not exceeding twelve months if he fails or refuses to enter into the recognizance.	5
Forms.	(4) A recognizance and committal to prison in default of recognizance under subsection (3) may be in Forms 28 and 20, respectively.	10
Procedure.	(5) The provisions of this Part apply, <i>mutatis mutandis</i> , to proceedings under this section.	
Breach of recognizance.	<b>718.</b> A person bound by recognizance under section 717 who commits a breach of the recognizance is guilty of an offence punishable on summary conviction.	15

## APPEAL.

	<b>719.</b> For the purposes of sections 720 to 732, "appeal court" means	
P.E. Island, Newfoundland.	(a) in the Provinces of Prince Edward Island and Newfoundland, the Supreme Court,	
Nova Scotia, New Brunswick, Manitoba.	(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,	20
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,	25
Saskatchewan, 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,	30
N. W. Territories.	(g) in the Northwest Territories, a stipendiary magistrate, and	
Yukon.	(h) in the Yukon Territory, a judge of the Territorial Court.	35
Appeal.	<b>720.</b> Except where otherwise provided by law,	
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	40
	(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,	45

**718.** New.

**719.** Section 749 (1).

**720.** Section 749 (1).

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. 5

British  
Columbia.

**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.

Alberta,  
Saskat-  
chewan.

(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. 15

Yukon,  
N. W.  
Territories.

(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.

Notice of  
appeal.

**722.** (1) Where an appeal is taken under section 720, 20  
the appellant shall

Contents.

(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 25

(ii) the grounds of appeal;

Service.

(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, 30  
within thirty days after the conviction or order was made or the sentence was imposed; and

Filing.

(c) file in the office of the clerk of the appeal court

(i) the notice of appeal referred to in paragraph (a), and 35

(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.

Time for  
service and  
filing.

(2) In the Northwest Territories, the appeal court 40  
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.

Alternative  
service.

(3) Where the respondent is a person engaged in enforce- 45  
ment 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

**721.** Section 749 (1).

**722.** Section 750 (*b*).

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.

Setting  
down appeal.

**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. 5 10

Exception.

(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. 15

#### SECURITY BY APPELLANT.

Where  
appeal from  
conviction  
imposing  
imprison-  
ment.

**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 20
- (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 25

- (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 30 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, 35 the appellant shall comply with subparagraph (ii) or (iii) of paragraph (b); and

Where  
appeal from  
dismissal  
of com-  
plaint.

(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 40 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.

**723.** New.

**724.** Section 750 (*c*).

**Formalities  
of recogniz-  
ance.**

(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, 5

(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. 10

**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, 15

(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, 20

(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. 25

**New recog-  
nizance.**

(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. 30

**Release of  
appellant.**

(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.

**Payment of  
fine not a  
waiver of  
appeal.**

**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. 35

**Presumption.**

(2) A conviction, order or sentence shall be deemed not to have been appealed against until the contrary is shown. 40

**PROCEDURE ON APPEAL.****Transmission  
of conviction,  
etc.**

**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. 45



**725.** (1) Section 750 (*g*).

(2) Section 757 (2).

**726.** (1) Section 757 (1).

Saving.

(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.

Appellant to furnish transcript of evidence.

(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. 5 10

Further evidence.

**727.** (1) Where an appeal has been lodged in accordance with this Part, the appeal court shall hear and determine the appeal upon the evidence taken at the trial but may

(a) order any witness who would have been a compellable witness at the trial, whether or not he was called at the trial, to attend and be examined, and 15

(b) order the production of any writing, exhibit or other thing connected with the proceedings.

Powers of court.

(2) Where an appeal is taken against a conviction for an offence the appeal court 20

Allowance of appeal from conviction.

(a) may allow the appeal if it is of opinion that

(i) the conviction should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the summary conviction court should be set aside on the ground that it is a wrong decision on a question of law, or 25

(iii) on any ground there has been a miscarriage of justice; or

Dismissal of appeal from conviction.

(b) may dismiss the appeal 30

(i) if it is of opinion that the appellant, notwithstanding that he was not properly convicted on a count or part of the information, was properly convicted on another count or part of the information, 35

(ii) if it is of opinion that the appellant could, on the information, have been found guilty of an offence other than that of which he was convicted, and that the summary conviction court must have been satisfied that the evidence proved that the appellant was guilty of that other offence, 40

(iii) if the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a), or

(iv) if, notwithstanding that the appeal court is of opinion that on any ground mentioned in paragraph (a) the appeal might be decided in favour of the appellant, it is of opinion that no substantial wrong or miscarriage of justice has occurred. 45

(2) New.

(3) New.

**727.** New in part.

Powers on  
appeal from  
dismissal  
of inform-  
ation.

(3) Where an appeal is taken from the dismissal of an information for an offence the appeal court may

- (a) dismiss the appeal, or
- (b) allow the appeal and enter a verdict of guilty with respect to the offence of which in its opinion the appellant ought to have been found guilty, and pass a sentence that is warranted in law. 5

Powers on  
appeal from  
dismissal of  
complaint.

(4) Where an appeal is taken against an order or is taken from the dismissal of an information seeking an order the appeal court may dismiss the appeal in whole or in part and make the order that ought to have been made. 10

Appeal  
against  
sentence.

(5) 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, 15

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

Appeals  
on matters  
of form.

(6) The following provisions apply in respect of appeals, 20 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 25

(ii) for any variance between the information, or process and the evidence adduced at the trial, unless it is shown

Objection  
must have  
been taken  
below.

(iii) that the objection was taken at the trial, and 30

(iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant;

Defect.

- (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; or 35

Correcting  
punishment.

- (c) where an appeal is based on an allegation that the sentence imposed or the amount to be paid under an order for the payment of money was in excess of or less than that which might lawfully have been imposed or ordered to be paid, judgment shall not be given in favour of the appellant, but the court shall impose the sentence or fix the amount that is warranted in law. 45

Adjournment.

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

(5) Section 754 (1).

(6) Section 753.

**728.** Section 751 (3).

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.

Costs.

**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.

To whom  
costs payable,  
and when.

**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.

Application  
of deposit.

(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.

Certificate  
of non-pay-  
ment of costs.

(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.

Committ-  
tal.

(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.

Enforce-  
ment of  
conviction or  
order by  
court of  
appeal.

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

- (a) in the same manner as if it had been made by the summary conviction court, or
- (b) by process of the appeal court.

Enforcement  
by justice.

(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.

Duty of clerk  
of court.

(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.

**729.** Section 760 (in part).

**730.** Sections 755 (1) in part and 760 in part.

**731.** (1) Section 758.

(2) Section 751 (2).

(3) Section 759 (1).

(4) Section 759 (2).

**732.** Sections 754 (2) and (3), 756 and 757 (4).

## STATED CASE.

"Court."	<b>733.</b> 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.	
Application for stated case.	<b>734.</b> (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	5
Grounds.	(a) it is erroneous in point of law, or (b) it is in excess of jurisdiction,	10
Rules of court, if any, to apply.	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. (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,	15
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;	20
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	25
Delivery of stated case.	(c) the appellant shall, within seven 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.	30
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.	40
Recognizance by appellant.	<b>735.</b> (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	45



**733.** Section 705 (e).

**734.** Section 761.

**735.** Section 762 (1), (2) and (3).

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.

Justice's  
fees.

(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.

Exception.

(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.

Discharge of  
appellant from  
custody.

(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.

New recogniz-  
ance.

(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.

Procedure  
when justice  
dies or quits  
office.

**736.** (1) Where, pending an application for a stated case, a justice who was, or was a member of, the summary conviction court dies or quits office, 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.

Recognizance.

(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.

Refusal to  
state a case.

**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.

**736.** Section 762 (4) and (5).

**737.** Section 763.

Compelling  
statement  
of 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.

5

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.

10

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.

15

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.

20

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,

25

(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,

30

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.

35

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.

40

**738.** Section 764.

**739.** Section 768.

**740.** Sections 765 and 766.

Enforcement of adjudication.	<b>741.</b> (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.	5
Idem.	(2) An order of the superior court may be enforced by its own process.	10
Statement of case precludes appeal.	<b>742.</b> (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.	15
No case to be stated when no 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.	

#### APPEALS TO COURT OF APPEAL.

On question of law.	<b>743.</b> (1) An appeal to the court of appeal, as defined in section 581 may, with leave of the court of appeal, be taken on any ground that involves a question of law alone, against (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.	20
Sections applicable.	(2) Sections 581 to 589 apply, <i>mutatis mutandis</i> , to an appeal under this section.	30
Costs.	(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.	
Enforcement of decision.	(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.	35

#### FEES AND ALLOWANCES.

Fees and allowances.	<b>744.</b> 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.	40
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**741.** Section 767.

**742.** Section 769.

**743.** Section 769A.

**744.** Section 770.

## 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	5
(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.)		
		10
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	15
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.		20
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	25
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.)		30
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	35
19. Serving summons or subpoena.....	0.50	
20. Mileage to serve summons or subpoena or to make an arrest, both ways, for each mile....	0.20	
(Where a public conveyance is not used, reasonable costs of transportation may be allowed.)		
		40



- |   |        |    |
|---|--------|----|
| 21. Mileage where service cannot be effected, upon proof of a diligent attempt to effect service, one way.....  | \$0.20 |    |
| 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, for each mile, one way.. | 0.20   | 10 |
| 23. Taking a prisoner to prison on remand or committal, for each mile, one way.....   | 0.20   |    |
| (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.)   |        | 15 |
| 24. Attending summary conviction court or justice on summary conviction proceedings, for each day necessarily employed.....   | 2.00   | 20 |
| (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.)   |        | 25 |

FEES AND ALLOWANCES THAT MAY BE ALLOWED  
TO WITNESSES.

- |  |      |
|--|------|
| 25. Each day attending trial.....                                  | 3.00 |
| 26. Mileage travelled to attend trial, for each mile, one way..... | 0.20 |

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.... | 5.00 |
| 29. Mileage travelled to attend trial, for each mile, one way.....                               | 0.20 |

## PART XXV.

## TRANSITIONAL.

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

**Transitional.**   **746.** Every offence against the criminal law that was wholly or partly committed before the coming into force of this Act shall be dealt with, inquired into, tried and determined, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force.       5

**Coming into force.**   **747.** This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.       10

## PART XXVI.

## FORMS.

**Forms.**       **748.** (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 15 any writing or process that he is authorized to issue and in respect of which a form is provided by this Part.

**748. Section 1152.**

## 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	
<i>(territorial division)</i>	

In the *(set out name of the court)*

Her Majesty the Queen

against

*(name of accused)*In the *(name of the court in which the indictment is found)*.

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	
<i>(territorial division)</i>	

In the *(set out name of the court)*

Her Majesty the Queen

against

*(name of accused)**(Name of accused)* stands charged1. 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).*

*Warrant to search.*

1.

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;

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_  
at \_\_\_\_\_

A Justice of the Peace in and  
for

*Summons to a person charged with an offence.*

1

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

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 \_\_\_\_\_ day of \_\_\_\_\_  
A.D. \_\_\_\_\_, A. B., 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	
(territorial division)	

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 \_\_\_\_\_





(Section 460.)

*Warrant of committal for trial.*

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, stands charged that  
(state offence as in the information);

And Whereas on a preliminary inquiry into that charge the accused (having elected to be tried by a judge without a jury or by a court composed of a judge and jury, or having stood mute, *as the case may be*) was this day committed for trial;

This is therefore to command you, in Her Majesty's name, to take the accused and convey him safely to the (prison) at \_\_\_\_\_ and there deliver him to the keeper thereof, with the following precept:

I do hereby command you the said keeper to receive the accused into your custody in the said prison and keep him safely there until he is delivered by due course of law.

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 ; dollars
- (b) 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) 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  
of , 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.  
 at

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



## FORM 21.

(Section 461.)

*Warrant of committal of witness for failure to enter into recognizance.*

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 committed for trial on a charge that (state offence as in the information);

And Whereas E. F., hereinafter called the witness, having appeared as a witness on the preliminary inquiry into the said charge, and being required to enter into a recognizance to appear as a witness on the trial of the accused on the said charge, has (failed or refused) to do so;

This is therefore to command you, in Her Majesty's name, to take and safely convey the said witness 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 witness into your custody in the said prison and keep him there safely until the trial of the accused upon the said charge, unless before that time the witness enters into the said recognizance.

Dated this                      day of                      A.D. .  
at

.....  
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 \_\_\_\_\_
- (b) for the term of \_\_\_\_\_ unless the said sums and the costs 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 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. , or until  
is discharged in due course of law.

And you, the said sheriff, are further commanded to make a return on  
the day of A.D. ,  
of what you have done in execution of this warrant.

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 .



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

Canada,  
Province of  
(territorial division)

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  
o'clock in the                  at                  at  
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

*Deposition of a witness.*

;

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

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, 710, 717, 724 and 735.)

*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 29.

(Section 676.)

*Certificate of default to be endorsed on recognizance.*

I hereby certify that A. B. has not appeared as required by this recognizance and that by reason thereof the ends of justice have been (defeated or delayed, as the case may be).

The reason for the default is (*state reason if known*).

The names and addresses of the principal and sureties are as follows:

Dated this                      day of                      A.D.

at

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

(Seal, if required).

Now, therefore, the condition of the above written recognizance is that (if the accused appears at that court, or if, having re-elected under Part XVI, he appears before the presiding judge at the time and place fixed for his trial) 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.

- (d) Whereas C. D., hereinafter called the accused, was committed for trial on a charge that (*set out charge*);

And Whereas A. B. appeared as a witness on the preliminary inquiry into the said charge;

Now, therefore, the condition of the above written recognizance is that if the said A. B. appears at the time and place fixed for the trial of the accused to give evidence upon the indictment that is found against the accused, the said recognizance is void, otherwise it stands in full force and virtue.

- (e) The condition of the above written recognizance is that if A. B. keeps the peace and is of good behaviour for the term of                      commencing on                      , the said recognizance is void, otherwise it stands in full force and virtue.

- (f) The condition of the above written recognizance is that if A. B. appears and receives judgment when called upon during the term of                      commencing on                      , and during that term keeps the peace and is of good behaviour (*add special conditions as authorized by section 638, where applicable*), the said recognizance is void, otherwise it stands in full force and virtue.

- (g) Whereas A. B., hereinafter called the appellant, has appealed (against his conviction or against an order or by way of stated case) in respect of the following matter (*set out offence, subject matter of order or question of law*);

Now, therefore, the condition of the above written recognizance is that if the appellant personally appears at the sittings of the court at which the (appeal or stated case) is to be heard and abides the judgment of the said court and pays any costs that are awarded against him, the said recognizance is void, otherwise it stands in full force and virtue.

## 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 \_\_\_\_\_

(Seal, if required).

.....  
Clerk of the Court, Justice or  
Magistrate.

\* 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.



*Order against a defendant.*

$$\left. \begin{array}{l} 1. \\ 2. \\ 3. \end{array} \right\}$$

Dated this                      day of                      A.D.  
at                      .

A Justice of the Peace in and  
for

(Section 482.)

*Order acquitting accused.*

}

Dated this                      day of                      A.D.  
at                      "                      .

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 36.

(Section 538).

*Challenge to array.*

Canada,  
Province of  
(territorial division)

}  
,  
.

The Queen  
v.  
C. D.

The (prosecutor or accused) challenges the array of the panel on the ground that X. Y., (sheriff or deputy sheriff), who returned the panel, was guilty of (partiality or fraud or wilful misconduct) on returning it.

Dated this

day of

A.D.

at

.....  
Counsel for (prosecutor or  
accused).

## FORM 37.

(Section 548).

*Challenge for cause.*

Canada,  
Province of  
(territorial division)

}  
,  
.

The Queen  
v.  
C. D.

The (prosecutor or accused) challenges G. H. on the ground that (set out ground of challenge in accordance with section 547(1) ).

.....  
Counsel for (prosecutor or  
accused).

FORM 38.

(Section 731).

*Certificate of non-payment of costs of appeal.*

In the Court of

(Style of Cause)

I hereby certify that A. B. (the appellant or respondent, as the case may be) in this appeal, having been ordered to pay costs in the sum of \_\_\_\_\_ dollars, has failed to pay the said costs within the time limited for the payment thereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
at \_\_\_\_\_

(Seal). \_\_\_\_\_ Clerk of the \_\_\_\_\_ Court  
of \_\_\_\_\_

FORM 39.

(Section 636).

*Gaoler's receipt to peace officer for prisoner.*

I hereby certify that I have received from X. Y., a peace officer for (territorial division) one A. B., together with a (warrant or order) issued by (set out court or justice, as the case may be).\*

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D.  
at \_\_\_\_\_

.....  
Keeper of (prison).

\* (Add a statement of the condition of the prisoner.)

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)

[illegible]

### APPLICATION TO REGISTER FIREARM.

Place.....DATE.....  
 Re.....Certificate No.....  
*(Name of Applicant)* *(If available)*  
*(Please show full Christian names)*

*Description of Firearm*

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.....Initialled 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).*