NATIONAL ASSEMBLY

FIRST SESSION THIRTY-THIRD LEGISLATURE

Bill 75

Code of Penal Procedure

Introduction

Introduced by
Mr Herbert Marx
Minister of Justice

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EXPLANATORY NOTES

This bill proposes a general reform of the procedure applicable in respect of penal sanctions for offences under the Acts and regulations of Québec.

First, the bill sets forth general provisions respecting the jurisdiction of the courts, the right to prosecute and the prescription of offences. Next, it gives the rules for the computation of time, the service of proceedings, the making of applications and the summons of witnesses before the courts. It also authorizes the appointment of commissions for the examination of witnesses, reference to certain general rules of evidence and the use of defenses traditionally recognized in penal and criminal matters.

The bill then prescribes the cases where an offender may be arrested and explicitly states the obligations of the person making the arrest. It sets down the general principles governing the issue and execution of search warrants and telewarrants. Special provisions are provided to regulate searches involving confidential information and access to documents connected with the search. Other measures control the custody, detention and disposition of things seized.

As to prosecution, the bill introduces a new mechanism for the institution of proceedings: the statement of offence, the form of which will be adaptable for the different penal proceedings. This document, addressed to the offender, will state the nature of the offence he is accused of and the penalty claimed by the prosecutor. The defendant will have thirty days from service of the statement to transmit his plea in writing. Judgment will be deemed rendered where the individual pleads guilty and accepts the penalty. Judgment may be rendered by default if he does not reply to the charge or, if he contests it, after trial of the action.

The bill, after defining the rules respecting trial and judgment, makes additional rules concerning sentences, including the rule that generally speaking statutory offences in Québec will no longer be punishable by imprisonment.

The bill introduces the necessary mechanisms for the verification of judgments, namely, the rectification of a judgment containing a clerical error or an error in computation, and the setting aside of a judgment rendered without the defendant's having had an opportunity to be heard, or rendered through an administrative error. The parties may also invoke extraordinary measures to have decisions reviewed and a person will be entitled to apply to the Superior Court by way of habeas corpus *proceedings for release from illegal detention.*

In addition to these means of recourse, the bill continues the traditional procedure of appeal as a matter of right to the Superior Court and appeal with leave to the Court of Appeal of Québec. However, in Superior Court, appeal by way of factum is replaced by appeal on the record, and appeal de novo *becomes an extraordinary procedure.*

The bill also prescribes a body of measures for the execution of judgments where sums of money are recoverable, namely out of a security, under the terms of an agreement with the collector, by way of seizure, the carrying out of compensatory work or, as a last resort, imprisonment.

Finally, the bill empowers the Government to make regulations and the judges to make rules of practice for the application of this Code.

Bill 75

Code of Penal Procedure

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

DIVISION I

INTRODUCTORY PROVISIONS

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

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

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

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

5. No person may be prosecuted for an offence he committed when under 14 years of age.

6. The provisions specially relating to persons under 18 years of age also apply to persons 18 years of age or over in respect of offences committed by them before they were 18 years of age.

7. Where a judge orders the detention of a person under 18 years of age, the person must be kept in custody in a reception centre.

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

DIVISION II

RIGHT TO PROSECUTE

9. Any of the following persons may be a prosecutor:

(1) the Attorney General;

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

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

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

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

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

11. The Attorney General may

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

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

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

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

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

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

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

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

DIVISION III

PRESCRIPTION

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

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

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

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

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

DIVISION IV

COMPUTATION OF TIME

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

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

18. The following are non-juridical days:

(1) Sundays;

(2) the first and second of January;

(3) Good Friday;

(4) Easter Monday;

(5) the third Monday of May;

(6) the twenty-fourth of June;

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

(8) the first Monday of September;

(9) the second Monday of October;

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

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

DIVISION V

SERVICE OF WRITTEN PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. Where this Code requires service on the parents of a person under 18 years of age, it must be made on his father and mother or, as the case may be, any other person having parental authority. The same rule applies where they must be given notice.

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

DIVISION VI

MAKING OF APPLICATIONS

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

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

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

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

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

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

34. The notice provided for in article 95 of the Code of Civil Procedure must be served on the Attorney General in accordance with that article in every case where a party alleges that a provision referred to in that article is either inapplicable constitutionally, invalid or

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

DIVISION VII

PROCURING ATTENDANCE OF WITNESSES

35. Each party shall summon his witnesses by way of subpoena.

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

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

37. A subpoena must be signed by a judge or a clerk of the court of competent jurisdiction in the judicial district where the witness is to be heard or by the attorney of the party who summons the witness.

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

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

(2) a judge;

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

The judge may grant the authorization only if he is satisfied that the testimony of the witness is necessary to allow the prosecutor to prove the commission of an offence, to afford the defendant the benefit of a full and complete defence or to allow the judge to rule on a question submitted to him.

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

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

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

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

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

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

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

(2) is evading service of a subpoena;

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

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

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

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

(1) state his name and quality;

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

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

He shall use only as much force as is necessary.

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

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

48. A witness under 18 years of age who is arrested must be committed to the custody of the director of youth protection on the place of the arrest.

The director shall see to it that the witness is kept in custody in a reception centre until he is brought before a judge. Moreover, the director shall make every reasonable effort in the circumstances to notify the parents of the witness without delay of their child's arrest, of the grounds for his arrest, of the place where he is being kept and of the appointed time and place of his appearance before a judge.

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

50. After his arrest, the witness must be brought, as soon as practicable but within 24 hours, before the judge before whom he is to testify or, if he is not sitting, before another judge of the judicial district where he is to testify. If no judge is available within the prescribed time, the witness must be brought before a judge of the district as soon as practicable.

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

Except where the warrant of arrest was issued under paragraph 1 of section 43, the judge, after giving the witness an opportunity to justify

his conduct, may also condemn him to pay all or part of the costs arising from his failure to appear or remain in attendance. The amount of the costs is fixed by regulation and the judge shall allow not less than 30 days for payment.

Notwithstanding the foregoing, in no case may a witness under 18 years of age be required to furnish or pay security or costs in excess of $100.

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

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

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

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

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

DIVISION VIII

ROGATORY COMMISSION

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

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

55. Before trial, the application must be made to a judge having jurisdiction to try the case in the judicial district where proceedings have been instituted; during trial, the application must be made to the

judge trying the case, with his leave. The judge who hears the application may agree to act as the commissioner.

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

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

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

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

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

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

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

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

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

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

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

DIVISION IX

DEFENSES AND GENERAL RULES OF EVIDENCE

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

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

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

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

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

The defendant may be condemned to pay the costs prescribed by regulation if he is convicted of the offence and the judge is satisfied that the statement, report or copy would have afforded sufficient evidence and that the person's testimony added nothing substantial.

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

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

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

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

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

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

67. Any certificate containing extracts from a register kept according to law by a government department or a public body and signed by the person having custody of the register constitutes, in the absence of any evidence to the contrary, proof of the information contained in the certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER II

ARREST

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

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

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

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

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

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

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

76. A peace officer may require security from a defendant on whom a statement of offence is being served if he has reasonable grounds to believe that the defendant is about to elude justice by leaving the territory of Québec. In no case, however, may he require security from a person under 18 years of age.

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

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

77. Security in a greater amount than that described in section 76 may be required from a defendant 18 years of age or over provided it is fixed, upon the application of a peace officer made before service of the statement of offence on the defendant, by a judge of the judicial district where the proceeding may be instituted.

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

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

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

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

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

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

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

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

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

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

He shall use only as much force as is necessary.

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

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

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

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

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

86. A peace officer shall use only as much force as is necessary to enter a place.

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

Except in the case of section 88, a person responsible as in the first paragraph who makes an arrest shall, as soon as practicable, commit the person he has arrested to the custody of a peace officer if he cannot release him from custody pursuant to section 74, 75 or 79.

88. A person under 18 years of age who is arrested and who cannot be released from custody pursuant to section 74 or 75 shall be committed to the custody of the director of youth protection in the place where the arrest was made; in such a case, the director of youth protection shall comply with the second paragraph of section 48.

89. Every arrested person who has not been released from custody must be brought before a judge in the judicial district where he was arrested or where proceedings were instituted as soon as practicable but within 24 hours after his arrest. If no judge is available within that time, the person must be brought as soon as practicable before a judge in one of those districts.

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

If the arrested person complies with the order, the judge shall allow a statement of offence to be served on the person forthwith; if the person

fails to comply with the order, the judge may find him guilty of contempt of court.

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

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

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

The judge may require, as a condition for release from custody, security in the amount he determines in accordance with section 76 or 77. He shall not order a person under 18 years of age to furnish security in excess of $100.

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

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

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

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

CHAPTER III

SEARCH

DIVISION I

GENERAL PROVISIONS

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

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

(2) the possession of which constitutes an offence;

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

96. A search is authorized by a warrant. It may be authorized by a telewarrant where the circumstances, such as the time or distance that would be involved in obtaining a warrant, are likely to prevent the search. No search may be made without a warrant or telewarrant except where the person in charge of the premises agrees to the search, or in exigent circumstances.

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

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

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

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

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

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

If the judge issues the telewarrant,

(1) he shall complete the original, indicating the number and the place, date and time of issue of the telewarrant, and sign it;

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

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

101. The person who applied for a telewarrant shall prepare a duplicate thereof. He shall indicate thereon the number of the telewarrant, the name of the judge who issued it and the place, date and time of its issue, and shall sign it.

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

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

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

104. The search warrant or telewarrant must indicate, by name or in general terms, who is in charge of the search; it must also indicate

the place, vehicle or receptacle authorized to be searched and the things searched for therein; the warrant or telewarrant must be numbered and mention the obligation to make a report of the search.

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

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

107. A search may be made by a peace officer, a person responsible for the enforcement of an Act or any other person authorized by the judge who issued the warrant or telewarrant.

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

(1) declare his name and quality to them;

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

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

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

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

He may seize, in addition to the thing searched for, any conspicuous thing described in section 95.

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

If the person must use force in making the search, he shall use only as much force as is necessary.

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

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

(2) the date and time of the seizure;

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

(4) a summary description of the thing seized;

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

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

(7) the name and quality of the seizor.

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

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

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

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

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

The report must be filed within 15 days of the expiry of the period for executing the warrant unless the judge grants an extension for the filing.

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

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

Where a thing was seized, the seizor shall also file with the judge the minutes of seizure either at the time he reports on the search or within 15 days of the seizure, unless the judge grants an extension.

DIVISION II

SEARCH IN RESPECT OF CONFIDENTIAL INFORMATION

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

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

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

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

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

Prior notice of not less than one clear day of the application must be served within 15 days of the return of the thing seized to the clerk on the seizor and the prosecutor as well as on any other person entitled to make such an application. Failing prior notice within the time prescribed, the thing seized must be returned to the seizor or to the prosecutor, depending on whether or not proceedings have been instituted.

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

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

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

121. The decision on the confidentiality of information is executory only after the expiry of 15 days, unless the parties waive that time.

DIVISION III

EXAMINATION OF THINGS SEIZED AND OF DOCUMENTS RELATED TO SEARCH

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

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

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

(1) the search warrant and the written statement;

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

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

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

(5) the minutes of seizure.

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

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

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

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

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

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

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

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

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

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

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

DIVISION IV

CUSTODY, DETENTION AND DISPOSITION OF THINGS SEIZED

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

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

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

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

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

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

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

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

132. The seizor has no right to detain the thing seized or the proceeds of the sale thereof for a period of more than 90 days from the date of seizure unless proceedings have been instituted or except in the cases provided for in sections 133 to 137.

133. The seizor may, before the expiry of the ninety-day period, apply to a judge for further detention for a period of not more than 90 days.

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

To obtain any further detention period, the seizor must prove that further detention is necessary, having regard to the complexity of the evidence or to the difficulty of examining the things seized.

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

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

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

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

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

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

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

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

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

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

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

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

138. On the application of a person who claims to have a right to the thing seized, a judge shall order the thing seized or the proceeds of the sale thereof to be handed over to the person if he is satisfied that the person is entitled thereto, that the return thereof will not hinder

the course of justice and that detention or forfeiture thereof is not required under section 135, 136 or 137.

Notice of the application must be served on the seizor, the prosecutor, the defendant and the person from whom the thing was seized if he fails to make such an application.

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

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

140. An order for the return or forfeiture of a thing seized or the proceeds of the sale thereof is executory only on the expiry of 30 days, unless the parties waive that time.

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

Where the thing seized has been submitted in evidence but no judgment has been rendered, the judge who is to render judgment in the case has competent authority to order the return of the thing.

CHAPTER IV

INSTITUTION OF PROCEEDINGS

DIVISION I

PLACE OF INSTITUTION

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

(1) committed the offence;

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

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

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

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

DIVISION II

STATEMENT OF OFFENCE

§ 1.—*General provisions*

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

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

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

(1) the name and address of the prosecutor;

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

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

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

(5) the description of the offence;

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

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

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

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

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

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

148. The statement of offence shall also contain, in a separate section, a notice of claim indicating

(1) the minimum penalty claimed by the prosecutor;

(2) where the penalty claimed is a fine,the amount of the costs prescribed by regulation payable by the defendant if he enters a plea of guilty and the total amount of the fine and costs;

(3) a summary statement of the reasons for claiming, where such is the case, a greater penalty than the minimum penalty, particularly in the case of a subsequent offence;

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

The judge shall examine the notice of claim only after declaring the defendant guilty.

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

§ 2.—*Description of the offence*

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

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

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

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

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

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

DIVISION III

SERVICE OF STATEMENT OF OFFENCE

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

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

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

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

159. Where the defendant is under 18 years of age, a duplicate of the statement must also be served on his parents, unless they are unknown or cannot be found or except in the case of a parking violation.

CHAPTER V

PROCEDURE PRIOR TO THE TRIAL

DIVISION I

TRANSMISSION OF PLEA

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

161. A defendant who enters a plea of guilty shall, on pain of possibly having to pay an additional amount of costs prescribed by regulation, transmit the whole amount of the fine and costs claimed with his plea.

A defendant on whom a greater penalty than the minimum penalty is imposed is not required to transmit the amount claimed with his plea of guilty if the plea includes a statement of his intention to contest the penalty.

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

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

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

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

The judgment is deemed to be rendered, and the penalty and the costs claimed in the statement are deemed to be imposed by a judge in the judicial district in which the proceedings were instituted, upon receipt of the plea or payment of the whole amount of the fine and costs claimed.

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

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

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

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

DIVISION II

PRELIMINARY APPLICATIONS

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

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

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

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

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

171. The judge to whom a preliminary application is made may defer his decision until after the trial only in the case of

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

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

172. The judge may grant or dismiss a preliminary application with or without the costs prescribed by regulation or, as the case may be, order that the costs be determined at the time of judgment on the main action.

173. A party who makes a preliminary application after being advised of the date set for the trial or after the trial has begun may be condemned to pay the costs fixed by regulation even if the application is granted, where the judge is satisfied that the application could have been made earlier.

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

174. A preliminary application may be made

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

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

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

(4) to have a count amended;

(5) to have the statement of offence amended;

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

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

(8) to obtain the dismissal of the proceedings.

175. Where the judge in possession of the record of a case does not have jurisdiction to try it, he shall, on the application of either party, order it transferred to a judge having such jurisdiction.

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

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

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

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

179. On the application of the prosecutor, the judge shall allow him, on such conditions as he determines, to amend a count so as to add a detail or correct an irregularity, and in particular to include in it an express statement of an essential element of the offence.

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

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

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

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

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

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

184. On the application of the defendant, the judge shall order the dismissal of a count on any of the following grounds:

(1) the defendant has already been acquitted or convicted of the offence described in the statement of offence or been in jeopardy for the offence;

(2) the offence is prescribed;

(3) the defendant has immunity from prosecution;

(4) the person mentioned in the statement of offence as being authorized to issue the statement on behalf of the prosecutor was not so authorized by him;

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

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

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

(8) the provision that creates the offence is either inapplicable constitutionally, invalid or inoperative or of no force or effect, including in respect of the Canadian Charter of Rights and Freedoms or in respect of the Charter of human rights and freedoms.

Notwithstanding the foregoing, the judge shall, on conditions he considers just and reasonable, allow the prosecutor to make amendments to the statement of offence where such amendments can correct the irregularity that has been invoked, but in no case may a correction cause one defendant to be substituted for another or one offence to be substituted for another.

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

186. No defendant who pleads guilty immediately after obtaining further details or immediately after the count or the statement of offence is amended may be required to pay a greater amount of costs than he

would have been required to pay if he had entered such a plea within the time indicated in the statement of offence.

CHAPTER VI

TRIAL

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

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

188. Where the defendant is deemed to have transmitted a plea of not guilty, the case shall be tried and judgment rendered even in the absence of the defendant.

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

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

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

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

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

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

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

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

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

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

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

198. Where a defendant is under 18 years of age and a duplicate of the statement of offence has not been served on his parents or, as the case may be, where the notice of his arrest has not been given to them, the judge may either try the case and render judgment or order that the statement be served on them or that the notice be given to them and adjourn the trial for that purpose.

199. Where the defendant is in detention, no adjournment of his trial may exceed eight days without his consent unless he is detained in connection with another case.

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

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

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

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

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

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

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

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

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

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

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

208. Subject to section 171, the judge trying the case may reserve his decision on the question of law raised during the trial, but in case of an objection to the admissibility of any evidence and on the application

of either party, he shall render his decision before the party who intended to submit that evidence declares his proof closed.

209. On the application of the prosecutor, the judge shall amend a count to make it correspond to the evidence submitted if the count and the evidence submitted are different. The judge shall not, however, allow the substitution of defendants or of offences.

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

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

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

213. Where the behaviour of the defendant during the trial, the testimony or, if the parties consent, the report of a duly qualified physician gives the judge reasonable grounds to believe that the defendant is mentally unfit to stand trial, the judge shall adjourn the trial until he renders a decision on the fitness of the defendant to stand trial.

214. Before deciding on the fitness of the defendant to stand trial, the judge may require that the defendant be given clinical psychiatric examination and order him to submit to such an examination in accordance with the Mental Patients Protection Act (R.S.Q., chapter P-41).

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

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

Notice of the application must be served on the adverse party.

217. Where the judge is satisfied after hearing the evidence and representations of the parties that the defendant is fit to stand trial, he shall fix a date for the continuation of the trial; otherwise, the suspension shall continue.

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

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

CHAPTER VII

JUDGMENT

DIVISION I

GENERAL PROVISIONS

219. The judge who renders judgment may acquit the defendant, find him guilty or dismiss the action.

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

Notwithstanding the foregoing, where the judge finds the defendant guilty of an offence, and is satisfied that the lawgiver has not created separate offences, he shall postpone judgment on the other counts. The clerk shall enter that fact in the record of the judgment.

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

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

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

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

223. When rendering judgment, the judge may

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

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

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

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

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

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

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

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

DIVISION II

SENTENCE

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

into account the special circumstances relating to the offence or to the defendant and any period of detention served by the defendant in respect of the offence.

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

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

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

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

233. Where the defendant is under 18 years of age, no fine to which he is liable may exceed $100, notwithstanding any provision to the contrary.

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

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

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

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

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

237. A judgment imposing a fine or the payment of costs is not executory before the expiry of at least 30 days, except where the person required to pay it waives that period, and it cannot include any order for recovery of the fine or costs. However, where the judge is satisfied that the defendant will abscond, he shall direct that, failing immediate payment of the sum due under the judgment, the defendant shall be imprisoned for the period he determines in accordance with sections 350 to 353.

238. Where a judge imposes imprisonment, he shall give the reasons for his judgment in writing except in the case of section 237.

239. A term of imprisonment is executory upon sentence.

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

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

241. Where the defendant is already in detention, the judge, in sentencing him to a new term of imprisonment, may order that the terms be served consecutively, except where the term being served was imposed under this Code for default of payment of a sum due.

242. Where the judge imposes a sentence of imprisonment for less than 90 days, he may order that it be served intermittently at the times and on the conditions he specifies in his judgment and in the warrant of committal.

CHAPTER VIII

RECTIFICATION OF JUDGMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER IX

SETTING ASIDE JUDGMENT

DIVISION I

SETTING ASIDE UPON APPLICATION OF THE DEFENDANT

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

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

251. An application for setting aside must be in writing and contain, in addition to the grounds for setting aside judgment, the grounds of defence that the defendant intends to invoke.

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

252. The written application must be filed within 15 days after the defendant acquires knowledge of the judgment finding him guilty.

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

253. The judge shall grant the application for setting aside judgment if he is satisfied that the grounds alleged are serious and that the defendant has valid grounds of defence to invoke.

Where the application is granted, the parties are placed in the position they were in before the trial and the judge may thereupon recommence the trial or adjourn the new trial to a later date.

254. Where the judge grants or dismisses an application for setting aside judgment, he may do so with or without costs, in the amount

fixed by regulation or, if advisable, order that the amount be determined at the time of the judgment on the main action.

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

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

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

DIVISION II

SETTING ASIDE UPON APPLICATION OF THE PROSECUTOR

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

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

258. The application for setting aside judgment shall be made orally.

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

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

Where the application is granted, the parties are placed in the position they were in before the trial and the judge may thereupon recommence the trial or adjourn the new trial to a later date.

260. An application for setting aside judgment stays execution of judgment.

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

DIVISION III

REDUCTION OF COSTS

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

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

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

263. The judge shall grant the application without costs if he is satisfied that the defendant, without negligence on his part, was unaware that the statement of offence had been served on him. If he dismisses the application, he may condemn the defendant to the costs fixed by regulation.

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

CHAPTER X

EXTRAORDINARY REMEDIES AND HABEAS CORPUS PROCEEDINGS

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

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

A judge may grant or dismiss an application for extraordinary remedy or *habeas corpus* proceedings with or without the costs fixed by regulation or order that they be determined, if advisable, at the time judgment is rendered on the main action.

CHAPTER XI

APPEAL TO THE SUPERIOR COURT

DIVISION I

GENERAL PROVISIONS

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

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

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

(3) a judicial stay of proceedings;

(4) a decision to admit or dismiss an application to set aside judgment;

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

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

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

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

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

269. A person does not waive his right of appeal by the sole fact that he pays the fine imposed or complies in any way with the judgment rendered in first instance.

DIVISION II

INSTITUTION OF APPEAL

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

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

271. An appeal must be brought within 30 days of the judgment rendered in first instance.

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

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

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

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

274. The respondent shall, within 10 days of the filing of the notice of appeal in the office of the Superior Court, file a written appearance in the same office.

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

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

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

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

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

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

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

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

He may then sentence the appellant to the costs fixed by regulation.

280. The appellant may abandon his appeal by filing a notice of abandonment at the office of the Superior Court where the appeal is brought. The appellant may in that case be sentenced by a judge of that court to the costs fixed by regulation.

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

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

DIVISION III

HEARING OF APPEAL AND JUDGMENT

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

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

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

If the judge dismisses the application, he may sentence the applicant to the costs fixed by regulation.

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER XII

APPEAL TO COURT OF APPEAL

DIVISION I

GENERAL PROVISIONS

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

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

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

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

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

The appeal takes place by operation of law where the objection to the evidence has been denied or where the nonconfidentiality of the information has been declared. The appeal does not stay proceedings but the judge of first instance or of the Superior Court, as the case may be, cannot hear the evidence contemplated by the objection or permit access to the information or render judgment on the proceedings until the appeal from the interlocutory judgment is decided.

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

293. A person does not waive his right to appeal by the sole fact that he pays the fine imposed or complies in any way with the judgment from which he is appealing.

DIVISION II

INSTITUTION OF APPEAL

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

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

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

296. Application for leave to appeal must be presented in writing within 30 days from the appealed judgment. It must indicate, in particular, the grounds for the appeal and the conclusions sought and be drafted concisely and precisely in accordance with the rules of practice. A copy of the appealed judgment must be attached to the application.

Upon the written application of the appellant, the application for leave to appeal may be presented within any other time fixed by a judge of the Court of Appeal, before or after the expiry of the period of 30 days.

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

298. On the application of a defendant who has served an application for leave to appeal from the judgment under which he is imprisoned, a judge of the Court of Appeal shall release him from custody on the conditions he determines, particularly the furnishing of security, unless he is satisfied that the defendant will abscond or will not keep the peace while awaiting judgment on the appeal; where the judge orders continuation of detention of the defendant, he shall make any order that may expedite the hearing in appeal.

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

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

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

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

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

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

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

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

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

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

304. Within 60 days of the judgment granting leave to appeal, the appellant shall file a factum at the office of the Court of Appeal together with proof of its service on the respondent.

305. Within 60 days of the filing of the factum of the appellant, the respondent shall file a factum at the office of the court together with proof of its service on the appellant.

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

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

Notice of the application must be served on the adverse party.

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

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

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

310. If, within one year from the date on which it was brought, the appeal is not ready to be entered on the roll, the clerk shall notify the parties, at least 60 days in advance, that the appeal has been entered on a special roll, and indicate the date of the hearing of the appeal.

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

311. The appellant may abandon his appeal by filing a notice of abandonment. The appellant may in that case be sentenced by a judge to the costs fixed by regulation.

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

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

DIVISION III

HEARING OF THE APPEAL AND JUDGMENT

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

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

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

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

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

CHAPTER XIII

EXECUTION OF JUDGMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where the defendant cannot be brought forthwith before the collector, the person who arrested him shall release him from custody providing he gives his address or, if necessary, any information confirming the accuracy thereof, and undertakes to appear before the collector on the day specified in the recognizance; where the defendant

refuses to comply with these requirements, he shall be brought before the judge who issued the warrant of arrest or a judge having jurisdiction to issue such a warrant within the same judicial district. Where the defendant persists in his refusal, the judge shall order his imprisonment and issue a warrant of committal in default of payment of the sums due.

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

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

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

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

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

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

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

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

(2) notwithstanding the first paragraph of article 589 and the first paragraph of article 662 of the Code of Civil Procedure, no advance to meet the costs of custody or the disbursements rendered necessary by the execution of the writ may be required by the seizing officer;

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

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

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

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

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

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

333. Where a collector has reasonable grounds to believe that seizure does not or will not permit the recovery of the sums due from the defendant, he may offer the defendant the option of paying the sums he owes by means of compensatory work, depending on the availability of compensatory work programs.

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

Where the defendant is under 18 years of age, the collector shall entrust the director of youth protection having competent authority in the place of the defendant's residence with determining the nature of the compensatory work and supervising it.

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

The agreement shall be in writing.

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

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

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

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

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

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

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

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

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

For the carrying out of the said Act,

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

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

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

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

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

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

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

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

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

Notice of the application shall be served on the defendant. The judge may, however, hear the application if it has been impossible to serve the notice on the defendant despite reasonable efforts to do so.

The collector shall, if the defendant is a person under 18 years of age, serve notice of the application on the person's parents. If the parents have not been notified, the judge may proceed against the defendant or adjourn the hearing of the application on the conditions he determines, and order that notice be served on the parents.

347. The judge may order imprisonment and issue a warrant of committal if he is satisfied that the measures provided for in this chapter

to recover the sums due do not permit, in this particular case, full recovery of the sums due.

The reasons for ordering imprisonment shall be given in writing.

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

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

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

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

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

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

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

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

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

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

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

(1) state his name and quality;

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

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

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

The person shall not use more force than is necessary.

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

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

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

If the defendant is under 18 years of age, he must be delivered into the custody of the director of youth protection having competent authority at the place of arrest.

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

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

If the defendant is a person under 18 years of age, the warrant must be delivered without delay to the director of youth protection having competent authority at the place of detention.

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

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

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

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

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

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

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

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

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

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

364. Where a defendant has not paid the sum due at the expiration of the time indicated under section 322 or granted under section 327

or 328, or where, at the expiration of such time, although he had agreed to do compensatory work, the defendant has failed to honour his agreement, the collector shall notify the Régie de l'assurance automobile du Québec of that fact so that the driver's licence or learner's licence of the defendant be suspended or his right to obtain such be refused by the Régie.

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

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

365. The collector, if he has given a notice under section 364, shall notify the Régie de l'assurance automobile du Québec without delay if the sum due has been acquitted as a result of a payment or seizure or if the defendant has been released from payment under the second paragraph of section 339 or has served the term of imprisonment ordered in default of payment of a sum due.

366. The collector shall remit, on the conditions prescribed by regulation, part of the costs recovered under this chapter to the prosecuting party contemplated in paragraph 3 of section 9 who disbursed sums of money to institute proceedings.

CHAPTER XIV

REGULATIONS

367. The Government may, by regulation,

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

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

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

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

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

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

(7) fix the allowances payable to witnesses;

(8) fix the amount of costs a defaulting witness may be condemned to pay;

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

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

(11) fix the costs of execution of the judgment a party may be condemned to pay;

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

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

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

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

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

CHAPTER XV

FINAL PROVISIONS

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

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

SCHEDULE

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

(Sections 336 and 348)

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

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