



## CHAPTER 85

An Act to amend the Code of Civil Procedure respecting writs of prohibition and *certiorari*

[Assented to, the 4th of April, 1929]

**HIS MAJESTY**, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

**1.** The Code of Civil Procedure is amended by replacing article 1003 thereof by the following articles: C. C. P., art. 1003, replaced.

**"1003.** In cases where there is no appeal or if there is no other remedy equally convenient, beneficial and effectual, a writ of prohibition lies whenever a court of inferior jurisdiction exceeds its jurisdiction. Writ of prohibition.

It is applied for, contested and executed in the same manner as *mandamus* and with the same formalities; and the writ of summons contains a summons to the court of inferior jurisdiction and to the party proceeding therein. Formalities.

The service of such writ of summons upon the court of inferior jurisdiction has the effect of suspending all proceedings before such court. Effect of service.

**"1003a.** In addition, whenever the petition for the issuing of the writ by which the proceedings are commenced alleges as a single allegation or together with other allegations the unconstitutionality of a law or part of a law of Canada or of the Province or wherever the proceedings before the court of inferior jurisdiction are for a penal or criminal offence, the following provisions apply: Additional formalities in cases of unconstitutionality or criminal offence.

1. The petition must be first served upon the Attorney-General, together with a reasonable notice of the hour, date and place of its presentation. Service of petition and notice.

2. The writ by which the proceedings are commenced must be endorsed with a certificate of the prothonotary establishing that there is attached or joined to the petition Certificate endorsed on writ.

Effect of  
absence of  
certificate.

a minute of service upon the Attorney-General, an acknowledgment of copy received or a written waiver of service by the Attorney-General, as the case may be. In the absence of such a certificate, the service of such writ upon the functionary or tribunal to whom or which it is addressed has not the effect of suspending the proceedings and the case must be proceeded with as if the writ had never been served.

Term days.

3. Notwithstanding the provisions of section 50 of chapter 145 of the Revised Statutes, 1925, all juridical days are term days in all the districts, and the case has precedence over all other cases. It must be continued from day to day."

Precedence.  
Continua-  
tion.

C. C. P., art.  
1006, am.

2. Article 1006 of the said Code, as replaced by the act 10 George V, chapter 79, section 12, is amended by adding thereto the following paragraph:

Precedence  
in appeal.

"Where the case is one provided for by article 1003a, the case in appeal has precedence over all other cases."

C. C. P., art.  
1295, re-  
placed.

3. Article 1295 of the said Code is replaced by the following articles:

Petition for  
writ of cer-  
tiorari.

"**1295.** Such petition must be first served upon the functionary seized of the case or who rendered the judgment, as well as upon the other parties in the case, together with a reasonable notice of the hour, date and place of its presentation.

Service and  
notice.

Additional  
formalities  
in cases of  
unconstitu-  
tionality or  
criminal  
offence.

"**1295a.** In addition, whenever the petition alleges as a single allegation or together with other allegations the unconstitutionality of a law or part of a law of Canada or of the Province, or whenever proceedings before the court of inferior jurisdiction are for a penal or criminal offence, the following provisions apply:

Service and  
notice.

1. The petition must also be served upon the Attorney-General, together with the notice mentioned in article 1295.

Endorsa-  
tions on writ.

2. Mention must be made on the back of the writ that it has been issued by order of the Chief Justice or Acting Chief Justice, as the case may be, or of two puisne judges, or of a puisne judge. The writ must in addition be endorsed with a certificate of the prothonotary establishing that there is attached or joined to the petition a minute of service upon the Attorney-General, an acknowledgment of copy received or a written waiver of service by the Attorney-General, as the case may be. In the absence of such a certificate, the service of such writ upon the functionary or tribunal to whom or which it is addressed has

Mention of  
issue.

Certificate.

Effect of ab-  
sence of cer-  
tificate.

not the effect of suspending the proceedings, and the case must be proceeded with as if the writ had never been served.

3. Notwithstanding the provisions of section 50 of Term days. chapter 145 of the Revised Statutes, 1925, all juridical days are term days in all the districts. The case must be continued from day to day.” Continuation.

4. Article 1296 of the said Code is replaced by the following: C. C. P., art. 1296, replaced.

“**1296.** The service of the writ upon the functionary seized of the case or who rendered the judgment has the effect of suspending all proceedings in the court below.” Effect of service.

5. Article 1306 of the said Code, as replaced by the act 10 George V, chapter 79, section 25, is again replaced by the following: C. C. P., art. 1306, replaced.

“**1306.** Where the case is one provided for by article 1295a, it has precedence over all other cases, whether before the Superior Court or in appeal.” Precedence.

6. Article 15 of the said Code, as amended by the acts 62 Victoria, chapter 52, section 1; 9 Edward VII, chapter 73, section 2; 1 George V (1910), chapter 42, section 1; 5 George V, chapter 51, section 2; 5 George V, chapter 81, section 1, and 14 George V, chapter 42, section 2, is again amended by inserting therein, immediately after paragraph 14 thereof, the following: C. C. P., art. 15, am.

“15. Proceedings contemplated by articles 1003a and 1295a.” Proceedings in holidays.

7. Article 43 of the said Code, as replaced by the act 10 George V, chapter 79, section 1, is amended by adding, at the end of sub-paragraph a of paragraph 1 thereof, the following words: “saving the proceedings contemplated by section 1295a;”. C. C. P., art. 43, am.

8. This act shall come into force on the day of its sanction. Coming into force.