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Provincial Offences Act

R.S.O. 1990, CHAPTER P.33

Consolidation Period: From May 15, 2012 to the e-Laws currency date.

Last amendment: 2011, c. 1, Sched. 1, s. 7.

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INTERPRETATION

Interpretation

1. (1) In this Act,

"certificate" means a certificate of offence issued under Part I or a certificate of parking infraction issued under Part II; ("procès-verbal")

"court" means the Ontario Court of Justice; ("tribunal")

"judge" means a provincial judge; ("juge provincial")

"justice" means a provincial judge or a justice of the peace; ("juge")

"offence" means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature; ("infraction")

"police officer" means a chief of police or other police officer but does not include a special constable or by-law enforcement officer; ("agent de police")

"prescribed" means prescribed by the rules of court; ("prescrit")

"prosecutor" means the Attorney General or, where the Attorney General does not intervene, means the person who issues a certificate or lays an information and includes an agent acting on behalf of either of them; ("poursuivant")

"provincial offences officer" means,

(a) a police officer,

(b) a constable appointed pursuant to any Act,

(c) a municipal law enforcement officer referred to in subsection 101 (4) of the *Municipal Act, 2001* or in subsection 79 (1) of the *City of Toronto Act, 2006*, while in the discharge of his or her duties,

(d) a by-law enforcement officer of any municipality or of any local board of any municipality, while in the discharge of his or her duties,

(e) an officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a by-law, an Act or a regulation under an Act, while in the discharge of his or her duties, or

(f) a person designated under subsection (3); ("agent des infractions provinciales")

"representative" means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding; ("représentant")

"set fine" means the amount of fine set by the Chief Justice of the Ontario Court of Justice for an offence for the purpose of proceedings commenced under Part I or II. ("amende fixée") R.S.O. 1990, c. P.33, s. 1 (1); 2000, c. 26, Sched. A, s. 13 (6); 2002, c. 18, Sched. A, s. 15 (6); 2006, c. 21, Sched. C, s. 131 (1, 2); 2009, c. 33, Sched. 4, s. 1 (1).

(2) Repealed: 2002, c. 17, Sched. F, Table.

Designation of provincial offences officers

(3) A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences. R.S.O. 1990, c. P.33, s. 1 (3).

General

Purpose of Act

2. (1) The purpose of this Act is to replace the summary conviction procedure for the prosecution of provincial offences, including the provisions adopted by reference to the *Criminal Code* (Canada), with a procedure that reflects the distinction between provincial offences and criminal offences.

Interpretation

(2) Where, as an aid to the interpretation of provisions of this Act, recourse is had to the judicial interpretation of and practices under corresponding provisions of the *Criminal Code* (Canada), any variation in wording without change in substance shall not, in itself, be construed to intend a change of meaning. R.S.O. 1990, c. P.33, s. 2.

PART I
COMMENCEMENT OF PROCEEDINGS BY CERTIFICATE OF OFFENCE

Certificate of offence and offence notice

3. (1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of an offence may be commenced by filing a certificate of offence alleging the offence in the office of the court. R.S.O. 1990, c. P.33, s. 3 (1).

Issuance and service

(2) A provincial offences officer who believes that one or more persons have committed an offence may issue, by completing and signing in the form prescribed under section 13,

(a) a certificate of offence certifying that an offence has been committed; and

(b) either an offence notice indicating the set fine for the offence or a summons. 2009, c. 33, Sched. 4, s. 1 (2).

Service

(3) The offence notice or summons shall be served personally upon the person charged within thirty days after the alleged offence occurred. R.S.O. 1990, c. P.33, s. 3 (3).

(4) Repealed: 2009, c. 33, Sched. 4, s. 1 (3).

Certificate of service

(5) Where service is made by the provincial offences officer who issued the certificate of offence, the officer shall certify on the certificate of offence that he or she personally served the offence notice or summons on the person charged and the date of service. R.S.O. 1990, c. P.33, s. 3 (5).

Affidavit of service

(6) Where service is made by a person other than the provincial offences officer who issued the certificate of offence, he or she shall complete an affidavit of service in the prescribed form. R.S.O. 1990, c. P.33, s. 3 (6).

Certificate as evidence

(7) A certificate of service of an offence notice or summons purporting to be signed by the provincial offences officer issuing it or an affidavit of service under subsection (6) shall be received in evidence and is proof of personal service in the absence of evidence to the contrary. R.S.O. 1990, c. P.33, s. 3 (7).

Officer not to act as agent

(8) The provincial offences officer who serves an offence notice or summons under this section shall not receive payment of any money in respect of a fine, or receive the offence notice for delivery to the court. R.S.O. 1990, c. P.33, s. 3 (8).

Filing of certificate of offence

4. A certificate of offence shall be filed in the office of the court as soon as is practicable, but no later than seven days after service of the offence notice or summons. 2009, c. 33, Sched. 4, s. 1 (4).

Having a trial

5. (1) A defendant who is served with an offence notice may give notice of intention to appear in court for the purpose of entering a plea and having a trial of the matter. 2009, c. 33, Sched. 4, s. 1 (5).

Notice of intention to appear in offence notice

(2) If the offence notice includes a part with a notice of intention to appear, the defendant must give notice of intention to appear by,

(a) completing the notice of intention to appear part of the offence notice; and

(b) delivering the offence notice to the court office specified in it in the manner provided in the offence notice. 2009, c. 33, Sched. 4, s. 1 (5).

Notice of intention to appear to be filed in person

(3) If the offence notice requires the notice of intention to appear to be filed in person, the defendant must give the notice of intention to appear by,

(a) attending in person or by representative at the court office specified in the offence notice at the time or times specified in the offence notice; and

(b) filing a notice of intention to appear in the form prescribed under section 13 with the clerk of the court. 2009, c. 33, Sched. 4, s. 1 (5).

Specified court office

(4) A notice of intention to appear under subsection (3) is not valid if the defendant files the notice of intention to appear at a court office other than the one specified on the offence notice. 2009, c. 33, Sched. 4, s. 1 (5).

Notice of trial

(5) Where a notice of intention to appear is received under subsection (2) or (3), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of the trial. 2009, c. 33, Sched. 4, s. 1 (5).

Rescheduling time of trial

(6) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to in subsection (5). 2009, c. 33, Sched. 4, s. 1 (5).

Availability of meeting procedure

5.1 (1) This section applies where the offence notice requires the notice of intention to appear to be filed in person in the form prescribed under section 13. 2009, c. 33, Sched. 4, s. 1 (6).

Option for meeting with the prosecutor

(2) Instead of filing a notice of intention to appear under subsection 5 (3), a defendant may request a meeting with the prosecutor to discuss the resolution of the offence by,

(a) indicating that request on the offence notice; and

(b) delivering the offence notice to the court office specified on it within 15 days after the defendant was served with the offence notice. 2009, c. 33, Sched. 4, s. 1 (6).

Notice of meeting time

(3) Where a defendant requests a meeting with the prosecutor under subsection (2), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of their meeting. 2009, c. 33, Sched. 4, s. 1 (6).

Rescheduling the meeting time

(4) If the time for the meeting scheduled in the notice under subsection (3) is not suitable for the defendant, the defendant may, at least two days before the scheduled time of the meeting, deliver to the clerk of the court one written request to reschedule the time for the meeting and the clerk shall arrange a new meeting time to take place within 30 days of the time scheduled in the notice under subsection (3). 2009, c. 33, Sched. 4, s. 1 (6).

Notice of rescheduled meeting time

(5) Where a meeting time is rescheduled under subsection (4), the clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the rescheduled time and the place of their meeting. 2009, c. 33, Sched. 4, s. 1 (6).

Meeting by electronic method

(6) The defendant and the prosecutor may, if unable to attend in person because of remoteness, attend their meeting by electronic method in accordance with section 83.1. 2009, c. 33, Sched. 4, s. 1 (6).

Agreement on plea of guilty and submissions

(7) At their meeting, the defendant and the prosecutor may agree that,

(a) the defendant will enter a guilty plea to the offence or a substituted offence; and

(b) the defendant and the prosecutor will make submissions as to penalty, including an extension of time for payment. 2009, c. 33, Sched. 4, s. 1 (6).

Appearance before justice

(8) If an agreement is reached under subsection (7), the defendant shall, as directed by the prosecutor,

(a) appear with the prosecutor before a justice sitting in court and orally enter the plea and make submissions; or

(b) appear without the prosecutor before a justice sitting in court within 10 days, enter the plea orally and make the submissions in the form determined by the regulations. 2009, c. 33, Sched. 4, s. 1 (6).

Conviction

(9) Upon receiving the plea and submissions under subsection (8), the justice may,

(a) require the prosecutor to appear and speak to the submissions, if the submissions were submitted under clause (8) (b); and

(b) enter a conviction and impose the set fine or such other fine as is permitted by law in respect of the offence for which the plea was entered. 2009, c. 33, Sched. 4, s. 1 (6).

If no justice available

(10) If no justice is available after the meeting to conduct the proceeding under clause (8) (a), the clerk of the court shall, as soon as practicable, give notice to the defendant and the prosecutor of the time and place for their joint appearance before a justice. 2009, c. 33, Sched. 4, s. 1 (6).

Notice of trial

(11) The clerk of the court shall, as soon as is practicable, give notice to the defendant and the prosecutor of the time and place of the trial if,

(a) an agreement is not reached under subsection (7); or

(b) the justice does not accept the guilty plea and refers the matter to trial. 2009, c. 33, Sched. 4, s. 1 (6).

Rescheduling time of trial

(12) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to subsection (11). 2009, c. 33, Sched. 4, s. 1 (6).

5.1.1 Repealed: 2009, c. 33, Sched. 4, s. 1 (8).

Challenge to officer's evidence

5.2 (1) A defendant who gives notice of an intention to appear in court for the purpose of entering a plea and having a trial of the matter shall indicate on the notice of intention to appear or offence notice if the defendant intends to challenge the evidence of the provincial offences officer. 1993, c. 31, s. 1 (3).

Notifying officer

(2) If the defendant indicates an intention to challenge the officer's evidence, the clerk of the court shall notify the officer. 1993, c. 31, s. 1 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 5.2 is repealed. See: 2009, c. 33, Sched. 4, ss. 1 (9), 5 (4).

6. Repealed: 2009, c. 33, Sched. 4, s. 1 (10).

Plea of guilty with submissions

7. (1) A defendant who does not have the option of meeting with the prosecutor under section 5.1 and does not wish to dispute the charge in the offence notice, but wishes to make submissions as to penalty, including an extension of time for payment, may attend at the time and place specified in the notice and may appear before a justice sitting in court for the purpose of pleading guilty to the offence and making submissions as to penalty, and the justice may enter a conviction and impose the set fine or such lesser fine as is permitted by law. 2009, c. 33, Sched. 4, s. 1 (11).

Submissions under oath

(2) The justice may require submissions under subsection (1) to be made under oath, orally or by affidavit. 2009, c. 33, Sched. 4, s. 1 (11).

Payment out of court

8. (1) A defendant who does not wish to dispute the charge in the offence notice may, in the manner indicated on the offence notice, pay the set fine and all applicable costs and surcharges fixed by the regulations. 2009, c. 33, Sched. 4, s. 1 (12).

Effect of payment

(2) Acceptance by the court office of payment under subsection (1) constitutes,

(a) a plea of guilty by the defendant;

(b) conviction of the defendant for the offence; and

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(c) imposition of a fine in the amount of the set fine for the offence. 2009, c. 33, Sched. 4, s. 1 (12).

Deemed not to dispute charge

9. (1) A defendant is deemed to not wish to dispute the charge where,

(a) at least 15 days have elapsed after the defendant was served with the offence notice and the defendant did not give notice of intention to appear under section 5, did not request a meeting with the prosecutor in accordance with section 5.1 and did not plead guilty under section 7 or 8;

(b) the defendant requested a meeting with the prosecutor in accordance with section 5.1 but did not attend the scheduled meeting with the prosecutor; or

(c) the defendant reached an agreement with the prosecutor under subsection 5.1 (7) but did not appear at a sentencing hearing with a justice under subsection 5.1 (8). 2009, c. 33, Sched. 4, s. 1 (13).

Action by justice

(2) Where a defendant is deemed to not wish to dispute the charge, a justice shall examine the certificate of offence and shall,

(a) where the certificate of offence is complete and regular on its face, enter a conviction in the defendant's absence and without a hearing and impose the set fine for the offence; or

(b) where the certificate of offence is not complete and regular on its face, quash the proceeding. 2009, c. 33, Sched. 4, s. 1 (13).

Conviction without proof of by-law

(3) Where the offence is in respect of an offence under a by-law of a municipality, the justice shall enter a conviction under clause (2) (a) without proof of the by-law that creates the offence if the certificate of offence is complete and regular on its face. 2009, c. 33, Sched. 4, s. 1 (13).

Failure to appear at trial

9.1 (1) A defendant is deemed to not wish to dispute the charge where the defendant has been issued a notice of the time and place of trial and fails to appear at the time and place appointed for the trial. 2009, c. 33, Sched. 4, s. 1 (14).

Examination by justice

(2) If subsection (1) applies, section 54 does not apply, and a justice shall examine the certificate of offence and shall without a hearing enter a conviction in the defendant's absence and impose the set fine for the offence if the certificate is complete and regular on its face. 1993, c. 31, s. 1 (3).

Quashing proceeding

(3) The justice shall quash the proceeding if he or she is not able to enter a conviction. 1993, c. 31, s. 1 (3).

Signature on notice

10. A signature on an offence notice or notice of intention to appear purporting to be that of the defendant is proof, in the absence of evidence to the contrary, that it is the signature of the defendant. 1993, c. 31, s. 1 (4).

Reopening

Application to strike out conviction

11. (1) A defendant who was convicted without a hearing may, within 15 days of becoming aware of the conviction, apply to a justice to strike out the conviction. 2009, c. 33, Sched. 4, s. 1 (16).

Striking out the conviction

(2) Upon application under subsection (1), a justice shall strike out a conviction if satisfied by affidavit of the defendant that, through no fault of the defendant, the defendant was unable to appear for a hearing or for a meeting under section 5.1 or the defendant did not receive delivery of a notice or document relating to the offence. 2009, c. 33, Sched. 4, s. 1 (16).

If conviction struck out

(3) If the justice strikes out the conviction, the justice shall,

(a) proceed under section 7, if the offence notice does not require the notice of intention to appear to be filed in person and the defendant wishes to proceed under that section;

(b) direct the clerk of the court to give notice to the defendant and the prosecutor of the time and place of their meeting under subsection 5.1 (3), if the offence notice requires the notice of intention to appear to be filed in person and the defendant wishes to proceed under that section; or

(c) direct the clerk of the court to give notice to the defendant and the prosecutor of the time and place of the trial. 2009, c. 33, Sched. 4, s. 1 (16).

Rescheduling time of trial

(4) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to clause (3) (c). 2009, c. 33, Sched. 4, s. 1 (16).

Certificate

(5) A justice who strikes out a conviction under subsection (2) shall give the defendant a certificate of the fact in the prescribed form. 2009, c. 33, Sched. 4, s. 1 (16).

Error by municipality

11.1 (1) A municipality or other body may apply to a justice requesting that a conviction be struck out if the defendant was convicted because of an error made by the municipality or other body. 2009, c. 33, Sched. 4, s. 1 (17).

Striking out conviction

(2) On an application by a municipality or other body, if a justice is satisfied that an error was made, the justice shall strike out the conviction. 2009, c. 33, Sched. 4, s. 1 (17).

Notice to defendant

(3) If the justice strikes out the conviction, the municipality or other body shall notify the defendant of that fact. 2009, c. 33, Sched. 4, s. 1 (17).

Consequences of conviction

Penalty

12. (1) Where the penalty prescribed for an offence includes a fine of more than $1,000 or imprisonment and a proceeding is commenced under this Part, the provision for fine or imprisonment does not apply and in lieu thereof the offence is punishable by a fine of not more than the maximum fine prescribed for the offence or $1,000, whichever is the lesser. R.S.O. 1990, c. P.33, s. 12 (1); 2009, c. 33, Sched. 4, s. 1 (18).

Transitional

(1.1) Subsection (1) applies only to an offence committed on or after the day subsection 1 (18) of Schedule 4 to the *Good Government Act, 2009* comes into force. 2009, c. 33, Sched. 4, s. 1 (19).

Other consequences of conviction

(2) Where a person is convicted of an offence in a proceeding initiated by an offence notice,

(a) a provision in or under any other Act that provides for an action or result following upon a conviction of an offence does not apply to the conviction, except,

(i) for the purpose of carrying out the sentence imposed,

(ii) for the purpose of recording and proving the conviction,

(iii) for the purposes of giving effect to any action or result provided for under the *Highway Traffic Act*, and

(iv) Repealed: 2004, c. 22, s. 7 (2).

(v) for the purposes of section 16 of the *Smoke-Free Ontario Act*; and

(b) any thing seized in connection with the offence after the service of the offence notice is not liable to forfeiture. R.S.O. 1990, c. P.33, s. 12 (2); 1994, c. 10, s. 23; 2004, c. 22, s. 7; 2005, c. 18, s. 18.

Regulations

13. (1) The Lieutenant Governor in Council may make regulations,

(a) Repealed: 2011, c. 1, Sched. 1, s. 7 (1).

(b) authorizing the use in a form prescribed under clause (1.1) (a) of any word or expression to designate an offence.

(c) Repealed: 2011, c. 1, Sched. 1, s. 7 (3).

(d) Repealed: 2009, c. 33, Sched. 4, s. 1 (20).

R.S.O. 1990, c. P.33, s. 13 (1); 1993, c. 31, s. 1 (6); 2009, c. 33, Sched. 4, s. 1 (20); 2011, c. 1, Sched. 1, s. 7 (1-3).

Same, Attorney General

(1.1) The Attorney General may make regulations,

(a) prescribing the form of certificates of offence, offence notices and summonses and such other forms as are considered necessary under this Part;

(b) respecting any matter that is considered necessary to provide for the use of the forms under this Part. 2011, c. 1, Sched. 1, s. 7 (4).

Sufficiency of abbreviated wording

(2) The use on a form prescribed under clause (1.1) (a) of any word or expression authorized by the regulations to designate an offence is sufficient for all purposes to describe the offence designated by such word or expression. R.S.O. 1990, c. P.33, s. 13 (2); 2011, c. 1, Sched. 1, s. 7 (5).

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe an offence in a form prescribed under clause (1.1) (a), the offence may be described in accordance with section 25. R.S.O. 1990, c. P.33, s. 13 (3); 2011, c. 1, Sched. 1, s. 7 (5).

PART II
COMMENCEMENT OF PROCEEDINGS FOR PARKING INFRACTIONS

“Parking infraction”, Part II

14. In this Part,

"parking infraction" means any unlawful parking, standing or stopping of a vehicle that constitutes an offence. 1992, c. 20, s. 1 (1).

Proceeding, parking infraction

14.1 In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced in accordance with this Part. 1992, c. 20, s. 1 (1).

Certificate and notice of parking infraction

15. (1) A provincial offences officer who believes from his or her personal knowledge that one or more persons have committed a parking infraction may issue,

(a) a certificate of parking infraction certifying that a parking infraction has been committed; and

(b) a parking infraction notice indicating the set fine for the infraction.

Idem

(2) The provincial offences officer shall complete and sign the certificate and notice in the form prescribed under section 20.

Municipal by-laws

(3) If the alleged infraction is under a by-law of a municipality, it is not necessary to include a reference to the number of the by-law on the certificate or notice.

Service on owner

(4) The issuing provincial offences officer may serve the parking infraction notice on the owner of the vehicle identified in the notice,

(a) by affixing it to the vehicle in a conspicuous place at the time of the alleged infraction; or

(b) by delivering it personally to the person having care and control of the vehicle at the time of the alleged infraction.

Service on operator

(5) The issuing provincial offences officer may serve the parking infraction notice on the operator of a vehicle by delivering it to the operator personally at the time of the alleged infraction.

Certificate of service

(6) The issuing provincial offences officer shall certify on the certificate of parking infraction that he or she served the

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parking infraction notice on the person charged and the date and method of service.

Certificate as evidence

(7) If it appears that the provincial offences officer who issued a certificate of parking infraction has certified service of the parking infraction notice and signed the certificate, the certificate shall be received in evidence and is proof of service unless there is evidence to the contrary. 1992, c. 20, s. 1 (1).

Payment out of court

16. A defendant who does not wish to dispute the charge may deliver the notice and amount of the set fine to the place shown on the notice. 1992, c. 20, s. 1 (1).

Intention to appear

17. (1) A defendant who is served with a parking infraction notice may give notice of intention to appear in court for the purpose of entering a plea and having a trial of the matter by so indicating on the parking infraction notice and delivering the notice to the place specified in it. 1993, c. 31, s. 1 (7).

Proceeding commenced

(2) If a defendant gives notice of an intention to appear, a proceeding may be commenced in respect of the charge if it is done within seventy-five days after the day on which the alleged infraction occurred. 1993, c. 31, s. 1 (7).

Idem

(3) The proceeding shall be commenced by filing in the office of the court,

(a) the certificate of parking infraction; and

(b) if the parking infraction is alleged against the defendant as owner of a vehicle, evidence of the ownership of the vehicle. 1992, c. 20, s. 1 (1).

Notice of trial

(4) As soon as practicable after the proceeding is commenced, the clerk of the court or a person designated by the regulations shall give notice to the defendant and prosecutor of the time and place of the trial. 1992, c. 20, s. 1 (1); 1993, c. 31, s. 1 (8).

Rescheduling time of trial

(4.1) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to subsection (4). 2009, c. 33, Sched. 4, s. 1 (21).

Certificate not invalid without by-law number

(5) A certificate of parking infraction issued for an infraction under a by-law of a municipality is not insufficient or irregular by reason only that it does not identify the by-law that creates the offence if the notice of trial given to the defendant identifies the by-law. 1992, c. 20, s. 1 (1).

Application

17.1 (1) This section applies where the parking infraction notice requires the notice of intention to appear to be filed in person at a place specified in the parking infraction notice. 2009, c. 33, Sched. 4, s. 1 (22).

Subss. 17 (1), (3) and (4) inapplicable

(2) Subsections 17 (1), (3) and (4) do not apply in a municipality in which this section applies. 1994, c. 27, s. 52 (1).

Filing

(3) A defendant who is served with a parking infraction notice may give notice of intention to appear in court for the purpose of entering a plea and having a trial of the matter by attending in person or by representative at the place specified in the parking infraction notice at the time or times specified in the parking infraction notice and filing a notice of intention to appear with a person designated by the regulations. 1993, c. 31, s. 1 (9); 2006, c. 21, Sched. C, s. 131 (3).

Notice

(4) The notice of intention to appear shall be in the form prescribed under section 20. 1993, c. 31, s. 1 (9).

Proceeding commenced

(5) The proceeding shall be commenced by filing the certificate of parking infraction in the office of the clerk of the court or the person designated by the regulations. 1994, c. 27, s. 52 (2).

Notice of trial

(6) As soon as practicable after the proceeding is commenced, the clerk of the court or the person designated by the regulations shall give notice to the defendant and the prosecutor of the time and place of the trial. 1994, c. 27, s. 52 (2).

Rescheduling time of trial

(6.1) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to subsection (6). 2009, c. 33, Sched. 4, s. 1 (23).

Evidence required at trial

(7) The court shall not convict the defendant unless the following are presented at the trial:

1. If the parking infraction is alleged against the defendant as owner of a vehicle, evidence of the ownership of the vehicle.

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2. A copy of the notice of trial, with the certificate of the person who issued the notice under subsection (6), stating that the notice was given to the defendant and to the prosecutor and stating the date on which this was done.

3. The certificate of parking infraction. 1994, c. 27, s. 52 (2).

Failure to respond

18. (1) The person designated by the regulations may give the defendant a notice of impending conviction if,

(a) at least fifteen days and no more than thirty-five days have elapsed since the alleged infraction occurred;

(b) the defendant has not paid the fine; and

(c) a notice of intention to appear has not been received. 1992, c. 20, s. 1 (1); 1993, c. 31, s. 1 (10).

Form of notice

(2) The notice shall be in the form prescribed under section 20.

Contents of notice

(3) The notice shall,

(a) indicate the set fine for the infraction; and

(b) indicate that a conviction will be registered against the defendant unless the defendant pays the set fine or gives notice of an intention to appear in court for the purpose of entering a plea and having a trial of the matter. 1993, c. 31, s. 1 (11).

Intention to appear

18.1 (1) A defendant who receives a notice of impending conviction may give notice of intention to appear in court for the purpose of entering a plea and having a trial of the matter by so indicating on the notice of impending conviction and delivering the notice to the place specified in it. 1993, c. 31, s. 1 (12).

Proceeding commenced

(2) If a defendant gives notice of an intention to appear after a notice of impending conviction has been given, a proceeding may be commenced in respect of the charge if it is done within seventy-five days after the day on which the alleged infraction occurred. 1993, c. 31, s. 1 (12).

Idem

(3) The proceeding shall be commenced by filing in the office of the court,

(a) the certificate of parking infraction; and

(b) if the parking infraction is alleged against the defendant as owner of a vehicle, evidence of the ownership of the vehicle. 1992, c. 20, s. 1 (1).

Notice of trial

(4) As soon as practicable after the proceeding is commenced, the clerk of the court or a person designated by the regulations shall give notice to the defendant and prosecutor of the time and place of the trial. 1992, c. 20, s. 1 (1); 1993, c. 31, s. 1 (13).

Rescheduling time of trial

(5) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to subsection (4). 2009, c. 33, Sched. 4, s. 1 (24).

Application

18.1.1 (1) This section applies where the notice of impending conviction requires the notice of intention to appear to be filed in person at a place specified in the notice of impending conviction. 2009, c. 33, Sched. 4, s. 1 (25).

Subss. 18.1 (1), (3) and (4) inapplicable

(2) Subsections 18.1 (1), (3) and (4) do not apply in a municipality in which this section applies. 1994, c. 27, s. 52 (3).

Subss. 17.1 (5), (6) and (7) applicable

(2.1) Subsections 17.1 (5), (6) and (7) apply to a proceeding begun under this section. 1994, c. 27, s. 52 (3).

Filing notice of intention to appear

(3) A defendant who receives a notice of impending conviction may give notice of intention to appear in court for the purpose of entering a plea and having a trial of the matter by attending in person or by representative at the place specified in the notice of impending conviction at the time or times specified in the notice of impending conviction and filing a notice of intention to appear with a person designated by the regulations. 1993, c. 31, s. 1 (14); 2006, c. 21, Sched. C, s. 131 (3).

Form of notice

(4) The notice of intention to appear shall be in the form prescribed under section 20. 1993, c. 31, s. 1 (14).

Challenge to officer's evidence

18.1.2 (1) A defendant who gives notice of an intention to appear under subsection 17 (1), 17.1 (3), 18.1 (1) or 18.1.1 (3) shall indicate on the notice of intention to appear or parking infraction notice if the defendant intends to challenge the evidence of the provincial offences officer who completed the certificate of parking infraction. 1993, c. 31, s. 1 (14).

Notifying officer

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(2) If the defendant indicates an intention to challenge the officer's evidence, the clerk of the court or a person designated by the regulations shall notify the officer. 1993, c. 31, s. 1 (14).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 18.1.2 is repealed. See: 2009, c. 33, Sched. 4, ss. 1 (26), 5 (4).

No response to impending conviction notice

18.2 (1) A defendant who has been given a notice of impending conviction shall be deemed not to dispute the charge if fifteen days have elapsed since the defendant was given the notice, the fine has not been paid and a notice of intention to appear has not been received.

Request for conviction

(1.1) If subsection (1) applies, the person designated by the regulations may prepare and sign a certificate requesting a conviction in the form prescribed under section 20. 1993, c. 31, s. 1 (15).

Idem

(2) The certificate requesting a conviction shall state,

(a) that the certificate of parking infraction is complete and regular on its face;

(b) if the defendant is liable as owner, that the person is satisfied that the defendant is the owner;

(c) that there is valid legal authority for charging the defendant with the parking infraction;

(d) that the defendant was given a notice of impending conviction at least fifteen days before the certificate requesting a conviction is filed;

(e) that the alleged infraction occurred less than seventy-five days before the certificate requesting a conviction is filed; and

(f) the prescribed information. 1992, c. 20, s. 1 (1).

Idem

(3) If the certificate of parking infraction was issued for an infraction under a by-law of a municipality, the certificate requesting a conviction shall also state,

(a) that payment of the set fine has not been made; and

(b) that the defendant has not given notice of intention to appear in court for the purpose of entering a plea and having a

trial of the matter. 1992, c. 20, s. 1 (1); 1993, c. 31, s. 1 (16).

Idem

(4) A certificate requesting a conviction purporting to be signed by the person authorized to prepare it shall be received in evidence and is proof, in the absence of evidence to the contrary, of the facts contained in it.

Proceeding commenced

(5) A proceeding may be commenced in respect of the charge by filing the certificate requesting a conviction in the office of the court, but only if the certificate is filed within seventy-five days after the alleged infraction occurred. 1992, c. 20, s. 1 (1).

Recording of conviction

(6) Upon receiving a certificate requesting a conviction, the clerk of the court shall record a conviction and the defendant is then liable to pay the set fine for the offence. 1993, c. 31, s. 1 (17).

Application where ticket defective

18.3 (1) A defendant who is convicted of a parking infraction under section 18.2 may, within fifteen days after becoming aware of the conviction, apply to a justice requesting that the conviction be struck out for the reason that the parking infraction notice is defective on its face.

Idem

(2) On an application by the defendant, if a justice is satisfied that the parking infraction notice is defective on its face, the justice shall strike out the conviction and shall order that the municipality or other body that issued the certificate requesting a conviction pay $25 in costs to the defendant. 1992, c. 20, s. 1 (1).

Failure to appear at trial

18.4 (1) A defendant is deemed to not wish to dispute the charge where the defendant has been issued a notice of the time and place of trial and fails to appear at the time and place appointed for the trial. 2009, c. 33, Sched. 4, s. 1 (27).

Examination by justice

(2) If subsection (1) applies, section 54 does not apply, and a justice shall examine the certificate of parking infraction and shall without a hearing enter a conviction in the defendant's absence and impose the set fine for the offence if the certificate is complete and regular on its face. 1993, c. 31, s. 1 (18).

Owner liability

(3) Despite subsection (2), if the defendant is alleged to have committed the parking infraction as owner of the vehicle involved in the infraction, the justice shall not enter a conviction and impose the set fine unless he or she is satisfied that the defendant is the owner of the vehicle. 1993, c. 31, s. 1 (18).

Entering conviction

(4) The justice shall enter a conviction with respect to a parking infraction under a by-law of a municipality without proof of the by-law that creates the offence if the justice is satisfied that the other criteria for entering a conviction have been met. 1993, c. 31, s. 1 (18).

Quashing proceeding

(5) The justice shall quash the proceeding if he or she is not able to enter a conviction. 1993, c. 31, s. 1 (18).

Error by municipality

18.5 (1) A municipality or other body may apply to a justice requesting that a conviction respecting a parking infraction be struck out if the defendant was convicted because of an error made by the municipality or other body.

Idem

(2) On an application by a municipality or other body, if a justice is satisfied that an error was made, the justice shall strike out the conviction.

Idem

(3) If the justice strikes out the conviction, the municipality or other body shall notify the defendant of that fact. 1992, c. 20, s. 1 (1).

Authority to collect parking fines

18.6 (1) A municipality may collect the fines levied for convictions respecting parking infractions under its by-laws if the municipality,

(a) enters into an agreement with the Attorney General to authorize it; or

(b) enters into a transfer agreement under Part X. 2009, c. 33, Sched. 4, s. 1 (28).

Agreement

(1.1) The Attorney General and a municipality may enter into an agreement for the purpose of clause (1) (a). 2009, c. 33, Sched. 4, s. 1 (28).

Notice to municipality

(2) If a conviction is entered respecting a parking infraction under a by-law of a municipality to which subsection (1) applies, the clerk of the court shall give notice of the conviction to the clerk of the municipality. 1992, c. 20, s. 1 (1).

Notice of fine

(3) If the clerk of a municipality receives notice of a conviction, the clerk of the municipality or the person designated by

the clerk shall give notice to the person against whom the conviction is entered, in the form prescribed under section 20, setting out the date and place of the infraction, the date of the conviction and the amount of the fine. 1992, c. 20, s. 1 (1).

If default

(4) If the fine is in default, the clerk of the municipality may send notice to the person designated by the regulations certifying that it is in default. 1992, c. 20, s. 1 (1).

Idem

(5) If a conviction is entered respecting a parking infraction and the parking infraction is not under a by-law of a municipality to which subsection (1) applies, the clerk of the court shall give notice to the person against whom the conviction is entered of the date and place of the infraction, the date of the conviction and the amount of the fine. 1992, c. 20, s. 1 (1).

Reopening

Application to strike out conviction

19. (1) A defendant who was convicted of a parking infraction without a hearing may, within 15 days of becoming aware of the conviction, apply to a justice to strike out the conviction. 2009, c. 33, Sched. 4, s. 1 (29).

Striking out the conviction

(2) Upon application under subsection (1), a justice shall strike out a conviction if satisfied by affidavit of the defendant or otherwise that, through no fault of the defendant, the defendant was unable to appear for a hearing or the defendant never received any notice or document relating to the parking infraction. 2009, c. 33, Sched. 4, s. 1 (29).

If conviction struck out

(3) If the justice strikes out the conviction, the justice shall,

(a) if the defendant enters a plea of guilty, accept the plea and impose the set fine; or

(b) direct the clerk of the court to give notice to the defendant and the prosecutor of the time and place of the trial. 2009, c. 33, Sched. 4, s. 1 (29).

Rescheduling time of trial

(4) The clerk of the court may, for administrative reasons, reschedule the time of the trial by giving a revised notice to the defendant and the prosecutor within 21 days of giving the notice referred to in clause (3) (b). 2009, c. 33, Sched. 4, s. 1 (29).

Regulations

20. (1) The Lieutenant Governor in Council may make regulations,

(a) Repealed: 2011, c. 1, Sched. 1, s. 7 (6).

(b) authorizing the use in a form under this Part of any word or expression to designate a parking infraction;

(c), (d) Repealed: 2011, c. 1, Sched. 1, s. 7 (6).

(e) designating the persons or classes of persons who are required to prepare a notice of impending conviction or a certificate requesting a conviction for municipalities and for other bodies on whose behalf parking infraction notices are issued;

(e.1) designating a person or class of persons for the purposes of subsection 17 (4), 17.1 (3), 17.1 (5), 17.1 (6), 18.1 (4), 18.1.1 (3) or 18.1.2 (2);

(f) providing that the procedure set out in subsections 18.4 (2) to (10) is to apply to all proceedings under this Part;

(g) authorizing Ontario to pay allowances to municipalities and other bodies that issue notices of impending conviction and that collect fines under this Part, providing for the payment of those allowances from the court costs received in connection with the fines levied under this Part and fixing the amount of the allowances;

(h) Repealed: 2009, c. 33, Sched. 4, s. 1 (30).

(i) designating the person to whom a notice certifying that a fine is in default under subsection 18.6 (4) is to be sent;

(j) designating municipalities for the purposes of sections 17.1 and 18.1.1. 1992, c. 20, s. 1 (1); 1993, c. 31, s. 1 (20, 21); 1994, c. 27, s. 52 (4); 2009, c. 33, Sched. 4, s. 1 (30); 2011, c. 1, Sched. 1, s. 7 (6, 7).

Same, Attorney General

(1.1) The Attorney General may make regulations,

(a) prescribing the forms that are considered necessary under this Part;

(b) respecting any matter that is considered necessary to provide for the use of the forms under this Part;

(c) prescribing information that is required to be included in a parking infraction notice, a notice of impending conviction or a certificate requesting a conviction;

(d) prescribing the information to be included in a notice certifying that a fine is in default under subsection 18.6 (4). 2011, c. 1, Sched. 1, s. 7 (8).

Sufficiency of abbreviations

(2) The use on a form prescribed under clause (1.1) (a) of any word or expression authorized by the regulations to designate a parking infraction is sufficient for all purposes to describe the infraction designated by such word or expression.

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1992, c. 20, s. 1 (1); 2011, c. 1, Sched. 1, s. 7 (9).

Idem

(3) Where the regulations do not authorize the use of a word or expression to describe a parking infraction in a form prescribed under clause (1.1) (a), the offence may be described in accordance with section 25. 1992, c. 20, s. 1 (1) ; 2011, c. 1, Sched. 1, s. 7 (9).

Note: Part II of this Act, as it read immediately before September 1, 1993 continues to apply to proceedings that were commenced before September 1, 1993. See: 1992, c. 20, s. 3.

PART III
COMMENCEMENT OF PROCEEDING BY INFORMATION

Commencement of proceeding by information

21. (1) In addition to the procedure set out in Parts I and II for commencing a proceeding by the filing of a certificate, a proceeding in respect of an offence may be commenced by laying an information. R.S.O. 1990, c. P.33, s. 21 (1).

Exception

(2) Where a summons or offence notice has been served under Part I, no proceeding shall be commenced under subsection (1) in respect of the same offence except with the consent of the Attorney General or his or her agent. R.S.O. 1990, c. P.33, s. 21 (2); 2006, c. 21, Sched. C, s. 131 (4).

Summons before information laid

22. Where a provincial offences officer believes, on reasonable and probable grounds, that an offence has been committed by a person whom the officer finds at or near the place where the offence was committed, he or she may, before an information is laid, serve the person with a summons in the prescribed form. R.S.O. 1990, c. P.33, s. 22.

Information

23. (1) Any person who, on reasonable and probable grounds, believes that one or more persons have committed an offence, may lay an information in the prescribed form and under oath before a justice alleging the offence and the justice shall receive the information. R.S.O. 1990, c. P.33, s. 23 (1).

Multiple defendants

(1.1) For greater certainty, an information laid under subsection (1) may include one or more persons. 2009, c. 33, Sched. 4, s. 1 (32).

Where information may be laid

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(2) An information may be laid anywhere in Ontario. R.S.O. 1990, c. P.33, s. 23 (2).

Procedure on laying of information

24. (1) A justice who receives an information laid under section 23 shall consider the information and, where he or she considers it desirable to do so, hear and consider in the absence of the defendant the allegations of the informant and the evidence of witnesses and,

(a) where he or she considers that a case for so doing is made out,

(i) confirm the summons served under section 22, if any,

(ii) issue a summons in the prescribed form, or

(iii) where the arrest is authorized by statute and where the allegations of the informant or the evidence satisfy the justice on reasonable and probable grounds that it is necessary in the public interest to do so, issue a warrant for the arrest of the defendant; or

(b) where he or she considers that a case for issuing process is not made out,

(i) so endorse the information, and

(ii) where a summons was served under section 22, cancel it and cause the defendant to be so notified.

Summons or warrants in blank

(2) A justice shall not sign a summons or warrant in blank. R.S.O. 1990, c. P.33, s. 24.

Counts

25. (1) Each offence charged in an information shall be set out in a separate count. R.S.O. 1990, c. P.33, s. 25 (1).

Allegation of offence

(2) Each count in an information shall in general apply to a single transaction and shall contain and is sufficient if it contains in substance a statement that the defendant committed an offence therein specified. R.S.O. 1990, c. P.33, s. 25 (2).

Reference to statutory provision

(3) Where in a count an offence is identified but the count fails to set out one or more of the essential elements of the offence, a reference to the provision creating or defining the offence shall be deemed to incorporate all the essential elements of the offence. R.S.O. 1990, c. P.33, s. 25 (3).

Idem

(4) The statement referred to in subsection (2) may be,

(a) in popular language without technical averments or allegations of matters that are not essential to be proved;

(b) in the words of the enactment that describes the offence; or

(c) in words that are sufficient to give to the defendant notice of the offence with which the defendant is charged. R.S.O. 1990, c. P.33, s. 25 (4).

More than one count

(5) Any number of counts for any number of offences may be joined in the same information. R.S.O. 1990, c. P.33, s. 25 (5).

Particulars of count

(6) A count shall contain sufficient detail of the circumstances of the alleged offence to give to the defendant reasonable information with respect to the act or omission to be proved against the defendant and to identify the transaction referred to. R.S.O. 1990, c. P.33, s. 25 (6).

Sufficiency

(7) No count in an information is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of this section and, without restricting the generality of the foregoing, no count in an information is insufficient by reason only that,

(a) it does not name the person affected by the offence or intended or attempted to be affected;

(b) it does not name the person who owns or has a special property or interest in property mentioned in the count;

(c) it charges an intent in relation to another person without naming or describing the other person;

(d) it does not set out any writing that is the subject of the charge;

(e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;

(f) it does not specify the means by which the alleged offence was committed;

(g) it does not name or describe with precision any person, place, thing or time; or

(h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained. R.S.O. 1990, c. P.33, s. 25 (7); 2009, c. 33, Sched. 4, s. 1 (33).

Idem

(8) A count is not objectionable for the reason only that,

(a) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an offence the matters, acts or omissions charged in the count; or

(b) it is double or multifarious. R.S.O. 1990, c. P.33, s. 25 (8); 1993, c. 27, Sched.

Need to negative exception, etc.

(9) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in an information. R.S.O. 1990, c. P.33, s. 25 (9).

Summons

26. (1) A summons issued under section 22 or 24 shall,

(a) be directed to the defendant;

(b) set out briefly the offence in respect of which the defendant is charged; and

(c) require the defendant to attend court at a time and place stated therein and to attend thereafter as required by the court in order to be dealt with according to law. R.S.O. 1990, c. P.33, s. 26 (1).

Service

(2) A summons shall be served by a provincial offences officer by delivering it personally to the person to whom it is directed or if that person cannot conveniently be found, by leaving it for the person at the person's last known or usual place of abode with an inmate thereof who appears to be at least sixteen years of age. R.S.O. 1990, c. P.33, s. 26 (2).

Service outside Ontario

(3) Despite subsection (2), where the person to whom a summons is directed does not reside in Ontario, the summons shall be deemed to have been duly served seven days after it has been sent by registered mail to the person's last known or usual place of abode. R.S.O. 1990, c. P.33, s. 26 (3).

Service on corporation

(4) Service of a summons on a corporation may be effected,

(a) in the case of a municipal corporation by,

(i) delivering the summons personally to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation, or

(ii) mailing the summons by registered mail to the municipal corporation at an address held out by it to be its address;

(b) in the case of any corporation, other than a municipal corporation, incorporated or continued by or under an Act by,

(i) delivering the summons personally to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office of the corporation, or

(ii) mailing the summons by registered mail to the corporation at an address held out by it to be its address;

(c) in the case of corporation not incorporated or continued by or under an Act by,

(i) a method provided under clause (b),

(ii) delivering the summons personally to the corporation's resident agent or agent for service or to any other representative of the corporation in Ontario, or

(iii) mailing the summons by registered mail to a person referred to in subclause (ii) or to an address outside Ontario, including outside Canada, held out by the corporation to be its address. 2009, c. 33, Sched. 4, s. 1 (34).

Date of mailed service

(4.1) A summons served by registered mail under subsection (4) is deemed to have been duly served seven days after the day of mailing. 2009, c. 33, Sched. 4, s. 1 (34).

Substitutional service

(5) A justice, upon motion and upon being satisfied that service cannot be made effectively on a corporation in accordance with subsection (4), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the corporation. R.S.O. 1990, c. P.33, s. 26 (5).

Proof of service

(6) Service of a summons may be proved by statement under oath or affirmation, written or oral, of the person who made the service. R.S.O. 1990, c. P.33, s. 26 (6).

Contents of warrant

27. (1) A warrant issued under section 24 shall,

(a) name or describe the defendant;

(b) set out briefly the offence in respect of which the defendant is charged; and

(c) order that the defendant be forthwith arrested and brought before a justice to be dealt with according to law.

Idem

(2) A warrant issued under section 24 remains in force until it is executed and need not be made returnable at any particular time. R.S.O. 1990, c. P.33, s. 27.

PART IV
TRIAL AND SENTENCING

TRIAL

Application of Part

28. This Part applies to a proceeding commenced under this Act. R.S.O. 1990, c. P.33, s. 28.

Territorial jurisdiction

29. (1) Subject to subsection (2), a proceeding in respect of an offence shall be heard and determined by the Ontario Court of Justice sitting in the county or district in which the offence occurred or in the area specified in the transfer agreement made under Part X. 2009, c. 33, Sched. 4, s. 1 (35).

Idem

(2) A proceeding in respect of an offence may be heard and determined in a county or district that adjoins that in which the offence occurred if,

(a) the court holds sittings in a place reasonably proximate to the place where the offence occurred; and

(b) the place of sitting referred to in clause (a) is named in the summons or offence notice. R.S.O. 1990, c. P.33, s. 29 (2).

Transfer to proper county

(3) Where a proceeding is taken in a county or district other than one referred to in subsection (1) or (2), the court shall order that the proceeding be transferred to the proper county or district and may where the defendant appears award costs under section 60. R.S.O. 1990, c. P.33, s. 29 (3).

Change of venue

(4) Where, on the motion of a defendant or prosecutor made to the court at the location named in the information or certificate, it appears to the court that,

(a) it would be appropriate in the interests of justice to do so; or

(b) both the defendant and prosecutor consent thereto,

the court may order that the proceeding be heard and determined at another location in Ontario. R.S.O. 1990, c. P.33, s. 29 (4).

Conditions

(5) The court may, in an order made on a motion by the prosecutor under subsection (3) or (4), prescribe conditions that it thinks proper with respect to the payment of additional expenses caused to the defendant as a result of the change of venue. R.S.O. 1990, c. P.33, s. 29 (5).

Time of order for change of venue

(6) An order under subsection (3) or (4) may be made even if a motion preliminary to trial has been disposed of or the plea has been taken and it may be made at any time before evidence has been heard. R.S.O. 1990, c. P.33, s. 29 (6).

Preliminary motions

(7) The court at a location to which a proceeding is transferred under this section may receive and determine any motion preliminary to trial although the same matter was determined by the court at the location from which the proceeding was transferred. R.S.O. 1990, c. P.33, s. 29 (7).

Delivery of papers

(8) Where an order is made under subsection (3) or (4), the clerk of the court at the location where the trial was to be held before the order was made shall deliver any material in his or her possession in connection with the proceeding forthwith to the clerk of the court at the location where the trial is ordered to be held. R.S.O. 1990, c. P.33, s. 29 (8).

Justice presiding at trial

30. (1) The justice presiding when evidence is first taken at the trial shall preside over the whole of the trial. R.S.O. 1990, c. P.33, s. 30 (1).

When presiding justice unable to act before adjudication

(2) Where evidence has been taken at a trial and, before making his or her adjudication, the presiding justice dies or in his or her opinion or the opinion of the Chief Justice of the Ontario Court of Justice is for any reason unable to continue, another justice shall conduct the hearing again as a new trial. R.S.O. 1990, c. P.33, s. 30 (2); 2000, c. 26, Sched. A, s. 13 (6); 2002, c. 18, Sched. A, s. 15 (6).

When presiding justice unable to act after adjudication

(3) Where evidence has been taken at a trial and, after making his or her adjudication but before making his or her order or imposing sentence, the presiding justice dies or in his or her opinion or the opinion of the Chief Justice of the Ontario Court of Justice is for any reason unable to continue, another justice may make the order or impose the sentence that is authorized by law. R.S.O. 1990, c. P.33, s. 30 (3); 2000, c. 26, Sched. A, s. 13 (6); 2002, c. 18, Sched. A, s. 15 (6).

Consent to change presiding justice

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(4) A justice presiding at a trial may, at any stage of the trial and upon the consent of the prosecutor and defendant, order that the trial be conducted by another justice and, upon the order being given, subsection (2) applies as if the justice were unable to act. R.S.O. 1990, c. P.33, s. 30 (4).

Retention of jurisdiction

31. The court retains jurisdiction over the information or certificate even if the court fails to exercise its jurisdiction at any particular time or the provisions of this Act respecting adjournments are not complied with. R.S.O. 1990, c. P.33, s. 31.

Stay of proceeding

32. (1) In addition to his or her right to withdraw a charge, the Attorney General or his or her agent may stay a proceeding at any time before judgment by direction in court to the clerk of the court and thereupon any recognizance relating to the proceeding is vacated. R.S.O. 1990, c. P.33, s. 32 (1); 2006, c. 21, Sched. C, s. 131 (5).

Recommencement

(2) A proceeding stayed under subsection (1) may be recommenced by direction of the Attorney General, the Deputy Attorney General or a Crown Attorney to the clerk of the court but a proceeding that is stayed shall not be recommenced,

(a) later than one year after the stay; or

(b) after the expiration of any limitation period applicable, which shall run as if the proceeding had not been commenced until the recommencement,

whichever is the earlier. R.S.O. 1990, c. P.33, s. 32 (2).

Dividing counts

33. (1) A defendant may at any stage of the proceeding make a motion to the court to amend or to divide a count that,

(a) charges in the alternative different matters, acts or omissions that are stated in the alternative in the enactment that creates or describes the offence; or

(b) is double or multifarious,

on the ground that, as framed, it prejudices the defendant in the defendant's defence.

Idem

(2) Upon a motion under subsection (1), where the court is satisfied that the ends of justice so require, it may order that a count be amended or divided into two or more counts, and thereupon a formal commencement may be inserted before each of the counts into which it is divided. R.S.O. 1990, c. P.33, s. 33.

Amendment of information or certificate

34. (1) The court may, at any stage of the proceeding, amend the information or certificate as may be necessary if it appears that the information or certificate,

(a) fails to state or states defectively anything that is requisite to charge the offence;

(b) does not negative an exception that should be negatived; or

(c) is in any way defective in substance or in form.

Idem

(2) The court may, during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial.

Variances between charge and evidence

(3) A variance between the information or certificate and the evidence taken on the trial is not material with respect to,

(a) the time when the offence is alleged to have been committed, if it is proved that the information was laid or certificate issued within the prescribed period of limitation; or

(b) the place where the subject-matter of the proceeding is alleged to have arisen, except in an issue as to the jurisdiction of the court.

Considerations on amendment

(4) The court shall, in considering whether or not an amendment should be made, consider,

(a) the evidence taken on the trial, if any;

(b) the circumstances of the case;

(c) whether the defendant has been misled or prejudiced in the defendant's defence by a variance, error or omission; and

(d) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.

Amendment, question of law

(5) The question whether an order to amend an information or certificate should be granted or refused is a question of law. R.S.O. 1990, c. P.33, s. 34 (1-5).

Endorsement of order to amend

(6) An order to amend an information or certificate shall be endorsed on the information or certificate as part of the record

and the trial shall proceed as if the information or certificate had been originally laid as amended. R.S.O. 1990, c. P.33, s. 34 (6); 1993, c. 27, Sched.

Particulars

35. The court may, before or during trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceeding, be furnished to the defendant. R.S.O. 1990, c. P.33, s. 35.

Motion to quash information or certificate

36. (1) An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash the information or certificate before the defendant has pleaded, and thereafter only by leave of the court.

Grounds for quashing

(2) The court shall not quash an information or certificate unless an amendment or particulars under section 33, 34 or 35 would fail to satisfy the ends of justice. R.S.O. 1990, c. P.33, s. 36.

Costs on amendment or particulars

37. Where the information or certificate is amended or particulars are ordered and an adjournment is necessary as a result thereof, the court may make an order under section 60 for costs resulting from the adjournment. R.S.O. 1990, c. P.33, s. 37.

Joinder of counts or defendants

38. (1) The court may, before trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried together or that persons who are charged separately be tried together.

Separate trials

(2) The court may, before or during the trial, where it is satisfied that the ends of justice so require, direct that separate counts, informations or certificates be tried separately or that persons who are charged jointly or being tried together be tried separately. R.S.O. 1990, c. P.33, s. 38.

Issuance of summons

39. (1) Where a justice is satisfied that a person is able to give material evidence in a proceeding under this Act, the justice may issue a summons requiring the person to attend to give evidence and bring with him or her any writings or things referred to in the summons. R.S.O. 1990, c. P.33, s. 39 (1); 1993, c. 27, Sched.

Service

(2) A summons shall be served and the service shall be proved in the same manner as a summons under section 26. R.S.O. 1990, c. P.33, s. 39 (2).

Exception

(2.1) Despite subsection (2), a summons served under this section may be served by a person other than a provincial offences officer. 2009, c. 33, Sched. 4, s. 1 (36).

Attendance

(3) A person who is served with a summons shall attend at the time and place stated in the summons to give evidence and, if required by the summons, shall bring with him or her any writing or other thing that the person has in his or her possession or under his or her control relating to the subject-matter of the proceeding. R.S.O. 1990, c. P.33, s. 39 (3).

Remaining in attendance

(4) A person who is served with a summons shall remain in attendance during the hearing and the hearing as resumed after adjournment from time to time unless the person is excused from attendance by the presiding justice. R.S.O. 1990, c. P.33, s. 39 (4).

Arrest of witness

40. (1) Where a judge is satisfied upon evidence under oath or affirmation, that a person is able to give material evidence that is necessary in a proceeding under this Act and,

(a) will not attend if a summons is served; or

(b) attempts to serve a summons have been made and have failed because the person is evading service,

the judge may issue a warrant in the prescribed form for the arrest of the person.

Idem

(2) Where a person who has been served with a summons to attend to give evidence in a proceeding does not attend or remain in attendance, the court may, if it is established,

(a) that the summons has been served; and

(b) that the person is able to give material evidence that is necessary,

issue or cause to be issued a warrant in the prescribed form for the arrest of the person.

Bringing before justice

(3) The police officer who arrests a person under a warrant issued under subsection (1) or (2) shall immediately take the person before a justice.

Release on recognizance

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p33_e.htm

(4) Unless the justice is satisfied that it is necessary to detain a person in custody to ensure his or her attendance to give evidence, the justice shall order the person released upon condition that the person enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his or her attendance.

Bringing before judge

(5) Where a person is not released under subsection (4), the justice of the peace shall cause the person to be brought before a judge within two days of the justice's decision.

Detention

(6) Where the judge is satisfied that it is necessary to detain the person in custody to ensure his or her attendance to give evidence, the judge may order that the person be detained in custody to testify at the trial or to have his or her evidence taken by a commissioner under an order made under subsection (11).

Release on recognizance

(7) Where the judge does not make an order under subsection (6), he or she shall order that the person be released upon condition that the person enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure his or her attendance.

Maximum imprisonment

(8) A person who is ordered to be detained in custody under subsection (6) or is not released in fact under subsection (7) shall not be detained in custody for a period longer than ten days.

Release when no longer required

(9) A judge, or the justice presiding at a trial, may at any time order the release of a person in custody under this section where he or she is satisfied that the detention is no longer justified.

Arrest on breach of recognizance

(10) Where a person who is bound by a recognizance to attend to give evidence in any proceeding does not attend or remain in attendance, the court may issue a warrant in the prescribed form for the arrest of that person and,

(a) where the person is brought directly before the court, subsections (6) and (7) apply; and

(b) where the person is not brought directly before the court, subsections (3) to (7) apply.

Commission evidence of witness in custody

(11) A judge or the justice presiding at the trial may order that the evidence of a person held in custody under this section be taken by a commissioner under section 43, which applies thereto in the same manner as to a witness who is unable to attend

by reason of illness. R.S.O. 1990, c. P.33, s. 40.

Order for person in a prison to attend

41. (1) Where a person whose attendance is required in court to stand trial or to give evidence is confined in a prison, and a judge is satisfied, upon evidence under oath or affirmation orally or by affidavit, that the person's attendance is necessary to satisfy the ends of justice, the judge may issue an order in the prescribed form that the person be brought before the court, from day to day, as may be necessary.

Idem

(2) An order under subsection (1) shall be addressed to the person who has custody of the prisoner and on receipt thereof that person shall,

(a) deliver the prisoner to the police officer or other person who is named in the order to receive the prisoner; or

(b) bring the prisoner before the court upon payment of the person's reasonable charges in respect thereof.

Idem

(3) An order made under subsection (1) shall direct the manner in which the person shall be kept in custody and returned to the prison from which he or she is brought. R.S.O. 1990, c. P.33, s. 41.

Penalty for failure to attend

42. (1) Every person who, being required by law to attend or remain in attendance at a hearing, fails without lawful excuse to attend or remain in attendance accordingly is guilty of an offence and on conviction is liable to a fine of not more than $2,000, or to imprisonment for a term of not more than thirty days, or to both.

Proof of failure to attend

(2) In a proceeding under subsection (1), a certificate of the clerk of the court or a justice stating that the defendant failed to attend is admissible in evidence as proof, in the absence of evidence to the contrary, of the fact without proof of the signature or office of the person appearing to have signed the certificate. R.S.O. 1990, c. P.33, s. 42.

Order for evidence by commission

43. (1) Upon the motion of the defendant or prosecutor, a judge or, during trial, the court may by order appoint a commissioner to take the evidence of a witness who is out of Ontario or is not likely to be able to attend the trial by reason of illness or physical disability or for some other good and sufficient cause. R.S.O. 1990, c. P.33, s. 43 (1).

Admission of commission evidence

(2) Evidence taken by a commissioner appointed under subsection (1) may be read in evidence in the proceeding if,

(a) it is proved by oral evidence or by affidavit that the witness is unable to attend for a reason set out in subsection (1);

(b) the transcript of the evidence is signed by the commissioner by or before whom it purports to have been taken; and

(c) it is proved to the satisfaction of the court that reasonable notice of the time and place for taking the evidence was given to the other party, and the party had full opportunity to cross-examine the witness. R.S.O. 1990, c. P.33, s. 43 (2).

Attendance of accused

(3) An order under subsection (1) may make provision to enable the defendant to be present or represented by representative when the evidence is taken, but failure of the defendant to be present or to be represented by representative in accordance with the order does not prevent the reading of the evidence in the proceeding if the evidence has otherwise been taken in accordance with the order and with this section. R.S.O. 1990, c. P.33, s. 43 (3); 2006, c. 21, Sched. C, s. 131 (6).

Application of rules in civil cases

(4) Except as otherwise provided by this section or by the rules of court, the practice and procedure in connection with the appointment of commissioners under this section, the taking of evidence by commissioners, the certifying and return thereof, and the use of the evidence in the proceeding shall, as far as possible, be the same as those that govern like matters in civil proceedings in the Superior Court of Justice. R.S.O. 1990, c. P.33, s. 43 (4); 2000, c. 26, Sched. A, s. 13 (5).

Trial of issue as to capacity to conduct defence

44. (1) Where at any time before a defendant is sentenced a court has reason to believe, based on,

(a) the evidence of a legally qualified medical practitioner or, with the consent of the parties, a written report of a legally qualified medical practitioner; or

(b) the conduct of the defendant in the courtroom,

that the defendant suffers from mental disorder, the court may,

(c) where the justice presiding is a judge, by order suspend the proceeding and direct the trial of the issue as to whether the defendant is, because of mental disorder, unable to conduct his or her defence; or

(d) where the justice presiding is a justice of the peace, refer the matter to a judge who may make an order referred to in clause (c).

Examination

(2) For the purposes of subsection (1), the court may order the defendant to attend to be examined under subsection (5).

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Finding

(3) The trial of the issue shall be presided over by a judge and,

(a) where the judge finds that the defendant is, because of mental disorder, unable to conduct his or her defence, the judge shall order that the proceeding remain suspended;

(b) where the judge finds that the defendant is able to conduct his or her defence, the judge shall order that the suspended proceeding be continued.

Application for rehearing as to capacity

(4) At any time within one year after an order is made under subsection (3), either party may, upon seven days notice to the other, make a motion to a judge to rehear the trial of the issue and where upon the rehearing the judge finds that the defendant is able to conduct his or her defence, the judge may order that the suspended proceeding be continued. R.S.O. 1990, c. P.33, s. 44 (1-4).

Order for examination

(5) For the purposes of subsection (1) or a hearing or rehearing under subsection (3) or (4), the court or judge may order the defendant to attend at such place or before such person and at or within such time as are specified in the order and submit to an examination for the purpose of determining whether the defendant is, because of mental disorder, unable to conduct his or her defence. R.S.O. 1990, c. P.33, s. 44 (5); 1993, c. 27, Sched.

Idem

(6) Where the defendant fails or refuses to comply with an order under subsection (5) without reasonable excuse or where the person conducting the examination satisfies a judge that it is necessary to do so, the judge may by warrant direct that the defendant be taken into such custody as is necessary for the purpose of the examination and in any event for not longer than seven days and, where it is necessary to detain the defendant in a place, the place shall be, where practicable, a psychiatric facility.

Limitation on suspension of proceeding

(7) Where an order is made under subsection (3) and one year has elapsed and no further order is made under subsection (4), no further proceeding shall be taken in respect of the charge or any other charge arising out of the same circumstance. R.S.O. 1990, c. P.33, s. 44 (6, 7).

Taking of plea

45. (1) After being informed of the substance of the information or certificate, the defendant shall be asked whether the defendant pleads guilty or not guilty of the offence charged in it. 2009, c. 33, Sched. 4, s. 1 (37).

Conviction on plea of guilty

(2) Where the defendant pleads guilty, the court may accept the plea and convict the defendant. 2009, c. 33, Sched. 4, s. 1 (37).

Conditions of accepting plea

(3) A court may accept a plea of guilty only if it is satisfied that the defendant,

(a) is making the plea voluntarily;

(b) understands that the plea is an admission of the essential elements of the offence;

(c) understands the nature and consequences of the plea; and

(d) understands that the court is not bound by any agreement made between the defendant and the prosecutor. 2009, c. 33, Sched. 4, s. 1 (37).

Validity of plea not affected

(4) The failure of a court to fully inquire into whether the conditions set out in subsection (3) are met does not affect the validity of the plea. 2009, c. 33, Sched. 4, s. 1 (37).

Refusal to plead

(5) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty. 2009, c. 33, Sched. 4, s. 1 (37).

Plea of guilty to another offence

(6) Where the defendant pleads guilty of an offence other than the offence charged, and whether or not it is an included offence and whether or not the defendant has pleaded not guilty to the offence charged, the court may, with the consent of the prosecutor, accept such plea of guilty and accordingly amend the certificate of offence, the certificate of parking infraction or the information, as the case may be, or substitute the offence to which the defendant pleads guilty. 2009, c. 33, Sched. 4, s. 1 (37).

Judicial pre-trial conferences

45.1 (1) On application by the prosecutor or the defendant or on his or her own motion, a justice may order that a pre-trial conference be held between the prosecutor and the defendant or a representative of the defendant. 2009, c. 33, Sched. 4, s. 1 (38).

Matters for consideration

(2) The court, or a justice of the court, shall preside over the pre-trial conference, the purpose of which is to,

(a) consider the matters that, to promote a fair and expeditious trial, would be better decided before the start of the proceedings and other similar matters; and

(b) make arrangements for decisions on those matters. 2009, c. 33, Sched. 4, s. 1 (38).

Trial on plea of not guilty

46. (1) If the defendant pleads not guilty, the court shall hold the trial. 2009, c. 33, Sched. 4, s. 1 (39).

Right to defend

(2) The defendant is entitled to make full answer and defence. R.S.O. 1990, c. P.33, s. 46 (2).

Right to examine witnesses

(3) The prosecutor or defendant, as the case may be, may examine and cross-examine witnesses. R.S.O. 1990, c. P.33, s. 46 (3).

Agreed facts

(4) The court may receive and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence. R.S.O. 1990, c. P.33, s. 46 (4).

Defendant not compellable

(5) Despite section 8 of the *Evidence Act*, the defendant is not a compellable witness for the prosecution. R.S.O. 1990, c. P.33, s. 46 (5).

Evidence and burden of proof

Evidence taken on another charge

47. (1) The court may receive and consider evidence taken before the same justice on a different charge against the same defendant, with the consent of the parties. R.S.O. 1990, c. P.33, s. 47 (1).

Certificate as evidence

(2) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as proof, in the absence of evidence to the contrary, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case. R.S.O. 1990, c. P.33, s. 47 (2); 1993, c. 27, Sched.

Burden of proving exception, etc.

(3) The burden of proving that an authorization, exception, exemption or qualification prescribed by law operates in favour of the defendant is on the defendant, and the prosecutor is not required, except by way of rebuttal, to prove that the

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authorization, exception, exemption or qualification does not operate in favour of the defendant, whether or not it is set out in the information. R.S.O. 1990, c. P.33, s. 47 (3).

Exhibits

48. (1) The court may order that an exhibit be kept in such custody and place as, in the opinion of the court, is appropriate for its preservation.

Release of exhibits

(2) Where any thing is filed as an exhibit in a proceeding, the clerk may release the exhibit upon the consent of the parties at any time after the trial or, in the absence of consent, may return the exhibit to the party tendering it after the disposition of any appeal in the proceeding or, where an appeal is not taken, after the expiration of the time for appeal. R.S.O. 1990, c. P.33, s. 48.

Certificate evidence

48.1 (1) The certified statements in a certificate of offence or certificate of parking infraction are admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated therein. 1993, c. 31, s. 1 (22).

Exception

(2) Subsection (1) does not apply if the defendant has indicated under section 5.2, subsection 11 (3), section 18.1.2 or subsection 19 (3) that the defendant intends to challenge the evidence of the provincial offences officer who completed the certificate. 1993, c. 31, s. 1 (22).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 48.1 is repealed and the following substituted:

Certified evidence

Application

48.1 (1) This section applies to a hearing, including a hearing in the absence of a defendant under section 54, where,

(a) the proceeding for the offence was commenced by certificate under Part I or II; and

(b) the offence is specified by the regulations. 2009, c. 33, Sched. 4, s. 1 (40).

Admissibility of certified evidence

(2) The following are admissible in evidence as proof of the facts certified in it, in the absence of evidence to the contrary:

1. A certified statement in a certificate of offence.

2. A certified statement in a certificate of parking infraction.

3. Other types of certified evidence specified by the regulations. 2009, c. 33, Sched. 4, s. 1 (40).

Other provisions on admissibility

(3) For greater certainty, subsection (2) does not affect or interfere with the operation of a provision of this Act or any other Act that permits or specifies that a document or type of document be admitted into evidence as proof of the facts certified in it. 2009, c. 33, Sched. 4, s. 1 (40).

Onus

(4) For greater certainty, this section does not remove the onus on the prosecution to prove its case beyond a reasonable doubt. 2009, c. 33, Sched. 4, s. 1 (40).

No oral evidence

(5) A provincial offences officer who provides certified evidence referred to in subsection (2) in respect of a proceeding shall not be required to attend to give evidence at trial, except as provided under subsection 49 (4). 2009, c. 33, Sched. 4, s. 1 (40).

Regulations

(6) The Lieutenant Governor in Council may make regulations,

(a) specifying offences for the purposes of clause (1) (b);

(b) respecting other types of certified evidence for the purposes of paragraph 3 of subsection (2);

(c) respecting restrictions or conditions on the admissibility of evidence under subsection (2). 2009, c. 33, Sched. 4, s. 1 (40).

See: 2009, c. 33, Sched. 4, ss. 1 (40), 5 (4).

Adjournments

49. (1) The court may, from time to time, adjourn a trial or hearing but, where the defendant is in custody, an adjournment shall not be for a period longer than eight days without the consent of the defendant. R.S.O. 1990, c. P.33, s. 49 (1).

Early resumption

(2) A trial or hearing that is adjourned for a period may be resumed before the expiration of the period with the consent of the defendant and the prosecutor. R.S.O. 1990, c. P.33, s. 49 (2).

Adjournment

(3) Despite subsection (1), if the trial is being held in respect of a proceeding commenced under Part I or II, the court shall not adjourn the trial for the purpose of having the provincial offences officer who completed the certificate attend to give evidence unless the court is satisfied that the interests of justice require it. 1993, c. 31, s. 1 (23).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

Adjournment

(3) Despite subsection (1) and subject to subsection (4), if the trial is being held in respect of a proceeding commenced under Part I or II, the court shall not adjourn the trial for the purpose of having the provincial offences officer who completed the certificate of offence or the certificate of parking infraction, as the case may be, attend to give evidence unless the court is satisfied that the interests of justice require it. 2009, c. 33, Sched. 4, s. 1 (41).

Adjournment where certified evidence

(4) If certified evidence referred to in subsection 48.1 (2) is being admitted as evidence in a trial referred to in subsection (1), the court shall not adjourn the trial for the purpose of having any of the following persons attend to give evidence unless the court is satisfied that the oral evidence of the person is necessary in order to ensure a fair trial:

1. The provincial offences officer who completed the certificate of offence or the certificate of parking infraction, as the case may be.

2. Any provincial offences officer who provided certified evidence in respect of the proceeding. 2009, c. 33, Sched. 4, s. 1 (41).

See: 2009, c. 33, Sched. 4, ss. 1 (41), 5 (4).

Power of clerk to adjourn

(5) The clerk of the court may, on behalf of the court, adjourn,

(a) the first trial date for a proceeding commenced under Part I or Part II to a date agreed to by the defendant and the prosecutor in a written agreement filed with the court; and

(b) any proceeding under this Act or any step in a proceeding under this Act, where no justice is able to attend in person, to a date chosen in accordance with the instructions of a justice. 2009, c. 33, Sched. 4, s. 1 (42).

Appearance by defendant

50. (1) A defendant may appear and act personally or by representative. R.S.O. 1990, c. P.33, s. 50 (1); 2006, c. 21, Sched. C, s. 131 (7).

Appearance by corporation

(2) A defendant that is a corporation shall appear and act by representative. R.S.O. 1990, c. P.33, s. 50 (2); 2006, c. 21, Sched. C, s. 131 (7).

Exclusion of representatives

(3) The court may bar any person, other than a person who is licensed under the *Law Society Act*, from appearing as a representative if the court finds that the person is not competent properly to represent or advise the person for whom he or she appears, or does not understand and comply with the duties and responsibilities of a representative. 2006, c. 21, Sched. C, s. 131 (8).

Compelling attendance of defendant

51. Although a defendant appears by representative, the court may order the defendant to attend personally, and, where it appears to be necessary to do so, may issue a summons in the prescribed form. R.S.O. 1990, c. P.33, s. 51; 2006, c. 21, Sched. C, s. 131 (9).

Restrictions on hearing and publication

Excluding defendant from hearing

52. (1) The court may cause the defendant to be removed and to be kept out of court,

(a) when the defendant misconducts himself or herself by interrupting the proceeding so that to continue in the presence of the defendant would not be feasible; or

(b) where, during the trial of an issue as to whether the defendant is, because of mental disorder, unable to conduct his or her defence, the court is satisfied that failure to do so might have an adverse effect on the mental health of the defendant.

Excluding public from hearing

(2) The court may exclude the public or any member of the public from a hearing where, in the opinion of the court, it is necessary to do so,

(a) for the maintenance of order in the courtroom;

(b) to protect the reputation of a minor; or

(c) to remove an influence that might affect the testimony of a witness.

Prohibition of publication of evidence

(3) Where the court considers it necessary to do so to protect the reputation of a minor, the court may make an order prohibiting the publication or broadcast of the identity of the minor or of the evidence or any part of the evidence taken at the hearing. R.S.O. 1990, c. P.33, s. 52.

Failure of prosecutor to appear

53. (1) Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to another time upon such terms as it considers proper.

Idem

(2) Where the prosecutor does not appear at the time and place appointed for the resumption of an adjourned hearing under subsection (1), the court may dismiss the charge.

Costs

(3) Where a hearing is adjourned under subsection (1) or a charge is dismissed under subsection (2), the court may make an order under section 60 for the payment of costs.

Written order of dismissal

(4) Where a charge is dismissed under subsection (1) or (2), the court may, if requested by the defendant, draw up an order of dismissal stating the grounds therefor and shall give the defendant a certified copy of the order of dismissal which is, without further proof, a bar to any subsequent proceeding against the defendant in respect of the same cause. R.S.O. 1990, c. P.33, s. 53.

Conviction in the absence of the defendant

54. (1) Where a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, a notice of trial was given under Part I or II, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court may,

(a) proceed to hear and determine the proceeding in the absence of the defendant; or

(b) adjourn the hearing and, if it thinks fit, issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant. 2009, c. 33, Sched. 4, s. 1 (43).

Proceeding arising from failure to appear

(2) Where the court proceeds under clause (1) (a) or adjourns the hearing under clause (1) (b) without issuing a summons

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or warrant, no proceeding arising out of the failure of the defendant to appear at the time and place appointed for the hearing or for the resumption of the hearing shall be instituted, or if instituted shall be proceeded with, except with the consent of the Attorney General or his or her agent. 2009, c. 33, Sched. 4, s. 1 (43).

Included offences

55. Where the offence as charged includes another offence, the defendant may be convicted of an offence so included that is proved, although the whole offence charged is not proved. R.S.O. 1990, c. P.33, s. 55.

SENTENCING

Pre-sentence report

56. (1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence. R.S.O. 1990, c. P.33, s. 56 (1).

Service

(2) Where a report is filed with the court under subsection (1), the clerk of the court shall cause a copy of the report to be provided to the defendant or the defendant's representative and to the prosecutor. R.S.O. 1990, c. P.33, s. 56 (2); 2006, c. 21, Sched. C, s. 131 (11).

Other information relevant to sentence

Submissions as to sentence

57. (1) Where a defendant who appears is convicted of an offence, the court shall give the prosecutor and the defendant's representative an opportunity to make submissions as to sentence and, where the defendant has no representative, the court shall ask the defendant if he or she has anything to say before sentence is passed. 2006, c. 21, Sched. C, s. 131 (12).

Omission to comply

(2) The omission to comply with subsection (1) does not affect the validity of the proceeding. R.S.O. 1990, c. P.33, s. 57 (2).

Inquiries by court

(3) Where a defendant is convicted of an offence, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as it considers desirable, including the defendant's economic circumstances, but the defendant shall not be compelled to answer. R.S.O. 1990, c. P.33, s. 57 (3).

Proof of previous conviction

(4) A certificate setting out with reasonable particularity the finding of guilt or acquittal or conviction and sentence in Canada of a person signed by,

(a) the person who made the adjudication; or

(b) the clerk of the court where the adjudication was made,

is, upon the court being satisfied that the defendant is the person referred to in the certificate, admissible in evidence and is proof, in the absence of evidence to the contrary, of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the certificate. R.S.O. 1990, c. P.33, s. 57 (4); 1993, c. 27, Sched.

Time spent in custody considered

58. In determining the sentence to be imposed on a person convicted of an offence, the justice may take into account any time spent in custody by the person as a result of the offence. R.S.O. 1990, c. P.33, s. 58.

Provision for minimum penalty

59. (1) No penalty prescribed for an offence is a minimum penalty unless it is specifically declared to be a minimum.

Relief against minimum fine

(2) Although the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may impose a fine that is less than the minimum or suspend the sentence.

Idem, re imprisonment

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, despite the prescribed penalty, impose a fine of not more than $5,000 in lieu of imprisonment. R.S.O. 1990, c. P.33, s. 59.

Costs

Fixed costs on conviction

60. (1) Upon conviction, the defendant is liable to pay to the court an amount by way of costs that is fixed by the regulations.

Costs respecting witnesses

(2) The court may, in its discretion, order costs towards fees and expenses reasonably incurred by or on behalf of witnesses in amounts not exceeding the maximum fixed by the regulations, to be paid,

(a) to the court or prosecutor by the defendant; or

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(b) to the defendant by the person who laid the information or issued the certificate, as the case may be,

but where the proceeding is commenced by means of a certificate, the total of such costs shall not exceed $100.

Costs collectable as a fine

(3) Costs payable under this section shall be deemed to be a fine for the purpose of enforcing payment. R.S.O. 1990, c. P.33, s. 60.

Surcharge

60.1 (1) If a person is convicted of an offence in a proceeding commenced under Part I or III and a fine is imposed in respect of that offence, a surcharge is payable by that person in the amount determined by regulations made under this Act.

Collection

(2) The surcharge shall be deemed to be a fine for the purpose of enforcing payment.

Priorities

(3) Any payments made by a defendant shall be credited towards payment of the fine until it is fully paid and then towards payment of the surcharge. 1994, c. 17, s. 130.

Part X agreements

(3.1) When an agreement made under Part X applies to a fine, payments made by the defendant shall first be credited towards payment of the surcharge, not as described in subsection (3). 1998, c. 4, s. 1 (1).

Special purpose account

(4) Surcharges paid into the Consolidated Revenue Fund shall be credited to the victims' justice fund account and shall be deemed to be money received by the Crown for a special purpose. 1994, c. 17, s. 130; 1995, c. 6, s. 7 (1).

Same

(4.1) Subsection (4) also applies to payments received under clause 165 (5) (a). 1998, c. 4, s. 1 (1).

(5), (6) Repealed: 1995, c. 6, s. 7 (2).

Regulations

(7) The Lieutenant Governor in Council may make regulations,

(a) prescribing the amount of the surcharges or the method by which they are to be calculated;

(b) Repealed: 1995, c. 6, s. 7 (2).

(c) exempting any offence or class of offence from the application of subsection (1). 1994, c. 17, s. 130; 1995, c. 6,

s. 7 (2).

(8) Repealed: 1995, c. 6, s. 7 (2).

General penalty

61. Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than $5,000. R.S.O. 1990, c. P.33, s. 61.

Minute of conviction

62. Where a court convicts a defendant or dismisses a charge, a minute of the dismissal or conviction and sentence shall be made by the court, and, upon request by the defendant or the prosecutor or by the Attorney General or his or her agent, the court shall cause a copy thereof certified by the clerk of the court to be delivered to the person making the request. R.S.O. 1990, c. P.33, s. 62; 2006, c. 21, Sched. C, s. 131 (13).

Time when imprisonment starts

63. (1) The term of imprisonment imposed by sentence shall, unless otherwise directed in the sentence, commence on the day on which the convicted person is taken into custody thereunder, but no time during which the convicted person is imprisoned or out on bail before sentence shall be reckoned as part of the term of imprisonment to which he or she is sentenced.

Idem

(2) Where the court imposes imprisonment, the court may order custody to commence on a day not later than thirty days after the day of sentencing. R.S.O. 1990, c. P.33, s. 63.

Sentences consecutive

64. Where a person is subject to more than one term of imprisonment at the same time, the terms shall be served consecutively except in so far as the court has ordered a term to be served concurrently with any other term of imprisonment. R.S.O. 1990, c. P.33, s. 64.

Warrant of committal

65. (1) A warrant of committal is sufficient authority,

(a) for the conveyance of the prisoner in custody for the purpose of committal under the warrant; and

(b) for the reception and detention of the prisoner by keepers of prisons in accordance with the terms of the warrant.

Conveyance of prisoner

(2) A person to whom a warrant of committal is directed shall convey the prisoner to the correctional institution named in the warrant.

Prisoner subject to rules of institution

(3) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced. R.S.O. 1990, c. P.33, s. 65.

When fine due

66. (1) A fine becomes due and payable fifteen days after its imposition.

Extension of time for payment of a fine

(2) Where the court imposes a fine, the court shall ask the defendant if the defendant wishes an extension of the time for payment of the fine.

Inquiries

(3) Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or affirmation or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer.

Granting of extension

(4) Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise.

Notice where convicted in the absence of the defendant

(5) Where a fine is imposed in the absence of the defendant, the clerk of the court shall give the defendant notice of the fine and its due date and of the defendant's right to make a motion for an extension of the time for payment under subsection (6).

Further motion for extension

(6) The defendant may, at any time by motion in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the motion shall be determined by a justice and the justice has the same powers in respect of the motion as the court has under subsections (3) and (4). R.S.O. 1990, c. P.33, s. 66.

Defendant's address

66.1 If a court imposes a fine, grants an extension of time for payment of a fine or deals with a fine under section 69, and the defendant is before the court, the court shall require the defendant to provide the defendant's current address to the clerk of the court. 1993, c. 31, s. 1 (24).

Fee for refused cheque collectable as a fine

66.2 When a person purports to pay a fine by a cheque that the drawee of the cheque refuses to cash and thereby becomes liable to pay a fee in the amount prescribed for the purpose of section 8.1 of the *Financial Administration Act*, the fee shall be

deemed to be a fine for the purpose of enforcing payment. 1994, c. 27, s. 52 (5).

Regulation for work credits for fines

67. The Lieutenant Governor in Council may make regulations establishing a program to permit the payment of fines by means of credits for work performed, and, for the purpose and without restricting the generality of the foregoing may,

(a) prescribe classes of work and the conditions under which they are to be performed;

(b) prescribe a system of credits;

(c) provide for any matter necessary for the effective administration of the program,

and any regulation may limit its application to any part or parts of Ontario. R.S.O. 1990, c. P.33, s. 67.

Civil enforcement of fines

68. (1) When the payment of a fine is in default, the clerk of the court may complete a certificate in the prescribed form as to the imposition of the fine and the amount remaining unpaid and file the certificate in a court of competent jurisdiction and upon filing, the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement. R.S.O. 1990, c. P.33, s. 68 (1).

(2) Repealed: 2009, c. 33, Sched. 4, s. 1 (44).

Certificate of discharge

(3) Where a certificate has been filed under subsection (1) and the fine is fully paid, the clerk shall file a certificate of payment upon which the certificate of default is discharged and, where a writ of execution has been filed with the sheriff, the clerk shall file a certificate of payment with the sheriff, upon which the writ is cancelled. R.S.O. 1990, c. P.33, s. 68 (3).

Costs of enforcement

(4) Costs incurred in enforcing the deemed court order or judgment shall be added to the order or judgment and form part of it. 1993, c. 31, s. 1 (25).

More than one fine

(5) The clerk may complete and file one certificate under this section in respect of two or more fines imposed on the same person. 1994, c. 27, s. 52 (6).

Default

69. (1) The payment of a fine is in default if any part of it is due and unpaid for fifteen days or more. 1993, c. 31, s. 1 (26).

Order on default

(2) A justice of the peace who is satisfied that payment of a fine is in default,

(a) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized under any Act because of non-payment of the fine be suspended until the fine is paid;

(b) shall order that any permit, licence, registration or privilege in respect of which any Act authorizes a refusal to renew, validate or issue the permit, licence, registration or privilege because of non-payment of the fine not be renewed, validated or issued until the fine is paid; and

(c) may direct the clerk of the court to proceed with civil enforcement under section 68. 1993, c. 31, s. 1 (26).

***Highway Traffic Act* permits**

(3) If section 7 of the *Highway Traffic Act* authorizes an order or direction under this section that any permit under that Act not be validated or issued because payment of a fine is in default, a person designated by the regulations who is satisfied that payment of a fine is in default shall direct that until the fine is paid,

(a) validation of any permit held by the person who has defaulted be refused; and

(b) issuance of any permit to the person who has defaulted be refused. 2004, c. 22, s. 8.

Restriction

(4) If a person holds more than one permit and a direction in respect of that person is made under clause (3) (a), the direction shall not apply so as to prevent validation of any permit in respect of which the numbered plate evidencing validation of the permit had not been displayed on the vehicle involved in the infraction. 1993, c. 31, s. 1 (26).

***Highway Traffic Act* licences**

(5) If section 46 of the *Highway Traffic Act* authorizes an order or direction under this section that any licence under that Act be suspended or not be issued because payment of a fine is in default, a person designated by the regulations who is satisfied that payment of a fine is in default shall direct that until the fine is paid,

(a) if the person who has defaulted holds a licence, the licence be suspended; or

(b) if the person who has defaulted does not hold a licence, no licence be issued to him or her. 1993, c. 31, s. 1 (26).

Obtaining convicted person's attendance

(6) A justice may issue a warrant requiring that a person who has defaulted be arrested and brought before a justice as soon as possible if other reasonable methods of collecting the fine have been tried and have failed, or would not appear to be

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likely to result in payment within a reasonable period of time. 1993, c. 31, s. 1 (26).

Alternative summons procedure

(7) The clerk of the court that imposed the fine that is in default may issue a summons requiring the person who has defaulted to appear before a justice if the conditions described in subsection (6) exist. 1993, c. 31, s. 1 (26).

Service of summons

(8) The summons referred to in subsection (7) may be served by regular prepaid mail. 1993, c. 31, s. 1 (26).

Hearing

(9) If a person who has defaulted in paying a fine is brought before a justice as a result of a warrant issued under subsection (6) or such a person appears before a justice as a result of a summons issued under subsection (7), the justice shall hold a hearing to determine whether the person is unable to pay the fine within a reasonable period of time. 1993, c. 31, s. 1 (26).

Onus

(10) In a hearing under subsection (9), the onus of proving that the person is unable to pay the fine within a reasonable period of time is on the person who has defaulted. 1993, c. 31, s. 1 (26).

Adjournment

(11) The justice may adjourn the hearing from time to time at the request of the person who has defaulted. 1993, c. 31, s. 1 (26).

Warning

(12) When an adjournment is granted, the justice shall warn the person who has defaulted that if the person fails to appear for the resumption of the hearing, the hearing may proceed in the person's absence. 1993, c. 31, s. 1 (26).

Failure to warn

(13) If a hearing was adjourned and the person who has defaulted does not appear when it is resumed, the hearing may proceed in the person's absence even if the warning required by subsection (12) was not given. 1993, c. 31, s. 1 (26).

Warrant of committal

(14) If the justice is not satisfied that the person who has defaulted is unable to pay the fine within a reasonable period of time and that incarceration of the person would not be contrary to the public interest, the justice may issue a warrant for the person's committal or may order that such other steps be taken to enforce the fine as appear to him or her to be appropriate. 1993, c. 31, s. 1 (26).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 69 is amended by adding the following

subsection:

Inability to pay

(14.1) Despite subsection 165 (3), a defendant may, in accordance with the regulations, apply to a justice to reduce or expunge a defaulted fine under subsection (15) where the defendant meets the criteria for inability to pay defined in the regulations. 2009, c. 33, Sched. 4, s. 1 (45).

See: 2009, c. 33, Sched. 4, ss. 1 (45), 5 (4).

Inability to pay fine

(15) If the justice is satisfied that the person who has defaulted is unable to pay the fine within a reasonable period of time, the justice may,

(a) grant an extension of the time allowed for payment of the fine;

(b) require the person to pay the fine according to a schedule of payments established by the justice;

(c) in exceptional circumstances, reduce the amount of the fine or order that the fine does not have to be paid. 1993, c. 31, s. 1 (26).

Term of imprisonment

(16) Subject to subsection (17), the term of imprisonment under a warrant issued under subsection (14) shall be for three days, plus,

(a) if the amount that has not been paid is not greater than $50, one day; or

(b) if the amount that has not been paid is greater than $50, a number of days equal to the sum of one plus the number obtained when the unpaid amount is divided by $50, rounded down to the nearest whole number. 1993, c. 31, s. 1 (26).

Limit

(17) The term of imprisonment shall not exceed the greater of,

(a) ninety days; and

(b) half of the maximum number of days of imprisonment that may be imposed on conviction of the offence that the person who has defaulted was convicted of. 1993, c. 31, s. 1 (26).

Effect of payments

(18) Subject to subsection (19), a payment in respect of the fine in default that is made after a warrant is issued under subsection (14) shall result in a reduction of the term of imprisonment by the number of days that is in the same proportion to the term as the payment is to the amount in default. 1993, c. 31, s. 1 (26).

Restriction

(19) A payment that is less than the amount outstanding on the fine shall not result in a reduction of the term of imprisonment unless it is an amount that would reduce the term by a number of days that is a whole number. 1993, c. 31, s. 1 (26).

Exceptions

(20) Subsections (6) to (19) do not apply if,

(a) the person who has defaulted is less than eighteen years old; or

(b) the fine was imposed on conviction of an offence under subsection 31 (2) or (4) of the *Liquor Licence Act*. 1993, c. 31, s. 1 (26).

Exceptional circumstances

(21) In exceptional circumstances where, in the opinion of the court that imposed the fine, to proceed under subsections (6) to (14) would defeat the ends of justice, the court may order that no warrant be issued under subsection (6) and that no summons be issued under subsection (7). 1993, c. 31, s. 1 (26).

Regulations

(22) The Lieutenant Governor in Council may make regulations,

(a) designating a person or class of persons for purposes of subsections (3) and (5);

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (22) is amended by adding the following clause:

(a.1) prescribing the form and procedure for an application under subsection (14.1);

See: 2009, c. 33, Sched. 4, ss. 1 (46), 5 (4).

(b) prescribing criteria to be considered by a justice in determining whether a person is unable to pay a fine within a reasonable period of time. 1993, c. 31, s. 1 (26).

Disclosure to consumer reporting agency

69.1 (1) When a fine has been in default for at least 90 days, the Ministry of the Attorney General may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

Same

(2) When a fine disclosed to a consumer reporting agency has been paid in full, the Ministry of the Attorney General shall inform the agency of this fact as soon as possible after payment. 1994, c. 17, s. 131.

Fee where fine in default

70. (1) Where the payment of a fine is in default and the time for payment is not extended or further extended under subsection 66 (6), the defendant shall pay the administrative fee prescribed by the regulations.

Fee collectable as a fine

(2) For the purpose of making and enforcing payment, a fee payable under this section shall be deemed to be part of the fine that is in default. R.S.O. 1990, c. P.33, s. 70.

Suspension of fine on conditions

71. Where an Act provides that a fine may be suspended subject to the performance of a condition,

(a) the period of suspension shall be fixed by the court and shall be for not more than one year;

(b) the court shall provide in its order of suspension the method of proving the performance of the condition;

(c) the suspension is in addition to and not in lieu of any other power of the court in respect of the fine; and

(d) the fine is not in default until fifteen days have elapsed after notice that the period of suspension has expired is given to the defendant. R.S.O. 1990, c. P.33, s. 71; 1993, c. 27, Sched.

Probation order

72. (1) Where a defendant is convicted of an offence in a proceeding commenced by information, the court may, having regard to the age, character and background of the defendant, the nature of the offence and the circumstances surrounding its commission,

(a) suspend the passing of sentence and direct that the defendant comply with the conditions prescribed in a probation order;

(b) in addition to fining the defendant or sentencing the defendant to imprisonment, whether in default of payment of a fine or otherwise, direct that the defendant comply with the conditions prescribed in a probation order; or

(c) where it imposes a sentence of imprisonment on the defendant, whether in default of payment of a fine or otherwise,

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that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the defendant, at all times when he or she is not in confinement pursuant to such order, comply with the conditions prescribed in a probation order.

Statutory conditions of order

(2) A probation order shall be deemed to contain the conditions that,

(a) the defendant not commit the same or any related or similar offence, or any offence under a statute of Canada or Ontario or any other province of Canada that is punishable by imprisonment;

(b) the defendant appear before the court as and when required; and

(c) the defendant notify the court of any change in the defendant's address.

Conditions imposed by court

(3) In addition to the conditions set out in subsection (2), the court may prescribe as a condition in a probation order,

(a) that the defendant satisfy any compensation or restitution that is required or authorized by an Act;

(b) with the consent of the defendant and where the conviction is of an offence that is punishable by imprisonment, that the defendant perform a community service as set out in the order;

(c) where the conviction is of an offence punishable by imprisonment, such other conditions relating to the circumstances of the offence and of the defendant that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to the rehabilitation of the defendant; or

(d) where considered necessary for the purpose of implementing the conditions of the probation order, that the defendant report to a responsible person designated by the court and, in addition, where the circumstances warrant it, that the defendant be under the supervision of the person to whom he or she is required to report.

Form of order

(4) A probation order shall be in the prescribed form and the court shall specify therein the period for which it is to remain in force, which shall not be for more than two years from the date when the order takes effect.

Notice of order

(5) Where the court makes a probation order, it shall cause a copy of the order and a copy of section 75 to be given to the defendant.

Regulations for community service orders

(6) The Lieutenant Governor in Council may make regulations governing restitution, compensation and community service orders, including their terms and conditions. R.S.O. 1990, c. P.33, s. 72.

Exception

(7) The court shall not make a probation order when an individual has been convicted of an absolute liability offence, unless the order is made in addition to a sentence of imprisonment imposed under section 69 in default of payment of a fine. 1994, c. 27, s. 52 (7).

When order comes into force

73. (1) A probation order comes into force,

(a) on the date on which the order is made; or

(b) where the defendant is sentenced to imprisonment other than a sentence to be served intermittently, upon the expiration of that sentence.

Continuation in force

(2) Subject to section 75, where a defendant who is bound by a probation order is convicted of an offence or is imprisoned in default of payment of a fine, the order continues in force except in so far as the sentence or imprisonment renders it impossible for the defendant to comply for the time being with the order. R.S.O. 1990, c. P.33, s. 73.

Variation of probation order

74. The court may, at any time upon the application of the defendant or prosecutor with notice to the other, after a hearing or, with the consent of the parties, without a hearing,

(a) make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances;

(b) relieve the defendant, either absolutely or upon such terms or for such period as the court considers desirable, of compliance with any condition described in any of the clauses in subsection 72 (3) that is prescribed in the order; or

(c) terminate the order or decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order, inform the defendant of its action and give the defendant a copy of the order so endorsed. R.S.O. 1990, c. P.33, s. 74.

Breach of probation order

75. Where a defendant who is bound by a probation order is convicted of an offence constituting a breach of condition of

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the order and,

(a) the time within which the defendant may appeal or make a motion for leave to appeal against that conviction has expired and the defendant has not taken an appeal or made a motion for leave to appeal;

(b) the defendant has taken an appeal or made a motion for leave to appeal against the conviction and the appeal or motion for leave has been dismissed or abandoned; or

(c) the defendant has given written notice to the court that convicted the defendant that the defendant elects not to appeal,

or where the defendant otherwise wilfully fails or refuses to comply with the order, the defendant is guilty of an offence and upon conviction the court may,

(d) impose a fine of not more than $1,000 or imprisonment for a term of not more than thirty days, or both, and in lieu of or in addition to the penalty, continue the probation order with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable; or

(e) where the justice presiding is the justice who made the original order, in lieu of imposing the penalty under clause (d), revoke the probation order and impose the sentence the passing of which was suspended upon the making of the probation order. R.S.O. 1990, c. P.33, s. 75.

PART V
GENERAL PROVISIONS

Limitation

76. (1) A proceeding shall not be commenced after the expiration of any limitation period prescribed by or under any Act for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

Extension

(2) A limitation period may be extended by a justice with the consent of the defendant. R.S.O. 1990, c. P.33, s. 76.

Electronic format and filing

76.1 (1) A document may, in accordance with the regulations, be completed, signed and filed by electronic means in an electronic format. 2009, c. 33, Sched. 4, s. 1 (47).

Electronic copy

(1.1) When a document is filed in paper form, an electronic copy may be retained instead of the paper original if there

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exists a reliable assurance as to the integrity of the information contained in the electronic copy. 2000, c. 26, Sched. A, s. 13 (1).

Duty to ensure integrity

(1.2) A person who makes, stores or reproduces an electronic copy of a document for the purposes of subsection (1.1) shall take all reasonable steps to ensure the integrity of the information contained in the electronic copy. 2000, c. 26, Sched. A, s. 13 (1).

Deemed original

(2) A printed copy of a document filed under subsection (1) or retained under subsection (1.1) shall be deemed to have been filed as the original document if it is printed in accordance with the regulations and for the purpose of disposing of a charge under this Act. 1993, c. 31, s. 1 (27); 2000, c. 26, Sched. A, s. 13 (2).

Interpretation

(3) In this section,

"document" includes a certificate of offence, certificate of parking infraction, a certificate requesting a conviction, an offence notice and a parking infraction notice. 1993, c. 31, s. 1 (27).

Regulations

(4) The Lieutenant Governor in Council may make regulations respecting,

(a) the completion and signing of documents by electronic means;

(b) the filing of documents by direct electronic transmission;

(c) the printing of documents filed by direct electronic transmission. 1993, c. 31, s. 1 (27).

Parties to offence

77. (1) Every person is a party to an offence who,

(a) actually commits it;

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

Common purpose

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to

the offence. R.S.O. 1990, c. P.33, s. 77.

Counselling

78. (1) Where a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to the offence, the person who counselled or procured is a party to the offence, even if the offence was committed in a way different from that which was counselled or procured.

Idem

(2) Every person who counsels or procures another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling or procuring that the person who counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring. R.S.O. 1990, c. P.33, s. 78.

Computation of age

79. In the absence of other evidence, or by way of corroboration of other evidence, a justice may infer the age of a person from his or her appearance. R.S.O. 1990, c. P.33, s. 79; 1993, c. 27, Sched.

Common law defences

80. Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of offences, except in so far as they are altered by or inconsistent with this or any other Act. R.S.O. 1990, c. P.33, s. 80.

Ignorance of the law

81. Ignorance of the law by a person who commits an offence is not an excuse for committing the offence. R.S.O. 1990, c. P.33, s. 81.

Representation

82. A defendant may act by representative. 2006, c. 21, Sched. C, s. 131 (14).

Evidence, recording and taking

83. (1) A proceeding in which evidence is taken shall be recorded.

Evidence under oath or affirmation

(2) Evidence under this Act shall be taken under oath or affirmation, except as otherwise provided by law. R.S.O. 1990, c. P.33, s. 83.

Definition

83.1 (1) In this section,

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"electronic method" means video conference, audio conference, telephone conference or other method determined by the regulations. 2009, c. 33, Sched. 4, s. 1 (48).

Appearance by electronic method

(2) Subject to this section, in any proceeding under this Act or any step in a proceeding under this Act, if the appropriate equipment is available at the courthouse where the proceeding occurs,

(a) a witness may give evidence by electronic method;

(b) a defendant may appear by electronic method;

(c) a prosecutor may appear and prosecute by electronic method; and

(d) an interpreter may interpret by electronic method. 2009, c. 33, Sched. 4, s. 1 (48).

Consent required

(3) A witness may appear by electronic method to give evidence in a proceeding commenced by information under Part III only with the consent of both the prosecutor and the defendant. 2009, c. 33, Sched. 4, s. 1 (48).

Attendance by justice

(3.1) A justice may attend and conduct a sentencing hearing under sections 5.1 and 7 and any other proceeding or any step in a proceeding determined by the regulations, by means of electronic method, if the appropriate equipment is available at the courthouse where the proceeding occurs, and the justice may,

(a) adjourn the sentencing hearing to have the defendant appear in person before the justice for the purpose of ensuring that the defendant understands the plea; and

(b) adjourn any other proceeding or step in a proceeding determined by the regulations if he or she is satisfied that the interests of justice require it or it is necessary for a fair trial. 2009, c. 33, Sched. 4, s. 1 (49).

Limited use of certain electronic methods

(4) Attendance by audio conference or telephone conference may only be used for the purpose of,

(a) attending a pre-trial conference;

(b) attending a meeting between the defendant and the prosecutor under section 5.1; or

(c) attending or appearing at any other proceeding or step in a proceeding determined by the regulations. 2009, c. 33, Sched. 4, s. 1 (48).

Appearance in person

(5) The court may order any person described in subsection (2) to appear in person if it is satisfied that the interests of justice require it or it is necessary for a fair trial. 2009, c. 33, Sched. 4, s. 1 (48).

Oaths

(6) Despite the *Commissioners for taking Affidavits Act*, where evidence is given under oath by electronic method, the oath may be administered by the same electronic method. 2009, c. 33, Sched. 4, s. 1 (48).

Regulations

(7) The Lieutenant Governor in Council may make regulations,

(a) respecting the conditions for using any electronic method, including the degree of any remoteness required;

(b) determining proceedings where attendance or appearance may be made by electronic method;

(c) requiring the payment of fees for using electronic methods, fixing the amounts of the fees, and prescribing the circumstances in which and the conditions under which a justice or another person designated in the regulations may waive the payment of a fee. 2009, c. 33, Sched. 4, s. 1 (48).

Interpreters

84. (1) A justice may authorize a person to act as interpreter in a proceeding before the justice where the person swears the prescribed oath and, in the opinion of the justice, is competent.

Idem

(2) A judge may authorize a person to act as interpreter in proceedings under this Act where the person swears the prescribed oath and, in the opinion of the judge is competent and likely to be readily available. R.S.O. 1990, c. P.33, s. 84.

Extension of time

85. (1) Subject to this section, the court may extend any time fixed by this Act, by the regulations made under this Act or the rules of court for doing any thing other than commencing or recommencing a proceeding, whether or not the time has expired. 2009, c. 33, Sched. 4, s. 1 (50).

Limit on number of applications

(2) No more than one application for an extension of the time for filing of an appeal may be made in respect of a conviction. 2009, c. 33, Sched. 4, s. 1 (50).

Exception for commencing parking proceeding

(3) A justice may extend the time for commencing a parking proceeding where the court is unable to obtain proof of

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ownership of the vehicle or to send a notice of impending conviction to the defendant within that time because of extraordinary circumstances, including labour disputes and disruptions of postal services, power services and technological facilities. 2009, c. 33, Sched. 4, s. 1 (50).

Penalty for false statements

86. Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than $2,000. R.S.O. 1990, c. P.33, s. 86.

Delivery

87. (1) Any notice or document required or authorized to be given or delivered under this Act or the rules of court is sufficiently given or delivered if,

(a) delivered personally or by mail;

(b) delivered in accordance with a method provided by this Act or the regulations; or

(c) delivered in accordance with a method provided under any other Act or prescribed by the rules of court. 2009, c. 33, Sched. 4, s. 1 (51).

Same

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act is mailed to the person at the person's last known address appearing on the records of the court in the proceeding, there is a rebuttable presumption that the notice or document is delivered to the person. 2009, c. 33, Sched. 4, s. 1 (51).

Regulations

(3) The Lieutenant Governor in Council may make regulations respecting the method of delivery for any notice or document, including additional electronic methods, for the purposes of this Act. 2009, c. 33, Sched. 4, s. 1 (51).

Civil remedies preserved

88. No civil remedy for an act or omission is suspended or affected for the reason that the act or omission is an offence. R.S.O. 1990, c. P.33, s. 88.

Process on holidays

89. Any action authorized or required by this Act is not invalid for the reason only that the action was taken on a non-juridical day. R.S.O. 1990, c. P.33, s. 89.

Irregularities in form

90. (1) The validity of any proceeding is not affected by,

(a) any irregularity or defect in the substance or form of the summons, warrant, offence notice, parking infraction notice, undertaking to appear or recognizance; or

(b) any variance between the charge set out in the summons, warrant, parking infraction notice, offence notice, undertaking to appear or recognizance and the charge set out in the information or certificate.

Adjournment to meet irregularities

(2) Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection (1), the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 60 for the payment of costs. R.S.O. 1990, c. P.33, s. 90.

Contempt

91. (1) Except as otherwise provided by an Act, every person who commits contempt in the face of a justice of the peace presiding over the Ontario Court of Justice in a proceeding under this Act is on conviction liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1990, c. P.33, s. 91 (1); 2000, c. 26, Sched. A, s. 13 (6).

Statement to offender

(2) Before a proceeding is taken for contempt under subsection (1), the justice of the peace shall inform the offender of the conduct complained of and the nature of the contempt and inform him or her of the right to show cause why he or she should not be punished. R.S.O. 1990, c. P.33, s. 91 (2).

Show cause

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he or she should not be punished. R.S.O. 1990, c. P.33, s. 91 (3).

Adjournment for adjudication

(4) Except where, in the opinion of the justice of the peace, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the justice of the peace shall adjourn the contempt proceeding to another day. R.S.O. 1990, c. P.33, s. 91 (4).

Adjudication by judge

(5) A contempt proceeding that is adjourned to another day under subsection (4) shall be heard and determined by the court presided over by a provincial judge. R.S.O. 1990, c. P.33, s. 91 (5).

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Arrest for immediate adjudication

(6) Where the justice of the peace proceeds to deal with a contempt immediately and without adjournment under subsection (4), the justice of the peace may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination. R.S.O. 1990, c. P.33, s. 91 (6).

Barring representative in contempt

(7) Where the offender is appearing before the court as a representative and the offender is not licensed under the *Law Society Act*, the court may order that he or she be barred from acting as representative in the proceeding in addition to any other punishment to which he or she is liable. 2006, c. 21, Sched. C, s. 131 (15).

Appeals

(8) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction in a proceeding commenced by certificate under Part I of this Act. R.S.O. 1990, c. P.33, s. 91 (8).

Enforcement

(9) This Act applies for the purpose of enforcing a punishment by way of a fine or imprisonment under this section. R.S.O. 1990, c. P.33, s. 91 (9).

Regulations for purpose of Act

92. The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter referred to in this Act as prescribed by the regulations;

(b) prescribing the form of certificate as to ownership of a motor vehicle given by the Registrar under subsection 210 (7) of the *Highway Traffic Act* for the purpose of proceedings under this Act;

(c) providing for the extension of times prescribed by or under this Act or the rules of court in the event of a disruption in postal services;

(d) requiring the payment of fees upon the filing of anything required or permitted to be filed under this Act or the rules and fixing the amounts thereof, and providing for the waiver of the payment of a fee by a justice, or by a judge under Part VII, in such circumstances and under such conditions as are set out in the regulations;

(e) fixing costs payable upon conviction and referred to in subsection 60 (1);

(f) fixing the items in respect of which costs may be awarded under subsection 60 (2) and prescribing the maximum amounts that may be awarded in respect of each item;

(g) prescribing administrative fees for the purposes of subsection 70 (1) for the late payment of fines or classes of fines, and prescribing the classes. R.S.O. 1990, c. P.33, s. 92.

PART VI
YOUNG PERSONS

Definitions, Part VI

93. In this Part,

"parent", when used with reference to a young person, includes an adult with whom the young person ordinarily resides; ("père ou mère")

"young person" means a person who is or, in the absence of evidence to the contrary, appears to be,

(a) twelve years of age or more, but

(b) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age. ("adolescent") R.S.O. 1990, c. P.33, s. 93.

Minimum age

94. No person shall be convicted of an offence committed while he or she was under twelve years of age. R.S.O. 1990, c. P.33, s. 94.

Offence notice not to be used

95. A proceeding commenced against a young person by certificate of offence shall not be initiated by an offence notice under clause 3 (2) (a). R.S.O. 1990, c. P.33, s. 95.

Notice to parent

96. (1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the provincial offences officer, in the case of a summons, or the officer in charge, in the case of a recognizance, shall as soon as practicable give notice to a parent of the young person by delivering a copy of the summons or recognizance to the parent.

Where no notice given

(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may,

(a) adjourn the hearing to another time to permit notice to be given; or

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(b) dispense with notice.

Saving

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceeding against the young person. R.S.O. 1990, c. P.33, s. 96.

Sentence where proceeding commenced by certificate

97. (1) Despite subsection 12 (1), where a young person is found guilty of an offence in a proceeding commenced by certificate, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the set fine that would be payable for the offence by an adult, the maximum fine prescribed for the offence, or $300, whichever is the least, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of probation order

(2) Section 72 applies with necessary modifications to a probation order made under subclause (1) (a) (ii), in the same manner as if the proceeding were commenced by information, except that the probation order shall not remain in force for more than ninety days from the date when it takes effect.

s. 12 (2) applies where proceeding initiated by summons

(3) Subsection 12 (2) applies with necessary modifications where a young person is convicted of an offence in a proceeding initiated by summons, in the same manner as if the proceeding were initiated by offence notice. R.S.O. 1990, c. P.33, s. 97.

Young person to be present at trial

98. (1) Subject to subsection 52 (1) and subsection (2) of this section, a young person shall be present in court during the whole of his or her trial.

Court may permit absence

(2) The court may permit a young person to be absent during the whole or any part of his or her trial, on such conditions as the court considers proper.

Application of ss. 42, 54

(3) Sections 42 and 54 do not apply to a young person who is a defendant.

Failure of young person to appear

(4) Where a young person who is a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the young person does not appear upon the resumption of a hearing that has been adjourned, the court may adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the young person.

Compelling young person's attendance

(5) Where a young person does not attend personally in response to a summons issued under section 51 and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that the summons was served, the court may adjourn the hearing and issue a further summons or issue a warrant in the prescribed form for the arrest of the young person. R.S.O. 1990, c. P.33, s. 98.

Identity of young person not to be published

99. (1) No person shall publish by any means a report,

(a) of an offence committed or alleged to have been committed by a young person; or

(b) of a hearing, adjudication, sentence or appeal concerning a young person who committed or is alleged to have committed an offence,

in which the name of or any information serving to identify the young person is disclosed.

Offence

(2) Every person who contravenes subsection (1) and every director, officer or employee of a corporation who authorizes, permits or acquiesces in a contravention of subsection (1) by the corporation is guilty of an offence and is liable on conviction to a fine of not more than $10,000.

Exceptions

(3) Subsection (1) does not prohibit the following:

1. The disclosure of information by the young person concerned.
2. The disclosure of information by the young person's parent or lawyer, for the purpose of protecting the young person's interests.

3. The disclosure of information by a police officer, for the purpose of investigating an offence which the young person is suspected of having committed.

4. The disclosure of information to an insurer, to enable the insurer to investigate a claim arising out of an offence committed or alleged to have been committed by the young person.

5. The disclosure of information in the course of the administration of justice, but not for the purpose of making the information known in the community.

6. The disclosure of information by a person or member of a class of persons prescribed by the regulations, for a purpose prescribed by the regulations. R.S.O. 1990, c. P.33, s. 99.

Pre-sentence report

100. (1) Section 56 applies with necessary modifications where a young person is convicted of an offence in a proceeding commenced by certificate of offence, in the same manner as if the proceeding were commenced by information. R.S.O. 1990, c. P.33, s. 100 (1).

Pre-sentence report mandatory where imprisonment considered

(2) Where a young person who is bound by a probation order is convicted of an offence under section 75 and the court is considering imposing a sentence of imprisonment, the court shall direct a probation officer to prepare and file with the court a report in writing relating to the defendant for the purpose of assisting the court in imposing sentence, and the clerk of the court shall cause a copy of the report to be provided to the defendant or his or her representative and to the prosecutor. R.S.O. 1990, c. P.33, s. 100 (2); 2006, c. 21, Sched. C, s. 131 (16).

Penalties limited

101. (1) Despite the provisions of this or any other Act, no young person shall be sentenced,

(a) to be imprisoned, except under clause 75 (d); or

(b) to pay a fine exceeding $1,000.

Sentence where proceeding commenced by information

(2) Where a young person is found guilty of an offence in a proceeding commenced by information, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the maximum prescribed for the offence or $1,000, whichever is less, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

Term of probation order

(3) A probation order made under subclause (2) (a) (ii) shall not remain in force for more than one year from the date when it takes effect. R.S.O. 1990, c. P.33, s. 101.

No imprisonment for non-payment of fine

102. (1) No warrant of committal shall be issued against a young person under section 69.

Probation order in lieu of imprisonment

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 69 (3) or (4), a judge may direct that the young person comply with the conditions prescribed in a probation order, where the young person has been given fifteen days notice of the intent to make a probation order and has had an opportunity to be heard.

Term of probation order

(3) A probation order made under subsection (2) shall not remain in force for more than ninety days from the date when it takes effect. R.S.O. 1990, c. P.33, s. 102.

Open custody

103. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d), the term of imprisonment shall be served in a place of open custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise. R.S.O. 1990, c. P.33, s. 103; 2006, c. 19, Sched. D, s. 18 (1).

Evidence of young person's age

104. In a proceeding under this Act, a parent's testimony as to a young person's age and any other evidence of a young person's age that the court considers credible or trustworthy in the circumstances are admissible. R.S.O. 1990, c. P.33, s. 104.

Appeal

105. Where the defendant is a young person, an appeal under subsection 135 (1) shall be to the Superior Court of Justice, but the procedures and the powers of the court and any appeal from the judgment of the court shall be the same as if the appeal were to the Ontario Court of Justice presided over by a provincial judge. R.S.O. 1990, c. P.33, s. 105; 2000, c. 26, Sched. A, s. 13 (5, 6).

Arrest without warrant limited

106. No person shall exercise an authority under this or any other Act to arrest a young person without warrant unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or to the person or property of another. R.S.O. 1990, c. P.33, s. 106.

Release of young persons after arrest by officer
s. 149 does not apply

107. (1) Section 149 does not apply to a young person who has been arrested.

Requirement to release

(2) Where a police officer acting under a warrant or other power of arrest arrests a young person, the police officer shall, as soon as is practicable, release the young person from custody unconditionally or after serving him or her with a summons unless the officer has reasonable and probable grounds to believe that it is necessary in the public interest for the young person to be detained in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

Release by officer in charge

(3) Where a young person is not released from custody under subsection (2), the police officer shall deliver the young person to the officer in charge who shall, where in his or her opinion the conditions set out in clause (2) (a) or (b) do not or no longer exist, release the young person,

(a) unconditionally;

(b) upon serving the young person with a summons; or

(c) upon the young person entering into a recognizance in the prescribed form without sureties conditioned for his or her appearance in court.

Notice to parent

(4) Where the officer in charge does not release the young person under subsection (3), the officer in charge shall as soon

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as possible notify a parent of the young person by advising the parent, orally or in writing, of the young person's arrest, the reason for the arrest and the place of detention.

Release after young person brought before justice

(5) Sections 150 and 151 apply with necessary modifications to the release of a young person from custody under this section.

Place of custody

(6) No young person who is detained under section 150 shall be detained in any part of a place in which an adult who has been charged with or convicted of an offence is detained unless a justice so authorizes, on being satisfied that,

(a) the young person cannot, having regard to the young person's own safety or the safety of others, be detained in a place of temporary detention for young persons; or

(b) no place of temporary detention for young persons is available within a reasonable distance.

Idem

(7) Wherever practicable, a young person who is detained in custody shall be detained in a place of temporary detention designated under the *Youth Criminal Justice Act* (Canada). R.S.O. 1990, c. P.33, s. 107; 2006, c. 19, Sched. D, s. 18 (2).

Functions of a justice of peace limited

108. (1) The functions of a justice with respect to a defendant who is a young person shall be performed only by a judge where a defendant is charged with an offence under section 75.

Exception

(2) Subsection (1) does not apply to the functions of a justice under Parts III and VIII. 1993, c. 31, s. 1 (28).

PART VII
APPEALS AND REVIEW

Definitions, Part VII

109. In this Part,

"court" means the court to which an appeal is or may be taken under this Part; ("tribunal")

"judge" means a judge of the court to which an appeal is or may be taken under this Part; ("juge d'appel")

"sentence" includes any order or disposition consequent upon a conviction and an order as to costs. ("sentence") R.S.O. 1990, c. P.33, s. 109; 2000, c. 26, Sched. A, s. 13 (6); 2006, c. 21, Sched. C, s. 131 (17).

Custody pending appeal

110. A defendant who appeals shall, if in custody, remain in custody, but a judge may order his or her release upon any of the conditions set out in subsection 150 (2). R.S.O. 1990, c. P.33, s. 110.

Payment of fine before appeal

111. (1) A notice of appeal by a defendant shall not be accepted for filing if the defendant has not paid in full the fine imposed by the decision appealed from. R.S.O. 1990, c. P.33, s. 111 (1).

Exception with recognizance

(2) A judge may waive compliance with subsection (1) and order that the appellant enter into a recognizance to appear on the appeal, and the recognizance shall be in such amount, with or without sureties, as the judge directs. R.S.O. 1990, c. P.33, s. 111 (2).

Simultaneous applications

(3) A defendant may file an application to waive compliance with subsection (1) at the same time as the notice of appeal. 2009, c. 33, Sched. 4, s. 1 (52).

Role of prosecutor

(4) The defendant shall give the prosecutor notice of any application to waive compliance with subsection (1) and the prosecutor shall have an opportunity to make submissions in the public interest in respect of the application. 2009, c. 33, Sched. 4, s. 1 (53).

Stay

112. The filing of a notice of appeal does not stay the conviction unless a judge so orders. R.S.O. 1990, c. P.33, s. 112.

Fixing of date where appellant in custody

113. (1) Where an appellant is in custody pending the hearing of the appeal and the hearing of the appeal has not commenced within thirty days from the day on which notice of the appeal was given, the person having custody of the appellant shall make a motion to a judge to fix a date for the hearing of the appeal.

Idem

(2) Upon receiving a motion under subsection (1), the judge shall, after giving the prosecutor a reasonable opportunity to be heard, fix a date for the hearing of the appeal and give such directions as the judge thinks appropriate for expediting the hearing of the appeal. R.S.O. 1990, c. P.33, s. 113.

Payment of fine not waiver

114. A person does not waive the right of appeal by reason only that the person pays the fine or complies with any order

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imposed upon conviction. R.S.O. 1990, c. P.33, s. 114.

Transmittal of material

115. Where a notice of appeal has been filed, the clerk or local register of the appeal court shall notify the clerk of the trial court of the appeal and, upon receipt of the notification, the clerk of the trial court shall transmit the order appealed from and transmit or transfer custody of all other material in his or her possession or control relevant to the proceeding to the clerk or local registrar of the appeal court to be kept with the records of the appeal court. R.S.O. 1990, c. P.33, s. 115.

APPEALS UNDER PART III

Appeals, proceedings commenced by information

116. (1) Where a proceeding is commenced by information under Part III, the defendant or the prosecutor or the Attorney General by way of intervention may appeal from,

(a) a conviction;

(b) a dismissal;

(c) a finding as to ability, because of mental disorder, to conduct a defence;

(d) a sentence; or

(e) any other order as to costs. 2009, c. 33, Sched. 4, s. 1 (54).

Appeal court

(2) An appeal under subsection (1) shall be,

(a) where the appeal is from the decision of a justice of the peace, to the Ontario Court of Justice presided over by a provincial judge; or

(b) where the appeal is from the decision of a provincial judge, to the Superior Court of Justice. R.S.O. 1990, c. P.33, s. 116 (2); 2000, c. 26, Sched. A, s. 13 (5, 6).

Notice of appeal

(3) The appellant shall give notice of appeal in such manner and within such period as is provided by the rules of court. R.S.O. 1990, c. P.33, s. 116 (3).

Simultaneous application

(4) Despite subsection (3), the notice of appeal may be filed at the same time as an application under section 85 to extend

the time to give notice of appeal. 2009, c. 33, Sched. 4, s. 1 (55).

Conduct of appeal

117. (1) The court may, where it considers it to be in the interests of justice,

(a) order the production of any writing, exhibit or other thing relevant to the appeal;

(a.1) amend the information, unless it is of the opinion that the defendant has been misled or prejudiced in his or her defence or appeal;

(b) order any witness who would have been a compellable witness at the trial, whether or not he or she was called at the trial,

(i) to attend and be examined before the court, or

(ii) to be examined in the manner provided by the rules of court before a judge of the court, or before any officer of the court or justice of the peace or other person appointed by the court for the purpose;

(c) admit, as evidence, an examination that is taken under subclause (b) (ii);

(d) receive the evidence, if tendered, of any witness;

(e) order that any question arising on the appeal that,

(i) involves prolonged examination of writings or accounts, or scientific investigation, and

(ii) cannot in the opinion of the court conveniently be inquired into before the court,

be referred for inquiry and report, in the manner provided by the rules of court, to a special commissioner appointed by the court; and

(f) act upon the report of a commissioner who is appointed under clause (e) in so far as the court thinks fit to do so. R.S.O. 1990, c. P.33, s. 117 (1); 2009, c. 33, Sched. 4, s. 1 (56).

Rights of parties

(2) Where the court exercises a power under this section, the parties or their representatives are entitled to examine or cross-examine witnesses and, in an inquiry under clause (1) (e), are entitled to be present during the inquiry and to adduce evidence and to be heard. R.S.O. 1990, c. P.33, s. 117 (2); 2006, c. 21, Sched. C, s. 131 (18).

Right to representation

118. (1) An appellant or respondent may appear and act personally or by representative. 2006, c. 21, Sched. C,

s. 131 (19).

Attendance while in custody

(2) An appellant or respondent who is in custody as a result of the decision appealed from is entitled to be present at the hearing of the appeal. R.S.O. 1990, c. P.33, s. 118 (2).

Sentencing in absence

(3) The power of a court to impose sentence may be exercised although the appellant or respondent is not present. R.S.O. 1990, c. P.33, s. 118 (3).

Written argument

119. An appellant or respondent may present the case on appeal and argument in writing instead of orally, and the court shall consider any case or argument so presented. R.S.O. 1990, c. P.33, s. 119.

Orders on appeal against conviction, etc.

120. (1) On the hearing of an appeal against a conviction or against a finding as to the ability, because of mental disorder, to conduct a defence, the court by order,

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

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

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

(iii) on any ground, there was a miscarriage of justice; or

(b) may dismiss the appeal where,

(i) the court is of the opinion that the appellant, although the appellant was not properly convicted on a count or part of an information, was properly convicted on another count or part of the information,

(ii) the appeal is not decided in favour of the appellant on any ground mentioned in clause (a), or

(iii) although the court is of the opinion that on any ground mentioned in subclause (a) (ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred.

Idem

(2) Where the court allows an appeal under clause (1) (a), it shall,

(a) where the appeal is from a conviction,

(i) direct a finding of acquittal to be entered, or

(ii) order a new trial; or

(b) where the appeal is from a finding as to the ability, because of mental disorder, to conduct a defence, order a new trial, subject to section 44.

Idem

(3) Where the court dismisses an appeal under clause (1) (b), it may substitute the decision that in its opinion should have been made and affirm the sentence passed by the trial court or impose a sentence that is warranted in law. R.S.O. 1990, c. P.33, s. 120.

Orders on appeal against acquittal

121. Where an appeal is from an acquittal, the court may by order,

(a) dismiss the appeal; or

(b) allow the appeal, set aside the finding and,

(i) order a new trial, or

(ii) enter a finding of guilt with respect to the offence of which, in its opinion, the person who has been accused of the offence should have been found guilty, and pass a sentence that is warranted in law. R.S.O. 1990, c. P.33, s. 121; 1993, c. 27, Sched.

Orders on appeal against sentence

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

(a) dismiss the appeal; or

(b) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted,

and, in making any order under clause (b), the court may take into account any time spent in custody by the defendant as a result of the offence.

Variance of sentence

(2) A judgment of a court that varies a sentence has the same force and effect as if it were a sentence passed by the trial

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court. R.S.O. 1990, c. P.33, s. 122.

One sentence on more than one count

123. Where one sentence is passed upon a finding of guilt on two or more counts, the sentence is good if any of the counts would have justified the sentence. R.S.O. 1990, c. P.33, s. 123; 1993, c. 27, Sched.

Appeal based on defect in information or process

124. (1) Judgment shall not be given in favour of an appellant based on any alleged defect in the substance or form of an information, certificate or process or any variance between the information, certificate or process and the evidence adduced at trial unless it is shown that objection was taken at the trial and that, in the case of a variance, an adjournment of the trial was refused although the variance had misled the appellant.

Idem

(2) Where an appeal is based on a defect in a conviction or an order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect. R.S.O. 1990, c. P.33, s. 124.

Additional orders

125. Where a court exercises any of the powers conferred by sections 117 to 124, it may make any order, in addition, that justice requires. R.S.O. 1990, c. P.33, s. 125.

New trial

126. (1) Where a court orders a new trial, it shall be held in the Ontario Court of Justice presided over by a justice other than the justice who tried the defendant in the first instance unless the appeal court directs that the new trial be held before the justice who tried the defendant in the first instance. R.S.O. 1990, c. P.33, s. 126 (1); 2000, c. 26, Sched. A, s. 13 (6).

Order for release

(2) Where a court orders a new trial, it may make such order for the release or detention of the appellant pending such trial as may be made by a justice under subsection 150 (2) and the order may be enforced in the same manner as if it had been made by a justice under that subsection. R.S.O. 1990, c. P.33, s. 126 (2).

Appeal by way of new trial

127. (1) Where, because of the condition of the record of the trial in the trial court or for any other reason, the court, upon the motion of the appellant or respondent, is of the opinion that the interests of justice would be better served by hearing and determining the appeal by holding a new trial in the court, the court may order that the appeal shall be heard by way of a new trial in the court and for this purpose this Act applies with necessary modifications in the same manner as to a proceeding in the trial court.

Evidence

(2) The court may, for the purpose of hearing and determining an appeal under subsection (1), permit the evidence of any witness taken before the trial court to be read if that evidence has been authenticated and if,

(a) the appellant and respondent consent;

(b) the court is satisfied that the attendance of the witness cannot reasonably be obtained; or

(c) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the court. R.S.O. 1990, c. P.33, s. 127.

Dismissal or abandonment

128. (1) The court may, upon proof that notice of an appeal has been given and that,

(a) the appellant has failed to comply with any order made under section 110 or 111 or with the conditions of any recognizance entered into under either of those sections; or

(b) the appeal has not been proceeded with or has been abandoned,

order that the appeal be dismissed. R.S.O. 1990, c. P.33, s. 128; 1993, c. 27, Sched.

Dismissal by justice

(2) Where the clerk of the court considers that an appeal has not been proceeded with or has been abandoned, the clerk may, after giving notice to the parties to the appeal, have the matter brought before a justice sitting in open court to determine whether the appeal has been abandoned and the appeal should be dismissed. 2011, c. 1, Sched. 1, s. 7 (10).

Motion to restore

(3) A party to an appeal that was dismissed under subsection (2) may apply to have the appeal restored. 2011, c. 1, Sched. 1, s. 7 (10).

Costs

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

Payment

(2) Where the court orders the appellant or respondent to pay costs, the order shall direct that the costs be paid to the clerk

of the trial court, to be paid by the clerk to the person entitled to them, and shall fix the period within which the costs shall be paid.

Enforcement

(3) Costs ordered to be paid under this section by a person other than a prosecutor acting on behalf of the Crown shall be deemed to be a fine for the purpose of enforcing its payment. R.S.O. 1990, c. P.33, s. 129.

Implementation of appeal court order

130. An order or judgment of the appeal court shall be implemented or enforced by the trial court and the clerk or local registrar of the appeal court shall send to the clerk of the trial court the order and all writings relating thereto. R.S.O. 1990, c. P.33, s. 130.

Appeal to Court of Appeal

131. (1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the court to the Court of Appeal, with leave of a judge of the Court of Appeal on special grounds, upon any question of law alone or as to sentence.

Grounds for leave

(2) No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

Appeal as to leave

(3) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1). R.S.O. 1990, c. P.33, s. 131.

Custody pending appeal

132. A defendant who appeals shall, if the defendant is in custody, remain in custody, but a judge may order his or her release upon any of the conditions set out in subsection 150 (2). R.S.O. 1990, c. P.33, s. 132.

Transfer of record

133. Where a motion for leave to appeal is made, the Registrar of the Court of Appeal shall notify the clerk or local registrar of the court appealed from of the motion and, upon receipt of the notification, the clerk or local registrar of the court shall transmit to the Registrar all the material forming the record including any other relevant material requested by a judge of the Court of Appeal. R.S.O. 1990, c. P.33, s. 133.

Application of lower court of appeal procedures, etc.

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134. Sections 114, 117, 118, 119, 120, 121, 122, 123, 124, 125 and 126, clause 128 (b) and section 129 apply with necessary modifications to appeals to the Court of Appeal under section 131. R.S.O. 1990, c. P.33, s. 134.

APPEALS UNDER PARTS I AND II

Appeals, proceedings commenced by certificate

135. (1) A defendant or the prosecutor or the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by certificate under Part I or II and the appeal shall be to the Ontario Court of Justice presided over by a provincial judge. R.S.O. 1990, c. P.33, s. 135 (1); 2000, c. 26, Sched. A, s. 13 (6).

Application for appeal

(2) A notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken and shall be filed with the clerk of the court within 30 days after the making of the decision appealed from, in accordance with the rules of court. R.S.O. 1990, c. P.33, s. 135 (2); 2009, c. 33, Sched. 4, s. 1 (57).

Simultaneous application

(2.1) Despite subsection (2), the notice of appeal may be filed at the same time as an application under section 85 to extend the time to give notice of appeal. 2009, c. 33, Sched. 4, s. 1 (58).

Notice of hearing

(3) The clerk shall, as soon as is practicable, give a notice to the defendant and prosecutor of the time and place of the hearing of the appeal. R.S.O. 1990, c. P.33, s. 135 (3).

Conduct of appeal

136. (1) Upon an appeal, the court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined.

Review

(2) An appeal shall be conducted by means of a review.

Evidence

(3) In determining a review, the court may,

(a) hear or rehear the recorded evidence or any part thereof and may require any party to provide a transcript of the evidence, or any part thereof, or to produce any further exhibit;

(b) receive the evidence of any witness whether or not the witness gave evidence at the trial;

(c) require the justice presiding at the trial to report in writing on any matter specified in the request; or

(d) receive and act upon statements of agreed facts or admissions. R.S.O. 1990, c. P.33, s. 136.

Dismissal on abandonment

137. (1) Where an appeal has not been proceeded with or abandoned, the court may order that the appeal be dismissed. R.S.O. 1990, c. P.33, s. 137.

Dismissal by justice

(2) Where the clerk of the court considers that an appeal has not been proceeded with or has been abandoned, the clerk may, after giving notice to the parties to the appeal, have the matter brought before a justice sitting in open court to determine whether the appeal has been abandoned and the appeal should be dismissed. 2009, c. 33, Sched. 4, s. 1 (59).

Motion to restore

(3) A party to an appeal that was dismissed under subsection (2) may apply to have the appeal restored. 2009, c. 33, Sched. 4, s. 1 (59).

Powers of court on appeal

138. (1) Upon an appeal, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial. R.S.O. 1990, c. P.33, s. 138 (1).

New trial

(2) Where the court directs a new trial, it shall be held in the Ontario Court of Justice presided over by a justice other than the justice who tried the defendant in the first instance, but the appeal court may, with the consent of the parties to the appeal, direct that the new trial be held before the justice who tried the defendant in the first instance or before the judge who directs the new trial. R.S.O. 1990, c. P.33, s. 138 (2); 2000, c. 26, Sched. A, s. 13 (6).

Costs

(3) Upon an appeal, the court may make an order under section 60 for the payment of costs incurred on the appeal, and subsection (3) thereof applies to the order. R.S.O. 1990, c. P.33, s. 138 (3).

Appeal to Court of Appeal

139. (1) An appeal lies from the judgment of the Ontario Court of Justice in an appeal under section 135 to the Court of Appeal, with leave of a judge of the Court of Appeal, on special grounds, upon any question of law alone. R.S.O. 1990, c. P.33, s. 139 (1); 2000, c. 26, Sched. A, s. 13 (6).

Grounds for leave

(2) No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted. R.S.O. 1990, c. P.33, s. 139 (2).

Costs

(3) Upon an appeal under this section, the Court of Appeal may make any order with respect to costs that it considers just and reasonable. R.S.O. 1990, c. P.33, s. 139 (3).

Appeal as to leave

(4) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1). R.S.O. 1990, c. P.33, s. 139 (4).

REVIEW

Mandamus, prohibition, certiorari

140. (1) On application, the Superior Court of Justice may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in an application for an order in the nature of mandamus, prohibition or certiorari. R.S.O. 1990, c. P.33, s. 140 (1); 2000, c. 26, Sched. A, s. 13 (5).

Notice of application

(2) Notice of an application under this section shall be served on,

(a) the person whose act or omission gives rise to the application;

(b) any person who is a party to a proceeding that gives rise to the application; and

(c) the Attorney General. R.S.O. 1990, c. P.33, s. 140 (2).

Appeal

(3) An appeal lies to the Court of Appeal from an order made under this section. R.S.O. 1990, c. P.33, s. 140 (3).

Certiorari

141. (1) A notice under section 140 in respect of an application for relief in the nature of certiorari shall be given at least seven days and not more than ten days before the date fixed for the hearing of the application and the notice shall be served within thirty days after the occurrence of the act sought to be quashed. R.S.O. 1990, c. P.33, s. 141 (1).

Filing material

(2) Where a notice referred to in subsection (1) is served on the person making the decision, order or warrant or holding the proceeding giving rise to the application, such person shall forthwith file with the Superior Court of Justice for use on the application, all material concerning the subject-matter of the application. R.S.O. 1990, c. P.33, s. 141 (2); 2000, c. 26, Sched. A, s. 13 (5).

Motion to continue proceeding

(2.1) Where a notice referred to in subsection (1) is served in respect of an application, a person who is entitled to notice of the application under subsection 140 (2) may make a motion to the Superior Court of Justice for an order that a trial in the proceeding giving rise to the application may continue despite the application and the Court may make the order if it is satisfied that it is in the interests of justice to do so. 2000, c. 26, Sched. A, s. 13 (3).

Where appeal available

(3) No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise. R.S.O. 1990, c. P.33, s. 141 (3).

Substantial wrong

(4) On an application for relief in the nature of certiorari, the Superior Court of Justice shall not grant relief unless the court finds that a substantial wrong or miscarriage of justice has occurred, and the court may amend or validate any decision already made, with effect from such time and on such terms as the court considers proper. R.S.O. 1990, c. P.33, s. 141 (4); 2000, c. 26, Sched. A, s. 13 (5).

(5) Repealed: 2009, c. 33, Sched. 4, s. 1 (60).

Habeas corpus

142. (1) On application, the Superior Court of Justice may by order grant any relief in respect of a matter arising under this Act that the applicant would be entitled to in an application for an order in the nature of *habeas corpus*. R.S.O. 1990, c. P.33, s. 142 (1); 2000, c. 26, Sched. A, s. 13 (5).

Procedure on application for relief in nature of *habeas corpus*

(2) Notice of an application under subsection (1) for relief in the nature of *habeas corpus* shall be served upon the person having custody of the person in respect of whom the application is made and upon the Attorney General and upon the hearing of the application the presence before the court of the person in respect of whom the application was made may be dispensed with by consent, in which event the court may proceed to dispose of the matter forthwith as the justice of the case requires. R.S.O. 1990, c. P.33, s. 142 (2).

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Idem

(3) Subject to subsections (1) and (2), the *Habeas Corpus Act* applies to applications under this section, but an application for relief in the nature of certiorari may be brought in aid of an application under this section. R.S.O. 1990, c. P.33, s. 142 (3).

Idem

(4) The *Judicial Review Procedure Act* does not apply to matters in respect of which an application may be made under section 140. R.S.O. 1990, c. P.33, s. 142 (4).

Costs

(5) A court to which an application or appeal is made under section 140 or this section may make any order with respect to costs that it considers just and reasonable. R.S.O. 1990, c. P.33, s. 142 (5).

PART VIII
ARREST, BAIL AND SEARCH WARRANTS

ARREST

Officer in charge, Part VIII

143. In this Part,

"officer in charge" means the police officer who is in charge of the lock-up or other place to which a person is taken after his or her arrest. R.S.O. 1990, c. P.33, s. 143.

Execution of warrant

144. (1) A warrant for the arrest of a person shall be executed by a police officer by arresting the person against whom the warrant is directed wherever he or she is found in Ontario.

Idem

(2) A police officer may arrest without warrant a person for whose arrest he or she has reasonable and probable grounds to believe that a warrant is in force in Ontario. R.S.O. 1990, c. P.33, s. 144.

Arrest without warrant

145. Any person may arrest without warrant a person who he or she has reasonable and probable grounds to believe has committed an offence and is escaping from and freshly pursued by a police officer who has lawful authority to arrest that person, and, where the person who makes the arrest is not a police officer, shall forthwith deliver the person arrested to a police officer. R.S.O. 1990, c. P.33, s. 145.

Use of force

146. (1) Every police officer is, if he or she acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the officer is required or authorized by law to do.

Use of force by citizen

(2) Every person upon whom a police officer calls for assistance is justified in using as much force as he or she believes on reasonable and probable grounds is necessary to render such assistance. R.S.O. 1990, c. P.33, s. 146.

Immunity from civil liability

147. Where a person is wrongfully arrested, whether with or without a warrant, no action for damages shall be brought,

(a) against the police officer making the arrest if he or she believed in good faith and on reasonable and probable grounds that the person arrested was the person named in the warrant or was subject to arrest without warrant under the authority of an Act;

(b) against any person called upon to assist the police officer if such person believed that the police officer had the right to effect the arrest; or

(c) against any person required to detain the prisoner in custody if such person believed the arrest was lawfully made. R.S.O. 1990, c. P.33, s. 147.

Production of process and giving of reasons

148. (1) It is the duty of every one who executes a process or warrant to have it with him or her, where it is feasible to do so, and to produce it when requested to do so.

Notice of reason for arrest

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person, where it is feasible to do so, of the reason for the arrest. R.S.O. 1990, c. P.33, s. 148.

BAIL

Release after arrest by officer

149. (1) Where a police officer, acting under a warrant or other power of arrest, arrests a person, the police officer shall, as soon as is practicable, release the person from custody after serving him or her with a summons or offence notice unless the officer has reasonable and probable grounds to believe that,

(a) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the

need to,

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence; or

(b) the person arrested is ordinarily resident outside Ontario and will not respond to a summons or offence notice.

Release by officer in charge

(2) Where a defendant is not released from custody under subsection (1), the police officer shall deliver him or her to the officer in charge who shall, where in his or her opinion the conditions set out in clauses (1) (a) and (b) do not or no longer exist, release the defendant,

(a) upon serving the defendant with a summons or offence notice;

(b) upon the defendant entering into a recognizance in the prescribed form without sureties conditioned for his or her appearance in court.

Cash bail by non-resident

(3) Where the defendant is held for the reason only that he or she is not ordinarily resident in Ontario and it is believed that the defendant will not respond to a summons or offence notice, the officer in charge may, in addition to anything required under subsection (2), require the defendant to deposit cash or other satisfactory negotiable security in an amount not to exceed,

(a) where the proceeding is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, $300; or

(b) where the proceeding is commenced by information under Part III, $500. R.S.O. 1990, c. P.33, s. 149.

Person in custody to be brought before justice

150. (1) Where a defendant is not released from custody under section 149, the officer in charge shall, as soon as is practicable but in any event within twenty-four hours, bring the defendant before a justice and the justice shall, unless a plea of guilty is taken, order that the defendant be released upon giving his or her undertaking to appear unless the prosecutor having been given an opportunity to do so shows cause why the detention of the defendant is justified to ensure his or her appearance in court or why an order under subsection (2) is justified for the same purpose. R.S.O. 1990, c. P.33, s. 150 (1); 1993, c. 27, Sched.

Order for conditional release

(2) Subject to subsection (1), the justice may order the release of the defendant,

(a) upon the defendant entering into a recognizance to appear with such conditions as are appropriate to ensure his or her appearance in court;

(b) where the offence is one punishable by imprisonment for twelve months or more, conditional upon the defendant entering into a recognizance before a justice with sureties in such amount and with such conditions, if any, as are appropriate to ensure his or her appearance in court or, with the consent of the prosecutor, upon the defendant depositing with the justice such sum of money or other valuable security as the order directs in an amount not exceeding,

(i) where the proceeding is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, $300, or

(ii) where the proceeding is commenced by information under Part III, $1,000; or

(c) if the defendant is not ordinarily resident in Ontario, upon the defendant entering into a recognizance before a justice, with or without sureties, in such amount and with such conditions, if any, as are appropriate to ensure his or her appearance in court, and depositing with the justice such sum of money or other valuable security as the order directs in an amount not exceeding,

(i) where the proceeding is commenced by certificate under Part I or II, the amount of the set fine for the offence or, if none, $300, or

(ii) where the proceeding is commenced by information under Part III, $1,000.

Idem

(3) The justice shall not make an order under clause (2) (b) or (c) unless the prosecutor shows cause why an order under the immediately preceding clause should not be made.

Order for detention

(4) Where the prosecutor shows cause why the detention of the defendant in custody is justified to ensure his or her appearance in court, the justice shall order the defendant to be detained in custody until he or she is dealt with according to law.

Reasons

(5) The justice shall include in the record a statement of the reasons for his or her decision under subsection (1), (2) or (4).

Evidence at hearing

(6) Where a person is brought before a justice under subsection (1), the justice may receive and base his or her decision upon information the justice considers credible or trustworthy in the circumstances of each case except that the defendant shall

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not be examined or cross-examined in respect of the offence with which he or she is charged.

Adjournments

(7) Where a person is brought before a justice under subsection (1), the matter shall not be adjourned for more than three days without the consent of the defendant. R.S.O. 1990, c. P.33, s. 150 (2-7).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 150 is amended by the Statutes of Ontario, 2002, chapter 18, Schedule A, subsection 15 (1) by adding the following subsections:

Alternative to physical presence

(8) Where a defendant is to be brought before a justice under this section, the defendant's actual physical attendance is required, but the justice may, subject to subsection (9), allow the defendant to appear by means of any suitable telecommunication device, including telephone, that is satisfactory to the justice. 2002, c. 18, Sched. A, s. 15 (1).

Note: On the day the Statutes of Ontario, 2002, chapter 18, Schedule A, subsection 15 (1) comes into force, subsection (8) is amended by the Statutes of Ontario, 2006, chapter 19, Schedule B, subsection 15 (1) by striking out "subject to subsection (9)" and substituting "despite any other Act and subject to subsection (9)". See: 2006, c. 17, Sched. B, ss. 15 (1), 24 (2).

Consent required

(9) The consent of the prosecutor and the defendant is required for the purpose of an appearance if,

(a) the evidence of a witness is to be taken at the appearance; and

(b) it is not possible for the defendant to appear by closed-circuit television or any other means that allow the justice and the defendant to engage in simultaneous visual and oral communication. 2002, c. 18, Sched. A, s. 15 (1).

See: 2002, c. 18, Sched. A, ss. 15 (1), 21 (3).

Expediting trial of person in custody

151. (1) Where a defendant is not released from custody under section 149 or 150, he or she shall be brought before the court forthwith and, in any event, within eight days.

Further orders

(2) The justice presiding upon any appearance of the defendant in court may, upon the motion of the defendant or prosecutor, review any order made under section 150 and make such further or other order under section 150 as to the justice

seems appropriate in the circumstances. R.S.O. 1990, c. P.33, s. 151.

Appeal, order re release

152. A defendant or the prosecutor may appeal from an order or refusal to make an order under section 150 or 151 and the appeal shall be to the Superior Court of Justice. R.S.O. 1990, c. P.33, s. 152; 2000, c. 26, Sched. A, s. 13 (5).

Accounting for deposit, recognizance, etc.

Appointment of agent for appearance

153. (1) A person who is released upon deposit under subsection 149 (3) or clause 150 (2) (c) may appoint the clerk of the court to act as the person's agent, in the event that he or she does not appear to answer to the charge, for the purpose of entering a plea of guilty on the person's behalf and authorizing the clerk to apply the amount so deposited toward payment of the fine and costs imposed by the court upon the conviction, and the clerk shall act as agent under this subsection without fee. R.S.O. 1990, c. P.33, s. 153 (1); 2006, c. 21, Sched. C, s. 131 (20).

Returns to court

(2) An officer in charge or justice who takes a recognizance, money or security under section 149 or 150 shall make a return thereof to the court. R.S.O. 1990, c. P.33, s. 153 (2).

Returns to sureties

(3) The clerk of the court shall, upon the conclusion of a proceeding, make a financial return to every person who deposited money or security under a recognizance and return the surplus, if any. R.S.O. 1990, c. P.33, s. 153 (3).

Recognizance binding

154. (1) The recognizance of a person to appear in a proceeding binds the person and the person's sureties in respect of all appearances required in the proceeding at times and places to which the proceeding is adjourned.

Recognizance binds independently of other charges

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

Liability of principal

(3) The principal to a recognizance is bound for the amount of the recognizance due upon forfeiture.

Liability where sureties

(4) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance due upon forfeiture for non-appearance. R.S.O. 1990, c. P.33, s. 154.

Relief of surety

155. (1) A surety to a recognizance may, on motion in writing to the court at the location where the defendant is required to appear, ask to be relieved of the surety's obligation under the recognizance and the court shall thereupon issue a warrant for the arrest of the defendant.

Certificate of arrest

(2) When a police officer arrests the defendant under a warrant issued under subsection (1), he or she shall bring the defendant before a justice under section 150 and certify the arrest by certificate in the prescribed form and deliver the certificate to the court.

Vacating of recognizance

(3) The receipt of the certificate by the court under subsection (2) vacates the recognizance and discharges the sureties. R.S.O. 1990, c. P.33, s. 155.

Delivery of defendant by surety

156. A surety to a recognizance may discharge the surety's obligation under the recognizance by delivering the defendant into the custody of the court at the location where he or she is required to appear at any time while it is sitting at or before the trial of the defendant. R.S.O. 1990, c. P.33, s. 156.

Default of recognizance

157. (1) Where a person who is bound by recognizance does not comply with a condition of the recognizance, a justice having knowledge of the facts shall endorse on the recognizance a certificate in the prescribed form setting out,

(a) the nature of the default;

(b) the reason for the default, if it is known;

(c) whether the ends of justice have been defeated or delayed by reason of the default; and

(d) the names and addresses of the principal and sureties. R.S.O. 1990, c. P.33, s. 157 (1).

Certificate as evidence

(2) A certificate that has been endorsed on a recognizance under subsection (1) is evidence of the default to which it relates. R.S.O. 1990, c. P.33, s. 157 (2).

Motion for forfeiture

(3) The clerk of the court shall transmit the endorsed recognizance to the local registrar of the Superior Court of Justice and, upon its receipt, the endorsed recognizance constitutes a motion for the forfeiture of the recognizance. R.S.O. 1990, c. P.33,

s. 157 (3); 2000, c. 26, Sched. A, s. 13 (5).

Notice of hearing

(4) A judge of the Superior Court of Justice shall fix a time and place for the hearing of the motion by the court and the local registrar of the court shall, not less than ten days before the time fixed for the hearing, deliver notice to the prosecutor and to each principal and, where the motion is for forfeiture for non-appearance, each surety named in the recognizance, of the time and place fixed for the hearing and requiring each principal and surety to show cause why the recognizance should not be forfeited. R.S.O. 1990, c. P.33, s. 157 (4); 2000, c. 26, Sched. A, s. 13 (5).

Order as to forfeiture

(5) The Superior Court of Justice may, after giving the parties an opportunity to be heard, in its discretion grant or refuse the motion and make any order in respect of the forfeiture of the recognizance that the court considers proper. R.S.O. 1990, c. P.33, s. 157 (5); 2000, c. 26, Sched. A, s. 13 (5).

Collection on forfeiture

(6) Where an order for forfeiture is made under subsection (5),

(a) any money or security forfeited shall be paid over by the person who has custody of it to the person who is entitled by law to receive it; and

(b) the principal and surety become judgment debtors of the Crown jointly and severally in the amount forfeited under the recognizance and the amount may be collected in the same manner as money owing under a judgment of the Superior Court of Justice. R.S.O. 1990, c. P.33, s. 157 (6); 2000, c. 26, Sched. A, s. 13 (5).

SEARCH WARRANTS

Search warrant

158. (1) A justice may at any time issue a warrant under his or her hand if the justice is satisfied by information upon oath that there are reasonable grounds to believe that there is in any place,

(a) anything on or in respect of which an offence has been or is suspected to have been committed; or

(b) anything that there are reasonable grounds to believe will afford evidence as to the commission of an offence. 2002, c. 18, Sched. A, s. 15 (2).

Same

(1.1) The search warrant authorizes a police officer or person named in the warrant,

(a) to search the place named in the information for any thing described in clause (1) (a) or (b); and

(b) to seize the thing and deal with it in accordance with section 158.2. 2002, c. 18, Sched. A, s. 15 (2).

Expiration

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue. R.S.O. 1990, c. P.33, s. 158 (2).

When to be executed

(3) Every search warrant shall be executed between 6 a.m. and 9 p.m. standard time, unless the justice by the warrant otherwise authorizes. R.S.O. 1990, c. P.33, s. 158 (3).

Definition

(4) In this section and in section 158.1,

"place" includes a building and a receptacle. 2002, c. 18, Sched. A, s. 15 (3).

Telewarrants

Submission of information

158.1 (1) Where a provincial offences officer believes that an offence has been committed and that it would be impracticable to appear personally before a justice to make application for a warrant in accordance with section 158, the provincial offences officer may submit an information on oath, by a means of telecommunication that produces a writing, to a justice designated for the purpose by the Chief Justice of the Ontario Court of Justice. 2002, c. 18, Sched. A, s. 15 (4).

Filing of information

(2) The justice who receives an information submitted under subsection (1) shall, as soon as practicable, cause the information to be filed with the clerk of the court, certified by the justice as to time and date of receipt. 2002, c. 18, Sched. A, s. 15 (4).

Same, alternative to oath

(3) A provincial offences officer who submits an information under subsection (1) may, instead of swearing an oath, make a statement in writing stating that all matters contained in the information are true to his or her knowledge and belief, and the statement is deemed to be made under oath. 2002, c. 18, Sched. A, s. 15 (4).

Contents of information

(4) An information submitted under subsection (1) shall include,

(a) a statement of the circumstances that make it impracticable for the provincial offences officer to appear personally

before a justice;

(b) a statement of the alleged offence, the place to be searched and the items alleged to be liable to seizure;

(c) a statement of the provincial offences officer's grounds for believing that items liable to seizure in respect of the alleged offence will be found in the place to be searched; and

(d) a statement as to any prior application for a warrant under this section or any other search warrant, in respect of the same matter, of which the provincial offences officer has knowledge. 2002, c. 18, Sched. A, s. 15 (4).

Issuing warrant

(5) A justice to whom an information is submitted under subsection (1) may, if the conditions set out in subsection (6) are met,

(a) issue a warrant to a provincial offences officer conferring the same authority respecting search and seizure as may be conferred by a warrant issued by a justice before whom the provincial offences officer appears personally under section 158; and

(b) require that the warrant be executed within such time period as the justice may order. 2002, c. 18, Sched. A, s. 15 (4).

Conditions

(6) The conditions referred to in subsection (5) are that the justice is satisfied that the information,

(a) is in respect of an offence and complies with subsection (4);

(b) discloses reasonable grounds for dispensing with an information presented personally; and

(c) discloses reasonable grounds, in accordance with section 158, for the issuance of a warrant in respect of an offence. 2002, c. 18, Sched. A, s. 15 (4).

Application of s. 158 (2) and (3)

(7) Subsections 158 (2) and (3) apply to a warrant issued under this section. 2002, c. 18, Sched. A, s. 15 (4).

Form, transmission and filing of warrant

(8) A justice who issues a warrant under this section shall,

(a) complete and sign the warrant, noting on its face the time, date and place of issuance;

(b) transmit the warrant by the means of telecommunication to the provincial offences officer who submitted the information; and

(c) as soon as practicable after the warrant has been issued, cause the warrant to be filed with the clerk of the court. 2002, c. 18, Sched. A, s. 15 (4).

Copies

(9) The copy of the warrant that is transmitted to the provincial offences officer and any copies that are made from the transmitted copy have the same effect as the original for all purposes. 2002, c. 18, Sched. A, s. 15 (4).

Providing or affixing copy when executing warrant

(10) When a provincial offences officer executes a warrant issued under this section,

(a) if the place to be searched is occupied, the provincial offences officer shall, before entering or as soon as practicable thereafter, give a copy of the warrant to any person present and ostensibly in control of the place; and

(b) if the place to be searched is unoccupied, the provincial offences officer shall, on entering or as soon as practicable thereafter, cause a copy of the warrant to be suitably and prominently affixed within the place. 2002, c. 18, Sched. A, s. 15 (4).

Proof of authorization

(11) In any proceeding in which it is material for a court to be satisfied that a search or seizure was authorized by a warrant issued under this section, the warrant or the related information shall be produced and the court shall verify,

(a) in the case of the warrant, that it is signed by the justice and bears on its face a notation of the time, date and place of issuance;

(b) in the case of the related information, that it is certified by the justice as to time and date of receipt. 2002, c. 18, Sched. A, s. 15 (4).

Presumption

(12) If the warrant or related information is not produced or if the matters set out in clause (11) (a) or (b) cannot be verified, it shall be presumed, in the absence of evidence to the contrary, that the search or seizure was not authorized by a warrant issued under this section. 2002, c. 18, Sched. A, s. 15 (4).

Duty of person who carries out seizure

158.2 (1) Subsection (2) applies when,

(a) a person has, under a warrant issued under this or any other Act or otherwise in the performance of his or her duties under an Act, seized any thing,

(i) upon or in respect of which an offence has been or is suspected to have been committed, or

(ii) that there are reasonable grounds to believe will afford evidence as to the commission of an offence; and

(b) no procedure for dealing with the thing is otherwise provided by law. 2006, c. 19, Sched. B, s. 15 (2).

Same

(2) The person shall, as soon as is practicable, take the following steps:

1. The person shall determine whether the continued detention of the thing is required for the purposes of an investigation or proceeding.

2. If satisfied that continued detention is not required as mentioned in paragraph 1, the person shall,

i. return the thing, on being given a receipt for it, to the person lawfully entitled to its possession, and

ii. report to a justice about the seizure and return of the thing.

3. If paragraph 2 does not apply, the person shall,

i. bring the thing before a justice, or

ii. report to a justice about the seizure and detention of the thing. 2006, c. 19, Sched. B, s. 15 (2).

Order of justice re things seized

159. (1) When, under paragraph 3 of subsection 158.2 (2), a thing that has been seized is brought before a justice or a report in respect of it is made to a justice, he or she shall, by order,

(a) detain the thing or direct it to be detained in the care of a person named in the order; or

(b) direct it to be returned. 2002, c. 18, Sched. A, s. 15 (5); 2006, c. 19, Sched. B, s. 15 (3).

Detention pending appeal, etc.

(1.0.1) A direction to return seized items does not take effect for 30 days and does not take effect during any application made or appeal taken in respect of the thing. 2009, c. 33, Sched. 4, s. 1 (61).

Same

(1.1) The justice may, in the order,

(a) authorize the examination, testing, inspection or reproduction of the thing seized, on the conditions that are reasonably necessary and are directed in the order; and

(b) make any other provision that, in his or her opinion, is necessary for the preservation of the thing. 2002, c. 18, Sched. A, s. 15 (5).

Time limit for detention

(2) Nothing shall be detained under an order made under subsection (1) for a period of more than three months after the time of seizure unless, before the expiration of that period,

(a) upon motion, a justice is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and he or she so orders; or

(b) a proceeding is instituted in which the thing detained may be required. R.S.O. 1990, c. P.33, s. 159 (2).

Motion for examination and copying

(3) Upon the motion of the defendant, prosecutor or person having an interest in a thing detained under subsection (1), a justice may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order. R.S.O. 1990, c. P.33, s. 159 (3).

Motion for release

(4) Upon the motion of a person having an interest in a thing detained under subsection (1), and upon notice to the defendant, the person from whom the thing was seized, the person to whom the search warrant was issued and any other person who has an apparent interest in the thing detained, a justice may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of an investigation or proceeding. R.S.O. 1990, c. P.33, s. 159 (4).

Appeal where order by justice of the peace

(5) Where an order or refusal to make an order under subsection (3) or (4) is made by a justice of the peace, an appeal lies therefrom in the same manner as an appeal from a conviction in a proceeding commenced by means of a certificate. R.S.O. 1990, c. P.33, s. 159 (5).

Claim of privilege

160. (1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document,

(a) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package; and

(b) place the package in the custody of the clerk of the court or, with the consent of the person and the client, in the custody of another person.

Opportunity to claim privilege

(2) No person shall examine or seize a document that is in the possession of a lawyer without giving him or her a reasonable opportunity to claim the privilege under subsection (1).

Examination of documents in custody

(3) A judge may, upon the motion made without notice of the lawyer, by order authorize the lawyer to examine or make a copy of the document in the presence of its custodian or the judge, and the order shall contain such provisions as are necessary to ensure that the document is repackaged and resealed without alteration or damage.

Motion to determine privilege

(4) Where a document has been seized and placed in custody under subsection (1), the client by or on whose behalf the claim of solicitor-client privilege is made may make a motion to a judge for an order sustaining the privilege and for the return of the document.

Limitation

(5) A motion under subsection (4) shall be by notice of motion naming a hearing date not later than thirty days after the date on which the document was placed in custody.

Attorney General a party

(6) The person who seized the document and the Attorney General are parties to a motion under subsection (4) and entitled to at least three days notice thereof.

Private hearing and scrutiny by judge

(7) A motion under subsection (4) shall be heard in private and, for the purposes of the hearing, the judge may examine the document and, if he or she does so, shall cause it to be resealed.

Order

(8) The judge may by order,

(a) declare that the solicitor-client privilege exists or does not exist in respect of the document;

(b) direct that the document be delivered up to the appropriate person.

Release of document where no motion under subs. (4)

(9) Where it appears to a judge upon the motion of the Attorney General or person who seized the document that no

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p33_e.htm

motion has been made under subsection (4) within the time limit prescribed by subsection (5), the judge shall order that the document be delivered to the applicant. R.S.O. 1990, c. P.33, s. 160.

PART IX
ORDERS ON APPLICATION UNDER STATUTES

Orders under statutes

161. Where, by any other Act, a proceeding is authorized to be taken before the Ontario Court of Justice or a justice for an order, including an order for the payment of money, and no other procedure is provided, this Act applies with necessary modifications to the proceeding in the same manner as to a proceeding commenced under Part III, and for the purpose,

(a) in place of an information, the applicant shall complete a statement in the prescribed form under oath attesting, on reasonable and probable grounds, to the existence of facts that would justify the order sought; and

(b) in place of a plea, the defendant shall be asked whether or not the defendant wishes to dispute the making of the order. R.S.O. 1990, c. P.33, s. 161; 2000, c. 26, Sched. A, s. 13 (6).

PART X
AGREEMENTS WITH MUNICIPALITIES CONCERNING ADMINISTRATIVE FUNCTIONS AND PROSECUTIONS

Definition

161.1 In this Part,

"transfer agreement" means an agreement under subsection 162 (1). 2002, c. 17, Sched. C, s. 23 (1).

Agreements

162. (1) The Attorney General and a municipality may enter into an agreement with respect to a specified area, authorizing the municipality to,

(a) perform courts administration and court support functions, including the functions of the clerk of the court, for the purposes of this Act and the *Contraventions Act* (Canada); and

(b) conduct prosecutions,

(i) in proceedings under Parts I and II, and

(ii) in proceedings under the *Contraventions Act* (Canada) that are commenced by ticket under Part I or II of this

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90p33_e.htm

Act.

Application of cl. (1) (a)

(2) Clause (1) (a) also applies to the functions assigned to the clerk of the court by any other Act.

Performance standards and sanctions

(3) Performance standards and sanctions shall be specified in the agreement; the municipality shall meet the standards and is subject to the sanctions for failure to meet them.

Definition

(4) In subsection (3),

"performance standards" includes standards for the conduct of prosecutions, for the administration of the courts and for the provision of court support services. 1998, c. 4, s. 1 (2).

Area of application

163. A transfer agreement may specify an area that includes territory outside the municipality. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (2).

Evidence and effect of agreement

Deposit with clerk

164. (1) When the Attorney General and a municipality have entered into a transfer agreement, a copy of the agreement shall be deposited with the clerk of the municipality and with the clerk of any other municipality that has jurisdiction in the specified area. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (3).

Judicial notice

(2) Judicial notice shall be taken of the agreement without the agreement or its deposit being specially pleaded or proved. 1998, c. 4, s. 1 (2).

Non-compliance

(3) No proceeding is invalidated by reason only of a person's failure to comply with the agreement. 1998, c. 4, s. 1 (2).

Fair hearing

(4) Without limiting the generality of subsection (3), that subsection does not preserve the validity of the proceeding if the failure to comply with the agreement results in prejudice to the defendant's right to a fair hearing. 1998, c. 4, s. 1 (2).

Collection and enforcement

165. (1) When a transfer agreement is in force, the municipality has power to collect fines levied in respect of

proceedings under Parts I, II and III, including costs under section 60, surcharges under section 60.1 and fees referred to in section 66.2, and to enforce their payment; collection and enforcement shall be carried out in the manner specified in the agreement. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (4).

***Contraventions Act* (Canada)**

(2) Subsection (1) also applies to fines and fees imposed under the *Contraventions Act* (Canada). 1998, c. 4, s. 1 (2).

Non-application of subss. 69 (6-21)

(3) Subsections 69 (6) to (21) do not apply to fines that are governed by the agreement. 1998, c. 4, s. 1 (2).

Fines, etc., payable to municipality

(4) Fines that are governed by the agreement are payable to the municipality and not to the Minister of Finance. 1998, c. 4, s. 1 (2).

Payments to Minister of Finance

(5) The municipality shall pay to the Minister of Finance, at the times and in the manner specified in the agreement, amounts calculated in accordance with the agreement, in respect of,

(a) surcharges collected by the municipality under section 60.1;

(b) other fine revenues collected by the municipality that constitute money paid to Ontario for a special purpose within the meaning of the *Financial Administration Act*;

(c) costs the Attorney General incurs for adjudication and prosecution, for monitoring the performance of the agreement and for enforcing the agreement; and

(d) fines and fees imposed under the *Contraventions Act* (Canada) and collected by the municipality. 1998, c. 4, s. 1 (2).

Exception, federal-municipal agreement re parking fines and fees

(6) Despite clause (5) (d), fines and fees imposed under the *Contraventions Act* (Canada) in relation to the unlawful parking, standing or stopping of a vehicle and collected by the municipality shall be paid in accordance with any agreement made under sections 65.2 and 65.3 of that Act. 1998, c. 4, s. 1 (2).

Payments to another municipality

(7) The municipality acting under a transfer agreement shall pay to another municipality,

(a) the amount of any fine collected by the municipality that was imposed for a contravention of the other municipality's by-law;

(b) the amount of any fine collected by the municipality that was imposed for a contravention of a provincial statute and that would, except for the agreement, be payable to the other municipality; and

(c) the amount of any allowance retained by the municipality that would, except for the agreement, be payable to the other municipality under a regulation made under clause 20 (1) (g). 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (5).

Retention of balance

(8) Despite the *Fines and Forfeitures Act*, the municipality is entitled to retain, as a fee, the balance remaining after payment under subsections (5) and (7). 1998, c. 4, s. 1 (2).

No other charge

(9) The municipality shall not collect any other charge for acting under a transfer agreement, except in accordance with section 304 of the *Municipal Act, 2001* or section 240 of the *City of Toronto Act, 2006* or with the Attorney General's advance written consent. 2009, c. 33, Sched. 4, s. 1 (62).

Disclosure to consumer reporting agency

(10) When a transfer agreement applies to a fine, section 69.1 applies to the municipality in the same manner as it applies to the Ministry of the Attorney General. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (7).

Exception, transitional period

(11) Despite subsection (4), while a regulation made under clause 174 (b) is in effect, fines that are governed by the agreement remain payable to the Minister of Finance, who shall,

(a) calculate and retain the appropriate amounts under subsection (5);

(b) make any payments required by subsection (7); and

(c) pay the balance remaining to the municipality in accordance with subsection (8). 1998, c. 4, s. 1 (2).

Municipal defendants

165.1 (1) In this section,

"local board" has the same meaning as in the *Municipal Affairs Act*, but does not include a school board or a hospital board. 1997, c. 30, Sched. D, s. 17.

Special rules

(2) When a transfer agreement is in effect, the special rules set out in subsection (3) apply to a proceeding if,

(a) the proceeding is under Part I or III; and

(b) the defendant is a municipality or one of its local boards. 1997, c. 30, Sched. D, s. 17; 2002, c. 17, Sched. C, s. 23 (8).

Same

(3) The special rules referred to in subsection (2) are:

1. The fine is payable to the Minister of Finance and not to the municipality, despite subsection 165 (4).
2. The prosecutor may elect to collect and enforce the fine instead of the municipality, despite subsection 165 (1) and the provisions of the agreement relating to collection and enforcement.
3. Notice of the election shall be given to the municipal representative named in the agreement for the purpose, or if none is named, to the clerk of the court. 1997, c. 30, Sched. D, s. 17.

Fines imposed before effective date

166. A transfer agreement may,

(a) authorize the municipality to collect and enforce the payment of fines that were imposed before the agreement's effective date; and

(b) provide in what proportions and in what manner the amounts collected are to be shared between the municipality and the Minister of Finance. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (9).

Rules under agreements

167. (1) When a transfer agreement is in effect, the following rules apply:

1. The clerk of the court may be a municipal employee.
2. Subject to section 29, the court may sit in the location designated by the municipality, which need not be in premises operated by the Province of Ontario for court purposes.
3. The court office shall be in the location designated by the municipality.
4. Despite anything else in this Act, the municipality shall not without the Attorney General's written consent, obtained in advance, assign to a person other than its own employee a function that the agreement gives to the municipality. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (10).

Definition: "prosecutor", Part X

(2) For the purposes of this Part,

"prosecutor" means the Attorney General or, where the Attorney General does not intervene, means a person acting on behalf

of the municipality in accordance with the agreement or, where no such person intervenes, means the person who issues a certificate or lays an information, and includes an agent acting on behalf of any of them. 1998, c. 4, s. 1 (2); 2006, c. 21, Sched. C, s. 131 (21).

Attorney General's right to intervene

168. A transfer agreement does not affect the Attorney General's right to intervene in a proceeding and assume the role of prosecutor at any stage, including on appeal. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (11).

Municipality not Crown agent

169. A municipality that acts under a transfer agreement does not do so as an agent of the Crown in right of Ontario or of the Attorney General. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (12).

Protection from personal liability

170. (1) No proceeding shall be commenced against any person for an act done in good faith in the performance or intended performance of a function under a transfer agreement or for an alleged neglect or default in the performance in good faith of such a function. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (13).

Municipality not relieved of liability

(2) Subsection (1) does not relieve a municipality of liability in respect of a tort committed by a person referred to in subsection (1) to which the municipality would otherwise be subject. 1998, c. 4, s. 1 (2).

Revocation or suspension of agreement

Order for compliance

171. (1) When a transfer agreement is in effect, the Attorney General may make an order directing the municipality to comply with the agreement within a specified time. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (14).

Revocation or suspension

(2) The Attorney General may revoke or suspend the agreement if the municipality does not comply with the order within the specified time. 1998, c. 4, s. 1 (2).

Protection from personal liability

(3) No proceeding for damages shall be commenced against the Attorney General or an employee of the Ministry of the Attorney General for anything done or omitted in good faith in connection with the revocation or suspension of a transfer agreement. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (15).

Review committee

172. A transfer agreement may provide for a review committee whose composition and functions are determined by

regulation. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (16).

Transition: application to all proceedings

173. (1) Unless a transfer agreement provides otherwise, the agreement applies in respect of a proceeding whether it was commenced before or after the agreement's effective date. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (17).

Exception

(2) However, if one of the following conditions applies to a proceeding, the trial and disposition, including sentencing, shall be conducted as if there were no agreement:

1. The trial is scheduled to begin within seven calendar days after the effective date.
2. The trial began before the effective date and the disposition, including sentencing, is not yet complete on that date. 1998, c. 4, s. 1 (2).

Regulations re agreements

174. The Attorney General may, by regulation,

(a) impose obligations in connection with a transfer agreement on a person who is not a party to the agreement;

(b) provide that fines governed by a transfer agreement may, for a transitional period after its effective date, be paid to the Minister of Finance;

(c) determine the composition and functions of a review committee for the purposes of section 172;

(d) provide for the effective implementation of transfer agreements. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (18-20).

Municipal powers

174.1 (1) A municipality has power to enter into and to perform a transfer agreement. 2002, c. 17, Sched. C, s. 23 (21).

Employees and others

(2) The functions given to a municipality by a transfer agreement or by an agreement under subsection (3) or (7) may be performed,

(a) by the municipality's employees;

(b) by a combination of the municipality's employees and the employees of another municipality, if the municipalities have an agreement under subsection (3) or (7); or

(c) by any other person, with the Attorney General's consent, as described in subsection 175 (2). 2002, c. 17, Sched. C, s. 23 (21).

Joint performance agreement between municipalities

(3) A municipality that has entered into a transfer agreement may enter into an agreement with one or more other municipalities for the joint performance, by a joint board of management or otherwise, of the functions given to the first municipality by the transfer agreement. 2002, c. 17, Sched. C, s. 23 (21).

Attorney General's consent

(4) The joint performance agreement requires the Attorney General's written consent, obtained in advance. 2002, c. 17, Sched. C, s. 23 (21).

Extra-territorial effect

(5) The power to perform an agreement under subsection (3) may be exercised in an area outside the municipality's territorial limits if that area forms part of the area specified in the agreement. 2002, c. 17, Sched. C, s. 23 (21).

Intermunicipal agreements

(6) Municipalities may enter into and perform intermunicipal agreements to implement a transfer agreement. 2002, c. 17, Sched. C, s. 23 (21).

Further agreements

(7) A municipality that has entered into a transfer agreement may enter into an agreement with one or more municipalities for the performance by the other municipality or municipalities of any of the functions given to the first municipality by the transfer agreement and the municipalities have the power to enter into and perform the agreement under this subsection. 2002, c. 17, Sched. C, s. 23 (21).

Consent

(8) An agreement entered into under subsection (7) requires the Attorney General's written consent. 2002, c. 17, Sched. C, s. 23 (21).

Extra-territorial effect

(9) The power to perform an agreement under subsection (7) may be exercised in an area outside the municipality's territorial limits. 2002, c. 17, Sched. C, s. 23 (21).

Delegation

175. (1) Subject to subsection (2), a municipality has power to assign to any person a function that a transfer agreement gives to the municipality. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (22).

Attorney General's consent

(2) An assignment to a person other than the municipality's employee requires the Attorney General's written consent, obtained in advance. 1998, c. 4, s. 1 (2).

(3) Repealed: 2002, c. 17, Sched. C, s. 23 (23).

Group of municipalities

176. A transfer agreement may also be made with two or more municipalities, and in that case sections 162 to 175 apply with necessary modifications. 1998, c. 4, s. 1 (2); 2002, c. 17, Sched. C, s. 23 (24).

Français

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