UNIFORM REGULATORY OFFENCES PROCEDURE ACT

(1992 Proceedings at page 40)

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INTRODUCTION

The purpose of this Act is twofold.

One is to simplify the court procedures for the imposition of penalties for minor offences that are not seen as criminal in nature. This simplification would make a more light-handed procedure for the public's access to justice in the great number of cases that arise from the mere regulation of conduct rather than from conduct that is criminal in itself and would lighten the load on the administration of justice.

The other purpose is to separate the proceedings for conduct that is in itself permissible or even desirable but not done in the manner required from proceedings for genuine criminal conduct. This separation may be reflected in the atmosphere in which a hearing for traffic tickets is conducted when the defendant is on the list with persons charged with robbery, assault etc., or in the procedure where provisions that are appropriate to serious crimes and designed for dangerous conduct and maintaining the peace are applied equally to regulatory offences.

The principal changes from the summary procedure under the Criminal Code are in procedures applying to offences for which a set fine is acceptable and procedures before trial and summary disposition when not contested. When a trial is elected, traditional standards of justice are necessary.

At the same time there are many very serious offences under provincial and territorial statutes and full procedure can be taken at the option of the defendant.

Application

1. This Act applies to proceedings for the prosecution of offences that are created by an Act of the Legislature or under a regulation or by-law that is made under the authority of an Act of the Legislature.

COMMENTARY

Offences created by the statutes of the provinces and territories are, by that fact, not criminal. In the case of statutes of the Federal Government another formula would be needed to describe the offences that are considered regulatory and to which the regulatory offence procedures apply.

Regulatory Offences Officer

2.-(1) A minister of the Crown may designate in writing any person or class of persons as regulatory offences officers for the purpose of all or any class of offences named in the designation.

(2) The council of a municipality may designate by by-law any person or class of persons as regulatory offences officers for the purpose of all or any class of offences under the by-laws of the municipality that are named in the designation.

(3) Police officers are regulatory offences officers.

COMMENTARY

The provision in subsection 2(1) is optional for the purposes of uniformity of laws. The advantage it offers is to enable administrative ministries of government to have their own inspectors lay charges on the spot during inspections and for the enforcement of ministry Acts by their own people. This permits the ministry to implement its own enforcement policy and reduces the non criminal enforcement and prosecution functions of the Attorney General.

Set Fines

[3. The Chief Judge of the (court that is designated for regulatory offences and named in section 4) may by order fix a fine in respect of specific offences, as the Chief Judge considers appropriate, which is the set fine for the purposes of proceedings under this Act.] or
[3. The Lieutenant Governor in Council may, by regulation, fix a fine in respect of specific offences which is the set fine for the purposes of proceedings under this Act.]

COMMENTARY

Set fines are now established in two ways. One is by regulation made by the government and the other is by the judges under the leadership of the chief or senior judge, possibly by committee or general consensus.

Section 3 provides an option for the enacting jurisdiction.

COMMENCEMENT OF PROCEEDINGS

Manner of Commencement

4.-(1) A proceeding in respect of a regulatory offence shall be commenced in the (name of court established by the enacting jurisdiction).

COMMENTARY

There are advantages in having, where possible, regulatory offences dealt with in a court that is separate from the criminal summary convictions court. It separates the defendants,and encourages the judges to develop a distinction between the classes of offences and the differences in the procedures. Furthermore, the court would not be operating from one code to the other in succeeding cases. The same bench could be used and assigned to one court or the other. This should not be more costly in large centres, but may be impracticable in areas with a sparse population.

(2) A proceeding in respect of a regulatory offence may be commenced by filing a certificate of offence in the office of the court named in the certificate.

(3) A certificate of offence must be filed in the office of the court named therein as soon as is practicable after service of the offence notice or summons.

Charge

5.-(1) A regulatory offences officer who has reasonable grounds to believe that a person has committed an offence may issue, by completing and signing, a certificate of offence certifying that an offence has been committed, and an offence notice.

COMMENTARY

The swearing and issuing of an information is replaced with a certificate that there are reasonable grounds to believe that the alleged offence has been committed. Where the prosecution is initiated by a person other than the regulatory offences officer, the leave of a judge is required, which approximates the information procedure (See section 14).

(2) Where there is a set fine prescribed for the offence, the regulatory offences officer may, in his or her discretion, issue an offence notice that specifies the set fine for the offence.

Summons

6.-(1) Where the offence notice does not specify a set fine, the regulatory offences officer shall also serve a summons in the prescribed form.

(2) A summons issued under subsection (1) shall be,

(a) 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 in the summons and to attend thereafter as required by the court in order to be dealt with according to law.

Summons for Trial

7. Where an offence notice and a summons are served on a defendant, the charge shall be adjudicated by a hearing.

Set Fine Dispute

8. Where an offence notice in which a set fine is specified is served on a defendant and the defendant wishes to dispute the charge, the defendant shall plead not guilty by signing the not guilty plea on the offence notice and indicating his or her desire in the form contained on the notice to appear or be represented at a trial, and shall deliver the offence notice to the office of the court that is specified in the notice.

Set Fine Payment

9.-(1) Where an offence notice in which a set fine is specified is served on a defendant and the defendant does not wish to dispute the charge, the defendant shall sign the plea of guilty on the offence notice and deliver the offence notice and the amount of the set fine to the place that is specified in the notice.

(2) Acceptance of the payment under subsection (1) constitutes a plea of guilty whether or not the plea is signed and endorsement of the payment on the certificate of offence constitutes conviction and imposition of the fine in the amount of the set fine for the offence.

(3) Where the place specified in the notice to which payment of the set fine is to be sent under subsection (1) is a place other than the court office, a certificate purporting to be signed by the clerk of the municipality, or a person designated by the clerk,

(a) that payment has not been made under subsection (1); and

(b) that notice of the defendant's desire to appear or to be represented at trial has not been delivered to the place specified in the notice,
shall be received in evidence and is proof of the facts contained therein in the absence of evidence to the contrary.

Notice of Trial

10. Where an offence notice with a plea of not guilty is delivered to the court office, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial.

Set Fine on Inaction

11. Where at least fifteen days have elapsed after the defendant was served with the offence notice in which a set fine is specified, and the offence notice has not been delivered in accordance with section 8 or 9 and a plea of guilty has not been accepted, the defendant shall be deemed to not wish to dispute the charge and the court shall examine the certificate of offence and,

(a) where the certificate is complete and regular on its face, the court shall 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, the court shall quash the proceeding with written reasons.

Defendant Outside Jurisdiction

12.-(1) Where an offence notice, whether or not it specifies a set fine, is served on a defendant whose address as shown on the certificate of offence is outside the territorial jurisdiction of the court specified in the notice, and the defendant wishes to dispute the charge but does not wish to attend or be represented at a trial, the defendant may do so by signifying his or her intention on the offence notice and delivering the offence notice to the office of the court specified in the notice together with a sworn statement in writing setting out with reasonable particularity the grounds for dispute and any facts on which he or she relies.

(2) Where an offence notice is delivered under subsection (1), the court shall, in the absence of the defendant, consider the dispute and,

(a) where the dispute raises an issue that may constitute a defence, direct a hearing and serve notice of the hearing on the defendant; or

(b) where the dispute does not raise an issue that may constitute a defence, and

(i) the offence notice specifies a set fine, convict the defendant and impose the set fine, or

(ii) the offence notice does not specify a set fine, direct a hearing and serve notice of the hearing on the defendant.

(3) Where the court directs a hearing under subsection (2) and the defendant fails to appear, the court may, in the absence of the defendant, consider all the evidence including the issues raised in the dispute, and acquit the defendant or convict the defendant and impose the appropriate penalty.

Failsafe Review

13. Where a defendant is convicted and has not had an opportunity to dispute the charge or to appear or be represented at a hearing for the reason that, through no fault of his or her own, the delivery of a necessary notice or document failed to occur in fact, and where not more than thirty days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a judge of the court or may submit affidavit evidence in the prescribed form and the judge, upon being satisfied of such facts, shall strike out the conviction and order the proceedings to be reinstituted in the manner prescribed in the order.

Private Prosecution

14.-(1) A person who is not a regulatory offences officer may commence a proceeding if the person has a reasonable belief on grounds in his or her personal knowledge that an offence has been committed and the court gives leave to commence the proceeding.

(2) The evidence upon an application under subsection (1) shall be under oath and the application for leave may be heard without notice to any other person.

(3) A proceeding under this section shall be commenced by filing in the court office a certificate of offence signed by the person who is commencing the proceeding and bearing an endorsement of the leave of the court, and the court office shall serve an offence notice that does not specify a set fine and a summons in the prescribed form on the defendant.

Evidence of Written Plea

15. A signature affixed to the form of a plea of guilty or not guilty on an offence notice, purporting to be that of the defendant, is proof that it is the signature of that person, in the absence of evidence to the contrary.

Service

16.-(1) An offence notice, or a summons and offence notice, shall be served within thirty days after the offence occurred by delivering it personally to the person to whom it is directed or, if that person cannot be found, by leaving it for the person

at his or her last known or usual place of abode with an inmate of that place who appears to be at least sixteen years of age.

(2) Where the person to whom the summons or offence notice is directed does not reside in (the enacting jurisdiction), the summons or offence notice shall be deemed to have been duly served seven days after it has been sent by registered mail to the defendant's last known or usual place of abode.

(3) Service of a summons or offence notice on a corporation may be effected by delivering it personally,

(a) in the case of a municipal corporation, to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation; or

(b) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office of the corporation,

or by mailing the summons or offence notice by registered mail to the corporation at an address held out by the corporation to be its address, in which case the summons shall be deemed to have been duly served seven days after the date of mailing.

(4) A judge, upon application and upon being satisfied that service can not be made effectively on a corporation in accordance with subsection (3), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the corporation.

(5) Service of a summons or notice of offence may be proved by statement under oath, written or oral, of the person who made the service.

(6) A regulatory offences officer may serve a notice of offence for a contravention of (the legislation, regulations or bylaws for parking offences, by which the owner of the vehicle is held responsible) on the owner of the motor vehicle by affixing it to the vehicle in a conspicuous place at the time of the alleged offence, or by delivering it personally to the person who has the care and control of the vehicle at the time of the alleged offence.

COMMENTARY

Subsection (6) would be necessary only if the enacting jurisdiction made the owner of a motor vehicle responsible for a breach of parking by-laws or regulations committed by a driver other than the owner.

(7) Where service of an offence notice or summons is made by the regulatory 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 the service.

(8) The regulatory offences officer who serves an offence notice or summons shall not receive payment of money in respect of a fine, or receive the offence notice for delivery to the court.

TRIAL

General Jurisdiction

17.-(1) The court has jurisdiction in a proceeding commenced under this Act to perform such powers and duties as are set out in this and any other Act, and in addition has the jurisdiction and the duty to complete the proceeding in accordance with principles of justice despite the absence of a statutory provision for any specific step of the proceeding.

(2) The court retains jurisdiction over the certificate of offence notwithstanding the failure of the court to exercise its jurisdiction at any particular time or that the provisions of this Act respecting adjournments are not complied with.

COMMENTARY

Judges of the "superior and county and district courts" have the jurisdiction of the courts of common law and equity in England before confederation. They therefore have an original jurisdiction to dispense justice, subject only to specific direction given by statute. The judges appointed by a province for courts created by the province have only the jurisdiction that is given by provincial statute. It frequently occurs that a court will take the position that it is powerless to act because the statute was not specific enough to cover an unusual situation or that no form has been prescribed for a particular order. Subsection 17 (1) is an attempt to give the necessary statutory direction to enable judges to deal with a case on its merits.

The notion that the judge in a summary conviction case is seized of personal jurisdiction which can be lost if not exercised arose under the Criminal Code as a result of giving jurisdiction to persons (magistrates) to be appointed by the provinces. This obstacle is avoided by giving jurisdiction to the court and the old concept is abolished by subsection 17(2).

Limitations

18.-(1) Proceedings 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.

(2) A limitation period may be extended by a judge with the consent of the defendant.

COMMENTARY

The main purpose of subsection (2) is to enable a willing defendant and prosecutor to accept a guilty plea to a lesser offence for which the limitation period has expired.

Presiding Judge

19.-(1) The judge presiding when evidence is first taken at the trial shall preside over the whole of the trial.

(2) Where evidence has been taken at a trial and, before making an adjudication, the presiding judge dies or in the opinion of the judge or of the chief judge is for any reason unable to continue, another judge shall conduct the hearing again as a new trial.

(3) Where evidence has been taken at a trial and, after making an adjudication but before making an order or imposing a sentence the presiding judge dies or in the opinion of the judge or of the chief judge is for any reason unable to continue, another judge may make the order or impose the sentence that is authorized by law.

(4) A judge presiding at a trial may, at any stage of the trial and upon the consent of the prosecutor and the defendant, order that the trial be conducted by another judge and, upon the order being made, subsection (2) applies as if the judge were unable to act.

Prescribed Counts

20. A count in a charge that is described in a manner that is prescribed in the regulations made under section 133 shall be deemed to incorporate all the essential elements of the offence.

Contents of Counts

21.-(1) This section applies to charges made in a certificate of offence that are not prescribed, or that are not made in the manner prescribed, by the regulations made under section 133.

(2) Each offence charged shall be set out in a separate count.

(3) Each count 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 that is specified in the count.

(4) 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.

(5) The statement referred to in subsection (3) 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 the defendant notice of the offence with which the defendant is charged.

(6) Any number of counts for any number of offences may be joined in the same charge.

(7) A count shall contain sufficient detail of the circumstances of the alleged offence to give the defendant reasonable information with respect to the act or omission to be proved against the defendant and to identify the transaction referred to.

(8) No count 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 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 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 or thing; 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.

(9) 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.

(10) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in a charge.

Dividing Counts

22.-(1) A defendant may at any stage of the proceeding apply 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 defence.

(2) Upon an application 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.

Included Offences

23. Where the offence as charged includes another offence, the defendant may be convicted of the offence that is included if it is proved, notwithstanding that the whole offence charged is not proved.

Parties to Offence

24.-(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.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other in it 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.

Counselling and Procuring

25.-(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, notwithstanding that the offence was committed in a way different from that which was counselled or procured.

(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 and 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.

Quashing Certificate

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

(2) The court shall not quash a certificate unless an amendment or particulars under section 28 would fail to satisfy the ends of justice.

Amending Certificate

27.-(1) The court may, at any stage of the proceeding, amend the certificate as may be necessary if it appears that the 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 form.

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

(3) A variance between the certificate and the evidence taken at 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 certificate was 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.

(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 his or her 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.

(5) The question whether an order to amend a certificate should be granted or refused is a question of law.

(6) An order to amend a certificate shall be endorsed on the certificate as part of the record and the trial shall proceed as if the certificate had been originally laid as amended.

Particulars

28. 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 proceedings, be furnished to the defendant.

Costs on Amendment or Particulars

29. Where the certificate is amended or particulars are ordered and as a result an adjournment is necessary, the court may make an order under section 78 for costs resulting from the adjournment.

Stay of Proceeding

30.-(1) In addition to the right of the Attorney General to withdraw a charge, the Attorney General or his or her agent may stay any proceeding at any time before judgment by direction in court to the clerk of the court in which the proceeding is conducted and thereupon any recognizance relating to the proceeding is vacated.

(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 in which the proceeding was stayed 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.

Trying Together or Separately

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

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

Plea

32.-(1) After being informed of the substance of the certificate, the defendant shall be asked whether he or she pleads guilty or not guilty of the offence charged in the certificate.

(2) Where the defendant pleads guilty, the court may accept the plea and convict the defendant.

(3) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty.

(4) Where the defendant pleads not guilty of the offence charged but guilty of any other offence, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept the plea of guilty and accordingly amend the certificate or substitute the offence to which the defendant pleads guilty.

Trial

33.-(1) Where the defendant pleads not guilty, the court shall hold the trial.

(2) The defendant is entitled to make full answer and defence.

(3) The prosecutor and defendant may examine and cross-examine witnesses.

(4) The court may receive and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence.

(5) Notwithstanding section 00 of the Evidence Act, the defendant is not a compellable witness for the prosecution.

COMMENTARY

Provincial and territorial legislation for evidence is designed for civil actions. It is common to have a provision that parties to an action are competent and compellable to give evidence in the action on behalf of themselves or of any party to the action. This is not the criminal law rule which needs to be stated as in subsection (5). This question is not the issue of self incrimination, which is usually equally necessary, and provided for, in respect of civil actions.

Representation

34.-(1) A defendant may appear and act personally or by counsel or agent.

(2) A defendant that is a corporation shall appear and act by counsel or agent.

(3) The court may bar any person from appearing as an agent who is not a barrister and solicitor entitled to practise law in (enacting jurisdiction) if the court finds that the person is not competent properly to represent or advise the person for whom the agent appears or does not understand and comply with the duties and responsibilities of an agent.

Compelling Personal Appearance

35. Notwithstanding that a defendant appears by counsel or agent, 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.

Non-appearance of Prosecutor

36.-(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.

(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.

(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 77 for the payment of costs.

(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 for the dismissal 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.

Non-appearance of Defendant

37.-(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, an undertaking to appear was given or a recognizance to appear was entered into, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court,

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

(b) may, if it thinks fit, adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant; or

(c) may, where the defendant does not appear in response to the summons or warrant on the date to which the hearing is adjourned, proceed under clause (a) or (b).

(2) Where the court proceeds to hear and determine the proceeding in the absence of the defendant, 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 the Attorney General's agent.

Liability

38.-(1) Every element of an offence must be proved beyond a reasonable doubt.

(2) It is not necessary to prove that the defendant intended to commit the offence except insofar as intent is expressly stated to be an element of the offence.

(3) It is a defence to a charge of an offence that the defendant used all due diligence to avoid the commission of the offence unless the liability is expressly stated to be absolute.

(4) It is a defence to a sentence of imprisonment that the defendant did not have a gross disregard for the exercise of due diligence to avoid the commission of the offence.

(5) There is a presumption that the defences in subsections (3) and (4) are absent unless there is evidence to the contrary that is sufficient to raise a reasonable doubt.

(6) No civil remedy for an act or omission is suspended or affected for the reason that the act or omission is an offence.

COMMENTARY

Section 38 incorporates the decisions of the Supreme Court of Canada in R v City of Sault Ste Marie (1978), 40 C.C.C.(2d) 353 and of the Ontario Court of Appeal in R v Wholesale Travel Group Inc. (1989), 63 D.L.R. (4th) 325 and, more recently, R v Ellis Don Limited. Subsection (4) was not included in those decisions.

Common Law Defences

39.-(1) 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 it is altered by or inconsistent with this or any other Act.

(2) Ignorance of the law by a person who commits an offence is not an excuse for committing the offence.

Adjournments

40.-(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.

(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.

Fitness to Stand Trial

41.-(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 by order suspend the proceedings and direct the trial of the issue as to whether the defendant is, because of mental disorder, unable to conduct his or her defence.

(2) For the purposes of subsection (1), the court may order the defendant to attend to be examined under subsection (6).

(3) Where on the trial of an issue the court finds that the defendant is, because of mental disorder, unable to conduct his or her defence, the court shall order that further proceeding on the charge be suspended.

(4) Where on the trial of an issue the court finds that the defendant is able to conduct his or her defence, the court shall order that the suspended proceeding be continued.

(5) At any time within one year after an order is made under subsection (3), either party may, upon seven days notice to the other party, apply to the court to rehear the trial of the issue and where upon the rehearing the court finds that the defendant is able to conduct his or her defence, the court may order that the suspended proceeding be continued.

(6) For the purposes of subsection (1) or a hearing or rehearing under subsection (3),(4) or (5), the court 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.

(7) Where the defendant fails or refuses to comply with an order under subsection (6) 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.

(8) 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.

Taking of Evidence

42.-(1) Evidence under this Act shall be taken under oath, except as otherwise provided by law.

(2) Proceedings in which evidence is taken shall be recorded.

(3) 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.

Attendance of Witnesses

43.-(1) Where a judge is satisfied that a person is able to give material evidence in a proceeding under this Act, the judge may issue a subpoena requiring the person to attend to give evidence and bring with him or her any writings or things referred to in the subpoena.

(2) A subpoena shall be served and the service shall be proved in the same manner as a summons under section 16.

(3) A person who is served with a subpoena shall attend at the time and place stated in the subpoena to give evidence and, if required by the subpoena, shall bring any writing or other thing that he or she has in possession or control relating to the subject-matter of the proceeding.

(4) A person who is served with a subpoena 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 judge.

Compelling Attendance of Witnesses

44.-(1) Where the court is satisfied upon evidence under oath that a person is able to give material evidence that is necessary in a proceeding under this Act and,

(a) the person will not attend if a subpoena is served; or

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

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

(2) Where a person who has been served with a subpoena 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 subpoena 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.

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

(4) Unless the judge is satisfied that it is necessary to detain a person in custody to ensure attendance to give evidence, the judge 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 attendance.

(5) Where the judge is satisfied that it is necessary to detain the person in custody to ensure 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 (10).

(6) Where the judge does not make an order under subsection (5), the judge 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 reasonaably necessary to ensure attendance.

(7) A person who is ordered to be detained in custody under subsection (5) or is not released in fact under subsection (6) shall not be detained in custody for a period longer than ten days.

(8) A judge may at any time order the release of a person in custody under this section where the judge is satisfied that the detention is no longer justified.

(9) Where a person who is bound by a recognizance to attend to give evidence in a proceeding does not attend or remain in attendance, the court before which the person is bound to attend 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 (5) and (6) apply; and

(b) where the person is not brought directly before the court, subsections (3) to (6) apply.

(10) The court may order that the evidence of a person held in custody under this section be taken by a commissioner under section 48, which applies thereto in the same manner as to a witness who is unable to attend by reason of illness.

Order for a Prisoner to Attend

45.-(1) Where a person whose attendance is required in a court to stand trial or to give evidence is confined in a prison, and a judge is satisfied, upon evidence under oath given 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 before which attendance is required, from day to day, as may be necessary.

(2) An order under subsection (1) shall be addressed to the person who has custody of the prisoner and on receipt of the order 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 any reasonable charges in respect thereof.

(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 the person is brought.

Failure to Attend

46.-(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.

(2) In a proceeding under subsection (1), a certificate of the clerk or a judge of the court before which the defendant in that proceeding is alleged to have failed to attend stating that the defendant failed to attend is admissible in evidence as proof of the fact, in the absence of evidence to the contrary, without proof of the signature or office of the person appearing to have signed the certificate.

Commission Evidence

47.-(1) Upon the application of the defendant or prosecutor, the court may by order appoint a commissioner to take the evidence of a witness who is out of (the enacting jurisdiction) 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.

(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.

(3) An order under subsection (1) may make provision to enable the defendant to be present or represented by counsel or agent when the evidence is taken, but failure of the defendant to be present or to be represented by counsel or agent 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.

Evidence on Another Charge

48. The court may receive and consider evidence taken before the same judge on a different charge against the same defendant, with the consent of the parties.

Evidence of Age

49. In the absence of other evidence, or by way of corroboration of other evidence, the court may infer the age of a person from the appearance of the person.

Exhibits

50.-(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.

(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.

Interpreters

51. 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.

False Statements

52. 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.

Removal of Defendant

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

(a) when the defendant interrupts the proceedings so that to continue in the defendant's presence 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.

(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 for the maintenance of order in the courtroom or to remove an influence that might affect the testimony of a witness.

Contempt of Court

54.-(1) Except as otherwise provided by an Act, every person who commits contempt in the face of the court 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.

(2) Before proceedings are taken for contempt under subsection (1), the court shall inform the offender of the conduct complained of and the nature of the contempt and inform the offender of the right to show cause why he or she should not be punished.

(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.

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

(5) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

(6) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in (enacting jurisdiction), the court may order that he or she be barred from acting as agent in the proceeding in addition to any other punishment to which he or she is liable.

(7) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction of a regulatory offence.

COMMENTARY

As a court of record and a creation of statute, the regulatory offences court has powers to punish for contempt in the face of the court but not for contempt of its processes or other contempt outside of the courtroom. Section 54 retains that limit on the court's contempt jurisdiction but provides certain regular procedure.

Non-juridical Day

55. 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.

Irregularity and Validity

56.-(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, undertaking to appear or recognizance; or

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

(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 78 for the payment of costs.

Extension of Time

57. Any time prescribed by this Act or the regulations made thereunder or by the rules of the court for doing any thing other than commencing or recommencing proceedings may be extended by the court, whether or not the prescribed time has expired.

Service

58.-(1) Except where otherwise provided by this Act or the rules of the court, any notice or document required or authorized to be given or delivered under this Act or the rules of the court is sufficiently given or delivered if delivered, whether personally or by mail.

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act or the rules of the court is mailed to the person at his or her last known address appearing on the record of the proceeding in the court, there is a rebuttable presumption that the notice or document is delivered to the person.

SENTENCING

Presentence Report

59.-(1) Where a defendant is convicted of an offence for which the notice of offence does not specify a set fine, the court may, where necessary for the

purpose of assisting the court in imposing a sentence, direct a probation officer to prepare and file with the court a report in writing relating to the defendant.

(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 counsel or agent and to the prosecutor.

Submission as to Sentence

60.-(1) Where a defendant who appears personally is convicted of an offence, the court shall give the prosecutor and the counsel or agent for the defendant an opportunity to make submissions as to sentence and, where the defendant has no counsel or agent, the court shall ask the defendant if he or she has anything to say before sentence is passed.

(2) The omission to comply with subsection (1) does not affect the validity of the proceeding.

(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.

(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 in which 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, in the absence of evidence to the contrary, proof of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the certificate.

Time Spent in Custody

61. In determining the sentence to be imposed on a person convicted of an offence, the court may take into account any time spent in custody by the person as a result of the offence.

Minute of Disposition

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 the Attorney General's agent, the court shall cause a copy of the minute certified by the clerk of the court to be delivered to the person making the request.

Minimum Penalties

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

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

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, notwithstanding the prescribed penalty, impose a fine of not more than $5,000 in lieu of imprisonment.

COMMENTARY

Minimum penalties are prescribed to force courts to penalize certain offences more severely as a matter of public policy. They always cause a strain because the courts are then compelled to comply despite the judge's conviction that in the particular circumstances of the case before him or her the minimum is not just, although technically there is guilt. The tailoring of the penalty to individual circumstances within the public policy is the function of courts. One consequence of minimum penalties is a tendency for the court to stretch a point in interpreting the law to avoid a finding of guilt when faced with what the judge feels is an obligatory unjust penalty.

The purpose of section 63 is to permit a judge to have more flexibility in special circumstances.

Fines

64.-(1) A fine becomes due and payable [fifteen days or such other period as is determined by the enacting jurisdiction] after its imposition.

(2) Where the defendant is from outside the jurisdiction of the court, the court may order that the fine is due and payable immediately.

(3) Where the court imposes a fine, the court shall ask the defendant if he or she wishes an extension ot the time for payment of the fine.

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

(5) 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.

(6) 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 his or her right to apply for an extension of the time for payment under subsection (7).

(7) The defendant may, at any time by application 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 court may grant the request or require a hearing in the same manner as under subsections (4) and (5).

Fine Options

65. 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 (enacting jurisdiction).

Civil Suit on Default of Fine

66.-(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.

(2) A certificate shall not be filed under subsection (1) after two years after the default in respect of which it is issued.

(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.

Default of Fines

67.-(1) The payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more.

(2) Where a judge is satisfied that payment of a fine is in default, the judge,
(a) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized by or under any Act for non-payment of the fine be suspended, not renewed or not issued until the fine is paid; and
(b) may direct the clerk of the court to proceed with civil enforcement under section 66.

(3) A judge may issue a warrant in the prescribed form for the committal of the defendant where,
(a) an order or direction under clause (2) (a) has not resulted in payment within a time that is reasonable in the circumstances;
(b) the defendant has not taken the fine option;
(c) the defendant has made no arrangement for extension of the time for payment or for payment by instalments;
(d) the defendant has not responded to the notice of intent to issue a warrant;
(e) all other reasonable methods of collecting the fine have been tried and failed or, in the opinion of the judge, would not likely result in payment within a reasonable time in the circumstances; (f) the judge is satisfied that the defendant is able to pay the fine; and
(g) the defendant has been given fifteen days notice of the intent to issue a warrant and has had an opportunity to be heard.

(4) In exceptional circumstances where, in the opinion of the court that imposed the fine, to proceed under subsection (3) would defeat the ends of justice, the court may,
(a) order that no warrant of committal be issued under subsection (3); or
(b) order imprisonment in default of payment of the fine and that no extension of time for payment be granted.

(5) Imprisonment under a warrant issued under subsection (3) or (4) shall be for three days, plus one day for each $50 or part thereof that is in default, subject to a maximum period of ninety days or half of the maximum imprisonment, if any, provided for the offence, whichever is the greater.

(6) Any payment made after a warrant is issued under subsection (3) or (4) shall reduce the term by the number of days that is in the same proportion to the number of days in the term as the amount bears to the amount in default and no amount offered in part payment of a fine shall be accepted unless it is sufficient to secure reduction of sentence of one day, or a multiple thereof.

Suspension of Fine

68. 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.

Custody on Imprisonment

69.-(1) The term of imprisonment imposed by a sentence shall, unless otherwise directed in the sentence, commence on the day on which the convicted person is taken into custody under the sentence, 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 the person is sentenced.

(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.

COMMENTARY

Since regulatory offences do not normally involve dangerous conduct or the need for public protection, continuous custody after conviction is not important. Subsection (2) permits the defendant to make arrangements for his or her absence from family and work.

Sentences Consecutive

70. Where a person is subject to more than one term of imprisonment at the same time, the two 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.

Warrant of Committal

71.-(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.

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

(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.

Probation Order

72.-(1) Where a defendant is convicted of an offence in a proceeding commenced by the issuance of a summons, 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, 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 not in confinement under the order, comply with the conditions prescribed in a probation 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 (enacting jurisdiction) or any other province or territory 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 his or her address.

(3) In addition to the conditions set out in subsection (2), the court may prescribe the following conditions 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 that is 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.

(4) A probation order shall be in the prescribed form and the court that makes the order 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.

(5) Where the court makes a probation order, it shall cause a copy of the order and a copy of section 76 to be given to the defendant.

(6) The Lieutenant Governor in Council may make regulations governing restitution, compensation and community service orders, including their terms and conditions.

Commencement of Probation Order

73. 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.

Probation Order and Further Conviction

74. 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.

Amendment of Probation Order

75. 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.

Breach of Probation Order

76. Where a defendant who is bound by a probation order is convicted of an offence constituting a breach of condition of the order and,

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

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

(c) the defendant has given written notice to the court that convicted him or her that he or she 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 judge presiding is the judge 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.

Costs

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

(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 to the court or prosecutor by the defendant or to the defendant by the person who issued the certificate.

(3) Costs payable under this section and administration fees in the proceeding that are prescribed by law shall be deemed to be a fine for the purpose of enforcing payment.

General Penalty

78. 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.

COMMENTARY

This section is probably obsolete. It is well established that conduct does not become an offence unless there is a specific statement that it is an offence. If there is still an instance where conduct is created an offence and no penalty is prescribed it is probably in a century old statute and could be better ignored.

YOUNG PERSONS

COMMENTARY

The provisions of the Young Offenders Act (Canada) apply in respect of offences against the Criminal Code. The enacting jurisdiction will require legislation to create the facilities referred to in the Young Offenders Act, probably in its social ministry legislation. Similarly the administrative structure that is necessary will be established in the children's services administration. The special provisions for alternative sentencing belong in that legislation by merely extending its application to regulatory offences. Similarly alternative measures should be provided for by extending the application of existing provisions that deal with the Federal Act. It is, however, necessary to carry out the procedural principles that are contained in the Federal legislation.

Minimum Age

79. No person shall be convicted of an offence committed while under twelve years of age.

Application of ss 81 to 89

80.-(1) Sections 81 to 89 apply to proceedings against a young person who is a person of twelve years of age or more but under sixteen years of age, and includes proceedings against a person of sixteen years of age or more who is charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age.

(2) The provisions of this Act apply to young persons except insofar as anything in sections 81 to 89 is inconsistent with them.

(3) A reference in sections 81 to 89 to a parent includes a reference to an adult with whom the young person ordinarily resides.

COMMENTARY

When determining the upper age of a young offender for the purposes of regulatory offences a major consideration is the age in the statutes of the jurisdiction when young persons can obtain a driving licence, obtain alcohol or engage in other commonly regulated activities. The central purpose of young offender legislation is not directed at purely regulatory minor offences.

Summons

81. A proceeding commenced against a young person shall be by a certificate of offence with an offence notice and summons.

Notice to Parent

82.-(1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the regulatory 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.

(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 adjourn the hearing to another time to permit notice to be given or may dispense with the notice.

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceedings against the young person.

Trial

83.-(1) Subject to section 37 (ex parte conviction), subsection 53 (1) (removal for misconduct) and subsection (2), a young person shall be present in court during the whole of the trial.

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

(3) Section 46 (penalty for failure to attend) does not apply to a young person who is a defendant.

(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.

(5) Where a young person does not attend personally in response to a summons issued under section 35 (court summons to attend) 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.

Protection of Identity

84.-(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.

(2) 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.

(3) 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.

Penalties

85.-(1) No young person shall be sentenced to be imprisoned except under clause 76(d) (breach of probation order).

(2) Where a young person is found guilty of an offence in proceedings commenced under this Act, 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.

(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.

Imprisonment for Non-payment of Fine

86.-(1) No warrant of committal shall be issued against a young person under section 67 (default of fines).

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 67(3) or (4) (imprisonment for non-payment of fine), a judge may direct that the young person comply with the conditions prescribed in a probation order after giving the young person fifteen days notice of the intention to make a probation order and giving the young person an opportunity to be heard.

(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.

Open Custody

87. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 76(d), the term of imprisonment shall be served in a place of open custody designated under section 24 of the Young Offenders Act (Canada).

Procès

83 (1) Sous réserve de l'article 37 (déclaration de culpabilité en l'absence du défendeur), du paragraphe 53 (1) (expulsion pour mauvaise conduite) et du paragraphe (2), l'adolescent doit être présent en cour pendant toute la durée du procès.

(2) Le tribunal peut autoriser un adolescent à être absent pendant la totalité ou une partie du procès aux conditions que le tribunal estime appropriées.

(3) L'article 46 (peine pour défaut d'être présent) ne s'applique pas si l'adolescent est défendeur.

(4) Si un adolescent qui est défendeur ne comparaît pas aux date, heure et lieu fixés pour une audience et que le poursuivant prouve, après avoir eu l'occasion raisonnable de le faire, qu'une assignation a été signifiée, qu'une promesse de comparaître a été donnée ou qu'un engagement à comparaître a été consenti, selon le cas, ou si l'adolescent ne comparaît pas à la reprise d'une audience ajournée, le tribunal peut ajourner l'audience et décerner une assignation à comparaître ou un mandat pour l'arrestation de l'adolescent, rédigés selon la formule prescrite.

(5) Si un adolescent ne se présente pas en personne à la suite d'une assignation décernée en vertu de l'article 35 (assignation du tribunal ordonnant au défendeur de se présenter en personne) et que le poursuivant prouve, après avoir eu l'occasion raisonnable de le faire, que l'assignation a été signifiée, le tribunal peut ajourner l'audience et décerner une autre assignation ou un mandat pour l'arrestation de l'adolescent, rédigés selon la formule prescrite.

Protection de l'identité

84 (1) Nul ne doit publier, par quelque moyen que ce soit, le compte rendu :

a) d'une infraction commise par un adolescent ou reprochée à celui-ci;

b) d'une audience, d'une décision, d'une sentence ou d'un appel concernant un adolescent qui a commis une infraction ou à qui une infraction est reprochée,

dans lequel est divulgué le nom de l'adolescent ou un renseignement permettant d'établir son identité.

(2) Le paragraphe (1) n'interdit pas ce qui suit :

1. La divulgation de renseignements par l'adolescent concerné.

2. La divulgation de renseignements par le père ou la mère, ou l'avocat de l'adolescent dans le but de protéger les intérêts de ce dernier.

3. La divulgation de renseignements par un agent de police dans le but de faire une enquête sur une infraction que l'adolescent est soupçonné d'avoir commise.

4. La divulgation de renseignements à un assureur pour lui permettre de faire une enquête sur une réclamation résultant d'une infraction commise par l'adolescent ou reprochée à celui-ci.

5. La divulgation de renseignements dans le cadre de l'administration de la justice, mais non dans le but de les porter à la connaissance de la collectivité.

6. La divulgation de renseignements par une personne ou un membre d'une catégorie de personnes prescrites par les règlements.

(3) Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 10 000 $, quiconque contrevient au paragraphe (1) et tout administrateur, dirigeant ou employé d'une personne morale qui autorise ou permet une contravention au paragraphe (1) par la personne morale ou qui y consent.

Peine

85 (1) Aucun adolescent ne peut être condamné à une peine d'emprisonnement si ce n'est en vertu de l'alinéa 76 d) (violation des conditions de l'ordonnance de probation).

(2) Si un adolescent est déclaré coupable d'une infraction dans une instance introduite en vertu de la présente loi, le tribunal peut :

a) soit déclarer l'adolescent coupable et, selon le cas :

(i) lui ordonner de payer une amende n'excédant pas le maximum prescrit à l'égard de l'infraction ou 1 000 $, selon le montant qui est le moindre,

(ii) surseoir au prononcé de la sentence et ordonner que l'adolescent se conforme aux conditions prescrites dans une ordonnance de probation;

b) soit libérer l'adolescent inconditionnellement.

(3) L'ordonnance de probation rendue en vertu du sous-alinéa (2) a) (ii) ne peut demeurer en vigueur pendant plus d'un an après la date de son entrée en vigueur.

Emprisonnement pour défaut de paiement d'une amende

86 (1) Aucun mandat de dépôt ne peut être décerné contre un adolescent en vertu de l'article 67 (défaut de paiement d'une amende).

Arrest Without Warrant

88. 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.

Release after Arrest

89.-(1) Section 121 (bail procedure) does not apply to a young person who has been arrested.

(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 the young person 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 establish the young person's identity, or prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

(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 and where the officer in charge is of the opinion that the conditions set out in subsection (2) do not or no longer exist, the officer in charge shall release the young person unconditionally or upon the young person entering into a recognizance in the prescribed form, without sureties, conditioned for appearance in court.

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

(5) Section 122 (prompt appearance in court) applies with necessary modifications to the release of a young person from custody under this section.

(6) No young person who is detained under section 121 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 judge so authorizes, which the judge may do 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.

(7) Wherever practicable, a young person who is detained in custody shall be detained in a place of temporary detention designated under subsection 7 (1) of the Young Offenders Act (Canada).

APPEALS AND REVIEW

Appeal Court

90. An appeal lies from the regulatory offences court to the (County or District Court or equivalent lowest trial court of federally appointed judges in the enacting jurisdiction).

Stay

91. The filing of a notice of appeal does not stay the conviction unless a judge of the appeal court so orders.

Fixing Date

92.-(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 apply to a judge of the appeal court to fix a date for the hearing of the appeal.

(2) Upon receiving an application 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.

Payment of Fine not Waiver

93. The payment of a fine or compliance with an order imposed upon conviction is not a waiver of the right to appeal.

Transmittal of Material

94. Where a notice of appeal has been filed, the clerk of the appeal court shall notify the clerk of the regulatory offences court appealed from of the appeal and, upon receipt of the notification, the clerk of the regulatory offences court shall transmit the order appealed from and transmit or transfer custody of all other material in the clerk's possession or control relevant to the proceedings to the clerk of the appeal court to be kept with the records of the appeal court.

Right of Appeal

95.-(1) A defendant, prosecutor or the Attorney General by way of intervention may appeal from a conviction, dismissal or sentence made by a regulatory offences court or from a finding as to ability, because of mental disorder, to conduct a defence.

(2) The appeal shall be in accordance with the rules of the appeal court.

Powers of Court

96.-(1) The appeal 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;

(b) order any witness who would have been a compellable witness at the trial, whether or not 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 before a judge of the court, or before any officer of the court 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, 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.

(2) In proceedings under this section, the parties or their counsel 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.

Appearance

97.-(1) An appellant or respondent may appear and act personally or by counsel.

(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.

(3) The power of the court to impose sentence may be exercised notwithstanding that the appellant or respondent is not present.

Written Argument

98. An appellant or respondent may present his or her case on appeal and argument in writing instead of orally, and the court shall consider any case or argument so presented.

Powers on Appeal Against Conviction

99.-(1) On the hearing of an appeal against a conviction or against a finding as to 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 not properly convicted on a count or part of a certificate was properly convicted on another count or part of the certificate,

(ii) the appeal is not decided in favour of the appellant on any ground mentioned in clause (a), or

(iii) notwithstanding that 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.

(2) Where the court allows an appeal under clause (1) (a), it shall,

(a) where the appeal is from a conviction, direct a finding of acquittal to be entered or order a new trial; or

(b) where the appeal is from a finding that the defendant is unable, because of mental disorder, to conduct a defence, order a new trial.

(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.

Powers on Appeal Against Acquittal

100. 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.

Appeal Against Sentence

101.-(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 offence.

(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 court.

One Sentence on More than One Count

102. 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.

Defect in Certificate or Process

103.-(1) Judgment shall not be given in favour of an appellant based on an alleged defect in the substance or form of a certificate or process or any variance between the 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 notwithstanding that the variance had misled the appellant.

(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.

Additional Orders

104. A court that exercises any of the powers in sections 96 to 103 may make any order in addition that justice requires.

New Trial

105.(1) Where a court orders a new trial, it shall be held in a regulatory offences court presided over by a judge other than the judge who tried the defendant in

the first instance unless the appeal court directs that the new trial be held before the judge who tried the defendant in the first instance.

(2) Where a court orders a new trial, it may make such order for the release or detention of the appellant pending the trial as may be made by a judge under subsection 123(2) (order for conditional release of person in custody) and the order may be enforced in the same manner as if it had been made by a judge under that subsection.

Trial de Novo

106.-(1) Where, because of the condition of the record of the trial in the trial court or for any other reason, the court, upon application 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 Appeal Court, the court may order that the appeal shall be heard by way of a new trial in the court in accordance with the rules, and for this purpose this Act applies with necessary modifications in the same manner as to a proceeding in a regulatory offences court.

(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.

Failure to Comply or Abandonment

107. The court may order that the appeal be dismissed, 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 92 (conditions for release from custody) or with the conditions of any recognizance entered into under that section; or

(b) the appeal has not been proceeded with or has been abandoned.

Costs

108.-(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.

(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 him to the person entitled to them, and shall fix the period within which the costs shall be paid.

(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.

Implementation of Order on Appeal

109. An order or judgment of the appeal court shall be implemented or enforced by the trial court and the clerk of the appeal court shall send to the clerk of the trial court the order and all writings relating to the order.

Appeal to the Court of Appeal

110.-(1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the appeal court to the Court of Appeal, with leave of a justice of appeal on special grounds, upon any question of law alone or as to sentence in accordance with the rules of the Court.

(2) Leave to appeal shall not be granted under subsection (1) unless the justice 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.

(3) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1).

Custody Pending Appeal

111. A defendant who appeals shall, if in custody, remain in custody, but a judge may order the defendant's release upon any of the conditions set out in subsection 122(2) (order for conditional release of person in custody).

Review in Minor Cases

112.-(1) Where a defendant is convicted of an offence for which the maximum penalty prescribed is a fine of $5,000 or less and no imprisonment, the defendant may elect to appeal by way of a review under this section.

(2) The review shall be conducted in the (provincial or territorial summary conviction court) as an informal review for the purpose of ensuring that the defendant has had due process and the evidence was duly considered.

(3) Upon a review, the court shall give the parties an opportunity to be heard and may,

(a) make such inquiries as are necessary to ensure that the issues are fully and effectively defined;

(b) receive any evidence that the defendant failed to present at the original hearing, notwithstanding that it was available;

(c) hear or rehear the recorded evidence or any part of it and may require any party to provide a transcript of the evidence or any part of it or to produce any further exhibit;

(d) receive the evidence of any witness whether or not the witness gave evidence at the trial;

(e) require the judge presiding at the trial to report in writing on any matter respecting the procedure and due process as is specified in the request;

(f) require the attendance of the regulatory offences officer who issued the certificate or the clerk of the trial court or any other official whose evidence is relevant to the issues raised by the defendant; and

(g) receive and act upon statements of agreed facts or admissions.

(4) Upon a review, 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.

(5) Where the court directs a new trial, it shall be held in the regulatory offences court presided over by a judge other than the judge who tried the defendant in the first instance, but the review court may, with the consent of the parties to the review, direct that the new trial be held before the judge who tried the defendant in the first instance.

(6) A decision on a review under this section is final.

COMMENTARY

In the great number of minor offences such as parking, illegal turns, stop signs, speeding and their equivalent in other activities such as jay-walking, smoking and many other similar offences, there is no legal issue that the defendants are interested in. It is much like being billed by a utility. The main questions on which the defendant seeks reassurance are of fact and amount. The principal function of the court is to give the defendant access to someone to ensure that the defendant's version of the facts are taken into consideration.

Unfortunately, the crowded courts and stylized procedure commonly leaves a defendant feeling that his or her story was never gotten across. After the gavel falls and the defendant seeks to continue, the defendant is told "You can appeal if I'm wrong". It is not access to justice in these cases to offer only an

expensive formal appeal with a full dress hearing through lawyers on legal points and, of course, no appeal will be taken.

The purpose of section 112 is to review due process and correct any oversight or deficiency in the hearing. Any serious questions of law should go to the regular appeal procedure. The review is an option but, if taken, excludes an appeal.

Judicial Review

113.-(1) Upon an application by way of originating notice, the (name the superior trial court of the enacting jurisdiction) may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of mandamus, prohibition or certiorari.

(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.

(3) An appeal lies to the Court of Appeal from an order made under this section.

Application for Certiorari

114.-(1) A notice under section 113 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.

(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 in the (Court) for use on the application, all material concerning the subject-matter of the application.

(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.

(4) On an application for relief in the nature of certiorari, the (Court) 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.

(5) Where an application is made to quash a decision, order, warrant or proceeding made or held by a judge on the ground that the judge exceeded his or her jurisdiction, the (Court) may, in quashing the decision, order, warrant or proceeding, order that no civil proceeding shall be taken against the judge or against any officer who acted under the decision, order or warrant or in the proceeding or under any warrant issued to enforce it.

Application for Habeas Corpus

115.-(1) Upon an application by way of originating notice, the (Court) may by order grant any relief in respect of a matter arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the 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 on 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.

Costs on Judicial Review

116. The (Court) to which an application or appeal is made under section 113 or 115 may make an order with respect to costs that it considers just and reasonable.

ARREST AND BAIL

Power of Arrest

117. There is no general power of arrest in respect of the commission of a regulatory offence unless the arrest is by a police officer who has reasonable and probable grounds to believe that an offence has been committed or is about to be committed and,

(a) an arrest is necessary to identify the defendant;

(b) an arrest is necessary to preserve evidence;

(c) an arrest is necessary to prevent the continuation of the offence; or

(d) the defendant is from out of the jurisdiction and unlikely to respond to the offence notice and a deposit is required by means of the bail procedure.

Execution of Warrant

118.-(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 found in (enacting jurisdiction).

(2) A police officer may arrest without warrant a person for whose arrest the officer has reasonable and probable grounds to believe that a warrant is in force in (enacting jurisdiction).

Use of Force

119.-(1) Every police officer, if the officer acts on reasonable and probable grounds, is justified in using as much force as is necessary to do what the officer is required or authorized by law to do.

(2) Every person upon whom a police officer calls for assistance is justified in using as much force as the person believes on reasonable and probable grounds is necessary to render the assistance.

Disclosure on Arrest

120.-(1) It is the duty of every one who executes a process or warrant to produce it when requested to do so.

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person of the reason for the arrest.

Release after Arrest

121.-(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 the person 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 of (enacting jurisdiction) and will not respond to a summons or offence notice.

(2) Where a defendant is not released from custody under subsection (1), the police officer shall deliver the defendant to the officer in charge of the place

where the defendant is held and where, in the opinion of the officer in charge the conditions set out in clauses (1)(a) and (b) do not or no longer exist, the officer in charge shall release the defendant, after serving the defendant with a summons or after the defendant has entered into a recognizance in the prescribed form, without sureties, conditioned for appearance in court.

(3) Where the defendant is held for the reason only that he or she is not ordinarily resident in (enacting jurisdiction) and it is believed that he or she will not respond to a summons, 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 the maximum fine for the offence or $500, whichever is the lesser.

Court Appearance

122.-(1) Where a defendant is not released from custody under section 121, the officer in charge shall, as soon as is practicable but in any event within twenty-four hours, bring the defendant before a judge and the judge shall, unless a plea of guilty is taken, order that the defendant be released upon giving an 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.

(2) The judge 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; or

(b) where the offence is one punishable by imprisonment for twelve months or more, or where the defendant is not ordinarily resident in (enacting jurisdiction), upon the defendant entering into a recognizance before a judge with sureties in such amount and with such conditions, if any, as are appropriate to ensure appearance in court or, with the consent of the prosecutor, upon the defendant depositing with the judge such sum of money or other valuable security as the order directs in an amount not exceeding the amount of the maximum fine for the offence or $1,000, whichever is the lesser.

(3) The judge shall not make an order under clause (2)(b) unless the prosecutor shows cause why an order under clause (2)(a) should not be made.

(4) Where the prosecutor shows cause why the detention of the defendant in custody is justified to ensure the defendant's appearance in court, the judge shall order the defendant to be detained in custody until dealt with according to law.

(5) The judge shall include in the record a statement of reasons for the decision under subsection (1), (2) or (4).

(6) In a proceeding under subsection (1), the judge may receive and base his or her decision upon information the judge considers credible or trustworthy in the circumstances of each case except that the defendant shall not be examined or cross-examined in respect of the offence with which he or she is charged.

(7) A proceeding under subsection (1) shall not be adjourned for more than three days without the consent of the defendant.

Expediting of Trial

123.-(1) A defendant who is not released from custody under section 121 or 122 shall be brought before the court forthwith and, in any event, within eight days.

(2) The judge presiding upon any appearance of the defendant in court may, upon the application of the defendant or prosecutor, review any order made under section 122 and make such further or other order under section 122 as to the judge seems appropriate in the circumstances.

Appeal

124. A defendant or the prosecutor may appeal from an order or refusal to make an order under section 122 or 123 and the appeal shall be to the (court designated by the enacting jurisdiction for appeals under section 90) and shall be conducted in accordance with the rules of the court.

Agent for Appearance

125.-(1) Where a defendant from outside the jurisdiction who is released upon making a deposit under subsection 121(3) or clause 122 (2)(b) does not appear to answer the charge, the judge may order the amount deposited to be applied to payment of the fine and costs imposed by the court upon the conviction.

(2) An officer in charge or judge who takes a recognizance, money or security under section 121 or 122 shall make a return of it to the court where the defendant is required to appear.

(3) The clerk of the court shall, upon the conclusion of proceedings, make a financial return to every person who deposited money or security under a recognizance and return the surplus, if any.

Recognizance Binding

126.(1) The recognizance of a person to appear in a proceeding binds the person and sureties in respect of all appearances required in the proceeding at times and places to which the proceeding is adjourned.

(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.

(3) The principal to a recognizance is bound for the amount of the recognizance that is due upon forfeiture.

(4) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance that is due upon forfeiture for non-appearance.

Relieving Surety

127.-(1) A surety to a recognizance may, by application in writing to the court at which the defendant is required to appear, apply to be relieved of the obligation under the recognizance and the court shall thereupon issue a warrant for the arrest of the defendant.

(2) A police officer who arrests the defendant under a warrant issued under subsection (1) shall bring the defendant before a judge under section 122 and certify the arrest by certificate in the prescribed form and deliver the certificate to the court.

(3) The receipt of the certificate by the court under subsection (2) vacates the recognizance and discharges the sureties.

Discharge of Surety

128. A surety to a recognizance may discharge the obligation under the recognizance by delivering the defendant into the custody of the court at which the defendant is required to appear at any time while it is sitting at or before the trial of the defendant.

Forfeiture of Recognizance

129.-(1) Where a person who is bound by a recognizance does not comply with a condition of the recognizance, a judge 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.

(2) A certificate that has been endorsed on a recognizance under subsection (1) is evidence of the default to which it relates.

(3) The clerk of the court shall transmit the endorsed recognizance to the clerk of the (County or District Court or equivalent lowest trial court of federally appointed judges in the enacting jurisdiction) and, upon its receipt, the endorsed recognizance constitutes an application for the forfeiture of the recognizance.

(4) A judge of the court shall fix a time and place for the hearing of the application and the clerk 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 application 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.

(5) The court may, after giving the parties an opportunity to be heard, in its discretion grant or refuse the application and make any order in respect of the forfeiture of the recognizance that the court considers proper.

(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 (county or district court or equivalent civil court of the enacting jurisdiction).

SEARCH AND SEIZURE

Warrant

130.-(1) Where a judge is satisfied by information upon oath that there is reasonable ground to believe that there is in any building, receptacle or place,

(a) anything upon or in respect of which an offence has been or is suspected to have been committed; or

(b) anything that there is reasonable ground to believe will afford evidence as to the commission of an offence,

the judge may at any time issue a warrant in the prescribed form authorizing a police officer or person named in the warrant to search the building, receptacle or place for any such thing, and to seize and carry it before the judge issuing the warrant or another judge to be dealt with according to law.

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue.

(3) Every search warrant shall be executed between 6 a.m. and 9 p.m., unless the judge otherwise authorizes by the warrant.

Detention of Things Seized

131.-(1) Where any thing is seized and brought before a judge, the judge shall by order,

(a) detain it or direct it to be detained in the care of a person named in the order; or

(b) direct it to be returned,

and the judge may in the order authorize the examination, testing, inspection or reproduction of the thing seized upon such conditions as are reasonably necessary and directed in the order, and may make any other provision as in the opinion of the judge is necessary for its preservation.

(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 application, a judge is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and the judge so orders; or

(b) proceedings are instituted in which the thing detained may be required.

(3) Upon the application of the defendant, prosecutor or person having an interest in a thing detained under subsection (1), a judge 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.

(4) Upon the application of a person having an interest in a thing detained under subsection (1), and upon notice to the defendant, to the person from whom the thing was seized, to the person to whom the search warrant was issued and to any other person who has an apparent interest in the thing detained, a judge 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 the investigation or proceeding.

Solicitor-Client Privilege

132.-(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.

(2) No person shall examine or seize a document that is in the possession of a lawyer without giving the lawyer a reasonable opportunity to claim the privilege under subsection (1).

(3) A judge may, upon the application of the lawyer, which may be made without notice, 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.

(4) Where a document has been seized and placed in custody under subsection (1), the client by whom or on whose behalf the claim of solicitor-client privilege is made may apply to a judge for an order sustaining the privilege and for the return of the document.

(5) An application under subsection (4) shall be by notice of motion returnable not later than thirty days after the date on which the document was placed in custody.

(6) The person who seized the document and the Attorney General are parties to an application under subsection (4) and entitled to at least three days notice of the application.

(7) An application under subsection (4) shall be heard in private and, for the purposes of the hearing, the judge may examine the document and, if so, the judge shall cause it to be resealed.

(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.

(9) Where it appears to a judge upon the application of the Attorney General or person who seized the document that no application 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.

COMMENTARY

Sections 130 to 132 are useful for adoption by reference in other statutes where searches are necessary for other purposes, such as investigations involving consumer or other public protection.

REGULATIONS

Regulations

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

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

(b) prescribing the words and expressions to designate particular offences for the purposes of describing charges in certificates of offence, offence notices and summons;

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

(2) The use on a form prescribed under clause (1)(a) of any word or expression authorized by the regulations to designate an offence is sufficient for all purposes to describe the offence, including sufficient particularity of the charge.

Rules of Court

134.-(1) There shall be a Rules Committee of the (court designated or established for regulatory offences in the enacting jurisdiction) composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the Committee.

(2) A majority of the members of the Rules Committee constitutes a quorum.

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules,

(a) regulating any matters relating to the practice and procedure of the (Court);

(b) prescribing forms that are referred to in this Act as prescribed forms, and such other forms respecting proceedings in the court as are considered necessary;

(c) prescribing and regulating the procedures under any Act that confers jurisdiction on the (Court) or a judge of the court;

(d) prescribing any matter that is referred to in an Act as provided for by the rules of the (Court).