## Excerpts from the *Criminal Code*

Appeal

**10.** (1) Where a court, judge, justice or provincial court judge summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal

(*a*) from the conviction; or

(*b*) against the punishment imposed.

Idem

(2) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal

(*a*) from the conviction; or

(*b*) against the punishment imposed.

Part XXI applies

(3) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and, for the purposes of this section, the provisions of Part XXI apply, with such modifications as the circumstances require.

R.S., 1985, c. C-46, s. 10; R.S., 1985, c. 27 (1st Supp.), s. 203.

Punishment for high treason

**47.** (1) Every one who commits high treason is guilty of an indictable offence and shall be sentenced to imprisonment for life.

Punishment for treason

(2) Every one who commits treason is guilty of an indictable offence and liable

(*a*) to be sentenced to imprisonment for life if he is guilty of an offence under paragraph 46(2)(*a*), (*c*) or (*d*);

(*b*) to be sentenced to imprisonment for life if he is guilty of an offence under paragraph 46(2)(*b*) or (*e*) committed while a state of war exists between Canada and another country; or

(*c*) to be sentenced to imprisonment for a term not exceeding fourteen years if he is guilty of an offence under paragraph 46(2)(*b*) or (*e*) committed while no state of war exists between Canada and another country.

Corroboration

(3) No person shall be convicted of high treason or treason on the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

Minimum punishment

(4) For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by subsection (1) is a minimum punishment.

R.S., c. C-34, s. 47; 1974-75-76, c. 105, s. 2.

*Prohibited Acts*

Acts intended to alarm Her Majesty or break public peace

**49.** Every one who wilfully, in the presence of Her Majesty,

(*a*) does an act with intent to alarm Her Majesty or to break the public peace, or

(*b*) does an act that is intended or is likely to cause bodily harm to Her

Majesty,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 49.

Intimidating Parliament or legislature

**51.** Every one who does an act of violence in order to intimidate Parliament or the legislature of a province is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 51.

Inciting to mutiny

**53.** Every one who

(*a*) attempts, for a traitorous or mutinous purpose, to seduce a member of the Canadian Forces from his duty and allegiance to Her Majesty, or

(*b*) attempts to incite or to induce a member of the Canadian Forces to commit a traitorous or mutinous act,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 53.

Punishment of seditious offences

**61.** Every one who

(*a*) speaks seditious words,

(*b*) publishes a seditious libel, or

(*c*) is a party to a seditious conspiracy,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., c. C-34, s. 62.

Piracy by law of nations

**74.** (1) Every one commits piracy who does any act that, by the law of nations, is piracy.

Punishment

(2) Every one who commits piracy while in or out of Canada is guilty of an indictable offence and liable to imprisonment for life.

R.S., c. C-34, s. 75; 1974-75-76, c. 105, s. 3.

Piratical acts

**75.** Every one who, while in or out of Canada,

(*a*) steals a Canadian ship,

(*b*) steals or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Canadian ship,

(*c*) does or attempts to do a mutinous act on a Canadian ship, or

(*d*) counsels a person to do anything mentioned in paragraph (*a*), (*b*) or (*c*),

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

R.S., 1985, c. C-46, s. 75; R.S., 1985, c. 27 (1st Supp.), s. 7.

*Prohibition Orders*

Mandatory prohibition order

**109.** (1) Where a person is convicted, or discharged under section 730, of

(*a*) an indictable offence in the commission of which violence against a person was used, threatened or attempted and for which the person may be sentenced to imprisonment for ten years or more,

(*b*) an offence under subsection 85(1) (using firearm in commission of offence), subsection 85(2) (using imitation firearm in commission of offence), 95(1) (possession of prohibited or restricted firearm with ammunition), 99(1) (weapons trafficking), 100(1) (possession for purpose of weapons trafficking), 102(1) (making automatic firearm), 103(1) (importing or exporting knowing it is unauthorized) or section 264 (criminal harassment),

(*c*) an offence relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the *Controlled Drugs and Substances Act*, or

(*d*) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, any ammunition, any prohibited ammunition or an explosive substance and, at the time of the offence, the person was prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance during the period specified in the order as determined in accordance with subsection (2) or (3), as the case may be.

Duration of prohibition order -- first offence

(2) An order made under subsection (1) shall, in the case of a first conviction for or discharge from the offence to which the order relates, prohibit the person from possessing

(*a*) any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance during the period that

(i) begins on the day on which the order is made, and

(ii) ends not earlier than ten years after the person's release from imprisonment after conviction for the offence or, if the person is not then imprisoned or subject to imprisonment, after the person's conviction for or discharge from the offence; and

(*b*) any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

Duration of prohibition order -- subsequent offences

(3) An order made under subsection (1) shall, in any case other than a case described in subsection (2), prohibit the person from possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance for life.

Definition of "release from imprisonment"

(4) In subparagraph (2)(*a*)(ii), "release from imprisonment" means release from confinement by reason of expiration of sentence, commencement of statutory release or grant of parole.

Application of ss. 113 to 117

(5) Sections 113 to 117 apply in respect of every order made under subsection (1).

R.S., 1985, c. C-46, s. 109; R.S., 1985, c. 27 (1st Supp.), s. 185(F); 1991, c. 40, s. 21; 1995, c. 39, ss. 139, 190; 1996, c. 19, s. 65.1.

Discretionary prohibition order

**110.** (1) Where a person is convicted, or discharged under section 730, of

(*a*) an offence, other than an offence referred to in any of paragraphs 109(1)(*a*), (*b*) and (*c*), in the commission of which violence against a person was used, threatened or attempted, or

(*b*) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance and, at the time of the offence, the person was not prohibited by any order made under this Act or any other Act of Parliament from possessing any such thing,

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court decides that it is so desirable, the court shall so order.

Duration of prohibition order

(2) An order made under subsection (1) against a person begins on the day on which the order is made and ends not later than ten years after the person's release from imprisonment after conviction for the offence to which the order relates or, if the person is not then imprisoned or subject to imprisonment, after the person's conviction for or discharge from the offence.

Reasons

(3) Where the court does not make an order under subsection (1), or where the court does make such an order but does not prohibit the possession of everything referred to in that subsection, the court shall include in the record a statement of the court's reasons for not doing so.

Definition of "release from imprisonment"

(4) In subsection (2), "release from imprisonment" means release from confinement by reason of expiration of sentence, commencement of statutory release or grant of parole.

Application of ss. 113 to 117

(5) Sections 113 to 117 apply in respect of every order made under subsection (1).

R.S., 1985, c. C-46, s. 110; 1991, c. 40, ss. 23, 40; 1995, c. 39, ss. 139, 190.

*Corruption and Disobedience*

Bribery of judicial officers, etc.

**119.** (1) Every one who

(*a*) being the holder of a judicial office, or being a member of Parliament or of the legislature of a province, corruptly

(i) accepts or obtains,

(ii) agrees to accept, or

(iii) attempts to obtain,

any money, valuable consideration, office, place or employment for himself or another person in respect of anything done or omitted or to be done or omitted by him in his official capacity, or

(*b*) gives or offers, corruptly, to a person mentioned in paragraph (*a*) any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by him in his official capacity for himself or another person,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Consent of Attorney General

(2) No proceedings against a person who holds a judicial office shall be instituted under this section without the consent in writing of the Attorney General of Canada.

R.S., c. C-34, s. 108.

Escape and being at large without excuse

**145.** (1) Every one who

(*a*) escapes from lawful custody, or

(*b*) is, before the expiration of a term of imprisonment to which he was sentenced, at large in or out of Canada without lawful excuse, the proof of which lies on him,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years or is guilty of an offence punishable on summary conviction.

Failure to attend court

(2) Every one who,

(*a*) being at large on his undertaking or recognizance given to or entered into before a justice or judge, fails, without lawful excuse, the proof of which lies on him, to attend court in accordance with the undertaking or recognizance, or

(*b*) having appeared before a court, justice or judge, fails, without lawful excuse, the proof of which lies on him, to attend court as thereafter required by the court, justice or judge,

or to surrender himself in accordance with an order of the court, justice or judge, as the case may be, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years or is guilty of an offence punishable on summary conviction.

Failure to comply with condition of undertaking or recognizance

(3) Every person who is at large on an undertaking or recognizance given to or entered into before a justice or judge and is bound to comply with a condition of that undertaking or recognizance directed by a justice or judge, and every person who is bound to comply with a direction ordered under subsection 515(12) or 522(2.1), and who fails, without lawful excuse, the proof of which lies on that person, to comply with that condition or direction, is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) an offence punishable on summary conviction.

Failure to appear or to comply with summons

(4) Every one who is served with a summons and who fails, without lawful excuse, the proof of which lies on him, to appear at a time and place stated therein, if any, for the purposes of the *Identification of Criminals Act* or to attend court in accordance therewith, is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) an offence punishable on summary conviction.

Failure to comply with appearance notice or promise to appear

(5) Every person who is named in an appearance notice or promise to appear, or in a recognizance entered into before an officer in charge or another peace officer, that has been confirmed by a justice under section 508 and who fails, without lawful excuse, the proof of which lies on the person, to appear at the time and place stated therein, if any, for the purposes of the *Identification of Criminals Act*, or to attend court in accordance therewith, is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) an offence punishable on summary conviction.

Failure to comply with conditions of undertaking

(5.1) Every person who, without lawful excuse, the proof of which lies on the person, fails to comply with any condition of an undertaking entered into pursuant to subsection 499(2) or 503(2.1)

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) is guilty of an offence punishable on summary conviction.

Idem

(6) For the purposes of subsection (5), it is not a lawful excuse that an appearance notice, promise to appear or recognizance states defectively the substance of the alleged offence.

(7) [Repealed, R.S., 1985, c. 27 (1st Supp.), s. 20]

Election of Crown under *Contraventions Act*

(8) For the purposes of subsections (3) to (5), it is a lawful excuse to fail to comply with a condition of an undertaking or recognizance or to fail to appear at a time and place stated in a summons, an appearance notice, a promise to appear or a recognizance for the purposes of the *Identification of Criminals Act* if before the failure the Attorney General, within the meaning of the *Contraventions Act*, makes an election under section 50 of that Act.

Proof of certain facts by certificate

(9) In any proceedings under subsection (2), (4) or (5), a certificate of the clerk of the court or a judge of the court before which the accused is alleged to have failed to attend or of the person in charge of the place at which it is alleged the accused failed to attend for the purposes of the *Identification of Criminals Act* stating that,

(*a*) in the case of proceedings under subsection (2), the accused gave or entered into an undertaking or recognizance before a justice or judge and failed to attend court in accordance therewith or, having attended court, failed to attend court thereafter as required by the court, justice or judge or to surrender in accordance with an order of the court, justice or judge, as the case may be,

(*b*) in the case of proceedings under subsection (4), a summons was issued to and served on the accused and the accused failed to attend court in accordance therewith or failed to appear at the time and place stated therein for the purposes of the *Identification of Criminals Act*, as the case may be, and

(*c*) in the case of proceedings under subsection (5), the accused was named in an appearance notice, a promise to appear or a recognizance entered into before an officer in charge or another peace officer, that was confirmed by a justice under section 508, and the accused failed to appear at the time and place stated therein for the purposes of the *Identification of Criminals Act*, failed to attend court in accordance therewith or, having attended court, failed to attend court thereafter as required by the court, justice or judge, as the case may be,

is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Attendance and right to cross-examination

(10) An accused against whom a certificate described in subsection (9) is produced may, with leave of the court, require the attendance of the person making the certificate for the purposes of cross-examination.

Notice of intention to produce

(11) No certificate shall be received in evidence pursuant to subsection (9) unless the party intending to produce it has, before the trial, given to the accused reasonable notice of his intention together with a copy of the certificate.

R.S., 1985, c. C-46, s. 145; R.S., 1985, c. 27 (1st Supp.), s. 20; 1992, c. 47, s. 68; 1994, c. 44, s. 8; 1996, c. 7, s. 38; 1997, c. 18, s. 3.

Order of prohibition

**161.** (1) Where an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence under section 151, 152, 155 or 159, subsection 160(2) or (3) or section 170, 171, 271, 272, 273 or 281, in respect of a person who is under the age of fourteen years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

(*a*) attending a public park or public swimming area where persons under the age of fourteen years are present or can reasonably be expected to be present,

or a daycare centre, schoolground, playground or community centre; or

(*b*) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of fourteen years.

Duration of prohibition

(2) The prohibition may be for life or for any shorter duration that the court considers desirable and, in the case of a prohibition that is not for life, the prohibition begins on the later of

(*a*) the date on which the order is made; and

(*b*) where the offender is sentenced to a term of imprisonment, the date on which the offender is released from imprisonment for the offence, including release on parole, mandatory supervision or statutory release.

Court may vary order

(3) A court that makes an order of prohibition or, where the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

Offence

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(*b*) an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 161; R.S., 1985, c. 19 (3rd Supp.), s. 4; 1993, c. 45, s. 1; 1995, c. 22, s. 18; 1997, c. 18, s. 4; 1999, c. 31, s. 67.

Classification of murder

**231.** (1) Murder is first degree murder or second degree murder.

Planned and deliberate murder

(2) Murder is first degree murder when it is planned and deliberate.

Contracted murder

(3) Without limiting the generality of subsection (2), murder is planned and deliberate when it is committed pursuant to an arrangement under which money or anything of value passes or is intended to pass from one person to another, or is promised by one person to another, as consideration for that other's causing or assisting in causing the death of anyone or counselling another person to do any act causing or assisting in causing that death.

Murder of peace officer, etc.

(4) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the victim is

(*a*) a police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties;

(*b*) a warden, deputy warden, instructor, keeper, jailer, guard or other officer or a permanent employee of a prison, acting in the course of his duties; or

(*c*) a person working in a prison with the permission of the prison authorities

and acting in the course of his work therein.

Hijacking, sexual assault or kidnapping

(5) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder in respect of a person when the death is caused by that person while committing or attempting to commit an offence under one of the following sections:

(*a*) section 76 (hijacking an aircraft);

(*b*) section 271 (sexual assault);

(*c*) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(*d*) section 273 (aggravated sexual assault);

(*e*) section 279 (kidnapping and forcible confinement); or

(*f*) section 279.1 (hostage taking).

Criminal harassment

(6) Irrespective of whether a murder is planned and deliberate on the part of any person, murder is first degree murder when the death is caused by that person while committing or attempting to commit an offence under section 264 and the person committing that offence intended to cause the person murdered to fear for the safety of the person murdered or the safety of anyone known to the person murdered.

Using explosives in association with criminal organization

(6.1) Irrespective of whether a murder is planned and deliberate on the part of a person, murder is first degree murder when the death is caused while committing or attempting to commit an offence under section 81 for the benefit of, at the direction of or in association with a criminal organization.

Second degree murder

(7) All murder that is not first degree murder is second degree murder.

R.S., 1985, c. C-46, s. 231; R.S., 1985, c. 27 (1st Supp.), ss. 7, 35, 40, 185(F), c. 1 (4th Supp.), s. 18(F); 1997, c. 16, s. 3, c. 23, s. 8.

Murder reduced to manslaughter

**232.** (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.

What is provocation

(2) A wrongful act or an insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.

Questions of fact

(3) For the purposes of this section, the questions

(*a*) whether a particular wrongful act or insult amounted to provocation, and

(*b*) whether the accused was deprived of the power of self-control by the provocation that he alleges he received,

are questions of fact, but no one shall be deemed to have given provocation to another by doing anything that he had a legal right to do, or by doing anything that the accused incited him to do in order to provide the accused with an excuse for causing death or bodily harm to any human being.

Death during illegal arrest

(4) Culpable homicide that otherwise would be murder is not necessarily manslaughter by reason only that it was committed by a person who was being

arrested illegally, but the fact that the illegality of the arrest was known to the accused may be evidence of provocation for the purpose of this section.

R.S., c. C-34, s. 215.

Manslaughter

**234.** Culpable homicide that is not murder or infanticide is manslaughter.

R.S., c. C-34, s. 217.

Punishment for murder

**235.** (1) Every one who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

Minimum punishment

(2) For the purposes of Part XXIII, the sentence of imprisonment for life prescribed by this section is a minimum punishment.

R.S., c. C-34, s. 218; 1973-74, c. 38, s. 3; 1974-75-76, c. 105, s. 5.

Manslaughter

**236.** Every person who commits manslaughter is guilty of an indictable offence and liable

(*a*) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(*b*) in any other case, to imprisonment for life.

R.S., 1985, c. C-46, s. 236; 1995, c. 39, s. 142.

Attempt to commit murder

**239.** Every person who attempts by any means to commit murder is guilty of an indictable offence and liable

(*a*) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(*b*) in any other case, to imprisonment for life.

R.S., 1985, c. C-46, s. 239; 1995, c. 39, s. 143.

Aggravated sexual assault

**273.** (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

Aggravated sexual assault

(2) Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable

(*a*) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(*b*) in any other case, to imprisonment for life.

R.S., 1985, c. C-46, s. 273; 1995, c. 39, s. 146.

Participation in criminal organization

**467.1** (1) Every one who

(*a*) participates in or substantially contributes to the activities of a criminal organization knowing that any or all of the members of the organization engage in or have, within the preceding five years, engaged in the commission of a series of indictable offences under this or any other Act of Parliament for each of which the maximum punishment is imprisonment for

five years or more, and

(*b*) is a party to the commission of an indictable offence for the benefit of, at the direction of or in association with the criminal organization for which the maximum punishment is imprisonment for five years or more

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Sentences to be served consecutively

(2) A sentence imposed on a person for an offence under subsection (1) shall be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events and to any other sentence to which the person is subject at the time the sentence is imposed on the person for an offence under subsection (1).

1997, c. 23, s. 11.

Court of criminal jurisdiction

**469.** Every court of criminal jurisdiction has jurisdiction to try an indictable offence other than

(*a*) an offence under any of the following sections:

(i) section 47 (treason),

(ii) section 49 (alarming Her Majesty),

(iii) section 51 (intimidating Parliament or a legislature),

(iv) section 53 (inciting to mutiny),

(v) section 61 (seditious offences),

(vi) section 74 (piracy),

(vii) section 75 (piratical acts), or

(viii) section 235 (murder);

Accessories

(*b*) the offence of being an accessory after the fact to high treason or treason or murder;

(*c*) an offence under section 119 (bribery) by the holder of a judicial office;

Crimes against humanity

(*c*.1) an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

Attempts

(*d*) the offence of attempting to commit any offence mentioned in subparagraphs (*a*)(i) to (vii); or

Conspiracy

(*e*) the offence of conspiring to commit any offence mentioned in paragraph (*a*).

R.S., 1985, c. C-46, s. 469; R.S., 1985, c. 27 (1st Supp.), s. 62; 2000, c. 24, s. 44.

Definitions

**493.** In this Part,

"accused" «*prévenu*»

"accused" includes

(*a*) a person to whom a peace officer has issued an appearance notice under section 496, and

(*b*) a person arrested for a criminal offence;

"appearance notice" «*citation à comparaître*»
"appearance notice" means a notice in Form 9 issued by a peace officer;

"judge" «*juge*»
"judge" means

(*a*) in the Province of Ontario, a judge of the superior court of criminal jurisdiction of the Province,

(*b*) in the Province of Quebec, a judge of the superior court of criminal jurisdiction of the province or three judges of the Court of Quebec,

(*c*) [Repealed, 1992, c. 51, s. 37]

(*d*) in the Provinces of Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, a judge of the superior court of criminal jurisdiction of the Province,

(*e*) in the Yukon Territory and the Northwest Territories, a judge of the Supreme Court of the territory, and

(*f*) in Nunavut, a judge of the Nunavut Court of Justice;

"officer in charge" «*fonctionnaire responsable*»
"officer in charge" means the officer for the time being in command of the police force responsible for the lock-up or other place to which an accused is taken after arrest or a peace officer designated by him for the purposes of this Part who is in charge of that place at the time an accused is taken to that place to be detained in custody;

"promise to appear" « *promesse de comparaître* »
"promise to appear" means a promise in Form 10;

"recognizance" « *engagement* »
"recognizance", when used in relation to a recognizance entered into before an officer in charge, or other peace officer, means a recognizance in Form 11, and when used in relation to a recognizance entered into before a justice or judge, means a recognizance in Form 32;

"summons" «*sommation*»
"summons" means a summons in Form 6 issued by a justice or judge;

"undertaking" « *promesse* »
"undertaking" means an undertaking in Form 11.1 or 12;

"warrant" «*mandat*»
"warrant", when used in relation to a warrant for the arrest of a person, means a warrant in Form 7 and, when used in relation to a warrant for the committal of a person, means a warrant in Form 8.

R.S., 1985, c. C-46, s. 493; R.S., 1985, c. 11 (1st Supp.), s. 2, c. 27 (2nd Supp.), s. 10, c. 40 (4th Supp.), s. 2; 1990, c. 16, s. 5, c. 17, s. 12; 1992, c. 51, s. 37; 1994, c. 44, s. 39; 1999, c. 3, s. 30.

*Arrest without Warrant and Release from Custody*

Arrest without warrant by any person
**494.** (1) Any one may arrest without warrant

(*a*) a person whom he finds committing an indictable offence; or

(*b*) a person who, on reasonable grounds, he believes

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

Arrest by owner, etc., of property

(2) Any one who is

(*a*) the owner or a person in lawful possession of property, or

(*b*) a person authorized by the owner or by a person in lawful possession of property,

may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

Delivery to peace officer

(3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.

R.S., c. C-34, s. 449; R.S., c. 2(2nd Supp.), s. 5.

Arrest without warrant by peace officer

**495.** (1) A peace officer may arrest without warrant

(*a*) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(*b*) a person whom he finds committing a criminal offence; or

(*c*) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitation

(2) A peace officer shall not arrest a person without warrant for

(*a*) an indictable offence mentioned in section 553,

(*b*) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or

(*c*) an offence punishable on summary conviction,

in any case where

(*d*) he believes on reasonable grounds that the public interest, 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,

may be satisfied without so arresting the person, and

(*e*) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Consequences of arrest without warrant

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(*a*) any proceedings under this or any other Act of Parliament; and

(*b*) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not

comply with the requirements of subsection (2).

R.S., 1985, c. C-46, s. 495; R.S., 1985, c. 27 (1st Supp.), s. 75.

Issue of appearance notice by peace officer

**496.** Where, by virtue of subsection 495(2), a peace officer does not arrest a person, he may issue an appearance notice to the person if the offence is

(*a*) an indictable offence mentioned in section 553;

(*b*) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction; or

(*c*) an offence punishable on summary conviction.

R.S., c. C-34, s. 451; R.S., c. 2(2nd Supp.), s. 5.

Release from custody by peace officer

**497.** (1) Subject to subsection (1.1), if a peace officer arrests a person without warrant for an offence described in paragraph 496(*a*), (*b*) or (*c*), the peace officer shall, as soon as practicable,

(*a*) release the person from custody with the intention of compelling their appearance by way of summons; or

(*b*) issue an appearance notice to the person and then release them.

Exception

(1.1) A peace officer shall not release a person under subsection (1) if the peace officer believes, on reasonable grounds,

(*a*) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, 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,

(iii) prevent the continuation or repetition of the offence or the commission of another offence, or

(iv) ensure the safety and security of any victim of or witness to the offence; or

(*b*) that if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.

Where subsection (1) does not apply

(2) Subsection (1) does not apply in respect of a person who has been arrested without warrant by a peace officer for an offence described in subsection 503(3).

Consequences of non-release

(3) A peace officer who has arrested a person without warrant for an offence described in subsection (1) and who does not release the person from custody as soon as practicable in the manner described in that subsection shall be deemed to be acting lawfully and in the execution of the peace officer's duty for the purposes of

(*a*) any proceedings under this or any other Act of Parliament; and

(*b*) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (1).

R.S., 1985, c. C-46, s. 497; 1999, c. 25, s. 3(Preamble).

Release from custody by officer in charge

**498.** (1) Subject to subsection (1.1), if a person who has been arrested without warrant by a peace officer is taken into custody, or if a person who has been arrested without warrant and delivered to a peace officer under subsection 494(3) or placed in the custody of a peace officer under subsection 163.5(3) of the *Customs Act* is detained in custody under subsection 503(1) for an offence described in paragraph 496(*a*), (*b*) or (*c*), or any other offence that is punishable by imprisonment for five years or less, and has not been taken before a justice or released from custody under any other provision of this Part, the officer in charge or another peace officer shall, as soon as practicable,

(*a*) release the person with the intention of compelling their appearance by way of summons;

(*b*) release the person on their giving a promise to appear;

(*c*) release the person on the person's entering into a recognizance before the officer in charge or another peace officer without sureties in an amount not exceeding $500 that the officer directs, but without deposit of money or other valuable security; or

(*d*) if the person is not ordinarily resident in the province in which the person is in custody or does not ordinarily reside within 200 kilometres of the place in which the person is in custody, release the person on the person's entering into a recognizance before the officer in charge or another peace officer without sureties in an amount not exceeding $500 that the officer directs and, if the officer so directs, on depositing with the officer a sum of money or other valuable security not exceeding in amount or value $500, that the officer directs.

Exception

(1.1) The officer in charge or the peace officer shall not release a person under subsection (1) if the officer in charge or peace officer believes, on reasonable grounds,

(*a*) that it is necessary in the public interest that the person be detained in custody or that the matter of their release from custody be dealt with under another provision of this Part, 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,

(iii) prevent the continuation or repetition of the offence or the commission of another offence, or

(iv) ensure the safety and security of any victim of or witness to the offence; or

(*b*) that, if the person is released from custody, the person will fail to attend court in order to be dealt with according to law.

Where subsection (1) does not apply

(2) Subsection (1) does not apply in respect of a person who has been arrested without warrant by a peace officer for an offence described in subsection 503(3).

Consequences of non-

(3) An officer in charge or another peace officer who has the custody of a

release

person taken into or detained in custody for an offence described in subsection (1) and who does not release the person from custody as soon as practicable in the manner described in that subsection shall be deemed to be acting lawfully and in the execution of the officer's duty for the purposes of

(*a*) any proceedings under this or any other Act of Parliament; or

(*b*) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the officer in charge or other peace officer did not comply with the requirements of subsection (1).

R.S., 1985, c. C-46, s. 498; R.S., 1985, c. 27 (1st Supp.), s. 186; 1997, c. 18, s. 52; 1998, c. 7, s. 2; 1999, c. 25, ss. 4, 30(Preamble).

Release from custody by officer in charge where arrest made with warrant

**499.** (1) Where a person who has been arrested with a warrant by a peace officer is taken into custody for an offence other than one mentioned in section 522, the officer in charge may, if the warrant has been endorsed by a justice under subsection 507(6),

(*a*) release the person on the person's giving a promise to appear;

(*b*) release the person on the person's entering into a recognizance before the officer in charge without sureties in the amount not exceeding five hundred dollars that the officer in charge directs, but without deposit of money or other valuable security; or

(*c*) if the person is not ordinarily resident in the province in which the person is in custody or does not ordinarily reside within two hundred kilometres of the place in which the person is in custody, release the person on the person's entering into a recognizance before the officer in charge without sureties in the amount not exceeding five hundred dollars that the officer in charge directs and, if the officer in charge so directs, on depositing with the officer in charge such sum of money or other valuable security not exceeding in amount or value five hundred dollars, as the officer in charge directs.

Additional conditions

(2) In addition to the conditions for release set out in paragraphs (1)(*a*), (*b*) and (*c*), the officer in charge may also require the person to enter into an undertaking in Form 11.1 in which the person, in order to be released, undertakes to do one or more of the following things:

(*a*) to remain within a territorial jurisdiction specified in the undertaking;

(*b*) to notify a peace officer or another person mentioned in the undertaking of any change in his or her address, employment or occupation;

(*c*) to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking, or from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking;

(*d*) to deposit the person's passport with the peace officer or other person mentioned in the undertaking;

(*e*) to abstain from possessing a firearm and to surrender any firearm in the possession of the person and any authorization, licence or registration certificate or other document enabling that person to acquire or possess a firearm;

(*f*) to report at the times specified in the undertaking to a peace officer or other person designated in the undertaking;

(*g*) to abstain from

(i) the consumption of alcohol or other intoxicating substances, or

(ii) the consumption of drugs except in accordance with a medical prescription; and

(*h*) to comply with any other condition specified in the undertaking that the officer in charge considers necessary to ensure the safety and security of any victim of or witness to the offence.

Application to justice

(3) A person who has entered into an undertaking under subsection (2) may, at any time before or at his or her appearance pursuant to a promise to appear or recognizance, apply to a justice for an order under subsection 515(1) to replace his or her undertaking, and section 515 applies, with such modifications as the circumstances require, to such a person.

Application by prosecutor

(4) Where a person has entered into an undertaking under subsection (2), the prosecutor may

(*a*) at any time before the appearance of the person pursuant to a promise to appear or recognizance, after three days notice has been given to that person, or

(*b*) at the appearance,

apply to a justice for an order under subsection 515(2) to replace the undertaking, and section 515 applies, with such modifications as the circumstances require, to such a person.

R.S., 1985, c. C-46, s. 499; R.S., 1985, c. 27 (1st Supp.), s. 186; 1994, c. 44, s. 40; 1997, c. 18, s. 53; 1999, c. 25, s. 5(Preamble).

Money or other valuable security to be deposited with justice

**500.** If a person has, under paragraph 498(1)(*d*) or 499(1)(*c*), deposited any sum of money or other valuable security with the officer in charge, the officer in charge shall, without delay after the deposit, cause the money or valuable security to be delivered to a justice for deposit with the justice.

R.S., 1985, c. C-46, s. 500; 1999, c. 5, s. 20, c. 25, s. 6(Preamble).

Contents of appearance notice, promise to appear and recognizance

**501.** (1) An appearance notice issued by a peace officer or a promise to appear given to, or a recognizance entered into before, an officer in charge or another peace officer shall

(*a*) set out the name of the accused;

(*b*) set out the substance of the offence that the accused is alleged to have committed; and

(*c*) require the accused to attend court at a time and place to be stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

Idem

(2) An appearance notice issued by a peace officer or a promise to appear given to, or a recognizance entered into before, an officer in charge or another peace officer shall set out the text of subsections 145(5) and (6) and section 502.

Attendance for purposes of *Identification of Criminals Act*

(3) An appearance notice issued by a peace officer or a promise to appear given to, or a recognizance entered into before, an officer in charge or another peace officer may require the accused to appear at a time and place stated in it for the purposes of the *Identification of Criminals Act*, where the accused is alleged to have committed an indictable offence and, in the case of an offence designated as a contravention under the *Contraventions Act*, the Attorney General, within the meaning of that Act, has not made an election under section 50 of that Act.

Signature of accused

(4) An accused shall be requested to sign in duplicate his appearance notice, promise to appear or recognizance and, whether or not he complies with that request, one of the duplicates shall be given to the accused, but if the accused fails or refuses to sign, the lack of his signature does not invalidate the appearance notice, promise to appear or recognizance, as the case may be.

Proof of issue of appearance notice

(5) The issue of an appearance notice by any peace officer may be proved by the oral evidence, given under oath, of the officer who issued it or by the officer's affidavit made before a justice or other person authorized to administer oaths or to take affidavits.

R.S., 1985, c. C-46, s. 501; R.S., 1985, c. 27 (1st Supp.), s. 76; 1992, c. 47, s. 69; 1994, c. 44, ss. 41, 94; 1996, c. 7, s. 38.

Failure to appear

**502.** Where an accused who is required by an appearance notice or promise to appear or by a recognizance entered into before an officer in charge or another peace officer to appear at a time and place stated therein for the purposes of the *Identification of Criminals Act* does not appear at that time and place, a justice may, where the appearance notice, promise to appear or recognizance has been confirmed by a justice under section 508, issue a warrant for the arrest of the accused for the offence with which the accused is charged.

R.S., 1985, c. C-46, s. 502; 1992, c. 47, s. 70; 1996, c. 7, s. 38; 1997, c. 18, s. 54.

*Appearance of Accused before Justice*

Taking before justice

**503.** (1) A peace officer who arrests a person with or without warrant or to whom a person is delivered under subsection 494(3) or into whose custody a person is placed under subsection 163.5(3) of the *Customs Act* shall cause the person to be detained in custody and, in accordance with the following provisions, to be taken before a justice to be dealt with according to law:

(*a*) where a justice is available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period, and

(*b*) where a justice is not available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice as soon as possible,

unless, at any time before the expiration of the time prescribed in paragraph (*a*) or (*b*) for taking the person before a justice,

(*c*) the peace officer or officer in charge releases the person under any other provision of this Part, or

(*d*) the peace officer or officer in charge is satisfied that the person should be released from custody, whether unconditionally under subsection (4) or otherwise conditionally or unconditionally, and so releases him.

Conditional release

(2) If a peace officer or an officer in charge is satisfied that a person described in subsection (1) should be released from custody conditionally, the officer may, unless the person is detained in custody for an offence mentioned in section 522, release that person on the person's giving a promise to appear or entering into a recognizance in accordance with paragraphs 498(1)(*b*) to (*d*) and subsection (2.1).

Undertaking

(2.1) In addition to the conditions referred to in subsection (2), the peace officer or officer in charge may, in order to release the person, require the person to enter into an undertaking in Form 11.1 in which the person undertakes to do one or more of the following things:

(*a*) to remain within a territorial jurisdiction specified in the undertaking;

(*b*) to notify the peace officer or another person mentioned in the undertaking of any change in his or her address, employment or occupation;

(*c*) to abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking, or from going to a place specified in the undertaking, except in accordance with the conditions specified in the undertaking;

(*d*) to deposit the person's passport with the peace officer or other person mentioned in the undertaking;

(*e*) to abstain from possessing a firearm and to surrender any firearm in the possession of the person and any authorization, licence or registration certificate or other document enabling that person to acquire or possess a firearm;

(*f*) to report at the times specified in the undertaking to a peace officer or other person designated in the undertaking;

(*g*) to abstain from

(i) the consumption of alcohol or other intoxicating substances, or

(ii) the consumption of drugs except in accordance with a medical prescription; or

(*h*) to comply with any other condition specified in the undertaking that the peace officer or officer in charge considers necessary to ensure the safety and security of any victim of or witness to the offence.

Application to justice

(2.2) A person who has entered into an undertaking under subsection (2.1) may, at any time before or at his or her appearance pursuant to a promise to appear or recognizance, apply to a justice for an order under subsection 515(1) to replace his or her undertaking, and section 515 applies, with such modifications as the circumstances require, to such a person.

Application by prosecutor

(2.3) Where a person has entered into an undertaking under subsection (2.1), the prosecutor may

(*a*) at any time before the appearance of the person pursuant to a promise to appear or recognizance, after three days notice has been given to that person,

or

(*b*) at the appearance,

apply to a justice for an order under subsection 515(2) to replace the undertaking, and section 515 applies, with such modifications as the circumstances require, to such a person.

Remand in custody for return to jurisdiction where offence alleged to have been committed

(3) Where a person has been arrested without warrant for an indictable offence alleged to have been committed in Canada outside the territorial division where the arrest took place, the person shall, within the time prescribed in paragraph (1)(*a*) or (*b*), be taken before a justice within whose jurisdiction the person was arrested unless, where the offence was alleged to have been committed within the province in which the person was arrested, the person was taken before a justice within whose jurisdiction the offence was alleged to have been committed, and the justice within whose jurisdiction the person was arrested

(*a*) if the justice is not satisfied that there are reasonable grounds to believe that the person arrested is the person alleged to have committed the offence, shall release that person; or

(*b*) if the justice is satisfied that there are reasonable grounds to believe that the person arrested is the person alleged to have committed the offence, may

(i) remand the person to the custody of a peace officer to await execution of a warrant for his or her arrest in accordance with section 528, but if no warrant is so executed within a period of six days after the time he or she is remanded to such custody, the person in whose custody he or she then is shall release him or her, or

(ii) where the offence was alleged to have been committed within the province in which the person was arrested, order the person to be taken before a justice having jurisdiction with respect to the offence.

Interim release

(3.1) Notwithstanding paragraph (3)(*b*), a justice may, with the consent of the prosecutor, order that the person referred to in subsection (3), pending the execution of a warrant for the arrest of that person, be released

(*a*) unconditionally; or

(*b*) on any of the following terms to which the prosecutor consents, namely,

(i) giving an undertaking, including an undertaking to appear at a specified time before the court that has jurisdiction with respect to the indictable offence that the person is alleged to have committed, or

(ii) entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*)

with such conditions described in subsection 515(4) as the justice considers desirable and to which the prosecutor consents.

Release of person about to commit indictable offence

(4) A peace officer or an officer in charge having the custody of a person who has been arrested without warrant as a person about to commit an indictable offence shall release that person unconditionally as soon as practicable after he is satisfied that the continued detention of that person in custody is no longer necessary in order to prevent the commission by him of an indictable offence.

Consequences of non-release

(5) Notwithstanding subsection (4), a peace officer or an officer in charge having the custody of a person referred to in that subsection who does not release the person before the expiration of the time prescribed in paragraph (1)(*a*) or (*b*) for taking the person before the justice shall be deemed to be acting lawfully and in the execution of his duty for the purposes of

(*a*) any proceedings under this or any other Act of Parliament; or

(*b*) any other proceedings, unless in such proceedings it is alleged and established by the person making the allegation that the peace officer or officer in charge did not comply with the requirements of subsection (4).

R.S., 1985, c. C-46, s. 503; R.S., 1985, c. 27 (1st Supp.), s. 77; 1994, c. 44, s. 42; 1997, c. 18, s. 55; 1998, c. 7, s. 3; 1999, c. 25, s. 7(Preamble).

*Information, Summons and Warrant*

In what cases justice may receive information

**504.** Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged

(*a*) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

(i) is or is believed to be, or

(ii) resides or is believed to reside,

within the territorial jurisdiction of the justice;

(*b*) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;

(*c*) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or

(*d*) that the person has in his possession stolen property within the territorial jurisdiction of the justice.

R.S., c. C-34, s. 455; R.S., c. 2(2nd Supp.), s. 5.

Time within which information to be laid in certain cases

**505.** Where

(*a*) an appearance notice has been issued to an accused under section 496, or

(*b*) an accused has been released from custody under section 497 or 498,

an information relating to the offence alleged to have been committed by the accused or relating to an included or other offence alleged to have been committed by him shall be laid before a justice as soon as practicable thereafter and in any event before the time stated in the appearance notice, promise to appear or recognizance issued to or given or entered into by the accused for his attendance in court.

R.S., c. 2(2nd Supp.), s. 5.

Form

**506.** An information laid under section 504 or 505 may be in Form 2.

R.S., c. 2(2nd Supp.), s. 5.

Justice to hear informant and witnesses

**507.** (1) Subject to subsection 523(1.1), a justice who receives an information, other than an information laid before the justice under section 505, shall, except where an accused has already been arrested with or without a warrant,

(*a*) hear and consider, *ex parte*,

(i) the allegations of the informant, and

(ii) the evidence of witnesses, where he considers it desirable or necessary to do so; and

(*b*) where he considers that a case for so doing is made out, issue, in accordance with this section, either a summons or a warrant for the arrest of the accused to compel the accused to attend before him or some other justice for the same territorial division to answer to a charge of an offence.

Process compulsory

(2) No justice shall refuse to issue a summons or warrant by reason only that the alleged offence is one for which a person may be arrested without warrant.

Procedure when witnesses attend

(3) A justice who hears the evidence of a witness pursuant to subsection (1) shall

(*a*) take the evidence on oath; and

(*b*) cause the evidence to be taken in accordance with section 540 in so far as that section is capable of being applied.

Summons to be issued except in certain cases

(4) Where a justice considers that a case is made out for compelling an accused to attend before him to answer to a charge of an offence, he shall issue a summons to the accused unless the allegations of the informant or the evidence of any witness or witnesses taken in accordance with subsection (3) discloses reasonable grounds to believe that it is necessary in the public interest to issue a warrant for the arrest of the accused.

No process in blank

(5) A justice shall not sign a summons or warrant in blank.

Endorsement of warrant by justice

(6) A justice who issues a warrant under this section or section 508 or 512 may, unless the offence is one mentioned in section 522, authorize the release of the accused pursuant to section 499 by making an endorsement on the warrant in Form 29.

Promise to appear or recognizance deemed to have been confirmed

(7) Where, pursuant to subsection (6), a justice authorizes the release of an accused pursuant to section 499, a promise to appear given by the accused or a recognizance entered into by the accused pursuant to that section shall be deemed, for the purposes of subsection 145(5), to have been confirmed by a justice under section 508.

Issue of summons or warrant

(8) Where, on an appeal from or review of any decision or matter of jurisdiction, a new trial or hearing or a continuance or renewal of a trial or hearing is ordered, a justice may issue either a summons or a warrant for the arrest of the accused in order to compel the accused to attend at the new or continued or renewed trial or hearing.

R.S., 1985, c. C-46, s. 507; R.S., 1985, c. 27 (1st Supp.), s. 78; 1994, c. 44, s. 43.

Justice to hear informant and witnesses

**508.** (1) A justice who receives an information laid before him under section 505 shall

(*a*) hear and consider, *ex parte*,

(i) the allegations of the informant, and

(ii) the evidence of witnesses, where he considers it desirable or necessary to do so;

(*b*) where he considers that a case for so doing is made out, whether the information relates to the offence alleged in the appearance notice, promise to appear or recognizance or to an included or other offence,

(i) confirm the appearance notice, promise to appear or recognizance, as the case may be, and endorse the information accordingly, or

(ii) cancel the appearance notice, promise to appear or recognizance, as the case may be, and issue, in accordance with section 507, either a summons or a warrant for the arrest of the accused to compel the accused to attend before him or some other justice for the same territorial division to answer to a charge of an offence and endorse on the summons or warrant that the appearance notice, promise to appear or recognizance, as the case may be, has been cancelled; and

(*c*) where he considers that a case is not made out for the purposes of paragraph (*b*), cancel the appearance notice, promise to appear or recognizance, as the case may be, and cause the accused to be notified forthwith of the cancellation.

Procedure when witnesses attend

(2) A justice who hears the evidence of a witness pursuant to subsection (1) shall

(*a*) take the evidence on oath; and

(*b*) cause the evidence to be taken in accordance with section 540 in so far as that section is capable of being applied.

R.S., 1985, c. C-46, s. 508; R.S., 1985, c. 27 (1st Supp.), s. 79.

Information laid otherwise than in person

**508.1** (1) For the purposes of sections 504 to 508, a peace officer may lay an information by any means of telecommunication that produces a writing.

Alternative to oath

(2) A peace officer who uses a means of telecommunication referred to in subsection (1) shall, instead of swearing an oath, make a statement in writing stating that all matters contained in the information are true to the officer's knowledge and belief, and such a statement is deemed to be a statement made under oath.

1997, c. 18, s. 56.

Summons

**509.** (1) A summons issued under this Part shall

(*a*) be directed to the accused;

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

(*c*) require the accused to attend court at a time and place to be stated therein and to attend thereafter as required by the court in order to be dealt with according to law.

Service on individual

(2) A summons shall be served by a peace officer who shall deliver it personally to the person to whom it is directed or, if that person cannot

conveniently be found, shall leave it for him at his latest or usual place of abode with an inmate thereof who appears to be at least sixteen years of age.

Proof of service

(3) Service of a summons may be proved by the oral evidence, given under oath, of the peace officer who served it or by his affidavit made before a justice or other person authorized to administer oaths or to take affidavits.

Content of summons

(4) There shall be set out in every summons the text of subsection 145(4) and section 510.

Attendance for purposes of *Identification of Criminals Act*

(5) A summons may require the accused to appear at a time and place stated in it for the purposes of the *Identification of Criminals Act*, where the accused is alleged to have committed an indictable offence and, in the case of an offence designated as a contravention under the *Contraventions Act*, the Attorney General, within the meaning of that Act, has not made an election under section 50 of that Act.

R.S., 1985, c. C-46, s. 509; R.S., 1985, c. 27 (1st Supp.), s. 80; 1992, c. 47, s. 71; 1996, c. 7, s. 38.

Failure to appear

**510.** Where an accused who is required by a summons to appear at a time and place stated in it for the purposes of the *Identification of Criminals Act* does not appear at that time and place and, in the case of an offence designated as a contravention under the *Contraventions Act*, the Attorney General, within the meaning of that Act, has not made an election under section 50 of that Act, a justice may issue a warrant for the arrest of the accused for the offence with which the accused is charged.

R.S., 1985, c. C-46, s. 510; 1992, c. 47, s. 72; 1996, c. 7, s. 38.

Contents of warrant to arrest

**511.** (1) A warrant issued under this Part shall

(*a*) name or describe the accused;

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

(*c*) order that the accused be forthwith arrested and brought before the judge or justice who issued the warrant or before some other judge or justice having jurisdiction in the same territorial division, to be dealt with according to law.

No return day

(2) A warrant issued under this Part remains in force until it is executed and need not be made returnable at any particular time.

Discretion to postpone execution

(3) Notwithstanding paragraph (1)(*c*), a judge or justice who issues a warrant may specify in the warrant the period before which the warrant shall not be executed, to allow the accused to appear voluntarily before a judge or justice having jurisdiction in the territorial division in which the warrant was issued.

Deemed execution of warrant

(4) Where the accused appears voluntarily for the offence in respect of which the accused is charged, the warrant is deemed to be executed.

R.S., 1985, c. C-46, s. 511; R.S., 1985, c. 27 (1st Supp.), s. 81; 1997, c. 18, s. 57.

Certain actions not to preclude issue of warrant

**512.** (1) A justice may, where the justice has reasonable and probable grounds to believe that it is necessary in the public interest to issue a summons or a warrant for the arrest of the accused, issue a summons or warrant, notwithstanding that

(*a*) an appearance notice or a promise to appear or a recognizance entered into before an officer in charge or another peace officer has been confirmed or cancelled under subsection 508(1);

(*b*) a summons has previously been issued under subsection 507(4); or

(*c*) the accused has been released unconditionally or with the intention of compelling his appearance by way of summons.

Warrant in default of appearance

(2) Where

(*a*) service of a summons is proved and the accused fails to attend court in accordance with the summons,

(*b*) an appearance notice or a promise to appear or a recognizance entered into before an officer in charge or another peace officer has been confirmed under subsection 508(1) and the accused fails to attend court in accordance therewith in order to be dealt with according to law, or

(*c*) it appears that a summons cannot be served because the accused is evading service,

a justice may issue a warrant for the arrest of the accused.

R.S., 1985, c. C-46, s. 512; R.S., 1985, c. 27 (1st Supp.), s. 82; 1997, c. 18, s. 58.

Formalities of warrant

**513.** A warrant in accordance with this Part shall be directed to the peace officers within the territorial jurisdiction of the justice, judge or court by whom or by which it is issued.

R.S., c. 2(2nd Supp.), s. 5.

Execution of warrant

**514.** (1) A warrant in accordance with this Part may be executed by arresting the accused

(*a*) wherever he is found within the territorial jurisdiction of the justice, judge or court by whom or by which the warrant was issued; or

(*b*) wherever he is found in Canada, in the case of fresh pursuit.

By whom warrant may be executed

(2) A warrant in accordance with this Part may be executed by a person who is one of the peace officers to whom it is directed, whether or not the place in which the warrant is to be executed is within the territory for which the person is a peace officer.

R.S., c. 2(2nd Supp.), s. 5.

*Judicial Interim Release*

Order of release

**515.** (1) Subject to this section, where an accused who is charged with an offence other than an offence listed in section 469 is taken before a justice, the justice shall, unless a plea of guilty by the accused is accepted, order, in respect of that offence, that the accused be released on his giving an undertaking without conditions, unless the prosecutor, having been given a reasonable opportunity to do so, shows cause, in respect of that offence, why the detention of the accused in custody is justified or why an order under any other provision of this section should be made and where the justice makes an order under any other provision of this section, the order shall refer only to the particular offence for which the accused was taken before the justice.

Release on undertaking with conditions, etc.

(2) Where the justice does not make an order under subsection (1), he shall, unless the prosecutor shows cause why the detention of the accused is justified, order that the accused be released

(*a*) on his giving an undertaking with such conditions as the justice directs;

(*b*) on his entering into a recognizance before the justice, without sureties, in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security;

(*c*) on his entering into a recognizance before the justice with sureties in such amount and with such conditions, if any, as the justice directs but without deposit of money or other valuable security;

(*d*) with the consent of the prosecutor, on his entering into a recognizance before the justice, without sureties, in such amount and with such conditions, if any, as the justice directs and on his depositing with the justice such sum of money or other valuable security as the justice directs; or

(*e*) if the accused is not ordinarily resident in the province in which the accused is in custody or does not ordinarily reside within two hundred kilometres of the place in which he is in custody, on his entering into a recognizance before the justice with or without sureties in such amount and with such conditions, if any, as the justice directs, and on his depositing with the justice such sum of money or other valuable security as the justice directs.

Power of justice to name sureties in order

(2.1) Where, pursuant to subsection (2) or any other provision of this Act, a justice, judge or court orders that an accused be released on his entering into a recognizance with sureties, the justice, judge or court may, in the order, name particular persons as sureties.

Alternative to physical presence

(2.2) Where, by this Act, the appearance of an accused is required for the purposes of judicial interim release, the appearance shall be by actual physical attendance of the accused but the justice may, subject to subsection (2.3), allow the accused to appear by means of any suitable telecommunication device, including telephone, that is satisfactory to the justice.

Where consent required

(2.3) The consent of the prosecutor and the accused is required for the purposes of an appearance if the evidence of a witness is to be taken at the appearance and the accused cannot appear by closed-circuit television or any other means that allow the court and the accused to engage in simultaneous

visual and oral communication.

Idem

(3) The justice shall not make an order under any of paragraphs (2)(*b*) to (*e*) unless the prosecution shows cause why an order under the immediately preceding paragraph should not be made.

Conditions authorized

(4) The justice may direct as conditions under subsection (2) that the accused shall do any one or more of the following things as specified in the order:

(*a*) report at times to be stated in the order to a peace officer or other person designated in the order;

(*b*) remain within a territorial jurisdiction specified in the order;

(*c*) notify the peace officer or other person designated under paragraph (*a*) of any change in his address or his employment or occupation;

(*d*) abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order, except in accordance with the conditions specified in the order that the justice considers necessary;

(*e*) where the accused is the holder of a passport, deposit his passport as specified in the order;

(*e*.1) comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of any victim of or witness to the offence; and

(*f*) comply with such other reasonable conditions specified in the order as the justice considers desirable.

Condition prohibiting possession of firearms, etc.

(4.1) When making an order under subsection (2), in the case of an accused who is charged with

(*a*) an offence in the commission of which violence against a person was used, threatened or attempted,

(*b*) an offence under section 264 (criminal harassment),

(*c*) an offence relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the *Controlled Drugs and Substances Act*, or

(*d*) an offence that involves, or the subject-matter of which is, a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition, prohibited ammunition or an explosive substance,

the justice shall add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law unless the justice considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person.

Surrender, etc.

(4.11) Where the justice adds a condition described in subsection (4.1) to an order made under subsection (2), the justice shall specify in the order the manner and method by which

(*a*) the things referred to in subsection (4.1) that are in the possession of the

accused shall be surrendered, disposed of, detained, stored or dealt with; and

(*b*) the authorizations, licences and registration certificates held by the person shall be surrendered.

Reasons

(4.12) Where the justice does not add a condition described in subsection (4.1) to an order made under subsection (2), the justice shall include in the record a statement of the reasons for not adding the condition.

Additional conditions

(4.2) Before making an order under subsection (2), in the case of an accused who is charged with an offence described in section 264, or an offence in the commission of which violence against a person was used, threatened or attempted, the justice shall consider whether it is desirable, in the interests of the safety and security of any person, particularly a victim of or witness to the offence, to include as a condition of the order

(*a*) that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, or refrain from going to any place specified in the order; or

(*b*) that the accused comply with any other condition specified in the order that the justice considers necessary to ensure the safety and security of those persons.

Detention in custody

(5) Where the prosecutor shows cause why the detention of the accused in custody is justified, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall include in the record a statement of his reasons for making the order.

Order of detention

(6) Notwithstanding any provision of this section, where an accused is charged

(*a*) with an indictable offence, other than an offence listed in section 469,

(i) that is alleged to have been committed while at large after being released in respect of another indictable offence pursuant to the provisions of this Part or section 679 or 680, or

(ii) that is an offence under section 467.1 or an offence under this or any other Act of Parliament alleged to have been committed for the benefit of, at the direction of or in association with a criminal organization for which the maximum punishment is imprisonment for five years or more,

(*b*) with an indictable offence, other than an offence listed in section 469 and is not ordinarily resident in Canada,

(*c*) with an offence under any of subsections 145(2) to (5) that is alleged to have been committed while he was at large after being released in respect of another offence pursuant to the provisions of this Part or section 679, 680 or 816, or

(*d*) with having committed an offence punishable by imprisonment for life under subsection 5(3), 6(3) or 7(2) of the *Controlled Drugs and Substances Act* or the offence of conspiring to commit such an offence,

the justice shall order that the accused be detained in custody until he is dealt with according to law, unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified,

but where the justice orders that the accused be released, he shall include in the record a statement of his reasons for making the order.

Order of release

(7) Where an accused to whom paragraph 6(*a*), (*c*) or (*d*) applies shows cause why the accused's detention in custody is not justified, the justice shall order that the accused be released on giving an undertaking or entering into a recognizance described in any of paragraphs (2)(*a*) to (*e*) with the conditions described in subsections (4) to (4.2) or, where the accused was at large on an undertaking or recognizance with conditions, the additional conditions described in subsections (4) to (4.2), that the justice considers desirable, unless the accused, having been given a reasonable opportunity to do so, shows cause why the conditions or additional conditions should not be imposed.

Idem

(8) Where an accused to whom paragraph (6)(*b*) applies shows cause why the accused's detention in custody is not justified, the justice shall order that the accused be released on giving an undertaking or entering into a recognizance described in any of paragraphs (2)(*a*) to (*e*) with the conditions, described in subsections (4) to (4.2), that the justice considers desirable.

Sufficiency of record

(9) For the purposes of subsections (5) and (6), it is sufficient if a record is made of the reasons in accordance with the provisions of Part XVIII relating to the taking of evidence at preliminary inquiries.

Justification for detention in custody

(10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

(*a*) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;

(*b*) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and

(*c*) on any other just cause being shown and, without limiting the generality of the foregoing, where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

Detention in custody for offence listed in section 469

(11) Where an accused who is charged with an offence mentioned in section 469 is taken before a justice, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall issue a warrant in Form 8 for the committal of the accused.

Order re no communication

(12) A justice who orders that an accused be detained in custody under this section may include in the order a direction that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with such conditions specified in the order as the justice considers necessary.

R.S., 1985, c. C-46, s. 515; R.S., 1985, c. 27 (1st Supp.), ss. 83, 186; 1991, c. 40, s. 31; 1993, c. 45, s. 8; 1994, c. 44, s. 44; 1995, c. 39, s. 153; 1996, c. 19, ss. 71, 93.3; 1997, c. 18, s. 59, c. 23, s. 16; 1999, c. 5, s. 21, c. 25, s. 8(Preamble).

Variation of undertaking or recognizance

**515.1** An undertaking or recognizance pursuant to which the accused was released that has been entered into under section 499, 503 or 515 may, with the written consent of the prosecutor, be varied, and where so varied, is deemed to have been entered into pursuant to section 515.

1997, c. 18, s. 60.

Remand in custody

**516.** (1) A justice may, before or at any time during the course of any proceedings under section 515, on application by the prosecutor or the accused, adjourn the proceedings and remand the accused to custody in prison by warrant in Form 19, but no adjournment shall be for more than three clear days except with the consent of the accused.

Detention pending bail hearing

(2) A justice who remands an accused to custody under subsection (1) or subsection 515(11) may order that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with any conditions specified in the order that the justice considers necessary.

R.S., 1985, c. C-46, s. 516; 1999, c. 5, s. 22, c. 25, s. 31(Preamble).

Order directing matters not to be published for specified period

**517.** (1) Where the prosecutor or the accused intends to show cause under section 515, he shall so state to the justice and the justice may, and shall on application by the accused, before or at any time during the course of the proceedings under that section, make an order directing that the evidence taken, the information given or the representations made and the reasons, if any, given or to be given by the justice shall not be published in any newspaper or broadcast before such time as

(*a*) if a preliminary inquiry is held, the accused in respect of whom the proceedings are held is discharged; or

(*b*) if the accused in respect of whom the proceedings are held is tried or ordered to stand trial, the trial is ended.

Failure to comply

(2) Every one who fails without lawful excuse, the proof of which lies on him, to comply with an order made under subsection (1) is guilty of an offence punishable on summary conviction.

Definition of "newspaper"

(3) In this section, "newspaper" has the same meaning as in section 297.

R.S., 1985, c. C-46, s. 517; R.S., 1985, c. 27 (1st Supp.), s. 101(E).

Inquiries to be made by justice and evidence

**518.** (1) In any proceedings under section 515,

(*a*) the justice may, subject to paragraph (*b*), make such inquiries, on oath or otherwise, of and concerning the accused as he considers desirable;

(*b*) the accused shall not be examined by the justice or any other person except counsel for the accused respecting the offence with which the accused is charged, and no inquiry shall be made of the accused respecting that offence by way of cross-examination unless the accused has testified respecting the offence;

(*c*) the prosecutor may, in addition to any other relevant evidence, lead evidence

(i) to prove that the accused has previously been convicted of a criminal

offence,

(ii) to prove that the accused has been charged with and is awaiting trial for another criminal offence,

(iii) to prove that the accused has previously committed an offence under section 145, or

(iv) to show the circumstances of the alleged offence, particularly as they relate to the probability of conviction of the accused;

(*d*) the justice may take into consideration any relevant matters agreed on by the prosecutor and the accused or his counsel;

(*d*.1) the justice may receive evidence obtained as a result of an interception of a private communication under and within the meaning of Part VI, in writing, orally or in the form of a recording and, for the purposes of this section, subsection 189(5) does not apply to that evidence;

(*d*.2) the justice shall take into consideration any evidence submitted regarding the need to ensure the safety or security of any victim of or witness to an offence; and

(*e*) the justice may receive and base his decision on evidence considered credible or trustworthy by him in the circumstances of each case.

Release pending sentence

(2) Where, before or at any time during the course of any proceedings under section 515, the accused pleads guilty and that plea is accepted, the justice may make any order provided for in this Part for the release of the accused until the accused is sentenced.

R.S., 1985, c. C-46, s. 518; R.S., 1985, c. 27 (1st Supp.), ss. 84, 185(F); 1994, c. 44, s. 45; 1999, c. 25, s. 9(Preamble).

Release of accused

**519.** (1) Where a justice makes an order under subsection 515(1), (2), (7) or (8),

(*a*) if the accused thereupon complies with the order, the justice shall direct that the accused be released

(i) forthwith, if the accused is not required to be detained in custody in respect of any other matter, or

(ii) as soon thereafter as the accused is no longer required to be detained in custody in respect of any other matter; and

(*b*) if the accused does not thereupon comply with the order, the justice who made the order or another justice having jurisdiction shall issue a warrant for the committal of the accused and may endorse thereon an authorization to the person having the custody of the accused to release the accused when the accused complies with the order

(i) forthwith after the compliance, if the accused is not required to be detained in custody in respect of any other matter, or

(ii) as soon thereafter as the accused is no longer required to be detained in custody in respect of any other matter

and if the justice so endorses the warrant, he shall attach to it a copy of the

order.

Discharge from custody

(2) Where the accused complies with an order referred to in paragraph (1)(*b*) and is not required to be detained in custody in respect of any other matter, the justice who made the order or another justice having jurisdiction shall, unless the accused has been or will be released pursuant to an authorization referred to in that paragraph, issue an order for discharge in Form 39.

Warrant for committal

(3) Where the justice makes an order under subsection 515(5) or (6) for the detention of the accused, he shall issue a warrant for the committal of the accused.

R.S., 1985, c. C-46, s. 519; R.S., 1985, c. 27 (1st Supp.), s. 85.

Review of order

**520.** (1) If a justice, or a judge of the Nunavut Court of Justice, makes an order under subsection 515(2), (5), (6), (7), (8) or (12) or makes or vacates any order under paragraph 523(2)(*b*), the accused may, at any time before the trial of the charge, apply to a judge for a review of the order.

Notice to prosecutor

(2) An application under this section shall not, unless the prosecutor otherwise consents, be heard by a judge unless the accused has given to the prosecutor at least two clear days notice in writing of the application.

Accused to be present

(3) If the judge so orders or the prosecutor or the accused or his counsel so requests, the accused shall be present at the hearing of an application under this section and, where the accused is in custody, the judge may order, in writing, the person having the custody of the accused to bring him before the court.

Adjournment of proceedings

(4) A judge may, before or at any time during the hearing of an application under this section, on application by the prosecutor or the accused, adjourn the proceedings, but if the accused is in custody no adjournment shall be for more than three clear days except with the consent of the accused.

Failure of accused to attend

(5) Where an accused, other than an accused who is in custody, has been ordered by a judge to be present at the hearing of an application under this section and does not attend the hearing, the judge may issue a warrant for the arrest of the accused.

Execution

(6) A warrant issued under subsection (5) may be executed anywhere in Canada.

Evidence and powers of judge on review

(7) On the hearing of an application under this section, the judge may consider

(*a*) the transcript, if any, of the proceedings heard by the justice and by any judge who previously reviewed the order made by the justice,

(*b*) the exhibits, if any, filed in the proceedings before the justice, and

(*c*) such additional evidence or exhibits as may be tendered by the accused or the prosecutor,

and shall either

(*d*) dismiss the application, or

(*e*) if the accused shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers is warranted.

Limitation of further applications

(8) Where an application under this section or section 521 has been heard, a further or other application under this section or section 521 shall not be made with respect to that same accused, except with leave of a judge, prior to the expiration of thirty days from the date of the decision of the judge who heard the previous application.

Application of sections 517, 518 and 519

(9) The provisions of sections 517, 518 and 519 apply with such modifications as the circumstances require in respect of an application under this section.

R.S., 1985, c. C-46, s. 520; R.S., 1985, c. 27 (1st Supp.), s. 86; 1994, c. 44, s. 46; 1999, c. 3, s. 31.

Review of order

**521.** (1) If a justice, or a judge of the Nunavut Court of Justice, makes an order under subsection 515(1), (2), (7), (8) or (12) or makes or vacates any order under paragraph 523(2)(*b*), the prosecutor may, at any time before the trial of the charge, apply to a judge for a review of the order.

Notice to accused

(2) An application under this section shall not be heard by a judge unless the prosecutor has given to the accused at least two clear days notice in writing of the application.

Accused to be present

(3) If the judge so orders or the prosecutor or the accused or his counsel so requests, the accused shall be present at the hearing of an application under this section and, where the accused is in custody, the judge may order, in writing, the person having the custody of the accused to bring him before the court.

Adjournment of proceedings

(4) A judge may, before or at any time during the hearing of an application under this section, on application of the prosecutor or the accused, adjourn the proceedings, but if the accused is in custody no adjournment shall be for more than three clear days except with the consent of the accused.

Failure of accused to attend

(5) Where an accused, other than an accused who is in custody, has been ordered by a judge to be present at the hearing of an application under this section and does not attend the hearing, the judge may issue a warrant for the arrest of the accused.

Warrant for detention

(6) Where, pursuant to paragraph (8)(*e*), the judge makes an order that the accused be detained in custody until he is dealt with according to law, he shall, if the accused is not in custody, issue a warrant for the committal of the accused.

Execution

(7) A warrant issued under subsection (5) or (6) may be executed anywhere in Canada.

Evidence and powers of judge on review

(8) On the hearing of an application under this section, the judge may consider

(*a*) the transcript, if any, of the proceedings heard by the justice and by any judge who previously reviewed the order made by the justice,

(*b*) the exhibits, if any, filed in the proceedings before the justice, and

(*c*) such additional evidence or exhibits as may be tendered by the prosecutor or the accused,

and shall either

(*d*) dismiss the application, or

(*e*) if the prosecutor shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers to be warranted.

Limitation of further applications

(9) Where an application under this section or section 520 has been heard, a further or other application under this section or section 520 shall not be made with respect to the same accused, except with leave of a judge, prior to the expiration of thirty days from the date of the decision of the judge who heard the previous application.

Application of sections 517, 518 and 519

(10) The provisions of sections 517, 518 and 519 apply with such modifications as the circumstances require in respect of an application under this section.

R.S., 1985, c. C-46, s. 521; R.S., 1985, c. 27 (1st Supp.), s. 87; 1994, c. 44, s. 47; 1999, c. 3, s. 32.

Interim release by judge only

**522.** (1) Where an accused is charged with an offence listed in section 469, no court, judge or justice, other than a judge of or a judge presiding in a superior court of criminal jurisdiction for the province in which the accused is so charged, may release the accused before or after the accused has been ordered to stand trial.

Idem

(2) Where an accused is charged with an offence listed in section 469, a judge of or a judge presiding in a superior court of criminal jurisdiction for the province in which the accused is charged shall order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

Order re no communication

(2.1) A judge referred to in subsection (2) who orders that an accused be detained in custody under this section may include in the order a direction that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order except in accordance with such conditions specified in the order as the judge considers necessary.

Release of accused

(3) If the judge does not order that the accused be detained in custody under subsection (2), the judge may order that the accused be released on giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions described in subsections 515(4), (4.1) and (4.2) as the judge considers desirable.

Order not reviewable except under section 680

(4) An order made under this section is not subject to review, except as provided in section 680.

Application of sections 517, 518 and 519

(5) The provisions of sections 517, 518 except subsection (2) thereof, and 519 apply with such modifications as the circumstances require in respect of an application for an order under subsection (2).

Other offences

(6) Where an accused is charged with an offence mentioned in section 469 and with any other offence, a judge acting under this section may apply the provisions of this Part respecting judicial interim release to that other offence.

R.S., 1985, c. C-46, s. 522; R.S., 1985, c. 27 (1st Supp.), s. 88; 1991, c. 40, s. 32; 1994, c. 44, s. 48; 1999, c. 25, s. 10(Preamble).

Period for which appearance notice, etc., continues in force

**523.** (1) Where an accused, in respect of an offence with which he is charged, has not been taken into custody or has been released from custody under or by virtue of any provision of this Part, the appearance notice, promise to appear, summons, undertaking or recognizance issued to, given or entered into by the accused continues in force, subject to its terms, and applies in respect of any new information charging the same offence or an included offence that was received after the appearance notice, promise to appear, summons, undertaking or recognizance was issued, given or entered into,

(*a*) where the accused was released from custody pursuant to an order of a judge made under subsection 522(3), until his trial is completed; or

(*b*) in any other case,

(i) until his trial is completed, and

(ii) where the accused is, at his trial, determined to be guilty of the offence, until a sentence within the meaning of section 673 is imposed on the accused unless, at the time the accused is determined to be guilty, the court, judge or justice orders that the accused be taken into custody pending such sentence.

Where new information charging same offence

(1.1) Where an accused, in respect of an offence with which he is charged, has not been taken into custody or is being detained or has been released from custody under or by virtue of any provision of this Part and after the order for interim release or detention has been made, or the appearance notice, promise to appear, summons, undertaking or recognizance has been issued, given or entered into, a new information, charging the same offence or an included offence, is received, section 507 or 508, as the case may be, does not apply in respect of the new information and the order for interim release or detention of the accused and the appearance notice, promise to appear, summons, undertaking or recognizance, if any, applies in respect of the new information.

Order vacating previous order for release or detention

(2) Notwithstanding subsections (1) and (1.1),

(*a*) the court, judge or justice before which or whom an accused is being tried, at any time,

(*b*) the justice, on completion of the preliminary inquiry in relation to an offence for which an accused is ordered to stand trial, other than an offence listed in section 469, or

(*c*) with the consent of the prosecutor and the accused or, where the accused or the prosecutor applies to vacate an order that would otherwise apply pursuant to subsection (1.1), without such consent, at any time

(i) where the accused is charged with an offence other than an offence listed in section 469, the justice by whom an order was made under this Part or any other justice,

(ii) where the accused is charged with an offence listed in section 469, a judge of or a judge presiding in a superior court of criminal jurisdiction for the province, or

(iii) the court, judge or justice before which or whom an accused is to be tried,

may, on cause being shown, vacate any order previously made under this Part

for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is completed that the court, judge or justice considers to be warranted.

Provisions applicable to proceedings under subsection (2)

(3) The provisions of sections 517, 518 and 519 apply, with such modifications as the circumstances require, in respect of any proceedings under subsection (2), except that subsection 518(2) does not apply in respect of an accused who is charged with an offence listed in section 469.

R.S., 1985, c. C-46, s. 523; R.S., 1985, c. 27 (1st Supp.), s. 89.

*Arrest of Accused on Interim Release*

Issue of warrant for arrest of accused

**524.** (1) Where a justice is satisfied that there are reasonable grounds to believe that an accused

(*a*) has contravened or is about to contravene any summons, appearance notice, promise to appear, undertaking or recognizance that was issued or given to him or entered into by him, or

(*b*) has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

he may issue a warrant for the arrest of the accused.

Arrest of accused without warrant

(2) Notwithstanding anything in this Act, a peace officer who believes on reasonable grounds that an accused

(*a*) has contravened or is about to contravene any summons, appearance notice, promise to appear, undertaking or recognizance that was issued or given to him or entered into by him, or

(*b*) has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

may arrest the accused without warrant.

Hearing

(3) Where an accused who has been arrested with a warrant issued under subsection (1), or who has been arrested under subsection (2), is taken before a justice, the justice shall

(*a*) where the accused was released from custody pursuant to an order made under subsection 522(3) by a judge of the superior court of criminal jurisdiction of any province, order that the accused be taken before a judge of that court; or

(*b*) in any other case, hear the prosecutor and his witnesses, if any, and the accused and his witnesses, if any.

Retention of accused

(4) Where an accused described in paragraph (3)(*a*) is taken before a judge and the judge finds

(*a*) that the accused has contravened or had been about to contravene his summons, appearance notice, promise to appear, undertaking or recognizance, or

(*b*) that there are reasonable grounds to believe that the accused has

committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

Release of accused

(5) Where the judge does not order that the accused be detained in custody pursuant to subsection (4), he may order that the accused be released on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions described in subsection 515(4) or, where the accused was at large on an undertaking or a recognizance with conditions, such additional conditions, described in subsection 515(4), as the judge considers desirable.

Order not reviewable

(6) Any order made under subsection (4) or (5) is not subject to review, except as provided in section 680.

Release of accused

(7) Where the judge does not make a finding under paragraph (4)(*a*) or (*b*), he shall order that the accused be released from custody.

Powers of justice after hearing

(8) Where an accused described in subsection (3), other than an accused to whom paragraph (*a*) of that subsection applies, is taken before the justice and the justice finds

(*a*) that the accused has contravened or had been about to contravene his summons, appearance notice, promise to appear, undertaking or recognizance, or

(*b*) that there are reasonable grounds to believe that the accused has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

Release of accused

(9) Where an accused shows cause why his detention in custody is not justified within the meaning of subsection 515(10), the justice shall order that the accused be released on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions, described in subsection 515(4), as the justice considers desirable.

Reasons

(10) Where the justice makes an order under subsection (9), he shall include in the record a statement of his reasons for making the order, and subsection 515(9) is applicable with such modifications as the circumstances require in respect thereof.

Where justice to order that accused be released

(11) Where the justice does not make a finding under paragraph (8)(*a*) or (*b*), he shall order that the accused be released from custody.

Provisions applicable to proceedings under this section

(12) The provisions of sections 517, 518 and 519 apply with such modifications as the circumstances require in respect of any proceedings under this section, except that subsection 518(2) does not apply in respect of an accused who is charged with an offence mentioned in section 522.

Certain provisions applicable to order under this section

(13) Section 520 applies in respect of any order made under subsection (8) or (9) as though the order were an order made by a justice or a judge of the Nunavut Court of Justice under subsection 515(2) or (5), and section 521 applies in respect of any order made under subsection (9) as though the order were an order made by a justice or a judge of the Nunavut Court of Justice under subsection 515(2).

R.S., 1985, c. C-46, s. 524; 1999, c. 3, s. 33.

*Arrest of Accused on Interim Release*

Issue of warrant for arrest of accused

**524.** (1) Where a justice is satisfied that there are reasonable grounds to believe that an accused

(*a*) has contravened or is about to contravene any summons, appearance notice, promise to appear, undertaking or recognizance that was issued or given to him or entered into by him, or

(*b*) has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

he may issue a warrant for the arrest of the accused.

Arrest of accused without warrant

(2) Notwithstanding anything in this Act, a peace officer who believes on reasonable grounds that an accused

(*a*) has contravened or is about to contravene any summons, appearance notice, promise to appear, undertaking or recognizance that was issued or given to him or entered into by him, or

(*b*) has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

may arrest the accused without warrant.

Hearing

(3) Where an accused who has been arrested with a warrant issued under subsection (1), or who has been arrested under subsection (2), is taken before a justice, the justice shall

(*a*) where the accused was released from custody pursuant to an order made under subsection 522(3) by a judge of the superior court of criminal jurisdiction of any province, order that the accused be taken before a judge of that court; or

(*b*) in any other case, hear the prosecutor and his witnesses, if any, and the accused and his witnesses, if any.

Retention of accused

(4) Where an accused described in paragraph (3)(*a*) is taken before a judge and the judge finds

(*a*) that the accused has contravened or had been about to contravene his

summons, appearance notice, promise to appear, undertaking or recognizance, or

(*b*) that there are reasonable grounds to believe that the accused has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

Release of accused

(5) Where the judge does not order that the accused be detained in custody pursuant to subsection (4), he may order that the accused be released on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions described in subsection 515(4) or, where the accused was at large on an undertaking or a recognizance with conditions, such additional conditions, described in subsection 515(4), as the judge considers desirable.

Order not reviewable

(6) Any order made under subsection (4) or (5) is not subject to review, except as provided in section 680.

Release of accused

(7) Where the judge does not make a finding under paragraph (4)(*a*) or (*b*), he shall order that the accused be released from custody.

Powers of justice after hearing

(8) Where an accused described in subsection (3), other than an accused to whom paragraph (*a*) of that subsection applies, is taken before the justice and the justice finds

(*a*) that the accused has contravened or had been about to contravene his summons, appearance notice, promise to appear, undertaking or recognizance, or

(*b*) that there are reasonable grounds to believe that the accused has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

Release of accused

(9) Where an accused shows cause why his detention in custody is not justified within the meaning of subsection 515(10), the justice shall order that the accused be released on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions, described in subsection 515(4), as the justice considers desirable.

Reasons

(10) Where the justice makes an order under subsection (9), he shall include in the record a statement of his reasons for making the order, and subsection 515(9) is applicable with such modifications as the circumstances require in

respect thereof.

Where justice to order that accused be released

(11) Where the justice does not make a finding under paragraph (8)(*a*) or (*b*), he shall order that the accused be released from custody.

Provisions applicable to proceedings under this section

(12) The provisions of sections 517, 518 and 519 apply with such modifications as the circumstances require in respect of any proceedings under this section, except that subsection 518(2) does not apply in respect of an accused who is charged with an offence mentioned in section 522.

Certain provisions applicable to order under this section

(13) Section 520 applies in respect of any order made under subsection (8) or (9) as though the order were an order made by a justice or a judge of the Nunavut Court of Justice under subsection 515(2) or (5), and section 521 applies in respect of any order made under subsection (9) as though the order were an order made by a justice or a judge of the Nunavut Court of Justice under subsection 515(2).

R.S., 1985, c. C-46, s. 524; 1999, c. 3, s. 33.

*Review of Detention where Trial Delayed*

Time for application to judge

**525.** (1) Where an accused who has been charged with an offence other than an offence listed in section 469 and who is not required to be detained in custody in respect of any other matter is being detained in custody pending his trial for that offence and the trial has not commenced

(*a*) in the case of an indictable offence, within ninety days from

(i) the day on which the accused was taken before a justice under section 503, or

(ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision, or

(*b*) in the case of an offence for which the accused is being prosecuted in proceedings by way of summary conviction, within thirty days from

(i) the day on which the accused was taken before a justice under subsection 503(1), or

(ii) where an order that the accused be detained in custody has been made under section 521 or 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision,

the person having the custody of the accused shall, forthwith on the expiration of those ninety or thirty days, as the case may be, apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody.

Notice of hearing

(2) On receiving an application under subsection (1), the judge shall

(*a*) fix a date for the hearing described in subsection (1) to be held in the jurisdiction

(i) where the accused is in custody, or

(ii) where the trial is to take place; and

(*b*) direct that notice of the hearing be given to such persons, including the prosecutor and the accused, and in such manner as the judge may specify.

Matters to be considered on hearing

(3) On the hearing described in subsection (1), the judge may, in deciding whether or not the accused should be released from custody, take into consideration whether the prosecutor or the accused has been responsible for any unreasonable delay in the trial of the charge.

Order

(4) If, following the hearing described in subsection (1), the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsection 515(10), the judge shall order that the accused be released from custody pending the trial of the charge on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions described in subsection 515(4) as the judge considers desirable.

Warrant of judge for arrest

(5) Where a judge having jurisdiction in the province where an order under subsection (4) for the release of an accused has been made is satisfied that there are reasonable grounds to believe that the accused

(*a*) has contravened or is about to contravene the undertaking or recognizance on which he has been released, or

(*b*) has, after his release from custody on his undertaking or recognizance, committed an indictable offence,

he may issue a warrant for the arrest of the accused.

Arrest without warrant by peace officer

(6) Notwithstanding anything in this Act, a peace officer who believes on reasonable grounds that an accused who has been released from custody under subsection (4)

(*a*) has contravened or is about to contravene the undertaking or recognizance on which he has been released, or

(*b*) has, after his release from custody on his undertaking or recognizance, committed an indictable offence,

may arrest the accused without warrant and take him or cause him to be taken before a judge having jurisdiction in the province where the order for his release was made.

Hearing and order

(7) A judge before whom an accused is taken pursuant to a warrant issued under subsection (5) or pursuant to subsection (6) may, where the accused shows cause why his detention in custody is not justified within the meaning of subsection 515(10), order that the accused be released on his giving an undertaking or entering into a recognizance described in any of paragraphs 515(2)(*a*) to (*e*) with such conditions, described in subsection 515(4), as the judge considers desirable.

Provisions applicable to proceedings

(8) The provisions of sections 517, 518 and 519 apply with such modifications as the circumstances require in respect of any proceedings under this section.

Directions for expediting

(9) Where an accused is before a judge under any of the provisions of this

trial

section, the judge may give directions for expediting the trial of the accused.

R.S., 1985, c. C-46, s. 525; R.S., 1985, c. 27 (1st Supp.), s. 90; 1994, c. 44, s. 49; 1997, c. 18, s. 61.

Directions for expediting proceedings

**526.** Subject to subsection 525(9), a court, judge or justice before which or whom an accused appears pursuant to this Part may give directions for expediting any proceedings in respect of the accused.

R.S., 1985, c. C-46, s. 526; R.S., 1985, c. 27 (1st Supp.), s. 91.

*Procedure to Procure Attendance of a Prisoner*

Procuring attendance

**527.** (1) A judge of a superior court of criminal jurisdiction may order in writing that a person who is confined in a prison be brought before the court, judge, justice or provincial court judge before whom the prisoner is required to attend, from day to day as may be necessary, if

(*a*) the applicant for the order sets out the facts of the case in an affidavit and produces the warrant, if any; and

(*b*) the judge is satisfied that the ends of justice require that an order be made.

Provincial court judge's order

(2) A provincial court judge has the same powers for the purposes of subsection (1) or (7) as a judge has under that subsection where the person whose attendance is required is within the province in which the provincial court judge has jurisdiction.

Conveyance of prisoner

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

(*a*) deliver the prisoner to any person who is named in the order to receive him; or

(*b*) bring the prisoner before the court, judge, justice or provincial court judge, as the case may be, on payment of his reasonable charges in respect thereof.

Detention of prisoner required as witness

(4) Where a prisoner is required as a witness, the judge or provincial court judge shall direct, in the order, the manner in which the prisoner shall be kept in custody and returned to the prison from which he is brought.

Detention in other cases

(5) Where the appearance of a prisoner is required for the purposes of paragraph (1)(*a*) or (*b*), the judge or provincial court judge shall give appropriate directions in the order with respect to the manner in which the prisoner is

(*a*) to be kept in custody, if he is ordered to stand trial; or

(*b*) to be returned, if he is discharged on a preliminary inquiry or if he is acquitted of the charge against him.

Application of sections respecting sentence

(6) Sections 718.3 and 743.1 apply where a prisoner to whom this section applies is convicted and sentenced to imprisonment by the court, judge, justice or provincial court judge.

Transfer of prisoner

(7) On application by the prosecutor, a judge of a superior court of criminal jurisdiction may, if a prisoner or a person in the custody of a peace officer consents in writing, order the transfer of the prisoner or other person to the

custody of a peace officer named in the order for a period specified in the order, where the judge is satisfied that the transfer is required for the purpose of assisting a peace officer acting in the execution of his or her duties.

Conveyance of prisoner

(8) An order under subsection (7) shall be addressed to the person who has custody of the prisoner and on receipt thereof that person shall deliver the prisoner to the peace officer who is named in the order to receive him.

Return

(9) When the purposes of any order made under this section have been carried out, the prisoner shall be returned to the place where he was confined at the time the order was made.

R.S., 1985, c. C-46, s. 527; R.S., 1985, c. 27 (1st Supp.), ss. 92, 101(E), 203; 1994, c. 44, s. 50; 1995, c. 22, s. 10; 1997, c. 18, s. 62.

*Endorsement of Warrant*

Endorsing warrant

**528.** (1) Where a warrant for the arrest or committal of an accused, in any form set out in Part XXVIII in relation thereto, cannot be executed in accordance with section 514 or 703, a justice within whose jurisdiction the accused is or is believed to be shall, on application and proof on oath or by affidavit of the signature of the justice who issued the warrant, authorize the arrest of the accused within his jurisdiction by making an endorsement, which may be in Form 28, on the warrant.

Copy of affidavit or warrant

(1.1) A copy of an affidavit or warrant submitted by a means of telecommunication that produces a writing has the same probative force as the original for the purposes of subsection (1).

Effect of endorsement

(2) An endorsement that is made on a warrant pursuant to subsection (1) is sufficient authority to the peace officers to whom it was originally directed, and to all peace officers within the territorial jurisdiction of the justice by whom it is endorsed, to execute the warrant and to take the accused before the justice who issued the warrant or before any other justice for the same territorial division.

R.S., 1985, c. C-46, s. 528; R.S., 1985, c. 27 (1st Supp.), s. 93; 1994, c. 44, s. 51.

*Powers to Enter Dwelling-houses to Carry out Arrests*

Including authorization to enter in warrant of arrest

**529.** (1) A warrant to arrest or apprehend a person issued by a judge or justice under this or any other Act of Parliament may authorize a peace officer, subject to subsection (2), to enter a dwelling-house described in the warrant for the purpose of arresting or apprehending the person if the judge or justice is satisfied by information on oath in writing that there are reasonable grounds to believe that the person is or will be present in the dwelling-house.

Execution

(2) An authorization to enter a dwelling-house granted under subsection (1) is subject to the condition that the peace officer may not enter the dwelling-house unless the peace officer has, immediately before entering the dwelling-house, reasonable grounds to believe that the person to be arrested or apprehended is present in the dwelling-house.

R.S., 1985, c. C-46, s. 529; 1994, c. 44, s. 52; 1997, c. 39, s. 2.

Warrant to enter dwelling-house

**529.1** A judge or justice may issue a warrant in Form 7.1 authorizing a peace officer to enter a dwelling-house described in the warrant for the purpose of

arresting or apprehending a person identified or identifiable by the warrant if the judge or justice is satisfied by information on oath that there are reasonable grounds to believe that the person is or will be present in the dwelling-house and that

(*a*) a warrant referred to in this or any other Act of Parliament to arrest or apprehend the person is in force anywhere in Canada;

(*b*) grounds exist to arrest the person without warrant under paragraph 495(1)(*a*) or (*b*); or

(*c*) grounds exist to arrest or apprehend without warrant the person under an Act of Parliament, other than this Act.

1997, c. 39, s. 2.

Reasonable terms and conditions

**529.2** Subject to section 529.4, the judge or justice shall include in a warrant referred to in section 529 or 529.1 any terms and conditions that the judge or justice considers advisable to ensure that the entry into the dwelling-house is reasonable in the circumstances.

1997, c. 39, s. 2.

Authority to enter dwelling without warrant

**529.3** (1) Without limiting or restricting any power a peace officer may have to enter a dwelling-house under this or any other Act or law, the peace officer may enter the dwelling-house for the purpose of arresting or apprehending a person, without a warrant referred to in section 529 or 529.1 authorizing the entry, if the peace officer has reasonable grounds to believe that the person is present in the dwelling-house, and the conditions for obtaining a warrant under section 529.1 exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

Exigent circumstances

(2) For the purposes of subsection (1), exigent circumstances include circumstances in which the peace officer

(*a*) has reasonable grounds to suspect that entry into the dwelling-house is necessary to prevent imminent bodily harm or death to any person; or

(*b*) has reasonable grounds to believe that evidence relating to the commission of an indictable offence is present in the dwelling-house and that entry into the dwelling-house is necessary to prevent the imminent loss or imminent destruction of the evidence.

1997, c. 39, s. 2.

Omitting announcement before entry

**529.4** (1) A judge or justice who authorizes a peace officer to enter a dwelling-house under section 529 or 529.1, or any other judge or justice, may authorize the peace officer to enter the dwelling-house without prior announcement if the judge or justice is satisfied by information on oath that there are reasonable grounds to believe that prior announcement of the entry would

(*a*) expose the peace officer or any other person to imminent bodily harm or death; or

(*b*) result in the imminent loss or imminent destruction of evidence relating to the commission of an indictable offence.

Execution of

(2) An authorization under this section is subject to the condition that the

authorization

peace officer may not enter the dwelling-house without prior announcement despite being authorized to do so unless the peace officer has, immediately before entering the dwelling-house,

(*a*) reasonable grounds to suspect that prior announcement of the entry would expose the peace officer or any other person to imminent bodily harm or death; or

(*b*) reasonable grounds to believe that prior announcement of the entry would result in the imminent loss or imminent destruction of evidence relating to the commission of an indictable offence.

Exception

(3) A peace officer who enters a dwelling-house without a warrant under section 529.3 may not enter the dwelling-house without prior announcement unless the peace officer has, immediately before entering the dwelling-house,

(*a*) reasonable grounds to suspect that prior announcement of the entry would expose the peace officer or any other person to imminent bodily harm or death; or

(*b*) reasonable grounds to believe that prior announcement of the entry would result in the imminent loss or imminent destruction of evidence relating to the commission of an indictable offence.

1997, c. 39, s. 2.

Telewarrant

**529.5** If a peace officer believes that it would be impracticable in the circumstances to appear personally before a judge or justice to make an application for a warrant under section 529.1 or an authorization under section 529 or 529.4, the warrant or authorization may be issued on an information submitted by telephone or other means of telecommunication and, for that purpose, section 487.1 applies, with any modifications that the circumstances require, to the warrant or authorization.

1997, c. 39, s. 2.

Proof of previous conviction

**667.** (1) In any proceedings,

(*a*) a certificate setting out with reasonable particularity the conviction, discharge under section 730 or the conviction and sentence in Canada of an offender signed by

(i) the person who made the conviction or order for the discharge,

(ii) the clerk of the court in which the conviction or order for the discharge was made, or

(iii) a fingerprint examiner,

is, on proof that the accused or defendant is the offender referred to in the certificate, evidence that the accused or defendant was so convicted, so discharged or so convicted and sentenced without proof of the signature or the official character of the person appearing to have signed the certificate;

(*b*) evidence that the fingerprints of the accused or defendant are the same as the fingerprints of the offender whose fingerprints are reproduced in or attached to a certificate issued under subparagraph (*a*)(iii) is, in the absence of evidence to the contrary, proof that the accused or defendant is the

offender referred to in that certificate;

(*c*) a certificate of a fingerprint examiner stating that he has compared the fingerprints reproduced in or attached to that certificate with the fingerprints reproduced in or attached to a certificate issued under subparagraph (*a*)(iii) and that they are those of the same person is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate; and

(*d*) a certificate under subparagraph (*a*)(iii) may be in Form 44, and a certificate under paragraph (*c*) may be in Form 45.

Idem

(2) In any proceedings, a copy of the summary conviction or discharge under section 730 in Canada of an offender, signed by the person who made the conviction or order for the discharge or by the clerk of the court in which the conviction or order for the discharge was made, is, on proof that the accused or defendant is the offender referred to in the copy of the summary conviction, evidence of the conviction or discharge under section 730 of the accused or defendant, without proof of the signature or the official character of the person appearing to have signed it.

Proof of identity

(2.1) In any summary conviction proceedings, where the name of a defendant is similar to the name of an offender referred to in a certificate made under subparagraph (1)(*a*)(i) or (ii) in respect of a summary conviction or referred to in a copy of a summary conviction mentioned in subsection (2), that similarity of name is, in the absence of evidence to the contrary, evidence that the defendant is the offender referred to in the certificate or the copy of the summary conviction.

Attendance and right to cross-examine

(3) An accused against whom a certificate issued under subparagraph (1)(*a*)(iii) or paragraph (1)(*c*) is produced may, with leave of the court, require the attendance of the person who signed the certificate for the purposes of cross-examination.

Notice of intention to produce certificate

(4) No certificate issued under subparagraph (1)(*a*)(iii) or paragraph (1)(*c*) shall be received in evidence unless the party intending to produce it has given to the accused reasonable notice of his intention together with a copy of the certificate.

Definition of "fingerprint examiner"

(5) In this section, "fingerprint examiner" means a person designated as such for the purposes of this section by the Solicitor General of Canada.

R.S., 1985, c. C-46, s. 667; R.S., 1985, c. 27 (1st Supp.), s. 136, c. 1 (4th Supp.), s. 18(F); 1995, c. 22, s. 10.

Review by court of appeal

**680.** (1) A decision made by a judge under section 522 or subsection 524(4) or (5) or a decision made by a judge of the court of appeal under section 261 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,

(*a*) vary the decision; or

(*b*) substitute such other decision as, in its opinion, should have been made.

Single judge acting

(2) On consent of the parties, the powers of the court of appeal under subsection (1) may be exercised by a judge of that court.

Enforcement of decision

(3) A decision as varied or substituted under this section shall have effect and may be enforced in all respects as though it were the decision originally made.

R.S., 1985, c. C-46, s. 680; R.S., 1985, c. 27 (1st Supp.), s. 142; 1994, c. 44, s. 68.

*Purpose and Principles of Sentencing*

Purpose

**718.** The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(*a*) to denounce unlawful conduct;

(*b*) to deter the offender and other persons from committing offences;

(*c*) to separate offenders from society, where necessary;

(*d*) to assist in rehabilitating offenders;

(*e*) to provide reparations for harm done to victims or to the community; and

(*f*) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6.

Fundamental principle

**718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.

Other sentencing principles

**718.2** A court that imposes a sentence shall also take into consideration the following principles:

(*a*) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, or

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization

shall be deemed to be aggravating circumstances;

(*b*) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(*c*) where consecutive sentences are imposed, the combined sentence should

not be unduly long or harsh;

(*d*) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(*e*) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95.

Victim impact statement

**722.** (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 730 in respect of any offence, the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

Procedure for victim impact statement

(2) A statement referred to in subsection (1) must be

(*a*) prepared in writing in the form and in accordance with the procedures established by a program designated for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction; and

(*b*) filed with the court.

Presentation of statement

(2.1) The court shall, on the request of a victim, permit the victim to read a statement prepared and filed in accordance with subsection (2), or to present the statement in any other manner that the court considers appropriate.

Evidence concerning victim admissible

(3) Whether or not a statement has been prepared and filed in accordance with subsection (2), the court may consider any other evidence concerning any victim of the offence for the purpose of determining the sentence to be imposed on the offender or whether the offender should be discharged under section 730.

Definition of “victim”

(4) For the purposes of this section and section 722.2, "victim", in relation to an offence,

(*a*) means a person to whom harm was done or who suffered physical or emotional loss as a result of the commission of the offence; and

(*b*) where the person described in paragraph (*a*) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or common-law partner or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

R.S., 1985, c. C-46, s. 722; 1995, c. 22, s. 6; 1999, c. 25, s. 17(Preamble); 2000, c. 12, s. 95.

Imprisonment for life or more than two years

**743.1** (1) Except where otherwise provided, a person who is sentenced to imprisonment for

(*a*) life,

(*b*) a term of two years or more, or

(*c*) two or more terms of less than two years each that are to be served one

after the other and that, in the aggregate, amount to two years or more,

shall be sentenced to imprisonment in a penitentiary.

Subsequent term less than two years

(2) Where a person who is sentenced to imprisonment in a penitentiary is, before the expiration of that sentence, sentenced to imprisonment for a term of less than two years, the person shall serve that term in a penitentiary, but if the previous sentence of imprisonment in a penitentiary is set aside, that person shall serve that term in accordance with subsection (3).

Imprisonment for term less than two years

(3) A person who is sentenced to imprisonment and who is not required to be sentenced as provided in subsection (1) or (2) shall, unless a special prison is prescribed by law, be sentenced to imprisonment in a prison or other place of confinement, other than a penitentiary, within the province in which the person is convicted, in which the sentence of imprisonment may be lawfully executed.

Long-term supervision

(3.1) Notwithstanding subsection (3), an offender who is required to be supervised by an order made under paragraph 753.1(3)(*b*) and who is sentenced for another offence during the period of the supervision shall be sentenced to imprisonment in a penitentiary.

Sentence to penitentiary of person serving sentence elsewhere

(4) Where a person is sentenced to imprisonment in a penitentiary while the person is lawfully imprisoned in a place other than a penitentiary, that person shall, except where otherwise provided, be sent immediately to the penitentiary, and shall serve in the penitentiary the unexpired portion of the term of imprisonment that that person was serving when sentenced to the penitentiary as well as the term of imprisonment for which that person was sentenced to the penitentiary.

Transfer to penitentiary

(5) Where, at any time, a person who is imprisoned in a prison or place of confinement other than a penitentiary is subject to two or more terms of imprisonment, each of which is for less than two years, that are to be served one after the other, and the aggregate of the unexpired portions of those terms at that time amounts to two years or more, the person shall be transferred to a penitentiary to serve those terms, but if any one or more of such terms is set aside or reduced and the unexpired portions of the remaining term or terms on the day on which that person was transferred under this section amounted to less than two years, that person shall serve that term or terms in accordance with subsection (3).

Newfoundland

(6) For the purposes of subsection (3), "penitentiary" does not, until a day to be fixed by order of the Governor in Council, include the facility mentioned in subsection 15(2) of the *Corrections and Conditional Release Act*.

1992, c. 11, s. 16; 1995, c. 19, s. 39, c. 22, s. 6; 1997, c. 17, s. 1.

*Appeals to Court of Appeal*

Appeal on question of law

**839.** (1) Subject to subsection (1.1), an appeal to the court of appeal as defined in section 673 may, with leave of that court or a judge thereof, be taken on any ground that involves a question of law alone, against

(*a*) a decision of a court in respect of an appeal under section 822; or

(*b*) a decision of an appeal court under section 834, except where that court is the court of appeal.

Nunavut

(1.1) An appeal to the Court of Appeal of Nunavut may, with leave of that court or a judge of that court, be taken on any ground that involves a question of law alone, against a decision of a judge of the Court of Appeal of Nunavut acting as an appeal court under subsection 812(2) or 829(2).

Sections applicable

(2) Sections 673 to 689 apply with such modifications as the circumstances require to an appeal under this section.

Costs

(3) Notwithstanding subsection (2), the court of appeal may make any order with respect to costs that it considers proper in relation to an appeal under this section.

Enforcement of decision

(4) The decision of the court of appeal may be enforced in the same manner as if it had been made by the summary conviction court before which the proceedings were originally heard and determined.

Right of Attorney General of Canada to appeal

(5) The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province has under this Part.

R.S., 1985, c. C-46, s. 839; R.S., 1985, c. 27 (1st Supp.), s. 183; 1999, c. 3, s. 57.