

Summary Proceedings Act

CHAPTER 450 OF THE REVISED STATUTES, 1989

as amended by

1990, c. 46; 1993, c. 45; 1994-95, c. 18, ss. 1, 2;
1996, c. 23, ss. 44, 45; 1999 (2nd Sess.), c. 8, ss. 20, 21;
2000, c. 4, ss. 74-77; 2000, c. 28, ss. 95, 96; 2001, c. 5, ss. 35-39;
2002, c. 10, s. 44; 2002, c. 30, ss. 20-29; 2003, c. 4, s. 30;
2003 (2nd Sess.), c. 1, s. 35; 2004, c. 3, s. 46; 2004, c. 4, s. 118;
2006, c. 2, ss. 59-62; 2006, c. 10, s. 6; 2007, c. 32, s. 11;
2007, c. 45, s. 28; 2009, c. 5, ss. 32-34; 2010, c. 26; 2011, c. 8, ss. 28-30;
2011, c. 28; 2011, c. 44, s. 34; 2012, c. 8, ss. 18, 19; 2012, c. 46;
2013, c. 3, ss. 22-24; 2015, c. 6, ss. 47-53; 2015, c. 17, s. 101;
2016, c. 3, s. 171; 2016, c. 4, s. 22; 2018, c. 3, s. 71; 2018, c. 22, s. 16



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An Act to Amend and Reconstitute the Law Concerning Summary Proceedings

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CITATION

Short title

- 1 (1) This Act may be cited as the *Summary Proceedings Act*.
- (2) A reference in any enactment to the former *Summary Convictions Act* is a reference to this Act. R.S., c. 450, s. 1.

APPLICATION

Application of Act

- 2 (1) Subject to any special provision otherwise enacted, this Act applies to
- (a) every case in which a person commits or is suspected of having committed any offence or act over which the Legislature has legislative authority and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment; and
- (b) every case in which a complaint is made to any justice in relation to any matter over which the Legislature has legislative authority and with respect to which the justice has authority by law to make any order, whether for the payment of money or otherwise.
- (2) Notwithstanding any special provision relating to appeals in any enactment, in every case referred to in clauses (a) and (b) of subsection (1), the

provisions of this Act relating to appeals shall apply to each such case instead of the special provisions relating to appeals in the enactment and all appeal proceedings taken under the enactment shall be taken up and continued under and in conformity with the provisions of this Act as far as consistently may be. R.S., c. 450, s. 2.

SEARCH AND SEIZURE

Power to search and seize

2A (1) Notwithstanding any enactment, a peace officer or any other person charged with the enforcement of an enactment may, in accordance with this Act, search any building, receptacle or place and seize anything found therein.

(2) For greater certainty, nothing in this Act shall be construed as restricting the lawful authority of a peace officer or any other person to search, in accordance with any other enactment, any building, receptacle or place and seize anything found therein. 1990, c. 46, s. 1.

Search warrant

2B (1) A justice who is satisfied by information upon oath in the form prescribed in the regulations that there are reasonable grounds to believe that there is in a building, receptacle or place

(a) anything on or in respect of which any offence against an enactment has been or is suspected to have been committed; or

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence against an enactment,

may at any time issue a warrant under the justice's hand authorizing a peace officer

(c) to search the building, receptacle or place for any such thing and to seize it; and

(d) to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice in accordance with Section 2E.

(1A) A justice of the peace or a judge of the provincial court may issue an investigative warrant authorizing a peace officer to, subject to this subsection, use any investigative technique or procedure or do any thing described in the warrant that would, if not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if

(a) the justice of the peace or judge of the provincial court, as the case may be, is satisfied by information under oath that there are reasonable grounds to believe that an offence against an enactment listed in Schedule B has been, is being or will be committed and that information or other evidence concerning the offence will be obtained through the use of the technique or procedure or the doing of the thing;

(b) the justice of the peace or judge of the provincial court, as the case may be, is satisfied that it is in the best interest of the administration of justice to issue the warrant; and

(c) there is no other provision in this or any other Act of the Legislature that would provide for a warrant or order authorizing the technique or procedure to be used or thing to be done.

(1B) Nothing in subsection (1A) shall be construed so as to permit interference with the bodily integrity of any person, the use of any device to intercept private communications as provided for in Part VI of the Criminal Code (Canada) or the taking of samples of bodily substances for the purpose of forensic DNA analysis.

(1C) An investigative warrant shall authorize a peace officer to enter and search the place for which the warrant was issued and, without limiting the powers of the justice of the peace or the judge of the provincial court under subsection (1A), the warrant may, in respect of the alleged offence, authorize the peace officer to enter the place for which the warrant is issued, and

(a) search for and examine and copy any drawings, specifications, licence, document, record or report;

(b) search for and examine any equipment, machine, device, article, thing, material or biological, chemical or physical agent;

(c) require a person to produce any item described in clause (a) or (b);

(d) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent, and take and carry away samples from the testing; and

(e) take measurements of and record by any means the physical circumstances of the place.

(1D) A peace officer who executes a warrant issued under subsection (1A) may seize or examine and copy any drawings, specifications, licence, document, record or report or seize or examine any equipment, machine, device, article, thing, material or biological, chemical or physical agent, in addition to those mentioned in the warrant, that the officer believes on reasonable grounds will afford evidence in respect of an offence against an enactment.

(1E) A person authorized under this Section to search a computer system in a building or place for data may

(a) use or cause to be used any computer system at the building or place to search any data contained in or available to the computer system;

(b) reproduce or cause to be reproduced any data in the form of a print-out or other intelligible output;

(c) seize the print-out or other output for examination or copying; and

(d) use or cause to be used any copying equipment at the place to make copies of the data.

(1F) Every person who is in possession or control of any building or place in respect of which a search is carried out under this Section shall, on presentation of the warrant, permit the person carrying out the search to

(a) use or cause to be used any computer system at the building or place in order to search any data contained in or available to the computer system for data that the person is authorized by this Section to search for;

(b) obtain a hard copy of the data and to seize it; and

(c) use or cause to be used any copying equipment at the place to make copies of the data.

(1G) A hard copy print-out of data from a computer made pursuant to subsection (1E) or (1F) is, if it purports to be certified as a true copy by the person who caused the print-out or hard copy to be produced or the person in whose presence the copy was made admissible in evidence and, in the absence of evidence to the contrary, has the same probative force as the original data would have if it had been proved in the ordinary way.

(1H) An investigative warrant is valid for thirty days or for such shorter period as may be specified in it by a justice of the peace or a judge of the provincial court and may, without limiting the generality of the foregoing, include provisions for re-entry to the place for the purpose of subsection (1A).

(1I) An investigative warrant shall contain terms and conditions in addition to those provided for in subsections (1A) to (1H) as the justice of the peace or judge of the provincial court, as the case may be, considers advisable to ensure that any search or seizure authorized by the warrant is reasonable in the circumstances.

(1J) A warrant issued under subsection (1A) that authorizes a peace officer to observe, by means of a television camera or other similar electronic device, any person who is engaged in activity in circumstances in which the person has a reasonable expectation of privacy shall contain such terms and conditions as the justice of the peace or judge of the provincial court considers advisable to ensure that the privacy of the person or of any other person is respected as much as possible.

(1K) A justice of the peace or judge of the provincial court may issue further warrants under subsection (1A).

(1L) Nothing in this Section restricts any power or duty of a peace officer under any enactment including, without limiting the generality of the foregoing, the power to conduct an inspection.

(1M) A justice of the peace or judge of the provincial court may, on application made at the time of issuing a warrant under this or any other enactment or at any time thereafter, make an order prohibiting access to and the disclosure of any information relating to the warrant or information on the ground that

(a) the information might be used for an improper purpose; or

(b) the ends of justice would be subverted by the disclosure on the grounds that disclosure of the information would

(i) compromise the identity of a confidential informant,

(ii) compromise the nature or extent of an ongoing investigation,

(iii) endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice future investigations in which similar techniques would be used,

(iv) prejudice the interests of an innocent person, or

(v) in the opinion of the justice of the peace or judge of the provincial court, subvert the ends of justice in some other way;

and

(c) the ground referred to in clause (a) or (b) outweighs in importance the access to and disclosure of the information.

(1N) Where an order is made under subsection (1M), all documents relating to the application shall, subject to any terms and conditions that the justice of the peace or judge of the provincial court considers desirable in the circumstances, including, without limiting the generality of the foregoing, any term or condition concerning the duration of the prohibition, partial disclosure of a document, deletion of any information or the occurrence of a condition, be placed in a packet and sealed by the justice of the peace or judge of the provincial court immediately on determination of the application, and that packet shall be kept in the custody of the court in a place to which the public has no access or in any other place that the justice of the peace or judge of the provincial court may authorize and shall not be dealt with except in accordance with the terms and conditions specified in the order or as varied under subsection (1O).

(1O) An application to terminate the order or vary any of the terms and conditions of an order made under subsection (1M) may be made to the justice of the peace or judge of the provincial court who made the order or a judge of the court before which any proceedings arising out of the investigation in relation to which the warrant was obtained may be held.

(2) A search warrant issued pursuant to this Section shall be in the form prescribed in the regulations, varied to suit the case.

(3) An endorsement that is made on a warrant as provided for in subsection (2) is sufficient authority to the peace officers or such persons to whom it was originally directed and to all peace officers to execute the warrant and to deal with the things seized in accordance with Section 2D or as otherwise provided by law.

(3A) A warrant may authorize persons who have special, expert or professional knowledge to accompany and assist a peace officer in the execution of the warrant.

(4) Subject to subsection (4A), where a peace officer believes that an offence against an enactment has been committed or is suspected to have been committed and has grounds to apply for a warrant under subsection (1) or (1A), the peace officer may submit an information on oath by telephone or other means of telecommunication to a justice designated for that purpose by the Chief Judge of the Provincial Court.

(4A) An information by telephone or other means of telecommunication that does not produce a writing may only be submitted in circumstances in which it would be impracticable to appear personally before a justice of the peace or a judge of the Provincial Court to apply for a warrant.

(5) An information submitted by telephone or other means of telecommunication must be on oath and must be recorded word for word by the justice, who must, as soon as reasonably possible, cause the record or a transcription of it, certified by the justice as to time, date and contents, to be filed with the clerk of the court.

(6) An information on oath submitted by telephone or other means of telecommunications that does not produce a writing must include a statement of the circumstances that make it impracticable for the peace officer to appear personally before a justice of the peace or a judge of the Provincial Court.

(6A) An information submitted by telephone or other means of telecommunication to obtain a warrant to search for anything permitted by subsection (1) must include

(a) a statement of the offence alleged, the place or premises to be searched and the items alleged to be liable to seizure;

(b) a statement of the peace officer's grounds for believing that the items liable to seizure in respect of the offence alleged will be found in the place or premises to be searched; and

(c) a statement as to any prior application for a warrant under this Section or any other search warrant, in respect of the same matter, of which the peace officer has knowledge.

(6B) An information submitted by telephone or other means of telecommunication to obtain a warrant to search for anything permitted by subsection (1A) must include

(a) a statement of the offence alleged, the place or premises to be searched;

(b) a statement of the investigative technique or procedure or any other thing sought to be authorized by the warrant and the peace officer's grounds for believing that information and other evidence concerning the offence will be obtained through the use of the technique or procedure or the doing of the thing; and

(c) a statement as to any previous application for a warrant under this Section or any other search warrant, in respect of the same matter, of which the peace officer has knowledge.

(7) A justice of the peace or a judge of the Provincial Court who is satisfied that an information submitted pursuant to subsection (4)

(a) concerns an offence punishable on conviction under an enactment;

(b) conforms to the requirements of subsection (6), (6A) or (6B); and

(c) discloses reasonable grounds, in accordance with subsection (1) or (1A), for the issuance of a warrant in respect of an offence,

may issue a warrant to a peace officer that

(d) confers the same authority respecting search and seizure as may be conferred by a warrant issued under subsection (1) or (1A); and

(e) requires the warrant to be executed within a period of time that the justice of the peace or the judge of the Provincial Court may order.

(8) Where a justice issues a warrant by telephone or other means of telecommunication that does not produce a writing,

(a) the justice shall complete and sign the warrant in the form prescribed in the regulations, varied to suit the case, and noting on its face the time, date and place where it is issued;

(b) the peace officer, on the direction of the justice, shall complete, in duplicate, a facsimile of the warrant referred to in clause (a), noting on its face the name of the justice who issued it and the time, date and place where it was issued; and

(c) the justice shall, as soon as practicable after the warrant has been issued, cause the warrant to be filed with the clerk of the court.

(8A) Where a justice of the peace or a judge of the Provincial Court issues a warrant by other means of telecommunication that produces a writing,

(a) the justice of the peace or the judge of the Provincial Court shall complete and sign the warrant in the form prescribed in the regulations, varied to suit the case, and note on its face the time, date and place where it is issued;

(b) the justice of the peace or the judge of the Provincial Court shall transmit the warrant by the means of telecommunication to the peace officer who submitted the information and the copy of the warrant received by the peace officer is deemed to be a facsimile;

(c) the peace officer shall procure a second copy of the warrant which is deemed to be a facsimile; and

(d) the justice of the peace or the judge of the Provincial Court shall, as soon as practicable after the warrant has been issued, cause the warrant to be filed with the clerk of the court.

(9) A peace officer who executes a warrant issued by telephone or other means of telecommunication shall, before entering the place or premises to be searched or as soon as practicable after entering, give a facsimile of the warrant to any person present who appears to be in control of the place or premises.

(10) A peace officer who, in any unoccupied place or premises, executes a warrant issued by telephone or other means of telecommunication shall, on entering the place or premises or as soon as practicable after entering, cause a facsimile of the warrant to be suitably affixed in a prominent place within the place or premises.

(11) A peace officer to whom a warrant is issued by telephone or other means of telecommunication shall file a written report with the clerk of the court as soon as reasonably possible but within a period not longer than seven days after the warrant has been executed, and the report shall include

(a) a statement of the time and date the warrant was executed or, if the warrant was not executed, a statement of the reasons why it was not executed;

(b) a statement of the things, if any, that were seized under the warrant and the location where they are being held; and

(c) a statement of the things, if any, that were seized in addition to the things mentioned in the warrant and the location where they are being held, together with a statement of the peace officer's grounds for believing that those additional things had been obtained by, or used in, the commission of an offence.

(12) As soon as reasonably possible, the clerk of the court with whom a written report is filed under subsection (11) shall cause the report, together with the information on oath and the warrant to which it pertains, to be brought before a justice to be dealt with under Section 2F.

(13) In any proceeding in which it is material for a court to be satisfied that a search or seizure was authorized by a warrant issued by telephone or other means of telecommunication, the absence of the information on oath, transcribed and certified by the justice as to time, date and contents, or of the original warrant, signed by the justice and carrying on its face a notation of the time, date and place of issuance, is, in the absence of evidence to the contrary, proof that the search or seizure was not authorized by a warrant issued by telephone or other means of telecommunication. 1990, c. 46, s. 1; 2000, c. 28, s. 95; 2002, c. 30, s. 20; 2012, c. 8, s. 18; 2015, c. 6, s. 47.

Time of execution

2C A warrant issued pursuant to Section 2B shall be exercised between the hours of eight o'clock in the forenoon and nine o'clock in the afternoon, unless the justice of the peace or the judge of the Provincial Court

(a) is satisfied that there are reasonable grounds in the information for the warrant to be executed between the hours of nine o'clock in the afternoon and eight o'clock in the forenoon; and

(b) provides in the warrant that it may be executed during those hours. 2002, c. 30, s. 21; 2015, c. 6, s. 48.

Additional power to seize

2D (1) A peace officer who executes a warrant issued pursuant to Section 2B may seize, in addition to the things mentioned in the warrant, anything that on reasonable grounds the peace officer believes has been obtained by or has been used in the commission of an offence.

(2) A peace officer may remove any thing seized under a warrant from the place from which it was seized or may detain it in that place.

(3) Although a warrant issued under subsection (1) of Section 2B would otherwise be required, a peace officer may exercise any of the powers described in those subsections without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant.

(4) For the purpose of subsection (3), exigent circumstances include circumstances in which the delay necessary to obtain a warrant would result in danger to human life or the loss or destruction of evidence. 1990, c. 46, s. 1; 2002, c. 30, s. 22.

Return of thing seized under warrant

2E (1) Where a person has seized anything under a warrant issued pursuant to Section 2B or seized anything pursuant to Section 2D, or otherwise in the execution of that person's duties under any enactment and subject to that enactment, that person shall, as soon as practicable,

(a) where that person is satisfied,

(i) that there is no dispute as to who is lawfully entitled to possession of the thing seized, and

(ii) that the continued detention of the thing seized is not required for the purposes of any investigation, inquiry, trial or other proceeding,

return the thing seized, on being issued a receipt therefor, to the person lawfully entitled to its possession and report to the justice who issued the warrant or some other justice that the thing has been returned; or

(b) where that person is not satisfied as described in paragraphs (i) and (ii) of clause (a),

(i) bring the thing seized before the justice referred to in clause (a), or

(ii) report to the justice that that person has seized the thing and is detaining it or causing it to be detained,

to be dealt with by the justice in accordance with subsection (1) of Section 2F.

(2) A report to a justice pursuant to this Section shall be in the form prescribed in the regulations, varied to suit the case. 1990, c. 46, s. 1.

Powers of justice

2F (1) Where, pursuant to Section 2E, anything that has been seized is brought before a justice or a report in respect of anything seized is made to a justice, the justice shall

(a) where the lawful owner or person who is lawfully entitled to possession of the thing seized is known, order it to be returned to the lawful owner or that person, as the case may be, unless the justice is satisfied that the detention of the thing seized is required for the purposes of any investigation, inquiry, trial or other proceeding; or

(b) where the justice is satisfied that the thing seized should be detained for a reason set out in clause (a), detain the thing seized or order that it be detained, taking reasonable care to ensure that it is preserved until the conclusion of any investigation or until it is required to be produced for the purposes of a inquiry, trial or other proceeding.

(2) Nothing shall be detained pursuant to clause (b) of subsection (1) for a period of more than three months after the day of the seizure or for any longer period that ends when an application made under clause (a) is decided, unless

(a) a justice, on the making of a summary application to the justice after three clear days notice thereof to the person from whom the thing detained was seized, is satisfied that, having regard to the nature of the investigation, its further detention for a specified

period not to exceed six months from the date of the order is warranted and the justice so orders; or

(b) an inquiry, trial or other proceeding is instituted in which the thing detained may be required.

(2A) Applications to detain things seized beyond the period prescribed in clause (a) of subsection (2) must be made to a judge of the provincial court, on the making of a summary application after three clear days' notice to the person from whom the thing detained was seized, and the judge may order a further period of detention if satisfied, having regard to the complex nature of the investigation, or because the thing might reasonably be required for the purposes of a potential inquiry, trial or other proceeding, that the further detention of the thing seized is warranted for a specified period and subject to such other conditions as the judge considers just and so orders.

(2B) An application under subsection (2A) is not required if proceedings are instituted in which the thing detained may be required before the expiry of an order made under subsection (2);[.]

(2C) More than one application may be made under subsection (2A).

(2D) A thing may be detained under clause (b) of subsection (1), for any period, whether or not an application for an order is made under clause (a) of subsection (2) or subsection (2A), if the lawful owner or person who is lawfully entitled to possession of the thing seized consents in writing to its detention for that period.

(3) When a proceeding is instituted, the justice shall forward anything detained pursuant to subsection (1), (2) or (2A) to the clerk of the court to which the defendant has been ordered to stand trial or to the authority conducting the proceeding to be detained and disposed of as the court or authority directs.

(4) Where at any time before the expiration of the periods of detention provided for or ordered pursuant to subsection (2) or (2A) in respect of anything seized, the peace officer or other person who seized the thing determines that the continued detention of the thing seized is no longer required for any purpose mentioned in subsection (1) or (3), the peace officer or other person, as the case may be, shall apply to a justice who shall, after affording the person from whom the thing was seized or the person who claims to be the lawful owner thereof or person entitled to its possession, if known, an opportunity to establish that that person is lawfully entitled to the possession thereof, make an order in respect of the property pursuant to subsection (8).

(5) Where the periods of detention provided for or ordered pursuant to subsection (1), (2) or (2A) in respect of anything seized have expired and proceedings have not been instituted in which the thing detained may be required, the peace officer or other person who seized the thing shall apply to a judge of the pro-

vincial court referred to in subsection (6) in the circumstances set out therein, for an order in respect of the property pursuant to subsection (9).

(6) A person from whom anything has been seized may, after the expiration of the periods of detention provided for or ordered pursuant to subsection (1), (2) or (2A) and on three clear days notice to the Attorney General, apply summarily to a judge of the provincial court for an order pursuant to clause (a) of subsection (8), that the thing seized be returned to the applicant.

(7) A judge of the provincial court may allow an application to be made pursuant to subsection (6) prior to the expiration of the periods referred to therein where the judge is satisfied that hardship will result unless such application is so allowed.

(8) If a judge of the provincial court is satisfied that the periods of detention provided for or ordered pursuant to subsection (1), (2) or (2A) in respect of anything seized have expired and proceedings have not been instituted in which the thing detained may be required or, where such periods have not expired, that the continued detention of the thing seized is not required for any purpose mentioned in subsection (1) or (3), the judge shall

(a) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person; or

(b) if possession of it by the person from whom it was seized is unlawful and the lawful owner or person who is lawfully entitled to its possession is known, order it to be returned to the lawful owner or to the person who is lawfully entitled to its possession, as the case may be, and the judge may, if possession of it by the person from whom it was seized is unlawful and the lawful owner or person who is lawfully entitled to its possession is not known, order it to be forfeited to Her Majesty in right of the Province, to be disposed of as the Attorney General directs, or otherwise dealt with in accordance with the law.

(8A) Notwithstanding subsection (8), a judge of the provincial court may, if satisfied that the periods of detention provided for or ordered under subsection (1), (2) or (2A) in respect of a thing seized have expired but proceedings have not been instituted in which the thing may be required, order that the thing continue to be detained for such a period as the judge considers necessary if the judge is satisfied that

(a) the continued detention of the thing might reasonably be required for the purposes of a potential inquiry, trial or other proceeding; and

(b) it is in the interests of justice to do so.

(9) A person, other than a person who may make an application pursuant to subsection (6), who claims to be the lawful owner or person lawfully entitled to possession of anything seized and brought before or reported to a justice

pursuant to Section 2E may, at any time, on three clear days notice to the Attorney General and the person from whom the thing was seized, apply summarily to a judge of the provincial court for an order that the thing detained be returned to the applicant.

(10) On an application pursuant to subsection (9), where a judge of the provincial court is satisfied that

(a) the applicant is the lawful owner or lawfully entitled to possession of the thing seized; and

(b) the periods of detention provided for or ordered pursuant to subsection (1), (2) or (2A) in respect of the thing seized have expired and proceedings have not been instituted in which the thing detained may be required or, where such periods have not expired, that the continued detention of the thing seized will not be required for any purpose mentioned in subsection (1) or (3),

the judge shall order that

(c) the thing seized be returned to the applicant; or

(d) except as otherwise provided by law, where, pursuant to subsection (8), the thing seized was forfeited, sold or otherwise dealt with in such a manner that it cannot be returned to the applicant, the applicant be paid the proceeds of sale or the value of the thing seized.

(11) Notwithstanding anything in this Section, nothing shall be returned, forfeited or disposed of pursuant to this Section pending any application made or appeal taken thereunder in respect of the thing or proceeding in which the right of seizure thereof is questioned or within thirty days after an order in respect of the thing is made pursuant to this Section.

(12) The Attorney General, a crown attorney or a peace officer or other person having custody of a document seized may, before bringing it before a justice of the peace or a judge of the Provincial Court or complying with an order that the document be returned, forfeited or otherwise dealt with under subsection (1), (8) or (10), make or cause to be made, and may retain, a copy of the document.

(13) A copy made pursuant to subsection (12) is, if it purports to be certified as a true copy by the Attorney General, a crown attorney, a peace officer or the person who made the copy or the person in whose presence the copy was made, admissible in evidence and, in the absence of evidence to the contrary, has the same probative force as the original document would have if it had been proved in the ordinary way.

(14) Where anything is detained pursuant to subsection (1), (2), (2A) or (3), a judge of the provincial court on summary application on behalf of a person who has an interest in what is detained, after three clear days notice to the

Attorney General, may order that the person by or on whose behalf the application is made be permitted to examine anything so detained.

(15) An order made pursuant to subsection (14) shall be made on such terms as appear to the judge of the provincial court to be necessary or desirable to ensure that anything in respect of which the order is made is safe-guarded and preserved for any purpose for which it may subsequently be required.

(16) Where a person considers that person is aggrieved by an order made pursuant to subsection (8), (10) or (14), that person may appeal from the order to a judge of a county court. 1990, c. 46, s. 1; 2002, c. 30, s. 23; 2015, c. 6, s. 49.

Return or disposal of thing seized

2G (1) Where anything seized pursuant to this Act or any other enactment is perishable or likely to deteriorate rapidly, the person who seized the thing or other person having custody of the thing may

(a) return it to its lawful owner or the person who is lawfully entitled to the possession of it; or

(b) where, on *ex parte* application to a judge of the provincial court, the judge so authorizes,

(i) dispose of it and give the proceeds of disposition to the lawful owner of the thing seized, if the lawful owner was not a party to an offence in relation to the thing, or

(ii) destroy it.

(2) Where the identity of the lawful owner cannot be reasonably ascertained under subclause (i) of clause (b) of subsection (1), the proceeds of disposition are forfeited to Her Majesty in right of the Province. 2002, c. 30, s. 24.

Request from designated province

2H (1) In this Section and Section 2J,

(a) “designated enactment” means an enactment of a designated province, which enactment is designated by the regulations;

(b) “designated province” means a province of Canada designated by the regulations.

(2) Where the Attorney General receives a request from a designated province to have a search or a seizure carried out in the Province in respect of an offence against an enactment of the designated province, the Attorney General may apply *ex parte* to a justice for a warrant.

(3) A justice to whom an application is made under subsection (2) and who is satisfied by information upon oath in the form prescribed in the regulations that there are reasonable grounds to believe that there is in a building, receptacle or place

(a) anything on or in respect of which any offence against an enactment of a designated province has been or is suspected to have been committed; or

(b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence against an enactment of a designated province,

may at any time issue a search warrant under the justice's hand authorizing a peace officer

(c) to search the building, receptacle or place for any such thing and to seize it; and

(d) to, as soon as practicable, bring the thing seized before, or make a report in respect thereof to, the justice or some other justice in accordance with subsection (1) of Section 2I.

(4) A justice may issue an investigative warrant authorizing a peace officer to, subject to this Section, use any investigative technique or procedure or do any thing described in the warrant that would, where not authorized, constitute an unreasonable search or seizure in respect of a person or a person's property if

(a) the justice is satisfied by information under oath that there are reasonable grounds to believe that an offence against a designated enactment has been, is being or will be committed and that information or other evidence concerning the offence will be obtained through the use of the technique or procedure or the doing of the thing;

(b) the justice is satisfied that it is in the best interest of the administration of justice to issue the warrant; and

(c) there is no other provision in this or any other Act of the Legislature that would provide for a warrant or order authorizing the technique or procedure to be used or thing to be done.

(5) A justice who issues a warrant under subsection (3) or (4) may order any person to accompany and assist a peace officer in the execution of the warrant, if the Attorney General so requests.

(6) For the purpose of subsections (1B) to (11) and (13) of Section 2B and Sections 2C, 2D and 2G,

(a) a search warrant issued under subsection (3) is deemed to be a warrant issued under subsection (1) of Section 2B; and

(b) an investigative warrant issued under subsection (4) is deemed to be an investigative warrant issued under subsection (1A) of Section 2B.

(7) Where a written report is filed under subsection (11) of Section 2B, the clerk of the court with whom the written report is filed shall, as soon as reasonably possible, cause the report, together with the information on oath and the warrant to which it pertains, to be brought before a justice to be dealt with under Section 2J. 2012, c. 46, s. 2.

Return of thing seized under warrant

2I (1) Where a person has seized anything under a warrant issued under Section 2H or seized anything under Section 2D while executing a warrant issued under Section 2H, that person shall, as soon as practicable,

(a) where that person is satisfied that

(i) there is no dispute as to who is lawfully entitled to possession of the thing seized, and

(ii) the continued detention of the thing seized is not required for the purposes of any investigation, inquiry, trial or other proceeding,

return the thing seized, on being issued a receipt therefor, to the person lawfully entitled to its possession and report to the justice who issued the warrant or some other justice that the thing has been returned; or

(b) where that person is not satisfied as described in sub-clauses (i) and (ii) of clause (a),

(i) bring the thing seized before the justice referred to in clause (a), or

(ii) report to the justice that that person has seized the thing and is detaining it or causing it to be detained,

to be dealt with by the justice in accordance with Section 2J.

(2) A report to a justice pursuant to subsection (1) shall be in the form prescribed in the regulations, varied to suit the case. 2012, c. 46, s. 2.

Powers of justice

2J (1) Where, pursuant to clause (b) of subsection (1) of Section 2I, anything that has been seized is brought before a justice or a report in respect of anything seized is made to a justice, the justice

(a) shall hear any representations of the Attorney General, the person from whom the thing was seized in the execution of the warrant and any person who claims to have an interest in the thing that was seized; and

(b) may require that the thing seized in execution of the warrant be brought before the justice.

- (2) At the hearing required under subsection (1), the justice shall
- (a) where the justice is not satisfied that the warrant was executed according to its terms and conditions or where the justice is satisfied that an order should not be made under clause (b), order that a thing seized in the execution of the warrant be returned to
- (i) the person from whom it was seized, if possession of it by that person is lawful, or
- (ii) the lawful owner or the person who is lawfully entitled to its possession, if the owner or that person is known and possession of the record or thing by the person from whom it was seized is unlawful; or
- (b) in any other case, order that the thing seized in the execution of the warrant be sent to the designated province referred to in subsection (2) of Section 2H and include in the order any terms and conditions that the justice considers necessary or advisable, including terms and conditions
- (i) necessary to give effect to the request referred to in subsection (2) of Section 2H,
- (ii) with respect to the preservation and return to the Province of any thing seized, and
- (iii) with respect to the protection of the interests of third parties. 2012, c. 46, s. 2.

PENAL PROCEEDINGS

Recovery or enforcement of statutory penalty

3 Except where it is otherwise provided, any penalty or imprisonment prescribed by an enactment shall be recovered or enforced on summary conviction before a justice of the peace or judge of the provincial court. R.S., c. 450, s. 3.

Offence

4 Every one who, without lawful excuse, contravenes an enactment by wilfully doing anything that it forbids or by wilfully omitting to do anything that it requires to be done is, unless some penalty or punishment is expressly provided by law, guilty of an offence punishable on summary conviction and liable to a fine of not more than two thousand dollars or to imprisonment for six months or to both. R.S., c. 450, s. 4; 1990, c. 46, s. 2.

Payment of costs

4A Upon conviction following a hearing, the defendant shall pay a charge of one hundred and twenty-two dollars and fifty cents, except where the conviction is for a parking infraction, as defined in subsection (1) of Section 8A, in which case the defendant shall pay a charge of thirty-six dollars and sixty cents. 2000, c. 4, s. 74; 2001, c. 5, s. 35; 2004, c. 3, s. 46; 2006, c. 2, s. 59; 2009, c. 5, s. 32; 2011, c. 8, s. 28; 2013, c. 3, s. 22; 2015, c. 6, s. 50.

Category A to category K offences**4B** Notwithstanding Section 4,

(a) where an enactment makes an offence punishable as a category A offence, a judge shall impose a fine of not less than twenty-five dollars for the first offence, not less than fifty dollars for the second offence and not less than one hundred dollars for the third or a subsequent offence;

(b) where an enactment makes an offence punishable as a category B offence, a judge shall impose a fine of not less than fifty dollars for the first offence, not less than one hundred dollars for the second offence and not less than two hundred dollars for the third or a subsequent offence;

(c) where an enactment makes an offence punishable as a category C offence, a judge shall impose a fine of not less than one hundred dollars for the first offence, not less than two hundred dollars for the second offence and not less than four hundred dollars for the third or a subsequent offence;

(d) where an enactment makes an offence punishable as a category D offence, a judge shall impose a fine of not less than one hundred and fifty dollars for the first offence, not less than three hundred dollars for the second offence and not less than six hundred dollars for the third or a subsequent offence;

(e) where an enactment makes an offence punishable as a category E offence, a judge shall impose a fine of not less than two hundred dollars for the first offence, not less than four hundred dollars for the second offence and not less than six hundred dollars for the third or a subsequent offence;

(f) where an enactment makes an offence punishable as a category F offence, a judge shall impose a fine of not less than two hundred and fifty dollars for the first offence, not less than five hundred dollars for the second offence and not less than one thousand dollars for the third or a subsequent offence;

(g) where an enactment makes an offence punishable as a category G offence, a judge shall impose a fine of not less than five hundred dollars for the first offence, not less than one thousand dollars for the second offence and not less than two thousand dollars for the third or a subsequent offence;

(h) where an enactment makes an offence punishable as a category H offence, a judge shall impose a fine of not less than one thousand dollars for the first offence, not less than two thousand dollars for the second offence and not less than five thousand dollars for the third or a subsequent offence;

(i) where an enactment makes an offence punishable as a category I offence, a judge shall impose a fine of not less than one thousand dollars for the first offence, not less than two thousand dollars for the second offence and not less than four thousand dollars for the third or a subsequent offence;

(j) where an enactment makes an offence punishable as a category J offence, a judge shall impose a fine of not less than one thousand five hundred dollars for the first offence, not less than two thousand five hundred dollars for the second offence and not less than five thousand dollars for the third or a subsequent offence;

(k) where an enactment makes an offence punishable as a category K offence, a judge shall impose a fine of not less than two thousand dollars for the first offence, not less than five thousand dollars for the second offence and not less than ten thousand dollars for the third or a subsequent offence. 2002, c. 10, s. 44; 2003, c. 4, s. 30; 2003 (2nd Sess.), c. 1, s. 35; 2007, c. 45, s. 28.

Interest

~~4B~~**4C**(1) Interest is payable on all fines, victim-fine surcharges and court costs payable to the Province under any enactment that are imposed after the coming into force of this Section and that are unpaid for more than ninety days.

(2) Interest is payable on all fines, victim-fine surcharges and court costs payable to the Province under any enactment that are outstanding upon the coming into force of this Section and remain unpaid one hundred and eighty days after this Section comes into force.

(3) The Governor in Council may determine the rate of interest for the purpose of subsections (1) and (2). 2001, c. 5, s. 36.

No conviction of police obtaining certain evidence

5 A member of the Royal Canadian Mounted Police or a member of a municipal police force in the Province shall not be convicted of a violation of the *Motor Vehicle Act* or the *Hotel Regulations Act* if it is made to appear to the judge before whom the proceeding is heard that the person charged with the offence committed the offence for the purpose of obtaining evidence during an investigation relating to the *Narcotic Control Act* (Canada) or the *Food and Drugs Act* (Canada). R.S., c. 450, s. 5.

IMPRISONMENT

Place of imprisonment

6 Where an enactment prescribes imprisonment in respect of any offence or matter, and no other place for such imprisonment is mentioned or provided, such imprisonment shall be in the common jail of the locality in which the order or adjudication directing any such imprisonment is made or, if there is no common jail there, then in that common jail which is nearest to such locality; and the keeper of any such common jail shall receive such person, and safely keep and detain him in such common jail under his custody until discharged in due course of law, or bailed, in cases in which bail may by law be taken. R.S., c. 450, s. 6.

JURISDICTION AND PROCEDURE

Summary conviction provisions of Criminal Code

7 (1) Except where and to the extent that it is otherwise specially enacted, the provisions of the *Criminal Code* (Canada), except section 734.2, as amended or re-enacted from time to time, applicable to offences punishable on summary conviction, whether those provisions are procedural or substantive and including provisions which impose additional penalties and liabilities, apply, *mutatis mutandis*, to every proceeding under this Act.

(2) In applying the provisions of the *Criminal Code* (Canada) to proceedings under this Act, the following expressions therein have the following meanings:

(a) “Act of the Parliament of Canada” means an Act of the Legislature;

(b) “Attorney General” means the Attorney General of the Province and includes his lawful deputy;

(c) “prison” means any place other than a penitentiary in which persons charged with or convicted of offences are usually kept or detained in custody;

(d) “prosecutor” means the person who lays an information or makes a complaint in a proceeding or, where the Attorney General intervenes, as he may do at any stage of a proceeding, it means the Attorney General or his agent, and it includes counsel acting on behalf of the informant or complainant or of the Attorney General or his agent. R.S., c. 450, s. 7; 1996, c. 23, s. 45.

Service of summons by mail

7A In applying the provisions of the *Criminal Code* (Canada) to proceedings under this Act, service of a summons may be made by registered mail and, for all purposes of this Act, the sending of the summons by registered mail is and is deemed to be personal service or delivery of the summons without proof of delivery or acceptance. 1993, c. 45, s. 1; 2010, c. 26, s. 1.

Summary offence ticket

8 (1) In addition to the procedure set out in the *Criminal Code* (Canada) for laying an information and for issuing a summons, an information may be laid and a summons issued by means of a ticket in accordance with this Section for an offence under any provision of an Act or regulation or municipal by-law designated by the regulations.

(2) A ticket under this Section shall include provision for the information, summons, report and police record.

(3) The Attorney General and Minister of Justice may make regulations

- (a) prescribing the form of the ticket;
- (aa) prescribing the form of a plea of guilty on a summons;
- (ab) prescribing the form of the notice of intention to appear for the purpose of pleading guilty to an offence and making a submission as to penalty;
- (ac) prescribing the form of the notice of intention to appear for the purpose of entering a plea of not guilty and having a trial of a matter;
- (ad) prescribing the form of the certificate of a justice striking out a conviction;
- (ae) prescribing the fee for an application to strike out the conviction pursuant to subsection (18);
- (b) designating offences under provisions of Acts or regulations or municipal by-laws for the purposes of this Section;
- (c) authorizing the use on a ticket of any word or expression to designate an offence under any provision of an Act or regulation or municipal by-law designated by the regulations;
- (d) respecting any matter that he considers necessary to provide for the use of the ticket.

(4) The exercise by the Attorney General and Minister of Justice of the authority contained in subsection (3) shall be regulations within the meaning of the *Regulations Act*.

(5) Where the offence charged in the ticket is one for which the penalty may be paid out of court, the officer issuing the summons may enter the amount of the penalty in the place provided therefor on the ticket, and such entry constitutes the indorsement required by subsection (1) of Section 9.

(6) The penalty to be entered on the summons pursuant to subsection (5) shall be the minimum penalty for the offence and a charge of one hundred and twenty-two dollars and fifty cents or thirty-six dollars and sixty cents for a parking infraction as defined in subsection (1) of Section 8A unless the Attorney General by order otherwise directs.

(7) The use on a ticket of any word or expression authorized by the regulations to designate an offence under any provision of an Act or regulation or municipal by-law designated by the regulations is sufficient for all purposes to describe the offence designated by such word or expression.

(8) Upon completing a ticket, the issuing officer shall print his name so that it appears on the summons portion and shall deliver the summons portion to the person charged with an offence therein and delivery of the ticket summons in accordance herewith shall be deemed to be personal service.

(9) Delivery of a ticket summons may be made on a holiday.

(10) The issuing officer shall sign the information portion of the ticket and certify that he personally delivered the summons portion of the ticket to the person accused therein and the certification shall be in the following words:

I certify that I did personally deliver the summons portion of
this ticket to the accused on the day of
. . ., 19.

(11) A certificate of delivery purporting to be signed by the issuing officer shall be received in evidence as sufficient proof of personal service in the absence of evidence to the contrary.

(12) Every ticket information shall be

- (a) signed by the informant; and
- (b) deposited, together with the ticket report of conviction, with the proper justice.

(13) The ticket information need not be sworn to before a justice or any other person and the informant need not be the same person as issued the ticket summons.

(13A) A person who is served with a ticket summons shall

- (a) where the person does not wish to dispute the charge,
 - (i) sign the plea of guilty on the summons and, within the time specified in the summons, deliver the summons and amount of the penalty specified in the summons to any Provincial Court office in the Province, or
 - (ii) where the person wishes to make a submission as to penalty, including the extension of time for payment, file in prescribed form, within the time specified in the summons, with the clerk of the court a notice of intention to appear for the purpose of pleading guilty to the offence and making a submission as to penalty; or
- (b) where the person wishes to dispute the charge,
 - (i) file in prescribed form, within the time specified in the summons, with the clerk of the court a notice of intention to appear in court for the purpose of entering a plea of not guilty and having a trial of the matter, and
 - (ii) include in the form the person's mailing address, telephone number, facsimile number and electronic mail address.

(13B) Where a person has delivered a notice of intention to appear in accordance with subsection (13A),

(a) the clerk of the court shall, as soon as practical, give notice to the person and the prosecutor of the time and place of the trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty; and

(b) the person shall attend at the time and place specified in the notice.

(13C) The clerk of the court may send a notice to a person by mail, facsimile or electronic mail and, where the notice is sent to the person by mail, facsimile or electronic mail, the notice is deemed to have been received by the person.

(13D) Acceptance by the court office of payment under subclause (i) of clause (a) of subsection (13A) constitutes a plea of guilty whether or not the plea is signed and the endorsement of payment on the certificate of offence constitutes the conviction and imposition of a fine in the amount specified in the summons for the offence.

(13E) A justice may require a submission as to penalty to be made orally under oath or by affidavit.

(13F) A signature on a ticket summons or notice of intention to appear purporting to be that of the defendant is proof, in the absence of evidence to the contrary, that it is the signature of the defendant.

(14) Where a justice makes a conviction on a ticket information in respect of an offence under a provision of an Act or regulation regulating traffic, he shall complete the ticket report of conviction and forward it to the Registrar of Motor Vehicles and it shall be deemed to be compliance with Section 266 of the *Motor Vehicle Act*.

(15) Where a person is served with a ticket summons and the person has not acted within the time specified in the summons as required by subsection (13A) or where a person who has given notice of an intention to appear fails to appear at the time and place appointed for the hearing, the person is deemed to not wish to dispute the charge and a justice shall

(a) where the information portion of the ticket is complete and regular on its face, enter a conviction in the person's absence without a hearing and impose

(i) the minimum penalty authorized by law for the offence or, where another penalty for that offence has been directed by the Attorney General for out of court settlement pursuant to subsection (6), that other penalty, and

(ii) a charge of one hundred and twenty-two dollars and fifty cents or, for a parking infraction as defined in subsection (1) of Section 8A, thirty-six dollars and sixty cents; or

(b) where the information portion of the ticket is not complete and regular on its face, quash the proceeding and advise the issuing officer that the proceeding has been quashed.

(15A) For greater certainty, where the ticket

(a) indicates that the ticket is for a second or for a third or subsequent offence; and

(b) correctly references the out-of-court settlement amount prescribed for a second or for a third or subsequent offence,

the ticket is sufficient notice to the defendant that an increased penalty may be imposed and, where the information portion of the ticket is complete and regular on its face, a justice, including a justice entering a conviction in a person's absence in accordance with subsection (15), shall impose the increased penalty.

(16) Where the justice enters a conviction pursuant to subsection (15), he shall, by ordinary mail, notify the defendant of the entry of the conviction and his right to apply for a hearing pursuant to subsection (17A) or (18).

(17) No proceeding may be taken to collect a penalty and the charge imposed pursuant to subsection (15) sooner than thirty days after the date on the notice to the defendant.

(17A) Where a person who has been convicted as a result of a failure to act as required by subsection (13A) attends at the court office during regular office hours within sixty days of the conviction and requests that the conviction be struck out, the clerk of the court shall

(a) strike out the conviction;

(b) give the person a certificate of that fact in the prescribed form; and

(c) give the person and the prosecutor notice of the time and place of the trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty.

(18) Where a person who has been convicted as a result of a failure to

(a) act as required by subsection (13A) and more than sixty days have elapsed; or

(b) appear at the time and place of the trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty, after having given a notice of intention to appear,

the person may appear before the court and the justice or the judge, as the case may be, upon payment of the prescribed application fee and being satisfied that

- (c) the person demonstrates a *prima facie* defence to the offence charged in the ticket;
- (d) the person has a reasonable excuse for failing to appear; and
- (e) the person acted without unreasonable delay,

shall strike out the conviction, give the person a certificate of that fact in the prescribed form and give the person appearing and the prosecutor a notice of trial or the appearance for the purpose of pleading guilty to the offence and making a submission as to penalty.

(19) Upon the motion of a duly authorized prosecutor, a justice of the peace or a judge of the provincial court shall strike out a conviction entered pursuant to subsection (15).

(20) Where a conviction is struck out pursuant to subsection (19) and the defendant has an opportunity to be heard, the judge may order the defendant to pay costs in an amount not exceeding ten dollars or such other amount as the Governor in Council may from time to time determine.

(21) Where a conviction is struck out pursuant to subsection (18) or (19), the justice or judge, as the case may be, shall, upon the request of the defendant, give the defendant a certificate of the fact in the prescribed form. R.S., c. 450, s. 8; 1993, c. 45, s. 2; 1994-95, c. 18, s. 1; 1999 (2nd Sess.), c. 8, s. 20; 2000, c. 4, s. 75; 2001, c. 5, s. 37; 2006, c. 2, s. 60; 2009, c. 5, s. 33; 2010, c. 26, s. 2; 2011, c. 8, s. 29; 2011, c. 28, s. 1; 2013, c. 3, s. 23; 2015, c. 6, s. 51.

Parking infraction ticket

8A (1) In this Section, “parking infraction” means any unlawful parking, standing or stopping of a vehicle that constitutes an offence.

(2) The officer issuing a parking-infraction ticket may serve the ticket on the registered owner of the vehicle identified in the ticket by

- (a) affixing the ticket to the vehicle in a conspicuous place at the time of the infraction; or
- (b) delivering the ticket personally to the operator at the time of the infraction.

(3) The issuing officer may serve the parking-infraction ticket on the operator of the vehicle by delivering the ticket to the operator personally at the time of the infraction.

(4) The issuing officer shall certify on the parking-infraction ticket the means by which the officer served the ticket and the date of service.

(5) Where the issuing officer serves the ticket in the manner referred to in subsection (2) or (3) and the specified penalty is not paid within the

time specified on the ticket, the officer shall cause to be sent, by ordinary mail, a notice of parking infraction to the owner of the vehicle at the last known address of the owner as indicated on the records of the Registrar of Motor Vehicles.

(6) Where it appears that the issuing officer has certified service of the parking-infraction ticket and signed the ticket and where it is further certified that the notice of parking infraction has been mailed as provided in subsection (5), the ticket shall be received in evidence as *prima facie* proof of service.

(7) Section 8 applies *mutatis mutandis* to a parking-infraction ticket issued pursuant to this Section.

(8) The Attorney General and Minister of Justice may make regulations

(a) prescribing the form of the parking-infraction ticket, including prescribing a different form of ticket for different municipalities;

(b) prescribing the form of the notice of parking infraction;

(c) designating offences under provisions of Acts or regulations or municipal by-laws for the purpose of this Section;

(d) authorizing the use on a parking-infraction ticket of any word or expression to designate an offence under any provision of an Act or regulation or municipal by-law designated by the regulations;

(e) respecting any matter that the Attorney General and Minister of Justice considers necessary to provide for the use of the parking-infraction ticket. 1994-95, c. 18, s. 2; 2000, c. 4, s. 76; 2001, c. 5, s. 38; 2006, c. 2, s. 61; 2011, c. 28, s. 2.

Certification and signing by electronic means

8B (1) Notwithstanding anything contained in this Act, a ticket or certification referred to in Section 8 or 8A may be completed and signed by electronic means in an electronic format and may be filed by direct electronic transmission if the completion, signature and filing are in accordance with the regulations.

(2) A printed copy of a ticket or certification filed pursuant to subsection (1) is deemed to have been filed as the original document if it is printed in accordance with the regulations and for the purpose of disposing of a charge under this Act.

(3) The Attorney General and Minister of Justice may make regulations respecting

(a) the completion and signing of tickets or certifications by electronic means;

(b) the filing of tickets or certifications by direct electronic transmission;

(c) the printing of tickets or certifications filed by direct electronic transmission. 1994-95, c. 18, s. 2; 2011, c. 28, s. 3.

Payment out of court

9 (1) There may be indorsed upon a summons a notice that the person to whom the summons is directed may pay out of court a specified penalty.

(2) Where a summons is so indorsed, it must provide for a plea of guilty in the form prescribed in the regulations.

(3) *repealed 2010, c. 26, s. 3.*

(4) The officer or other person delivering the summons indorsed under this Section shall not receive payment of the penalty payable out of court, or any part thereof.

(5) Upon receipt of the summons with the payment or partial payment of the out of court penalty as it provides which shall include a charge of one hundred and twenty-two dollars and fifty cents or thirty-six dollars and sixty cents for a parking infraction as defined in subsection (1) of Section 8A, a justice may convict the person to whom the summons is directed of the offence described in the summons.

(6) For greater certainty, a conviction entered upon receipt of a summons with the partial payment of an out-of-court penalty pursuant to subsection (5) does not relieve the person convicted of the obligation to pay the balance remaining of the out-of-court penalty. R.S., c. 450, s. 9; 2000, c. 4, s. 77; 2000, c. 28, s. 96; 2001, c. 5, s. 39; 2006, c. 2, s. 62; 2009, c. 5, s. 34; 2010, c. 26, s. 3; 2011, c. 8, s. 30; 2013, c. 3, s. 24; 2015, c. 6, s. 52.

Suspension of driver's license

10 (1) In this Section, "speeding" means an offence under Sections 100, 101, 102 or 103, clauses (b) or (c) of Section 106A or Section 163 of the *Motor Vehicle Act*.

(2) Where a summons provides for payment out of court of a penalty for speeding and such a payment is made, a driver's license issued under the *Motor Vehicle Act* to the person to whom the summons is directed shall be deemed to be suspended for a period of seven days commencing at noon the day ninety days after the day the ticket was issued. R.S., c. 450, s. 10; 2010, c. 26, s. 4; 2012, c. 8, s. 19.

RELIEF FROM PENAL RECORD

Lapse of conviction

11 (1) Notwithstanding any enactment, including the other provisions of this Act, every conviction for an offence under any enactment shall lapse and cease to have effect for any purpose when five years have elapsed from the day

when the conviction was first entered by a court, whether having original or appellate jurisdiction over the offence.

(2) Nothing in this Section affects the liability of the person convicted to any punishment, imprisonment or other penalty imposed by or in respect of a conviction for an offence at the date of conviction.

(3) Where a conviction for an offence has lapsed by virtue of this Section, the person who was convicted of the offence is not required to

- (a) disclose the fact that he was convicted of the offence;
- (b) answer affirmatively or negatively any question tending to disclose the fact that he was convicted of the offence.

(4) Where the provisions of this Section conflict with the provisions of any enactment with respect to the effect of a conviction for an offence, the provisions of this Section shall govern. R.S., c. 450, s. 11.

RELIEF FROM MANDATORY IMPRISONMENT

Imprisonment not mandatory

12 (1) Notwithstanding any enactment including this Act or any provisions of any enactment, no court shall be bound by law to impose imprisonment upon a person convicted of an offence as a penalty or punishment for the offence.

(2) Where the only penalty or punishment prescribed by the enactment for the offence is imprisonment, the court may impose a monetary penalty or fine not exceeding one thousand dollars in lieu of imprisonment.

(3) Nothing in this Section affects the power or authority, discretionary or otherwise, of a court to impose imprisonment upon a person convicted of an offence if imprisonment is authorized or permitted by law.

(4) When the provisions of this Section conflict with the provisions of any enactment or regulations made under any enactment, the provisions of this Section shall govern. R.S., c. 450, s. 12.

WARRANTS OF DISTRESS AND COMMITMENT

Distress or commitment for non-payment

13 (1) Whenever a conviction or an order requires the payment of a sum of money by a defendant, the summary conviction court may order that, in default of payment, the sum of money shall be levied by distress and sale of the goods and chattels of the defendant and, if sufficient distress cannot be found, that the defendant be imprisoned in the manner and for the time directed by the enactment authorizing the conviction or order, unless the sum of money and the costs and charges of the distress and commitment are sooner paid.

(2) The summary conviction court making the conviction or order mentioned in subsection (1) may issue a warrant of distress in Form 1 or 2 in Schedule A, as the case requires.

(3) If a warrant of distress is issued, and the peace officer charged with the execution thereof returns in Form 3 in Schedule A that he can find no goods or chattels to levy upon, the summary conviction court may issue a warrant of committal in the manner and form prescribed in the *Criminal Code* (Canada). R.S., c. 450, s. 13; 2002, c. 30, s. 25.

Execution elsewhere if insufficient distress realized

14 (1) Where, after delivery of a warrant of distress to a peace officer to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the summary conviction court granting the warrant, a summary conviction court of another territorial jurisdiction, upon proof on oath or by affidavit of the signature of the person who issued the warrant, shall indorse the warrant authorizing its execution within the limits of its jurisdiction and that part of the sum of money not before levied or paid shall be levied by distress and sale of the goods and chattels of the defendant by any peace officer.

(2) The indorsement referred to in subsection (1) may be in Form 4 in Schedule A. R.S., c. 450, s. 14; 2002, c. 30, s. 26.

Application for order to cease execution

15 (1) A defendant, or member of the family of a defendant, against whom a warrant of distress has been issued, may make an application to a summary conviction court for an order directing the peace officer to whom the warrant has been given for execution to cease the execution and to return any goods and chattels levied thereunder and remaining unsold.

(2) Upon receiving an application, the summary conviction court may order the temporary discontinuance of action under the warrant of distress and shall fix a day for the hearing of the application and direct that notice of the hearing be given to such persons and in such manner as may be specified.

(3) Upon the hearing of the application and where it appears that the execution of a warrant of distress would impose undue hardship on the defendant or his family, the summary conviction court may order the peace officer to whom the warrant has been given for execution to cease the execution and to return any goods and chattels levied thereunder and remaining unsold. R.S., c. 450, s. 15.

Execution ceases upon payment of sum due

16 Where a warrant of distress has been issued against any person, and the person pays or tenders to the peace officer having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the peace officer shall cease to execute the warrant. R.S., c. 450, s. 16.

Entry of fine as judgment

16A (1) Where an offender is in default of payment of a fine, in addition to any other method provided by law for recovering the fine, the person or body to whom the proceeds of the fine belong may, by filing the order, enter as a judgment the amount of the fine, and costs, if any, in any civil court in the Province that has jurisdiction to enter a judgment for that amount.

(2) An order that is entered as a judgment pursuant to subsection (1) is enforceable in the same manner as if it were a judgment obtained by the person or body, as the case may be, in a civil proceeding. 1999 (2nd Sess.), c. 8, s. 21.

GENERAL

Forms in Schedule A and regulations respecting Schedule A

17 (1) The forms in Schedule A, or forms to the like effect, shall be sufficient in the cases for which they are prescribed.

(2) The Governor in Council may make regulations prescribing forms in addition to those in Schedule A.

(3) The exercise by the Governor in Council of the authority contained in subsection (2) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 450, s. 17; 1990, c. 46, s. 3; 2002, c. 30, s. 27.

Regulations respecting Schedule B

18 (1) The Governor in Council may make regulations adding enactments to or deleting enactments from Schedule B.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2006, c. 10, s. 6.

Regulations

- 19 (1)** The Governor in Council may make regulations
- (a) designating enactments of a designated province of Canada for the purpose of clause (a) of subsection (1) of Section 2H;
 - (b) designating provinces of Canada for the purpose of clause (b) of subsection (1) of Section 2H;
 - (c) respecting requests by a designated province to have a search or a seizure carried out in the Province in respect of an offence against an enactment of the designated province;
 - (d) respecting the application for and execution of warrants under Section 2H;
 - (e) respecting the detention and return of things seized in the execution of a warrant under Section 2H;

(f) respecting the sending of things seized in the execution of a warrant under Section 2H to a designated province;

(g) defining any word or expression used but not defined in this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2010, c. 26, s. 5; 2012, c. 46, s. 3.

SCHEDULE A

FORM 1

(Section 13)

WARRANT OF DISTRESS UPON A CONVICTION FOR A PENALTY

Province of Nova Scotia
County of

To all peace officers in the County of (or Province of Nova Scotia).

Whereas A.B., of (labourer), was on the day of
....., 19....., duly convicted before on a charge that (state the offence
as in the conviction) and it was ordered that A.B. should forfeit and pay (etc., as in the con-
viction including costs) and the same has not been paid;

And whereas it has been ordered that the total sum of \$. should be levied
by distress and sale of the goods and chattels of A.B. unless the same and expenses of the dis-
tress are sooner paid;

Therefore you are commanded, in Her Majesty's name, forthwith to distrain upon the
goods and chattels of A.B. and if, within days next after the making of distress, the
total sum of \$....., together with the expenses of the distress, are not paid, then to sell
the goods and chattels distrained, and to pay the money arising from the sale to me so that I
may pay and apply the same according to law, and if no distress is found, to certify that to me
so further proceedings may be taken according to law.

Given under my hand at, in the County of, Nova
Scotia, this day of, 19.....

..... E.F.
Justice (or otherwise)

FORM 2

(Section 13)

WARRANT OF DISTRESS UPON AN ORDER FOR THE PAYMENT OF MONEY

Province of Nova Scotia
County of

To all peace officers in the County of (or Province of Nova Scotia).

Whereas a complaint was heard before on the complaint that A.B., of (labourer), (state the complaint as in the order) and it was ordered that A.B. pay to C.D. the sum of \$....., on or before the day of, 19....., and also pay to C.D. the sum of \$..... for his costs in that behalf, and the sum of \$..... has not been paid;

And whereas it has been ordered that the total sum of \$..... should be levied by distress and sale of the goods and chattels of A.B. unless the same and expenses of the distress are sooner paid;

Therefore you are commanded, in Her Majesty's name, forthwith to distrain upon the goods and chattels of A.B. and if, within days next after the making of distress, the total sum of \$..... together with the expenses of the distress, are not paid, then to sell the goods and chattels distrained, and to pay the money arising from the sale to me so that I may pay and apply the same according to law, and if no distress is found, to certify that to me so further proceedings may be taken according to law.

Given under my hand at, in the County of, Nova Scotia, this day of, 19.....

..... E.F.
Justice (or otherwise)

FORM 3

(Section 13)

PEACE OFFICER'S RETURN TO WARRANT OF DISTRESS

I, W.T., peace officer, of, in the County of, Nova Scotia, hereby certify to (person issuing warrant) that by virtue of this warrant I have made diligent search for the goods and chattels of A.B., and that I can find no sufficient goods and chattels of A.B. whereon to levy the sum within mentioned.

Witness my hand this day of, 19.....

..... W.T.

FORM 4

(Section 14)

INDORSEMENT IN BACKING
A WARRANT OF DISTRESS

Province of Nova Scotia
County of

Whereas proof upon oath or affidavit has this day been made before me
... that the name of E.F., to the within warrant subscribed, is the signature of E.F., I do
therefore authorize all peace officers by whom this warrant may be lawfully executed, to exe-
cute the same within the (territorial jurisdiction of person indorsing warrant).

Given under my hand at, in the County of, Nova
Scotia, this day of, 19.....

..... O.K.
Justice (or otherwise)

R.S., c. 450, Sch. A; revision corrected 1999; 2002, c. 30, s. 28; 2015, c. 6, s. 53.

SCHEDULE B

- Amusement Devices Safety Act
- ~~Animal Cruelty Prevention Act~~ [Animal Protection Act]
- Blind Persons' Rights Act
- Body Armour Control Act
- Building Code Act
- Cannabis Control Act
- Cemetery and Funeral Services Act
- ~~Coal Mines Regulation Act~~
- ~~Crane Operators and Power Engineers Act~~
- Crown Lands Act
- Dairy Industry Act
- Dangerous Goods Transportation Act
- Elections Act
- Electrical Installation and Inspection Act
- Elevators and Lifts Act
- Endangered Species Act
- Environment Act
- ~~Fire Prevention Act~~ [Fire Safety Act]
- Fisheries and Coastal Resources Act
- Forests Act
- Gas Distribution Act
- Health Protection Act
- Liquor Control Act
- Mineral Resources Act
- Motor Carrier Act
- Motor Vehicle Act
- Municipal Government Act
- Occupational Health and Safety Act
- Off-highway Vehicles Act
- Petroleum Resources Act
- Petroleum Resources Removal Permit Act
- Pharmacy Act

Pipeline Act
Provincial Parks Act
Railways Act
Retail Business Designated Day Closing Act
Safe Body Art Act
Service Dog Act
Smoke-free Places Act
~~Steam Boiler and Pressure Vessel Act~~
Underground Hydrocarbons Storage Act
Water Resources Protection Act
Wilderness Areas Protection Act
Wildlife Act

2002, c. 30, s. 29, Sch. B; 2004, c. 4, s. 118; 2007, c. 32, s. 11; 2011, c. 44, s. 34; 2015, c. 17, s. 101;
2016, c. 3, s. 171; 2016, c. 4, s. 22; 2018, c. 3, s. 71; 2018, c. 22, s. 16.
