

**RSA 2000 PROVINCIAL OFFENCES
PROCEDURE ACT**

Chapter P-34

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “address for service” for the purposes of Parts 2 and 3 means an address determined in accordance with section 21;
- (b) “clerk” means clerk of the Court or a person designated by a clerk of the Court to perform the duties of a clerk of the Court;
- (c) “Court” means The Provincial Court of Alberta;
- (d) “defendant” means
 - (i) a person to whom a summons is issued on the basis of an information or complaint alleging the commission by that person of an offence, or
 - (ii) a person in respect of whom an offence notice is issued under Part 3;
- (e) “enactment” means any Act, regulation, order or bylaw enacted in relation to any matter over which the Legislature has legislative authority;
- (f) “initial appearance date” means, in the case of proceedings under Part 2, the date referred to in section 27(1) and, in the case of proceedings under Part 3, the date indicated on the offence notice, on or before which a defendant is required to respond to the offence notice;

- (g) “justice” means a justice of the peace or a judge of the Court;
- (h) “local authority” means the council of a city, town, village, summer village, municipal district or Metis settlement;
- (i) “offence” means an offence under an enactment;
- (j) “operator’s licence” means a licence to operate motor vehicles issued pursuant to the *Traffic Safety Act*;
- (k) “peace officer” means
 - (i) a member of the Royal Canadian Mounted Police, while the member is in the exercise or discharge of the member’s powers or duties,
 - (ii) a member of a municipal police service, while the member is in the exercise or discharge of the member’s powers or duties,
 - (iii) a special constable appointed under the *Police Act*, while the special constable is in the exercise or discharge of the special constable’s powers or duties,
 - (iv) a person who is employed or retained by the Government, a municipality or a Metis settlement and whose duties include written authorization to issue violation tickets under Parts 2 and 3, while the person is in the exercise or discharge of that duty and while the person is serving a summons, offence notice or subpoena,
 - (v) a park warden appointed under the *Parks Canada Agency Act* (Canada) and a park officer designated under the *National Parks Act* (Canada), while they are in the exercise or discharge of their powers or duties in a national park established under the *National Parks Act* (Canada),
 - (vi) a person appointed under the *National Defence Act* (Canada) regulations for the purposes of section 156 of the *National Defence Act* (Canada), while the person is in the exercise or discharge of the person’s powers or duties in a defence establishment as defined in that Act, and
 - (vii) any other person employed by a municipality, a Metis settlement, the Government of Alberta or the Government of Canada for the preservation and maintenance of the public peace, while the person is in the exercise or discharge of the person’s powers and duties;
- (l) “specified penalty” means an amount determined pursuant to the regulations or pursuant to bylaws or ministerial orders under section 44 that can be paid by a defendant who is issued a violation ticket and is authorized to make a payment without a Court appearance;

- (m) “surcharge” means a surcharge under the *Victims of Crime Act*;
- (n) “violation ticket” means a violation ticket under Part 2 or Part 3;
- (o) “voluntary payment” means payment pursuant to section 26 or 36.

RSA 2000 cP-34 s1;RSA 2000 cT-6 s207

Part 1 General

Application of Act

2 Subject to any express provision in another Act, this Act applies to every case in which a person commits or is suspected of having committed an offence under an enactment for which that person may be liable to imprisonment, fine, penalty or other punishment.

1988 cP-21.5 s2

Application of Criminal Code

3 Except to the extent that they are inconsistent with this Act and subject to the regulations, all provisions of the *Criminal Code* (Canada), including the provisions in Part XV respecting search warrants, that are applicable in any manner to summary convictions and related proceedings apply in respect of every matter to which this Act applies.

1988 cP-21.5 s3;1992 c21 s38

Limitation period

4(1) Subject to any express provision in another Act, no proceedings to which this Act applies may be instituted more than 6 months after the time when the alleged offence occurred.

(2) In the case of an offence that is of a continuing nature, a contravention constitutes a separate offence in respect of each day or part of a day on which it continues and no proceedings may be instituted more than 6 months after the last occurrence of the alleged offence.

1988 cP-21.5 s4

Failure to attend

5(1) A person who, being at large on the person’s own undertaking or recognizance given to or entered into before a justice, fails without lawful excuse, the proof of which lies on the person, to attend Court in accordance with that undertaking or recognizance or to surrender himself or herself in accordance with an order of the justice, as the case may be, is guilty of an offence.

(2) A person who, being at large on the person’s own undertaking or recognizance given to or entered into before a justice and being

bound to comply with a condition of that undertaking or recognizance directed by a justice, fails without lawful excuse, the proof of which lies on the person, to comply with that condition, is guilty of an offence.

(3) A person who is served with a summons and who fails without lawful excuse, the proof of which lies on the person, to attend Court in accordance with that summons is guilty of an offence.

(4) A person who is named in

- (a) an appearance notice,
- (b) a promise to appear, or
- (c) a recognizance entered into before an officer in charge,

that has been confirmed by a justice and who fails without lawful excuse, the proof of which lies on the person, to attend Court in accordance with the appearance notice, promise to appear or recognizance, is guilty of an offence.

(5) For the purpose of subsection (4), it is not a lawful excuse that an appearance notice, promise to appear or recognizance does not correctly state the substance of the alleged offence.

(6) If at the trial of a person for an offence that person does not appear at the time and place appointed for the trial or the resumption of the trial and the justice proceeds to conduct the trial ex parte, no proceedings shall be instituted under this section arising out of the failure of the person to appear.

(7) In proceedings under subsection (1), (3) or (4), a certificate purporting to be signed by the clerk or a justice before whom the person is alleged to have failed to attend, stating that

- (a) in the case of proceedings under subsection (1), the person gave or entered into an undertaking or recognizance before a justice and failed to attend Court in accordance with the undertaking or recognizance,
- (b) in the case of proceedings under subsection (3), a summons was issued to and served on the person and the person failed to attend Court in accordance with the summons, and
- (c) in the case of proceedings under subsection (4), the person was named in an appearance notice, a promise to appear or a recognizance entered into before an officer in charge, that was confirmed by a justice, and the accused failed to attend Court in accordance with the appearance notice, promise to appear or recognizance,

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.

(8) A person against whom a certificate described in subsection (7) is produced may, with leave of the Court, require the attendance of

the person producing the certificate for the purpose of cross-examination.

(9) A certificate shall not be received in evidence pursuant to subsection (7) unless the party intending to produce it has, before the trial, given to the accused reasonable notice of the party's intention, together with a copy of the certificate.

1988 cP-21.5 s5

Witness

6(1) If a person is required to attend to give evidence before the Court, the Court shall issue a subpoena directed to that person, which shall be signed by a clerk or a justice.

(2) On proof to the satisfaction of the Court

- (a) of the service of a subpoena on a witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and
- (b) that the presence of the witness is material to the proceedings,

the Court may, by its warrant directed to any peace officer, cause the witness to be apprehended anywhere within Alberta, to be brought before a justice forthwith and to be detained in custody as the justice may order until the witness's presence as a witness is no longer required or, in the discretion of the justice, to be released on a recognizance with or without sureties.

1988 cP-21.5 s6

General punishment

7(1) Subject to any express provision in another enactment, every person who is convicted of an offence is liable to a fine of not more than \$2000 or to imprisonment for not more than 6 months or to both.

(2) Subject to any express provision in another enactment, if the imposition of a fine or the making of an order for the payment of money is authorized by an enactment but the enactment does not provide that imprisonment may be imposed in default of payment of the fine or compliance with the order, the Court may order that in default of payment of the fine or compliance with the order, as the case may be, the defendant shall be imprisoned for a period of not more than 6 months.

(3) This section does not apply if proceedings are commenced under Part 3.

1988 cP-21.5 s7

Compensation for property

8(1) A justice who convicts a defendant of an offence may, on the application of a person aggrieved, at the time sentence is imposed,

order the defendant to pay to the applicant an amount of not more than \$2000 as compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence.

(2) If an amount that is ordered to be paid under subsection (1) is not paid within the time ordered by the justice the applicant may, by filing the order, enter as a judgment in the Court of Queen’s Bench the amount ordered to be paid, and that judgment is enforceable against the defendant in the same manner as if it were a judgment rendered against the defendant in the Court of Queen’s Bench in civil proceedings.

1988 cP-21.5 s8

Term of imprisonment

9(1) When a defendant is sentenced to a term of imprisonment, the term, unless otherwise directed in the sentence, begins on and from the day on which the defendant is taken into custody under the sentence of imprisonment.

(2) Any time during which the defendant is lawfully at large on judicial interim release does not count as part of a term of imprisonment to which the defendant is sentenced.

1988 cP-21.5 s9

Absolute liability offence

10 Notwithstanding this Act or any other enactment, a defendant is not liable to imprisonment for an absolute liability offence.

1996 c28 s38

Time for payment

11(1) When time has been allowed for payment and a justice has ordered imprisonment in default of payment of the fine, a justice shall not issue a warrant of committal until the expiration of the time allowed for payment.

(2) Notwithstanding subsection (1), if, before the expiration of the time allowed for payment, the defendant who has been allowed time for payment appears before a justice and signifies in writing that the defendant prefers to be committed immediately rather than await the expiration of the time allowed, the justice may immediately issue a warrant of committal.

(3) When time has been allowed for payment any justice may, on application by or on behalf of the person allowed time for payment, allow further time for payment.

1988 cP-21.5 s10

Orders relating to payment

12 When a justice, in a conviction or order, imposes a fine or penalty, the conviction or order is not void nor is the right to collect a fine or to enforce a penalty under the conviction or order impaired because

- (a) time has been allowed for the payment of all or any part of the fine or penalty,
- (b) payment of part of the fine or penalty has been received,
- (c) the justice has accepted security for the payment of all or any part of the fine or penalty, or
- (d) the conviction is under appeal, unless a judge of the Court of Queen’s Bench stays the right to collect the fine or to enforce the penalty.

1988 cP-21.5 s11

Civil recovery

13(1) When a fine is imposed on a defendant but imprisonment of the defendant in default of payment of the fine is not ordered and the fine is not paid forthwith or within the time allowed by the justice, the Minister of Justice and Attorney General or a person authorized by the Minister of Justice and Attorney General may, by filing the conviction, enter as a judgment in the Court of Queen’s Bench the amount of the fine plus the late payment charge prescribed in the regulations, if any, and the judgment is enforceable against the convicted defendant in the same manner as if it were a judgment rendered against the defendant in that Court in a civil proceeding.

- (2)** If an enactment provides that any fine or penalty imposed
- (a) on a conviction for an offence occurring in a city, town or village enures to the benefit of the city, town or village,
 - (b) on a conviction for an offence occurring in a summer village, municipal district or Metis settlement, elsewhere than on a primary highway, enures to the benefit of the summer village, municipal district or Metis settlement, or
 - (c) on a conviction for an offence occurring in a reserve elsewhere than on a primary highway or on a road designated as a secondary road under the *Public Highways Development Act*, enures to the benefit of the band

and the conviction has not been entered as a judgment under subsection (1), an agent of the city, town, village, summer village, municipal district, Metis settlement or band, as the case may be, may enter the amount of a fine payable by the convicted defendant for that offence as a judgment under subsection (1).

(3) For the purposes of this section, “reserve” and “band” have the meanings assigned to them in the *Indian Act* (Canada).

1988 cP-21.5 s12; 1990 cM-14.3 s282; 1994 cG-8.5 s89;
1994 cM-26.1 s642(55); 1995 c24 s99(26)

Application of money received

14(1) Subject to section 8(5) of the *Victims of Crime Act* and any express provision in another enactment, the disposition of a penalty, fine or sum of money or the proceeds of a forfeiture under the enactment belong to the Crown in right of Alberta.

(2) Notwithstanding any other enactment, the proceeds of a late payment charge under this Act belong to the Crown in right of Alberta.

(3) Where, under an enactment,
 (a) the Crown in right of Alberta collects an amount of money in respect of a penalty, fine or sum of money payable under the enactment or the proceeds of a forfeiture, and
 (b) the amount collected by the Crown does not belong to the Crown in right of Alberta,

the Crown in right of Alberta may, notwithstanding any Act and subject to the regulations, retain a portion of that amount to offset the expenses incurred by the Crown with respect to the collecting of penalties, fines, sums of money or forfeitures arising under any enactment, and that portion that is retained by the Crown belongs to the Crown in right of Alberta and shall be deposited in the General Revenue Fund.

RSA 2000 cP-34 s14; 2002 c17 s6

Report of conviction

15(1) If a defendant is convicted of an offence, a justice or clerk shall, on request, complete a report respecting the conviction.

(2) A copy of a report under subsection (1) purporting to be certified by a clerk or by the justice who convicted the defendant, or proved to be a true copy, shall, without proof of the identity of the person to whom the report relates, be admitted in evidence in any legal proceedings as proof, in the absence of evidence to the contrary, of the conviction of that person for the offence mentioned in the report.

1988 cP-21.5 s14

No seal required on documents

16 In any proceeding under an enactment,

(a) it is not necessary for the justice to affix a seal of a justice of the peace to a document, and

- (b) no document is invalid by reason only of the lack of a seal even if the document purports to be sealed.

1988 cP-21.5 s15

Transcripts of evidence

17(1) Except as provided in subsection (2), there is to be no transcript of evidence.

(2) If evidence is recorded in a proceeding, the clerk shall, on payment of the applicable fee, provide either a copy of a mechanical recording of the evidence or a transcript of the evidence if it is

- (a) requested by one of the parties,
- (b) required for an appeal from a conviction or order,
- (c) required by the Minister of Justice and Attorney General, or
- (d) ordered by a justice.

(3) When a trial is conducted, the evidence shall be recorded.

1988 cP-21.5 s16;1994 cG-8.5 s89

Appeals

18(1) The Minister of Justice and Attorney General, a prosecutor, a defendant or a person affected by a judgment, order or sentence to which this Act applies may appeal a judgment, order or sentence of a justice to the Court of Queen’s Bench in the judicial district in which the trial was held.

(2) Following the decision of the Court of Queen’s Bench, any justice has authority to enforce the judgment or order on the appeal.

1988 cP-21.5 s17;1994 cG-8.5 s89

Further appeals

19(1) When it appears to a judge of the Court of Appeal, on the application of the Minister of Justice and Attorney General, a prosecutor, a defendant or a person affected by a conviction or order to which this Act applies, that a judgment or order of the Court of Queen’s Bench made on appeal involves a question of law of sufficient importance to justify a further appeal, the judge of the Court of Appeal may certify that and an appeal then lies to the Court of Appeal from the judgment or order of the Court of Queen’s Bench.

(2) The procedure on the appeal shall, subject to the regulations, be the same as that provided in the provisions that relate to summary convictions in the *Criminal Code* (Canada) and the rules relating to appeal procedures insofar as they are applicable to appeals involving a question of law.

(3) Following the decision of the Court of Appeal, any justice has authority to enforce the judgment or order on the appeal.

1988 cP-21.5 s18;1994 cG-8.5 s89

Judicial notice

20 The following shall be judicially noted:

- (a) any rule, order or bylaw made pursuant to an Act;
- (b) the publication or promulgation of a rule, order or bylaw as required to be published or promulgated by an Act.

1988 cP-21.5 s19

Address for service

21(1) Under Part 2 and Part 3 the address for service, in the case of a defendant who is an individual, is the address indicated on the defendant's operator's licence unless the defendant, on being served with a summons under Part 2 or with an offence notice under Part 3, states another address.

(2) If a defendant is not in possession of an operator's licence when the defendant is served as described in subsection (1) or the defendant's address for service is not the address indicated on the operator's licence of the defendant, the defendant shall provide an address for service to the person serving the defendant.

(3) Under Part 2 and Part 3 the address for service, in the case of a defendant that is

- (a) a municipality, is the municipal office,
- (b) a Metis settlement, is its permanent office, and
- (c) a corporation other than a municipality or Metis settlement, is the most recent address of the corporation as indicated on the records of the Registrar, as defined in the *Motor Vehicle Administration Act*, but if an address is not indicated on those records the address for service is the registered office of the corporation.

(4) A defendant, after being served with a summons, may provide a clerk with a new address for service for the purpose of subsequent proceedings related to the summons.

1988 cP-21.5 s20;1990 cM-14.3 s282;1994 cG-8.5 s59

Parts 2, 3 offences

22(1) Instead of the procedure in the *Criminal Code* (Canada) for laying an information and for issuing a summons, the procedure set out in Part 2 or Part 3, as the case may be, may be followed with respect to offences provided for in the regulations.

(2) If the regulations provide that proceedings with respect to an offence may be commenced under either Part 2 or Part 3, the proceedings shall be commenced under Part 3 unless it is in the

public interest to compel the defendant to appear before a justice in proceedings under Part 2.

(3) If the proceedings with respect to an offence referred to in subsection (2) are commenced under Part 2, the peace officer shall issue a summons in accordance with section 27(3).

(4) The use on a violation ticket of a word, figure or expression or any combination of them authorized by a regulation to designate an offence under an enactment is sufficient for all purposes to describe the offence so designated.

(5) Failure to complete any information required in a violation ticket does not invalidate the violation ticket or any part of it if

- (a) the defendant is identified with reasonable clarity,
- (b) the offence with which the defendant is charged is specified in accordance with this Act and the regulations,
- (c) the date on which the offence is alleged to have occurred is specified, and
- (d) the place at or near which the offence is alleged to have occurred is specified.

1988 cP-21.5 s21

Service of summons

23(1) Service of a summons and of an offence notice may be made on a holiday.

(2) An affidavit signed by the person effecting service attesting to the fact that service was effected on the defendant shall be received in evidence in all legal proceedings as proof of that service without the necessity of proof of the signature of the person making the affidavit.

1988 cP-21.5 s22

Electronic data

23.1 Where, under Parts 2 and 3 or either of them, the Court may carry out a function only after receiving a violation ticket or a copy of a violation ticket, the Court, subject to the regulations, may nevertheless carry out that function by using an electronic version of, or other electronic data in respect of, the violation ticket if that electronic version or data contains all the pertinent information set out on the violation ticket.

RSA 2000 c16(Supp) s63

**Part 2
Summons Violation Tickets**

Use of violation tickets

24(1) Proceedings under this Part may be commenced by issuing a summons by means of a violation ticket described in section 25.

(2) If proceedings are commenced under this Part, Part 3 does not apply to those proceedings.

1988 cP-21.5 s23

Violation ticket

25(1) A violation ticket under this Part must be in a form prescribed by the regulations and shall include the following parts:

- (a) a complaint, and
 - (b) a summons.
- (2)** The complaint part of the violation ticket shall be
- (a) sworn before a commissioner for oaths by a complainant who believes on reasonable and probable grounds that an offence has been committed, and
 - (b) filed with a clerk prior to the initial appearance date indicated on the violation ticket.
- (3)** A summons shall indicate how the defendant may respond to the summons.
- (4)** A summons shall be served on a defendant,
- (a) in the case of a defendant who is an individual, by delivering it personally to the defendant or, if the defendant cannot conveniently be found, by leaving it for the defendant at the defendant's residence with a person on the premises who appears to be at least 18 years of age,
 - (b) in the case of a defendant that is a municipality, by delivering it personally to the chief elected official or chief administrative officer of the municipality,
 - (c) in the case of a defendant that is a Metis settlement, by delivering it personally to the settlement chair or the settlement administrator, and
 - (d) in the case of a defendant that is a corporation other than a municipality or Metis settlement,
 - (i) by sending it by single registered mail to the registered office of the corporation, or
 - (ii) by delivering it personally to the manager, secretary or other executive officer of the corporation or the person apparently in charge of a branch office of the corporation at an address held out by the corporation to be its address.
- (5)** A justice, on application and on being satisfied that service cannot be made effectively on a corporation in accordance with subsection (4)(d), may by order authorize another method of service.

1988 cP-21.5 s24;1990 cM-14.3 s282;1994 cM-26.1 s642(55)

Voluntary payments

26(1) When authorized by the regulations or a bylaw or ministerial order under section 44 and by a summons served on a defendant, the defendant who wishes to plead guilty may make a voluntary payment in respect of a summons by delivering on or before the initial appearance date the summons together with

- (a) an amount equal to the combined amounts of the specified penalty for the offence as provided for in the regulations and the applicable surcharge, if any, or
- (b) if the defendant is charged with an offence under a bylaw or ministerial order, an amount equal to the specified penalty for the offence as provided in the relevant bylaw or ministerial order,

to a Court office at a location prescribed under section 9(2)(a) of the *Provincial Court Act* or, where permitted by regulation, to a person acting as an agent of the Court for the purpose of receiving voluntary payments.

(2) When a clerk records in the Court records the receipt of a voluntary payment under subsection (1) in cash or by cheque, that act of recording constitutes acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine in the amount of the specified penalty.

(3) If a voluntary payment is made by cheque and the cheque is dishonoured on the grounds that no funds or insufficient funds were on deposit to the credit of the defendant in the institution on which the cheque was drawn

- (a) the conviction continues but the fine and any applicable surcharge remain outstanding whether or not the plea is signed in the manner provided for on the summons, and
- (b) the clerk shall give notice to the defendant by ordinary mail at the defendant's address for service that the cheque has been dishonoured, the conviction continues and the fine and any applicable surcharge remain outstanding,

but a warrant of committal in respect of the defendant shall not issue until 15 days after the notice has been sent by ordinary mail.

RSA 2000 cP-34 s26;RSA 2000 c16(Supp) s64

Appearances

27(1) Subject to subsection (2), a defendant shall appear, either personally or by an agent, before a justice on the date and at the place and time stated on the summons to answer that summons.

(2) A defendant is not required to appear before a justice on the initial appearance date to answer a summons if

- (a) the defendant enters a plea of guilty before a justice prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,

- (b) the defendant enters a plea of not guilty prior to the initial appearance date in the manner and during the time period stated in the summons for doing so,
- (c) the defendant obtains an adjournment of the proceedings prior to the initial appearance date, or
- (d) if authorized by the regulations or a bylaw or ministerial order under section 44 and the summons states that the defendant can make a voluntary payment, the defendant makes a voluntary payment.

(3) If it is in the public interest to compel the defendant to appear before a justice in proceedings under this Part, a peace officer may, if authorized by the regulations, issue a summons respecting any offence for which a voluntary payment may be made, requiring the defendant to appear before a justice on the initial appearance date without the alternative of making a voluntary payment.

(4) A prosecutor, if the prosecutor thinks it appropriate, may permit a defendant referred to in subsection (3) to make a voluntary payment.

1988 cP-21.5 s26

Failure to answer summons

28(1) If a defendant fails to enter a plea or make a voluntary payment in the manner provided for on the summons on or before the initial appearance date, the justice may

- (a) enter a plea of not guilty on behalf of the defendant and set a time for a trial,
- (b) issue a warrant for the arrest of the person, or
- (c) direct that a new summons be issued requiring the attendance of the person before a justice and set a time at which the attendance is required.

(2) When a time is set for a trial pursuant to subsection (1)(a), the justice shall direct that the defendant be notified by ordinary mail at the defendant's address for service of the time fixed for the trial.

(3) If a defendant fails to appear in Court in person or by an agent at the time fixed for the trial, a justice, on proof of service of the summons, shall

- (a) on application by a prosecutor, adjourn the proceedings, set a new trial date and direct that the defendant be notified of the new trial date by ordinary mail at the defendant's address for service,
- (b) on application by a prosecutor, issue a warrant for the arrest of the defendant, or
- (c) proceed to conduct the trial ex parte.

(4) If the proceedings are adjourned under subsection (3) and the defendant fails to appear at the new trial date a justice shall proceed to conduct the trial ex parte and if the defendant is convicted the

clerk shall give the defendant notice by ordinary mail at the defendant's address for service of the conviction and of the time allowed for payment of the fine.

1988 cP-21.5 s27;1992 c21 s38

Late payment

29(1) If a voluntary payment is tendered after the initial appearance date, a justice may, without a hearing and notwithstanding any action taken under section 28, direct that the voluntary payment be accepted as if it had been made in the time allowed.

(2) Acceptance of a voluntary payment with respect to a summons under this section constitutes cancellation of a warrant issued under section 28(1)(b) in respect of the defendant for failure to respond to that summons.

1988 cP-21.5 s28

Part 3
Offence Notice Violation Tickets

Use of violation ticket

30(1) Proceedings under this Part may be commenced by issuing an offence notice by means of a violation ticket described in section 31.

(2) If proceedings are commenced under this Part, Part 2 does not apply to those proceedings.

1988 cP-21.5 s29

Violation ticket

31(1) A violation ticket under this Part must be in a form prescribed by the regulations and shall include the following parts:

- (a) a certificate of offence, and
- (b) an offence notice.
- (2)** A certificate of offence
 - (a) shall be completed and signed by a peace officer who believes on reasonable and probable grounds that an offence has been committed,
 - (b) shall be filed with a clerk prior to the initial appearance date indicated on the violation ticket, and
 - (c) does not need to be sworn.
- (3)** An offence notice shall
 - (a) indicate the specified penalty for the offence or, if a surcharge is payable in respect of the offence, the combined amount of the specified penalty and the applicable surcharge, and

- (b) indicate
 - (i) how and when the defendant may respond to the offence notice, and
 - (ii) that the defendant may be convicted in the defendant's absence without a hearing if the defendant fails to respond to the violation ticket by the initial appearance date indicated on the offence notice or if the defendant pleads not guilty and fails to appear in Court in person or by an agent on the defendant's trial date.
- (4) An offence notice shall be served on a defendant
 - (a) in the case of a defendant who is an individual, by delivering it personally to the defendant,
 - (b) in the case of a defendant that is a municipality, by delivering it personally to the chief elected official or chief administrative officer of the municipality,
 - (c) in the case of a defendant that is a Metis settlement, by delivering it personally to the settlement chair or the settlement administrator, and
 - (d) in the case of a defendant that is a corporation other than a municipality or Metis settlement,
 - (i) by sending it by single registered mail to the registered office of the corporation, or
 - (ii) by delivering it personally to the manager, secretary or other executive officer of the corporation or the person apparently in charge of a branch office of the corporation at an address held out by the corporation to be its address.
- (5) Notwithstanding subsection (4), if
 - (a) the defendant has been charged under section 160 of the *Traffic Safety Act*, or
 - (b) the offence notice relates to an alleged parking violation, the offence notice may be served by sending it by ordinary mail to the defendant's address as shown on the records of the Registrar of Motor Vehicle Services under the *Traffic Safety Act*.
- (6) A justice, on application and on being satisfied that service cannot be made effectively on a corporation in accordance with subsection (4)(d), may by order authorize another method of service.

RSA 2000 cP-34 s31;RSA 2000 cT-6 s207

Evidence of service

- 32(1)** If an offence notice is served by the peace officer who issued it, the peace officer shall complete and sign a certificate of service on the violation ticket that the peace officer personally served the offence notice on the person charged and the peace officer shall indicate the date of service.
- (2)** A certificate of service does not need to be sworn.

(3) If an offence notice is served by a person other than the peace officer who issued it, that person shall complete an affidavit of service.

(4) A certificate of service or an affidavit of service shall be received in evidence and in the absence of evidence to the contrary is proof of personal service.

1988 cP-21.5 s31

Trial date

33(1) If an offence notice is served on a defendant, the defendant may plead not guilty by signing the not guilty plea on the offence notice and delivering it to the Court office indicated on the offence notice for that purpose.

(2) On receipt of an offence notice under subsection (1) the clerk shall, as soon as is practicable, give notice to the defendant of the time and place of the trial by ordinary mail at the defendant's address for service.

1988 cP-21.5 s32

Failure to appear

34(1) If a defendant pleads not guilty but fails to appear in Court in person or by an agent on the defendant's trial date the justice shall, if the certificate of offence is complete and regular on its face,

- (a) enter a conviction in the defendant's absence and without a hearing and impose the specified penalty,
- (b) on application by a prosecutor, proceed to conduct the trial ex parte, or
- (c) on application by a prosecutor, adjourn the proceedings, set a new trial date and direct that the defendant be notified of the new trial date by ordinary mail at the defendant's address for service.

(2) If a defendant fails to appear in Court for the defendant's trial set pursuant to subsection (1)(c) the justice shall enter a conviction in the defendant's absence and without a hearing and impose the specified penalty.

(3) If a defendant is convicted under this section the defendant shall be notified, by ordinary mail at the defendant's address for service, of the conviction, the combined amount of the specified penalty and the applicable surcharge, if any, and the time allowed for payment.

(4) If section 31(5)(a) or (b) applies, the notice referred to in subsection (3) may be sent by ordinary mail to the defendant's

address as shown on the records of the Registrar, as defined in the *Traffic Safety Act*.

RSA 2000 cP-34 s34;RSA 2000 cT-6 s207

Plea of guilty with representations

35(1) If an offence notice is served on a defendant and the defendant does not wish to dispute the charge but wishes to make submissions as to the penalty, including the extension of time for payment, the defendant may attend at the time and the place specified in the notice for that purpose and may appear before a justice for the purpose of pleading guilty to the offence and making submissions as to the penalty.

(2) The justice may require submissions under subsection (1) to be made under oath, either orally or by affidavit.

(3) On accepting a guilty plea under subsection (1), the justice shall enter a conviction and impose a fine equal to the specified penalty or a lesser fine permitted by law and indicate the amount of any applicable surcharge.

1988 cP-21.5 s35;1997 c13 s5

Payment, charges not disputed

36(1) If an offence notice is served on a defendant and the defendant wishes to plead guilty to the charge, the defendant may make a voluntary payment by delivering the offence notice together with an amount equal to the specified penalty and the applicable surcharge, if any, to a court office at a location prescribed under section 9(2)(a) of the *Provincial Court Act* or, where permitted by regulation, to a person acting as an agent of the Court for the purposes of receiving payment in the amount of the specified penalty.

(2) When a clerk records in the Court records the receipt of a voluntary payment under subsection (1), that act of recording constitutes acceptance of the guilty plea and also constitutes the conviction and the imposition of a fine in the amount of the specified penalty.

RSA 2000 cP-34 s36;RSA 2000 c16(Supp) s65

Failure to respond to offence notice

37(1) If an offence notice has not been delivered in accordance with section 33 or 36 and a plea of guilty has not been accepted under section 35, the defendant is deemed not to wish to dispute the charge and a justice shall examine the certificate of offence and the certificate of service or the affidavit of service referred to in section 32, and

- (a) if they are complete and regular on their face, the justice shall enter a conviction in the defendant's absence and without a hearing and impose the specified penalty, or
- (b) if they are not complete and regular on their face, the justice shall quash the proceedings.

(2) The clerk shall cause notice of the conviction and the imposition of the specified penalty and of any applicable surcharge payable to be given to the defendant by ordinary mail at the defendant's address for service.

(3) If section 31(5)(a) or (b) applies, the notice referred to in subsection (2) may be sent by ordinary mail to the defendant's address as shown on the records of the Registrar, as defined in the *Traffic Safety Act*.

(4) If proceedings are quashed under subsection (1)(b), proceedings may be recommenced under this Part if not more than 6 months have elapsed since the alleged offence occurred.

RSA 2000 cP-34 s37;RSA 2000 cT-6 s207

Conviction set aside

38 Where a defendant has a reasonable excuse for failing to dispute the charge or failing to appear in person or by agent at a trial, the defendant or the defendant's agent may, if not more than 15 days have elapsed since the conviction first came to the attention of the defendant, appear before a justice and the justice on being satisfied by affidavit that the defendant's excuse is reasonable shall set aside the conviction and

- (a) give the person appearing a notice of trial in accordance with section 33, or
- (b) proceed in accordance with section 35.

1988 cP-21.5 s38;1991 c21 s33

Affidavit evidence

39(1) In any proceedings under this Part where a defendant is charged with a contravention of

- (a) the *Traffic Safety Act* or the Rules of the Road under that Act relating to the speed of motor vehicles, or
- (b) the *Traffic Safety Act* or the Rules of the Road under that Act relating to the actions of a driver of a motor vehicle with respect to rapid intermittent flashes of yellow light displayed by a traffic control signal and the crossing of a highway by pedestrians,

the evidence of the interceptor of the motor vehicle and the issuer of the violation ticket may be given by affidavit.

(2) An affidavit referred to in subsection (1) is, in the absence of evidence to the contrary, proof as to the motor vehicle that was intercepted and the driver of the motor vehicle.

(3) A copy of an affidavit referred to in subsection (1) must be served on the defendant by ordinary mail at the defendant's address for service at least 14 days before the date of the hearing.

(4) The defendant may, with leave of the court, require the attendance of any person giving evidence by affidavit pursuant to subsection (1) for the purpose of cross-examination.

RSA 2000 cP-34 s39;RSA 2000 cT-6 s207

Penalty

40 Notwithstanding any other enactment but subject to section 41, if proceedings have been commenced under this Part with respect to an offence the fine imposed with respect to that offence shall not be more than \$1000 excluding any applicable surcharge and the defendant is not liable to imprisonment.

RSA 2000 cP-34 s40;RSA 2000 c16(Supp) s66

Failure to pay fine

41 A defendant who is convicted of an offence pursuant to proceedings commenced under this Part and fails to pay a fine imposed by a justice within the time allowed for payment, or, if no time is allowed, forthwith, is liable to pay an amount equal to the fine imposed plus any applicable surcharge and the late payment charge provided for by regulation.

1988 cP-21.5 s40;1997 c13 s5

Part 4
Regulations, Bylaws, Orders

Regulations

42 The Lieutenant Governor in Council may make regulations

- (a) respecting the fees payable with respect to any matter under this Act;
- (b) prescribing forms to be used under this Act or the regulations;
- (c) prescribing offences for which proceedings may be commenced under
 - (i) Part 2,
 - (ii) Part 3, or
 - (iii) either Part 2 or Part 3;
- (d) prescribing offences in respect of which a voluntary payment may be made;
- (e) respecting the contents of a violation ticket;

- (f) respecting the procedure for the issuance of a summons and certificate of offence;
- (g) respecting how an offence may be indicated on a violation ticket;
- (h) authorizing the use on a violation ticket of any word, figure or expression, or any combination of them, to designate an offence;
- (i) respecting the manner in which an initial appearance date is determined;
- (j) respecting the determination of the public interest under sections 22(2) and 27(3);
- (k) respecting the time allowed for payment of a fine;
- (l) respecting the amounts of specified penalties;
- (m) respecting the amounts of late payment charges;
- (m.1) prescribing or otherwise specifying, in whole or in part, the enactments or the penalties, fines or sums of money or forfeitures to which section 14(3) applies;
- (m.2) respecting the portions of amounts that may be retained by the Crown under section 14(3);
- (n) respecting service of a summons, offence notice, certificate, subpoena or other document under this Act;
- (o) prescribing provisions of the *Criminal Code* (Canada) that are not applicable to proceedings under this Act or any Part of this Act;
- (p) respecting the giving, sending and serving of notices under this Act;
- (q) with respect to agents of the Court for the purposes of sections 26(1) and 36(1),
 - (i) permitting persons to act as agents of the Court for the purposes of sections 26(1) and 36(1);
 - (ii) governing the qualifications of and requirements to be met by persons who wish to act as agents of the Court;
 - (iii) governing the carrying out of duties and functions of those agents;
 - (iv) governing the holding and handling of money by those agents;
 - (v) permitting an agent to carry out other functions on behalf of the Court with respect to violation tickets;
 - (vi) where an agent collects from a member of the public a voluntary payment, or otherwise provides a service to a member of the public in respect of a function carried out on behalf of the Court, permitting the agent, for the agent's own benefit, to charge and collect from that member of the public a service charge for collecting the voluntary payment or in respect of providing a service;

- (vii) respecting the maximum and minimum amounts that may be charged by agents as service charges;
- (viii) in addition to the matters referred to in subclauses (i) to (vii), generally governing the agency relationship;
- (f) respecting, for the purposes of section 23.1,
 - (i) the carrying out of functions by the Court using electronic versions of violation tickets and electronic data, and
 - (ii) what constitutes pertinent information.

RSA 2000 cP-34 s42; RSA 2000 c16(Supp) s67;
2002 c17 s6

Violation ticket transitional

43 When a new violation ticket is prescribed for the purposes of the surcharge, the violation ticket previously prescribed may also be used until supplies of those previously prescribed tickets are exhausted.

1997 c13 s5

Bylaws, orders

44 A local authority may make bylaws and, in the case of an improvement district or a special area, the Minister responsible for the *Municipal Government Act* or the *Special Areas Act*, as the case may be, may make orders,

- (a) respecting the offences under a bylaw or ministerial order, as the case may be, in respect of which a voluntary payment may be made;
- (b) prescribing the amounts of the specified penalties payable in respect of offences referred to in clause (a).

1988 cP-21.5 s42