



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 105

An Act to amend the Code of Penal Procedure and the Courts of Justice Act

Introduction

**Introduced by
Mr. Yvon Marcoux
Minister of Justice**

**Québec Official Publisher
2005**

EXPLANATORY NOTES

This bill proposes to amend the Code of Penal Procedure and the Courts of Justice Act to introduce a new scheme for the trial of penal proceedings adjudicated by default under article 188 of the Code of Penal Procedure. In addition, it provides that those matters may be dealt with by administrative justices of the peace acting at the Court of Québec or in municipal courts.

This special scheme introduces a presumption that a defendant who fails to respond in time to a duly served statement of offence has waived a hearing. The scheme does not totally replace the existing scheme, but applies for certain classes of offences that are not punishable by imprisonment, namely, offences under the Highway Safety Code and municipal traffic and parking by-laws.

The bill provides that a statement of offence issued under the new scheme must contain a warning to the defendant setting out the consequences of a failure to act. It also proposes rules relating to the service of such a statement. In order to convict a defendant, the decision-maker will simply verify a limited number of criteria. However, the decision-maker is empowered to correct minor errors in writing or calculation or any other clerical error, as long as the correction is not unfavourable to the defendant. The decisions may be reviewed by a judge in cases giving rise to revocation of judgment or to appeal.

The bill also amends the Courts of Justice Act to establish the concurrent jurisdictions of the judicial districts of Longueuil and Iberville with respect to the territory of the cities or towns of Chambly, Carignan, La Prairie and Saint-Rémi, of the judicial districts of Terrebonne and Joliette with respect to the territory of Ville de Terrebonne and of the judicial districts of Terrebonne and Labelle with respect to the territory of Ville de Mont-Tremblant.

LEGISLATION AMENDED BY THIS BILL:

- Code of Penal Procedure (R.S.Q., chapter C-25.1);
- Courts of Justice Act (R.S.Q., chapter T-16).

Bill 105

AN ACT TO AMEND THE CODE OF PENAL PROCEDURE AND THE COURTS OF JUSTICE ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Article 24 of the Code of Penal Procedure (R.S.Q., chapter C-25.1) is amended by inserting “or the second paragraph of article 218.3” at the end of the second paragraph.

2. Article 69 of the Code is amended by inserting “or cancellation” after “judicial stay” in the second line of the first paragraph.

3. Article 71 of the Code is amended by adding the following paragraph at the end:

“(9) the person who, in the context of proceedings under Division II of Chapter VI, issued a certificate attesting that the defendant did not enter a plea of guilty or not guilty within the time prescribed in article 160 and did not pay the whole or any part of the fine and costs requested.”

4. Article 146 of the Code is amended by adding the following paragraph at the end:

“In addition to the particulars set out in the first paragraph, in the case of an offence coming under Division II of Chapter VI and witnessed personally by a peace officer or a person entrusted with the enforcement of an Act, the statement of offence must include a warning to the defendant. The warning shall indicate that if the defendant fails to enter a plea or to pay the whole or any part of the fine and costs requested, within 30 days of service of the statement, the defendant will be deemed not to contest the proceedings and may be convicted of the alleged offence in absence and without having an opportunity to be heard.”

5. Article 147 of the Code is amended by inserting the following at the beginning of the third paragraph: “Subject to the specific provisions in Division II of Chapter VI,”.

6. Article 148 of the Code is amended by inserting the following paragraph after the first paragraph:

“However, in the case referred to in the second paragraph of article 146, the sentence imposed must be the minimum fine prescribed by law.”

7. The Code is amended by inserting the following article after article 157.1:

“157.2. A statement of offence that includes the warning referred to in the second paragraph of article 146 shall be served personally on the defendant, except as provided in articles 158 and 158.1.”

8. Article 158 of the Code is amended by adding the following paragraph at the end:

“The prosecutor shall promptly send notice of the service to the defendant. The sending of the notice does not operate to vary any time limit fixed by this Code.”

9. Article 163 of the Code is amended by adding the following paragraph at the end:

“However, in the case of an offence coming under Division II of Chapter VI that was witnessed personally by a peace officer or a person entrusted with the enforcement of an Act, a defendant who does not enter a plea and does not send the whole or any part of the fine and costs requested is deemed not to contest the proceedings.”

10. The Code is amended by inserting the following article after article 168:

“168.1. No preliminary application may be made by either party in the case of an offence coming under Division II of Chapter VI.”

11. Chapter VI of the Code is amended by inserting the following between the chapter heading and article 187:

“DIVISION I

“GENERAL PROVISIONS”.

12. The Code is amended by inserting the following at the end of Chapter VI:

“DIVISION II

“PROVISIONS SPECIFIC TO THE TRIAL OF PROCEEDINGS DEEMED UNCONTESTED BY THE DEFENDANT

“218.2. This division applies to proceedings by default relating to offences under the Highway Safety Code (chapter C-24.2) or a traffic or parking by-law adopted by a municipality, where

(1) the offence was witnessed personally by a peace officer or a person entrusted with the enforcement of an Act and, if some of the facts constituting the offence were witnessed by the peace officer who issued the statement of offence and some were witnessed by another peace officer, that fact was noted on the statement by the peace officer who issued it;

(2) the statement of offence was served personally on the defendant, except as provided in articles 158 and 158.1;

(3) the defendant was 18 years of age or over at the time the offence was committed; and

(4) pursuant to the second paragraph of article 163, the defendant is deemed not to contest the proceedings.

“218.3. The proceedings shall be tried by a judge of the judicial district where they were instituted.

They may also be tried by a judge of the judicial district where the plea and, if applicable, the fine and costs were to be sent.

“218.4. The judge shall try the case and render judgment by default, in the absence of the defendant and the prosecutor, based on the documents filed in the record.

The record is made up of the statement of offence and the related attestation of service, and, in the cases referred to in articles 158 and 158.1, an attestation of the sending of the notice to the defendant.

The record must also contain a certificate of the clerk or of a person authorized for that purpose by the prosecutor attesting that the defendant has not entered a plea of guilty or not guilty within the time prescribed in article 160 and has not paid the whole or any part of the fine and costs requested.

“218.5. The judge shall examine the statement of offence and the related attestation of service, as well as any attestation of the sending of a notice, if applicable.

The judge shall make sure that a certificate attesting that the defendant has not entered a plea of guilty or not guilty within the time prescribed in article 160 and has not paid the whole or any part of the fine and costs requested has been filed in the record. If the defendant is a natural person, the judge shall also make sure that the record contains an indication that the defendant is not a minor.

In addition, the judge shall make sure that, on the face of the record, the statement of offence has been correctly filled out and, in particular,

(1) that the date and place the offence was committed are indicated in the statement;

(2) that the offence was witnessed by a peace officer or a person entrusted with the enforcement of an Act;

(3) that the peace officer who issued the statement of offence notes in the statement, if applicable, that some of the facts constituting the offence were witnessed by that peace officer and some were witnessed by another peace officer;

(4) that the statement identifies the defendant and the person who issued the statement; and

(5) that it contains the required signatures.

“218.6. The judge may amend a statement of offence of the judge’s own motion to correct an error in writing or calculation or any other clerical error. However, no correction unfavourable to the defendant may be made.

Under the judge’s power to make corrections, the judge may reduce the fine requested on the statement of offence to the minimum fine prescribed by law.

“218.7. Division I does not apply to proceedings tried under this division.”

13. Article 222 of the Code is amended by adding the following paragraph at the end:

“If the judge who rendered the judgment does not have jurisdiction to make the orders referred to in this article, the orders may be made by any other judge who does have the required jurisdiction.”

14. The Code is amended by inserting the following after article 228:

“DIVISION I.1

**“PROVISIONS SPECIFIC TO JUDGMENTS RELATING TO
PROCEEDINGS DEEMED UNCONTESTED BY THE DEFENDANT**

“228.1. After trying a case deemed uncontested by the defendant, the judge shall render a judgment convicting the defendant of the alleged offence, unless the judge considers that the statement of offence is clearly inaccurate or affected by an irregularity other than that referred to in article 218.6, in which case the judge shall cancel the proceedings. The prosecutor may serve another statement of offence on the defendant provided that prescription has not been acquired.

If the defendant is convicted, the judge shall impose the fine prescribed by law and the costs determined by regulation.

“228.2. As soon as possible after the conviction, the clerk shall notify the defendant by mail.

“228.3. Division I, except for articles 222 and 225 to 227, does not apply to judgments rendered under this division.”

15. Article 244 of the Code is amended

(1) by inserting “or does not have jurisdiction to make the rectification” after “is not available” in the second line of the second paragraph;

(2) by inserting “or the second paragraph of article 218.3” after “article 187” in the fifth line of the second paragraph.

16. Article 250 of the Code is amended

(1) by inserting “or does not have jurisdiction to hear an application for revocation” after “is not available” in the third line of the first paragraph;

(2) by inserting “or the second paragraph of article 218.3” after “article 187” in the second line of the second paragraph.

17. Article 257 of the Code is amended

(1) by inserting “or does not have jurisdiction to hear an application for revocation” after “is not available” in the fourth line of the first paragraph;

(2) by inserting “or the second paragraph of article 218.3” after “article 187” in the second line of the second paragraph.

18. Article 262 of the Code is amended

(1) by inserting “or does not have jurisdiction to hear an application for the reduction of costs” after “is not available” in the second line of the first paragraph;

(2) by inserting “or the second paragraph of article 218.3” after “article 187” in the second line of the second paragraph.

19. Article 270 of the Code is amended by inserting “or the second paragraph of article 218.3” after “article 187” in the second line of the second paragraph.

20. Article 294 of the Code is amended by inserting “or the second paragraph of article 218.3” after “article 187” in the fourth line.

21. Article 316 of the Code is amended

(1) by inserting “or does not have jurisdiction to exercise the powers conferred on a judge by this chapter” after “is not available” in the second line of the first paragraph;

(2) by inserting “or the second paragraph of article 218.3” after “article 187” in the second line of the second paragraph.

22. Schedule I to the Courts of Justice Act (R.S.Q., chapter T-16) is amended

(1) by inserting “Longueuil and Iberville” after “Longueuil and Beauharnois” in the column listing the judicial districts and “Over the territory of the cities or towns of Chambly, Carignan, La Prairie and Saint-Rémi.” in the column listing the territories over which concurrent jurisdiction is exercised;

(2) by inserting “Terrebonne and Joliette” after “Saint-Maurice and Québec” in the column listing the judicial districts and “Over the territory of Ville de Terrebonne.” in the column listing the territories over which concurrent jurisdiction is exercised; and

(3) by adding “Terrebonne and Labelle” at the end of the column listing the judicial districts and “Over the territory of Ville de Mont-Tremblant.” in the column listing the territories over which concurrent jurisdiction is exercised.

23. Schedule IV to the Act, enacted by section 20 of chapter 12 of the statutes of 2004, is amended

(1) by striking out the text following the twelfth dash under Class 2 in paragraph 1;

(2) by adding the following at the end of paragraph 1:

“— trying proceedings by default under Division II of Chapter VI of the Code of Penal Procedure and rendering judgment under Division I.1 of Chapter VII of that Code, and, in that connection,

- exercising the powers conferred on a judge by that division;
- in the cases described in subparagraph 1 of the first paragraph of article 243 of the Code of Penal Procedure, rectifying a judgment after rendering it, provided that the correction is not unfavourable to the defendant.

However, when exercising the functions and powers conferred by Division II of Chapter VI or by Division I.1 of Chapter VII of the Code of Penal Procedure, an administrative justice of the peace may not

- make an order to regularize an irregular service (article 29 of the Code of Penal Procedure);
- make an order for the disposition of things seized (article 222 of the Code of Penal Procedure);
- grant or dismiss an application for revocation of judgment (articles 250 and 257 of the Code of Penal Procedure);
- make an order concerning the reduction of costs (article 262 of the Code of Penal Procedure).”;

(3) by striking out the text following the eleventh dash under Class 2 in paragraph 2;

(4) by adding the following after the text following the last dash under Class 2 in paragraph 2:

“— trying proceedings by default under Division II of Chapter VI of the Code of Penal Procedure and rendering judgment under Division I.1 of Chapter VII of that Code, and, in that connection,

- exercising the powers conferred on a judge by that division;
- in the cases described in subparagraph 1 of the first paragraph of article 243 of the Code of Penal Procedure, rectifying a judgment after rendering it, provided that the correction is not unfavourable to the defendant.

However, when exercising the functions and powers conferred by Division II of Chapter VI or by Division I.1 of Chapter VII of the Code of Penal Procedure, an administrative justice of the peace may not

- make an order to regularize an irregular service (article 29 of the Code of Penal Procedure);
- make an order for the disposition of things seized (article 222 of the Code of Penal Procedure);
- grant or dismiss an application for revocation of judgment (articles 250 and 257 of the Code of Penal Procedure);
- make an order concerning the reduction of costs (article 262 of the Code of Penal Procedure).”

24. Despite section 11 of the Regulations Act (R.S.Q., chapter R-18.1), the first regulations made by the Government to prescribe the form of the statements of offence and the offence reports that will be required for the purposes of this Act may be made on the expiry of 15 days after the date of their publication in the *Gazette officielle du Québec*.

25. The provisions of this Act come into force on the date or dates to be set by the Government, except section 22, which comes into force on (*insert the date of assent to this Act*).

