

appeal court at which the appeal is to be heard orders that the accused be released

(a) upon his giving an undertaking to the appeal court, without conditions or with such conditions as the appeal court directs, to surrender himself into custody in accordance with the order,

(b) upon his entering into a recognizance without sureties in such amount, with such conditions, if any, as the appeal court directs, but without deposit of money or other valuable security, or

(c) upon his entering into a recognizance with or without sureties in such amount, with such conditions, if any, as the appeal court directs, and upon his depositing with that appeal court such sum of money or other valuable security, as the appeal court directs,

and the person having the custody of the appellant shall, where the appellant complies with the order, forthwith release the appellant.

(2) The provisions of subsections 459(5), (6) and (7) apply *mutatis mutandis* in respect of a person who has been released from custody under subsection (1)."

Add immediately after line 28, on page 59, the following clause:

"91.1 Subsection 752.2(1) of the said Act is repealed and the following substituted therefor:

"752.2 (1) Where a justice makes an order under section 752.1, either the appellant or the respondent may, before or at any time during the hearing of the appeal, apply to the appeal court for a review of the order made by the justice."

Clause 94

Strike out line 1, on page 61, and substitute the following therefor:

"the exception of subsections 610(3) and 613(5), apply"

Strike out line 19, on page 61, and substitute the following therefor:

"apply *mutatis mutandis* to the order.

(4) Notwithstanding subsections (1) to (3), where an appeal is taken under section 748 and where, because of the condition of the record of the trial in the summary conviction court or for any other reason, the appeal court, upon application of the defendant, the informant, the Attorney-General or his agent, is of the opinion that the interests of justice would be better served by hearing and determining the appeal by holding a trial *de novo*, the appeal court may order that the appeal shall be heard by way of trial *de novo* in accordance with such rules as may be made under subsection 438(1.1) and for this purpose the provisions of sections 729 to 744 apply *mutatis mutandis*.

(5) The appeal court may, for the purpose of hearing and determining an appeal under subsection (4), permit the evidence of any witness taken before the summary conviction court to be read if that evidence has been authenticated in accordance with section 468 and if

(a) the appellant and respondent consent,

(b) the appeal court is satisfied that the attendance of the witness cannot reasonably be obtained, or

(c) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the appeal court.

(6) Where an appeal is taken under subsection (4) against sentence, the appeal court shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against and may, upon such evidence, if any, as it thinks fit to require or receive, by order,

(a) dismiss the appeal, or

(b) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted;

and in making any order under paragraph (b) the appeal court may take into account any time spent in custody by the defendant as a result of the offence.

(7) The following provisions apply in respect of appeals under subsection (4), namely,

(a) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant

(i) for any alleged defect therein in substance or in form, or

(ii) for any variance between the information or process and the evidence adduced at the trial,

unless it is shown

(iii) that the objection was taken at the trial, and

(iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and

(b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect."

Your Committee has ordered a reprint of Bill C-71, as amended, for the use of the House of Commons at the report stage.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (*Issues Nos. 29, 32 to 35 inclusive*) is tabled.

(*The Minutes of Proceedings and Evidence accompanying the Report recorded as Appendix No. 138 to the Journals*).