



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

PROBATION ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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PROBATION ACT

Table of Contents

| Section | Page |
|---|------|
| 1. Definitions..... | 5 |
| 2. Administration | 5 |
| 3. Probation officers, appointment | 5 |
| 4. Duties of probation officer | 5 |
| 5. Regulations | 6 |
| 6. Conviction of an accused under provincial Act, powers of judge | 6 |
| 7. Pre-probation order report for judge | 6 |
| 8. Conditions deemed prescribed in a probation order | 6 |
| 9. Form of probation order | 7 |
| 10. Duties of judge | 7 |
| 11. Effective date of | 7 |
| 12. Offences, penalties | 9 |





PROBATION ACT

CHAPTER P-22

1. Definitions

In this Act

- (a) “**judge**” means a provincial court judge, or a judge of the Supreme Court;
- (b) “**probation officer**” means a probation officer appointed pursuant to this Act;
- (c) “**prosecutor**” means the Minister of Justice and Public Safety and Attorney General, or where the Minister of Justice and Public Safety and Attorney General does not intervene, means the person who institutes proceedings to which this Act applies and includes counsel acting on behalf of either of them. *R.S.P.E.I. 1974, Cap. P-20, s.1; 1975, c.27, s.5; 1975, c.78, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

2. Administration

A Minister of the Crown designated by the Lieutenant Governor in Council shall have the administration of this Act. *R.S.P.E.I. 1974, Cap. P-20, s.2.*

3. Probation officers, appointment

- (1) The Minister may appoint such probation officers as the Minister considers necessary for the purposes of this Act.

Officer of the court

- (2) A probation officer shall be deemed to be an officer of every court in the province and shall carry out the directions of the judges. *R.S.P.E.I. 1974, Cap. P-20, s.3; 2004, c.12, s.1.*

4. Duties of probation officer

- (1) It is the duty of a probation officer and he has power, upon direction of a judge,
 - (a) to procure and report such information as to the antecedents, family history, previous convictions, character of employment and other information as the judge requires respecting any person convicted of an offence under an Act of the province;
 - (b) to supervise under the direction of the judge before whom such person was convicted, the employment, conduct and general condition under which the person so convicted may be placed during the period of probation imposed by the judge;
 - (c) to see that any person so convicted reports from time to time as the judge prescribes, and to report to the judge if the person so convicted is or is not carrying out the terms on which sentence is suspended, and to see that such person, in case of default, is brought again before a judge for sentence;
 - (d) to see that any person so released on suspended sentence duly makes restitution and reparation;

- (e) to see that any person so convicted while on probation duly carries out any order of the judge requiring the person to make due provision for the support of his or her spouse and any other dependants for whom the person may be liable;
- (f) to do such other things as are directed by the judge or by the regulations made under this Act.

Peace officer

- (2) In the performance and exercise of the powers imposed by or under subsection (1) a probation officer is a peace officer. *R.S.P.E.I. 1974, Cap. P-20, s.4; 2008, c.8, s.20(2).*

5. Regulations

The Lieutenant Governor in Council may make regulations which may be general or special in their application

- (a) respecting the qualifications, duties, powers and appointment of probation officers;
- (b) prescribing the reports and returns to be made by probation officers;
- (c) fixing the salary or other remuneration to be paid to probation officers;
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. *R.S.P.E.I. 1974, Cap. P-20, s.5.*

6. Conviction of an accused under provincial Act, powers of judge

When an accused is convicted of an offence pursuant to any statute of the province, the judge adjudicating on the offence may, having regard to the age and character of the accused, the nature of the offence and the circumstances surrounding the commission of the offence,

- (a) suspend the passing of sentence and direct that the accused be released upon the conditions prescribed in a probation order; or
- (b) in addition to fining the accused or sentencing him to imprisonment, for a term not exceeding two years, direct that the accused comply with the conditions prescribed in a probation order. *R.S.P.E.I. 1974, Cap. P-20, s.6; 1994, c.58, s.6.*

7. Pre-probation order report for judge

- (1) The judge who convicts an accused may direct a probation officer to prepare and file with the judge a report in writing relating to the accused for the purpose of assisting the judge in imposing sentence pursuant to section 6, and where a judge so directs a probation officer, the probation officer shall comply with the directions of the judge.

Copy of report provided to accused

- (2) Where a report is filed with the judge pursuant to subsection (1) the probation officer shall forthwith cause a copy of the report to be provided to the accused or his counsel and to the prosecutor. *R.S.P.E.I. 1974, Cap. P-20, s.7.*

8. Conditions deemed prescribed in a probation order

The following conditions shall be deemed to be prescribed in a probation order, namely, that the accused shall keep the peace and be of good behaviour and shall appear before the judge when required to do so by the judge, and, in addition, the judge may prescribe as conditions in a probation order that the accused shall do any one or more of the following things specified in the order, namely:

- (a) report to and be under the supervision of a probation officer or other person designated by the judge;
- (b) provide for the support of his or her spouse or any other dependents whom the accused is liable to support;
- (c) abstain from the consumption of alcohol either absolutely or on such terms as the judge may specify;
- (d) make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof;
- (e) remain within the jurisdiction of the judge and notify the judge or the probation officer or other person designated under clause (a) of any change in his address or his employment or occupation;
- (f) make reasonable efforts to find and maintain suitable employment; and
- (g) comply with such other reasonable conditions as the judge considers desirable for securing the good conduct of the accused and for preventing a repetition by him of the same offence or the commission of other offences. *R.S.P.E.I. 1974, Cap. P-20, s.8; 2008, c.8, s.20(3).*

9. Form of probation order

A probation order shall be in a form prescribed by regulation and the judge who makes the probation order shall specify therein the period for which it is to remain in force. *R.S.P.E.I. 1974, Cap. P-20, s.9.*

10. Duties of judge

Where a judge makes a probation order, he shall

- (a) cause the order to be read by or to the accused;
- (b) cause a copy of the order to be given to the accused; and
- (c) inform the accused of the provisions of subsection 11(4) and section 12 of this Act. *R.S.P.E.I. 1974, Cap. P-20, s.10.*

11. Effective date of

- (1) A probation order comes into force
 - (a) on the date on which the order is made; or
 - (b) where the accused is sentenced to imprisonment pursuant to clause 6(b), upon the expiration of that sentence.

Exceptions

- (2) Subject to subsection (4),
 - (a) where an accused who is bound by a probation order is convicted of an offence, including an offence under section 12 or is imprisoned under clause 6(b), the order continues in force except in so far as the sentence renders it impossible for the accused for the time being to comply with the order;
 - (b) where an accused is convicted of an offence, and the Act under which the conviction is made provides for a loss upon conviction of a privilege or right granted or subject to suspension or cancellation by the Act, or demerit points, the loss of privilege, right

or demerit points shall not be suspended or terminated by a judge pursuant to this Act; and

- (c) no probation order shall continue in force for more than two years from the date on which the order came into force.

Appearance by accused after order

- (3) Where a judge has made a probation order, the judge may at any time, upon application by the accused or the prosecutor, require the accused to appear before him and, after hearing the accused and the prosecutor,

- (a) make any changes in or additions to the conditions prescribed in the order that in the opinion of the judge are rendered desirable by a change in the circumstances since the conditions were prescribed;
- (b) relieve the accused, either absolutely or upon such terms or for such period as the judge considers desirable, of compliance with any condition described in any of clauses 8 (a) to (g) that is prescribed in the order; or
- (c) decrease the period for which the probation order is to remain in force,

and the judge shall thereupon endorse the probation order accordingly and, if he changes or adds to the conditions prescribed in the order, inform the accused of his action and give him a copy of the order so endorsed.

Probationer convicted of offence

- (4) Where an accused who is bound by a probation order is convicted of an offence, including an offence under section 12, and

- (a) the time within which an appeal may be taken against that conviction has expired and he has not taken an appeal;
- (b) he has taken an appeal against that conviction and the appeal has been dismissed; or
- (c) he has given written notice to the judge who convicted him that he elects not to appeal his conviction or has abandoned his appeal, as the case may be

in addition to any punishment that may be imposed for that offence the judge who made the probation order may, upon application by the prosecutor, require the accused to appear before him and, after hearing the prosecutor and the accused,

- (d) where the probation order was made under clause 6(a), revoke the order and impose any sentence that could have been imposed if the passing of sentence had not been suspended; or
- (e) make such changes in or additions to the conditions prescribed in the order as the judge considers desirable or extend the period for which the order is to remain in force for such period, not exceeding one year, as the judge deems desirable,

and the judge shall thereupon endorse the probation order accordingly and, if he changes or adds to the conditions prescribed in the order or extends the period for which the order is to remain in force, inform the accused of his action and give him a copy of the order so endorsed.

Appearance of accused, compellable

- (5) The provisions of Part XVI of the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46 with respect to compelling the appearance of an accused before a judge apply with the necessary changes to proceedings under subsections (3) and (4). *R.S.P.E.I. 1974, Cap. P-20, s.1; 1994, c.58, s.6.*

12. Offences, penalties

- (1) An accused who is bound by a probation order and who wilfully fails or refuses to comply with that order is guilty of an offence and is punishable on summary conviction to a fine not exceeding \$200.

Jurisdiction of judge

- (2) An accused who is charged with an offence under subsection (1) may be tried and punished by any judge having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody. *R.S.P.E.I. 1974, Cap. P-20, s.12; 1994, c.58, s.6..*