

COURT OF APPEAL

CHECKLIST IN CRIMINAL AND PENAL MATTERS

Updated: April 1, 2011

Note: This guide has been created for those who are involved in the appellate process for the first time. It does not bind the Court nor its judges and does not dispense those who use it from reading the relevant sections of the Criminal Code (*Cr.C.*) or the Code of Penal Procedure (*C.P.P.*) as well as the Rules of the Court of Appeal of Quebec in Criminal Matters (*R.C.A.*). However, it is always highly recommended that a lawyer be consulted.

1. How to file an appeal?

Dissatisfied with a decision of the Court of Quebec or of the Superior Court and you wish to file an appeal. It is highly recommended at this stage that a lawyer be consulted in order to at least verify if a right to appeal is provided in law and, if so, if leave to appeal is necessary or not. In the latter case, a motion for leave to appeal will be required while in the former case, for an appeal as of right, only a notice of appeal must be filed. A reading of the pertinent articles related to the appeal contained in the Criminal Code (articles 673 ff as well as the articles 839 ff *Cr.C.* and articles 291 ff *C.P.P.*) is imperative. One must act diligently, as an appeal must be brought within 30 days of the date of the knowledge of the judgement, except as otherwise provided by a specific statute.

A) AN APPEAL AS OF RIGHT: HOW TO PROCEED WITH A NOTICE OF APPEAL

- The notice of appeal must be filed within 30 days after the judgement (article 678 *Cr.C.* and article 21 *R.C.A.*). However, specific statutes may prescribe a different delay.
- 1 original and 4 copies of the notice of appeal must be filed at the Office of the Court, either in Montreal or Quebec City (article 23 *R.C.A.*).

- The Clerk of the Court of Appeal (Clerk) sends copies to the respective recipients (article 25 *R.C.A.*).
- There are no fees in criminal matters, but in penal matters a fee of \$192 must be paid upon filing of the notice of appeal.
- In the case of an appeal by the Attorney General, the notice of appeal is served upon the respondent personally before or after it is filed but at the latest within 30 days thereof, unless a judge orders otherwise (article 25 *R.C.A.*).
- Material presentation and contents:
 - size of paper: 8 1/2 x 11 (21.5 cm x 28 cm) (article 9 *R.C.A.*);
 - names of the parties (article 10 *R.C.A.*);
 - contents (article 22 *R.C.A.*):
 - the offence;
 - the sentence imposed, if applicable;
 - the date of the verdict, of the judgment and of the sentence;
 - the court of first instance and the file number;
 - the grounds for appeal and the conclusions sought, stated clearly and concisely;
 - the civic address of the appellant and the appellant's lawyer, including the postal code and the email address, if available; and
 - the name, the civic address of the respondent and, if applicable, the names of the other parties and their lawyers in first instance, including the postal code and the email address, if available.

B) AN APPEAL WITH LEAVE: HOW TO PROCEED WITH A MOTION FOR LEAVE TO APPEAL

- The motion must be filed within 30 days after the judgment (articles 678 and 839 *Cr.C.* as well as article 296 *C.P.P.* and article 21 *R.C.A.*). However, specific statutes may prescribe a different delay.
- 1 original and 4 copies of the motion for leave to appeal must be filed at the appropriate registry of the Court of Appeal (article 23 *R.C.A.*).
- The Clerk forwards copies to the respective recipients (article 25 *R.C.A.*).
- There are no fees in criminal matters, but in penal matters a fee of \$192 is payable upon filing of the motion for leave to appeal.
- In the case of an appeal by the Attorney General, the motion for leave to appeal is served on the respondent personally, before or after it is filed, but at the latest within 30 days thereof, unless a judge orders otherwise (article 24 *R.C.A.*).
- The motion is presentable before a judge of the Court of Appeal, from Monday to Friday at 9:30 a.m. in Room RC-18 at Montreal and in Room 4.32 at Quebec, with a prior notice of at least 2 clear juridical days (article 46 *R.C.A.*).
- Material presentation and contents:
 - size of paper: 8 ½ x 11 (21.5 cm x 28 cm). However, documents accompanying the motion may be submitted on legal size paper (article 9 *R.C.A.*);
 - names of the parties (article 10 *R.C.A.*);
 - title of the proceeding (article 11 *R.C.A.*); and
 - contents (article 22 *R.C.A.*):
 - the offence;
 - the sentence imposed, if applicable;

- the date of the verdict, of the judgment and of the sentence;
- the court of first instance and the file number;
- the grounds of appeal and the conclusions sought, advanced clearly and concisely by the petitioner;
- the civic address of the petitioner and the petitioner's lawyer, including the postal code and the email address, if available;
- the name and civic address of the respondent and, if applicable, of the other parties and of their lawyers in first instance, including the postal code and the email address, if available;
- an affidavit (sworn statement) is required if facts that do not appear in the file are alleged (article 35 *R.C.A.*);
- the notice of presentation for the date chosen;
- must be accompanied by the transcript of the reasons for the judgment in first instance and by all of the materials upon which the appellant relies (article 34 *R.C.A.*); and
- the motion for leave to appeal that has been accepted replaces the notice of appeal (article 27 *R.C.A.*).
- In penal matter, service of the application for leave to appeal from a judgment stays execution of the judgment, except a judgment under which the defendant is imprisoned (article 297 *C.P.P.*).

2. Next Steps

The Clerk will assign a file number in appeal upon reception of a notice of appeal or a motion for leave to appeal (ex.: for Montreal 500-10-000000-000 or 500-08-000000-000 and for Quebec 200-10-000000-000 or 200-08-000000-000) in the case of an appeal from a decision

of the Court of Quebec, Youth Division. This number must be mentioned thereafter in all proceedings or correspondence sent to the Office of the Court.

It is always possible to discontinue your appeal at any time (article 14 *R.C.A.*).

A) APPEARANCE

The respondent and all other parties must file an appearance within 10 days following the receipt by the Office of the Court of the filing of the appeal (article 28 *R.C.A.*).

- 1 original must be filed at the Office of the Court.
- Service is not required, however, the sending of a courtesy copy to the other parties is strongly encouraged.
- Size of paper: 8 ½ x 11 (21.5 cm x 28 cm) (article 9 *R.C.A.*).
- There are no fees.

B) THE FACILITATION CONFERENCE OR THE MANAGEMENT CONFERENCE IN CRIMINAL MATTERS

Parties represented by a lawyer may request the holding of a **facilitation conference** in criminal matters (art. 61 ff *R.C.A.*). This conference must be authorized and presided over by a judge who meets with the parties' lawyers in order to attempt to find a partial or final solution to the appeal. An example of the request form is available at Schedule 2 *R.C.A.*, at the Office of the Court counter as well as on the internet site www.tribunaux.qc.ca under the title "About the Court", "Facilitation Conference in criminal matters" tab.

The parties may request a **management conference** in criminal matters (article 64 *R.C.A.*) presided over by a judge who allows the parties to specify the issues truly in litigation and to identify proper ways and means in order to simplify the procedure and shorten the

hearing. The request is submitted by letter to the attention of the Clerk.

C) TRANSCRIPT OF THE FILE IN FIRST INSTANCE

The clerk of the court of first instance communicates with the parties in order to establish the transcript requirements, keeping in mind the grounds for the appeal (article 30 *R.C.A.*). The clerk of the court of first instance calculates the bill of costs and may require its payment in advance (article 33 *R.C.A.*). The appellant does not have the right to obtain the transcript until the costs have been paid (article 33 *R.C.A.*). The clerk of the court of first instance shall notify the Clerk that the transcript is available (article 32 *R.C.A.*).

D) THE PREPARATION OF THE FACTUMS OR DOCUMENTS IN LIEU THEREOF

As a general rule a factum must be submitted to the Court unless a judge decides otherwise. It is possible to request a management conference in criminal matters for a file, such as described above. In certain matters, for example, the appeal of a penalty, an extraordinary recourse, a decision of the Social Affairs Section of the Quebec Administrative Tribunal acting as the Examination Commission pursuant to the Criminal Code, the rule is to the effect that a simple written submission will be sufficient unless a judge decides otherwise.

i. Standard track: factums (written arguments and schedules)

- 7 copies (1 original and 6 copies) must be filed at the Office of the Court and 2 copies must be served on the adverse party (ies) (articles 66 and 67 *R.C.A.*).
- Material presentation and contents:
 - size of paper: 8 ½ x 11 (21.5 cm x 28cm) (article 9 *R.C.A.*);
 - each volume must contain no more than 225 sheets of paper (article 75 *R.C.A.*);
 - the written argument is divided into 5 parts (article 69 *R.C.A.*):
 1. Facts
 2. Issues in dispute

3. Argument
4. Conclusions
5. Authorities

- except where a judge, pursuant to a motion, has permitted otherwise, the argument must not exceed 30 pages (article 71 *R.C.A.* and *Notice of Chief Justice of Quebec Michel Robert to the clerk, litigants and their counsel dated of January 24, 2007*);
- the pages of the argument and Schedule 1 must be printed on the left side only (article 74 *R.C.A.*);
- the text must have at least one and one-half spaces between the lines, with the exception of quotations, which must be single-spaced and indented (article 71 (f) *R.C.A.*);
- the characters must be in 12 point font size (article 71 (f) *R.C.A.*);
- each paragraph of the argument must be numbered (article 71 (g) *R.C.A.*);
- the front cover of each volume must set out the following: the Court of Appeal file number; the court that rendered the judgment appealed from; the judicial district; the name of the judge; the date of the judgment as well as the court of first instance file number; the names of the parties and their status in the appeal as well as in first instance; the name of the party filling the factum as well as the name of the party's lawyer (article 71 (b) *R.C.A.*);
- the first volume of the factum shall contain a **general table of contents** at the front, and each subsequent volume shall contain a **table of its contents** (article 71 (c) *R.C.A.*);
- the page numbers must be indicated at the upper left-hand corner of each page of the factum and at

the top of each page of the schedules (article 71 (d) *R.C.A.*);

- if there is more than 1 volume, the volume number and the sequence of pages contained therein must be indicated on the cover page and bottom edge of each volume (article 71 (h) *R.C.A.*).

The appellant's factum

- Must be filed within 60 days of the notice provided for in article 32 *R.C.A* (article 66 *R.C.A.*).
- It is possible to obtain an extension of this delay.
- If the delay is not respected, the respondent may request, by motion to the Court, that the appeal be dismissed (article 66 *R.C.A.*). In penal matter, this Motion is presented before one judge.
- The cover must be yellow (article 71 (a) *R.C.A.*).
- In addition to the 5 parts of the argument, as mentioned above, the appellant's factum must also include 3 schedules (article 70 *R.C.A.*).
 - The first schedule includes the judgment appealed from and, if applicable, the reasons for judgment. In matters of extraordinary remedies or an appeal from a judgment of the Superior Court sitting in appeal, it should also include the decision subject to the extraordinary remedy or the judgment appealed to the Superior Court (article 70.1 *R.C.A.*).
 - The second schedule includes the notice of appeal and, if applicable, the judgment granting leave to appeal with the motion requesting it, as well as the indictment and the regulatory or statutory provisions referred to in article 70.2 *R.C.A.*
 - The third schedule includes the exhibits and depositions, or extracts therefrom, that are necessary for the consideration of all of the issues in dispute. If the parties

agree on a joint statement of the facts, this statement shall be inserted in Schedule 3 (article 70.3 *R.C.A.*).

- At the end of the schedules, an attestation is made that the factum is in conformity with the Rules of the Court of Appeal (article 76 *R.C.A.*).
- The party or the party's lawyer must indicate the length of time requested for oral argument (article 76 (2) *R.C.A.*).

The respondent's factum

- Must be filed within 60 days after the filing of the appellant's factum (article 67 *R.C.A.*).
- It is possible to obtain an extension of this delay.
- In criminal matter, If the delay is not respected, the appellant may request that the case be placed on the roll (article 67 *R.C.A.*). In penal matter, upon an application, a judge may bar a respondent from pleading where he does not file a factum within the prescribed time.
- The cover must be green (article 71 (a) *R.C.A.*).
- It includes schedules that contain elements that were not included by the appellant and that are necessary for the consideration of the issues in dispute (article 70.3 (3) *R.C.A.*).

The other parties' factum

- The cover must be grey (article 71 (a) *R.C.A.*).
- No delay for filing is provided. However, in fact, the Court equates other parties with the respondent and allows them a delay of 60 days from the date of the filing of the appellant's factum.

ii. Fast track

A judge may, through case management, allow an appeal to proceed without factums and authorize a fixed number of pages for argument to be submitted, within a reduced time frame (articles 1 and 64 *R.C.A.*).

iii. An example of fast track: summary referral in the case of an appeal of a sentence

This procedure allows for the acceleration of the process and the hearing of an appeal without the formality of factums.

The judge to whom a motion to appeal a sentence is presented may refer this request to the Court without adjudicating it (article 55 *R.C.A.*).

Once the motion for leave to appeal the sentence has been referred or granted, a judge must establish a timetable and fix the date for hearing of the motion or of the appeal as such, as the case may be (article 56 *R.C.A.*).

The appellant:

- must file 4 copies of the documents that stand in lieu of the factum at the Office of the Court (article 57 *R.C.A.*), that is to say:
 - a) the motion for leave to appeal;
 - b) the indictment;
 - c) the sentence, including the reasons and conclusion;
 - d) the depositions from the sentencing hearing, if any;
 - e) any other relevant remarks of the trial judge and the lawyers in the course of the submissions as to the sentence; and
 - f) the questionnaire on the form in Schedule 1, duly completed.
- may include an argument of no longer than 10 pages in length with the document (article 59 (1) *R.C.A.*) or must do so if the judge so orders (article 59 (2) *R.C.A.*); and
- must serve 1 copy on the respondent and on each of the other parties, if any (article 56 (2) *R.C.A.*).

Failure to respect the delay for filing or to have obtained an extension will result in the refusal to file any documents (article 56 (3) *R.C.A.*).

The respondent

- may serve 1 copy and file 4 copies of the questionnaire duly completed (article 58 *R.C.A.*);
- may serve 1 copy and file 4 copies of the documents that it considers necessary and that the appellant has not produced; and
- may include an argument no longer than 10 pages in length with the documents (article 59 (1) *R.C.A.*) or must do so if a judge so orders (article 59 (2) *R.C.A.*).

E) PREPARATION OF THE BOOK OF AUTHORITIES

It is preferable that a party file, in addition to its factum, a book of authorities. It would be especially helpful to do so if a party wants to bring to the attention of the Court any recent decisions or doctrine not already included in the list of authorities of its factum.

The book of authorities:

- must be filed at least 30 days before the date of the hearing (article 90 (1) *R.C.A.*);
- must be filed at the Office of the Court in quadruplicate (article 90 (1) *R.C.A.*);
- the relevant excerpts must be highlighted to facilitate tracking; and
- must be served on each of the other parties (article 90 *R.C.A.*).

F) READINESS

Before January 1, 1997

- 1 original of the certificate of readiness (Schedule 3 *R.C.A.*) must be filed at the Office the Court within 15 days of the filing of the respondent's factum (article 80 *R.C.A.*). This certificate contains the names of the lawyers in charge of the file and is signed by them or by the party, if such party is not represented by counsel.
- If a party does not sign the certificate, the other party may present a motion before the Clerk to have the case placed on the roll (article 81 *R.C.A.*).
 - The motion must be served on the other party.
 - It must be accompanied by the completed and signed certificate by the party presenting the motion.
 - It must be filed at least 2 clear juridical days before the date of presentation (article 50 *R.C.A.*).
- Presentation of the motion is held at 9 a.m. at the Office of the Court, in room RC-02 at Montreal and in room 4.27 at Quebec.

Since January 1, 2007

- It is the Clerk who declares that a file is ready (article 83 *R.C.A.*) and who notifies the parties by means of a notice in the form set out in Schedule 4 *R.C.A.*

In penal matter, if, within one year from the date on which it was brought, the appeal is not ready to be entered on the roll, the clerk shall notify the parties, at least 60 days in advance, that the appeal has been entered on a special roll, and indicate the date of the hearing of the appeal (article 310 *C.P.P.*). If, on the date specified by the clerk, the appeal is not ready for hearing, a judge of the Court of Appeal may, after giving the parties an opportunity to be heard, declare the appeal abandoned, unless a valid reason (article 310 *C.P.P.*).

G) THE HEARING

The Court sits from September to June in order to hear appeals. The Master of the Rolls prepares the rolls 3 months in advance. The rolls, available on the Court's website, are updated weekly in order to take

into consideration discontinuances, settlements, modifications, etc. A copy of the roll is sent obligatorily by mail to the lawyers of the parties or to any party not represented by a lawyer, at least 30 days in advance. Sending of the roll constitutes the notice of hearing.

- Sittings begin at 9:30 a.m. daily (article 91 *R.C.A.*).
- Dress: for the lawyer, the wearing of a gown is obligatory (article 18 *R.C.A.*). For individuals, dress must be appropriate to the Court of Appeal's decorum.
- All persons must insure that their cellular telephones and pagers are turned off (article 19 *R.C.A.*).

The Office of the Court must be informed of any discontinuance or settlement as soon as possible (article 14 *R.C.A.*); and thereafter, 1 original of such documents is filed at the Office of the Court.

3. Various motions presentable before the Court of Appeal

A motion may be presented to the Court, either before a judge or before the Clerk. When the expression "the Court" is used in law, the motion must necessarily be presented before a panel of 3 judges. If the expression "the Court or a judge" is used in law, the motion may be presented before a judge sitting alone. A non-exhaustive list is given to you for certain situations. In the case of shared competency the more efficient option is chosen by the Court. For example, if both the Court and a judge have jurisdiction to hear a motion, the motion will be placed on the judge's list.

A) MOTIONS PRESENTABLE BEFORE THE COURT (A PANEL OF 3 JUDGES)

Examples of motions presentable before a panel of 3 judges:

- motion for leave to appeal for other reasons considered sufficient (article 675 (1) (a) (iii) *Cr.C.*);

- motion for revision of the decision of a judge rejecting a leave to appeal a guilty verdict (article 675 (4) *Cr.C.*)¹;
- motion for revision of the decision rendered by a judge refusing provisional liberation (article 680 *Cr.C.*); this motion is presentable firstly to the Chief Justice or a judge designated by the Chief Justice;
- motion seeking the dismissal of the appeal because the appellant fails to file the factum within the prescribed time limit (article 66 *R.C.A.*); and
- motion seeking authorization to adduce fresh evidence (article 683 (1) *Cr.C.* and article 54 *R.C.A.*).

Procedure to follow:

- 4 copies of the motion at the Office of the Court must be filed at least 5 clear juridical days before the date set for its presentation (article 42 *R.C.A.*);
- the motion must have been served on the other parties (article 42 *R.C.A.*);
- the presentation date of the motion must have been determined beforehand with the Office of the Court (article 41 *R.C.A.*); from September to June, the Court hears motions on Mondays at 9:30; at Montreal, the motions are presented in Room Pierre-Basile-Mignault and at Quebec in Room 4.33; in July and in August, the Court sits for 2 weeks on the dates fixed by the Chief Justice;
- information is available at the Office of the Court:
 - Office of the Court at Montreal: (514) 393-2022
 - Office of the Court at Quebec: (418) 649-3401

¹ In penal matter, the refusal of a judge to authorize an application for leave to appeal can not be revised by this Court. The party must appeal to the Supreme Court (article 40 *Supreme Court Act*).

- o dress: for the lawyer, the wearing of a gown is obligatory (article 18 *R.C.A.*); for individuals, dress must be appropriate to the Court of Appeal's decorum; and
- o if applicable, the book of authorities must be filed in quadruplicate.

B) MOTIONS PRESENTABLE BEFORE A JUDGE SITTING ALONE

Examples of motions presentable before a judge sitting alone:

- motion for leave to appeal for reasons pertaining to questions of fact and questions of law and fact (article 675 (1) (a) (ii) Cr.C.);
- motion for leave to appeal a sentence (article 675 (1) (b) Cr.C. and article 676 (1) (d) Cr.C.);
- motion for provisional release (article 679 Cr.C. and article 53 R.C.A.);
- motion seeking suspension of the payment of a fine (article 683 (5) Cr.C.);
- motion seeking the extension of a delay to file an appeal (article 678 (2) Cr.C.);
- motion for special service on a respondent who cannot be found (article 678 (1) Cr.C.);
- motion to obtain the transcript of omitted elements (article 30 R.C.A.);
- motion to obtain permission to produce a factum containing more than 30 pages (article 71 (e) R.C.A.);
- motion seeking revision of the decision of the Clerk refusing a factum (article 77 (5) R.C.A.);
- motion to obtain adjournment of the hearing (article 20 R.C.A.); and

- motion to obtain abridgment or extension of a delay (article 15 R.C.A.).

Specifically to the files in penal matter:

- motion to release from custody the defendant for the duration of the appeal to the Court of appeal (article 298 *C.P.P.*);
- motion to release from custody the defendant for the duration of the appeal to the Supreme Court of Canada (article 314 *C.P.P.*);
- motion seeking the dismissal of the appeal because the appellant fails to file the factum within the prescribed time (article 307 *C.P.P.*); and
- motion to bar a respondent from pleading where he does not file a factum within the prescribed time (article 307 *C.P.P.*).

Procedure to follow:

- file 2 copies of the motion at the Office of the Court, at least 2 clear juridical days before the date fixed for presentation (article 46 *R.C.A.*);
- must have been served beforehand on the other parties (article 46 *R.C.A.*);
- from September to June, a judge sits daily, from Monday to Friday, in Room RC-18 at Montreal and in Room 4.32 at Quebec, at 9:30 a.m.; and in July and in August, only on Wednesdays;
- dress: for the lawyer, the wearing of the gown is not obligatory; for individuals, dress must be appropriate to the Court of Appeal's decorum; and
- if applicable, 1 copy of the book of authorities must be filed.

C) MOTIONS PRESENTABLE TO THE CHIEF JUSTICE

Examples of motions presentable to the Chief Justice:

- motion to obtain directions in relation to an appeal (article 65 *R.C.A.*);
- motion to have a case placed on the roll by preference (article 86 *R.C.A.*); and
- motion to obtain permission of the Chief Justice to petition the Court to revise the decision of a judge (article 680 *Cr.C.*).

Procedure to follow:

- 1 original and 1 copy of the motion must be filed at the Office of the Court at least 2 clear juridical days before the date fixed for its presentation;
- the motion must have been served beforehand on the other parties; and
- the date of presentation must have been determined beforehand with the Office of the Court by calling (514) 393-2022 at Montreal and (418) 649-3401 at Quebec; the motion may be heard at the office of the Chief Justice or in Room RC-18 at the time determined by the Chief Justice.