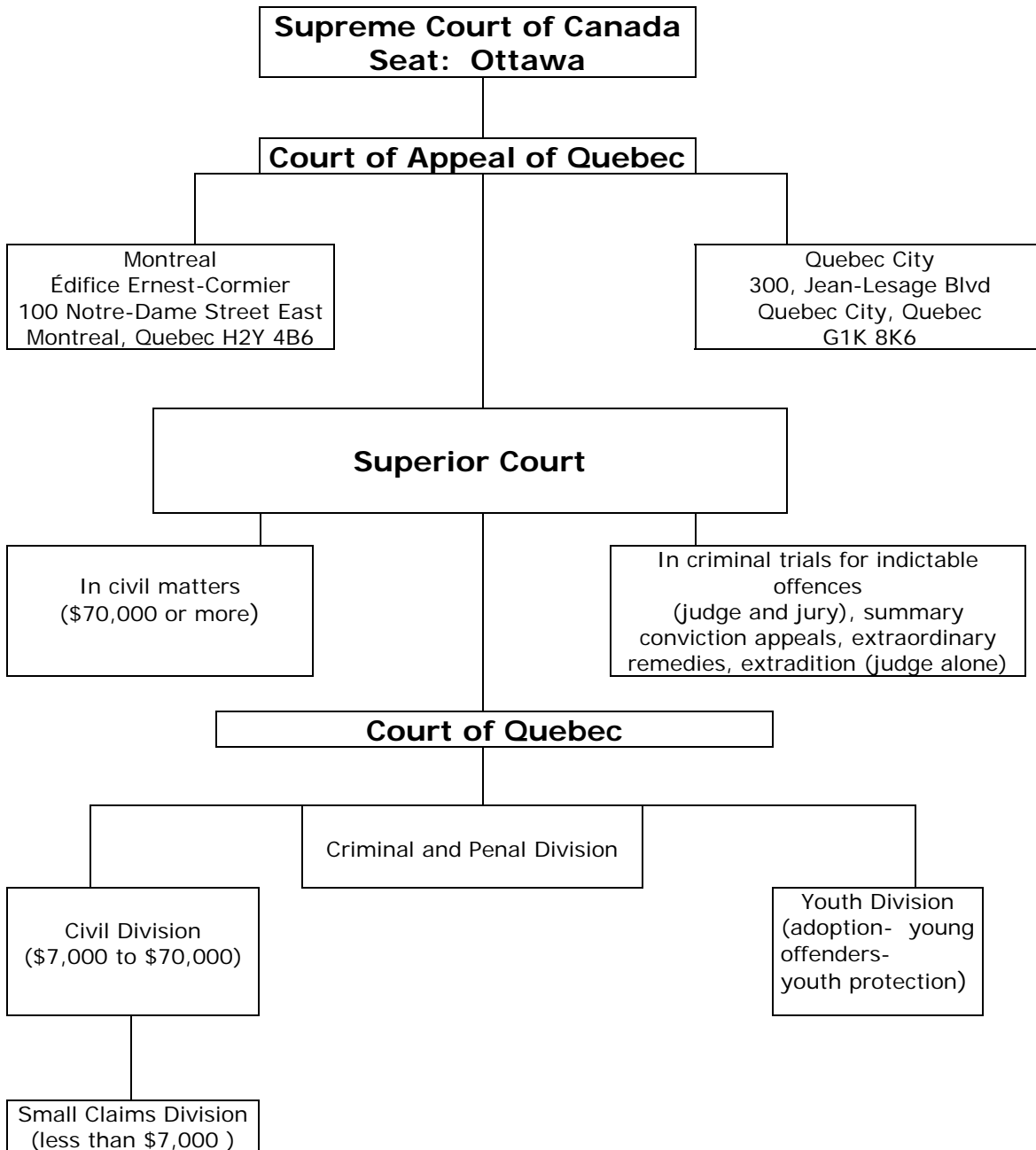


FREQUENTLY ASKED QUESTIONS (in civil matters)
(Last updated : 2010-04-01)

1. What is the Court of Appeal's position in the judicial hierarchy?

Here is a diagram showing the position of the various courts appearing on this web site.



2. Does the Court of Appeal rehear the trial?

No. The Court of Appeal analyses the judgment rendered and the file as it is constituted in first instance. The Court of Appeal can interfere with findings of fact only if the appellant establishes that the trial judge has committed a palpable and overriding error, and that this error was determinative in the trial judge's disposition of the appeal. Similarly, as a general rule, the Court will intervene to correct errors of law. It should be noted that no witnesses are heard in appeal. The hearing is used for oral argument, and as an interactive exchange with the judges hearing the case.

3. Do I need a lawyer or can I represent myself?

You can represent yourself, without a lawyer. A legal person (company) must be represented by a lawyer. In all cases, it is strongly recommended that you speak to a lawyer before instituting legal proceedings. The staff at the Office of the Court will explain and answer questions about how the Court works and about its Rules, but cannot give you legal advice or draft court proceedings for you.

4. What is the deadline to file an appeal?

Usually, you must initiate your appeal within 30 days of the date you learned of the judgment. Specific statutes may, however, prescribe a shorter time period. In all cases, it is strongly recommended that you speak to a lawyer immediately.

5. Is this delay peremptory?

In civil matters, if the judgment appealed from has been rendered within the preceding six months, the Court may, exceptionally, grant special leave to appeal out of time. The motion must specify the reasons why the appeal has not been filed within the required period as well as the proposed grounds of appeal.

6. Is leave to appeal necessary?

In civil matters, some judgments require that leave to appeal be obtained from a judge. This is generally the case with an interlocutory judgment. This is also the case if the value of the object of the dispute is less than \$50,000, or if the Code of Civil Procedure specifies that leave is required, such as, for example, with judgments rendered

in matters concerning execution of a judgment. In all cases, it is recommended that you speak to a lawyer.

7. Is leave to appeal always granted?

No. The motion for leave to appeal will be granted by a judge of the Court of Appeal only when the matter at issue is one which ought to be submitted to the Court, particularly where, in the opinion of the judge, the matter at issue is a question of principle, a new issue or a question of law that has given rise to conflicting judicial precedents. For an appeal from an interlocutory judgment, the judge will also have to be of the opinion that the pursuit of justice requires that leave be granted (articles 29 and 511 of the *Code of Civil Procedure*).

8. What documents should I enclose with the motion for leave to appeal?

A copy of the judgment appealed from and of the documents of the joined issue are required to be attached to the motion. In addition, the motion must be accompanied by all that is required for its consideration, and in particular by proceedings, exhibits, depositions, minutes, judgments or excerpts there from, as the Court has no access to the file of first instance.

9. Is there any appeal from a decision denying leave to appeal?

No, the Court of Appeal cannot reconsider the judge's decision. Nevertheless, the decision denying leave to appeal can be appealed, with leave, to the Supreme Court of Canada.

10. If I file an appeal from a judgment rendered in first instance, will it remain in effect?

No, since the appeal regularly brought suspends the execution of the judgment of first instance, saving the cases where the trial judge ordered provisional execution notwithstanding appeal, and, where the judgment is contemplated by one of the circumstances mentioned in article 547 of the *Code of Civil Procedure*, in which case provisional execution notwithstanding appeal is automatic. Even if provisional execution has not been ordered, however, the winning party may apply to a judge of the Court of Appeal to obtain it if it was sought and refused in the trial court. Similarly, if provisional execution of the judgment appealed from has been ordered, the appellant may ask a judge to suspend it. Such a motion, however, may only be filed if the

inscription in appeal or the motion for leave to appeal has already been filed at the Office of the Court.

11. Where do I have to file an appeal?

The Court of Appeal has offices in Montreal and in Quebec. Judgments rendered in the judicial districts of Beauharnois, Bedford, Drummond, Hull, Iberville, Joliette, Labelle, Laval, Longueuil, Megantic, Montreal, Pontiac, Richelieu, Saint-François and Terrebonne are appealed to the Court of Appeal sitting at Montreal; while those from judgments rendered in the other districts are appealed to the Court sitting at Quebec. In civil matters, the inscription in appeal is filed at the Office of the Court of first instance, while a motion for leave to appeal is filed at the Court of Appeal. A court file is opened as soon as your application for leave to appeal is received.

12. Are there Court costs?

In civil matters, in addition to bailiffs fees and disbursements incurred for the preparation of factums, the following costs are payable for an appeal to the Court of Appeal:

	Natural person	Legal person
Inscription in appeal from a final judgment	\$302	\$365
Inscription in appeal from an interlocutory judgment	\$216	\$264
Appearance	\$148	\$173

In addition, if a motion for leave to appeal is granted, the winning party will receive, simultaneously with a copy of the judgment granting leave to appeal, a letter specifying the amount of the judicial stamp to be paid. This amount will be the same as what is charged for an inscription in appeal, as shown in the table above, depending on whether the judgment is final or interlocutory.

13. Is it possible to participate in mediation?

At any stage of the appeal, the parties may participate in a judicial mediation session. This procedure is free and voluntary, and may be held only upon the written joint request of the parties. For additional information, click here www.tribunaux.qc.ca/c-appel/English/Altres/pprogram/pprogram.html.

14. Is the transcript of the witnesses' testimony required?

It is up to the appellant to include in his factum all the depositions or extracts of depositions taken in first instance. This decision is crucial for the success of the appeal, and it is strongly recommended to consult a lawyer. It is however possible, for parties trying to avoid the high costs of transcripts, to agree on a joint statement on the facts that will be inserted in the Schedules of the appellant's factum.

15. Is a factum always required?

Generally, if the case concerns an interlocutory judgment or a family matter, formal factums will not be required and will be replaced by a written argument, not exceeding a fixed number of pages determined by a judge, to which required exhibits and proceedings are attached. For such matters, the appeal will be heard within four months. For the other civil matters, a judge or the parties themselves may also suggest case management.

16. Can the Clerk refuse a factum?

Yes. The Clerk will refuse a factum that does not comply with the Rules of the Court. Click here to access the Rules of the Court of Appeal www.tribunaux.qc.ca/c-appel/English/Rules/rcivil/rcivil.html. However, an extension, determined by the Clerk, will be granted in order to allow the irregularity to be corrected. The Clerk will also refuse a factum if it is not filed within the time prescribed.

17. In civil matters, what is the time limit for filing a factum?

Usually, the appellant has to file a factum within 120 days of the filing of the inscription (or of the judgment authorizing the appeal) or of the judgment rendered on a motion to dismiss the appeal. The respondent has 90 days to reply, upon the filing of the appellant's factum. As there is no time limit specified for a mis en cause or an intervenor to file a factum, they are treated in the same manner as the respondent, and the Court accordingly allows 90 days upon the filing of the appellant's factum.

18. Can this time limit be extended?

The Clerk may extend the time limits, on motion.

19. What will happen if the factums are not filed within the established time limit?

If the appellant does not file a factum within the established time, the appeal is deemed to be abandoned. If the respondent does not file a factum within the established time, it is foreclosed from filing it. In both cases, the Clerk will immediately issue a certificate of abandonment or foreclosure, as the case may be. The Court may, however, on motion, relieve a party from its default and allow it to file the factum.

20. When the factums are filed, is the file complete?

For all appeals filed prior to January 1, 2003, a certificate of readiness must be completed by the lawyers and filed at the Office of the Court. Once it is filed, the case will be ready to be placed on the roll. If a party does not sign the certificate, the other party may file a motion before the Clerk to place the case on the roll (every day at 9:00 a.m.). For all appeals filed after January 1, 2003, the Clerk declares the case ready to be placed on the roll once all the factums have been filed.

21. When the file is complete, when can I expect to be heard?

In Montreal and Quebec, it takes approximately 11 months to be heard in a civil matter.

22. Is the judgment rendered at the conclusion of the hearing?

The judgment may be rendered immediately, or, if not, the case will be taken under advisement. If so, the average length of time before judgment is rendered is two months.

23. Is the Court of Appeal judgment final?

Yes, unless an application for leave to appeal to the Supreme Court of Canada is filed and leave to appeal is granted. Click here to access the Supreme Court web site: www.scc-csc.gc.ca.

24. Is the Court of Appeal judgment executory?

The decision is executory as soon as it is rendered. A party may however apply for a stay of the judgment, on motion, if the party intends to apply for leave to appeal to the Supreme Court of Canada.

25. Can an application for a stay be made before the Court of Appeal while an application for leave to appeal is being filed to the Supreme Court of Canada?

Yes, this application can be made by motion addressed to a judge of the Court of Appeal.

26. Where can I obtain a certificate attesting that no appeal was lodged against the Court of Appeal judgment?

At the Supreme Court of Canada, by sending a copy of the judgment and a cheque for \$20, payable to the "Receiver General for Canada" [telephone number (613) 996-8666].

27. How much will I receive for my bill of costs?

Click here for the information: www.tribunaux.qc.ca/c-appel/English/Billofcosts/bill/BILL_OF_COSTS.pdf. It should be noted that a party not represented by a lawyer is only entitled to recover taxable disbursements.

28. Can I access the Court of Appeal judgments on line?

Click here for free access to the reasoned judgments of the Court since January 1, 1987 www.jugements.qc.ca. The Court of Appeal judgments are also available by subscription at www.azimut.soquij.qc.ca.

29. Are the Court's hearings open to the public?

Yes, however, all attire must be simple and unadorned. Lawyers and articulated students must respect the Rules of the Court of Appeal concerning their attire www.tribunaux.qc.ca/c-appel/English/Rules/rcivil/rcivil.html#III

30. Are the use of mobile telephones, cameras and videos permitted in the Courtrooms?

No.

31. How can I be updated on the work of the Court of Appeal?

The rolls of the Court are available several weeks in advance. Click here to access the rolls www.tribunaux.qc.ca/c-

appel/English/index.html. It is also possible to subscribe to the Court of Appeal news release mailing list by clicking www.tribunaux.qc.ca/c-appel/English/Current/releases/releases.html.

32. When is the Office of the Court open?

The Office of the Court is open from Monday to Friday between 8:30 a.m. and 4:30 p.m., except for holidays.

33. Are the Court of Appeal judgments available in both official languages?

Judgments are not released in both official languages. A party to an appeal, however, is entitled to obtain a translation without charge, whether the translation is from French to English or English to French. Selected judgments written in French are translated into English and are offered on line at <http://www.jugements.qc.ca>.