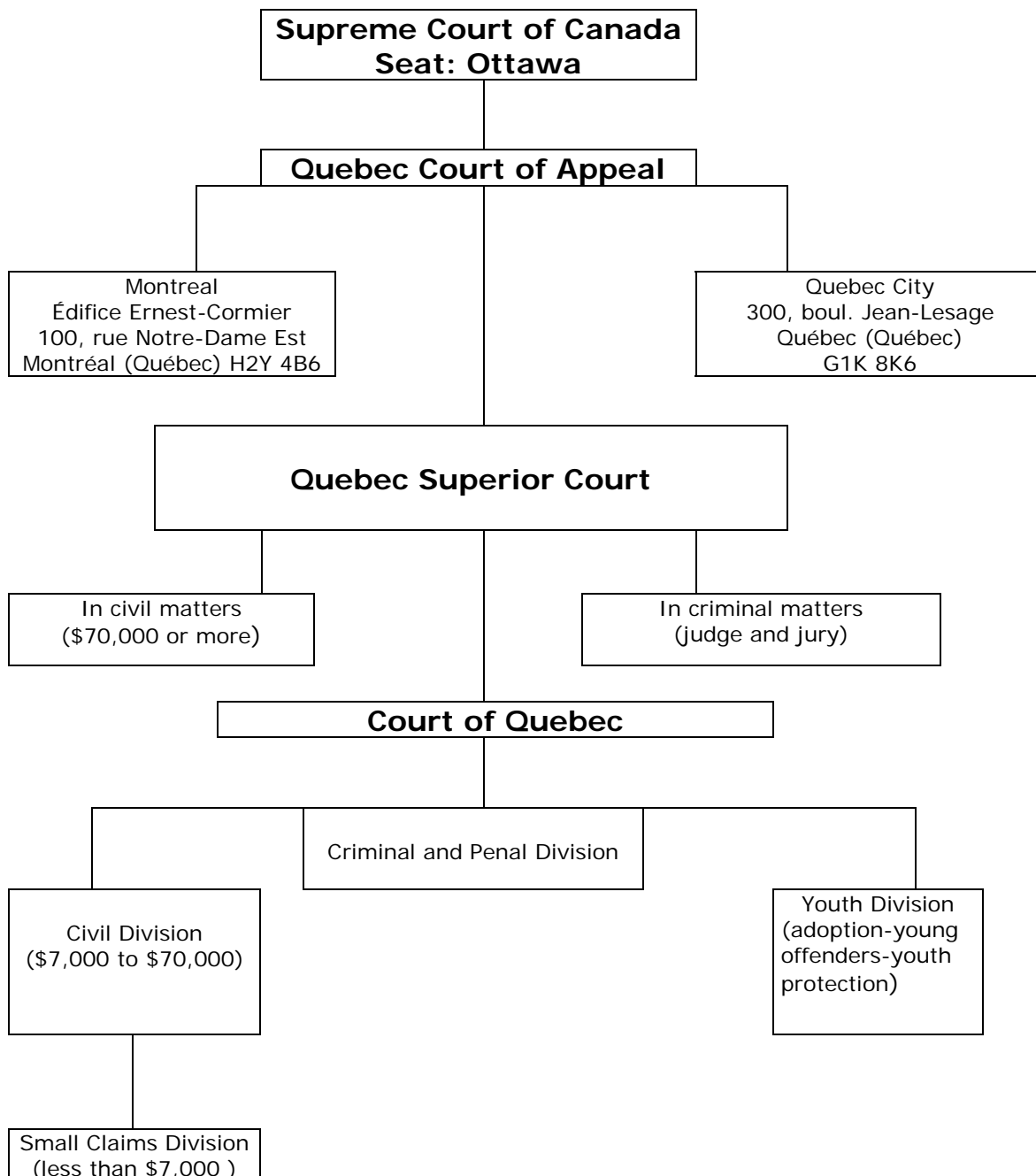


FREQUENTLY ASKED QUESTIONS (in criminal and penal matters)
(Updated: July 1, 2009)

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

The following is a diagram showing the position of the various courts appearing on this website.



2. Which appeals are heard by the Court of Appeal in criminal and penal matters?

An appeal of a sentence or of a penalty relating to a criminal act is heard by the Court of Appeal. On the other hand, it is the Superior Court that hears the appeal of decisions rendered concerning declarations of guilt by summary proceedings or in provincial penal matters. Moreover, in these matters, an appeal to the Court of Appeal is possible with respect to a question of law only, with the prior authorization of a Judge of that Court.

The same rules apply to the appeal of a decision rendered by the Youth Court (Court of Quebec, Youth Division).

The Court of Appeal also has jurisdiction to hear an appeal concerning extraordinary recourses (mandamus, certiorari, habeas corpus, prohibition) as well as an appeal concerning various orders such as those concerning a verdict of non-responsibility by reason of mental problems or the inability to stand trial. Certain laws foresee, as well, a right to appeal to the Court of Appeal (for example, The Extradition Act).

3. What do the following terms mean?

Court: depending on the context, the Court of Appeal or the Court sitting as a panel of three Judges.

Clerk: a functionary of the Ministry of Justice appointed to the Court of Appeal.

Judge: a judge of the Court of Appeal.

Attorney General: the Attorney General of the province where the proceedings are brought or the Attorney General of Canada. The Attorney General of Quebec is represented by an Attorney General's Prosecutor and the Attorney General of Canada is represented by a Prosecutor of Public Prosecutions of Canada.

4. Can the Attorney General appeal to the Court?

In the event of a verdict of acquittal the Attorney General may appeal this decision on a question of law. The Attorney General may appeal an order annulling an indictment and may also appeal an order to halt proceedings. For questions of law, the Attorney General may appeal a

decision concerning the ability of an accused to stand trial. Finally, the Attorney General may, with the permission of a Judge, appeal a penalty imposed by a court of first instance.

5. Is the competence of the Court unlimited?

No. The right to appeal is a right of exception that must rely upon specific wording (see: for example, article 674 of the Criminal Code). Thus, there is no appeal of decisions rendered in a preliminary inquiry or immediate appeal of interlocutory decisions rendered during trial. The latter may only be examined in the framework of an appeal of the verdict.

6. Can I represent myself?

An individual may represent himself or herself alone, without the assistance of a lawyer. Only lawyers are authorized to represent another person. In all cases it is highly recommended that one consult a lawyer before instituting appeal procedures. The staff of the Office of the Court will inform one concerning the Court and its rules but may not, in any case, provide judicial opinions or draft legal proceedings.

7. If I am being detained do I have the right to be present at the appeal hearing?

Generally, if you are represented by a lawyer you do not have the right to be present except by exception or authorization of a Judge. If you are not represented by a lawyer you have the right to be present. However, the Court may order to proceed by conference call if it concerns an application for authorization to appeal or for proceedings ancillary to the appeal. The Court may also order that the appeal proceed by means of closed circuit television or any other method that allows the Judges and the parties to see each other and to communicate simultaneously.

8. What is the delay for appeal?

Generally the delay for appeal is 30 days from the date of judgment. Certain statutes may, however, establish a different delay. In all cases it is strongly recommended that a lawyer be consulted without delay.

9. Is the delay peremptory?

Upon request, a Judge may prolong the delay. The motion must set out the reasons for which the appeal was not filed within the delay as well as setting out the reasons for the appeal that one intends to raise.

10. How to appeal a guilty verdict?

Again, prior consultation with a lawyer is strongly recommended.

The appeal of a guilty verdict requires either a notice of appeal or a motion for permission to appeal presentable before a Judge.

If only questions of law are raised (that is to say, for example, if neither the burden of proof nor the credibility of the witnesses is in question), a notice of appeal in conformity with the rules of the Court must be filed with the Clerk.

On the other hand, if the reasons for the appeal contain questions of fact (i.e. that the understanding of the facts by the Judge is contested) or of questions of fact and of law (i.e. that the understanding of the facts or of the credibility of the witnesses, with respect to the rule of law, is in question), an authorization must be obtained by means of a motion before a Judge. For any other reason, authorization must be obtained from the Court.

11. How is an appeal from a sentence relating to a criminal act made?

An authorization to appeal must be obtained by means of a motion made before a Judge.

12. What does a notice of appeal contain?

A notice of appeal contains the following information:

1. the infraction;
2. the penalty imposed, if any;
3. the date of the verdict, of the judgment and of the sentence, as the case may be;
4. the location of the trial;
5. the court of first instance and the file number;
6. the grounds of appeal and the conclusions sought, stated clearly and concisely;

7. the civic address and, if available, the email address of the appellant and of his or her lawyer; and
8. the name, civic address and, if available, the email address of the Attorney General's Prosecutor or the Prosecutor of Public Prosecutions of Canada and, depending on the case, the same information concerning the other parties and their lawyers in first instance.

13. How to obtain the authorization of a Judge in order to file an appeal relating to a guilty verdict?

By motion accompanied by a sworn statement that contains the information set out in the preceding question. This motion must be served upon the Attorney General's Prosecutor or the Prosecutor of Public Prosecutions of Canada and filed at the Office of the Court together with a notice of presentation setting out the date, the hour and the room where the motion will be heard.

14. Which documents are attached to the motion for permission to appeal?

All documents necessary for the consideration of the motion must be attached thereto, notably, proceedings, exhibits, pertinent depositions, minutes and judgments or excerpts, there from as the file of first instance is not available to the Court.

15. Is a decision by a Judge rejecting a motion for permission to appeal subject to revision?

In the case of permission to appeal a guilty verdict the Court may, upon request made within 7 days, examine the request again. In the case of a sentence, the refusal by the Judge to authorize an appeal is not revisable by the Court. It is, however, possible to request authorization of the Supreme Court of Canada to appeal from a judgment refusing permission to appeal.

16. Does a notice of appeal or a request for authorization to appeal suspend execution of the decision?

No. However, the Criminal Code foresees the possibility of requesting a deferral of the payment of a fine, of the payment of a compensatory surcharge or of certain conditions contained in an order for probation. This request should be presented by means of a motion to a Judge who has the discretion to hear it if he is convinced that the interests of

justice so requires (article 683 (5) of the *Criminal Code*). Similarly, a Judge could suspend an order of interdiction to drive until the definitive decision on appeal is rendered (article 261 of the *Criminal Code*).

A request for suspension could be presented to the Court in view of its general powers as set out in article 683 (3) of the *Criminal Code*.

17. Can I be liberated while awaiting the decision of the Court of Appeal?

A Judge may, upon motion to this effect, liberate an appellant awaiting the decision of the Court. The particularities pertaining to this motion are set out in article 53 of the *Rules of the Court*.

The decision of the Judge may be revised by the Court if the Chief Justice authorizes it.

18. Where is the appeal made?

The Court has offices in Montreal and in Quebec City. Appeals of judgements rendered in the district of Beauharnois, Bedford, Drummond, Hull, Iberville, Joliette, Labelle, Laval, Longueuil, Megantic, Montreal, Pontiac, Richelieu, Saint-François and Terrebonne are brought before the Court sitting in Montreal and appeals from judgments rendered in other districts are brought in Quebec City.

The notice of appeal and the motion for authorization to appeal are filed at the Court. A file is opened at the Court as of the reception of a request to appeal.

19. Are there fees incurred upon my presentation of a request to appeal?

Other than fees incurred in the preparation of the factum there are no clerking fees payable in criminal matters. An appeal in a provincial penal matter is subject to the fees set out in the judicial tariff in penal matters (R.S.Q. chap. C-25.1). This tariff sets out, among others, a fee of \$184, with or without permission.

20. Is it possible to participate in a facilitation conference in criminal matters?

At any stage in the appeal process, parties represented by a lawyer may ask that a facilitation conference in criminal matters be held. Such conference must be authorized by a Judge. For additional information click here www.tribunaux.qc.ca/c-appel/English/Altres/pprogram/pprogram.html.

21. Is the transcript of the hearings in first instance required?

Except for the renunciation of the parties or of their lawyers or their agreement in a joint statement of the facts necessary for the solution of the questions in dispute, the clerk of first instance obtains a complete transcript of the file, at the expense of the appellant. The Rules of the Court set out that certain portions are omitted unless the appeal concerns these matters, or the contrary ruling of the Judge, or, lastly, by the consent of the parties.

22. Is a factum always required?

In the case of an appeal from a sentence or in the case of a file having been subject to case management, formal factums will not be required and will be replaced by a written argument not exceeding a set number of pages as determined by a Judge, to which are attached the required exhibits and proceedings.

23. Can a Clerk refuse a factum?

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 www.tribunaux.qc.ca/c-appel/English/Rules/rcriminal/rcriminal.html#1. Nevertheless, an extension will be granted in order to allow the irregularity to be corrected.

24. What is the delay for filing a factum?

The delay, for the appellant, is 60 days from the notice of the clerk of first instance stating that the appeal file is complete. The delay, for the respondent, is 60 days from the date of deposit of the appellant's factum.

25. Can this delay be extended?

It is possible to obtain an extension of this delay.

26. What will happen if a factum is not filed within these delays?

If the appellant does not file a factum within the delay the Court may reject the appeal upon motion to that effect. If the respondent does not file a factum within the delay, the appellant could ask that the case be placed on the roll.

27. When the factum is filed, is the file complete (in readiness)?

No. For all appeals filed prior to January 1, 2007, a certificate of readiness must be completed and filed by the parties. Once it is filed the case will be ready. If a party does not complete the certificate, the other party may file a motion before the Clerk to place the case on the roll. As of January 1, 2007, for all cases that are not subject to case management, the Clerk will declare the case ready when the factum is filed or when the delay for the respondent to file a factum has expired.

28. Once the file is complete, how long does it take to be heard by the Court?

The average delay is 4 months.

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

The judgment may be rendered at the conclusion of the hearing or it may be taken under deliberation, in which case the average delay before judgment is rendered is from 3 to 5 months. Once judgment is rendered the Clerk notifies the parties and sends them a copy of it.

30. Is the judgment of the Court final?

Yes. However, an appeal to the Supreme Court of Canada may be considered. Click here to access the Supreme Court website : www.scc-csc.gc.ca.

31. Is the judgment of the Court executory?

The judgment is executory as soon as it is rendered unless a delay has been granted, for example, to a convicted person to report to prison.

32. Does the Court hear witnesses?

No. Exceptionally a party, by motion to the Court, may request that new proof be submitted. This motion must show that the proof has been obtained with diligence and that it is pertinent, plausible and susceptible of influencing the verdict, if it is believable.

33. Can the Court hear a request for provisional liberation while a request for authorization to appeal is brought before the Supreme Court?

Yes, this request is made by motion before a Judge. The requirements relative to this motion are set out in Article 53 of the Rules of the Court.

34. Are the judgements of the Court available on the Internet?

Click here to access, at no charge, the reasoned judgements of the Court since January 1, 1987 www.jugements.qc.ca. On the other hand, the judgements of the Court from 1963 to the present are also available by subscription at www.azimut.soquij.qc.ca .

35. Are the Court hearings open to the public?

Yes, however everyone must be dressed properly.

36. Is the use of cameras, videos, etc. permitted in the courtrooms?

No.

37. How can I be updated on the activities at the Court?

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 news release mailing list by clicking here www.tribunaux.qc.ca/c-appel/English/Current/releases/releases.html.

38. 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. The Court usually sits between 9:30 a.m. and 5:00 p.m.

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

All judgments are not released in both languages. Nevertheless, a party to an appeal is entitled to obtain a translation without charge. Some judgments selected by the Court are translated and are available online at www.jugements.qc.ca.