

Notice of amendment to the Rules of practice of the Court of Appeal of Québec in civil matters

At a meeting convened for that purpose in Pointe-aux-Pic on 18 and 19 October 1995, the majority of the judges of the Court of Appeal, in virtue of article 47 of the Code of Civil Procedure, adopted amendments to the Rules of practice of the Court adopted on 31 August 1982 and published in the *Gazette officielle du Québec* on 15 September 1982. Those rules were amended on 23 October 1987 and 30 July 1993, with publication in the *Gazette officielle du Québec* of 3 February 1988 and 22 December 1993, respectively.

At the said meeting, the judges of the Court of Appeal ordered that these amendments be observed in all civil matters brought before the Court of Appeal, from their coming into force, in accordance with article 48 of the Code of Civil Procedure, that is, 10 days after their publication in the *Gazette officielle du Québec*.

Montréal, 2 April 1996

PIERRE-A. MICHAUD,
Chief Justice of Québec

Rules to amend the Rules of practice of the Court of Appeal in civil matters

Code of Civil Procedure
(R.S.Q., c. C-25, s. 47)

1. The Rules of practice of the Court of Appeal in civil matters, adopted on 31 August 1982 and amended on 23 October 1987 and 30 July 1993, are further amended by substituting the following for the first paragraph of section 7:

“7. Every motion shall be accompanied by what is necessary for an examination thereof, and in particular by proceedings, exhibits, depositions, minutes, judgments or extracts therefrom.

The motion and its schedules shall be accompanied by a copy for each judge to whom they are presented.”.

2. The following is substituted for sections 8, 8a and 8b:

“8. Every motion intended for a single judge shall be served and filed at the office of the court, with its schedules, at least one clear day before the day fixed for its presentation.

Before 1:00 p.m. on the last juridical day preceding the day fixed for its presentation, the petitioner shall notify the clerk in writing or by fax of the parties' consent to postpone the presentation to a later date or of the fact that a party will request such postponement on the selected day.

Every motion intended for the Court shall be served and filed at the office of the court, with its schedules, at least 5 clear juridical days before the day fixed for its presentation.

Before serving and filing a motion intended for the Court, the petitioner shall settle with the clerk the date and time of its presentation. The notice of presentation shall mention the day and time on which the motion will be presented.

Before 4:30 p.m. on the day before last of the 5 juridical days preceding the day fixed for its presentation, the petitioner shall notify the clerk in writing or by fax of the parties' consent to postpone the presentation to a later date or of the fact that a party will request such postponement on the scheduled day.

In the absence of the notice to the clerk required by the second and fifth paragraphs of this Rule and in the absence of any special circumstance, the single judge or the Court shall take cognizance of the motion and rule on it. The same applies where the motion is already postponed to a later date.

A motion based on subparagraph 5 of the first paragraph of article 501 of the Code of Civil Procedure shall be served and filed, with its schedules, without a notice of presentation. The Court shall inform the parties of the motions it considers groundless and that are therefore dismissed without the parties being heard. Where the Court requires an oral presentation of the motion, the clerk shall so inform the petitioner and a date of presentation shall then be determined in accordance with the fourth paragraph of this Rule. The petitioner shall then serve a notice of presentation and, if such is the case, the third, fifth and sixth paragraphs apply *mutatis mutandis*.

8a. The written statement prescribed by section 495.2 of the Code of Civil Procedure shall be in the following form:

I, the undersigned, _____, hereby certify under oath (of office, if by an attorney) that, on _____, I directed _____ to transcribe or translate with diligence the depositions or extracts of depositions

to be filed as a schedule to my factum or I hereby certify under the same oath that no deposition is necessary for the appeal.

Signed at _____, this _____.

(Jurat) _____

This Rule also applies *mutatis mutandis* to an incidental appeal.

8b. The certificate attesting to the abandonment of an appeal shall be in the following form:

I, the undersigned, _____, clerk of the Court of Appeal or his representative, hereby certify that I have this day recorded the default of the appellant to file his factum within the time period prescribed in the Code of Civil Procedure and in the Rules of practice of the Court of Appeal in civil matters, and I therefore issue and file this certificate stating that the appeal is abandoned, with costs, since _____.

Signed at _____, on _____.

The clerk shall forward a true copy of the certificate to the parties or their attorneys.

The clerk may, *ex officio* or upon application by a party, cancel the certificate of abandonment if it was issued through an obvious oversight. He shall then forward a copy of the document attesting to the cancellation to the parties or their attorneys.”

3. The following is substituted for the second paragraph of section 10:

“The second part shall include only those exhibits and depositions, or extracts therefrom, that are necessary for the examination of the arguments and of all the questions raised by the appeal. When filing his factum, the appellant shall inform the other parties that he is placing at their disposal, free of charge, the original or a copy of all the depositions whose recording has been transcribed or whose stenographic notes have been translated at his request.”

4. The following is substituted for section 11:

“**11.** The respondent’s factum shall include in the schedules only the items which he deems necessary for the examination of any question raised by his incidental appeal. When filing his factum, the incidental appellant shall inform the other parties that he is placing at their disposal, free of charge, the original or a copy of all the

depositions whose recording has been transcribed or whose stenographic notes have been translated at his request.

11a. Except for short quotations which can be inserted in the main body of the argumentation, the factums and their schedules shall not include the text of the quoted authorities.

Any party is free to file a book of particularly relevant authorities and, if such is the case, it is preferable that it be filed in triplicate, several days before the oral presentation of the appeal or of any motion, and after notice of the presentation is served on the opposite party.”

5. The following is added at the end of section 12:

“and that he places at the disposal of the other party, free of charge, the original or a copy of all the depositions whose recording has been transcribed or whose stenographic notes have been translated at his request.”

6. The following paragraph is added at the end of section 14:

“Any exhibit that may usefully be included in the factum shall be legible and, if illegible, shall be accompanied by a legible text; photocopies of photographs are acceptable only if they are clear.”

7. The following is substituted for the first paragraph of section 16:

“Any factum not in conformity with the law or with these rules shall be refused by the clerk as soon as possible after its filing. The clerk shall so inform the attorneys or the parties, if they are not represented. A factum that is refused is deemed not to have been filed, unless the irregularity is rectified within the time period fixed by the clerk.”

8. The following paragraph is added at the end of section 19:

“The time period allotted to the respondent who has made an incidental appeal shall be computed from the filing of the appellant’s factum at the office of the court, in accordance with article 504.1 of the Code of Civil Procedure, or, if the appellant fails to file it within the time period allowed, from the expiry of that period.”

9. Section 24 is revoked.

10. The following is substituted for sections 27 and 27a:

“27. The parties shall inform the clerk of any discontinuance, settlement or bankruptcy as soon as it takes place.

27a. When granting a motion for leave to appeal from an interlocutory judgment, a single judge or the Court may allow that the appeal go through accelerated procedure, if the parties agree thereto.

If such is the case, the single judge or the Court shall determine the date and time of presentation of the appeal and shall fix a time limit for filing the documents that ordinarily constitute Schedules I and II to the factum and that stand in lieu of the factum.

Where the schedules in lieu of the appellant’s factum are not served and filed within the time fixed, the appeal is deemed to be abandoned and the provisions of article 503.1 of the Code of Civil Procedure apply *mutatis mutandis*.

Where the schedules in lieu of the respondent’s factum, where applicable, are not served and filed within the time fixed, the respondent is foreclosed from filing them and the provisions of article 505 of the Code of Civil Procedure apply *mutatis mutandis*.

In family matters, a judge may, having examined the inscription in appeal, conclude that the appeal may be presented through accelerated procedure.

In such case, he shall so inform the parties and invite them to give their consent. Where they do so, the clerk shall fix a time limit for filing the documents that ordinarily constitute Schedules I and II to the factum.

Where the schedules in lieu of the appellant’s factum are not served and filed within the time fixed, the appeal shall be struck from the roll of appeals going through accelerated procedure and shall be placed on the regular roll of the Court.

The provisions of the fourth paragraph of this rule apply to any schedules that the respondent may wish to file.”

11. Section 27*b* is revoked.

12. The following is substituted for section 30:

“30. If none of the parties are ready to plead when a case is called out, the Court shall strike the case from the roll, postpone the presentation to a later date or dismiss the appeal.

If only the appellant is ready to plead, the Court shall hear the pleadings or postpone the presentation to a later date.

If only the respondent is ready to plead, the Court shall strike the case from the roll, postpone the presentation to a later date or dismiss the appeal.”

13. The following is inserted after section 31:

“31*a*. If they both agree, the parties may request that an appeal be decided on the basis of the factums, without oral presentation.

Such request shall be made in the certificate of readiness. If such is the case, the appellant shall attach to the certificate of readiness a factum in reply to the respondent’s factum, prepared in the ordinary form, without new schedules and not exceeding 10 pages.

Such request may also be made after the certificate of readiness has been filed. In such case, the parties shall make their request in writing to the clerk and the appellant is then allowed to file a factum in reply to the respondent’s factum, on the conditions set out in the preceding paragraph.

The clerk shall inform the parties of the date on which the appeal is to be taken under advisement and of the identity of the judges who are in charge of the case.

If the judges in charge of the appeal consider that an oral presentation is required, the parties shall be informed that their case is no longer under advisement and the appeal shall be replaced on the general roll.

31*b*. In Québec City, motions made to a single judge or to the Court and appeals whose date and time for the oral presentation have already been determined may be presented through a video.

To that end, the parties shall present a written request to the coordinating judge. In cases of urgency, such request may be made by telephone.

After examining the file, the judge who must preside over the sitting of the Court shall forward his decision to the persons who made the request.

All parties concerned may plead from any video room available in the territory or either party may also plead in the courtroom where the receiving apparatus is located and where the single judge or the Court is sitting.

In the case of a hearing of the Court, the dress requirements set under Rule 31 shall apply.

The cost for renting the video rooms and the cost of the long distance calls shall be borne by the party or the parties that required the presentation through a video.”

14. Section 33 is revoked.

15. The following is inserted after section 36:

“**36a.** The Rules of practice of the Court shall be construed so as to ensure the fair and simple operation of the appeal procedure and to eliminate unjustified expenses and delays. Unless there is a declaration to the contrary, these rules of practice may be relaxed or set aside by the Court where compliance with them might create an injustice. In the absence of rules, the Court may rule in a manner compatible with the objectives set out above.”.

16. Division IX entitled “Transitional provisions”, which comprises sections 37 and 38, is revoked.

17. The Schedule attached hereto is substituted for Schedule A to the Rules.

18. These Rules apply in respect of pending appeals, but they do not render irregular any proceedings made before their coming into force pursuant to the previous rules.

19. These Rules come into force 10 days after their publication in the *Gazette officielle du Québec*.

SCHEDULE A

COURT OF APPEAL

Certificate of readiness

C.A. No.

Roll No.

.....

.....
Appellant Respondent

Object of the dispute:

Amount:

On the merits Interlocutory

Filed:

Reasons for judgment appealed from

Factum of the appellant
Factum of the respondent
Factum of other parties

The undersigned attorneys declare that the case is ready to be pleaded on the day fixed.

Duration of pleadings: Appellant _____

Respondent _____

Others _____ Total _____

We waive an oral presentation of the appeal and declare that the argumentation contained in our respective factums is complete.

At

This

.....
Signature of attorney
of appellant

.....
Signature of attorney of
respondent

Address

Address

..... Tel.

..... Tel.

Name of attorney personally
in charge of the file

Name of attorney personally
in charge of the file

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Signature of attorney of

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Signature of attorney of

Address

Address

..... Tel.

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Name of attorney personally
in charge of the file

Name of attorney personally
in charge of the file

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Note to the clerk: The following are the numbers of the files between the same parties that will be joined in the same hearing.

No. _____

No. _____

9695