

Notices

Notice concerning the rules of practice of the Court of Appeal of Québec in civil matters

At a meeting held for that purpose in North Hatley on 22, 23 and 24 October 1997, a majority of the judges of the Court of Appeal of Québec, under article 47 of the Code of Civil Procedure, adopted amendments to the rules of practice of that Court in civil matters, adopted on 31 August 1982 (1982, *G.O.* 2, 3093) and amended on 23 October 1987 (1987, *G.O.* 2, 944), 30 July 1993 (1993, *G.O.* 2, 6937) and 2 April 1996 (1996, *G.O.* 2, 2095 and 2319). The Rules of practice of the Court of Appeal in civil matters are now those attached to this notice.

At the said meeting, the judges of the Court of Appeal ordered that those rules 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, 27 July 1998

PIERRE A. MICHAUD,
Chief Justice of Québec

Rules of practice of the Court of Appeal in civil matters

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

I. OFFICE OF THE COURT

1. The office of the court shall be located in Québec and in Montréal. It shall be open on juridical days from Monday to Friday, from eight-thirty in the morning until four-thirty in the afternoon.

2. The clerk shall not give up possession of a document in a file without a receipt from the attorney of one of the parties and shall furnish copies thereof at the expense of the party requesting them.

3. The clerk shall keep up to date a register in which, for each case, the following information is entered:

- the names of the parties and of their attorneys;
- the date of receipt of the copy or of the original of the inscription in appeal and, if applicable, the date of the security;
- the date of the appearance of the respondent;
- the date of filing of the factum of each party;
- the date of filing of the certificate of readiness;
- the date when the case is taken under advisement and the date of judgment, as well as the number given to the judgment;
- the date of every other proceeding and, if applicable, the date of the decision thereon;
- relevant information with respect to the requirements of the last paragraph of section 8 and of section 8a and 8b.

II. PROCEEDINGS

- 4.** The size of the paper shall be 21.5 cm x 35,5 cm.
- 5.** In every proceeding, the case heading shall include, in the following order, the names of the appellant, of the respondent and, if applicable, of the other parties. Under the name of each party, there must be indicated her or his position in appeal, in capital letters, and in first instance, in small letters.

The case heading shall remain the same in all proceedings during the appeal.

6. The title of a motion, appearing on the back and on the first page of the proceeding, shall indicate the position in appeal of the party presenting it, followed by precise reference to the texts of law or of regulation upon which it is based.

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.

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, on the selected day, a party will request such postponement.

Every motion intended for the Court shall be served and filed at the office of the court, with its schedules, at least five 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 five 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, on the scheduled day, a party will request such postponement.

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. The same applies where the motion will already have been postponed to a later date.

A motion based on subparagraph 5 of the first paragraph of article 501 of the Code of Civil Procedure, with or without a subsidiary conclusion seeking an order for security, shall be served and filed with its schedules, at least thirty days before the date of presentation settled with the clerk. The Court shall inform the parties as soon as possible of those motions which are found without merit and which are accordingly dismissed without hearing the parties.

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 tran-

scribe 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 clerk's representative, hereby certify that I have this day recorded the default of the appellant to file his or her factum or schedules, as the case may be, 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. The clerk shall then forward a copy of the document attesting to the cancellation to the parties or their attorneys.

8c. In the event of an amendment to a proceeding, the additions or replacements must be underlined or indicated in the margin by a vertical line, and deletions must be indicated by means of dots between brackets.

III. FACTUM

9. The contents of the factum shall be divided into five parts, identified by Roman numerals. Unless a judge on motion permits otherwise, the first four parts together must not exceed fifty pages.

PART I FACTS

In this part, the appellant shall set forth the facts succinctly. The respondent shall indicate her or his position with regard to the appellant's statement of the facts and, if need be, shall state the other facts which she or he deems relevant.

PART II

QUESTIONS IN DISPUTE AND GROUNDS OF APPEAL

In this part, the appellant shall list the questions in dispute and her or his other grounds of appeal; the respondent shall indicate her or his position in regard thereto, following the order adopted by the appellant and shall list, if need be, the other points which she or he intends to argue.

PART III

ARGUMENT

In this part, the parties shall develop each of the factual and legal grounds raised, with precise references to the schedules.

PART IV

CONCLUSIONS

The parties shall formulate precisely the conclusions sought, including, if applicable, a decision on costs which derogates from the general rule.

PART V

AUTHORITIES

The parties shall supply, both for the caselaw and for the doctrine, a list of the authorities referred to, drawn up in the order in which they are referred to in the factum, with mention of the pages of the factum where the references appear.

10. The factum of the appellant shall also include schedules comprising two parts.

The first part shall include:

(a) the inscription in appeal and, if applicable, the permission to appeal with the motion requesting it;

(b) the judgment appealed from and, if applicable, the notes or reasons for judgment in accordance with article 507, second paragraph, of the Code of Civil Procedure;

(c) the proceedings of the joined issue.

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 her or his factum, the appellant shall inform the other parties that she or 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 her or his request.

11. The respondent's factum shall include in the schedules only the items which she or he deems necessary for the examination of any question raised by her or his incidental appeal. When filing her or his factum, the incidental appellant shall inform the other parties that she or 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 her or 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 authorities in which the relevant excerpts shall be highlighted. Such a book shall be served on all other parties and filed in three copies with the office of the Court as soon as possible before the date fixed for the hearing of the appeal or of the motion; if the motion is intended for a single judge, it is sufficient to file one copy of the book of authorities.

12. At the end of the schedules, the attorney shall certify that the factum and the schedules are in conformity with the present rules and that she or 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 her or his request.

13. The form of the factum and of the schedules shall be subject to the following rules:

1° The colour of the covers shall vary with the party: yellow for the appellant, green for the respondent and grey for the other parties.

2° The front cover shall contain the following information:

— the number given to the file by the clerk;

— the court of first instance which rendered the judgment appealed from, the judicial district, the name of the judge, the date of the judgment, as well as the number of the file;

— the names of the appellant, of the respondent and, if applicable, of the other parties, in that order; under the name of each party there must be indicated her or his position in the appeal, in capital letters, and in first instance, in small letters;

— the identification of the factum according to the position of the party who produces it;

— the name of the attorney.

3° Each volume of the factum and of the annexes shall include, at the front, a general table of contents. The pagination shall be in the upper left corner of each page. If there is more than one volume, the number of each one and the series of pages contained in each one shall be printed on the front cover and on the lower edge of the volumes.

4° In the schedules, each exhibit or extract from an exhibit shall begin on a new page, bearing at the top the date; in cases which permit of it, the nature and the number of the exhibit. The exhibits shall be reproduced, so far as possible, in chronological order rather than in the order of production in first instance.

5° In the schedules, the depositions or extracts from depositions shall each begin on a new page showing at the top the name of the witness in capital letters followed, the first time only and in brackets, by his given name, age, occupation and residence. This title shall be completed by abbreviated mention of:

— the name of the party who called the witness;

— the fact that the testimony was not given at trial, if applicable;

— the stage of the hearing (proof, defence, rebuttal);

— the stage of the examination (examination, cross-examination, re-examination);

14. The factum and the schedules shall be bound so that the text is printed only on the pages on the left side. The text shall be presented with the lines at least one and one-half lines apart, except for quotations which shall be indented and single-spaced. The text, when typewritten, shall be in 10 point type, neither smaller than “elite” type nor larger than standard pica and, when computer prepared, in 12 point type.

They shall be presented on white paper of good quality, size 21.5 cm x 28 cm. Each page shall contain approximately fifty lines, numbered in the left margin every ten lines.

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.

15. A party relying upon provisions of law other than those of the Civil Code or of the Code of Civil Procedure, or upon regulations, must reproduce them in his factum or furnish a copy thereof to each of the judges who make up the coram of the Court.

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.

Such decision may be revised by a judge upon motion presented within fifteen days from the notification.

17. When ruling on costs, the Court may order a reduction of judicial expenses and fees or make any other order in cases where the schedules include elements not necessary for the examination of the dispute.

18. The clerk shall tax the memorandum of costs. As a general rule, the cost of the transcription of depositions according to the tariff, the cost of the reproduction of exhibits and the cost of the preparation and printing of factums, schedules and book of authorities shall, to the extent that they are not excessive, form part of the costs.

IV. INCIDENTAL APPEAL

19. If there is an incidental appeal, the factum of the principal respondent shall include two parts, the first being the factum of the appeal and the second the factum in the incidental appeal. The second part shall be in the form prescribed for the factum of the appellant.

The principal appellant may, in reply to the incidental appeal, serve and file a factum in the form prescribed for the factum of the respondent, within thirty days following receipt of the factum of the incidental appellant.

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 allotted, from the expiry of that period.

V. CERTIFICATE OF READINESS

20. The certificate of readiness, in the form shown as schedule A, must be produced at the office of the court within fifteen days following the filing of the factums. It

shall be signed by the attorneys of the parties or by the parties themselves if they are not represented by attorney. It shall indicate the name of the attorney personally in charge of the file.

21. If the appellant does not sign the certificate, the respondent may request the clerk to place the case on the roll. Such request shall be made in writing, accompanied by the certificate signed by her or him, and shall be served on the opposite party.

If the respondent does not sign the certificate or has not filed her or his factum within the prescribed delays, the appellant may in the same manner request the clerk to place the case on the roll.

22. Requests that a case be placed on the roll, filed at least one clear day previously, shall be presented on Tuesday morning from 10 o'clock.

VI. ROLL FOR HEARING

23. The clerk shall prepare the roll for hearing, observing to the extent possible the order of filing of the certificates of readiness, subject to the priorities provided by law or granted by the chief justice or a judge named by her or him.

24. Revoked.

25. The clerk shall, under the supervision of the chief justice or of a judge named by her or him, indicate the time allotted for the argument of each party in each case.

26. At least thirty days before the beginning of the term, the clerk shall forward copies of the roll to the attorneys of the parties, or to the parties themselves if they are not represented by attorney, at the addresses indicated on the certificates. The clerk shall also display a copy thereof at the office of the court.

These two formalities constitute notice of the date fixed for hearing.

The parties and their attorneys shall advise the clerk of any change of address without delay.

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 judge or the Court shall determine the date and time of presentation of the appeal and shall fix a time limit for filing, in three copies, the documents that ordinarily constitute Schedules I and II to the factum and that stand in lieu of the factum. The appellant must also file, within the same delay, an outline of argument of no more than five pages referring to the relevant depositions and authorities; the respondent may do the same, her or his outline being also limited to a maximum of five pages.

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. A judge may decide likewise in the case of an appeal from a judgment taxing a bill of cost, from a judgment dismissing a motion in revocation of judgment at the stage of reception and from a judgment dismissing a motion based on article 75.1 of the Code of Civil Procedure.

In such case, the judge shall so inform the parties and invite them to give their consent for the appeal to be governed by the accelerated procedure. Where they do so, the clerk shall fix a time limit for filing, in three copies, the documents that ordinarily constitute Schedules I and II to the factum. The appellant must also file, within the same delay, an outline of argument of no more than five pages referring to the relevant depositions and authorities; the respondent may do the same, her or his outline being also limited to a maximum of five pages.

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.

27b. Revoked.

VII. HEARING

28. Sittings of the Court shall begin at ten o'clock in the morning or at such other time as the Court may fix.

29. In each term, cases shall be pleaded in the order in which they appear on the roll, unless the Court decides otherwise.

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.

31. On the merits of the appeal, two attorneys may be heard for each party but only one may reply for the appellant. On a motion, only one attorney may be heard for each party, unless the Court otherwise permits.

31a. If they 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 ten 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 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.

31b. In Quebec City, motions made to 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 her or 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 32 shall apply.

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

32. At hearings before the Court, the following dress is obligatory;

(a) For attorneys, black gown, bands, white collar, and dark suit;

(b) For articulated students, black gown and dark suit;

(c) For clerks and for criers, black gown and dark suit.

33. Revoked.

34. Motions submitted to a judge sitting alone shall be presented at ten o'clock in the morning. Between the first of July and Labour Day, they shall be presented on one of the days fixed by the chief justice.

35. The beginning and the ending of sittings of the Court and of those of a judge sitting alone shall be announced by the crier, who shall remain present during the entire hearing, unless the Court or a judge permits otherwise.

VIII. MISCELLANEOUS

36. In the case of an appeal from a decision of a court other than the Superior Court or of a public body, the duties which, on ordinary appeals, are imposed on the clerk of the Superior Court under the law and the rules of practice must be performed, as the case may be, by the clerk of the court, or the secretary of the public body.

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.

36b. (1) Where satisfied that a party is conducting a proceeding in a vexatious manner, the Court may order that the proceedings be stayed, on the terms the Court deems appropriate.

(2) Where an application for leave to appeal or an appeal has been dismissed, the Court may order that no further proceedings be filed relating to the leave application or to the appeal, where the Court is satisfied that the further proceedings would be vexatious or brought for an improper purpose.

(3) A motion for an order under subsection (1) or (2) may be made by any party in accordance with Rules 7 and 8.

IX. REVOKED

37-38. Revoked

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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 fileName of attorney personally
in charge of the file_____
Signature of attorney of.._____
Signature of attorney of..

Address _____

Address _____

_____ Tel. _____

_____ Tel. _____

Name of attorney personally
in charge of the fileName of attorney personally
in charge of the file

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. _____