



# **COURT OF APPEAL**

## **AIDE-MEMOIRE IN CIVIL MATTERS**

**Last updated: June 2016**

**Note: This guide, created for those who are involved in the appellate process for the first time, does not bind the Court nor its judges, and it does not preclude those who use it from reading the relevant sections of the *Code of Civil Procedure (C.C.P.)* and the *Civil Practice Regulation* of the Court of Appeal (*C.P.R.*). Even though a natural person (as opposed to a legal person, which must be represented by a lawyer) can represent himself or herself, it is strongly recommended that a lawyer be consulted.**

**This aide-memoire is divided in four sections:**

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## 1. How to File an Appeal?

Unsatisfied with a judgment of the Court of Quebec or the Superior Court, you would like to file an appeal. **It is strongly recommended that you consult a lawyer before instituting an appeal** in order to verify if a right to appeal is provided by law and how to file an appeal.

There is two kind of appeal: an appeal as of right and an appeal with leave. In the first case, the appeal is initiated by filing a *Notice of Appeal*. In the latter case, an *Application for Leave to Appeal* is required and must be filed with a *Notice of Appeal*. A judge may then grant leave to appeal.

It is imperative to take cognizance the *Code of Civil Procedure* (C.C.P.) as well of the *Civil Practice Regulation* (C.P.R.). Everyone must act diligently, since usually, an appeal must be brought within 30 days of the date of the judgment. Specific statutes may, however, prescribe a shorter time period.

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

- **OBJECT:** An appeal as of right is initiated by filing a *Notice of Appeal* and a proof of service on the respondent (Art. 352 C.C.P.);
- **TIME LIMIT:** Usually, within 30 days after the date of the notice of judgment or after the date of the judgment if it was rendered at the hearing (Art. 360 C.C.P.). Specific statutes may, however, prescribe a shorter time period;
- **SERVICE:** The *Notice of Appeal* must be served on the respondent before its filing (Art. 352 and 358 C.C.P.);
- **NOTIFICATION:** The *Notice to Appeal* must be notified:
  - in two copies to the clerk of first instance (Art. 354 C.C.P. and 29 C.P.R.);
  - in one copy to the lawyer who represented the respondent in first instance (Art. 358 C.C.P.);
  - in one copy to persons with an interest in the appeal (intervenor or impleaded parties) (Art. 358 C.C.P.);
- **FILING:**
  - A copy of the *Notice of Appeal* must be filed with the office of the Court of Appeal together with a proof of service on the respondent (Art. 352 and 353 C.C.P. and 28 C.P.R.). It must be

filed with a copy of the judgment in first instance (Art. 353 C.C.P.);

- Proof of notification on the clerk of first instance and persons with an interest in the appeal (intervenor or impleaded parties) must be filed with the office of the Court of Appeal within 3 days of the expiration of the time limit to appeal (Art. 29 C.P.R.);

- **FEES:** Fees must be paid to the office of the Court of Appeal:

<i>Pleadings</i>	Natural person	Legal person
Notice of Appeal from a final judgment	\$340	\$400
Notice of Appeal from a judgment rendered in the course of a proceeding	\$255	\$300

- **FORMAT:**

- Paper: good quality white paper, 8 ½ x 11 (21.5 cm x 28 cm) (Art. 21 C.P.R.);
- Text: on one side only of each page, with a minimum of one and one half spaces between lines, type face no less than 12, margins of no less than 1 inch (2.5 cm) (Art. 21 C.P.R.);
- Style of cause: name of the parties, their status in appeal in capital letters, their status in first instance in lower case letters (Art. 353 C.C.P. and Art. 22 C.P.R.);
- Heading: the title is « Notice to Appeal (Art. 353 C.C.P.), following by its date and the party producing it (Art. 23 C.P.R.);

- **CONTENT:**

- Express references: article 358 C.C.P. para. 2, 25 para.1 C.P.R. and 30 C.P.R. must be reproduce on the backing of the Notice of Appeal;
- Confidentiality: if applicable, include an express reference to confidentiality (Articles 8 and 26 C.P.R.);
- Name of the court that rendered the judgment appealed from (Art. 353 C.C.P.);
- Date of judgment in first instance (Art. 353 C.C.P.);
- Duration of the trial in first instance (Art. 353 C.C.P.);
- Conclusions sought by the appellant (Art. 353 C.C.P.);
- Grounds of appeal (Art. 353 C.C.P.);

- Value of the subject matter of the dispute (Art. 353 C.C.P.);

\*\*\* An example of a Notice of Appeal is available on the Court website in the section "Examples of proceedings".

## B) APPEAL WITH LEAVE: HOW TO PROCEED WITH AN APPLICATION FOR LEAVE TO APPEAL

- **OBJECT:** For certain matters, a leave to appeal must be granted by a judge (Art. 30 and 31 C.C.P.). An *Application for leave to appeal* is filed together with a *Notice to appeal* and a proof of service on the respondent (Art. 352 C.C.P.);
- **TIME LIMIT:** Usually, within 30 days after the date of the notice of judgment or after the date of the judgment if it was rendered at the hearing (Art. 360 C.C.P.). Specific statutes may, however, prescribe a shorter time period and it is possible to seek a leave to appeal after the expiry of the time limit (Art. 363 C.C.P.);
- **SERVICE:** The *Notice of Appeal* and the *Application for leave to appeal* must be served on the respondent before its filing (Art. 352 and 358 C.C.P.). Those two proceedings must be served together with a notice of presentation and an affidavit (Art. 59 and 61 C.P.R.);
- **NOTIFICATION:** The *Application for leave to appeal* (attached to the *Notice to Appeal*) must be notified to:
  - in two copies to the clerk of first instance (Art. 354 C.C.P. and 29 C.P.R.);
  - in one copy to the lawyer who represented the respondent in first instance (Art. 358 C.C.P.);
  - in one copy to persons with an interest in the appeal (intervenor or impleaded parties) (Art. 358 C.C.P.);
- **FILING:**
  - Two copies of the *Application for leave to appeal* (attached to the *Notice of Appeal*) must be filed with the office of the Court of Appeal together with a proof of service on the respondent (Art. 352 and 353 C.C.P. and 28 C.P.R.). It must be filed with a copy of the judgment in first instance (Art. 353 C.C.P.);
  - Proof of notification on the clerk of first instance and persons with an interest in the appeal (intervenor or impleaded parties) must be filed with the office of the Court of Appeal within 3 days of the expiration of the time limit to appeal (Art. 29 C.P.R.);

- **FORMAT:**
  - Paper: good quality white paper, 8 ½ x 11 (21.5 cm x 28 cm) (Art. 21 C.P.R.);
  - Text: on one side only of each page, with a minimum of one and one half spaces between lines, type face no less than 12, margins of no less than 1 inch (2.5 cm) (Art. 21 C.P.R.);
  - Style of cause: name of the parties, their status in appeal in capital letters, their status in first instance in lower case letters (Art. 353 C.C.P. and Art. 22 C.P.R.);
  - Number of pages: the *Application for leave to appeal* must be of 10 pages maximum (Art. 59 C.P.R. and Practice Direction G-2);
  - Heading: the title is « Application for leave to appeal (Art. 30 or 31 C.C.P.), following by its date and the party producing it (Art. 23 C.P.R.). It is written on the backing of the proceeding;
  
- **CONTENT:**
  - Name of the court that rendered the judgment appealed from (Art. 353 C.C.P.);
  - Date of judgment in first instance (Art. 353 C.C.P.);
  - Duration of the trial in first instance (Art. 353 C.C.P.);
  - Conclusions sought by the appellant (Art. 353 C.C.P.);
  - Grounds of appeal (Art. 353 C.C.P.);
  - Value of the subject matter of the dispute (Art. 353 C.C.P.);
  - The basis of the *Application for leave to appeal*;
  - A short explication of why the leave should be granted;
  
- **FEES:** Fees must be paid to the office of the Court of Appeal when filing the *Application for leave to appeal* attached to the *Notice of appeal*. Those fees are the same as an appeal as of right and they are paid only once:

<i>Pleadings</i>	Natural person	Legal person
Notice of Appeal from a final judgment	\$340	\$400
Notice of Appeal from a judgment rendered in the course of a proceeding	\$255	\$300

- **PRESENTATION:** The *Application for leave to appeal* is presented without delay to an appellate judge. It is contested orally (Art. 357 C.C.P.). The notice of presentation must be notified at least two days before the presentation of the application (Art. 377 C.C.P.).

\*\*\* An example of an Application for leave to appeal is available on the Court website in the section "Examples of proceedings".

## **2. Next Steps following the opening of a court file in civil matters**

The Clerk will assign a file number in appeal as soon as the *Notice of Appeal* is filed at the Office of the Court (ex.: Montréal 500-09-000000-000 and Quebec 200-09-000000-000). This file number has to be subsequently mentioned on every pleadings or letter sent to the Court.

**It is possible at any time to discontinue of the *Notice of appeal* or of the *Application for leave to appeal*.** However, because discontinuance involves the obligation to pay the costs occasioned by the suit (art. 213 and 378 C.C.P.), you may come to an agreement with the adverse party if you want to avoid having to pay these costs.

### A) SETTLEMENT CONFERENCE (Art. 381 and 382 C.C.P. and 68 and 69 C.P.R.)

You would like to participate in dispute settlement of your file and resolve the case in a free and expeditious way? You want to take part in discussions with the adverse party in order to attempt to resolve your case? The settlement conference is for you!

- Is held before a judge, in order to assist the parties (represented by their lawyer) to resolve their dispute;
- May be held only upon the **joint** request of the parties;
- The Judge who presides at the settlement conference must approve any agreement;
- Possible at any stage of the appeal;
- Free and confidential;
- Suspends the delays otherwise applicable to file the briefs;

Pamphlets and forms are available at the Office of the Court as well as on our web site: <http://courdappelduquebec.ca/en/judicial-mediation-and-facilitation-conferences/>

B) CERTIFICATE CONCERNING THE TRANSCRIPTION OF DEPOSITION  
(Art. 353 and 357 C.C.P.)

The appellant must notify and file a certificate certifying that he has directed an official stenographer to transcribe the depositions or excerpts of depositions that are necessary for the consideration of all the issues in dispute.

- An original must be filed at the Office of the Court of Appeal by the appellant, within 45 days after the judgment appealed from or with 15 days after the judgment authorizing the appeal (art. 353 and 357 C.C.P.);
- Must have been notify to the adverse party (Art. 357 C.C.P.);
- Even if it is not necessary for the appeal to transcribe the depositions, a statement so certifying must be filed (Art 353 and 357 C.C.P.);
- It is possible, for the parties wishing to avoid the costs of transcription, to agree on a joint statement of the facts that must be inserted at the beginning of Schedule III (Art. 372 C.C.P. and 43 C.P.R.).

\*\*\* An example of a Certificate concerning the transcription of deposition is available on the Court website in the section "Examples of proceedings".

C) REPRESENTATION STATEMENT AND NON-REPRESENTATION  
STATEMENT (Art. 358 C.C.P.)

The respondent or any other party (mis en cause, intervenor) must file a representation statement stating that she is represented by a lawyer at the Office of the Court. If the party is appearing personally, she must file a non-representation statement.

- Must be filed at the Office of the Court of Appeal by the respondent or the mise en cause, within 10 days following the notification of the *Notice of Appeal* or within 10 days following receipt by the respondent of the copy of the judgment authorizing the appeal in the case of an *Application for leave to appeal* (Art. 358 C.C.P.);
- Indicate if the file is confidential (if needed) (Art. 8 C.P.R.);
- Service or notification are not required (however, sending a courtesy copy to the adverse party is strongly encouraged);
- Size of the paper: 8 ½ x 11 (21.5 cm x 28 cm) (Art. 21 C.P.R.);
- A judicial stamp of \$85 (natural person) or \$100 (legal person) must be paid.

If a party fails to file a representation statement, it won't be allowed to file any other pleading and the Clerk won't be obliged to notify any notice to such party (Art. 30 C.P.R.). Moreover, the parties are not obliged to notify their pleadings (including briefs and memoranda) to the party who failed to file a representation statement (Art. 25 C.P.R.).

\*\*\* An example of a Representation statement is available on the Court website in the section "Examples of proceedings".

#### D) INCIDENTAL APPEAL (Art. 359 C.C.P. and 31 C.P.R.)

A respondent unsatisfied with the judgment rendered **may** lodge an incidental appeal by filing such a *Notice of incidental appeal* with the Office of the Court. The appeals (the principal and incidental appeals) would be heard at the same time.

- The *Notice of incidental appeal* must be filed at the Office of the Court of Appeal by the respondent (Art. 359 C.C.P.);
- Must have been served upon the adverse party (Art. 360 C.C.P.);
- The service and the filing must be done within 10 days of the service of the *Notice of Appeal* (principal appeal) or within 10 days of the judgement granting leave;
- The *Notice of incidental appeal* meets the same requirements as the *Notice of appeal* (principal appeal), with the necessary adjustments. In particular, the respondent must also file a certificate concerning the transcription of deposition (Art. 353 C.C.P. and 31 C.P.R.).

#### E) APPEAL BRIEFS AND MEMORANDA

Please, see section 3 of this Aide-memoire for more information on appeal briefs and memoranda.

#### F) SETTING DOWN FOR HEARING (Art. 383 and 384 C.C.P.)

As soon as the file is ready to be heard, the clerk sets the appeal down for hearing. This setting down takes place once all the briefs (or memoranda) and the other pleadings are filed.

If the respondent does not file its brief (or memorandum) in the allotted time, the appeal is still set down by the clerk for hearing (Art. 383 C.C.P.).

The date of the hearing is then set following the setting down for hearing. The law may provide that certain files are heard in priority.

Moreover, if the parties request so, the Court may decide the appeal on the face of the record. That means that the appeal will be decided without a court hearing (Art. 384 C.C.P.).

#### G) THE BOOK OF AUTHORITIES (Art. 56 to 58 C.P.R.)

For the hearing of the appeal, all parties may file, in addition to the briefs, a book of authorities (art 85, par.1 RCA). It will be especially helpful to do so if a party wants to bring to the attention of the Court new decisions or doctrine not already included in its list of authorities.



- Must be filed at least 30 days before the date fixed for the hearing of the appeal. The book of authorities may, however, not be filed if the date of hearing has not yet been determined;
- Must be filed at the Office of the Court in 4 copies;
- The relevant excerpts must be highlighted to facilitate tracking;
- It is print recto verso and separated by tabs;
- If a technological version is produced, the texts shall be PDF accessible where possible, and key-word searches must be possible;
- Must be served on the other parties;
- Must not contained the excluded (\*\*\*) To see the list of excluded judgments, go on the Court website in the section "Notices in civil matters" and click on the notice of the Chief Justice dated May 1, 2014).
- Must be notified to the other parties;

A book of authorities may also be filed for the hearing of an application. In such a case, only one copy of the book of authorities (for an application before the clerk or a judge) or three copies (for a panel of three judges) need to be filed, as soon as possible before the hearing.

## H) HEARING

The Court sits from September to June. The roll, available on the Court's web site, is updated weekly in order to consider discontinuances, settlements, modifications, etc. A copy of the roll is sent to the attorneys for the parties or to any party not represented by an attorney at least 30 days in advance. Sending of this roll represents the notice of hearing (Art. 75 C.P.R.). It specifies the time allotted to each party for oral argument (Art. 385 C.C.P.).

- Sittings begin at 9:30 a.m., from Monday to Friday (Art. 76 C.P.R.);
- If the parties consent, they may request that the appeal be decided on the basis of the facts and without an oral hearing (art. 80, par.1 RCA);
- Dress (Art. 7 C.P.R.):
  - For the attorney: a gown, bands, white collared shirt and dark garment;
  - For articulated students: a gown and dark garment;
  - For individuals: dress must be in accordance with Court decorum;
- All persons must ensure that their cellular telephones and other technological devices are turned off (Art. 6 C.P.R. and Guidelines concerning the use of technological devices in courtrooms, April 15, 2013);
- Hearings are public, subject to limited exceptions;
- Hearings are recorded (audio);
- A party may produce an outline not exceeding 2 pages at the beginning of a hearing (Art. 78 C.P.R.);

- **The Office of the Court has to be informed of any discontinuance, settlement, bankruptcy or any event ending the appeal as soon as it occurs (Art. 38 C.P.R.).**

I) DECISION (JUDGMENT) (Art. 387 C.C.P.)

After the presentation of oral arguments, the Court will render its decision on the appeal.

The Court can render its decision at the end of the hearing. In that case, the decision is given open court by the judge presiding over the appeal hearing (recorded in minutes of the hearing).

The Court can also take the decision under advisement. The Clerk will inform the parties as soon as the decision is rendered by the Court.

In all cases, the Court's decision is rendered when a majority of the judges having heard the appeal concur.

J) LEGAL COSTS (Art. 339 et seq C.C.P)

After the judgement is rendered, a party can have its legal costs reimbursed by the opposite party. In principle, legal costs are owed to the successful party, unless the Court decides otherwise (Art. 340 C.C.P.).

In most cases, the reimbursement of legal costs is done without the Court's intervention.

- The party entitled to the legal costs prepare a bill of costs;
- The bill of costs is then notify to the other party (debtor) – the later has 10 days to notify its opposition to the Office of the Court and to the party;
- In case of opposition, the bill of cost its sent for taxation to the court clerk;
- The court clerk taxing the bill of costs must ensure that any disbursement not subject to the tariff is reasonable and that the sough costs comply with the rules (Art. 80 C.P.R.);
- Once the bill of costs has been drawn up, the party entitled to the legal costs can ask the clerk to homologate it.

Legal costs are (Art. 339 C.C.P):

- Court costs and fees (as example, \$340 for filing a *Notice of appeal* of a final judgment);
- Disbursements incurred for the preparation of appeal briefs, memoranda et book of authorities;
- Professional fees and expenses for the service or notification of pleadings;
- Fees and costs related to long distance hearing;
- Etc.

### 3. Physical Preparation of Briefs and Memoranda

The appeal brief is a document filed by each party. It is composed of a written argument and schedules. The written argument consists of a maximum of 30 pages. The schedules reproduce the judgment under appeal, the pleadings in the file and all and only those exhibits and depositions necessary for the Court to decide the issues in dispute (Art. 45 C.P.R.).

In some matters (see Article 374 C.C.P.), a memorandum will usually be required, unless a judge decides otherwise. This memorandum is composed of a written argument and schedules. Unless a judge decides otherwise, the written argument consists of a maximum of 10 pages.

#### **i) Appeal brief**

##### **General requirements:**

- File 7 paper copies with the Office of the Court (Art. 50 C.P.R.);
- It is strongly suggested to file an electronic version with key-word searches function (Art. 11 and 50 C.P.R., and Practice Direction G-3);
- Notify 2 paper copies to each other party who filed a representation statement or a non-representation statement (Art 50 C.P.R. and Practice Direction G-1);
- File with the Office of the Court a proof of notification of the brief on the other parties within 3 days following the expiration of the time limit for the filing of the brief (Art. 50 C.P.R.).

##### **General material requirements.**

(\*\*\* An example of a Appeal brief is available on the Court website in the section "Examples of proceedings".)

- Letter format (21.5 cm x 28 cm ; 8 ½ x 11), typeface 12 points, margins no less than 2.5 cm, white paper (Art. 21 and 49 e) C.P.R.);
- Number of pages (a maximum of 225 pages per volume) (Art. 46 h) C.P.R.);
- Page Numbering (top of the page in the center) (Art. 49 d) C.P.R.);
- Cover:
  - Color (Art. 49 a) *CPR*);
  - File number in appeal (Art. 49 b) i) *CPR*);
  - Facts concerning the file in first instance (Art. 49 b) ii) *CPR*);
  - Style of cause, title of the brief and date (Art. 99, al. 2 *C.C.P.*, 49 b) iii) and iv) *CPR*);
  - Names of parties and their positions (upper and lower case) (Art. 22 *CPR*);

- Name and coordinates of the author of the brief (Art. 103 C.C.P. and 49 b) v) *CPR*);
- Volume and page numbers (cover and bottom edge) (Art. 49 i) *CPR*));
- General table of contents and a table of contents for subsequent volumes (Art. 49 c) *CPR*);
- Argument:
  - A maximum of 30 pages (Art. 44 *CPR*);
  - Numbered paragraphs (Art. 49 f) *CPR*);
  - Line spacing (1.5 spacing) (Art. 49 e) *CPR*);
  - Characters (12 characters per 2.5 cm) (Art. 49 e) *CPR*);
  - Quotations (single spaced and indented) (Art. 49 e) *CPR*);
  - Argument in five parts (facts, issues in dispute, submissions, conclusions, sources) (Art. 42 *CPR*);
- Printing:
  - Argument and Schedule I (left) Art. 49 g) *CPR*);
  - Schedule II and III (double sided) (Art. 49 g) *CPR*);
  - Depositions (4 pages in one allowed) (Art. 49 l) *CPR*);
- Final requirements (signature, attestation of compliance, undertaking, time required) (Art. 99, al. 3 C.C.P. and 47 *CPR*). The brief's author undertakes to make available to any other party, at no cost, the depositions in its possession in paper or technological format.

Schedule III can be filed in electronic format, in which case only the excerpts to which the submissions refer shall be reproduced on paper (Art. 46 C.P.R.).

### **The Appellant's brief**

- Must be filed with the Office of the Court and notified to the other party that have filed a representation statement or a non-representation statement within **3 months** after the filing of the *Notice of appeal* (or of the date set in the appeal management decision made by a judge) (Art. 373 C.C.P.);
- This delay can be extended. Before the expiration of this delay, the appellant shall notify to the other parties an *Application to extend the time limit to file a brief* and files it to the Office of the Court (Art. 373 C.C.P.);
- Cover must be yellow (Art. 49a) C.P.R.);
- In addition to the argument, the appellant's brief is composed of 3 schedules (Art. 45 C.P.R.):

- 1) the judgement under appeal and, in the case of judicial review or appeal, the impugned decision;
- 2) the pleadings relevant to the file (*Notice of appeal, application for leave to appeal, minutes of the hearing in first instance, etc.*), and all applicable statutory provisions (except the *Civil Code of Québec* and the *Code of Civil Procedure*);
- 3) all and only those exhibits and depositions necessary for the Court to decide the issues in dispute.

### **The Respondent's brief**

- Must be filed with the Office of the Court and notified to the other party that have filed a representation statement or a non-representation statement within **2 months** after the filing of the appellant's brief (Art. 373 C.C.P.);
- This delay can be extended. Before the expiration of this delay, the respondent shall notify to the other parties an *Application to extend the time limit to file a brief* and files it to the Office of the Court (Art. 373 C.C.P.);
- Cover must be green (Art. 49a) C.P.R.);
- In addition to the argument, the respondent's brief may includes elements in addition to those of the appellant's schedules (Art. 41 C.P.R.).

### **The Respondent/Incidental appellant's brief**

- If there is an incidental appeal, the appellant brief's argumentation is composed of two sections: the first section is an answer to the principal appeal (as a respondent), the second section is an argument (as an incidental appellant) (Art. 48 C.P.R.);
- The brief's title is: Respondent/incidental appellant's brief;
- Must be filed with the Office of the Court and notified to the other party that have filed a representation statement or a non-representation statement within **2 months** after the filing of appellant's brief (Art. 373 C.C.P.);
- This delay can be extended. Before the expiration of this delay, the incidental appellant shall notify to the other parties an *Application to extend the time limit to file a brief* and files it to the Office of the Court (Art. 373 C.C.P.);
- Cover must be green (Art. 49a) C.P.R.);
- In addition to the argument, the incidental appellant's brief is composed of schedules (Art. 45 and 48 C.P.R.):

- 1) the pleadings relevant to the file (*Notice of appeal, application for leave to appeal, minutes of the hearing in first instance, etc.*), and all applicable statutory provisions (except the *Civil Code of Québec* and the *Code of Civil Procedure*);
- 2) all and only those exhibits and depositions necessary for the Court to decide the issues in dispute.

The incidental appellant's schedule shall not reproduce the content already included in the schedules of the principal appeal (Art. 48 C.P.R.).

### **The Incidental Respondent's brief**

- If there is an incidental appeal, the incidental respondent **can** respond by filing an "incidental respondent's brief";
- Must be filed with the Office of the Court and notified to the other party that have filed a representation statement or a non-representation statement within **2 months** after the filing of the incidental appellant's brief (Art. 373 C.C.P.);
- This delay can be extended. Before the expiration of this delay, the respondent shall notify to the other parties an *Application to extend the time limit to file a brief* and files it to the Office of the Court (Art. 373 C.C.P.);
- Cover must be yellow (Art. 49a) C.P.R.);
- In addition to the argument, the incidental respondent's brief may includes elements in addition to those of the appellant's schedules (Art. 41 C.P.R.).

### **Impleaded Party's brief**

- Must be filed with the Office of the Court and notified to the other party that have filed a representation statement or a non-representation statement within **4 months** after the filing of the appellant's brief (Art. 373 C.C.P.);
- This delay can be extended. Before the expiration of this delay, the party shall notify to the other parties an *Application to extend the time limit to file a brief* and files it to the Office of the Court (Art. 373 C.C.P.);
- Cover must be gray (Art. 49a) C.P.R.);

## ii) Memoranda

### General requirements:

(\*\*\* An example of a Memoranda is available on the Court website in the section "Examples of proceedings".)

- A memorandum is filed in cases under article 374 C.C.P. or if a judge decides so;
- Filed with the Office of the Court in 5 copies (Art. 54 C.P.R.);
- Electronic version (if available) with key-word searches function can be filed (it is strongly suggested to file an electronic version) (Art. 11 C.P.R. and Practice Direction G-3);
- Notify 1 copy to other parties (Art. 25 and 50 C.P.R.);
- Filed the proof of notification to the other parties with the Office of the Court (Art. 50 C.P.R.);
- The written argument presents succinctly the facts, the issues in dispute, the arguments and the conclusions sought (Art. 374 C.C.P.);
- Are attached to the memorandum all documents necessary for the adjudication of the appeal (judgement under appeal, pleadings, exhibits, depositions, etc.) (Art. 53 C.P.R.);
- Time limits of the notification and the filing of a memorandum are specified in the appeal management decision of the appellate clerk or of the appellate judge (Art. 374 C.C.P.);
- **It is imperative to follow the orders given by the Clerk or the judge.**

### Material requirements:

- Letter format (21.5 cm x 28 cm ; 8 ½ x 11), typeface 12 points, margins no less than 2.5 cm, white paper (Art. 21 and 49 e) C.P.R.);
- Continued page numbering or tabs (Art. 55 C.P.R.);
- Cover (title page):
  - File number in appeal (Art. 49 b) i) C.P.R.);
  - Facts concerning the file in first instance (Art. 49 b) ii) C.P.R.);
  - Style of cause, title of the memorandum and date (Art. 99, al. 2 C.C.P., 49 b) iii) and iv) C.P.R.);
  - Names of parties and their positions (upper and lower case) (Art. 22 C.P.R.);
  - Name and coordinates of the author of the brief (Art. 103 C.C.P. and 49 b) v) C.P.R.);
- General table of contents (Art. 55 C.P.R.);
- Signature after the conclusions (Art. 47 C.P.R.).

## 4. Applications in the Course of a Proceeding

Application in course of proceeding is an application presented before the Court after the filing of the *Notice of appeal* and before the end of proceeding, including the *Application for leave to appeal* ([Practice Direction G-2](#)). The end of proceeding, unless otherwise stated, is the moment the Court renders its final decision.

An application in course of proceeding is made by a written proceeding (Art. 59 C.P.R.). The applicant must notify its application to the other parties and must file it with the Office of the Court.

An application may be presented before the Court, before a judge or before the Clerk.

When the expression "**the Court**" is used, the application has to be presented to a panel of three judges.

In other cases, the law designates "**a Judge**" to hear an application during the proceedings. This application has to be made to a judge sitting alone.

Also, the law sometimes gives jurisdiction **to the Clerk** to hear some application. Before filing an application, every party must consult the relevant legislation. It is essential to determine who has jurisdiction to hear an application (the Court, a judge or the Clerk). The rules and information presented in this section are general rules. Special rules may apply to a particular application.

Examples of applications are available on the Court website in the section "[Examples of proceedings](#)".

### A) APPLICATIONS PRESENTABLE BEFORE THE COURT (A PANEL OF THREE JUDGES)

#### **Examples of applications presentable before the Court:**

- To dismiss an appeal (Art. 365 C.C.P.);
- For permission to present indispensable evidence (Art. 380 C.C.P.);
- Leave to appeal after the expiry of the time limit (Art. 363 C.C.P.).

#### **General rules for the presentation of an application before the Court**

- Made in writing (Art. 377 C.C.P.);
- Of no more than 10 pages (Art. 59 C.P.R.);
- With an affidavit attached to (Art. 59 C.P.R. and 101, para. 3 C.C.P.);



- With a notice of presentation attached to (date, time and the room) (Art. 61 C.P.R.);
- The applicant must reserve a date of presentation with the Office of the Court (Art. 61 C.P.R.);
- The application, the notice of presentation and the affidavit are notified to the other parties at least 5 days before the presentation (Art. 378 C.C.P.) (for the application to dismiss an appeal, this delay is 30 days (Art. 365 C.C.P.));
- Everything is filed with the Office of the Court in 4 copies (Art. 59 C.P.R.);
- One copy of each document necessary for the adjudication of the application must be attached to it (Art. 60 C.P.R.);
- Dress for the hearing (Art. 7 C.P.R.):
  - For counsel: a gown, band, white collared shirt and dark garment;
  - For articulated students: a gown and dark garment;
  - For clerks and court ushers: a gown and dark garment;
  - For other persons: simple and unadorned attire is required.
- The book of authorities must be filed in 4 copies as soon as possible before the hearing, if applicable (Art. 58 C.P.R.);
- The application is presented in the Pierre-Basile-Mignault room (in Montréal) or in the room 4.30 (in Quebec City) at 9:30 am (Art. 62 C.P.R.);
- The application's defence is oral;

## B) APPLICATIONS PRESENTABLE BEFORE A JUDGE:

### **Examples of applications presentable before a judge:**

- Leave to appeal (Art. 30, para. 2 and 357 C.C.P.);
- Leave to appeal of a judgment rendered in the course of a proceeding (Art. 31 and 357 C.C.P.);
- For provisional execution (Art. 355 or 661 C.C.P.);
- To suspend the provisional execution (Art. 660 C.C.P.);
- To suspend the provisional execution of a judgment of the Court of Appeal (Art. 390, para. 2 C.C.P. and 65.1(1) *Supreme Court Act*);
- To extend the expiration of the time fixed for instituting an appeal (Art. 21(4) of the Divorce Act);
- For extension of delay for leave to appeal (Art. 31(1) of Bankruptcy and Insolvency General Rules).

### **General rules for the presentation of an application before a judge:**

- Made in writing (Art. 377 C.C.P.);
- Of no more than 10 pages (Art. 59 C.P.R.);
- With an affidavit attached to (Art. 59 C.P.R. and 101, para. 3 C.C.P.);
- With a notice of presentation attached to (date, time and the room) (Art. 61 C.P.R.);

- The applicant must reserve a date of presentation with the Office of the Court (Art. 61 C.P.R.);
- The application, the notice of presentation and the affidavit are notified to the other parties at least 2 days before the presentation (Art. 378 C.C.P.);
- Everything is filed with the Office of the Court in 2 copies (Art. 59 C.P.R.);
- One copy of each document necessary for the adjudication of the application must be attached to it (Art. 60 C.P.R.);
- Dress for the hearing: a gown is not required, but simple and unadorned attire is required.
- The book of authorities must be filed in 1 copy as soon as possible before the hearing, if applicable (Art. 58 C.P.R.);
- The application is presented Monday to Friday in room RC-18 (in Montréal) or in the room 4.30 (in Quebec City) at 9:30 am (Art. 62 C.P.R.);
- The application's defence is oral;
- The judge may refer an application to a panel of the Court (Art. 378 C.C.P.).

C) APPLICATIONS PRESENTABLE BEFORE THE CLERK:

**Examples of applications presentable before the Clerk of the Court of Appeal (Art. 378 C.C.P.):**

- Extension of the time limit to file an appeal brief;
- For the separation of appeals;
- For the consolidation of appeals;
- For authorization to file a supplementary statement;
- To cease representing a party;
- For a substitution of lawyer.

**General rules for the presentation of an application before the Clerk:**

- Made in writing (Art. 377 C.C.P.);
- Of no more than 10 pages (Art. 59 C.P.R.);
- With an affidavit attached to (Art. 59 C.P.R. and 101, para. 3 C.C.P.);
- With a notice of presentation attached to (date, time and the room) (Art. 61 C.P.R.);
- The applicant must reserve a date of presentation with the Office of the Court (Art. 61 C.P.R.);
- The application, the notice of presentation and the affidavit are notified to the other parties at least 2 days before the presentation (Art. 378 C.C.P.);
- Everything is filed with the Office of the Court in 2 copies (Art. 59 C.P.R.);
- One copy of each document necessary for the adjudication of the application must be attached to it (Art. 60 C.P.R.);
- Dress for the hearing: a gown is not required, but simple and unadorned attire is required.

- The book of authorities must be filed in 1 copy as soon as possible before the hearing, if applicable (Art. 58 C.P.R.);
- The application is presented Monday to Friday in room RC-18 (in Montréal) or in the room 4.30 (in Quebec City) at 9:00 am (Art. 62 C.P.R.);
- The application's defence is oral;
- The Clerk may refer an application to a judge (Art. 378 C.C.P.).

**D) APPLICATIONS PRESENTABLE BEFORE THE CHIEF JUSTICE OR A JUDGE THE CHIEF JUSTICE DESIGNATES**

**Examples of applications presentable before the Chief Justice (or a judge the Chief Justice designates):**

- For an appeal to be heard by preference (Art. 73 C.P.R.);
- To request directives from the Chief Justice for the subsequent conduct of appeal (Art. 369 C.C.P.).

**General rules for the presentation of an application before the Chief Justice (or a judge designated by the Chief Justice):**

- Made without formalities (can be done by letter);
- With a notice of presentation attached to (date, time and the room) (Art. 61 C.P.R.);
- The applicant must reserve a date of presentation with the Office of the Court (Art. 61 C.P.R.);
- The application, the notice of presentation and the affidavit are notified to the other parties at least 2 days before the presentation (Art. 378 C.C.P.);
- Everything is filed with the Office of the Court in 2 copies (Art. 59 C.P.R.);
- One copy of each document necessary for the adjudication of the application must be attached to it (Art. 60 C.P.R.);
- Dress for the hearing: a gown is not required, but simple and unadorned attire is required.
- The application's defence is oral;

**E) ADJOURNMENT AND EXCUSAL OF ATTENDANCE**

- Adjournment (Art. 65 and 66 C.P.R.):
  - The parties may only adjourn an application once by agreement. The applicant must inform the Clerk as soon as possible of an adjournment;
  - If the parties do not agree on the adjournment, the applicant can present an application for adjournment. The applicant shall inform the Clerk as soon as possible of this application;
  - After the first adjournment, if the applicant want to adjourn again, it must inform the panel of the Court, the judge or the Clerk as soon as possible;
- Excusal of Attendance (Art. 67 C.P.R.): A party who declares in writing that an application will not be contested is excused from attendance at the hearing.