



Note from the Superior Court of Quebec: These Rules of Practice have been amended since September 19, 2019. Please consult the [Notice of Amendment dated November 5, 2019](#).

# Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, 2002, SI/2002-46

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## **Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, 2002**

**SI/2002-46**

**CRIMINAL CODE**

Registration 2002-02-27

Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, 2002

The annexed *Rules of Practice of the Superior Court of the Province of Quebec, Criminal Division, 2002* were made by the Superior Court of Quebec pursuant to [section 482](#) of the *Criminal Code*.

Montreal, Quebec, February 11, 2002

The Honourable Lyse Lemieux  
Chief Justice  
Superior Court of Quebec

## **(Section 482 of the *Criminal Code*)**

### I. Preliminary Provisions

**1** These rules apply to all the judicial districts of Quebec.

**2** Unless otherwise stated, the following definitions apply in these rules:

**(a) Code** means the *Criminal Code*;

**(b) decision** includes any conviction, verdict, order or sentence;

**(c) clerk** means the clerk of the Superior Court, Criminal Division, for the district where the appeal is filed;

**(d) clerk of the court of first instance** means the person having the legal custody of the proceedings filed before the court that rendered the decision appealed from.

### II. General Provisions

#### **A. Sessions of the Court**

**3** Sessions of the court commence at 9:30 a.m. or at such other time as the court may fix.

**4** All persons present shall rise when the judge enters the court room and shall remain standing until the judge is seated. At the adjournment, they shall rise again, and remain in place until the judge has retired. The same rule applies in respect of jurors.

**5** At the opening of the session, the court usher shall say aloud:

“Silence. All rise please. The Superior Court is now in session, the Honourable.....presiding.”

Once the judge is seated, the court usher shall invite those present also to be seated.

**6** During sessions of the court, the following attire is obligatory:

**(a)** for counsel: black gown, bands, white collar and dark clothing;

**(b)** for articling students: black gown and dark clothing;

**(c)** for the court clerk and usher: black gown and dark clothing.

The wearing of the gown is not required during the months of July and August, except in the case of jury trials.

**7** Every person appearing before the court shall be suitably attired.

Every person addressing the court shall stand, unless the judge permits otherwise.

**8** Anything that interferes with the dignity and good order of the court is forbidden.

In particular, reading newspapers, taking photographs, filming, radio or television broadcasting and the use of cellular telephones and pagers are prohibited during sessions of the court.

The media may nevertheless record proceedings before the court on audiotape, including any decision rendered, unless the judge orders otherwise. The broadcasting of any such recording is prohibited.

**8.A** Any broadcasting of a recording of a hearing is prohibited.

SI/2005-19, s. 1.

**8.B** In order to ensure the fair administration of justice, the serenity of judicial hearings and the respect of the rights of parties and witnesses, interviews and the use of cameras in a courthouse shall only be permitted in the areas designated for such purposes by directives of the chief justices.

SI/2005-19, s. 1.

**9** The accused shall remain in the prisoners' dock throughout the trial unless authorized by the judge to sit elsewhere in the court room.

## **B. Counsel**

**10** Counsel who has acted for an accused when the latter was committed for trial is deemed to continue to represent the accused before the court, unless, at the committal stage,

counsel has declared the mandate to be terminated and has caused this fact to be noted in the court record.

After committal of an accused for trial, counsel who wishes to withdraw from the record must serve written notice of such intention on both the accused and the prosecutor and must deposit the original notice together with the returns of service with the clerk.

Within the 14 days preceding the opening of the term or during the term itself, counsel who wishes to withdraw from the record may do so only with the permission of the court, and only after having served on the accused, the prosecutor and the clerk a motion, with one clear day's notice, setting forth the reasons justifying such withdrawal.

If the accused is in custody, the clerk shall take the necessary steps to ensure the accused's presence before the court on the date when the motion is presented.

**11** Unless the judge permits otherwise, only one counsel may act for each party during any of the following stages of a jury trial:

- (a)** empanelling of the jury;
- (b)** examination or cross-examination of any witness;
- (c)** argument on any objection;
- (d)** summing up to the jury.

## **C. Applications and Motions**

**12** Unless the judge permits otherwise, all applications and motions must be in writing, and be served on the opposing party or their counsel, with a notice of presentation of at least one clear juridical day, except where the law expressly provides for another time-limit.

**13** All applications and motions must set out precisely the factual and legal grounds on which the applicant intends to rely, together with the conclusions sought.

#### **D. Authorities**

**14** A party who proposes to refer to case law or jurisprudence shall file a copy of the relevant pages and highlight the extracts relied on.

**15** A party who proposes to rely on regulatory or statutory provisions other than those set out in the *Constitution Act, 1982*, the *Criminal Code*, the *Canada Evidence Act*, the *Controlled Drugs and Substances Act*, the *Food and Drugs Act* or the *Young Offenders Act* shall file in the court record a copy of the relevant provisions appropriately highlighted.

#### **E. Placing on the Roll**

**16** Only those applications and motions filed in the office of the clerk of the court in conformity with these rules shall be placed on the roll, unless specific provisions provide otherwise.

#### **F. Hearing by Video Conference**

**17** Any motion, application, appeal on the merits or pre-hearing conference may be presented by way of videolink in districts where the necessary equipment is available. Pre-hearing conferences may also be held by telephone.

Any party wishing to proceed by way of videolink must present a written application to the Judge Administrator of the Criminal Division with a copy to the other parties. In cases of urgency, such applications may be made by telephone.

After examining the matter, the judge shall forward the decision to the parties or to their counsel.

If the application is granted, either party may plead from any video facility available in the territory where they respectively reside, and either party may, at its option, address the court in the court room where the receiving apparatus is located and where the court is sitting.

## **G. Judgment**

**18** The court may make any order that is necessary in the interests of justice, and may include in the order any conditions that it considers just.

**19** The clerk shall forward every written judgment or, as the case may be, the conclusions of any judgment rendered in open court and noted in the court record, to the parties or their counsel, to the judge who rendered the decision appealed from, and to the clerk of the court of first instance.

## **III. Specific Provisions**

### **A. Judicial Interim Release**

**20** No application made under section 522 of the Code may be heard by a judge unless the accused gives the prosecutor two clear juridical days' written notice. The prosecutor may waive this requirement.

**21** Every application made under section 520 or 522 of the Code shall be supported by the affidavit of the accused attesting to the following information:

- (a) the date and place of accused's arrest;
- (b) the residential address(es) of the accused during the ten years before arrest and notice of the address where the accused intends to reside if interim release is granted;
- (c) the marital status of the accused; whether the accused is co-habiting with any other person and, if so, for how long;
- (d) the accused's occupation or the nature of the accused's work at the time of arrest, the name of the accused's employer, if any, and the length of time employed;
- (e) a full statement of the accused's criminal record, if any, including any convictions that are recorded in any foreign country;
- (f) whether there are any other charges pending in Canada or elsewhere against the accused and, if so, the details of them;
- (g) whether the accused is the holder of any passports.

## **B. Extraordinary Remedies**

**22** Every application by way of *certiorari*, *habeas corpus*, *mandamus*, *procedendo* or prohibition shall be made by way of motion supported by one or more affidavits attesting to the truth of the facts alleged and setting out the relief sought.

**23** The motion shall be served on the court, judge or official who was responsible for the case and on all the parties and



must include a notice of the date of its presentation of at least one clear juridical day.

The judge shall set the date for the hearing. In a case of urgency, the applicant may apply to the judge for directions.

**24** No motion filed after the expiry of 30 days from the date of the decision or proceeding that it challenges shall be heard unless a judge extends that period before or after it expires.

**25** Service of the motion suspends proceedings before the court, judge or official concerned, but a judge may at any time order the proceedings to be continued.

**26** On being served with the motion, the respondent court, judge or official shall transmit the record of the case to the clerk.

**27** For all extraordinary remedies, the parties must file written submissions in support of their positions, with references to the relevant passages of the transcript where applicable, within the time set by the judge and in accordance with the judge's directions.

**28** Articles 851 to 855 of the *Code of Civil Procedure* apply to writs of *habeas corpus* in criminal matters, with any modifications that the circumstances require.

### **C. Appeals Pursuant to Sections 812 to 828 of the Code**

**29** Appeals must be brought before the Superior Court in the district where the decision appealed from was rendered.

Notice of Appeal

**30** The notice of appeal from any decision must be signed by the appellant or by the appellant's counsel and must contain the following information:

- (a)** the offence charged;
- (b)** the sentence imposed, where applicable;
- (c)** the date of the decision, the sentencing, or both, appealed from as the case may be;
- (d)** the place where the trial was held;
- (e)** the name of the court of first instance and the number of the court record;
- (f)** the grounds of appeal and the conclusions sought, stated precisely and concisely;
- (g)** the address of the appellant and of the appellant's counsel;
- (h)** the name and address of the respondent and, where applicable, of all other parties, and of their respective counsel of first instance.

**31** Any appellant wishing to plead grounds of appeal other than those set out in the notice of appeal must deposit with the clerk, no later than 15 days before the hearing of the appeal, a notice setting out precisely and concisely the additional grounds, together with proof of service on the other party or their counsel.

**32** Subject to subsection 815(2) of the Code, every appeal must be commenced within 30 days after the decision appealed from.

An appeal is commenced by filing a Notice of Appeal in the office of the clerk within 30 days after the decision or within the extended time under subsection 815(2) of the Code.

On receipt of the notice of appeal, the clerk shall transmit copies of it to counsel who acted in the court of first instance, to the judge who rendered the decision appealed from and to the clerk of the court of first instance.

In the case of an appeal by the prosecutor, the notice of appeal must be served on the respondent personally, unless the judge orders otherwise.

## Appearance

**33** Counsel for the respondent must file a written appearance within 10 days after service of the notice of appeal, or within any additional time that may be fixed by the judge.

## Preparation of the Record

**34** On receipt within the prescribed time period of the notice of appeal or of a decision of the judge extending the time period for appeal, the clerk shall

**(a)** call for the record of first instance;

**(b)** place the case *pro forma* on the practice roll, within 30 days after the filing of the notice of appeal or within such other time as may be directed by the judge, and give notice in writing of the date to the parties.

At the calling of the practice roll or in the course of a preparatory conference which, at the option of the judge, may

be held by telephone, the judge, after examining the questions in issue and discussing with the parties the evidence as it relates to the grounds of appeal, may prescribe whatever steps are deemed appropriate to complete the record, settle questions relating to the written submissions and shorten the hearing. After establishing a timetable for the completion of the record, the judge shall continue the matter to a subsequent calling of the practice roll, fix a date for a further preparatory conference or set a date for the hearing.

Unless exempted from doing so by the judge, the parties must, within the time-limit set by the judge, file written submissions setting out the arguments on which they propose to rely supported by appropriate references to the transcript, together with any supporting case law or jurisprudence on which they intend to rely.

**35** The court record is to be made ready for the hearing in the following manner:

**(a)** on being ordered to do so by a judge, the clerk of the court of first instance shall require a complete or partial transcript of the evidence to be prepared together with the judgment appealed from;

**(b)** as soon as the transcript is delivered, the clerk of the court of first instance shall inform the clerk in writing, and the appellant and the respondent or their counsel by priority post or by facsimile;

**(c)** on receipt of that notice, the appellant shall, without delay, pay the cost, if any, of the transcript, and the clerk of the court of first instance shall, without delay, forward the

original of the transcript to the clerk with a copy to the parties or to their counsel.

## Powers of the Court

### **36** The Court may

**(a)** dismiss the appeal if the appellant is not ready to proceed when the case is called;

**(b)** allow the appellant to proceed *ex parte* against a respondent who is not ready to proceed when the case is called;

**(c)** on motion or on its own motion, dismiss the appeal of an appellant who has not conformed with the requirements prescribed by law or by these rules.

## Discontinuance

**37** Any appellant wishing to discontinue an appeal must file in the court record a written discontinuance signed by the appellant or by their counsel. The discontinuance must be submitted to the judge.

## **D. Contempt of Court**

**38** Proceedings for contempt of court not committed in the face of the court must be instituted by way of a detailed motion served on the respondent summoning the respondent to appear before the court on the day and at the time set out in the notice. Subsequently, the respondent may be ordered to appear before the court by oral order.

## **E. Pre-hearing Conference**

## Pre-hearing Conference Pursuant to Subsection 625.1(2) of the Code

(These conferences are mandatory in all matters to be tried by judge and jury)

**39** A judge shall preside over the pre-hearing conference and the conference may be held at any time considered opportune following the accused's committal to trial.

**40** Proceedings at the pre-hearing conference are subject to a publication ban.

**41** The pre-hearing conference is held in the presence of counsel for the parties, and, if unrepresented, the accused. The judge may in any event require the accused to be present.

**42** The indictment shall be signed and filed before the pre-hearing conference.

**43** Unless the pre-hearing conference takes place in chambers, the proceedings shall be recorded in conformity with the provisions of section 646 of the Code. The minutes of the conference shall consist of the items set out in the schedule to these rules.

**44** The questions, issues and information to be addressed at the conference shall include the following:

**(a)** is the accused's fitness to stand trial in issue ?

**(b)** a summary statement of the facts of the case and the respective positions of the parties (The defence may elect not to disclose its position.);

- (c)** is disclosure of evidence complete? If not, a timetable for its completion must be established;
- (d)** does the prosecutor intend to raise any preliminary matters. If so, what are they?
- (e)** does the defence intend to raise any preliminary matters such as
- (i)** a motion to quash the indictment or a particular count(s) of the indictment,
  - (ii)** a motion for particulars,
  - (iii)** a motion for separate trials,
  - (iv)** a motion to sever counts,
  - (v)** a motion for a change of venue,
  - (vi)** other motions;
- (f)** the estimated time required to dispose of the motions in respect of the matters mentioned in paragraphs (a), (c), (d) and (e);
- (g)** other questions of law concerning the admissibility of evidence that may be raised at trial (The parties are required to specify the nature of such questions, the number of witnesses and the estimated time required to resolve them.);
- (h)** whether any of these issues can be resolved before the accused is placed in the charge of the jury;
- (i)** is the continuity of possession of the exhibits admitted?
- (j)** a list of the facts that the parties are prepared to admit;

- (k) a list of witnesses whom the prosecutor intends to call;
- (l) on each motion or point of law that the parties propose to raise, whether written submissions supported by case law are to be submitted and within what time period;
- (m) the date of the summoning of the jury panel;
- (n) the estimated length of trial and the trial's date of commencement;
- (o) other questions, issues or information.

## Transitional Provisions

**45 (1)** These rules come into force 15 days after their date of publication in the *Canada Gazette* and, subject to subsection (2), supersede the *Rules of practice of the Superior Court of the Province of Quebec, criminal division* and the *Quebec Superior Court Rules of Practice Respecting Criminal Matters*.

**(2)** The former rules of practice continue to apply to cases commenced before the coming into force of these rules.

## SCHEDULE

### Superior Court — Criminal Division

#### Minutes of Pre-Hearing Conference

COURT RECORD(S):	NAME(S) OF ACCUSED(S):	
DATE:	COURT ROOM:	CHAMBERS:
JUDGE:		



PROSECUTOR: Me

COUNSEL FOR THE ACCUSED: Me

ACCUSED PRESENT  yes  no

DETAILS OF THE OFFENCE(S) CHARGED:

RECORDED TRANSCRIPT: Start: Finish: N/A:

INDICTMENT FILED:  yes  no

Comments:

PUBLICATION BAN IN RESPECT OF THE PRE-HEARING

CONFERENCE:

yes  no

Details:

WILL THE FITNESS OF THE ACCUSED TO STAND TRIAL BE

RAISED?

yes  no

Details:

SUMMARY STATEMENT OF THE FACTS OF THE CASE AND

THE RESPECTIVE POSITIONS OF BOTH PARTIES. DEFENCE

MAY ELECT NOT TO DISCLOSE ITS POSITION.

Details:

HAVE THE DISCLOSURE OBLIGATIONS BEEN MET? IF NOT, A

TIMETABLE MUST BE ESTABLISHED.

Details:

PROSECUTION:

PRELIMINARY MATTERS:  yes  no

Details:

DEFENCE:

PRELIMINARY MATTERS:  yes  no

- Motion to quash the indictment
- Motion to quash a particular count(s) in the indictment
- Motion for particulars
- Motion for separate trial
- Motion to sever counts
- Motion for a change of venue
- Other motions

Details:

Time required for the resolution of above-mentioned motions:

OTHER QUESTIONS OF LAW CONCERNING THE ADMISSIBILITY OF EVIDENCE THAT MAY BE RAISED DURING

TRIAL:  yes  no

- Details:
- 1
  - 2
  - 3
  - 4
  - 5

Indicate the number of witnesses to be heard:

Time required to resolve these issue(s):

CAN THESE ISSUES BE DECIDED BEFORE THE ACCUSED IS PLACED IN THE CHARGE OF THE JURY?

yes  no

Comments:

IS THE CONTINUITY OF POSSESSION OF THE EXHIBITS ADMITTED?

yes  no

LIST OF FACTS THAT THE PARTIES ARE PREPARED TO ADMIT:

LIST OF PROSECUTION WITNESSES:

INSTRUCTIONS OF THE JUDGE IN RELATION TO ALL MOTIONS OR POINTS OF LAW: WRITTEN SUBMISSIONS - SUPPORTING CASE LAW - TIME ALLOWED:

OTHER:

TRIAL:

Date of commencement:

Date of summoning of the jury panel:

(If different from the date of commencement of the trial)	
Estimated length of trial:	
COURT CLERK	JUSTICE OF THE SUPERIOR COURT

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