



Court of Appeal of Quebec

PRACTICE DIRECTION FACILITATION IN CRIMINAL MATTERS

CONFIDENTIALITY

1. Only persons required to know the status of a file under facilitation will be informed thereof.
2. All communications with the Court or its administration must be **addressed to the judge in charge of facilitation or to the judge designated in respect of a file**.
3. If communications are submitted to the Office of the Court, they must be marked confidential.
4. Confidentiality continues after the process is complete, subject to a reference in the judgment to be rendered or an allegation against counsel who has overstepped his mandate or has made false and misleading submissions, or subject to an exception where the protection of the public requires it.
5. To guarantee confidentiality, all communications must be addressed to facilitation.penale.ca.mtl@judex.qc.ca, for Montreal files and facilitation.penale.ca.qc@judex.qc.ca, for Quebec files.

OBJECTIVE

6. The objective is to facilitate discussions in order to assist in defining the matter under appeal or in finding a solution to the dispute in accordance with the law and the public interest, that will be submitted to a panel of the Court.
7. If the process is unsuccessful, the appeal will proceed and the judge who presided over the facilitation or participated, as the case may be, will not form part of the panel hearing the appeal.

GROUND FOR REFUSAL

8. The judge in charge of facilitation or the judge designated in respect of a file may refuse a facilitation application or end the process at any time if, among other things:
 - The interests of justice require that the issues raised in the appeal be debated publicly;
 - The facilitation involves a rule of law or case law that is controversial or new;
 - The parties are unable to agree.

DOCUMENTS

9. The facilitation file is separate from the Court file. Consequently, the parties must provide the judge in charge of facilitation or the judge designated in respect of a file with a copy of all documents required to accomplish his duties.
10. **ALL DOCUMENTS MUST BE SUBMITTED AS A TECHNOLOGICAL VERSION ONLY**, by email (facilitation.penale.ca.mtl@judex.qc.ca for files for the seat of Montreal or facilitation.penale.ca.qc@judex.qc.ca for files for the seat of Quebec).
11. The following documents are required for a preliminary review of the application:
 - a. The signed facilitation application;
 - b. The parties' joint memorandum, signed by their lawyers, not exceeding two pages and divided into four parts :
 - An overview of the facts: The parties must set out the important facts required for an understanding of the problem and the solution sought. Where applicable, they may simply declare that they are satisfied with the statement of facts set out in the judgment under appeal.
 - The error(s) committed by the judge or the item(s) to be discussed: The parties must identify the error(s) or concisely state their position on the issue(s) to be discussed. It is desirable to provide a succinct reference to the applicable law.
 - The specific conclusions sought: If possible, they should be formulated jointly by the parties. It is desirable to provide a succinct reference to the applicable law.
 - Status of the file: Provide an indication of the status of the appeal file (upcoming motion, hearing, etc.) and the degree of urgency, where applicable;
 - c. Procedures and decisions on appeal, such as: the notice of appeal, the motion for leave to appeal and authorizing judgment, judgment allowing new evidence, etc.
 - d. The judgment under appeal; and
 - e. **All other documents** the parties deem **useful**.
12. The parties will be called to a meeting in person or by means of remote communication as soon as possible after all the documents have been received.

OUTCOME OF THE FACILITATION

13. The discussions and documents having led to the agreement will constitute the facilitation file. The parties waive the holding of a hearing and the judgment will, in principle, be rendered on the basis of the record, in the absence of the parties, and will reflect the accepted outcome.

14. The Court's judgment will indicate that a facilitation session in a criminal matter was held (all other elements of the file remain confidential) and specify the reasons and outcome accepted by the parties and the Court.
15. Alternatively, at the end of the process, the judge may suggest that the parties consider that the appeal be decided on the basis of the record, in accordance with section 78 of the *Rules of the Court of Appeal of Quebec in Criminal Matters*, or a public hearing.

COURT OF APPEAL OF QUEBEC

**CANADA
PROVINCE OF QUEBEC
REGISTRY OF**

Court of Appeal of Quebec

No.:

In first instance

No.:

APPELLANT

v.

RESPONDENT

JOINT APPLICATION FOR FACILITATION IN A CRIMINAL MATTER

In accordance with section 67 of the *Rules of the Court of Appeal of Quebec in Criminal Matters*, we hereby present a joint application for facilitation in order to find a solution to our dispute in a criminal matter by reaching an agreement that may be submitted to the Court.

We understand that the facilitation is a complement to the appeal, that the process is confidential, that we are hereby waiving the right to a hearing and that the time limits for an appeal will be suspended as of the filing of the application for facilitation. We agree to respect the confidentiality of all exchanges that take place during the facilitation process.

We agree to deliver the required summary file directly to the judge in charge of the facilitation no later than 30 days from the date hereof. The judge in charge of the facilitation (or the judge designated by him) will contact us as soon as possible after receipt of the documents.

We confirm that our email addresses, if provided, comply with the rules of professional conduct, namely, that the lawyer has obtained valid consent from his client to use this means of communication, it being understood that the free email services (such as Hotmail, Gmail, Yahoo, Icloud) will not be used by the Court during the facilitation process.

Date _____

Counsel for the appellant _____

Counsel for the respondent _____

Name:	Name:
Firm:	Firm:
Address:	Address:
Telephone:	Telephone:
Fax:	Fax:
Email:	Email:

QUESTIONNAIRE ON THE STATE OF THE RECORD**UPCOMING DATE BEFORE A JUDGE OR PANEL OF THE COURT:** _____**NEXT DATE IN LESS THAN 90 DAYS****Verdict appeal**

NO verdict appeal

Notice of appeal filed on: _____

There is an application for leave to appeal

Scheduled / Date: _____

Heard / Date: _____

Dismissed Granted Referred

Sentence appeal

NO sentence appeal

There is an application for leave to appeal

Scheduled / Date: _____

Heard / Date: _____

Dismissed Granted Referred

Has the brief / have the written arguments and documents that stand in lieu of the brief been filed by the appellant?**Verdict appeal**

NO / filing date _____

YES / Date filed: _____

Awaiting transcripts

Sentence appeal

NO / filing date _____

YES / Date filed: _____

Awaiting transcripts

Has the brief / have the written arguments and documents that stand in lieu of the brief been filed by the respondent?

Verdict appeal

NO / filing date _____

YES / Date filed: _____

Sentence appeal

NO / filing date _____

YES / Date filed: _____

● Other motion(s):

NONE FILED

FILED (specify)

To come

Nature of motion(s):

Status of motion(s): pending / scheduled; date / decided; date(s):

(if space is insufficient, add another sheet)

● Release from custody

Does not apply

Refused

Granted / Date: _____

EMAIL ADDRESS / ADRESSE COURRIEL

E-mail communications in the context of the facilitation conference are confidential. The e-mail address used must comply with the ethical rules governing the profession, in particular the duty of confidentiality.

I confirm the use of the following email address for the purposes of my communications for the facilitation conference:

Les communications par courriel dans le cadre de la facilitation pénale sont confidentielles. L'adresse courriel utilisée doit être conforme aux règles déontologiques régissant la profession, notamment le devoir de confidentialité.

Je confirme l'utilisation de l'adresse courriel suivante aux fins de mes communications pour la facilitation pénale :

_____ @ _____

Signature

Name / Nom

Date

See in particular this excerpt from a document of the Bar of Montreal concerning confidential communications (generally with the client) [\(french only\)](#)

[Guide - Courriels](#)

3. LES COMMUNICATIONS AVEC AVEC LES CLIENTS

Protégez vos courriels

L'article 34 de la *Loi concernant le cadre juridique des technologies de l'information*¹¹ impose l'obligation de protéger l'information confidentielle à moins que le client n'en relève l'avocat par écrit. Ainsi, non seulement l'avocat doit-il protéger l'information, il doit convenir des moyens pour ce faire avec le client. Les modalités de protection de vos courriels devraient être proportionnelles à la confidentialité de l'information qui y est contenue. Il est possible de concevoir certains cas dans lesquels de l'information confidentielle sera acheminée dans le corps du courriel avec le consentement du client.

Par contre, plus généralement, l'information confidentielle devra être colligée au sein d'une pièce jointe qui sera protégée. Un simple mot de passe peut être suffisant alors que parfois, il faudra privilégier le chiffrement¹² de la pièce jointe¹³, celui du courriel entier¹⁴ ou celui du canal de communication¹⁵.

Les services de courriels gratuits

Les services de courriels gratuits (par ex. : Hotmail, Gmail ou Yahoo Mail) ne conviennent pas à la pratique du droit et mènent presque inévitablement à la violation d'obligations déontologiques de l'avocat. Comme le démontrent les termes et conditions d'usage de ces services, leur prix est en fait le secret professionnel de vos clients et votre vie privée²⁰.

Par conséquent, avant même de convenir avec votre client que vous communiquerez ensemble par voie de courriels, vous devriez aviser votre client que, selon le contrat intervenu avec son fournisseur de service de messagerie ou encore son employeur (dans le cas des adresses courriel professionnelles), il est possible que ces derniers se réservent le droit de consulter le contenu de leurs courriels, ceci ayant une incidence sur le respect de votre obligation au maintien du secret professionnel et de la confidentialité des communications²¹.

Publicité par courriel

En vertu de la *Loi canadienne anti-pourriel*²², un ca-

PLEASE email the form signed by all to:
facilitation.penale.ca.mtl@judex.qc.ca for files under the
 jurisdiction of Montreal or facilitation.penale.ca.qc@judex.qc.ca
 for files under the jurisdiction of Quebec City.