

You will find herewith the documents to petition the judge in accordance with the *CODE OF PENAL PROCEDURE*, to wit:

Revocation of judgment

- if you were convicted by default and
- if your intention is to plead not guilty and wish to submit a defence
- please read article 250 and following on the revocation of judgment

Reduction of costs

- if you were convicted by default and
- if your intention is to plead guilty
- please read article 261 and following on the reduction of costs

If your demand is dismissed, the judge could condemn you to costs

ORDER OF PROCEDURE

You must complete the form corresponding to your application.

**** The employees of the Municipal Court cannot help you to complete the form ****

You may consult a lawyer (advocate)

Once your form has been duly completed, **you bring to our office the original of the application as well as the copy for the plaintiff.** You ask for a date of presentation. You indicate this date on the form.

**** Court fees of 22 \$ (no refund) are payable for the presentation of an application:**

BY CERTIFIED CHEQUE, MONEY ORDER, MONEY BANK OR CASH MONEY ONLY **

You present yourself before the judge at the date scheduled for approval of your application.

CODE DE PROCÉDURE PÉNALE

RÉTRACTATION DE JUGEMENT

Art. 250

[Cas de rétractation] Le défendeur qui a été déclaré coupable par défaut et qui, pour un motif sérieux, n'a pu présenter sa défense peut demander la rétractation de ce jugement au juge qui l'a rendu ou, s'il n'est pas disponible, à un juge ayant compétence pour le rendre dans le district judiciaire où le jugement a été rendu.

[District visé] Lorsque le jugement a été rendu dans le district visé au deuxième alinéa de l'article 187, la demande de rétractation peut en outre être présentée dans le district où la poursuite a été intentée.

Art. 251

[Demande écrite] La demande de rétractation se fait par écrit et indique, en outre des motifs qui la fondent, que le défendeur conteste le bien-fondé du jugement.

[Demande orale] Toutefois, elle peut aussi se faire oralement lorsque le défendeur se présente à l'audience après que le juge a rendu jugement à condition que le juge et le poursuivant soient encore présents dans la salle d'audience.

Art. 252

[Délai] La demande écrite doit être produite dans les 15 jours de la date à laquelle le défendeur a pris connaissance du jugement le déclarant coupable.

[Retard du défendeur] Toutefois, sur demande écrite, le juge peut relever le défendeur des conséquences de son retard lorsque celui-ci établit qu'il était dans l'impossibilité de présenter une demande de rétractation dans ce délai.

Art. 253

[Demande accueillie] Le juge accueille la demande de rétractation s'il est convaincu que les motifs de rétractation allégués sont sérieux et que le défendeur a un motif pour contester le bien-fondé du jugement.

[Nouvelle instruction] Lorsque la demande est accueillie, les parties sont remises dans l'état où elles étaient avant l'instruction et le juge peut alors instruire la poursuite à nouveau ou ajourner la nouvelle instruction à une date ultérieure.

Art. 254

[Frais] Le juge qui rejette la demande de rétractation peut le faire avec ou sans frais dont le montant est fixé par règlement. S'il accueille la demande, il peut le faire sans frais ou ordonner que ceux-ci soient déterminés, s'il y a lieu, lors du jugement sur la poursuite.

Art. 255

[Exécution] La demande de rétractation n'opère pas sursis de l'exécution à moins que le juge ne l'ordonne sur demande du défendeur.

[Préavis] Un préavis de la demande de sursis est signifié au poursuivant sauf s'il est présent lors de la demande. Toutefois, en cas d'urgence, le juge peut ordonner le sursis même si le préavis de cette demande n'a pas été signifié au poursuivant.

Art. 256

[Exécution du jugement] La personne chargée de l'exécution du jugement est tenue d'y surseoir et de rapporter sans délai au greffe l'ordonnance d'exécution dès que lui est signifié un double de la décision qui accueille la demande de rétractation ou de sursis de l'exécution.

RÉDUCTION DES FRAIS

Art. 261

[Réduction des frais] Le défendeur qui a été déclaré coupable par défaut pour une infraction peut demander que les frais soient réduits au montant minimum fixé par règlement même s'il reconnaît sa culpabilité relativement à cette infraction.

Art. 262

[Demande écrite] La demande de réduction est faite par écrit au juge qui a rendu ce jugement, ou, s'il n'est pas disponible, à un juge ayant compétence pour le rendre dans le district judiciaire où le jugement a été rendu.

[District visé] Lorsque le jugement a été rendu dans le district visé au deuxième alinéa de l'article 187, la demande de réduction peut en outre être présentée dans le district où la poursuite a été intentée.

Art. 263

[Demande accueillie] Le juge accueille cette demande s'il est convaincu que le défendeur, sans négligence de sa part, n'a pu avoir connaissance du fait que le constat d'infraction lui a été signifié. S'il rejette la demande, il peut condamner le défendeur aux frais fixés par règlement.

Art. 264 [Dispositions applicables] Les articles 252, 255 et 256 s'appliquent, avec les adaptations nécessaires, à la présente section.

CODE OF PENAL PROCEDURE

REVOCATION OF JUDGMENT

Art. 250

[Defendant convicted by default] Where a defendant convicted by default was, for a serious reason, prevented from submitting his defence, he may apply for revocation of judgment to the judge who rendered it or, if he is not available, to a judge having jurisdiction to render such a judgment in the judicial district where the judgment was rendered.

[Judicial district] Where the judgment was rendered in the district contemplated in the second paragraph of article 187, the application for revocation of judgment may also be made in the district where proceedings were instituted.

Art. 251

[Application] An application for revocation of judgment must be in writing and state, in addition to the grounds for the application, that the defendant contests the merits of the judgment.

[Oral application] Notwithstanding the foregoing, the application may also be made orally if the defendant appears at the hearing after the judge has rendered judgment, provided that the judge and the prosecutor are still present in the court room.

Art. 252

[Filing] The written application must be filed within fifteen days after the defendant acquires knowledge of the judgment convicting him.

[Late filing] Notwithstanding the foregoing, the judge, on a written application, may relieve the defendant of the consequences of his delay if he proves that he was unable to file an application for revocation of judgment within the prescribed time.

Art. 253

[Granting of application] The judge shall grant the application for revocation of judgment if he is satisfied that the grounds alleged are serious and that the defendant has a ground for contesting the merits of the judgment.

[Effect of granting] Where the application is granted, the parties are placed in the position they were in before the trial and the judge may thereupon recommence the trial or adjourn the new trial to a later date.

Art. 254

[Dismissal of application] Where the judge dismisses an application for revocation of judgment, he may do so with or without costs, in the amount fixed by regulation. Where he grants the application, he may do so without costs or order that the amount of the costs be determined, if advisable, at the time of the judgment on the proceedings.

Art. 255

[Execution] An application for revocation of judgment does not stay execution of judgment unless the judge so orders upon an application by the defendant.

[Notice] Prior notice of the application must be served on the prosecutor unless he is present when it is made. In cases of urgency, however the judge may order a stay of execution even if prior notice of the application has not been served on the prosecutor.

Art. 256

[Stay of execution] The person responsible for the execution of the judgment is bound to stay execution and to immediately return the order of execution to the office of the court on being served a duplicate of the decision granting the application for revocation of judgment or for stay of execution.

REDUCTION OF COSTS

Art. 261

[Reduction of costs] A defendant who has been convicted by default of an offence may demand that the costs be reduced to the minimum amount fixed by regulation even if he pleads guilty to the offence.

Art. 262

[Reduction of costs] The application for reduction shall be made in writing to the judge who rendered judgment or, if he is not available, to a judge having jurisdiction to render such a judgment in the judicial district where judgment was rendered.

[Judicial district] Where the judgment was rendered in the district contemplated in the second paragraph of article 187, the application for reduction of costs may also be made in the district where proceedings were instituted.

Art. 263

[Granting of application] The judge shall grant the application without costs if he is satisfied that it was not possible for the defendant to be aware, without negligence on his part, that the statement of offence had been served on him. If he dismisses the application, the judge may award the costs fixed by regulation against the defendant.

Art. 264 [Provisions applicable] Articles 252, 255 and 256, adapted as required, apply to this division.

APPLICATION FOR REVOCATION OF JUDGMENT UNDER THE CODE OF PENAL PROCEDURE

This form is for the use of any person who wishes to file an application for revocation of judgment after having been convicted by default of an offence against a Quebec law.

1. HOW TO FILE AN APPLICATION FOR REVOCATION OF JUDGMENT

1.1 Where to file your application

If you were convicted by default and **for a serious reason** were unable to submit a defence, you may file an application for revocation of judgment with the Municipal Court at which the judgment was rendered.

1.2 Deadline for filing your application

You must file your application **within 15 days** after the date on which you acquired **knowledge** of the judgment convicting you.

If the 15-day period has expired, you may apply to be relieved of the consequences of your delay by stating, in PARAGRAPH 3 of the attached form, the reasons for which you were unable to file your application within the prescribed period.

1.3 Stay of execution of judgment

You cannot obtain a stay of execution of judgment by filing an application for revocation of judgment. You must file an application for stay of execution of judgment, using the form intended specifically for the purpose.

1.4 Effect of your application

If the judge grants your application for revocation of judgment, the parties are placed in the position they were in before the trial. The judge may then recommence the trial or adjourn the new trial to a later date.

1.5 Costs payable

You must pay costs of 22 \$ (**for every claim, in cash, certified check, postal or bank money order**) to the clerk when filing an application for revocation of judgment or an application for stay of execution of judgment. The judge who grants or dismisses your application for revocation of judgment may or may not impose costs. He may even order that the question of costs be determined at the time of the judgment on the proceedings. **The costs that you may be required to pay are set by regulation at 22 \$.**

2. HOW TO FILL IN THE ATTACHED FORM

2.1 Application

Fill the top portion and state in the lower portion the allegations and conclusions of your application.

2.2 Top portion

- Enter the number of the statement of offence appearing on the notice of judgment or on the writ of execution.
- Enter your full name, date of birth, address and postal code in the space reserved for the applicant.
- Enter the prosecutor's name in the space reserved for the respondent.

2.3 Allegations

PARAGRAPH 1

-Enter the date of conviction, as indicated in the notice of judgment or in the writ of execution.

PARAGRAPH 2

-Enter the date on when you acquired **knowledge** of the judgment convicting you.

PARAGRAPH 3

-Fill in this part **only** if your application is being filed after the expiry of the 15-day period following the date on which you acquired **knowledge** of the judgment convicting you.

State the reasons for which you were unable to file your application within the prescribed period.

PARAGRAPH 4

-State the reasons for which your defence could not be submitted.

For example: *I did not acquire knowledge of the statement of offence because.....*

PARAGRAPH 5

-**You must convince** the judge that you have **serious reasons** for contesting the judgment. For that purpose, you may state the nature of your defence without revealing any of the details.

For example: *I am contesting the legality of the charges brought against me because...*

2.4 Conclusions

- ✓ Check the box corresponding to the conclusions that you are seeking, sign your application and enter the date and place of filing.

2.5 Affidavit of solemn affirmation

Write out the affidavit of solemn affirmation, which is generally administered by a commissioner for oaths or by an advocate, a notary or a justice of the peace.

The application and the affidavit must be prepared in 4 copies and divided as follows:

- (1) ORIGINAL (22\$)
- (1) COPY FOR THE COURT
- (1) COPY FOR THE CROWN PROSECUTOR (RESPONDENT)
- (1) COPY FOR THE DEFENSE (THE APPLICANT / PETITIONER)

2.6 Date and time set for the application

You must obtain from the clerk of the Court the date and time for the hearing of your application, and indicate that information in the prior notice.

Every prior notice and application must be filled in the office of the Court and served on the Crown prosecutor (respondent) **not less than five (5) clear days before the date set for the hearing** at the date given by the court employee.

2.7 Service of application

Serve your application on the prosecutor at least five (5) clear days before the date on which you file it and, within the same period, file your application at the office of the Court in the district in which the judgment was rendered.

Serve your application by registred mail, certified mail, priority courier of bailiff at the following location:

**COUR MUNICIPALE DE MONT-TREMBLANT
1145, RUE DE ST-JOVITE
MONT-TREMBLANT, QUÉBEC
J8E 1V1**

**PROVISIONS OF THE CODE OF PENAL PROCEDURE THAT CONCERN
THE SERVICE AND FILING OF APPLICATIONS AND REVOCATION OF
JUDGMENT UPON APPLICATION FOR THE DEFENDANT
(CODE OF PENAL PROCEDURE, ARTICLES 19, 31 AND 32)**

19. ***Service of a written proceeding under this Code or the rules of practice may be made by mail or by a peace officer or bailiff.***
 31. ***A written application must briefly and precisely state the facts and grounds on which it is based and the conclusions sought . It must be accompanied with an affidavit attesting the truth of the facts stated.
Prior notice must be given of the date and place of a written application.***
 32. ***Unless otherwise provided, every prior notice and, where such is the case, every written application and affidavit must be served on the adverse party not less than five (5) clear days before the date of the application and must be filed in the office of the court of competent jurisdiction in the place where the application is to be made within the same time unless another time is fixed by the rules of practice.***
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