

EXPLANATORY NOTES

APPLICATION FOR REVOCATION OF JUDGMENT AND STAY OF EXECUTION (SJ-721A)

The “Application for Revocation of Judgment and Stay of Execution” form is available for all persons found guilty by default of an offence against a penal law who wish to ask a judge for cancellation of the judgment on the ground that they were unable to present their defence.

TYPES OF FORMS

- Dynamic PDF:

After completing the form, you can print it on letter-sized paper, i.e. 8.5 inches by 11 inches (215.9 mm by 279.4 mm).

- Paper:

If you complete the form by hand, please write legibly in block letters.

PROCEDURE

After filling out the form, you should keep a copy for your files.

The form must be sworn before a commissioner for oaths, by a clerk or by any other person authorized to take oaths.

You will need to contact the office of the courthouse to obtain information to complete the “Prior notice” section of the form.

Please note that you must serve the application on the prosecutor at least five (5) clear days before the date it is presented to the judge. Service may be made by any appropriate method that provides proof the document was delivered to the addressee (ex.: by registered mail or bailiff).

FILING AT THE COURT OFFICE

You must then submit the application, accompanied by the supporting documents and proof of service, to the office of the courthouse where the guilty by default judgment was rendered or to the office of the district where the proceedings were instituted. To do this, you may use the Digital Court Office of Québec (GNJQ), which is accessible via the website of the Ministère de la Justice at www.justice.gouv.qc.ca.

Court fees are payable for the filing of the application. For further information on [court fees](#) and contact information for all [courthouses](#) in the province of Québec, consult the website of the Ministère de la Justice.

Application for Revocation of Judgment and Stay of Execution

(Application for cancellation of a default judgment of conviction and for suspension of execution of the judgment)

▶ General information on the application for revocation of judgment and stay of execution

(The provisions governing the application for revocation of judgment and stay of execution are contained in sections 250 and 255 of the Code of Penal Procedure.)

WHO MAY FILE THE APPLICATION?

This application is for persons convicted by default of an offence under a Québec penal law and who wish to ask a judge for cancellation of the judgment on the ground that they were prevented from presenting their defence. The application is also for persons wishing to ask a judge to order a stay of the judgment execution proceedings brought against them.

A person can be convicted by default for failure to comply with a statement of offence within the required time period or for failure to appear in court for his or her trial.

The judge can cancel the judgment rendered if the grounds given for preventing the person from presenting his or her defence are believed to be serious. The judge can also order, on application, a stay of the judgment execution proceedings.

WHERE IS THE APPLICATION TO BE FILED?

The application must be filed at the office of the court where the default judgment of conviction was rendered or at the office of the court where proceedings were instituted.

WHEN DOES THE APPLICATION HAVE TO BE FILED?

The application must be filed within 15 days after you acquire **knowledge** of the judgment convicting you. If you file the application after that time period, you must explain the reasons for the delay in section 2 of the application.

WILL THE APPLICATION FOR REVOCATION OF JUDGMENT STAY THE EXECUTION OF THE JUDGMENT?

No. A stay of execution of judgment cannot be obtained simply by filling an application for revocation of judgment. To obtain a stay of execution, you must ask a judge to stop the judgment execution proceedings brought against you. To request a stay of execution, complete sections 5 and 6 of the application.

WHAT HAPPENS IF THE APPLICATION FOR REVOCATION OF JUDGMENT IS ACCEPTED?

If the judge grants your application, the judgment will be cancelled and you will be placed in the position you were in before your conviction by default. The judge will then recommence the trial, allowing you to present your defense.

WHAT HAPPENS IF THE JUDGE GRANTS MY APPLICATION FOR STAY OF EXECUTION OF THE JUDGMENT?

The court clerk will notify the collector of the Bureau régional des infractions et amendes, who will take the necessary steps with the bailiff and the Société de l'assurance automobile du Québec to have the suspension of the driver's licence lifted.

The stay of execution ends on the date set for the presentation of the application for revocation, unless the judge orders its extension.

ARE THERE FEES FOR FILING AN APPLICATION?

Yes. Court fees are payable for filing an Application for Revocation of Judgment and Stay of Execution. The clerk will inform you of the amounts payable.

Fees are payable in cash or by postal money order, credit card, debit card or certified cheque made out to the Minister of Finance.

SERVICE OF THE APPLICATION

You must serve the application at least five (5) clear days before it is presented to the judge. Once the application is served, you must also file a copy with the court office at least one (1) clear day before the date it is presented to the judge at the location where the judgment was rendered or the judge at the location where the prosecution was instituted. *(When a time period is specified in clear days, the day of reception of the application at the court office and the day it is presented to the judge are not calculated.)*

Service may be made by registered mail, priority mail or by bailiff, or by sending a copy of the application to the prosecutor. Instead of those methods of service, you may also deliver the copy of the application to the prosecutor yourself (in person), in which case the prosecutor must provide you with a signed and dated acknowledgement of receipt indicating the following mention: *"Received a copy as service"*.

In certain urgent circumstances, you may ask the judge to be excused from service of the application for stay of execution (see section 6 of the application).

SERVICE OF THE DECISION GRANTING THE STAY OF EXECUTION

You must serve a copy of the decision by the judge who allowed your application for revocation of judgment and stay of execution on the bailiff responsible for execution of the judgment. The stay of execution of the judgment is granted only on the condition that such service was made.

Refer to the attached instructions for completing the application for revocation of judgment and stay of execution.

INSTRUCTIONS

▶ How to fill out the application

Complete the heading and present the facts and the conclusions sought in the attached application. On the back of the form, be sure to fill out the sections “*Sworn Statement or Solemn Affirmation*” and “*Prior Notice*”.

HEADING

- ▶ Specify the name of the district and locality where the application is being filed. The application must be presented in the same judicial district where the judgment was rendered or in the district where proceeding were instituted.
- ▶ Indicate the file number assigned by the clerk and the number of the statement of offence specified on the notice of judgment or on the notice of execution given to you by the bailiff.
- ▶ Enter your family name, given name, date of birth, address and postal code in the space provided for the applicant.
- ▶ Indicate the name of the prosecutor in the space provided for the respondent.

FACTS

(The numbers of the explanatory notes refer to the corresponding sections of the form.)

1. Enter the date of the conviction indicated on any of the following documents: **the notice of judgment, the notice of execution or the minutes of the trial.**
2. Specify the date on which you acquired knowledge of the judgment convicting you. If you exceed the 15 days allowed for filling your application for revocation of judgment, explain why it was impossible for you to present your application in the time allotted.
3. Explain why you were unable to appear in court to defend yourself. The reasons for not presenting your defence must be convincing and serious.
4. Briefly explain why you are contesting the merits of the judgment rendered against you, indicating the facts pertaining to your defence.
5. Check (✓) this box if you wish to ask the judge for a stay of the judgment execution proceedings. Explain why you risk suffering irreparable prejudice if the stay of execution is not granted.
6. Check (✓) this box if you wish to invoke urgency for the purpose of asking the judge to order a stay of execution of the judgment even if prior notice of the application has not been served on the prosecutor.

CONCLUSIONS

- ▶ Indicate the purpose of the application by checking (✓) the appropriate box or boxes.
- ▶ Sign the application for revocation of judgment and stay of execution.

BACK OF THE FORM

▶ **Sworn Statement or Solemn Affirmation**

Fill out the section “*Sworn Statement or Solemn Affirmation*” and have it signed by a commissioner for oaths who will, if need be, help you fill it out.

The following persons are authorized to take oaths: commissioners, court clerks and their assistants, lawyers, notaries and justices of the peace. Mayors and municipal clerks and secretary-treasurers can also take oaths, but only within the limits of their municipality.

▶ **Prior Notice**

In the section “*Prior Notice*”, indicate the name and address of the prosecutor. You must also obtain from the court clerk the date, time and number of the room where your application will be heard and enter this information in the prior notice.

**We suggest you consult an attorney
if you need further information.**

APPLICATION FOR REVOCATION OF JUDGMENT AND STAY OF EXECUTION

Application for cancellation of a default judgment of conviction and for suspension of execution of the judgment
(sections 250 and 255 C.P.P.)

CANADA
PROVINCE OF QUÉBEC

District:

Locality:

File No.:

Statement No.:

(family name, given name, date of birth, address and postal code)

Applicant

and

(family name, given name, address and postal code)

Prosecutor

TO A JUDGE OF THIS COURT OR TO A JUSTICE OF THE PEACE, THE APPLICANT STATES THE FOLLOWING:

FACTS:

- 1. I was convicted by default on _____ *(date of judgment)* in the above file.
- 2. I acquired knowledge of this judgment of _____ *(date on which you acquired knowledge of the judgment convicting you)*
 - I ask that the consequences of my delay in presenting this application within 15 days after the date on which I acquired knowledge of the judgment be cancelled. I was unable to do so in time because:
(explain why it was impossible for you to present your application in the time allowed.)
- 3. I was unable to appear in court to defend myself, for the following reasons:
(the explanation must be convincing and serious.)
- 4. I contest the merits of the judgment of conviction rendered against me because:
(indicate the facts pertaining to your defence.)
- 5. I ask that the judgment execution proceedings be stayed for the following reasons:
(indicate the nature of the irreparable prejudice you might suffer if the execution is granted.)
- 6. I ask to be excused from serving on the prosecutor prior notice of the application for stay of execution of judgment, for the following reasons: *(specify the urgency.)*

FOR THESE REASONS, I ASK:

- to be relieved of the consequences of my delay in presenting the application for revocation of judgment;
- that my application for revocation of judgment be allowed;
- to be excused from serving prior notice of the application for stay of execution of judgment because of an urgency;
- that my application for stay of execution and revocation of judgment be allowed;
- TO PROCEED immediately with the trial or to have it adjourned to a later date.

In _____, on _____ Applicant

DECISION

In _____, on _____

Judge / Justice of the Peace

Judge / Justice of the Peace (in block letters)

SWORN STATEMENT

I, _____ ,
occupation: _____ ,
domiciled at (address and postal code) _____

declare under oath the following:

or

solemnly affirm the facts below. I make this solemn affirmation, conscientiously believing it to be true and knowing it has the same force and effect as if made under oath.

- 1. I am the applicant.
- 2. I attest that the facts given in the application are true.

And I have signed

Applicant

Sworn before me

Solemnly affirmed before me

In _____ , on _____

Person authorized to take oaths or solemn affirmations

PRIOR NOTICE

Name of prosecutor: _____

Address: _____

TAKE NOTICE that this application for revocation of judgment will be presented at the courthouse of _____ , in room _____ , on _____ , at _____ a.m./p.m.

TAKE NOTICE that this application for a stay of execution of the judgment will be presented at the courthouse of _____ , in room _____ , on _____ , at _____ a.m./p.m.

Applicant

You must serve the application at least (5) clear days before it is presented to the judge.