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**SUPREME COURT OF CANADA MANUAL  
Practice and Advocacy**

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Marie-France Major and Cory Giordano**

**Release No. 43, November 2018**

This publication provides an in-depth look at practice and procedure at the Supreme Court of Canada. The authors include a former Executive Legal Officer to Chief Justice Lamer and a former law clerk to LaForest, and collectively as lawyers, they have worked on hundreds of Supreme Court matters as either counsel or agent. Intended to be a comprehensive research and working tool for practitioners, the book brings readers through each step of the process beginning with applying for leave to appeal. In doing so, it offers a substantive view of the law along with practical guidance on the issues that can arise in the leave to appeal and appeal process. Designed to be a primary source of the statute and case law with respect to practice at the Supreme Court, the text also includes important legislation, rules, guidelines, forms and practice directions.

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The book also contains a “Year in Review”: an annual survey of all the law from the Supreme Court including appeal judgments, oral judgments, significant motions and leaves to appeal granted. Subscribers will appreciate the analysis of the leading cases, their practical implications for practitioners, and the identification of emerging issues.

### **What’s New in this Update:**

The authors have updated the commentary and case law in Chapters 2 (Overview of the Supreme Court of Canada Process), 3 (The Leave to Appeal Process), 4 (The Appeal Process), 5 (Interlocutory Motions), 7 (Courtroom Procedure) and 12 (Costs in the Supreme Court of Canada).

### **Highlights**

- **Overview of the Supreme Court of Canada Process — Appeal Stage — Court Judgment Process — Media Lock-ups** — In May 2017, the Court announced revised judgment lock-up procedures. The revised procedure provides that a media lock-up may be initiated by the Court or granted at the request of the Canadian Parliamentary Press Gallery. Consent of counsel for the parties will no longer be required, but the Court will seek their input. For more detailed information on the lock-up procedure, see Appendix A, Notices to the Profession, May 2017 — Judgment Lock-up Procedure.
- **Interlocutory Motions — Assignment of Counsel** — The Criminal Code provides that the Court may appoint counsel for an accused. Section 694.1(2) further provides that where counsel is assigned but Legal Aid is not granted, the fees and disbursements of counsel shall be paid by the Attorney General.

As Legal Aid applications can sometimes take weeks or months to fully resolve, counsel are encouraged to apply as soon as practicably possible. The request to the Court can be done by way of a notice of motion for an assignment of counsel. It can be accompanied by an affidavit which demonstrates that the accused has been denied Legal Aid, is impecunious, and is incapable of representing him or herself. The motion should highlight that it is in the interests of justice that the accused should have legal assistance.

At the leave stage, the request to assign counsel can be made when the application for leave to appeal is filed. If a barebones leave application is filed, the Court may order a more fulsome application be prepared if counsel is assigned. However, it is more likely to be

successful if the proposed counsel is able to prepare the initial application for leave regardless of whether the assignment has been made. At the appeal stage, the request should be made as soon as possible.

- **Courtroom Procedure — During the Hearing — Audio Recordings**  
— As of October 3, 2018, the Court is making audio recordings of hearings held since October 2017 available on its website. These recordings are in addition to the Court’s webcasts, which had been available since 2009. Audio files can be accessed by opening a hearing webcast page and selecting “Audio only” under “Select Format and Language.” Audio recordings of future hearings will be published within a day of the hearing, unless publication restrictions apply. The Court stated that this initiative is part of the Court’s continued efforts to make its work more accessible to Canadians.

