About this guide

More and more people go to court without a lawyer. That's why the Québec Bar Foundation has prepared guides called *How to prepare for court*.

These guides offer information that helps people understand the main steps of the legal process. They also help the reader make informed decisions about the choices they will face.

The information in this guide is only for people who have been charged with a penal offence.

Since 1978, the Foundation has worked for the advancement of law and supported young legal professionals to help create a fairer society.

Primarily funded by private donations, the Foundation can count on the support of its Governors, its donors, its partners and successful fundraisers to accomplish its mission.

Working in a collective spirit, open to the community and attentive to its needs, the Québec Bar Foundation helps unite people and aspires to be at the heart of a legal community committed to the future of law.

To learn more about the Foundation and the free publications it offers, visit its website: www.fondationdubarreau.qc.ca

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Pour l'avenir du droit

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How to prepare for court

for penal matters

This guide contains general information about current Québec law and is not meant to provide legal advice or a legal opinion.

This guide is for people who have been charged with a penal offence.

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A guide that doesn't apply in all cases

Only for penal cases

The information in this guide only applies to cases related to penal law. In other words, it applies to what we usually call tickets and fines.

Penal law is vast. It includes many types of offences set out by federal, provincial and municipal laws, bylaws and regulations. Penal offences aren't crimes. This means that they don't lead to a criminal record.

Here are some examples of penal offences:

- *Highway Safety Code* violations, such as speeding, using a phone while driving, or not wearing a seat belt.
- Municipal bylaw offences, such as noise violations or disobeying regulations related to your house or yard.
- Violations of the *Tobacco Control Act*, such as selling tobacco to a minor.

This guide does not apply to you if your case is related to another type of law, such as family law or civil law. It also does not apply to special requests, or recourses such as appeals.

… not for crimes

Have you received an appearance notice, a promise to appear or a summons ordering you to appear in court? Or have you been arrested?

This means your situation concerns a crime, formally known as a criminal offence. This is different from a penal offence. The rules of evidence and the rules of procedure for criminal matters are more complex than for penal matters.

That's why we've prepared a guide specifically for criminal law: "*How to prepare for court - For criminal matters*".

Only for Québec courts of law

Not all courts follow the same procedures.

This guide is for cases taking place in one of these courts:

- A municipal court in Québec
- The Court of Québec, Criminal and Penal Division

This guide is **not** for you if your case is with one of the following courts:

- The Court of Appeal of Québec
- A federal court or tribunal, or any other court that does not hear penal cases.

Only for actual people... not legal persons

This guide does not apply to corporations or organizations, also called “legal persons” or “legal entities”.

Even though a legal person can be charged in penal court under certain laws, this guide was not designed to cover that situation. Some of the information here should still be useful.

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Asking a lawyer for help… or not

When you are charged with a penal offence, you can either be represented by a lawyer or act alone in court. There are no other options. You can't ask a family member or friend to represent you. Only a lawyer can talk for you or act for you in court.

Representing yourself

You have the right to act on your own in court.

It's important to know that all the rules apply equally to everyone. The court won't treat you differently if you represent yourself. You'll have to find out what rules to follow, understand these rules and respect them.

Of course, you'll have to interact with a prosecutor who knows the appropriate rules of law and procedure. If you ask them questions, any information they give you must be true, but you can't count on their advice or assistance.

How to be represented by a lawyer

If you decide to be represented by a lawyer, you can choose the one you want.

Even if your lawyer knows you've done something wrong, they can still defend you at your hearing. But they will have to respect certain rules. They won't be allowed to lie or to let you lie.

If you decide to be represented by a lawyer, that means that you can speak to them freely. If you're clear and honest with them, that will give them the best chance to defend and advise you properly.

What if you don't know any lawyers? Groups and associations of lawyers provide referral services by area of law and by region. For more information, consult the "Referral Services" page on the Barreau du Québec website. You can find it by typing "Referral services Barreau du Québec" in a search engine like Google.

Too expensive? Options to consider

If you risk a heavy fine or jail time, you will likely want help from a lawyer. Before concluding that you don't have enough money, consider the following options:

1. A brief consultation or specific mandate with a lawyer

Even if you're working on your case alone or representing yourself in court, you can still consult a lawyer, even if only for a few hours.

You can also consult a lawyer briefly to find out how much it would cost for them to represent or assist you, either for the whole case or a portion.

Talk with a lawyer to find out if it's possible to negotiate their fees. In some cases, a lawyer might agree to work for a fixed fee or accept other terms that make things easier for you.

2. Referral services

Some referral services offer an initial consultation for free or at low cost.

You can learn more about these services on the Barreau du Québec website (select Find a lawyer in the menu) at barreau.qc.ca/en

You have rights

Everyone charged with an offence has the following rights:

- The presumption of innocence.
- To be tried within a reasonable time.

These rights are protected by the *Canadian Charter of Rights and Freedoms* (the *Charter*). They are important, and if they are not respected, that can affect your trial.

You are presumed innocent until proven otherwise

You've probably heard about the presumption of innocence. Thanks to that principle, you don't have to prove that you're innocent. The prosecution has to prove that you're guilty. They have the burden of proof.

The prosecution must convince the judge that you are guilty "beyond a reasonable doubt". This is a high standard to meet. The level of certainty required is almost total. If the evidence presented by the prosecution is not sufficient, or if you raise a reasonable doubt, you will be declared not guilty. The presumption of innocence is set out in section 11(d) of the *Charter*.

You have the right to be tried within a reasonable time

For Court of Québec or municipal court hearings, you normally have the right to be judged within 18 months[1].

What happens when the deadline isn't met?

It's presumed that the right to be tried within a reasonable time has not been respected. The prosecution must then prove that they couldn't meet the deadlines due to exceptional circumstances outside their control. If they can't do so, there can be a stay of proceedings. In that case, you will not be declared guilty or be acquitted, but the charges against you will be dropped.

The right to be judged within a reasonable time is set out in section 11(b) of the Charter.

Have your rights not been respected?

If you believe one of your constitutional rights was not respected, you can ask the judge who will hear your case for a remedy.

In general, it's your responsibility to establish that one of your rights was not respected. To prove this, you can interrogate police officers and have witnesses be heard.

The judge will first determine if your rights were violated. This means that they will decide if one of your rights was not respected. If they conclude that there was a violation, they must then decide if they grant a remedy or not. That's because a remedy is not always given when a right is not respected.

1. This deadline does not account for any delays caused by the defence, such as a hearing which is postponed at the defendant's request.

Here are some possible remedies:

- Postponing your hearing to a later date.
- Excluding some evidence.
- A stay of proceedings.

How to ask for a remedy

You must let the judge and the prosecution know you intend to plead that your constitutional rights were not respected. To do so, you must make a request.

In theory, you must transmit your request to the prosecution (by letter, email or fax) before the hearing, but the judge may decide otherwise. You can communicate with the Bureau des procureurs de la poursuite to find out which lawyer is responsible for your case.

If you want to proceed with such a request, talk to the judge. You can also talk to a lawyer for free at a Community Justice Center (justicedeproximite.qc.ca/en).

The start of the process

For penal matters, the judicial process usually starts when you receive a statement of offence.

Statement of offence

What it is

It's often also called a ticket or a fine.

No matter how you call it, the statement of offence will specify, among other things:

- The section of the law, bylaw or regulation which was violated.
- The amount you need to pay.
- The details of the offence, such as the time, date and location, as well as a description of the facts.

The statement of offence can be:

- Handed to you in person by an officer.
- Left at the site of the offence, such as on your vehicle's windshield.
- Sent by mail.

Don't be surprised: you might receive a statement of offence many months after the events in question occurred.

Teenagers can also be given a statement of offence

A statement of offence can be given to any person aged 14 or older who has committed an offence.

If a teenager is given a ticket, their parents should receive a copy of the statement of offence, unless it's a parking ticket.

Sentence or notice of claim

Your statement of offence should include a section called "sentence" or "notice of claim". Here is an explanation of the elements you'll find there:

- **Fine**: The amount of the fine depends on the offence and is determined by a law, bylaw or regulation.
- **Court costs or fees**: Court costs are added to the amount of the fine. These are costs related to the proceedings and the court office. These fees depend on the amount of the fine and are set out by rule in the Tariff of court costs in penal matters.
- **Contribution**: A contribution is required for offences related to provincial laws, but not for those related to municipal bylaws. The amount requested is in proportion to the fine. The contribution will go to the Crime Victims Assistance Fund and the Access to Justice Fund.

Pleading guilty or not guilty

Your statement of offence also includes a **reply form** where you can specify if you want to plead guilty or not guilty to the offence in question.

You must send your plea within 30 days. This deadline starts as soon as your statement of offence is delivered. These are calendar days, which means that you must count Saturdays and Sundays as well as weekdays.

Pleading guilty
When you plead guilty, you admit having committed the offence in question.

To do so, you must:
- check the box marked "Guilty".
- complete the section titled "Plea".
- send the form and your payment by mail, or drop it off in person at the specified address or an official service point. In some areas, it's also possible to do this online or by email.

If you pay the full amount requested without including the reply form, you will be considered to have pleaded guilty to the offence.

You must pay the total amount specified in the section of your statement titled "Sentence". If you don't pay in full, additional fees could apply. There could also be other consequences.

Pleading not guilty
When you plead not guilty, you contest the offence. In that case, you should not pay the claimed amount, because that would be considered an admission of guilt.

Simply fill out the reply form or the section titled "Plea" on your statement and send it by mail or drop it off in person at the specified address or an official service point. In certain areas, it's also possible to send it online or by email.

A hearing will take place. In other words, you will have to go to trial. You will receive a notice of hearing telling you where and when to present yourself in court.

Did you change your mind?
You can change your plea if you first plead not guilty, but upon reflection, decide to plead guilty. But it's impossible to change a guilty plea to not guilty.

You will need to find out what procedure to follow, because it can vary between jurisdictions. If you've already received a hearing notice, it might specify the conditions. You can also communicate with the prosecutor for your case to let them know you want to change your plea. They should be able to handle the matter for you in court without you needing to be present.

Additional fees might be requested if you change your plea.

What if you don't reply?
You might receive a default judgment if you don't reply.

Please read the following to understand what that means.

Default judgment

A default judgment means that the judge rendered judgment in your absence. There's a very good chance that the judgment was not in your favour.

Having a default judgment set aside

Is this possible? Yes, but only if you have a good reason.

To have a default judgment set aside, you must file an application for revocation of a judgment with the court.

The judge will decide if your request is valid. Here are some examples of situations where you might consider asking for a judgment to be revoked:
- You never received a statement of offence (which means you never had the chance to plead not guilty), but you received a default judgment.
- You pleaded not guilty within the 30-day deadline after receiving a statement of offence, but you still received a default judgment.
- You received a statement of offence, but circumstances made it impossible for you to contest it.

15 days to apply for a revocation

This 15-day deadline starts on the date when you were made aware of the default judgment.

Have you missed this deadline? You can still present your request, but you must also explain why it was impossible for you to submit it in time.

Use the right form

Different courts use different forms for this purpose. It's often called "Application for revocation of judgment" or "Motion for revocation of judgment".

If your case is with a municipal court, the form is most likely available on the court's website. Otherwise, you can obtain it by contacting the court office.

If your case is with the Court of Québec (this is the case if you are being prosecuted by the DPCP), you must use form SJ-721A, titled "Application for revocation of judgment and stay of execution". This form is available on the Québec government's website (quebec.ca/en). To find it, type "Forms and models - Penal proceedings Quebec" in a search engine such as Google.

Asking for penalties to be put on hold

You might want to request a stay of execution at the same time as you ask for the default judgment to be set aside.

What does this mean? It means that you're asking for the penalties specified in the judgment not to be applied immediately.

If you only submit an application for revocation of judgment, any penalties that were imposed won't be put on hold, and the judge won't make an order to that effect.

The request for a stay of execution can often be made on the same form as the application for revocation of judgment. If this is not the case, go to your court's website to see if the form you're looking for is available online, or for information on where to find it.

Please note that you will have to pay a fee to make each of these requests.

Requesting for costs to be reduced

If you've received a default judgment, you might have noticed that you are being asked to pay additional court costs. These costs can greatly increase the total amount you have been sentenced to pay.

What if you admit your guilt, but you don't believe you should have to pay these fees?

You can ask for these costs to be reduced to the minimum amount set out by rule. This is called an application for reduction of costs.

You must have a good reason

The judge will only accept your request if they believe the default judgment was not the result of your negligence. You must have a better reason than having simply forgotten to reply to the statement of offence.

15 days to request a reduction of costs

This 15-day deadline starts on the date when you were made aware of the default judgment.

Have you missed this deadline? You can still present your request, but you must also explain why it was impossible for you to submit it in time.

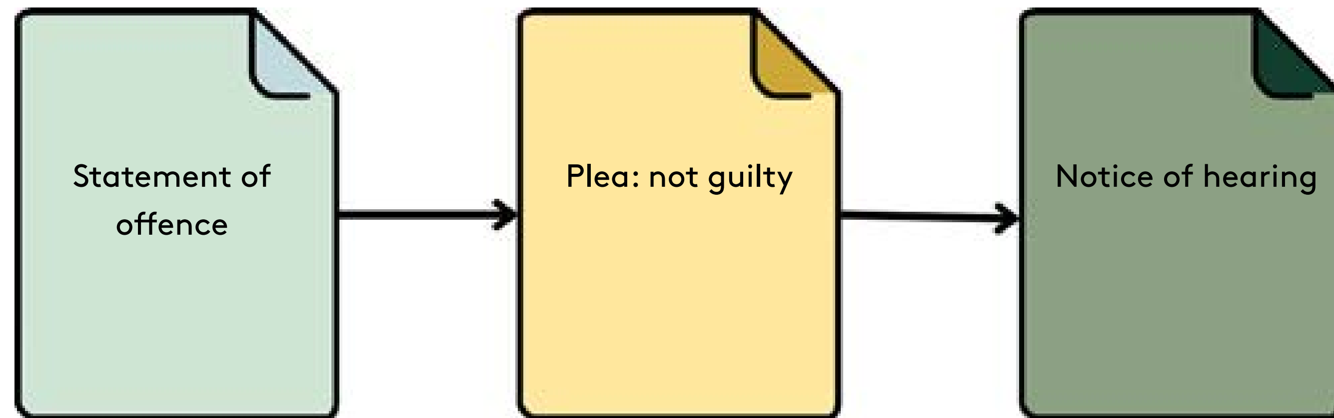
Use the right form

If your case is with:

- **a municipal court,** different courts use different forms for this purpose. It's often called "Application for the reduction of costs" or "Request for reduction of costs". The form is most likely available on the court's website. Otherwise, you can obtain it by contacting the court office.
- **the Court of Québec** (this is the case if you are being prosecuted by the DPCP), you must use form SJ-1197A titled "Application for the reduction of costs". This form is available on the Québec government's website at quebec.ca. To find it, type "Forms and models - Penal proceedings Quebec" in a search engine such as Google.

Notice of hearing

Were you given a statement of offence? And did you respond by pleading not guilty? Then you will receive a notice of hearing by mail.



The notice of hearing includes all the information related to your hearing (in other words, your trial): the address, the room, the date and the time.

The date specified on the hearing notice is when your hearing will be held. You must prepare properly and let your witnesses know when they will need to be available, if you have any.

Hearing rolls

"Hearing rolls" is a legal term referring to the schedule of court hearings.

If you've lost your hearing notice, you can consult the hearing rolls to find out when you need to go to court.

If your case is with:

- **a municipal court,** consult the court's website. You can also contact the court office by phone.
- **the Court of Québec,** consult the hearing rolls at roles.tribunaux.qc.ca

Disclosure of evidence

To mount a proper defence, it's important that you have access to all the same relevant information as the prosecution. That's why your prosecutor must give you all the evidence related to your case.

This principle is known as the right to disclosure of the evidence. It is based on section 7 of the *Canadian Charter of Rights and Freedoms*. This duty to disclose evidence only applies to the prosecution.

In penal cases, the most common items of evidence are the statement of offence and the police officer's report. There can also be evidence from an inquiry.

Do you believe the prosecution hasn't disclosed all their evidence? If so, you must inform the judge in charge of your case as soon as possible. They will make the appropriate decision. It's important to know that there are exceptions to the obligation to disclose evidence. That's the case when specific rules mean that some items of evidence must remain confidential.

Sent by mail

Normally, you should receive the prosecution's evidence by mail. This means that it's important that you let the court know at once if your address changes.

Another possibility is that you will be given the evidence in person on the day of your hearing.

Received on time… or not

You might prefer to receive the evidence in your case some time before the day of the hearing. If your hearing is getting close and you haven't received the evidence yet, don't hesitate to contact the prosecutor to request it.

If you believe you won't be able to properly prepare for your hearing because you received the evidence too late, you can request for the hearing to be postponed.

Postponing your hearing

You need a very good reason to have your hearing postponed.

Here are some examples of serious causes that could justify a postponement:

- You are in the hospital and can't be present.
- You will be out of the country on the day the hearing is planned.
- One of your witnesses isn't available.
- You were not given the evidence in the case, or you received it too late.
- You want to consult a lawyer.

The prosecutor can contest your request for a postponement. In that case, the judge decides whether to accept it.

If your request is rejected, the hearing could take place without you. You could then be declared guilty and receive a default judgment against you.

The prosecutor can also agree to your postponement request. In that case, they will likely ask you to "waive the right to invoke any additional delay caused by this postponement".

What does this mean?

This refers to your charter right to be heard in court within a reasonable time. If you cause a delay by asking for a postponement, the prosecution can ask you to explicitly waive your right to this added time when deciding whether this clause was breached.

To learn more about your right to be judged within a reasonable time, please see page 13.

Postponement request

A postponement request must normally be sent and received no later than 3 to 10 days before the planned date of your hearing. The specific deadline depends on where your hearing will take place. It's best to check with the court office to find out the actual deadline you need to respect.

You must give notification of the postponement request to the prosecutor's office and file it with the court office of the municipal court, or the court office of the Criminal and Penal Division of the Court of Québec.

How to make the request

If your case is with:

- **a municipal court,** you must fill out a form requesting a postponement in penal matters. This form might be available on the municipal court's website. If not, you can contact the court office.
- **the Court of Québec,** there is no form for this purpose. You must write your request and send it to the parties and the judge (send your request for the judge to the court office). A simple letter sent by email or fax might be sufficient, but make sure to contact the court office in case there are other requirements.

You can also communicate with the prosecutor beforehand to inform them you wish to request a postponement. This way, you will know if they plan to agree to your request or contest it.

Explain why you are requesting a postponement. You can join a copy of any justifying document to your request (for example, a note from your doctor, a plane ticket, or a note certifying that you are needed at work).

You can also inform the other parties and the judge of any other period when you will be unavailable, to make sure the new hearing won't be set for one of those dates. For example, if you know you will leave the country for a whole month, you should state that in your request.

You might have to pay a fee to file a postponement request, whether your case is with a municipal court or the Court of Québec.

If the prosecution objects to your request, the judge will choose whether to grant it. Before deciding, they might ask to hear from the prosecution and from you.

Granting a postponement request

If the judge grants your request for a postponement, a new date will be set for the hearing. You will receive another hearing notice by mail informing you of the new date and time.

You could take this opportunity to study the evidence, evaluate the issues related to your case, or reconsider your choice to act alone at your hearing, among other things.

Don't forget about your witnesses! If you had summoned witnesses to your hearing, make sure to let them know about the postponement.

Who is prosecuting you?

There are two possibilities

You are either being prosecuted by:

- **the Directeur des poursuites criminelles et pénales (DPCP):** In this case, the prosecution will be represented by a "criminal and penal prosecuting attorney". Your case will be heard by the Court of Québec.
- **a municipality:** In that case, a municipal court prosecutor will prosecute you on behalf of the city.

In either case, the person representing the prosecution is usually called the "prosecuting attorney" or "Crown prosecutor". They are in charge of the case and decide how to handle it.

You will never be prosecuted by a private individual, even though your case might have started when someone reported you.

At some point in the process, your court case will be identified by a number and the names of the parties according to the following pattern: "Town of XYZ v. Your Name", or "Directeur des poursuites criminelles et pénales v. Your Name". The letter v. stands for "versus".

Options to settle the case

It's sometimes possible to reach an agreement with the prosecution. You might be able to avoid a hearing, either through negotiations or an alternative measures program.

Negotiation

What it is

Negotiation lets you reach an agreement with the prosecution by making certain concessions. This kind of agreement can let you settle the case. It's an informal process between you (the defence) and the prosecution.

Negotiations can be held at any time.

It's not compulsory

- The prosecution

The prosecutor does not have to negotiate with you or accept your offers. They also have to respect some guidelines during negotiations.

- The defence

Of course, you also have your word to say. No one can force you to negotiate or accept terms.

- The judge

The judge doesn't have to accept common suggestions from the parties, but they must have a good reason not to do so.

What you can negotiate

You can negotiate with the prosecuting attorney to find an agreement on the offence or on the sentence. For example, the prosecution could agree to charge you with a different offence.

If you settle with the prosecution and the agreement states that you will plead guilty, this means that you give up your right to an actual hearing. Why? **Because when you plead guilty, you admit that you have committed the offence of which you are accused.** That's why it's very important to take enough time to reflect before making that decision.

Alternative measures

What they are

Alternative measures, also known as restorative justice, refer to different programs that let you take responsibility for your actions while avoiding the traditional judicial process.

Some of these programs can lead to charges being dropped if you complete them successfully.

How to take part

First, you must show that you are ready to collaborate in good faith. You must also admit the facts that led to your prosecution before you can take part in such a program.

There are many different alternative measures programs. Each of them has different eligibility requirements.

At this point in time, no programs are available province-wide. You will need to find information on what alternative measures programs are available in your area.

Preparing for the hearing

You should always prepare properly for a penal case.

Of course, someone who risks a small fine might not need to prepare as thoroughly as someone who might be sentenced to pay a hefty sum. Feel free to adapt your preparations accordingly.

But no matter how simple or complex your case, don't wait until the last minute to get started!

Are you nervous about your upcoming hearing? Don't hesitate to attend someone else's hearing. They are open to the public, so you can quietly enter a courtroom and sit in the public seating area. This will give you a better idea of how a hearing takes place and help you prepare properly.

Understanding the relevant law

To find out what kind of evidence you'll need to present, you must understand the law that applies to your situation. You should consult three types of sources for your research to be thorough:

- Laws, bylaws and regulations.
- Court decisions about cases like yours. This is called "jurisprudence" or "case law".
- Theoretical texts by specialized authors. This is called "doctrine".

Remember: you might be convinced you are right, but the law might say otherwise. It's your responsibility to research the law and learn about all the legal principles that apply to your case.

Not all resources are good!

In fact, some could lead you astray. For example:

- Online forums and discussion platforms
- Personal blogs
- Foreign websites: what is true elsewhere might not apply here!

Laws, bylaws and regulations

The offence you are charged with is set out in a law, regulation or municipal bylaw. Usually, the statement of offence will cite the text of the law, bylaw or regulation establishing the offence.

Take the time to read it properly. It will help you understand what the prosecution needs to prove.

To understand the procedure to be followed for penal matters, the main law to consult is the *Code of Penal Procedure*.

Other laws or regulations might be relevant to your case. For example:

- The *Canada Evidence Act*, which sets out rules about what evidence is admissible.
- The *Canadian Charter of Rights and Freedoms*, to learn about your fundamental rights.

Court decisions (jurisprudence)

You should also be aware of any past court decisions related to situations similar to yours. This is called jurisprudence or case law.

Jurisprudence is a complement to the law, because it tells us how judges have interpreted the law in the past. Jurisprudence is also where you'll find most examples of valid defences, excuses and justifications.

You can find court decisions for free using one of these search engines:

- SOQUIJ : soquij.qc.ca/a/fr/english
- CanLii : canlii.org/en
- CAIJ : caij.qc.ca/en/contents

Do you need help researching jurisprudence? A Community Justice Center lawyer can help you for free (justicedeproximite.qc.ca/en).

Theoretical texts (doctrine)

To help you understand the law, you can read texts on legal theory.

It's important to note that these texts are not binding on the court. This means that judges don't have to do what they say. But these texts can help you understand the law and find relevant court decisions.

To find texts on legal theory, you can go to the library of a university with a law program, or visit the CAIJ website: caij.qc.ca/en/online-secondary-sources

Preparing your witnesses

You can testify on your own behalf at the hearing. You can also have other people be heard as witnesses.

To identify the witnesses who could be useful, ask yourself the following questions:

- What facts essential to your defence do you need to prove to the court?
- Who has first-hand knowledge of these facts and can come explain them?
- Who is the author of the documents you wish to use at the hearing, or the person who signed them?
- Which witnesses could contradict fully or in part what might be said by the witnesses for the prosecution?

Preparing them to be present

Once you have identified your witnesses, you must make sure they will be there at the hearing. This means that you should contact them as soon as possible.

You can reassure them that their employer must allow them to go testify in court, either with or without financial compensation.

Your witnesses might be friends or family members. They will probably agree to serve as witnesses simply to help you out, without any formalities required. But if a witness doesn't want to come to court, or you believe that their presence is essential, or if you risk having to pay a hefty sum if you are found guilty, you might prefer using a summons.

A **summons**, also called a **subpoena**, is a document that forces someone to come testify. It informs the witness of this obligation and gives them the date, place and time to be present.

What happens when a witness who has received a summons doesn't show up at the hearing? They could be arrested by the police and brought to the courtroom by force. On the other hand, if you simply ask a witness to come testify without a formal summons, there won't be any consequences for them if they don't show up to your hearing.

Here is how to summon a witness:

- **If your case is with the Court of Québec,** use the form called Summons of a Witness (SJ-988A). To find it, type "Summons form SJ-988A" in a search engine such as Google Once you have filled out the form, you must go to the court office of your courthouse to have it authorized. You can then send it to the witness in a way that lets you prove it was received. Don't hesitate to contact the court office. They can explain the whole procedure in detail.

- **If your case is with a municipal court,** there is no specific form used to summon a witness. It's best to contact the court office of your municipal court to find out the procedure to follow. It's possible that the court office staff will prepare the document for you. If this is the case, you must give them the full name and address of your witness. Make sure you have the right information with you!

Do you want to summon the police officer who gave you the statement of offence? Contact the prosecutor and let them know.

Paying your witnesses

You must pay an indemnity to the witnesses that you summon. This indemnity compensates them for their travel, meals and lodging, as well as for their time.

The indemnity amount is set by the government. In 2024, this amount is set to $45 or $90 depending on how long the witness must be away from home to attend the hearing. Expert witnesses can be more expensive.

To receive their indemnity, your witnesses must go to the court office. They will be given a form to fill out.

Preparing your questions

Will there be witnesses at your hearing? Whether they were called by you or the prosecution, you must prepare your questions in advance.

Questioning your witnesses

During the hearing, you will ask your witnesses questions so they can clearly explain their version of the facts.

Here is how to prepare:

- Identify what the testimony of each witness needs to prove.
- Prepare a list of questions for each of your witnesses.
- Meet each witness in advance so you know every detail of their version of the facts.
- Plan a practice session with each witness.
- Note their answers during this session.

You can always decide you no longer wish to have a witness be heard. For example, you might find out that their version of the facts doesn't favour you as much as you thought. Remember, the witness has to tell the truth. You must not try to influence their testimony in any way.

Open-ended questions

When you question one of your witnesses, you must ask them non-leading questions that ask for more than a yes or no answer. Open-ended questions often start with one of the following words: where, when, who, how and why.

For example:

- What were you wearing?
- Why were you wearing a jacket?
- What colour was it?

Questioning the prosecution's witnesses

You will also be able to question the witnesses for the prosecution. Once the prosecution has finished their examination, it will be your turn to cross-examine them.

Don't be surprised: it's unlikely that the police officer who witnessed the offence or gave you a statement of offence will be summoned as a witness by the prosecution. The prosecutor will often simply file the statement of offence and the offence report into evidence.

It's possible to have the officer come to court if you want to cross-examine them. But you should know that you might have to pay the related costs. That's why it's important to decide whether it's relevant and necessary before having them summoned to appear in court.

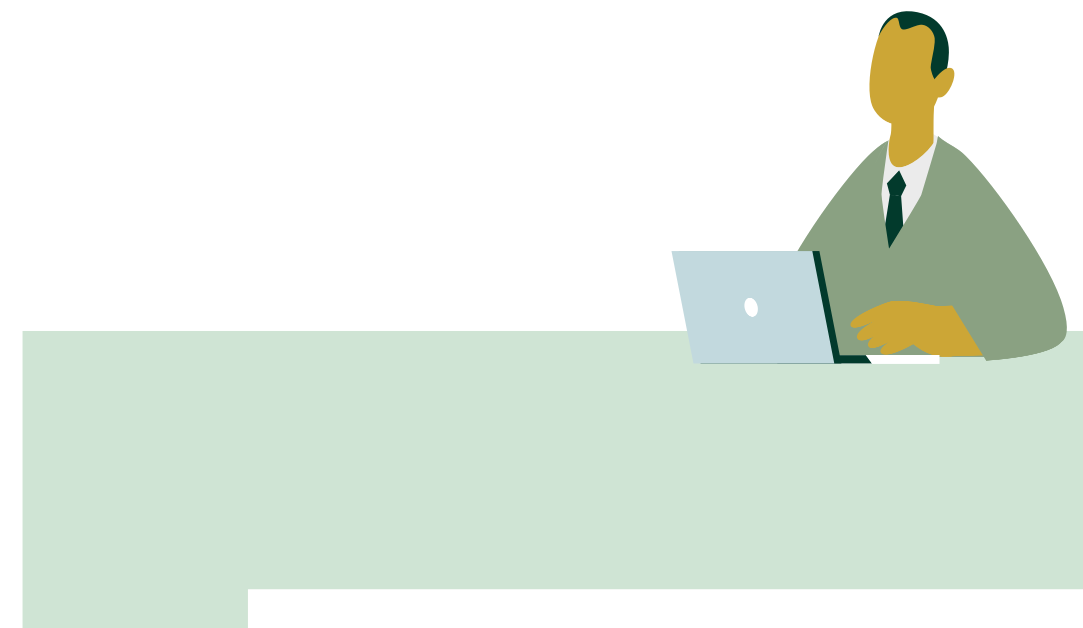
Leading questions

During cross-examination, you can ask questions that suggest an answer. Leading questions are usually short and have a clear point.

For example:

- You were wearing a jacket, isn't that right?
- You were wearing a jacket to go to a wedding, weren't you?
- Isn't it true that your jacket was black?

During cross-examination, it's highly recommended to ask questions to which you know the answer. Otherwise, the answer might surprise you and strengthen the other party's case. If you don't know what a witness will answer, it might be wiser to avoid asking them that question.



Don’t forget your own testimony!

First, remember that you have the right not to speak. The fact that you choose not to testify can’t be held against you. In other words, the judge and jury are not allowed to conclude that your silence is suspicious.

But if you choose to testify at your hearing, you must prepare. Note the things you want to say and take the time to properly organize your ideas.

In fact, your testimony will form a central pillar of the hearing. You must not take it lightly.

If you decide to testify, you will certainly be cross-examined by the prosecution. Don’t forget: you must tell the truth at all times.

Preparing your physical evidence

Physical evidence refers to the documents and items you will bring to your hearing to support what you say. These are called “exhibits”.

Here are some examples:

- Bank documents
- Contracts
- Pictures and videos

Prepare enough copies for the hearing

If you plan to file exhibits at your hearing, you must always prepare three copies: one for the judge, one for the prosecution, and one for you.

When you file an exhibit, you must also specify a code for it so it can be easily identified, such as D-1, D-2 or D-3 (“D” stands for defence).

Can a lawyer review your case?

Yes, it’s possible. You can consult a lawyer even only for a few hours. If you risk having to pay a hefty fine, this could be a good option.

A lawyer can let you know if you’re on the right track with your case. If you can afford it, a lawyer can analyze your case and help you determine:

- The legal points you need to establish to support your position.
- How to file and present your evidence and arguments.
- The rules of evidence you will need to respect.
- How to cross-examine the witnesses for the prosecution.

Rules of conduct to respect in court

There are many formal rules of conduct to follow in a courtroom. It's important to know and respect them.

These rules are mandatory. Breaking them can have significant consequences. Imagine how you would feel if the judge criticized you during the hearing for breaking one of these rules. You don't want to deal with that kind of stress.

The rules apply at all times, even if it's not your turn to speak or if your hearing is virtual.
Here are the main rules:

Be on time

This is essential. To make sure you are on time, get to the courthouse early. That way, you will be sure to have enough time to find the courtroom.

It's important to know that some courthouses have security checks to go through that can cause lineups.

Dress properly

You must watch how you dress when you go to court. If your clothes are inappropriate, the judge might even order you to get changed.

Your clothes must be neat and proper. Do not wear caps, hats, sandals, or inappropriately short clothing (shorts, skirts, revealing shirts). You must also wear closed-toe shoes.

Be silent and discreet

When you enter a courtroom, you must avoid making noise or drawing attention.
That's why, among other things, you must turn off your phone before entering the courtroom and not bring any food or beverages inside.

You should also be aware that it's forbidden to record any sounds or images inside a courtroom.

Stand when required

You must stand up when the judge enters or leaves the courtroom and remain standing until they sit down or leave the room.

You must also stand when it's time for you to speak.

Speak with respect

Disrespectful behaviour will not be tolerated. You must use polite forms of address for everyone in the courtroom.

When you speak to the judge, call them "Your Honour". When you speak to a lawyer, call them "Mr. (Last name)", "Ms. (Last name), or Maître (Last name)."

Wait your turn to speak

During the hearing, listen attentively and only interrupt if you want to object to the opposing party's questions.

You must wait your turn to speak. Ask the judge for permission to speak if you need to say something.

Respect the judge's requests and decisions

The judge is in charge of the hearing. Respect their decisions and obey their instructions at all times.

The judge can ask you questions about the facts you are explaining. Even though you know your case very well, remember that the judge is hearing your story for the first time. Some details might not seem important to you, but the judge might find them crucial. Listen carefully to their remarks and questions, and try to answer as best you can.

The judge's comments do not indicate that they think you're right or wrong, nor do they mean that the judge favours either side.

Finally, don't forget that the judge is the only person you are trying to convince at the hearing. Talk to them directly and not to the opposing party, except when you are questioning a witness.

Choosing the language

The hearing will take place in the language of your choice. If your mother tongue is neither French nor English, you can ask for the services of an interpreter for free.

How? You can make a request at the court office. But it's important to know that such a request might cause your hearing to be postponed.

The hearing

The hearing is your trial. Don't be late! Get there early if you can.

First moments in court

Once you've found the room where your hearing is being held, enter and sit in the section reserved for the public.

Here is how the first moments in the courtroom will go:

- The judge will be announced by name when they are about to enter the courtroom. You must then stand.
- More than one case will probably be scheduled for the same judge that day. The courthouse personnel will let you know when your turn will come.
- When the judge is ready to hear your case, you will be called by the official name of your case. Step forward and sit where indicated.
- The lawyers and parties will be asked to present themselves. You must then state your name and confirm that you don't have a lawyer.

Here is what a courtroom looks like:

A hearing can be stressful. If you are well prepared and understand the different steps, it should go more smoothly.

If you feel your emotions well up or you need a moment to gather your thoughts, you can ask the judge for a short break.

In general, a hearing takes place in the following order:

1. **Presenting evidence (testimony or documents).**
   - Evidence for the prosecution.
   - Evidence for the defence.

2. **Closing arguments (legal arguments).**
   The accused goes first if they presented a defence. Otherwise, they go second.

3. **Deliberation.**

4. **Verdict.**

Presenting evidence

During the hearing, each party presents their evidence in turn.

Evidence refers to any element that supports what you say. It can be a document, or a witness who tells the court what they have seen or heard.

The prosecution goes first

The prosecution always has to prove that you are guilty beyond a reasonable doubt, because you are presumed to be innocent.

Since the prosecution has the burden of guilt, they must present their evidence first.

Once the prosecution has finished presenting their evidence, you must decide if you wish to present evidence and if you want to testify on your behalf. In fact, at your hearing, you are allowed to choose not to present a defence.

To decide whether to present a defence or not, you must analyze the evidence that was presented to the court. Is there enough to prove all the key elements of the offence beyond a reasonable doubt?

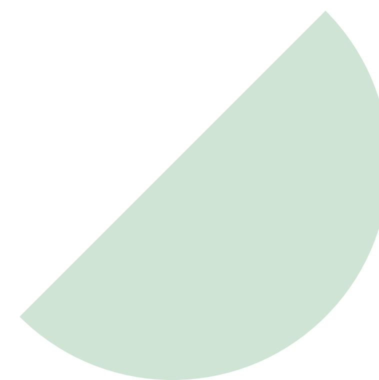
In most cases, you will need to present a defence. If you do, try to present your evidence in order and to respect the timeline of events.

Testimony

Testimony plays a key part at a hearing.

If you decide to testify, make sure you prepare properly. To find out how, see pages 38 to 40. You might not need any witnesses apart from yourself.

Before hearing witnesses, the judge does not know the facts of your case. The judge must carefully analyze all the testimony they hear. They must evaluate the witnesses' credibility and consistency and decide if the facts they relate are relevant to the case and how important they are. Testimony will be a key factor in the decision the judge hands down.



Examination-in-chief

The examination-in-chief, or direct examination, is when a party questions their own witness. The other party can then question the same witness during cross-examination.

> **Examination:** questioning your own witness.
> **Cross-examination:** questioning the other party's witness.

All witnesses are sworn in before they testify. This means that they promise to tell the truth.

Once this is done, the examination can start. During the examination, questions must be direct. You are not allowed to ask your own witnesses leading questions. If you think the prosecution is using leading questions, you can object.

Cross-examination

Once a party has finished questioning one of their witnesses, the other party gets a chance to question them. During cross-examination, you can ask leading questions that suggest an answer.

If you wish to contest something a witness for the prosecution has said, you must cross-examine them before you can claim that what they said was a lie. They must be allowed to explain any contradictions in their testimony.

Re-examination

There can also be a re-examination in the following cases:

- When new elements were raised during cross-examination.
- To ask the witness to clarify a point.
- To ask the witness to complete a previous answer.

Documents used as evidence

The documents, pictures and texts that you will use as evidence are called "exhibits".

If you wish to present exhibits at your hearing, please see page 41. The judge can also explain the procedure to follow.

During the hearing, you must confirm the origin and authenticity of each exhibit. To do so, your witnesses can give details about the contents. For example, a picture could be presented by a witness who knows the location it shows. They can then testify that the picture shows the scene of the offence.

During your closing argument (the next step), you can explain to the judge how these exhibits support your point of view.

Admissible evidence

The judge might tell you that an item of evidence can't be presented because you are not respecting the relevant rules of evidence. You must listen to the judge's explanation and respect the rules. Otherwise, the evidence might be refused.

The rules that govern what evidence is admissible are complex and varied. Nevertheless, here are some of the rules:

Rule of relevance

All evidence must be:

- directly related to the offence.
- relevant to what you are said to have done wrong.
- useful to the judge. For example, it might help them decide if you are guilty or not guilty of the offence in question.

You can object if you think that a witness for the prosecution has nothing to say about the offence, or if the prosecution asks a witness to present a document which is not relevant.

The prosecution can also object to evidence you present if they don't think it's relevant.

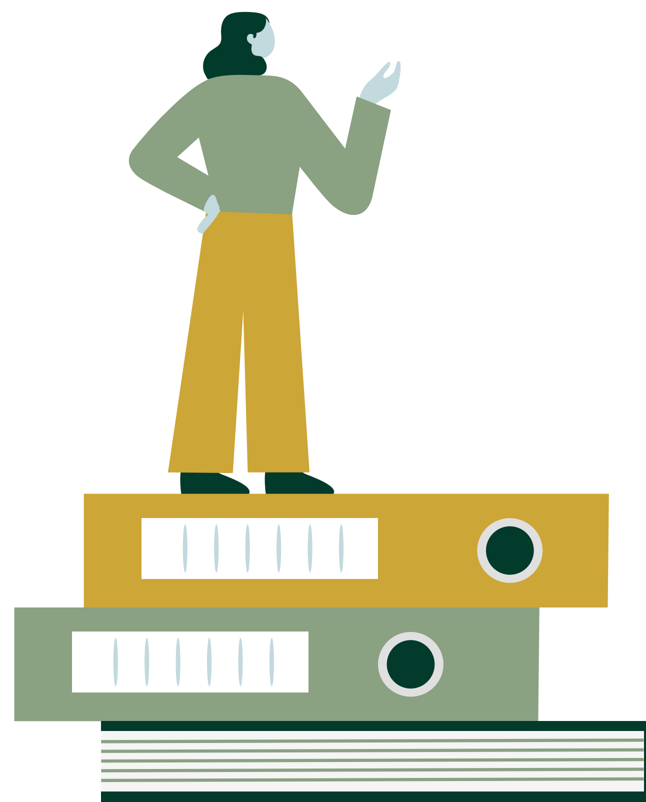
Hearsay

Normally, no one is allowed to tell the court what someone else said. This is called "hearsay".

Whoever said the words in question has to confirm it in court during the hearing. Why? Because hearsay is not reliable. To make sure it's true, the person must testify and be available for cross-examination.

There are exceptions to the hearsay rule, especially for things the defendant has said. This means that a witness for the prosecution could testify about something you said.

Do you want to know if there is an exception for hearsay that you would like to present as evidence? Talk to a lawyer for free at a Community Justice Center (justicedeproximite.qc.ca/en).



Closing arguments

After all the evidence has been presented, it's time for closing arguments. This will be your last chance to speak.

What they are

A closing argument is an oral presentation that lets you present your arguments to the judge. The goal is to briefly sum up your evidence (exhibits and testimony) and convince the judge.

There's no point trying to repeat the whole hearing again at this stage. Don't forget that the judge has already heard all the evidence and taken notes. But it's important to insist on the specific facts that support your case. And if you think there are weaknesses in the prosecution's evidence, this is the moment to underline them. For example, you could raise any contradictions in the testimony that was given.

When you present your arguments, you are not allowed to introduce new facts or details that were not already established by the evidence you presented.

During your closing argument, you can also present court decisions (jurisprudence) and theoretical legal texts (doctrine) that you think favour your case.

How it takes place

Each party gives their closing argument in turn.

If you presented a defence, you will go first. If you haven't presented a defence, the prosecution will give their closing argument first.

The first party to go can ask the judge for permission to respond to the second party's argument.

The judge can also ask you questions at this stage. Make sure you understand them, and answer as calmly and honestly as possible.

It's very important not to interrupt the other party while they are giving their closing argument.

Deliberation

The judge can render their verdict immediately after both parties have given their closing argument.

The judge can also reserve judgment and set a date when they will render their verdict. You must be present for that date.

Verdict

Here are the possible verdicts:

- Not guilty.
- Guilty.
- Not guilty of the offence you were charged with, but guilty of a lesser included offence.

Other verdicts are also possible in specific situations.

The sentence

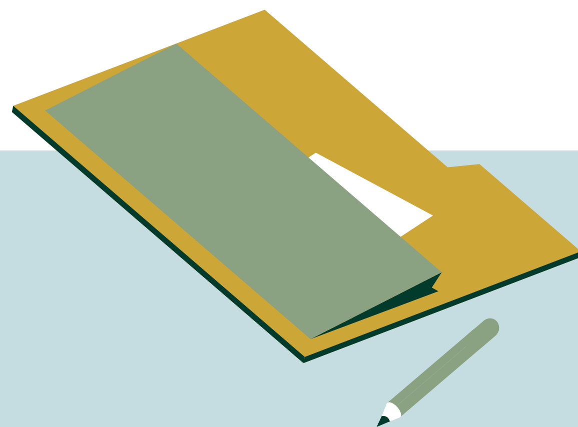
Did you plead guilty? Or were you declared guilty? Then the judge will hand down a sentence.

The judge must take many factors into account when determining your sentence. This decision is not taken lightly.

You should know that minimum sentences are set out for many offences. This means that a judge is not allowed to give you a lesser sanction than what the law says, even though they may empathize with your circumstances.

Possible sentences

Some offences lead to specific sentences or sanctions. Look up the section of law, bylaw or regulation defining the offence of which you were found guilty to find out what they could be.



Fine

This is the usual sentence for penal offences. To find out the amount you can expect to be fined, look up the section of law, bylaw or regulation defining the offence of which you were found guilty.

There are three possibilities when a fine is the sanction set out in a law, bylaw or regulation:

1. A minimum amount is defined. If this is the case, you will be fined an equal or greater amount.
2. No specific amount is defined. In that case, you will be fined a minimum of $50.
3. A maximum amount is defined. If this maximum is under $100, then the minimum is set to half the maximum amount. For example, if the maximum fine is $80, then the minimum fine will be $40.

When a specific fine is not defined by a law, bylaw or regulation, the judge decides the amount. This can vary depending on the seriousness of the offence. The amount must be fair and proportionate, which means that your sentence must be similar to those given to other people who have been found guilty of committing the same offence in similar circumstances.

What if you can't afford to pay?
You can ask for more time before you have to pay the fine.

If you have been sentenced to pay a fine and come to realize that you won't be able to do so, you can negotiate an agreement with the fine collector.

Contribution

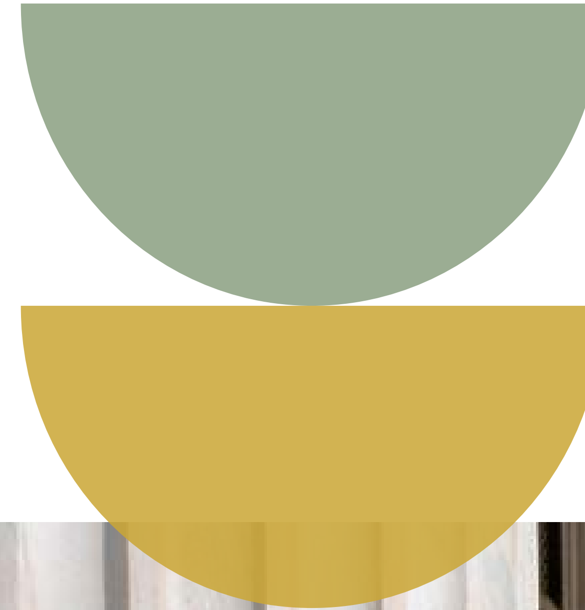
You only have to pay a contribution for offences defined by a provincial law of Québec. This is not necessary for offences set out in municipal bylaws.

The contribution is an amount of money added to the fine and fees claimed in the statement of offence. Part of this contribution will go to help victims of criminal offences.

Compensatory work program

The Compensatory work program (PTC in French) is designed for people who can't afford to pay a fine, even after being given options such as more time, a payment plan, or seizure of property. This program isn't meant for people who can afford to pay the fine but would rather do community service instead.

If you are eligible for this program, you can do community service in a non-profit organization to pay off your debt.



Imprisonment

Imprisonment is rare for penal matters, but it's a possible sentence for certain offences.

If your offence could lead to jail time, you should consult a lawyer. If you don't think you can afford one, there are different options that could make it possible. To find out more, see page 11.

Appeal

Not always possible

You have the right to appeal the guilty verdict or the sentence you were given. But in some cases, you must first get the court's permission.

Don't file an appeal simply because you're unhappy with the outcome of the hearing. The goal of an appeal is not to redo the hearing from scratch. You should only appeal if you believe the judge made errors in their judgment.

30-day time limit

There is a 30-day time limit to file an appeal. If you miss this deadline, you will have to ask the Court for permission to file your appeal and explain why you are late.

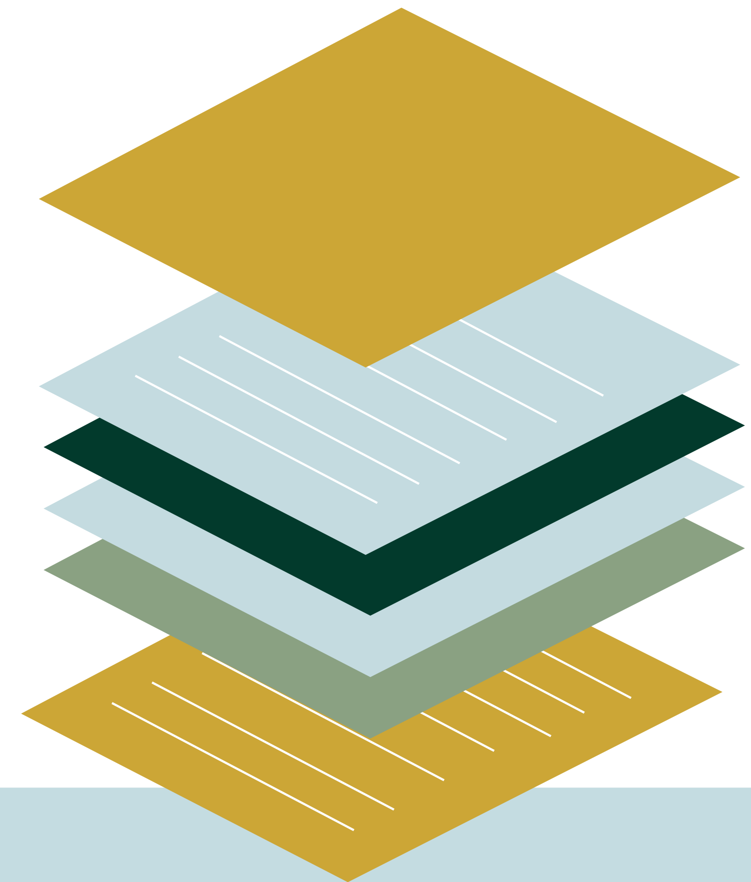
If you want to appeal a guilty verdict, don't wait until your sentence is handed down. You might miss the deadline.

In Superior Court

Any appeal related to a penal offence will be heard by the Superior Court of Québec.

Different rules

The rules and procedures that apply to appeals are different from the ones explained in this guide. Learn more by consulting a lawyer, if possible.



Resources to make things clearer

Many free or low-cost resources can help you prepare for your hearing.

To find legal information and court decisions

Éducaloi
educaloi.qc.ca/en

This is a good starting point for your legal research. You will find reliable information that's easy to understand.

Centre d'accès à l'information juridique (CAIJ)
caij.qc.ca/en

You can use its UNIK search engine to easily find doctrine, court decisions (jurisprudence), and the laws, bylaws and regulations you need to prepare your case.

Société québécoise d'information juridique (SOQUIJ)
soquij.qc.ca/a/fr/english

This website also offers a search engine for court decisions (jurisprudence).

To find it, click the link called "Looking for a court decision in English?" on the English homepage of the website.

Government of Québec
quebec.ca/justice-et-etat-civil/systeme-judiciaire

This site is a gold mine of information for people representing themselves in court. Note that there is no English version at the time of writing. It's also important to make sure you only read articles related to penal law, because the site also includes information on civil trials.

Here's some of what you'll find on this site:

- Information on the judicial process.
- The hearing rolls, to find out when your hearings are scheduled.
- Information on programs designed to help people who have been found guilty.

To find forms

Court office staff
There is a court office at every courthouse. All the files related to cases brought before the court are kept there.

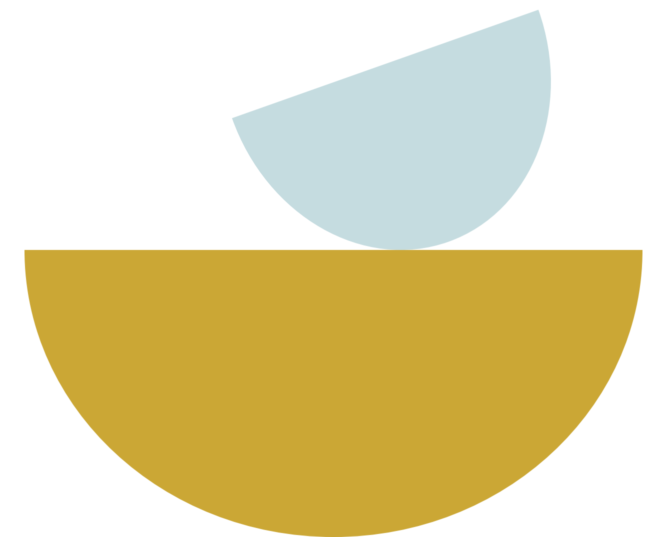
The role of the court office staff is limited to giving you general information and accepting certain filings.

For example, the court office staff can:

- Tell you where to find different services and resources that you might need.
- Explain the basics of certain elements of procedure, such as how to summon a witness.

However, the court office staff can never:

- Give you legal advice about your case.
- Recommend a lawyer.



Court of Québec (Documentation Center)

courduquebec.ca/en/documentation-center

If your hearing is being held at the Court of Québec, you'll find the forms you need here.

The Documentation Center tab can be found at the top right of the website's homepage. If you are on a smaller screen, click on the hamburger menu at the top right of the page to find the link.

To ask questions

Boussole juridique

boussolejuridique.ca/en

This site is essential!

It's an easy-to-use search engine that helps you find legal resources near you (such as legal clinics).

Note that legal clinics are offered at all the law faculties of Québec universities.

All the resources you'll find on the Boussole juridique website are free or low-cost.

The judge

You can also ask the judge questions.

One of the judge's roles is to inform and help all the parties, especially if they're not represented by a lawyer. In fact, the judge has an obligation to explain the rules to you.

Make sure you understand what they tell you. If their explanation seems too complicated, don't be shy, you can ask them to explain things again.

Community Justice Centers

justicedeproximite.qc.ca/en

Community Justice Centers are an essential resource.

Located throughout Québec, these centers let you consult a lawyer for free. During this meeting, you can ask for:

- legal information specific to your situation.
- help finding the correct forms and information on how to complete them.
- help finding the resources you need.

Please note that Community Justice Center lawyers can't tell you what you should do or evaluate your chances of winning. They also can't fill out forms for you or represent you in court.

There are 13 centers to serve you:

Bas-Saint-Laurent
418 722-7770 • 1 855 345-7770

Centre-du-Québec
873 382-2262

Côte-Nord
581 826-0088 • 1 844 960-7483

Estrie
819 933-5540

Laval-Laurentides-Lanaudière
450 990-8071 • 1 844 522-6900

Mauricie
819 415-5835 • 1 888 542-1822

Montérégie
579 723-3700

Nunavik
819 254-8567 • 1 833 844-8055

Outaouais
819 600-4600 • 1 844 606-4600

Québec-Chaudière-Appalaches
418 614-2470 • 1 833 614-2470

Grand-Montréal
514 227-3782 (option 4)

Saguenay-Lac-Saint-Jean
418 412-7722 • 1 844 412-7722

Gaspésie-Îles-de-la-Madeleine
418 689-1505 • 1 844 689-1505

Index: understanding legal jargon

The legal world has its own vocabulary which can be hard to understand.
If you have encountered a word during the judicial process and don't know what it means, look for it below. French equivalents are indicated in parentheses.

Alternative measures program (PMR - Programme de mesures de rechange) **page 31**
Closing argument (plaidoirie) **page 53**
Contribution **pages 17, 57**
Court costs (frais judiciaires) **pages 17, 21**
Default judgment (jugement par défaut) **page 19**
Doctrine **page 35**
DPCP **page 28**
Exhibit (pièce) **pages 41, 51**
Fees (frais judiciaires) **pages 17, 21**
Fine (amende) **pages 17, 57**
Hearing rolls (rôle) **page 22**
Hearsay (ouï-dire) **page 52**
Jurisprudence **page 34**
Presumption of innocence (présomption d'innocence) **page 12**
Revocation of a judgment (rétractation de jugement) **pages 19, 20**
Subpoena **page 36**
Summons (assignation) **page 36**

FONDATION BARREAU DU QUÉBEC
Pour l'avenir du droit

Thank you

The *How to prepare for court* guides owe their existence to the **Barreau du Québec**'s support and commitment to our mission.

Their enduring devotion to quality and accessible justice drives us to continue working for the advancement of law and to support the diverse next generation of legal professionals.

Thank you!

Thanks to the CJC!

The production of the *How to prepare for court* guides would not have been possible without the participation of the **Community Justice Centers (CJC)**. Thanks to their expertise, the information contained in the guides is accurate and meets the needs of citizens.

Together, we are helping to make justice more accessible and to increase public confidence in the justice system.