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 accused in criminal court.

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

FONDATION BARREAU DU QUÉBEC
Pour l'avenir du droit

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 accused in criminal court.

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A guide that doesn't apply in all cases

Only for criminal cases

The information in this guide only applies to cases related to criminal law.

Criminal law is vast. It includes many situations, mostly defined in the *Criminal Code*. These are called criminal offences, or simply crimes.

Here are some examples (the full list would be very long):

- Assault.
- Mischief.
- Sexual assault.
- Impaired driving.
- Failure to comply.
- Drug-related crimes.

A criminal trial has its own objectives, rules and procedures. 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 (such as pre-trial motions) or recourses (such as appeals).

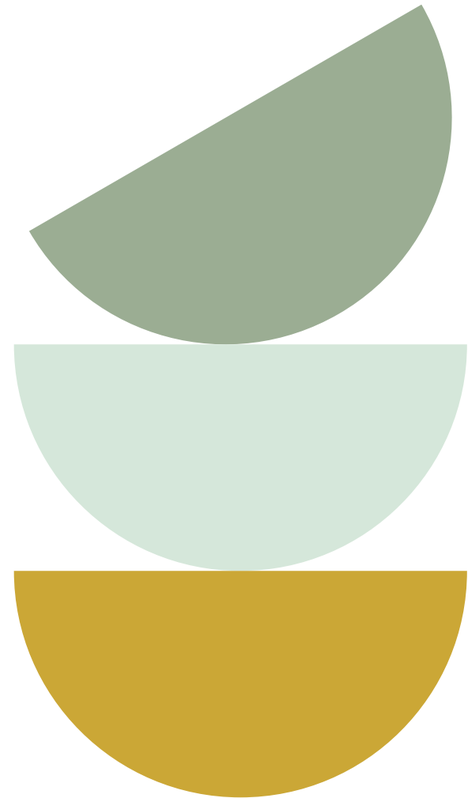
... not for tickets

Did you receive a ticket for an infraction that isn't a crime? In legal terms, this is called a penal offence. Usually, the rules of procedure are simpler than for criminal cases.

That's why we've prepared a guide specifically for this type of offence: *How to prepare for court - For penal matters*.

There are many offences related to penal law. They are set out in different laws, such as:

- the *Highway Safety Code* (speeding tickets, for example).
- the *Tobacco Control Act* (smoking in a prohibited place, for example).
- municipal bylaws (noise complaints, for example).



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:

- Municipal court
- Court of Québec, Criminal and Penal Division
- Superior Court, Criminal Division

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

- Court of Appeal of Québec.
- Federal courts or tribunals, or any other court that does not hear criminal cases.

Only for adults

Teenagers can also be accused of a crime.

Although they can be accused of the same crimes as adults, the legal process is different for minors.

That’s why this guide does not apply to teenagers under the age of 18.

Table of contents

Table of contents

Asking a lawyer for help… or not

When you are accused of a crime, 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.

Being represented by a lawyer

If you decide to be represented by a lawyer, you can choose the one you want. But the lawyer must agree to take you on as a client and accept your mandate.

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.

Representing yourself

You might not have enough money to pay a lawyer. Whether by force or by choice, you can represent yourself before the courts in criminal cases in Québec.

Without a lawyer, you'll have to complete all the tasks explained in this guide yourself.

Laws and rules of procedure can be hard to understand, and you can quickly feel lost. It's important to know that they apply equally to everyone. Unfortunately, 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 the 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.

Your lawyer won't turn you in

Are you afraid to hire a lawyer because you think they might report you to the authorities? Don't worry, they're not allowed to do that.

Even if your lawyer knows about your crime, they can still defend you at trial. But they will have to respect some 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.

Too expensive? Options to consider

Before concluding that you don't have enough money for a lawyer, consider the following options:

- Legal aid.
- A brief consultation or specific mandate with a lawyer.
- Referral services.

1. Legal aid

You might be entitled to legal aid, which lets you be represented by a lawyer paid for by the government.

To find out if you are eligible, contact your local legal aid office, or consult the Commission des services juridiques website at csj.qc.ca/commission-des-services-juridiques/lang/en

If you've been declared eligible for legal aid, you can entrust a legal aid mandate to a lawyer in private practice. Once they accept that mandate, instead of charging you an hourly rate, they will be paid by the Commission des services juridiques.

2. A brief consultation or specific mandate with a lawyer

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

This can be especially useful at the start of the process, but you can get this type of help at any time. If you have limited resources, choose a moment that will give you the most value for your money.

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.

3. Referral services

Some referral services offer an initial consultation for free or at a 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

After your arrest or detention

Were you arrested? Or maybe you weren't arrested, but you were told you were not free to go? That is called investigative detention. In either case, you have rights.

First, the police must have a valid reason to arrest or detain you. They are not allowed to rely solely on intuition. If they want to detain you for their investigation, the police must have "reasonable suspicion". But mere suspicion is not enough to give them the right to arrest you without a warrant. To do so, the police must have reasonable grounds to believe that you have committed or are about to commit a crime.

You also have the following rights:

- The right to know why you were detained or arrested
- The right to silence
- The right to not be subject to an unreasonable search
- The right to a lawyer

All of 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.

The right to know why you were detained or arrested

You have the right to be promptly informed of the reasons for your arrest or detention. Police officers must clearly explain what they believe you've done wrong.

This right is set out in section 10(a) of the *Charter*.

The right to silence

"You have the right to remain silent. If you give up that right, anything you say can and will be used against you in a court of law."

Have you ever watched a police TV show? Then you must have heard a character give that warning. In fact, police officers have to remind you of your right to silence when they detain or arrest you.

The right to silence means you can freely choose whether or not you want to talk to the police. Police officers must respect that right, but they are allowed to insist and to continue interrogating you. It's up to you to keep silent!

If you choose not to talk, no one is allowed to conclude that your silence means you are guilty. In fact, the judge must not make any conclusions based on your silence. But if you do decide to talk, anything you tell the police can be used against you at trial.

This right is set out in section 7 and section 11(c) of the *Charter*.

You must still identify yourself

In some situations, you are obligated to identify yourself at police request. You must then give them your name, address and date of birth. But you can refuse to answer any other question.

Did you refuse to identify yourself or lie about your identity? Police officers then have the right to arrest you and take you to the police station.

The right to not be subject to an unreasonable search

Police officers aren't allowed to search just anyone at any time, or in any manner they want.

But police officers are allowed to search you under certain circumstances. For example:

- You are under arrest.
- You are being detained and police officers believe there is a threat to your safety, their safety, or someone else's safety.
- You gave them permission to search you after having been informed that you had the right to refuse.

Many rules exist that regulate how police can conduct a search. What they are allowed or aren't allowed to do depends on the situation.

If you believe you have been the target of an unreasonable search, talk to a lawyer. Evidence that was obtained illegally can be excluded (that means it can't be used against you). It can also lead to a stay of proceedings and end the case.

This right is set out in section 8 of the *Charter*.

The right to a lawyer

Have you been arrested or detained? Police officers must:

- inform you promptly of your right to a lawyer.
- give you a reasonable opportunity to communicate with a lawyer in private.
- inform you that you can have an emergency consultation with a lawyer for free, 24 hours a day and 7 days a week.
- stop questioning you until you've had the chance to communicate with a lawyer.

Police officers are only freed from these obligations if you waive your right to a lawyer clearly and of your own free will.

Even if you decide to represent yourself in court, you can still talk to a lawyer if you are arrested or detained. Acting on your own in court does not mean you waive your right to a lawyer in case of an arrest or detention.

This right is set out in section 10(b) of the *Charter*.

During the judicial process

Everyone accused of a crime has the following rights:

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

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's proof must be made:

- according to the law.
- before an independent and impartial court.
- during a fair and public hearing.

The prosecution must convince the judge or jury 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

You have the right to be judged within a reasonable time. That means that you have the right to go to trial without waiting too long.

Preparing a trial takes time. On the other hand, waiting to be tried has a lot of downsides, like stress, conditions to respect over a long period, and maybe even lost job opportunities. It's important to find the right balance.

The Supreme Court of Canada, in the Jordan decision, established time limits to be met for going to trial.

How long is a reasonable time?

It depends on the case. For Court of Québec or municipal court trials, the deadline is usually 18 months. But for Superior Court trials, or if there is a preliminary inquiry, the deadline is 30 months.

It's important to note that these time limits do not include any delays caused by the defence (for example, if a hearing is postponed at the defendant's request).

What happens when the time limits are not 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 you won't be put on trial.

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 preside over your trial for a remedy.

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

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.

Here are some possible remedies:

- Postponing your trial 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 trial, 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

Were you arrested? That's because the police officer had good reasons to believe you committed a criminal offence.

After the arrest, the officer had two options:

Option 1: Keep you detained
In that case, you were detained until you could appear before a judge, as soon as possible.

Option 2: Free you
In that case, you were allowed to go home. The officer gave you one of the following:

- An appearance notice
- A promise to appear
- A summons

Appearance notice, promise to appear and summons

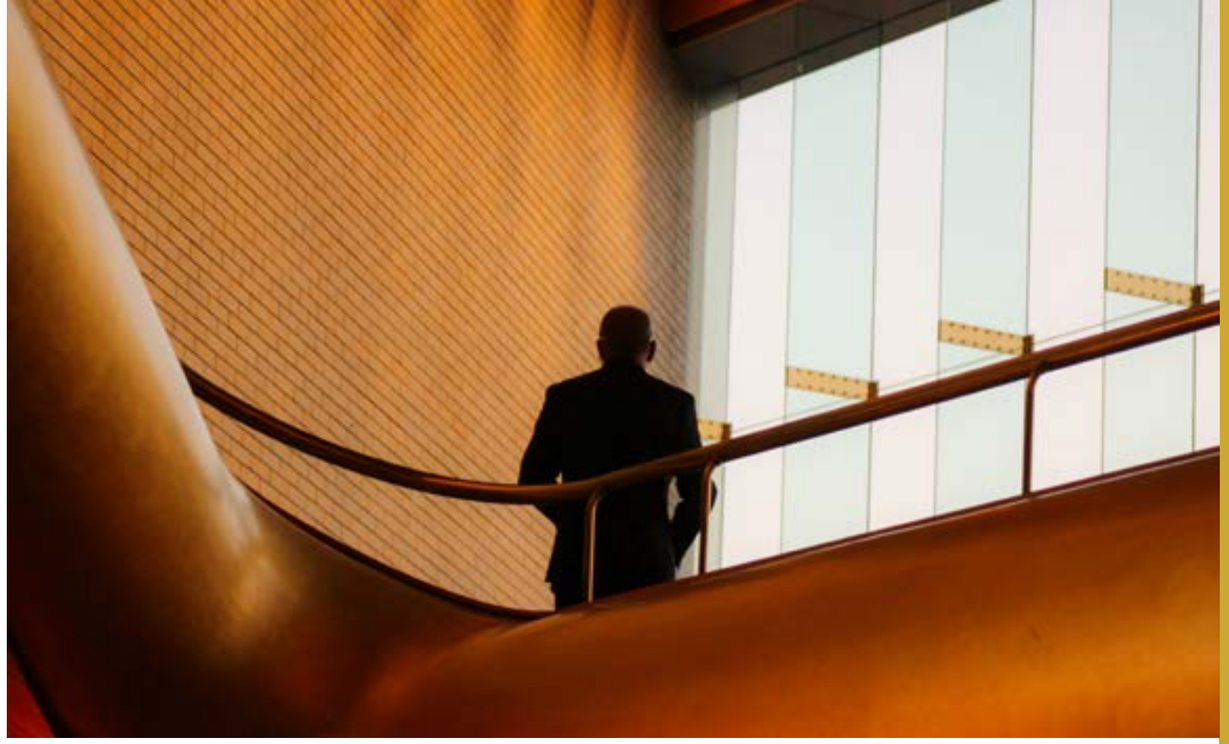
What they are

These three documents have the same goal: to make sure that someone who is suspected of having committed a crime appears before the court. To learn more about the first appearance, see pages 35 to 39 of this guide.

An appearance notice or a promise to appear is given to the suspect when they are freed from custody, whereas a summons can sometimes be sent later.

If you have received any of these three documents, you must appear in court at the specified date and time.

These documents can also direct you to appear at another date and place to have your fingerprints and a picture taken. You must also be present when requested in that case.



The promise to appear can be different

A promise to appear can come with conditions that must be respected in order for you to keep your freedom.

If you have received a promise to appear, you must respect the specified conditions until the end of the judicial process. If you don't, there will be consequences. For example, you could lose your freedom.

Here are some possible conditions:

- To not communicate with certain people, either directly or indirectly
- To not have a firearm
- To report at certain times to the police

The victim is not the prosecution

Have you noticed that the name of your case is called *R*. v. *Your name*?

The letter R stands for the Latin “Rex” (King) or “Regina” (Queen), and the letter v. stands for “versus”. This means that the state (represented by the King or Queen) is prosecuting you.

Of course, King Charles won’t be wearing a gown to your hearing. The Crown Prosecutor is in charge of the case and takes decisions related to it. For example, they will decide the number and type of charges.

This means that the victim is not in charge of prosecuting you. And they are not allowed to withdraw their complaint either.

What happens following a complaint

1. The police receive the complaint
2. The police decide if they accept the complaint and if they conduct an investigation
3. After the investigation, the police investigator transfers their files to the prosecutor
4. The prosecutor must study the police files to decide whether to authorize the complaint and file appropriate charges

Can you be accused without a complaint?

It’s possible. Someone can be accused of a crime even if the victim doesn’t wish to file a complaint. If there are enough witnesses and evidence, the prosecutor can allow the case to go forward.

Prosecution by indictment or summary conviction?

There are two ways you can be prosecuted:

1. By indictment.
2. By summary conviction.

It's important to know which applies to you in order to prepare properly.

Indictment is reserved for the most serious crimes. These are called "indictable offences".

Summary conviction applies to crimes known as "summary conviction offences". The procedure is simpler and the sentences are less severe than for indictable offences.

There is a third kind of criminal offence, called a "hybrid offence". If you are being charged with such a crime, the prosecution will decide whether to proceed by indictment or by summary conviction. You will be informed of their choice at your first appearance.

Here is an overview of the differences between the two types of prosecution:

	Indictment	Summary conviction
Gravity	More serious	Serious
Procedure	More complex: • Preliminary inquiry possible[1] • Jury trial possible	Less complex: • Trial before judge alone
Sentence	More severe	Severe
Criminal record	Leads to a criminal record	Leads to a criminal record
Examples	• Murder or attempted murder • Aggravated assault • Sexual assault with a weapon	• Disturbing the peace • Public nudity

1. To learn more about preliminary inquiries, see page 43 of this guide.

Options to settle the case

It’s sometimes possible to reach an agreement with the prosecution. In fact, this often happens. Most cases are settled before trial.

You can avoid a trial in different ways:

- Negotiation
- Facilitation conference
- Alternative measures
- Peace bond

Negotiation

What it is

Negotiation lets you reach an agreement with the prosecution, in exchange for certain concessions. This kind of agreement can let you avoid a trial.

It’s an informal process between you (the defence) and the prosecution. It can also be conducted with the help of a judge.

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 judge:

The judge does not have to accept a joint submission from the prosecution and defence, unless they took part in the negotiations. In that case, the judge is bound to accept.

- You :

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

What you can negotiate

You can negotiate with the prosecutor to find an agreement on the charges against you or on your sentence.

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 trial. Why? **Because when you plead guilty, you admit that you have committed the crime of which you are accused**. That’s why it’s very important to take enough time to reflect before making that decision.

Here are some examples of what you can negotiate:

Negotiate the charges

- **Lesser charges**

The prosecution might agree to charge you with a less serious crime than the one of which you are accused. What would they ask in exchange? That you plead guilty. This can mean a less severe sentence. In legal terms, you are negotiating to "reduce a criminal offence to a **lesser or included offence**".

- **Withdrawal or stay of charges**

For example, the prosecution might agree to drop the charges and instead have you agree to a peace bond (sometimes referred to as an "810", for the section of the *Criminal Code*).

If you are accused of more than one crime, the prosecution can also agree to drop some charges if you accept to plead guilty to the others.

- **Joinder of counts**

You might be accused of multiple counts or charges. If they are related to the same facts, the prosecution might agree to join them into a single count.

Negotiate the sentence

- **Promise to recommend a sentence**

The prosecution can promise to recommend a specific sentence.

- **Promise not to oppose a suggested sentence**

The prosecution can promise not to oppose the sentence you wish to suggest.

- **Promise not to ask for additional sanctions**

The prosecution can promise not to ask for more sanctions to be added to the main sentence.

- **Joint submission for the sentence**

You can come to an agreement with the prosecution to make a joint suggestion to the judge.

- **Promise to proceed by summary conviction instead of by indictment**

This is possible for hybrid offences. Sentences for summary convictions are generally less severe.

- **Promise not to ask for pre-trial detention**

This refers to detention before being sentenced, such as at the bail hearing stage.

Negotiations can also be held concerning the facts of the case, but this is less common. For example, the prosecution could agree not to give some information that could harm you. They can also promise not to bring up an aggravating circumstance during sentencing.

Facilitation conference

What it is

A facilitation conference is similar to negotiation, because the goal is to find a solution that works for everyone. But facilitation always takes place before a judge, unlike informal negotiations. Among other things, the judge is there to help the parties discuss matters, explore possible solutions and make clear their point of view.

If you come to an agreement using facilitation, the judge will respect it. But if you can't agree, you will have a trial, held before a different judge. Everything that was said during facilitation remains confidential, which means it can't be used at trial.

In your absence

Normally, a facilitation conference takes place without the accused. Only the lawyers and the judge take part.

Since you don't have a lawyer, it's likely that one will be named to represent you for facilitation. They are called an "**amicus curiae**" or "**amicus**". This lawyer's only role is to represent you at that precise moment. You won't have to pay for their services.

How to take part

Facilitation conferences aren't yet available everywhere in Québec. You have to ask if they are offered in your district.

If facilitation is an option, you must fill out a form with the prosecution. This is called a joint request.

Alternative measures programs (restorative justice)

What it is

Alternative measures 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 you are ready to collaborate in good faith. You must recognize what you did to be accused of a crime. In most cases, admitting these facts can't be used against you if the program is not a success.

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

Normally, the prosecution decides whether to give you the chance to participate in one of these programs. If they don't, it's probably because there are no programs appropriate to your situation.

The different programs

Some programs are available throughout Québec. See the following table for an idea of what these programs have to offer.

	Program for non-judicial treatment of certain criminal offences committed by adults	General alternative measures program (GAMP)	Programme d'accompagnement justice et santé mentale (PAJ-SM)
Candidates	People accused of an admissible crime for the program.		People who are vulnerable notably due to mental health problems, intellectual disability or autism spectrum disorder.
Eligibility requirements	The case must be with the Court of Québec or in municipal court. • Must be aged 18 or older • Must not have a criminal record for a similar crime • Must not have a pending case • Must not have been the target of a non-judicial measure in the past 5 years The prosecution decides whether someone can be admitted to the program.	The case must be with the Court of Québec or in municipal court. The prosecution decides whether someone can be admitted to the program.	The case must be with the Court of Québec or in municipal court. • Must be aged 18 or older • Must have a mental health issue • Must be considered fit for trial and responsible for criminal actions There must be a link between the mental health issue and the crime that was committed.
Goals	• Avoid the judicial process • Motivate the accused to change their behaviour and not commit another criminal offence	• Lead the accused to take responsibility • Make amends • Lower the risk of reoffending	• Rehabilitate the person • Lower the risk of reoffending • Offer appropriate supervision and monitoring in the community • Avoid detention (prison)
Intended measures or conclusions	Non-judicial treatment. Instead of being charged, the accused receives either: • a warning letter. • a formal notice.	End the judicial process. The charges are dropped and alternative measures apply instead, such as: • mediation sessions. • financial compensation. • community service. • therapy sessions.	• Provide support from health care professionals. • End the judicial process. The charges are dropped or the sentence is reduced.
If you refuse or fail to complete one of these programs, you might have to go through the normal judicial process. **Need more information?** You will find it on the Government of Québec website. Type the name of one of the programs in a search engine like Google. For some of these programs, only the French version can be found on the website at the time of writing.			

Other extrajudicial programs are available in specific regions. For example, there's the Court of Québec addiction treatment program (CQATP) in Montréal and Puvirnituq (the Nunavik Wellness Court).

To learn more about the programs available in your region, talk to the prosecutor.

For Indigenous people

Some programs exist exclusively for Québec's Indigenous population, such as the Alternative Measures Program for adults in Aboriginal communities.

Your community justice committee can suggest an alternative measure to the prosecutor that is appropriate to your situation.

Peace bonds

810 = **Keeping the peace** = **Peace bond** = **No contact order**

All of these expressions mean the same thing. But the official name is "**Peace bond**", which is set out in section 810 of the *Criminal Code*.

What it is

It's a written promise to respect some conditions. More precisely, it's a commitment to keep the peace.

If you accept, you promise to respect specific conditions set out by the court. The court decides how long you need to respect them, but the maximum time is 12 months.

Signing such an agreement does not lead to a criminal record. It can even be a way to avoid a criminal conviction. In exchange for signing a peace bond, the prosecution could drop the complaint and the charges against you.

Here are some typical conditions:

- Keep the peace
- Be of good behaviour
- Don't communicate with the victim
- Stay away from their home, workplace and school
- Don't use illegal drugs, alcohol or other intoxicants

What can make it an option

A peace bond is not appropriate for all crimes. It can be an option if someone has good reason to fear that you might do one of the following things:

- Cause them physical harm (or to their spouse or children)
- Damage their property
- Share or post an intimate picture of them

For example, a peace bond could be an option in cases of mischief, harassment, assault, etc.

You must admit that this person has reasonable grounds to fear you. This is not the same as pleading guilty.

Agreeing to a peace bond can come up during negotiations, or when you attempt to settle the case with the prosecutor.

Breach of conditions

If you breach the conditions that you promised to respect, you might be accused of a crime and forced to go through the judicial process.

Pre-trial court steps

Do you have a hearing in court? Be there!

You must be present for every step of the judicial proceedings. If you're absent, the judge can issue an arrest warrant that orders the police to bring you to court. For some offences, the court can even find you guilty in your absence.

In general, you must show up in person throughout the criminal procedure. However, in some circumstances, a judge can allow you to be present by audio conference or video conference. For example, this could be because you live in a remote area, or if it would cost too much for you to come in person. However, the court can revoke that permission and order you to be physically present at all times.

Each case is unique and can follow a different path. Some cases are settled quickly without going to trial, while others will go through each of the following steps:

1. **First appearance**
   (when you plead guilty or not guilty)
2. **Bail hearing**
   (if your first appearance takes place while you are detained)
3. ***Pro forma* hearing**
   (when you evaluate the prosecution's evidence and decide if you want to go to trial)
4. **Preliminary inquiry**
   (on demand and only for certain types of cases)

1. First appearance

First appearance is when you come before the judge for the first time. This is the first step of the judicial process.

This step is mandatory. It can be done by video conference or at the courthouse.

First appearance steps

1. The docket
There will probably be several cases and first appearances scheduled for the same courtroom and at the same time as yours. It's likely that you won't be the only accused person in the courtroom. That's why the audience will start with the calling of the roll (the docket). This step is used to decide in what order cases will be heard.

You will have to be patient. Sometimes, cases for which the defence has an attorney are heard before cases for which the accused is acting on their own.

In general, there is a paper version of the docket available in the courtroom. You will see defence attorneys consult it before telling the judge for which case and accused they are appearing. Don't worry, the judge does not expect you to refer to it like a lawyer would.

What is really important is to be on time. If you can't find the courtroom, you can ask a special constable for help. They are security officers assigned to the courthouse. Once inside the courtroom, sit silently in the public seating area until you are called.

2. Reading of the charges and plea

When your name is called, you must step forward to face the judge and the court clerk. The judge will then read the charge or charges against you. You must then enter a plea of either guilty or not guilty. In other words, you must plead guilty or not guilty to each of the offences charged against you.

At your first appearance, it's best to plead not guilty so you can find out what evidence exists against you. The prosecutor will give you this evidence.

Are you not sure whether to plead guilty or not guilty? Here are three things to consider as you decide:

1. Even if you plead not guilty at your first appearance, you can change your plea at any later step of the proceedings. The opposite is not true. It can be hard to withdraw a guilty plea.
2. It's in your best interests to know what evidence there is against you before entering a guilty plea. Maybe the prosecution doesn't have enough evidence?
3. Learn more about the consequences of a guilty plea. It could impact your life in many important ways. For example, a guilty plea could affect your work (being fired or not hired), your housing, your insurance (increased cost or refusal), your immigration application, or your trips abroad.

3. Choosing the mode of trial

In certain cases, usually for more serious charges or for more complex cases, you can choose between two modes of trials:

- Trial before judge alone
  or
- Trial before judge and jury

You don't have to make that choice at your first appearance. It's best to decide after you've had the chance to review the evidence.

4. Disclosure of evidence

At your first appearance, the prosecution must give you all their evidence in the case: written statements, video-recorded statements, pictures, audio recordings, etc.

These items of evidence come from the police inquiry. In fact, the prosecutor used this evidence to decide how to charge you.

To be able to defend yourself against the charges, it's very important for you to have access to all the same relevant information as the prosecution. 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*.

The prosecution must therefore give you all the evidence in the case, no matter if it helps or hurts your defence. This is a continuous obligation, which means that the prosecution must give you any evidence it obtains until the end of the trial.

Do you believe the prosecution hasn't disclosed all their evidence?
In that case, you must inform the trial judge 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.

Do you also have to disclose your evidence?
The answer is no. At this stage, you do not have to disclose anything or justify yourself in any way.

5. Postponing the case to a later date (*pro forma*)

- **If you plead not guilty**

The court will postpone the case "*pro forma*".

This will not be the date of your trial.

This will give you enough time to study the evidence, evaluate the issues related to your case and consider if you still want to act alone at trial. Once the date of the next hearing is set, you can leave the courtroom.

- **If you plead guilty to all charges**

The judge has two options. They can hand down a sentence immediately. They can also postpone the case to hear sentencing submissions (to learn more about sentencing submissions, see pages 74 and 75).

6. Choosing a language

You have the right to request that your trial take place in the language of your choice. In fact, the judge should remind you of this at your first appearance.

For criminal matters, a trial can take place in French or in English. If you don't understand the language spoken at your trial, you will be provided with an interpreter.

In all cases, the cost will be paid by the state.

First appearance when the accused is detained

If you have been arrested and the police have not yet freed you from custody, your first appearance will take place within 24 hours after your arrest, unless prevented by exceptional circumstances.

Is the procedure for a first appearance different when you are detained?

No, the process is the same. But before entering the courtroom, you will be in custody, generally in a cell, until your case is called. When it's your turn, constables will bring you inside the courtroom to the dock for accused in custody.

After your appearance, the prosecution must state whether they agree for you to be freed from custody. If they oppose your release, the court must schedule an interim release hearing, also known as a "bail hearing". It must take place within three **clear days**[2].

2. When calculating clear days, the start day and the final day are not counted. For example, if your first appearance is on September 1, the bail hearing will take place on September 5 or before.

2. Bail hearing, to determine whether you remain in custody

All of these expressions refer to the same concept.

No matter the name, this step only takes place if you are in custody. The goal is to decide whether you must remain detained while you await your trial.

What it is

The bail hearing lets the judge decide if you will be free or in custody until your trial is held.

This is not your trial. The goal is not to determine if you are guilty.

What can justify custody

The judge will consider the following three questions to decide whether to free you from custody:

1. **Is there a risk that you will not come to court?**
   It might be found necessary to keep you in custody to make sure you show up at court for every step of the proceedings.
2. **Is it likely that you will commit a new crime, or that you will hinder the legal process?**
   The goal is to protect the public and ensure its safety. This includes the victim.
   This is the most frequent reason for pre-trial detention. The judge can consider several factors as they evaluate you, including a possible criminal record.
3. **Would society be shocked if you were released?**
   The goal is to maintain public confidence in the legal system.

How it takes place

In general, the prosecution must convince the judge that you must remain in custody for one of the three reasons listed above. To do so, they will present the evidence in the case, as well as the likelihood of conviction. The prosecution can also bring up your criminal record, your character and your lifestyle.

Don’t worry, you will get a chance to speak as well. You can testify on your own behalf and have witnesses heard (if needed). Your goal is to convince the judge that they should free you and that you will respect all the conditions that are imposed. But remember: everything that is said at this hearing can be used by the prosecution at later proceedings, especially the trial.

The rules of evidence for this step aren’t as strict. You can talk about facts or statements that you were told about by someone else, even if you don’t have first-hand knowledge of them. This won’t be allowed at the trial. This type of testimony is called hearsay.

Bail conditions

Did the judge decide to free you under certain conditions?

You must respect these conditions. Otherwise, you could be accused of a new crime and be kept in custody for the rest of the judicial process.

Surety

You might be asked for a “surety”. You might even offer one yourself to reassure the court about your good intentions.

But what exactly is a surety?

A surety usually refers to someone who agrees to supervise and watch over you to make sure you respect all the conditions. It could be your spouse, a parent, a friend, or any trustworthy person.

Surety can sometimes involve pledging a certain amount of money ($). If you have pledged money and don’t respect your bail conditions, the money will not be returned.

3. *Pro forma*

The case can be postponed more than once, which means there can be more than one "*pro forma*" hearing at different stages of the proceedings.

Pro forma hearings have several purposes. Among other things, they are used to:

- Disclose evidence
- Discuss the direction of the case
- Negotiate

4. Preliminary inquiry

This step is only for the most serious criminal offences, those punishable by a maximum prison sentence of at least 14 years.

What it is

The preliminary inquiry is a hearing whose goal is to decide if there is enough evidence to justify holding a trial.

It can conclude in one of the following three ways:

1. Insufficient evidence ⟶ The accused is freed from the charges against them
2. Sufficient evidence ⟶ The accused will be put on trial as planned
3. The evidence shows new criminal offences ⟶ New charges will be added

This is not your trial. The goal is not to decide if you are guilty.

In fact, it's best not to testify or present your defence at the preliminary inquiry. That's because all testimony will be recorded and could be used against you at trial.

Instead, this is the moment to "test" the evidence and question the prosecution's witnesses during cross-examination.

This step is not automatic

The preliminary inquiry is held at the request of one of the parties: either the prosecution or the defendant (yourself).

It is held after the bail hearing (if one is required), but before the trial.

You can make new requests

Has your situation changed following the preliminary inquiry? You can make new requests.

For example, if the judge drops certain charges against you, you can ask to be released from custody, or for your bail conditions to be changed.

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 trial 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.

Have you forgotten the date of a hearing? You can ask by calling the court office at your courthouse or circuit court. For some courthouses, you can also find the date on this website: roles.tribunaux.qc.ca (click EN at the top right for the English version).

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 should also avoid ripped clothing.

Finally, if you have a tattoo that could be seen as offensive, sexist, violent, or drug-related, you might want to cover it up. Some judges don't appreciate this form of self-expression.

Be silent and discreet

When you enter a courtroom, you must avoid making noise or drawing attention.

That's why you must, among other things:

- turn off your phone before entering the courtroom.
- not bring any food or beverages.

You should also be aware that recording any sounds or images of the trial is forbidden.

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.

Wait your turn to speak

During the trial, 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.

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)."

Respect the judge's requests and decisions

The judge is in charge of the trial. 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 trial (or the jury). Talk to them directly and not to the opposing party, except when you are questioning a witness.

Virtual hearings

Let's be clear: most hearings take place in person at the courtroom.

But virtual hearings by video conference or audio conference are now possible in specific cases.

If a virtual hearing is allowed, you can attend using a secured platform. Normally, you can access this platform using a computer, tablet, or even a smartphone.

Here is some useful information for your virtual hearing:

- Your device must have a microphone and camera.
- You must have a stable internet connection.
- Before the hearing, you will receive connection information by mail or email. You can also consult the roll here: roles.tribunaux.qc.ca (click EN at the top right for the English version).
- During the hearing, you must be alone and in a quiet place.
- You must mute your microphone and close your camera when you are waiting to intervene.

For more information on how to connect, visit your courthouse's website. Make sure you're on the website of the court holding the hearing. The rules and information might be different from one court to the next.

- **For municipal courts:** coursmunicipales.ca/documentation (only in French at the time of writing)
- **For the Court of Québec:** courduquebec.ca/en/documentation-center/tools-for-semi-virtual-room-hearings
- **For Superior Court:** coursuperieureduquebec.ca/en/roles-of-the-court/virtual-hearings

Publication ban (if necessary)

As a general rule, trials are public. Your identity is known, as well as that of the victim and any witnesses. The information and evidence presented are also public.

You can ask the judge for a "publication ban" of the evidence, or of information revealed in certain hearings that take place before the trial. This is a simple oral request. For example, the prosecution can ask for one if they feel it's needed to ensure a fair trial.

Even if a publication ban is granted, the media still has the right to cite your name and reveal the nature of the charges. But they are not allowed to publish any details of the evidence presented in court.

In some cases, even if the trial is public, the judge can issue an order preventing the media from publishing any information that could identify the victim. For example, if the name of the accused might reveal the victim's identity, the judge can order that the accused be publicly known only by their initials.

Preparing the trial

Don’t wait until the last minute to prepare. All of the following steps take time and need proper attention.

Don’t hesitate to attend someone else’s trial. Trials are public, so you can quietly enter a courtroom and sit in the public seating area. This will give you a better idea of how trials take place and help you prepare for what awaits you.

1. Understand the relevant law

To know what you need to prove to the judge, you must understand the law that applies to your situation. You should consult three types of sources for your research to be thorough:

- Rules and laws.
- 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 and regulations

For someone to be found guilty of a crime, the prosecution must prove these two things beyond a reasonable doubt:

1. That the person has committed an illegal act
2. That they had a guilty intention

These two elements are called *actus reus* (Latin for "guilty act") and *mens rea* (Latin for "guilty mind").

For most crimes, these elements are defined in the *Criminal Code*. It also defines:

- Sentencing guidelines and principles
- Possible sentences for each crime
- The procedure to follow for criminal matters

Take the time to properly read the *Criminal Code* sections relevant to your case. This will help you understand what the prosecution needs to prove.

It would be even better if you could get an annotated copy of the *Criminal Code*. These editions accompany each section of the *Criminal Code* and other related laws with the most relevant jurisprudence. This can help you understand how a section is interpreted in court. Annotated copies of the *Criminal Code* can be consulted in some municipal and university libraries.

Even though the *Criminal Code* is the main law for criminal matters, it's not the only one. Other laws could apply to your situation. For example:

- The *Canadian Charter of Rights and Freedoms*, to know your fundamental rights
- The *Canada Evidence Act*, which defines rules for what evidence is admissible
- The *Controlled Drugs and Substances Act*

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 present jurisprudence to the judge during your trial at the closing argument stage. Pay special attention to decisions from the Supreme Court of Canada and the Court of Appeal of Québec. They outweigh decisions from the Superior Court and Court of Québec.

How to search for jurisprudence

Many online legal research databases are available online for free:

- 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

2. Prepare your physical evidence

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

Here are some examples:

- Bank documents
- Contracts
- School report cards
- Medical reports
- Crime weapons
- Clothing
- Fingerprints and DNA samples
- Pictures and videos

You don’t have to disclose your evidence to the prosecution

You don’t have to disclose your defence in advance to the prosecution or to the judge. You will be the only person who knows what you are planning at trial.

But there are some exceptions. You have to disclose your evidence in the following cases:

- If it’s for an alibi defence
- If it involves an expert witness or expert report. For more information, see page 56.
- If it’s an official document.

How can you find out what you have to disclose? Tell the judge what evidence you wish to use during a pre-trial meeting. They can tell you what you need to know. They can also explain the rules you will have to follow to disclose your evidence. These rules are very important.

You must first send the document to the prosecution in a way that lets you prove it was received. For example, you could use email with read receipt, registered mail or fax. This is called “notification”.

In some cases, notification must be done by a bailiff. This type of notification is called “service”.

After this is done, you must file a copy of the document with the court office, along with proof of notification or service. The court office is where all case records are kept. It should be easy to find in any courthouse.

Other rules could apply. Ask the judge to explain them to you, and make sure you fully understand them.

Prepare enough copies for the trial

If you plan to file exhibits at trial, 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).

3. Prepare your witnesses

To convince the judge at trial, you can testify on your own behalf. You can also have other people be heard.

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 trial, or the person who signed them?
- Which witnesses could contradict fully or in part what might be said by the witnesses for the prosecution?

Witnesses who say what they saw or heard

Someone who talks about facts they have seen, heard or observed first-hand is called an ordinary witness. This is to distinguish them from expert witnesses.

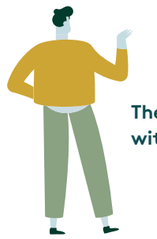
An ordinary witness cannot give their opinion.

Here are some examples of ordinary witnesses:

- A police officer
- The plaintiff
- A bystander who saw what happened
- A person who heard someone admit committing a crime

The witness who says what they saw or heard

The expert witness who gives their opinion



The other party's witnesses

Preparing them to be present

Once you have identified your witnesses, you must make sure they will be there at the trial.

To do so, you might need to use a subpoena, also called a "summons to appear". This 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 subpoena doesn't show up at trial? 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 trial.

To give your witnesses a subpoena, you must fill out the proper form (SJ-762B). To find it, type "subpoena sj-762B" in a search engine such as Google. The form's full name is "Subpoena to a witness at the request of the defence".

Let your witnesses know as soon as possible that you will need them to testify, so they can be there. You can reassure them that their employer must let them go testify at court, either with or without financial compensation.

Paying your witnesses

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

The indemnity amount is set by the government. It's the same for everyone. In 2024, witnesses who must spend five hours or less away from home to attend the trial receive an indemnity of $45. If more time is required, the indemnity goes to $90.

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

Witnesses who give their opinion

An expert is someone whose qualifications or special knowledge about a subject allow them to formulate an opinion. Their role is to help the court understand more technical questions. For example, an expert witness could be:

- a forensic pathologist who explains the cause of death.
- an accident reconstruction expert who explains what caused an accident.
- a doctor.

An expert can give their opinion by testimony or by filing an expert report.

If you decide to present an expert report, make sure it's brief, but sufficiently detailed and justified for the judge to understand it. The expert must explain what method they used for analysis. If the expert collected testimony, it must be joined to the report, because it's part of the evidence.

For expert evidence to be admissible, all of the following conditions must be met:

- The evidence is relevant to the case.
- It's needed for the judge to properly understand the facts.
- No rules of evidence exclude it.
- The expert is sufficiently qualified.

You must disclose expert evidence

If you plan to have an expert testify or to file an expert report, note that you must let the prosecutor know at least 30 days before the trial starts.

- If there is no report: you must give a precise and detailed summary of your expert's opinion.
- If there is a report: you must send the prosecution a copy of the report within a reasonable time. The prosecution can request that your expert be present at trial if they want to cross-examine them.

Witnesses for the prosecution

When the evidence was disclosed, you probably received written, audio or video statements made by the witnesses for the prosecution.

You will have the right to ask these people questions at your trial, but you won't be forced to do so. If you decide to ask them questions, make sure to prepare properly.

4. Prepare your questions

Questions for the examination

During the trial, 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 your witnesses in advance so you know every detail of their version of the facts.
- Plan a practice session with your witnesses.
- Note their answers during this session.

You can always decide you no longer wish to present a witness. For example, you might find out that their version of the facts doesn't favor 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?

Questions for the cross-examination

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.

Leading questions

During the 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.

	Examination	Cross-examination
Question type	Open-ended Who? What? When? Where? How? Why?	Leading
		Short, pointed questions
Goal	Establish the facts for your defence.	Attack the credibility or reliability of a witness. Show that they are wrong about certain facts. Highlight important elements that favor your position.
Examples	What color was your jacket?	Was your jacket black?

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 trial, 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 trial. 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.

5. Review your case

It's important to review your case.

You must make sure that you have everything you need to counter the prosecution's arguments and establish your defence.

Here are the main steps to properly review your case:

- ☐ Carefully go through all the evidence disclosed by the prosecution again.
- ☐ Make sure you know and understand the rules of evidence that will apply at your trial (see pages 69-70).
- ☐ Make sure your documents are well organized. You do not want to have to search for something during the trial.
- ☐ Make sure you have three copies of the documents you plan to file as evidence to give to the judge and the prosecution (if this applies to you).
- ☐ Keep secure all the documents and items of evidence related to the charges. You might have to use them at trial (make sure to bring them to the courthouse).

Should you have a lawyer review your case?

Did you know you can consult a lawyer for only a few hours? That could be useful at this stage to make sure you are 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.

6. Bring everything you need

Before going to the courthouse, make sure you don't forget anything. It's important to bring copies of any jurisprudence or doctrine you want to present to the judge. You must have enough copies for the judge, for the prosecution, and for yourself.

Here is a list of other things that can be useful. None of the following is mandatory, but these documents could help you greatly:

- A plan of the order in which you want to present your witnesses and documents
- A list of questions you want to ask for each witness
- A document outlining your legal arguments

The trial

Don’t be late for your trial! Get there early if you can.

First moments in court

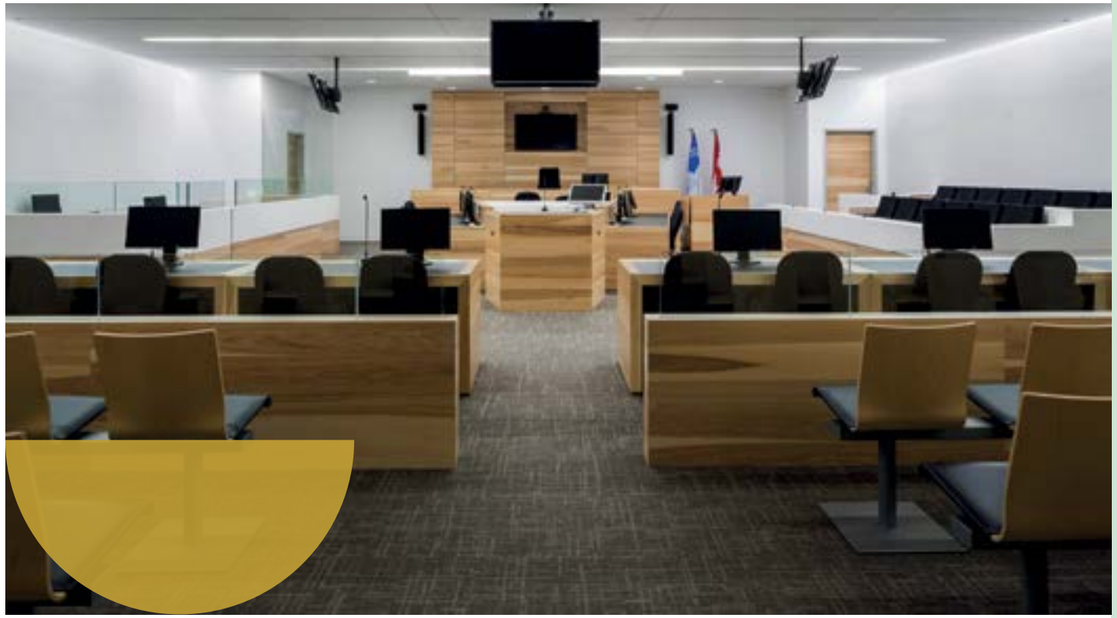
Once you’ve found the room where your trial is being held, enter and sit in the section reserved for the public.

Here’s 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.
- If more than one case is 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.

The judge will often ask the witnesses to leave the room as soon as the hearing starts. Why? This is to avoid their testimony being influenced by what the other witnesses will say. This procedure does not apply to you (the accused), nor to expert witnesses. If the judge doesn’t ask for this, the prosecution can ask for witnesses to be removed from the courtroom. You can request this as well.

Here is what a courtroom looks like:



A trial can be stressful. If you are well prepared and understand the different steps, your experience will be easier.

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 trial 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. **Jury instructions (if there is a jury)**

4. **Deliberation**

5. **Verdict**

The prosecution has to prove your guilt

The prosecution always has the obligation to prove you are guilty beyond a reasonable doubt. It has the "**burden of proof**", because you are presumed innocent.

It's important to know that the burden of proof can shift to you in certain circumstances. This can be the case if there is a presumption against you, for example, if you had the care and control of a vehicle, or if you were caught breaking and entering.

If the burden of proof is shifted in this way, you don't have to prove your innocence beyond a reasonable doubt, but your evidence must be sufficient to convince the judge or the jury.

Presenting evidence

At the trial, 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

Since the prosecution has to prove your guilt, they 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 trial, 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 it enough to prove all the elements of the criminal offence beyond a reasonable doubt? If you need time to make this decision, you can ask the judge. It's important to know that anything you admit to the court, even accidentally, can be used as evidence against you.

In most cases, you will choose to present your defence as planned. Try to present your evidence in order and to respect the timeline of events.

Pay attention to the judge if you can. If you see them writing while you're speaking, slow down so they can complete their notes and listen to what you say.

Testimony

Testimony plays a key part at a trial.

Before hearing the witnesses, the judge (or jury) does not know the facts related to 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.

Some advice: plan out your questions carefully before the trial. To learn how, read pages 57-59 of this guide.

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

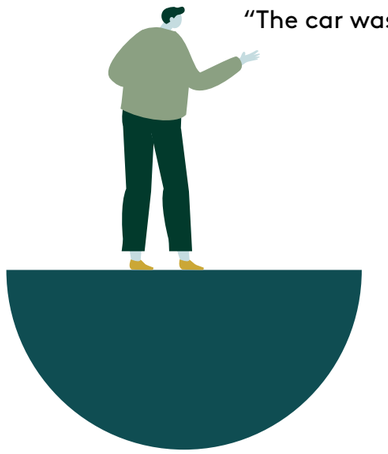
Once a party has finished questioning one of their witnesses, the other party gets a chance to question them. During cross-examination, you can ask leading questions that suggest an answer.

In some circumstances, the judge might not allow you to cross-examine a witness yourself. This could be the case for the victim of a sexual offence or for a minor. Cross-examination would then have to be conducted by a lawyer.

If this happens, the court must let you choose a lawyer to do the cross-examination. If you can't find a lawyer, the court will appoint one for free. The appointed lawyer does not represent you and their role is limited to the cross-examination.

Keep in mind that the best evidence is usually given by your own witnesses. You don't have to cross-examine witnesses for the prosecution, at least in most cases.

But let's imagine that your witness, Ms. A, will say the opposite of what Mr. X has said as a witness for the prosecution.



Mr. X
Witness for prosecution

Ms. A
Your witness

You are not allowed to choose not to cross-examine Mr. X and then claim that he was lying. He must be allowed to explain himself and any contradictions in his testimony.

If you have physical evidence (a picture, for example) that contradicts what Mr. X says, the situation is the same: you have to cross-examine him.

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 trial, please see pages 52-53 of this guide. The judge can also explain the procedure to follow.

During the trial, you must confirm the origin and authenticity of each exhibit. To do so, your witnesses can give details about the contents. You must plan your witnesses’ testimony to make sure that everyone who needs to testify about a document does so.

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 crime scene.

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 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 crime.
- relevant to the charges against you.
- useful to the judge or jury. For example, if it affects the credibility of a witness.

You can object if you think that a witness for the prosecution has nothing to say about the crime, 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.

Good character evidence

In theory, the prosecution is not allowed to attack your reputation for the sole purpose of showing that you are the kind of person who might commit a crime.

But you are allowed to present evidence of your good character. In other words, you can try to prove that you are not the type of person who would commit the crime in question. But watch out! If you present evidence of your good character, the prosecution is then allowed to try to prove the opposite.

It’s difficult to establish proof of your good character. If you’d like to try, make sure to also consider the consequences of presenting that evidence.

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 at trial. 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 accused 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).

Voir dire

A voir dire is a kind of "trial within a trial". It’s a hearing that can be held either before or during a trial. This type of hearing is not always necessary and might not be required for your case.

What it is

A voir dire hearing can determine whether some evidence is admissible. For example, it can be used to evaluate the admissibility of statements made by the accused, hearsay evidence, or evidence obtained in breach of *Charter* rights.

If you believe some of the evidence against you was obtained in breach of your *Charter* rights, you can ask for a voir dire hearing and ask to have that evidence excluded from your trial.

How it takes place

Witnesses can be heard during a voir dire hearing. They can be witnesses for the prosecution or for the defence.

You can also choose to testify at the voir dire, even if you plan to keep silent at your trial. That’s because the evidence presented at a voir dire hearing can’t be used to incriminate you at trial.

The rules that govern examination and cross-examination also apply during voir dire hearings.

If there is a jury at your trial, the voir dire hearing will only take place with the judge, not the jury.

After the voir dire hearing, the judge will decide whether the evidence in question is admissible.

Closing arguments

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

What it is

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 or jury.

There’s no point trying to redo the whole trial at this stage. Don’t forget that the judge (or the jury) 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 your evidence, unless the judge gives you permission.

Is your trial being held before judge alone (no jury)?	Is your trial being held with a jury?
This is also when you can present court decisions (jurisprudence) and theoretical legal texts (doctrine) that you think favor your case.	Before closing arguments, you will be able to talk with the judge and the prosecution, without the jury present. Together, you can discuss points of law and what instructions the judge will give to the jury. The jury will return for the closing arguments. In fact, it’s the jury that you will need to convince. To do so, you can remind the jury of the facts and evidence that favor your case, but you can’t discuss legal notions.

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, unless it's a jury trial.

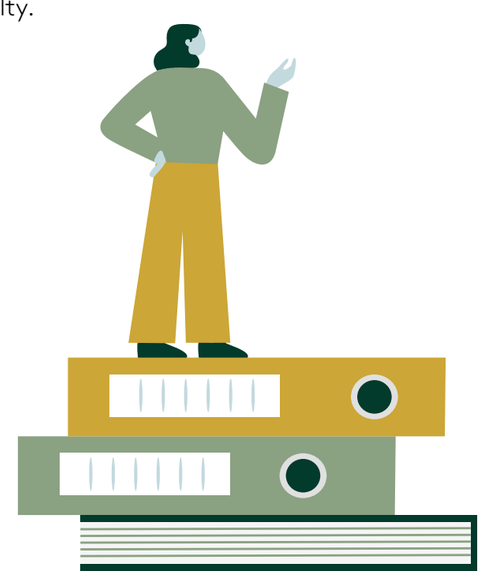
The judge can also ask you questions at this stage. Make sure you understand them, and answer as calmly and honestly as possible.

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

Jury instructions

At a jury trial, the judge will talk to the jury members after both parties have given their closing argument and before asking the jury to go deliberate and reach a verdict.

This procedure lets the judge explain important points of law to the jury, so they can decide if the facts of the case should lead to a verdict of guilty or not guilty.



Deliberation

Non-jury trials

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. The accused must be present for that date.

Jury trial

At the end of the trial, the jury members withdraw in private to discuss the decision to be made. From this moment, they are "sequestered", which means they have no contact with the outside world and can't consult any forms of media. This is called deliberation.

The jury must take as much time as necessary to reach a unanimous decision. If the jury can't agree on a unanimous verdict, the trial will have to be held again with a new jury.

Verdict

A verdict will be given for each charge. Here are the possible verdicts:

- Not guilty
- Guilty
- Not guilty of the charge against you, but guilty of a lesser included charge

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 is not a decision that is taken lightly.

To understand what is considered when choosing a sentence, you can read the following article on the Éducaloi website (educaloi.qc.ca/en): "How does a judge decide on a sentence?"

Sentencing submissions

Before handing down your sentence, the judge will hold a hearing for sentencing submissions.

What it is

During this hearing, the prosecution and yourself will raise any mitigating or aggravating circumstances of the case. These factors could increase or reduce the sentence. They can be related to the kind of person you are, or to the way the crime was committed.

Here are some mitigating circumstances:

- You collaborated with the authorities (you pleaded guilty, for example).
- You were not heavily involved in the crime.
- You are steadily employed.
- Your behaviour has changed.
- You started rehabilitation.

Here are some aggravating circumstances:

- Your crime was motivated by bias, prejudice or hate (based on ethnic origin, religion, sex, gender identity or expression, etc.).
- You abused a minor, intimate partner or spouse.
- You abused a position of trust or authority.
- You already have a criminal record.

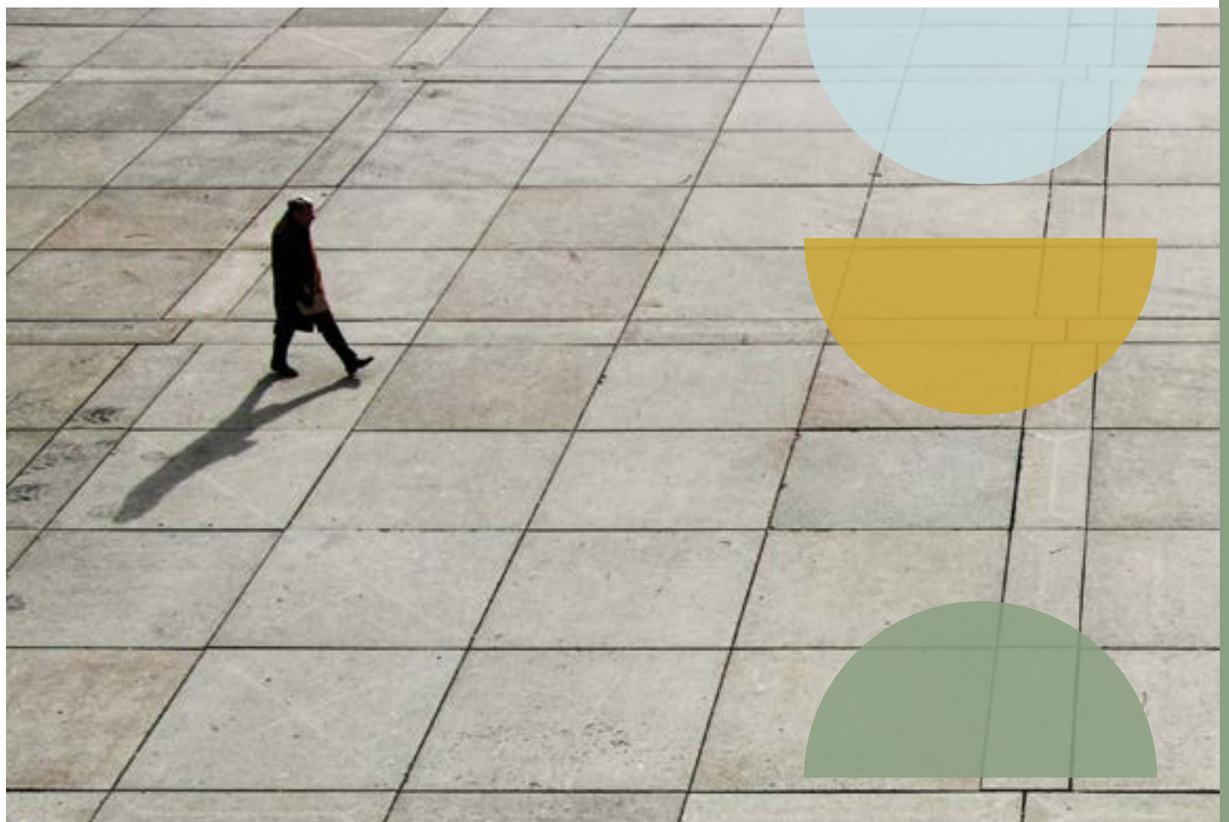
How it takes place

At this stage, you can testify or have witnesses be heard to try to convince the judge that the circumstances justify the most lenient sentence possible.

The prosecution can also have witnesses be heard, including victims and their close relations. The judge will also read any "victim impact statements" that have been submitted. These are documents in which victims explain how they were affected by a crime. You will receive a copy of these documents.

You can still negotiate

If you can agree with the prosecution, you can still submit a joint sentencing submission to the judge. The judge does not have to adopt your suggestion, unless the agreement took place during a facilitation conference (to learn more about facilitation conferences, see page 29).



Presentence report

A presentence report is not always necessary.

The prosecution, the judge or yourself can ask for such a report to be drawn up. The judge will make the final decision.

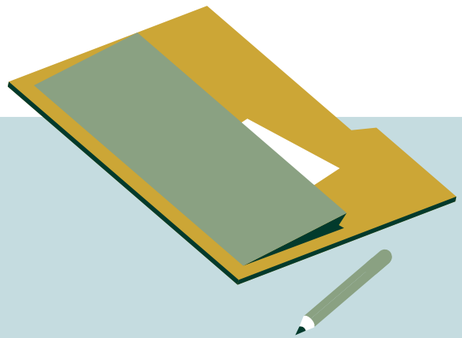
What it is

The presentence report helps the judge determine the most appropriate sentence. The goal is to evaluate the defendant and establish their risk of reoffending.

The report can go into many aspects of the defendant's personal history, from childhood to the present day, covering instances of drug or alcohol abuse, mental health issues, personal beliefs, etc.

Sometimes, the presentence report is in two parts, written by two different professionals:

- The standard report is always included and is drawn up by a probation officer.
- There can also be an expert report (called a "volet" in French) if specific expertise is needed to properly evaluate the defendant. It can be written by a sexologist, a neuropsychologist, etc.



Gladue report (for Indigenous people)

Are you Indigenous?

If you are Indigenous and you risk a prison sentence, you can ask for a Gladue report to be prepared, even if you don't live in an Indigenous community.

What it is

The goal of a Gladue report is to determine a fair and appropriate sentence.

The report will take into account any hardships you or your community has faced, systemic or historical factors in particular. It will also explain what services are offered in your community that could help your rehabilitation.

To learn more about Gladue reports:

- Go to the Native para-judicial services of Québec website at spaq.qc.ca/gladue-report/?lang=en
- Watch the *Gladue Report* video on Éducaloi's YouTube channel (youtube.com/@educaloi). To find it, type "Éducaloi Gladue Report YouTube" in a search engine such as Google.

Possible sentences

Discharge

Being discharged is the most lenient measure possible for criminal matters. It can be absolute (without conditions) or conditional (with conditions).

It's often said that being discharged means you won't have a criminal record. That's not entirely true. In fact, a discharge doesn't lead to a permanent criminal record, but it does lead to a temporary one. A record will be created in the files of the Royal Canadian Mounted Police (RCMP), but it will be deleted one year later after an order for an absolute discharge, or three years later for a conditional discharge.

Being discharged is not exceptionally rare, but it's not always possible. It's impossible to be discharged for offences that require a minimal sentence or that can lead to a prison sentence of 14 years or more. For example, driving while impaired or with prohibited levels of alcohol or other drugs leads to a mandatory minimum sentence, which means you can't be discharged.

Absolute discharge

An absolute discharge does not mean you were acquitted, but it does mean you won't need to respect any further conditions.

Conditional discharge

Sometimes, a discharge comes with conditions. These conditions are set out in a probation order for a precise period of time.

If you don't respect these conditions, or if you are found guilty of a new criminal offence committed while you were on probation, the judge can revoke your discharge. In fact, the judge can sentence you for the original offence as well as for the new offence.

Weapons ban

You might hear the prosecutor and judge talk about a weapons prohibition or weapons ban. This refers to a ban on possessing firearms or crossbows. This prohibition also includes hunting weapons.

Probation order

A probation order is a measure that can be combined with another sentence. Its goal is to impose binding conditions on the person who was found guilty, lasting for a maximum period of three years.

Here are some typical conditions:

- Show up to court when required.
- Keep the peace and be of good behaviour.
- Inform the court or the probation officer of any change of address, name, employment or occupation.
- Don't communicate, directly or indirectly, with certain people.
- Don't be in a specific place.
- Don't use prohibited drugs, alcohol, or other intoxicants.

Suspended sentence

The judge can decide not to sentence you immediately, but keep the option of handing down a sentence later if you commit a new criminal offence. This is called a suspended sentence.

The judge will then make a probation order with conditions to respect. If you don't respect these conditions, the judge can order you to return to court and give you the sentence that your original crime would have entailed.

Fine

The judge can choose to order you to pay a fine. This punishment must be proportional both to the seriousness of the crime and to your capacity to pay, except in cases where a minimum fine is defined by law.

What if you can't afford to pay?

You can ask for more time to pay the fine.

If you were sentenced to pay a fine and you come to realize you won't be able to pay it, you can ask permission to work it off by doing community service instead.

Conditional sentence

The judge can give you a conditional sentence, also known as serving your sentence in the community. To do so, the judge must be convinced that this measure does not put public safety at risk and that it respects the principles and goals of the sentence.

Conditional sentences are only possible if both of these conditions are true:

- The prison sentence is of fewer than two years.
- No mandatory minimum prison sentence is prescribed by law.

A conditional sentence comes with binding conditions that limit your freedom. For example, you could be put under house arrest, which means you must stay in your home at all times except to go to work or another essential occupation.

Throughout your conditional sentence, you will be subject to close surveillance. If you don't respect the conditions that were imposed, there could be serious consequences.

Intermittent sentence

Prison time can also be served in blocks of time, usually on weekends. This type of sentence is only possible for prison sentences of no more than 90 days.

An intermittent sentence can allow you to keep your job, but it's not the same as complete freedom. If you are given an intermittent sentence, you will also have to respect conditions defined in your probation order. These conditions can continue even after you have completed serving your weekend prison time.

If you don't respect your probation conditions or if you don't show up to prison to serve your intermittent sentence, you could be charged with new criminal offences.

If you receive an intermittent sentence, note that you can request the court to be allowed to serve your sentence continuously.

Imprisonment

A fixed term of imprisonment is served in provincial jail or a federal penitentiary, depending on its length.

- Imprisonment of less than two years = provincial jail
- Imprisonment of two years or more = federal penitentiary

The rules for parole eligibility change depending on whether you are in a provincial jail or a federal penitentiary.

Victim surcharge

This is an amount of money that helps finance programs and services for victims of criminal acts. A victim surcharge is always combined with another sentence.

Other orders

In addition to the sentence, the judge has the power, or even the obligation in certain cases, to make other orders.

For example, you could be ordered to pay back the damages caused by your crime. Your financial capacity does not need to be taken into account if the court decides to make such an order.

Other orders are also possible. For example:

- Driving ban
- Firearms ban
- Confiscation of goods or products of crime
- Having to submit a DNA sample
- Being registered as a sex offender

Appeal

In some circumstances, you can appeal the guilty verdict or the sentence.

But don't file an appeal simply because you don't like the outcome of your trial. The Court of Appeal's role is not to do the trial over or hear witnesses again.

To win your appeal, you must convince the Court of Appeal that the judge in your case made critical 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.

Two courts for your appeal

Depending on the type of charges against you, your appeal will be heard by:

- Superior Court, for **summary conviction offences.**
- The Court of Appeal of Québec, for **indictable offences.**

A trial transcript is mandatory

If you want to appeal a decision, you must first obtain a transcript of everything that took place at trial. You must pay the costs to obtain this transcript.

If you win your appeal, the Court of Appeal can order the prosecution to reimburse you for the cost of the transcript.

Different rules

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

Having the sentence suspended

Filing an appeal does not automatically suspend the application of your sentence.

For example, let's say you were banned from driving for a year and ordered to pay a $1,000 fine. While you wait for your appeal to be heard, you will have to pay the fine and you won't be allowed to drive a vehicle.

But note that you can ask the Court of Appeal to suspend the original trial judgment until your appeal is heard.

Resources to make things clearer

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

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.

Are you Indigenous? Éducaloi has prepared a guide on the criminal legal process and the rights of Indigenous people accused of a crime. To find it, go to the Éducaloi website homepage, click on "Publications", and filter by the "Indigenous Legal Issues" category.

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 you need to prepare your case.

Société québécoise d'information juridique (SOQUIJ)
citoyens.soquij.qc.ca

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

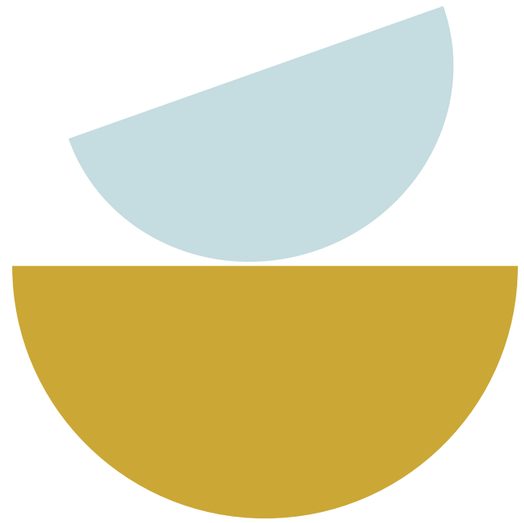
To find it, click the link called "Translated Decisions" on the English homepage of the website.

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 criminal law, because the site also includes information on civil trials.

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

- Information on the judicial process
- Information on programs designed to help people who have been found guilty
- The docket (roll for hearing) to find out when a hearing is scheduled



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:

- give you information on what forms you might need, help you understand how to fill them out and tell you about any costs involved.
- 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 subpoena 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 trial 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.

Superior Court of Québec (Montréal Division or Québec Division)

coursuperieureduquebec.ca/en

If your trial is being held in Superior Court, you'll find the forms you need here.

Click on the Montréal Division or Québec Division link in the top horizontal menu. If you're 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.

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

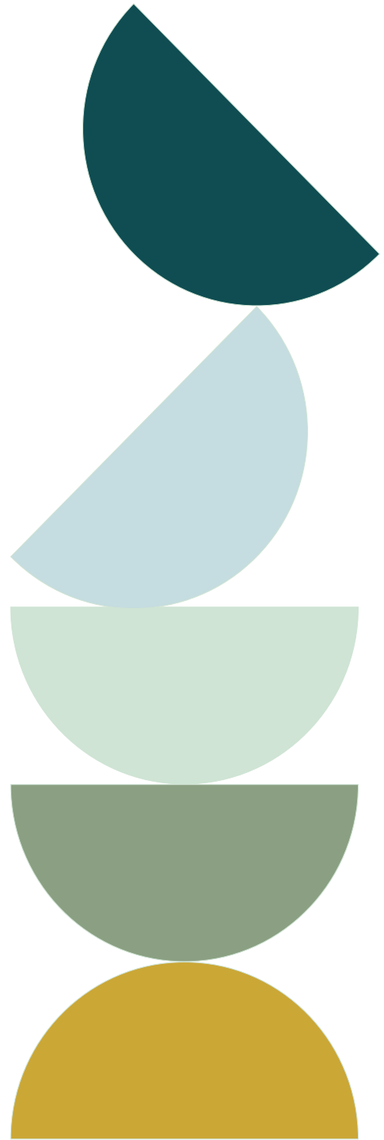
Gaspésie-Îles-de-la-Madeleine
418 689-1505 • 1 844 689-1505

The judge

You can also ask the judge questions.

One of the judge's roles is to help and inform all the parties, especially when 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.



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.**

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.