FONDATION BARREAU DU QUÉBEC

REPRESENTING YOURSELF IN COURT in CIVIL Matters

BOOKLET 1

REPRESENTING YOURSELF IN COURT

In CIVIL Matters

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WARNING

This document provides general information and does not constitute a legal opinion. Its contents should not be used to attempt to respond to a particular situation.

In this document, the masculine includes both men and women, depending on the context.

Legal deposit – Bibliothèque Nationale du Québec, 2009
Legal deposit – National Library of Canada, 2009
2nd quarter 2009
Latest update: January 2016
ISBN 978-2-922151-79-4 (PRINTED)
ISBN 978-2-922151-80-0 (PDF)

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Graphic and visual design: Septembre éditeur

FOREWORD

Faced with the increasing number of individuals choosing to represent themselves in court, without a lawyer, the Fondation du Barreau du Québec has decided to make the general information in this guide available to the public to help them better understand the main steps of the judicial process, so they can make informed choices about what to do.

Are you thinking of filing a **legal action** before a civil court?

Have you just found out that you are being sued in a civil case?

Now's the time to ask yourself the following questions:

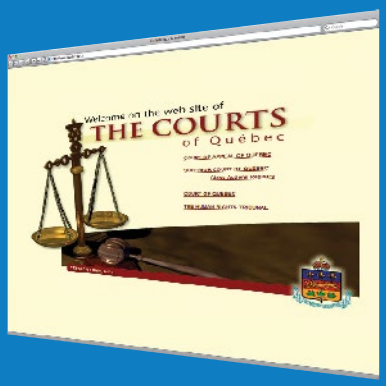
- Are you capable of acting alone?
- Should you consult a lawyer?
- Should you hire a lawyer to represent you?

This guide will help you answer those questions.

The information found in this guide applies only to **civil matters** (latent defects, neighbourhood annoyances, claims for money owed, etc.), with the exception of family law (divorce, custody, etc.), to which special rules apply. If the case you are involved in is a **criminal** or **penal matter,** you should be aware that the rules of **procedure** and **evidence** are very different.

This guide covers cases heard before the courts of Québec, such as the Québec Superior Court and the Court of Québec, including the Small Claims Division. It does not cover proceedings in the federal courts, such as the Federal Court or the Tax Court of Canada. Also, if you are involved in a matter that is submitted to a specialized body, such as the Régie du logement, the Administrative Tribunal of Québec (ATQ) or the Administrative Labour Tribunal (called "administrative tribunals"), you may wish to read our booklet that discusses the specific rules applicable to those tribunals.

To find out the respective jurisdictions of the various courts of Québec, visit **www.tribunaux.qc.ca/mjq_en/index.html**.



The words and expressions in **bold type and in colour** in the text (the colour varies depending on the chapter) refer to definitions you will find in the glossary at the back of this guide.

REPRESENTING YOURSELF IN COURT
In Civil Matters

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WHETHER OR NOT TO BE REPRESENTED BY A LAWYER

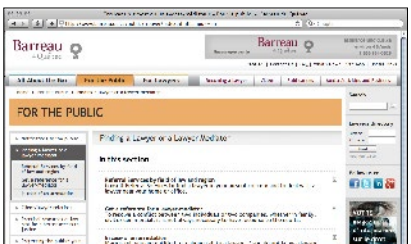
1.1 YOUR RIGHT TO BE REPRESENTED BY A LAWYER

As a general rule, you can be represented by a lawyer in any civil case in which you are involved as a **party**. However, the law prohibits anyone from being represented by a lawyer before the Court of Québec, Small Claims Division (which hears civil cases involving $7,000 or less), so you must represent yourself before that court. For information about this, see **www.justice.gouv.qc.ca/english/publications/generale/creance-a.htm**.

In court, you have a choice: be represented by a lawyer or act alone. No one other than a lawyer can speak on your behalf or act for you before the court, not even a member of your family.

You don't know a lawyer? Groups or associations of lawyers provide referral services by area of law and region. For further information:

www.barreau.qc.ca/fr/trouver-avocat/services-reference/



1.2 YOUR RIGHT TO REPRESENT YOURSELF

In theory, you don't have to be represented by a lawyer. Whether by choice or not, you can represent yourself before Québec's civil courts.

However, you should be aware that a **legal person** (a company, organization, etc.) must generally be represented by a lawyer when it is involved in a **lawsuit**. For example, if the action is taken by or against a company, partnership, syndicate of co-owners or non-profit organization, being represented by a lawyer is mandatory.

1.3 SHOULD YOU HIRE A LAWYER OR NOT?

Representing yourself before the court is not an easy thing to do. Before deciding to act alone, think about the significant consequences your decision could have on your rights.

The rules of **procedure** apply to everyone equally. If you decide to act alone, you will not be given special treatment. You will have to find out what the rules are, understand them and follow them.

THE HELP OF A LAWYER IS ESPECIALLY USEFUL IF, FOR EXAMPLE:

- You want to take a **legal action** against someone but you don't have any idea what laws apply to your case, and you don't know how to find out;
- You don't understand the documents you received from the other party or the court;
- The other party wants to submit your dispute to **mediation** but you're not familiar with that procedure;
- Your file seems complicated, and you need several **witnesses** to prove your points;
- You require the services of an **expert** (such as a doctor, engineer, etc.) to establish certain important facts as a **plaintiff** or to defend yourself. For example, you have to submit medical proof of your bodily injury or you want to prove the presence of a latent defect or contradict an expert's report that the opposing party sent you;
- The conflict between you and the other party has become very personal and emotional;
- You have trouble complying with rules and strict deadlines;
- The opposing party is represented by a lawyer;
- You don't feel comfortable speaking in public;
- You want to appeal a **judgment** rendered against you.

IF YOU THINK YOU CAN REPRESENT YOURSELF IN COURT, ASK YOURSELF WHETHER:

- Your file is relatively simple: few witnesses, not many documents, an issue that can be explained easily;
- You understand your file well enough to explain it verbally and in writing;
- You're able to understand texts with legal terms;
- You feel comfortable discussing and negotiating with the opposing party or his lawyer;
- You're able to remain calm in the presence of the other party or his lawyer, even during your **cross-examination** or after hearing people speak against you;
- You're able to organize your documents clearly and methodically;
- You're able to write clearly and concisely;
- You have enough time to follow your file, at every stage of the legal process;
- You have enough time to respond to the demands of the opposing party or the court within the timeframes given.

IF YOU DECIDE TO REPRESENT YOURSELF, YOU MUST BE ABLE TO DO THE FOLLOWING:

- Determine the appropriate court and district; ▶ See 3.2.2
- Do research to understand the legal rules that apply; ▶ See 5.3
- Draft **proceedings**; ▶ See 3.2.2 and 4.3
- Collect and keep the documents you want to submit to the judge; ▶ See steps 5 and 6.3.2
- Attend court and participate in preliminary **hearings**; ▶ See 4.2
- Participate in **pre-trial examinations**; ▶ See 4.2.3
- Thoroughly prepare for **trial**; ▶ See Step 5
- At trial, examine and cross-examine witnesses. ▶ See 6.3.1

Before deciding that you can't afford to hire a lawyer, take the time to consider ALL AVAILABLE OPTIONS.

Firstly, you may be entitled to legal aid, which allows you to be represented by a lawyer paid by the government. To find out whether you're eligible, contact your local legal aid office or visit the Commission des services juridiques web site at **www.csj.qc.ca/SiteComm/W2007English/Main_En_v3.asp**.

Some housing and automobile insurance policies contain "legal expense insurance" which compensates you under certain circumstances for part of the fees paid to your lawyer. Ask your insurer whether you have this type of coverage.

Also, most insurers offer certain "legal assistance" policies, which give you access to an information hot-line with lawyers accepted by the insurer. Sometimes you can be given "legal assistance" if you are a member of certain associations or groups, such as a union. If you are a member of an association or group, check whether this type of help is available.

You can also briefly consult a lawyer to find out how much it would cost to represent you, for all or part of the **case**. Discuss with a lawyer possible arrangements regarding the fees. In some cases, a lawyer will agree to work for a fixed amount or accept other terms to help with your situation.

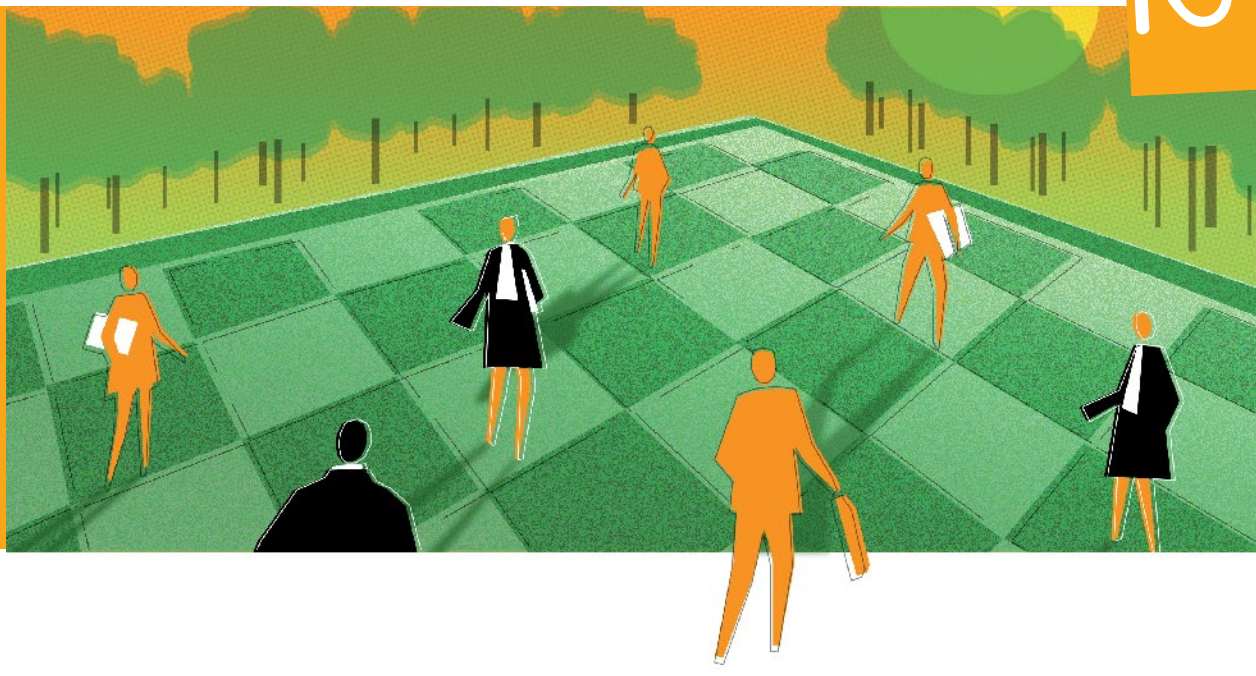
Finally, certain referral services let you have an initial consultation at a reduced cost for the first 30 minutes, or even free-of-charge in certain cases. You can find out more about this service by visiting the web site of the Barreau du Québec (referred to as the Bar in the rest of this document) (see page 5).

Before going to court, you should always check whether there's another way to settle a dispute between you and one or more other people. ▶ See Step 8.

REMEMBER

- ✓ It's up to you whether you represent yourself or are represented by a lawyer;
- ✓ If you plan to represent yourself, you are responsible for finding the information you need;
- ✓ If you decide to represent yourself, you can always consult a lawyer, even if it's only for a few hours, at the beginning of the proceedings or any other time you feel it's necessary.

IDENTIFYING THE ROLE OF EVERYONE INVOLVED



2.1 THE LAWYER

Lawyers are professionals who use their skills and knowledge of the law to represent and advise their clients. Before the courts, lawyers perform all the duties required to see a **case** through to its end for their clients.

Your lawyer may, for example:

- Evaluate the law applicable to your situation and determine whether your claim is well-founded;
- Periodically help you assess what's at stake, your chance of success and the possible risks;
- Draft **proceedings**;

- Discuss and negotiate with the opposing **party** or his lawyer;
- Represent you before the court;
- Submit your **evidence** and contradict that of the opposing party;
- Examine **witnesses** and cross-examine those of the opposing party;
- Help make your experience easier and less stressful;
- Advise you what steps should be taken or what strategy should be adopted after a **judgment** is rendered (possibility of an appeal, seizure, etc.)

A lawyer is a legal professional. Although the legal rules may appear complex and sometimes incomprehensible to you, for the lawyer they are work tools.

A lawyer is a member of a professional body, the Barreau du Québec (Bar), whose mission is to protect the public. The Bar requires that lawyers follow strict rules, including that of acting competently and in the best interests of their clients. Also, to protect their clients, lawyers must take out professional liability insurance.

To ensure their services are the best quality possible, lawyers must also submit to inspections by the Bar.

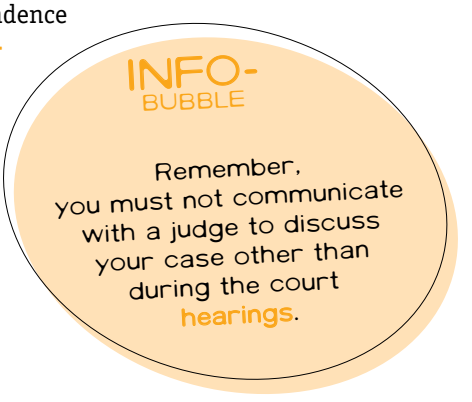
Requests for an investigation from clients who are dissatisfied or who believe they have been wronged by a lawyer are submitted to the Bar's syndic, an officer with investigatory and oversight powers that allow him to determine whether complaints made against a lawyer are valid.

When performing duties, lawyers must be polite and courteous toward the court, the parties to the case, the witnesses and the legal staff, in accordance with their Code of Ethics.

2.2 THE JUDGE

Judges hear the parties and are responsible for ensuring that the **trial** is conducted properly. They decide on disputes by making decisions, which are called "judgments". In addition to their traditional role as a decision-maker, judges may be asked to act as arbitrator, conciliator and mediator. ▶ See Step 8.

Judges are impartial and must demonstrate independence at all times. They apply the law and the rules of **procedure** in the same manner for all parties. They treat the parties fairly, being careful not to favour either one. The judge is not the adviser or personal guide of either party. If you represent yourself, you should not count on the judge to give you advice on how to present your case at trial.



The judge may, for example:

- Explain the consequences of acting without a lawyer to you;
- Recommend that you hire a lawyer to represent you;
- Ask you to participate in discussions with the other party to attempt to settle the case rather than going through a trial.

2.3 THE COURT OFFICE STAFF

The **court office** is the place where files for matters brought before the court are kept. The court office staff coordinates various administrative services relating to the files. Its role is limited to giving you general information and authorizing certain proceedings.

For example, the court office staff may:

- Tell you about the types of forms you need, how to fill them out and the related costs;
- Tell you where the various departments and staff are, if necessary;
- Explain certain basic aspects of procedure to you.

However, the court office staff may under no circumstances:

- Give you legal advice regarding your chance of success;
- Advise you about the **legal actions** you may file in the court;
- Advise you about the **defence** you should present;
- Recommend a lawyer to you;
- Give you advice regarding the evidence you should present or the witnesses you should have testify;
- Give you legal advice about your rights following a decision rendered by the court.

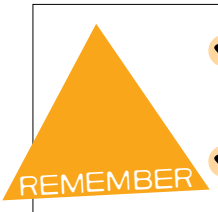
2.4 THE OPPOSING PARTY'S LAWYER

If you are self-represented and the other party is represented by a lawyer, you will be facing a legal professional trained to speak before the courts. You should be aware that you cannot count on that lawyer to give you assistance or advice, as all lawyers must act in the interests of their client.

However, the other party's lawyer is not prohibited from speaking to you if you represent yourself. In most cases, it is useful and even necessary for you to speak to each other. In particular, the other party's lawyer may give you an opinion and explain a position. You may also try to argue with him and come to a settlement. You are free to agree or disagree with him.

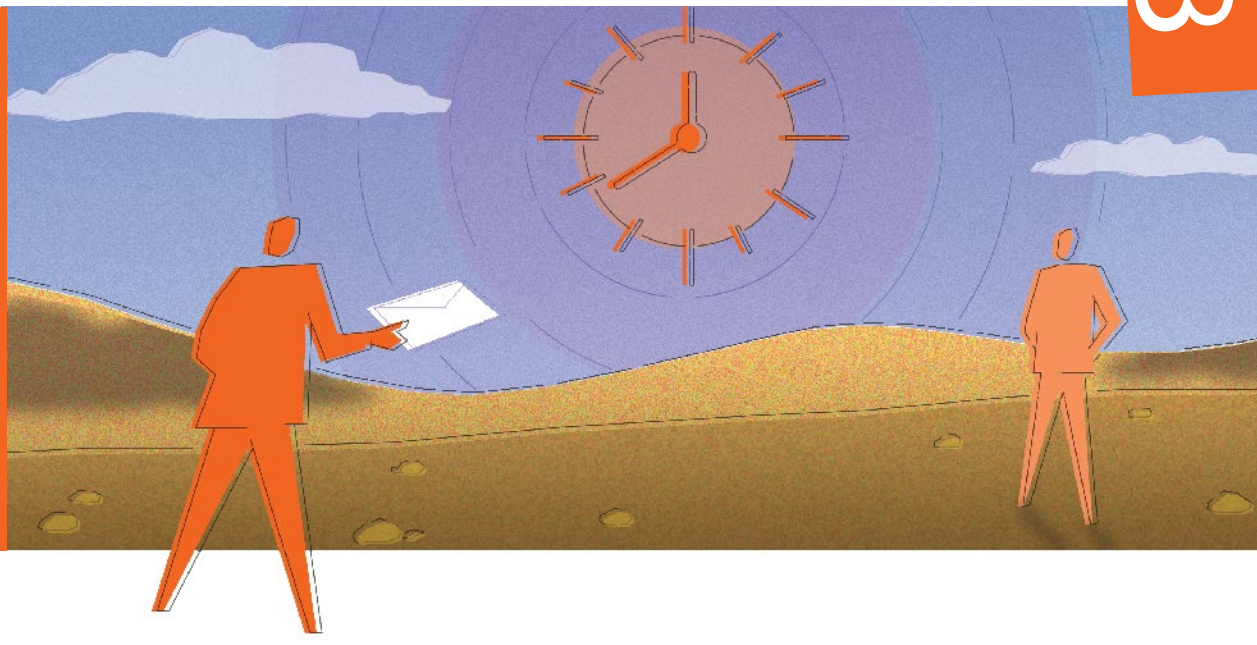
Lawyers have a duty to be courteous toward you, as well as toward everyone involved. You must act the same way toward them.

If you act alone, you must follow the same rules as those the lawyers and other parties must follow. You must prepare yourself and find the answers to your questions BEFORE appearing before the judge.



- ✓ Take account of the limitations of each person involved with respect to their role in the legal process.
- ✓ Act courteously toward everyone involved, just as they must act toward you.

FILING
A LEGAL ACTION



3.1 THE DEFINITION OF A LEGAL ACTION

In **civil matters**, the court is asked to decide on a dispute between two or more **parties**. A party may be an individual or a **legal person** (business, company, union, government body, etc.). The filing of a **legal action**, or **lawsuit**, commences a civil case. This is the normal way parties apply to the court to exercise their recourse, or right of action.

In most cases, a lawsuit is instituted through the filing of a document called an "**originating application**". For example, you may file an originating application if:

- You have suffered bodily harm and you want the person at fault to compensate you;
- You have discovered latent defects in your building and you want the vendor to fix them or reimburse you the cost of work you had to have done;

- A person refuses or fails to pay money owed to you;
- You want to have a contract you signed cancelled.

You must act promptly, as the law provides certain deadlines for taking your action. In legal language, this is called **prescription**. The deadlines can sometimes be very short and they must always be complied with.

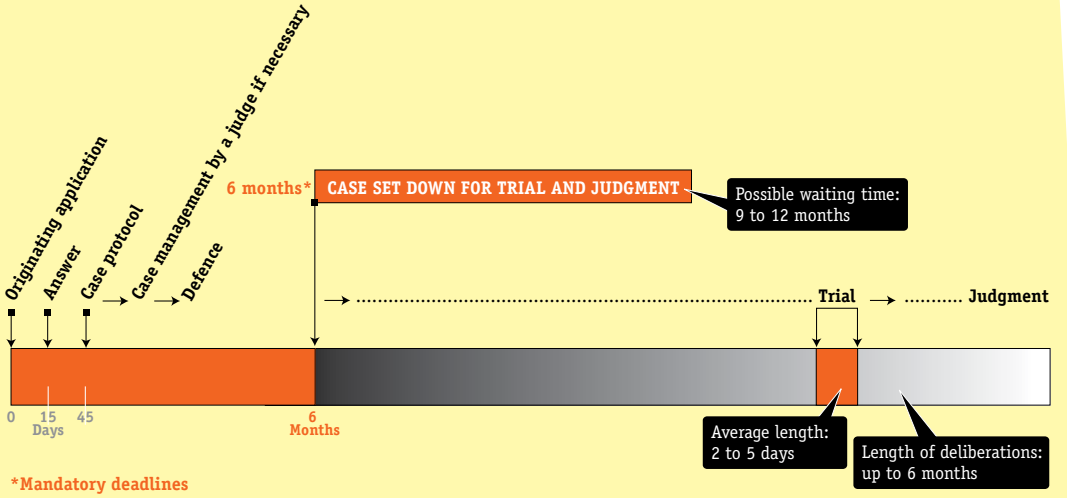
In addition, in some situations, you must have sent a particular notice beforehand, within the time prescribed by law, for example, if you have a claim against a municipality for property damage. Your application may be dismissed merely because you did not take your action within the time required by law or you failed to send the mandatory notice.

KEEP IN MIND

Before filing a lawsuit, it is essential that you learn about all the rules of **procedure** applicable to your case, and in particular those set out in the *Code of Civil Procedure*. Your are responsible for identifying and knowing the rules that apply specifically to your case.

The prescription times are found not only in the *Civil Code of Québec*, but also in various special statues, and may vary from one situation to the next.

The typical path of a CIVIL LAW case



*Mandatory deadlines

3.2 THE STEPS AND RULES TO BE FOLLOWED

3.2.1 THE DEMAND LETTER

Before taking your action before the courts, did you think of sending a demand letter or serving an official notice of default?

Such a letter informs the other party that you plan to take legal **proceedings** against him if he does not give you what he owes you or does not correct something you claim he has done. The letter is sent to the person who owes you something or who caused you harm.

Your letter must be sent by registered mail or **bailiff** so you have evidence that it was received.

A demand letter is strongly recommended in most cases and even mandatory in certain situations. It is also useful, as it often marks the starting point for calculating the interest you may be able to claim if you win your case.

Except in an emergency, take the time to send a demand letter. A favourable response could mean you will avoid having to file the suit. You can even suggest using an alternative method for resolving your dispute rather than going to court.

INFO-BUBBLE

Did you know that you could lose your case by the mere lapse of time? To help you figure out the rules and deadlines you have to meet, it is recommended that you consult a lawyer.

If you receive a demand letter, it is very important that you act quickly. Consult a lawyer or reply to the letter.

KEEP IN MIND

Certain wording and precautions are required when you write a demand letter. In particular, you must be careful to avoid using slander or words that could constitute an **admission** on your part.

3.2.2 THE ORIGINATING APPLICATION

In most cases, a legal action is taken through a written originating application, which sets out the relevant facts of the case and the conclusions sought.

▶ WHICH COURT WILL HEAR YOUR CASE?

Before starting your legal action, you must determine which court has jurisdiction to hear your case, which can be a complex issue in and of itself.

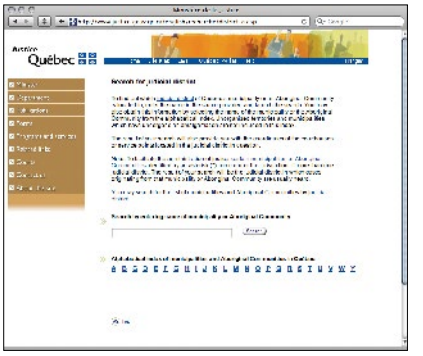
For example, if you are claiming $85,000 or more, it must generally be brought before the Superior Court. However, if it is less than $85,000, the Court of Québec normally has jurisdiction.

However, the amount in question is not always the deciding factor, since the two courts do not have jurisdiction in all areas. Other courts and specialized or administrative tribunals may have exclusive jurisdiction in certain matters.

To identify the court that has jurisdiction over your particular situation, you should check the relevant laws, and in particular the *Code of Civil Procedure*.

▶ THE APPROPRIATE JUDICIAL DISTRICT

You must also determine where you should institute your action. In general, you file your lawsuit at the **court office** where the opposing party is domiciled or has a place of business. However, other rules may apply and change the place where your action should be taken. To find the appropriate judicial district for your case, visit **www.justice.gouv.qc.ca/english/ recherche/district-a.asp**.



▶ DRAFTING YOUR ORIGINATING APPLICATION

Once those choices are made, it's time to draft your originating application.

In it, you must explain in detail, in concise paragraphs, the facts on which your case is based (where, when, how), clearly indicating what you are asking the court, for example payment of damages, cancellation of a contract, return of an object, etc.

Such an application must be written in logical order, carefully, thoroughly, concisely and in accordance with the applicable rules. In drafting your proceedings, you must always be courteous and avoid blaming, insulting or threatening the other party.

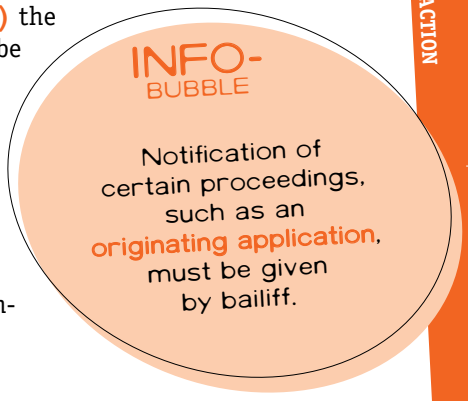
Once your originating application is ready, you must pay the **filing fee (stamp)** at the courthouse in the district where you are required to take your action.

3.3 THE NOTIFICATION

Once your originating application is prepared and stamped, your opponent must be given notice of it, that is, a copy of the proceeding must be sent to him in the manner indicated in the rules of procedure.

For each proceeding, proof of **notification** must be filed into the court record. You must ask a bailiff to **serve (service)** the originating application for you. Remember, there will be costs associated with this.

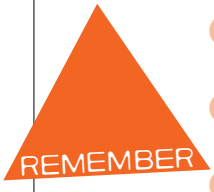
When a lawyer has sent you an **answer** (▶ see 4.1), you can send certain documents electronically, according to specific rules set out in the *Code of Civil Procedure*. If the other party does not have a lawyer, you must obtain his consent or the written consent of the judge or **court clerk** to send a document electronically.



3.4 THE FILING FEE

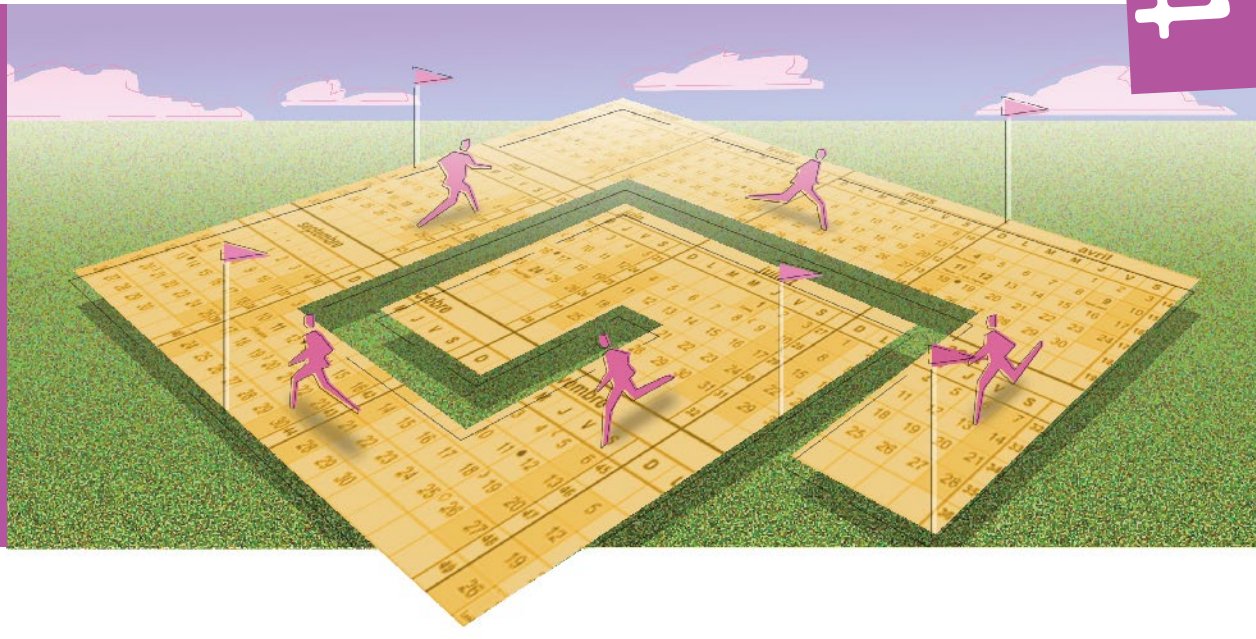
When you file a legal action and certain other proceedings in court, you must pay a filing fee set by the government.

The filing fee for certain proceedings varies depending on the amount involved and is subject to change.



- ✓ Send a demand letter serving official notice before filing a legal action;
- ✓ Be very aware of the prescription periods (deadlines) applicable to your situation;
- ✓ Clearly explain your situation and your claims in your originating application and be sure it is drafted carefully and concisely.

UNDERSTANDING THE PROCEEDINGS



The **case** begins when a **lawsuit** is filed and ends with the **judgment** or another act that puts an end to it. During the case, each **party** must take various steps and prepare certain **proceedings** to ensure their file progresses before the **trial** begins. These steps must be taken within certain time limits and according to the formalities set out in the rules applicable to each situation.

4.1 THE ANSWER

If you receive an **originating application**, it is very important to read it carefully. The application states what is being asked of you. The **summons** which accompanies the application contains instructions you must follow to respond to the application. In particular, it indicates how much time you have to file an **answer** in writing, either personally or through a lawyer.

An answer is a written document you must send the plaintiff's lawyer or the **plaintiff** himself if he is not represented by a lawyer. You must also file it with the **court clerk** and pay the **filing fee**. That will ensure that you receive any proceeding or document filed by the other party.

The filing of an answer is essential if you want to defend yourself. If you don't file an answer within the specified time, a decision may be rendered against you without further notice and without your being able to defend yourself (**inscription for a judgment by default for failure to file an answer**).

4.2 THE PROCEEDINGS AND STEPS OF A CASE

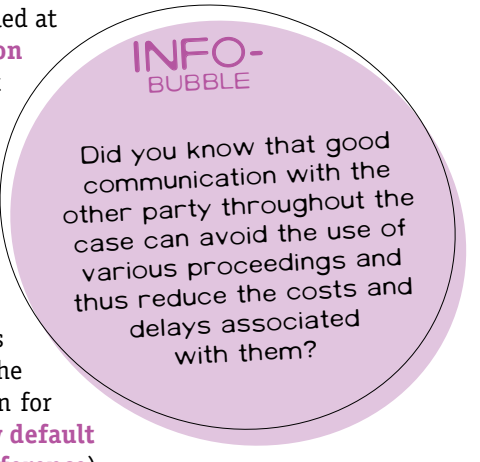
4.2.1 THE CASE PROTOCOL

After the **defendant** files an answer, the parties must establish a **case protocol**. This document prepared jointly by the parties covers several points, such as the consideration given to private dispute prevention and resolution processes as well as various formalities allowing them to make their case ready for trial. A deadline must be indicated for accomplishing each of the steps so the case is ready for trial within 6 months. ▶ See 3.1

For example, you must indicate:

- Whether you intend to submit preliminary objections and within what timeframe; ▶ See 4.2.2
- Whether you wish to conduct **pre-trial examinations** and within what timeframe; ▶ See 4.2.3
- Whether you wish to submit an expert's report and within what timeframe;
- The reasons why you don't intend to jointly seek an expert opinion.

Each party then signs the protocol, which must be filed at the **court office** within 45 days following **notification** of the originating application. If the protocol is not filed because the parties could not agree, the court determines the timeframes and conditions applicable to the case.



Even if the parties have filed a protocol, a judge can call them to a case **management conference** and issue orders to ensure the proceeding moves ahead smoothly before trial. If the defendant does not attend the case management conference, the judge can order the court clerk to set the case down for judgment by default (**inscription for a judgment by default for failure to participate in the management conference**).

4.2.2 **THE PRELIMINARY OBJECTIONS**

Various preliminary objections, which are listed in the *Code of Civil Procedure*, may be used by the parties throughout the case. They are proceedings in which one of the parties may:

- Ask that the file be transferred to another judicial district;
- Ask the court to dismiss the action or the **defence** because it is inadmissible in law;
- Obtain clarifications on certain vague or ambiguous allegations found in the other party's **originating application** or defence.

4.2.3 **THE PRE-TRIAL EXAMINATION**

Unless the amount involved is less than $30,000, each party has the right to examine the opposing party before or after the defence, but before the trial. Other people may also be examined with their consent and that of the other party, or with the judge's permission.

At an examination, you may ask questions of your opponent, the opponent's representative or even, under certain conditions, a third party, in order to obtain information and documents relating to the claim or the dispute. Where applicable, you will have to prepare and conduct a pre-trial examination of the other party.

Similarly, the other party may ask to examine you, and you must make yourself available before trial to answer various questions or provide certain documents.

The pre-trial examination does not take place before the judge. More often than not, it takes place in a room at the courthouse or at the office of one of the parties' lawyer. The examination is conducted under oath. Except under special circumstances, everything that is said during the examination is recorded, then transcribed by an **official stenographer** at the request of the parties. The transcriptions made by the stenographer are called stenographic notes.

There are costs associated with the use of a stenographer and obtaining a copy of the stenographic notes. If you wish to conduct a pre-trial examination of the other party, be sure to reserve the services of an official stenographer. To find one, see the resources indicated at the end of this document.

Each party is free to decide whether or not to file in court all or part of the stenographic notes of the examination he conducted. The other party is not required to file the stenographic notes of the examination that was conducted, even if you're the one examined. In the same way, you may also decide whether or not to file the stenographic notes of the examinations you conducted.

Pre-trial examinations are governed by specific rules, which must be followed by all parties, even when a party represents himself.

4.3 THE DEFENCE

The defence is a response (answer) to the originating application. A defence is usually given verbally before the judge but it may be in writing if the parties agree to a written defence in the case protocol or if the court asks for one. A **cross-application** may only be made in a written defence.

4.3.1 THE VERBAL DEFENCE

The purpose of a verbal defence is to contest the originating application. It is presented orally at the time agreed upon by the parties or set by the judge. However, the court could ask you to state your defence in writing.

4.3.2 THE WRITTEN DEFENCE

In the case of a written defence, the defendant must admit or deny each of the paragraphs in the plaintiff's originating application and explain in detail the arguments and facts on which he is basing himself to have the opposing party's claims dismissed.

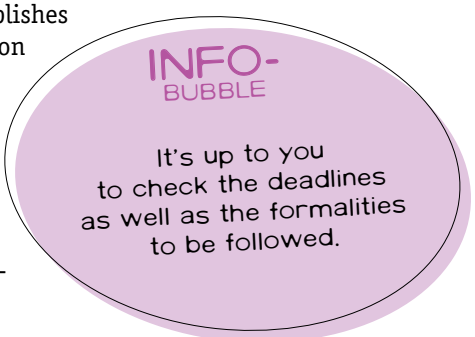
Once it is prepared, the defence must be sent to the other party and filed in the court office, in accordance with the applicable time limits and **rules of procedure**.

If you do not file your defence within the prescribed time, a judgment may be rendered against you without your having the opportunity to be heard by the judge (**inscription for a judgment by default to file a defence**).

4.4 THE REQUEST TO HAVE THE CASE SET DOWN FOR TRIAL AND JUDGMENT

The request to have the case set down for trial and judgment is a proceeding in which the parties jointly inform the court that the case is ready to be heard by a judge.

This request is made in the form of a **joint declaration that the case is ready for trial** which is prepared and signed by all the parties to the case. It is then filed with the court clerk within the time required by law. That time is six months from a date which, depending on the circumstances, may vary from the date the originating application was served to the date a case management judge establishes the case protocol. It must contain all the information required by the applicable rules.



If the joint declaration cannot be prepared with the other parties, you must prepare and file your own draft declaration. If you're the plaintiff and the declaration is not filed within the prescribed time, you are presumed to have discontinued your application.

KEEP IN MIND

Special rules of procedure must be followed to request that the case be set down for trial and judgment.

4.5 THE CALLING OF THE ROLL

When all the steps mentioned above are completed, you will receive an **attestation of readiness** from the courthouse confirming that your file is complete and that it is ready to be heard by the court.

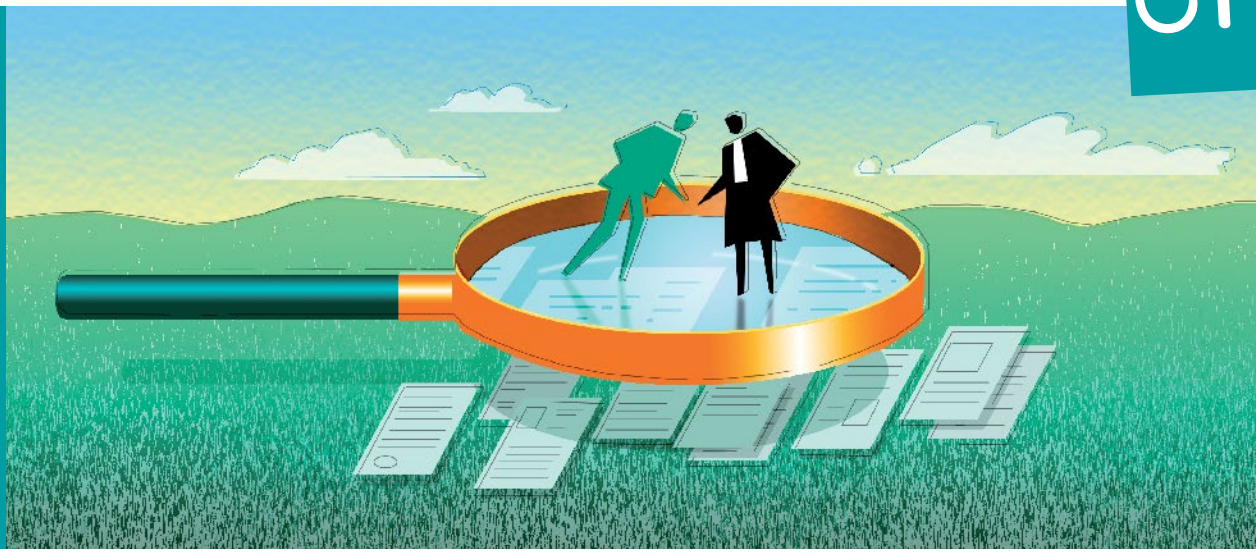
You will then be summoned to a general calling of the roll which takes place approximately once every three months, depending on the judicial district. Your case is then called by the judge and normally a hearing date is set, according to the court's availability. You should receive a notice to this effect.

However, this certificate is not sent if your application is made to the Court of Québec, Small Claims Division. Instead, a notice will be sent to you by the court clerk indicating the date of your trial.

REMEMBER

- ✓ Be sure you comply with the deadlines for filing your proceedings;
- ✓ If you don't file your answer or defence within the prescribed time or if you don't attend an initial case management conference to which you have been called without a valid reason, a judgment may be rendered against you without your having expressed your point of view;
- ✓ If you don't request that your case be set down for trial and judgment within the specified time, you could have to start your proceedings over again from the beginning or you might even lose your case.

PREPARING FOR TRIAL



If your file goes to **trial**, you will have to invest a lot of time and energy preparing for the day your **case** is scheduled to be heard.

As soon as you are informed of the official date of your trial, be sure your file is ready to be submitted to the court. Here are a few important steps to be considered BEFORE you appear in court.

5.1 REVIEWING YOUR FILE

Since you will be playing an important role explaining the facts behind your case and what claim you are making to the court, you should make sure your file contains everything that is necessary and relevant to understanding your claim.

Reviewing your file is a very important step.

- First, carefully re-read each of your allegations and make sure they're true.

Remember that, at trial, you generally can't add any facts or information that has not already been mentioned in your **proceedings**, unless the court gives you permission. In theory, the other **party** must have been informed of the facts before trial. ▶ See 3.2.2. and 4.3.1

- Secondly, be sure all the letters, contracts, photographs, expert's reports and other important documents in your file were sent to the other parties or, at least, that the list of **exhibits** is in the court record and has been sent to the other parties. Your original documents must be kept and given to the judge at trial. ▶ See 3.2.2

- Thirdly, be sure your file is in order so you don't have to search for documents when you are making your arguments to the court.

- Finally, be sure you know and understand the rules of **evidence** that apply during a trial.

As this is the last step before you appear before the court, you may wish to consult a lawyer so he can analyze and determine with you:

- The points of law you have to put forward to support your position;

- How to submit and present your **proof** and arguments;

- The rules of evidence with which you will have to comply.

5.2 IDENTIFYING AND PREPARING YOUR WITNESSES

Although you may be convinced that your version of the facts is true, don't forget that the other party also believes in their version, which could be contrary to or different from your own.

At trial, you will have to prove the facts on which you are basing your claims. In addition to the documents you intend to use, it is likely that you will have to testify yourself and have other **witnesses** testify.

To identify the witnesses you will need, ask yourself the following questions:

- What are the essential facts you have to prove to the court?

- Who is the person who had personal knowledge of the facts and who can come and explain them, or explain some of them?

- Who is the author or the person who signed the documents you intend to file to support your claims?

- To establish the sequence of events, is the presence of several witnesses necessary?

- Who is likely to be a witness for the opposing party and what will they tell the court? Who could partially or completely contradict their testimony?

When you have identified the people whose presence is necessary at trial, you must have a **bailiff** serve those witnesses a **subpoena** in accordance with the applicable rules and time limits long enough in advance to ensure their presence and avoid last-minute surprises or postponements. You will have to pay your witnesses in advance according to the tariffs (fees) determined by the government to compensate them for their travel costs, meals and overnight accommodation, as well as for their time. Check with the civil **court office** to find out how much you will have to pay your witnesses.

To learn how you must act toward witnesses and what their rights are, you may also wish to read the "Statement of Principle regarding Witnesses" signed by the judges, the Barreau du Québec and the ministère de la Justice at **www.justice.gouv.qc.ca/english/publications/generale/declar-a.htm**.

You must thoroughly prepare the examination of your witnesses (**examination in chief**) as well as the **cross-examination** of the opposing party's witnesses.

A party often needs an expert to prove certain facts it is alleging. An expert is a person who is specialized in a certain field (ex.: a doctor, engineer, appraiser, building expert, etc.) who gives his opinion as to the truth of the alleged facts.

When you have obtained an expert's report to support your position, it is generally not necessary to have him testify at the hearing if the document is clear and it has been provided to the other parties and filed in court. However, you may decide to call the expert anyway so he can provide certain clarifications or give his opinion about new evidence that may be introduced. The same applies for your opponent, who may demand that the expert come to court to be cross-examined.

However, in the Court of Québec's Small Claims Division, the court can agree that an expert can provide verbal testimony rather than a report. The expert is the only person who can give an opinion about the technical issues raised by your case.

▶ YOUR WITNESSES

At trial, you should ask your witnesses questions so that they can clearly explain their version of the facts to the court. Adequate preparation before trial is crucial.

You should meet with your witnesses in advance to find out their version and prepare their testimony. This preparation avoids unpleasant surprises at trial and allows you to make any necessary adjustments to your proof. For example, you may decide that you no longer want some witnesses to be heard because their version of the facts is less favourable than you thought.

Writing out your questions is a good way to make sure you don't forget anything important during the trial.

This preparation can be used as a rehearsal for both you and your witnesses. It's an opportunity to ensure that all the proof you need to present to the court is mentioned by your witnesses. ▶ See 6.3.1

▶ THE OTHER PARTY'S WITNESSES

The cross-examination is your opportunity to ask the other party or their witnesses questions. You must be very careful during this step. ▶ See 6.3.1

5.3 RESEARCHING THE APPLICABLE LEGAL PRINCIPLES

At the end of the trial, the judge must assess all the facts submitted as evidence by the parties and make a decision according to the legal rules.

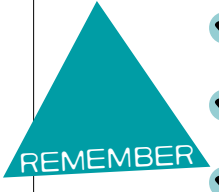
Bear in mind that, although you may be convinced that your position is well-founded, the legal rules may not be in your favour.

You are responsible for becoming informed and reading about the legal principles applicable to your case. For example, you should read the specific laws that apply to your situation. To do so, check the *Civil Code of Québec* and the *Code of Civil Procedure*. You may also wish to read various legal texts and **doctrine**, which can help you understand the legal rules and principles relevant to your case.

At trial, it is useful to give the judge decisions already rendered by the courts dealing with situations similar to yours. In legal language, these decisions are called "**jurisprudence**", or **case law**.

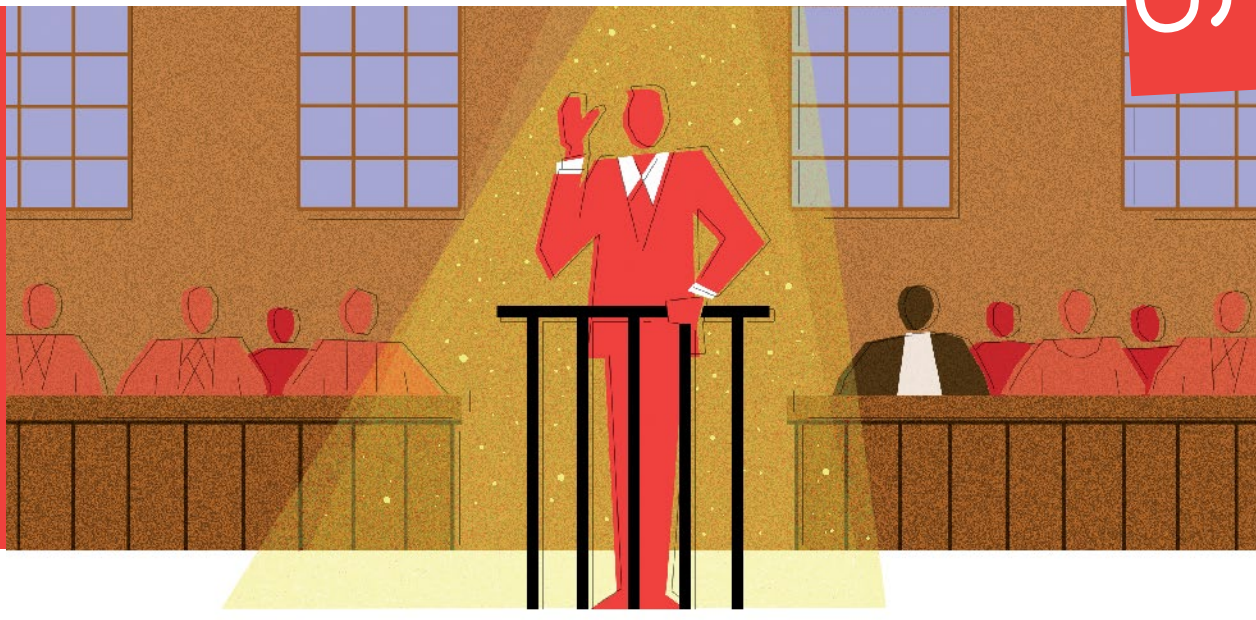
All the legal decisions and texts in support of the arguments you intend to submit to the court must be given to the other party at trial. It is therefore important to have enough copies for the judge and each of the other parties.

Doctrine can be found in specialized legal book stores and on the Internet. Court decisions can be found on various free web sites, including **www.jugements.qc.ca** and **www.iijcan.org**.



- ✓ Identify the legal issues involved and those you wish to put forward;
- ✓ Carefully prepare your testimony and your examinations;
- ✓ Do research in legal data bases and choose decisions that are in your favour.

THE TRIAL



6.1 THE RULES OF CONDUCT BEFORE THE COURT

When you appear before the court, be respectful, polite and calm toward the judge, your opponent, the **witnesses** and the court staff. Refrain from making accusations and insulting or threatening the other party or any other person present.

You must be aware of what is happening in the courtroom at all times, even if it is not your turn to speak.

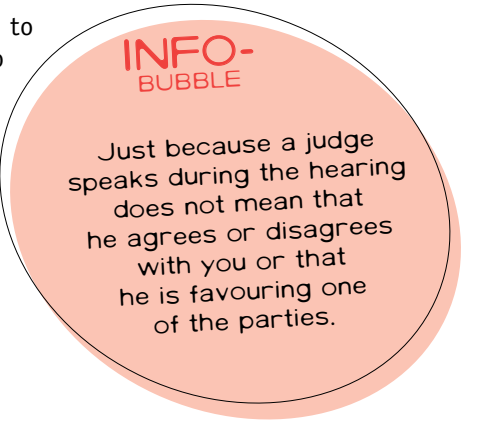
Certain rules of conduct must be followed in the **hearing** room, such as:

- Be appropriately attired;
- Remove any hat, cap or object covering your head, unless it is for religious reasons;

- Turn off your cell phone or pager before entering the hearing room;
- Stand up when the judge enters or leaves the hearing room;
- Stand up to speak to the judge or to examine the witnesses;
- When you speak to the judge, say "Judge" followed by his last name;
- If you are speaking in French, use "vous" to address the judge, your opponent, your opponent's lawyer, the **court clerk** and the witnesses;
- During the hearing, listen carefully and don't cut other people off, except to object to a question by the other party;
- Ask the judge for permission to speak;
- Except when you are examining a witness, speak directly to the judge, not to the other party;
- Avoid arguing with the other party. Remain clam and control your emotions;
- Do not use a camera or recording device;
- Do not bring food or drinks other than water into the hearing room;
- Do not chew gum.

Judges must ensure that the hearing is conducted properly and efficiently. They may ask you certain questions regarding the facts you are explaining. Although you are very familiar with your case, remember that the judge is hearing it for the first time. Certain details may seem unimportant to you but they may be crucial for the judge. Listen carefully to the judge's remarks and questions, and answer them as best you can.

It is normal for the judge to intervene sometimes to make sure the parties don't abuse their right to speak and the court's time. For example, if you repeat yourself, the judge may interrupt you and ask you to move on to another point.



Respect the judge's decisions and always follow his instructions. Someone who acts improperly during a hearing or who does not follow the judge's instructions could be found guilty of contempt of court.

6.2 THE DAY OF THE TRIAL

Before going to court, make sure you have all the documents you need to present your case and arrive a little earlier than the time you were asked to be there.

Take a seat in the courtroom, tell the court staff who you are and wait. When the judge is ready to enter, a **court usher** comes into the room, states the judge's name and declares that the day's session is open.

It may happen that several cases are set for hearing before the same judge that day. Be patient and listen to the instructions given by the court staff, who will tell you when it's your turn.

When the judge is ready to hear your case, he tells the court clerk, who calls your case by the name of the parties.

Step forward and take a place where indicated by the judge or the clerk. The **court clerk** will ask the lawyers and the parties to identify themselves. You should give your name and confirm that you are acting without a lawyer.

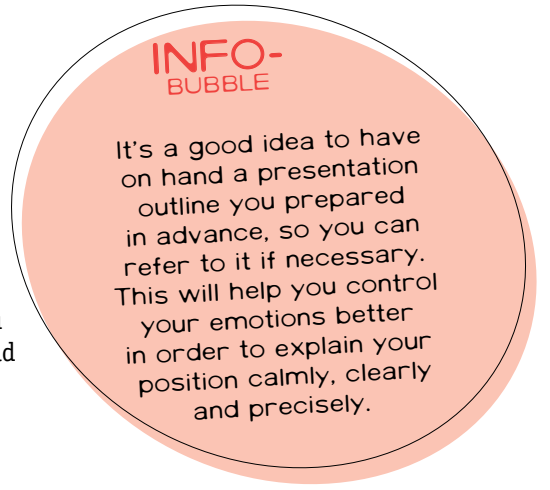
6.3 THE PRESENTATION OF YOUR EVIDENCE

At **trial**, each party presents their **evidence**, or **proof**, in turn. If you are the **plaintiff**, you will be asked to present your evidence first. If you are the **defendant**, you present your evidence after the plaintiff is done. You can explain your version of the facts when you present your evidence.

Your evidence may be made up of documents and testimony. In all cases, present your evidence coherently and in chronological order. You are responsible for ensuring that the information you wish to submit as evidence is presented according to the applicable rules and that it supports your claims and the conclusions you are seeking. To do so, you must determine which evidence is relevant and how to present it.

Pay attention to the judge to see whether you're getting your message across. If you notice the judge taking notes while you talk, speak more slowly so he can finish the notes and listen to you.

The judge may tell you that the evidence you are trying to present cannot be allowed because you do not comply with the rules relating to evidence. You will have to listen to what the judge tells you and make sure you follow the rules, otherwise your evidence could be rejected.



6.3.1 **THE TESTIMONY**

Testimony plays an essential role in a trial. As decision-makers, judges must analyze each piece of testimony they hear. They examine the credibility of the witnesses, whether what they say is consistent and the relevance of the facts they relate. Testimony is normally a decisive factor in the judge's final decision.

▶ THE EXAMINATION IN CHIEF

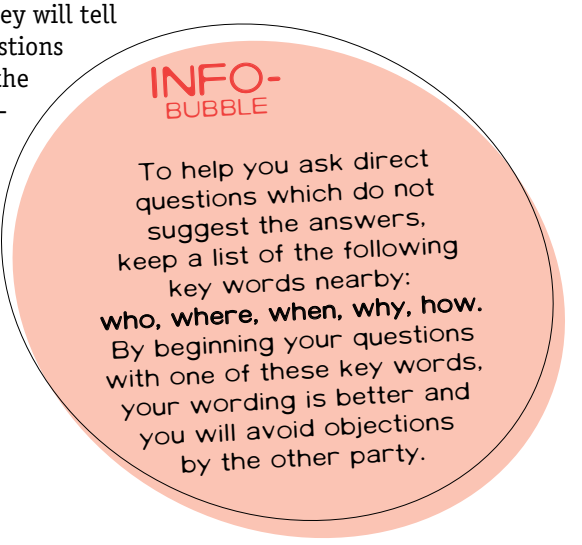
If you're the plaintiff, you are normally the first to have your witnesses heard. If you wish, you can testify yourself at the very beginning of the trial, in which case you become the first witness in your case. Like all witnesses, you will have to solemnly declare that you will tell the truth during your testimony.

As you do not have a lawyer to ask you questions, you will have to explain the relevant facts of your case, of which you have personal knowledge.

When you have finished giving your testimony, the lawyer for the other party, or the party himself if he is self-represented, may cross-examine you. Listen carefully to the questions you are asked, and answer them calmly and briefly.

Then you will be asked to present your other witnesses. You will have to call them one by one, in the order you have determined, and they will give their testimony one at a time. All witnesses must solemnly declare that they will tell the truth, and you can then ask them questions to get them to explain their version of the facts of which they have personal knowledge.

You should ask direct questions which do not suggest an answer. If you suggest answers to your own witnesses, your opponent may very well object to your question.



▶ THE CROSS-EXAMINATION

After each of your witnesses testifies, the other party may examine them in turn. This is the **cross-examination**. If you testified yourself, the other party may cross-examine you. During the cross-examination, suggestive questions may be asked.

When the other party has his own witnesses testify, avoid making comments or expressing your emotions or disagreement during the testimony. You will have the chance to cross-examine them, if you feel it's necessary.

Be careful when you cross-examine a witness of the other party, especially an expert. In cross-examination, it is strongly recommended that you ask questions to which you already know the answer to avoid being taken by surprise or strengthening your opponent's evidence. If you don't know in advance how the witness will answer, it is often a good idea not to ask the question.

Always keep in mind that you don't have to cross-examine your opponent's witnesses. The best proof is often that which you make using your own witnesses. In many cases, it is better to refrain from cross-examining a witness unless you can't make your proof any other way.

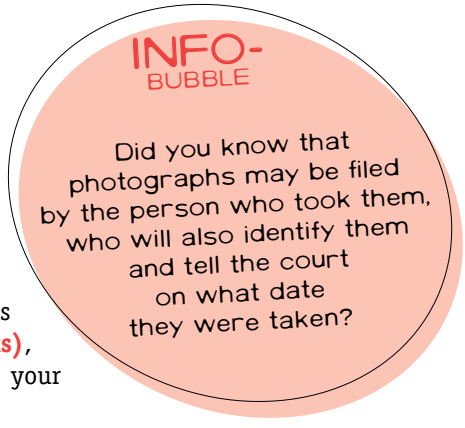
The cross-examination is a sensitive stage which requires finesse, listening and strategy.

6.3.2 THE FILING OF YOUR EXHIBITS

Each document (**exhibit**) you want to file into court must be submitted:

- by the person who wrote it;
- by a person who has personal knowledge of it;
- with the consent of the other party; or
- in certain situations, with the judge's consent.

When filing each of your documents, your witnesses may explain its content. During your **plea (arguments)**, you may wish to state how the documents support your claims.



6.4 YOUR ARGUMENTS

When you have filed all your exhibits and had your witnesses heard, the judge will ask you whether your evidence is complete. Make sure you haven't forgotten anything and that all the necessary aspects of your proof have been filed into court.

When all the parties have declared their proof closed, they are called to present their arguments, one after the other. At that time, you should summarize the facts presented to the court and explain why, in your opinion, the judge should rule in your favour.

Here again, the plaintiff begins, followed by the defendant. If necessary, the plaintiff may then respond.

During your arguments before the court, make sure you refer to the legal principles you mentioned in support of your claims.

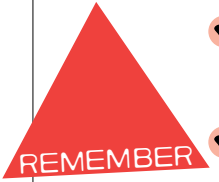
There's no need to repeat the entire trial. Remember, the judge heard all the evidence and took notes. You need only stress the important facts. You may also point out any contradictions you might have noticed.

The judge may ask you questions about certain points of law which, in his opinion, require more explanation or clarification. Answer the questions asked as honestly as possible. If you don't know the answer, say so rather than making up an answer.

The presentation of your arguments is also the time when you can file **jurisprudence** and legal texts in support of your claims (**doctrine**).

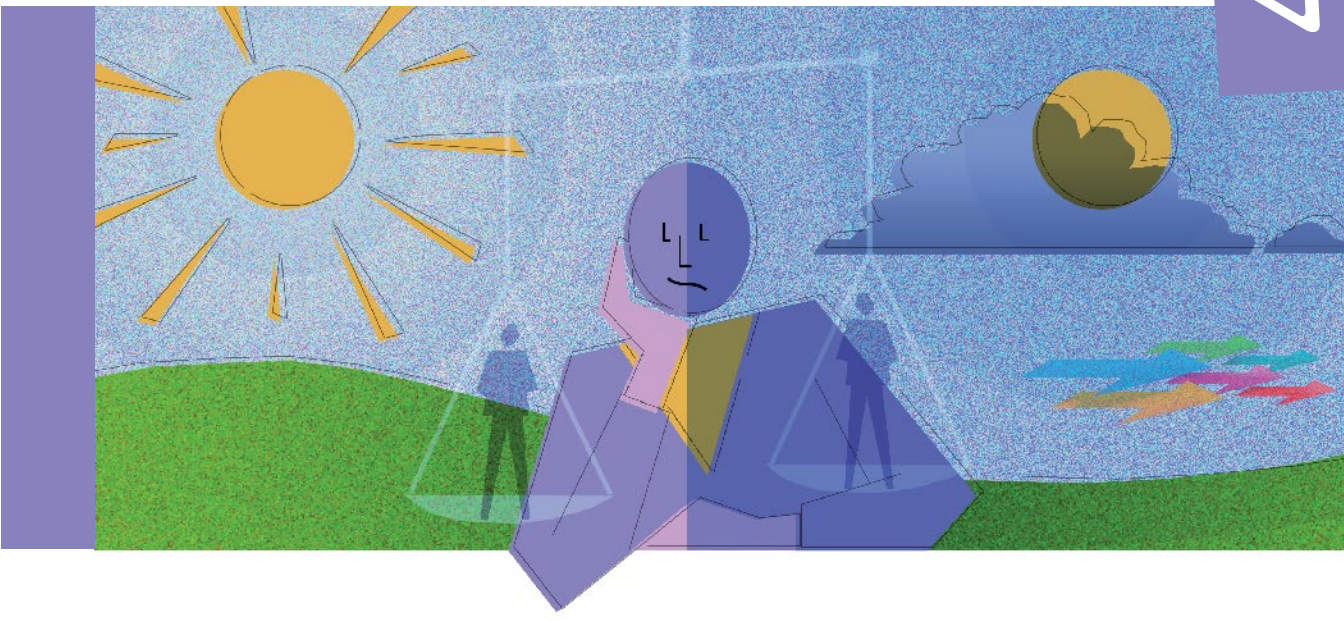
In some cases, the judge renders a decision immediately after the arguments, or "from the bench". However, in most cases, the judge takes the case "under advisement", rendering the decision in writing, after the hearing.

When making your **plea**, you are not allowed to add or clarify facts which were not established when you presented your evidence, unless the judge gives you permission. It is therefore important to carefully prepare for the trial and your plea, and to make notes of everything you have to explain to the court.



- ✓ Familiarize yourself with how trials are conducted generally and the rules of conduct you must follow during the hearing;
- ✓ Check the evidence you intend to put forward and decide how you will present it;
- ✓ Be sure you put forward relevant points of law to support your claims.

WHAT HAPPENS AFTER THE JUDGMENT



After the **trial**, you will receive a **judgment** within a period which may vary from a few days to a few months. In the interim, remember that you may not communicate with the judge. You cannot, for example, send him new **evidence** unless he gives you special permission to do so.

7.1 THE LEGAL COSTS

In theory, in most cases the winning **party** can have all his **legal costs** reimbursed by the losing party, in which case the judgment is rendered "with costs". However, the judge may decide otherwise.

Legal costs are generally limited to the expenses you had to incur, such as the **filing fee** for your **originating application** or **answer**, certain **notifications** by **bailiff**, **witnesses**' travel costs, etc., the amount of which are established or approved by the government.

In exceptional circumstances, the court can order a party to pay the legal costs, all or part of the legal fees of the successful party's lawyer or, if the other party is not represented by a lawyer, to compensate him for the time spent preparing his case.

In exceptional circumstances, after hearing what the parties have to say, the court can order a party to pay the legal costs, all or part of the legal fees of the successful party's lawyer or, if the other party is not represented by a lawyer, to compensate him for the time spent preparing his case.

7.2 THE EXECUTION OF THE JUDGMENT

Your judgment may be executed within ten years of the date on which it was rendered, according to various **procedures**, each of which follows particular rules.

If you receive a judgment against you which you don't understand, don't hesitate to consult a lawyer. The consequences of not complying with it could be very serious.

If a judgment is rendered in your favour, you may also consult a lawyer for advice on how to force the other party to comply with it.

7.3 THE APPEAL OF THE JUDGMENT

In certain circumstances, you have the right to appeal the judgment rendered. In **civil matters** in Québec, the Québec Court of Appeal is the general appeal court, with some exceptions.

In certain cases, an appeal is not "as of right", or automatic. Here again, special rules apply. For example, if you appeal to the Court of Appeal (if you're the **appellant**) and the amount of the award is less than $60,000, you must first ask for permission, or leave to appeal. An application for leave to appeal is attached to a **notice of appeal** and must be made presentable to the Court of Appeal, according to certain specific rules and time limits.

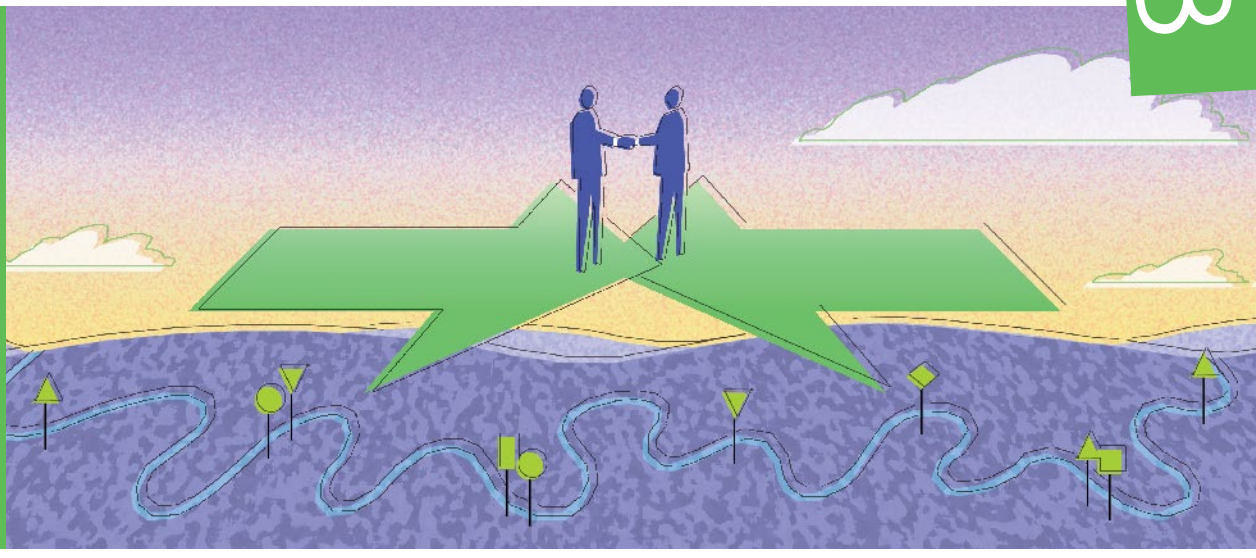
Even if your appeal is automatic or you're given leave to appeal, that does not mean that the judgment you want to have reviewed will necessarily be changed. The evidence and arguments that will be examined by the Court of Appeal are the same as the ones that were submitted to the court of first instance (trial court). You therefore have to convince the Court of Appeal that the first judge committed fundamental errors in his judgment.

Other than in exceptional circumstances prescribed by law or with the court's permission, the appeal of a decision suspends the execution of the judgment rendered in the first instance.

REMEMBER

- Take the formalities into account if you want to appeal a judgment and be aware that the deadlines for doing so are strict.
- Find out more about this, either directly at the Court of Appeal office, by visiting the Ministère de la Justice web site or by consulting a lawyer.

DISPUTE RESOLUTION METHODS



Turning to the courts is not the only solution to a conflict between you and another person. There are other options you should seriously consider before deciding to submit your dispute to a court. These dispute settlement alternatives often lead to a settlement out-of-court, i.e. an agreement with the other **party**. In most cases in which the parties choose one of the dispute settlement methods, the **case** is settled before it goes to **trial**, and sometimes even before a **lawsuit** is filed.

8.1 NEGOTIATION

Negotiation is the basis for all alternative dispute resolution methods. It consists of attempting to reach an agreement with the other party through discussions and by agreeing to make certain compromises.

Throughout the legal process, you may negotiate with the other party. You may also begin negotiations before any **legal action** is taken.

In many cases, negotiations can lead to a settlement out of court. Where applicable, be sure that all the details and terms of the agreement are included in a written document signed by all the parties. Make sure you understand the terms used.

If you are not able to reach an agreement, the words and written documents exchanged during your negotiations remain confidential and cannot be mentioned to the judge.

8.2 THE SETTLEMENT CONFERENCE

Provided all the parties expressly agree and a lawsuit has been filed, a **settlement conference** is held before the scheduled trial date.

The settlement conference takes place at the courthouse and is presided by a judge designated by the Chief Justice. Its purpose is to help the parties communicate, negotiate, identify their interests, assess their positions and explore possible solutions for settling the case that are satisfactory to both parties. It allows you to be assisted by a judge, who will act as a facilitator and help you find a satisfactory solution. Remember, however, that the judge designated to preside over the conference does not have any decision-making authority and cannot give an opinion on whether your position is well-founded. The judge is there to help the parties find a solution; the conference can allow you to settle your dispute with the other party without having to go through a trial, saving you time and money.

You must attend the conference and you may be assisted by your lawyer or any other person whose presence is considered useful by the judge and the parties.

The conference is free of charge, other than the fees you will have to pay for the services of your lawyer, if you use one.

It takes place *in camera*, i.e. in private, according to less formal rules than before the court. You can end the settlement conference at any time.

To ask for a settlement conference, you must complete a Request for a Settlement Conference form, which is available at the courthouse.

If the conference is successful and helps you find a satisfactory solution, an agreement is prepared and signed by the parties. The agreement must be complied with by each of the parties and it puts an end to the legal proceedings. If the conference does not resolve your conflict, neither the parties nor their lawyers may later reveal the information discussed it remains confidential. Also, the judge who chaired the conference cannot preside over your trial, which must be heard by another judge.

Other than in exceptional situations, the settlement conference does not delay the hearing of the case.

8.3 **MEDIATION**

Provided all the parties agree, **mediation** may be used, i.e. the parties may agree to ask a neutral and impartial third party called a "mediator" to help them find a solution to their dispute. Contrary to the settlement conference, mediation may take place even if a lawsuit has not been filed.

The parties choose the private mediator. The Bar can help you find one if need be. You should also take into consideration that the mediator's fees, which are usually on an hourly basis, must be paid by the parties. Mediators have no decision-making authority. Their role is to facilitate the dialogue so the parties can come to an agreement. They may propose solutions to the parties.

Sometimes mediation is even provided for in the law or in the contract you signed, as a way of settling a dispute.

Mediation may take place over one or more meetings, according to the disputes to be resolved. You may be represented by a lawyer if you so wish.

You may end the mediation at any time and the information exchanged remains confidential.

If the mediation is a success, you will probably have to sign an out-of-court settlement agreement with the other party. Be sure it contains all the points on which you agreed, and that you understand the terms used.

REMEMBER

- ✓ It is not always necessary to turn to the courts or to go to trial to have your rights respected;
- ✓ Seriously consider the other options available to you both before to filing a lawsuit and throughout the legal process. An out-of-court settlement is often more advantageous than a **judgment**, and it helps the parties reconcile!

There are several free legal resources that may be useful if you are acting without a lawyer. You may use them to obtain general information about your rights and to find out what rules apply before the courts. Here are a few:

BARREAU DU QUÉBEC:

www.barreau.qc.ca

The web site of the professional order for lawyers which provides information for both the public and lawyers, as part of its mission to protect the public.

CENTRE D'ACCÈS À L'INFORMATION JURIDIQUE (CAIJ):

www.caij.qc.ca

A site which provides, among other things, a variety of research tools available on-line.

CHAMBRE DES HUISSIERS DE JUSTICE DU QUÉBEC:

www.huissiersquebec.qc.ca

A site giving access to the professional body for bailiffs.

ÉDUCALOI:

www.educaloi.qc.ca

A site which makes legal information available to the public in easy-to-understand language and which lists other resources which may be useful in various areas of the law.

MINISTÈRE DE LA JUSTICE DU QUÉBEC:

www.justice.gouv.qc.ca/english/formulaires/formulaires-a.htm

A site which provides sample proceedings, pamphlets and brochures to make it easier to understand the laws and regulations.

PUBLICATIONS DU QUÉBEC:

www.publicationsduquebec.gouv.qc.ca

A site which gives access to the laws and regulations of Québec, including the *Civil Code of Québec* and the *Code of Civil Procedure*.

THE QUÉBEC LAW NETWORK:
www.avocat.qc.ca/english/index.htm
A site which publishes texts written by lawyers, judges or other legal professionals in an informal and understandable manner. It also has a "Frequently Asked Questions" section.

STÉNOGRAPHES DU QUÉBEC:
www.barreau.qc.ca/en/avocats/praticien/stenographes/index.html
Site giving access to the Order of Official Stenographers.

LEGAL INFORMATION OFFICES

Legal Information Offices are non-profit organizations normally located in law faculties at universities across the province. To obtain general information on the law and your rights, you may meet with law students, who volunteer their services. However, please note that students can give you information but they cannot advise you. They do not replace the services of a lawyer. Find out from the universities how to contact the legal information office closest to you. You can contact the following offices:

LAVAL UNIVERSITY
www.bijlaval.ca/
or 418 656-7211

MCGILL LEGAL AID CLINIC
http://licm.mcgill.ca/legal-information-clinic/
or 514 398-6792

UNIVERSITÉ DU QUÉBEC À MONTRÉAL (UQAM)
www.cliniquejuridique.uqam.ca/?articleId=2
or 514 987-6760

UNIVERSITY OF MONTREAL
http://droit.umontreal.ca/ressources-et-services/clinique-juridique/
or 514 343-7851

UNIVERSITY OF OTTAWA
http://commonlaw.uottawa.ca/community-legal-clinic/
or 613 562-5600

UNIVERSITY OF SHERBROOKE
https://www.usherbrooke.ca/etudiants/vie-etudiante/cles/cle-de-vos-droits/
or 819 821-8000, ext. 65221

GLOSSARY

ADMISSION – Acknowledgement of a fact which can have legal consequences for the person making it.

ANSWER – A proceeding in which the defendant, after receiving notice of the plaintiff's application and the summons, indicates his position about the case.

APPELLANT – A person who appeals a judgment and who files an application before the court of appeal.

ATTESTATION OF READINESS – A document confirming that the court file is complete and that the case will be placed on the roll to be heard by the court.

BAILIFF – A legal officer whose role is to serve legal proceedings and enforce judgments.

CASE – Refers to all the stages of a lawsuit, from the beginning to the end.

CASE PROTOCOL – An agreement through which the parties or their lawyers agree on several points prescribed by law, including a schedule of the procedural steps to be completed and the deadlines as required by law.

CIVIL MATTER – That which involves disputes or litigation between people (individuals, companies, partnerships, associations, etc.).

COURT CLERK – A legal officer who assists the judge when a case is being heard. Court clerks are responsible for swearing witnesses and keeping a record of the hearing. They normally sit in front of the judge.

COURT OFFICE – An office which provides administrative services for one or more courts and which looks after the issuance of court orders and record-keeping, among other things.

COURT USHER – The person responsible for maintaining order in the hearing room and doing certain things to help the judge.

CRIMINAL AND PENAL MATTERS – That which involves offences and penalties relating to the breach of penal or criminal laws.

CROSS-APPLICATION – A proceeding included in the defence, in which the defendant, in addition to contesting the action, makes a claim himself against the plaintiff. A cross-application is in writing and clearly sets out the facts on which the action is based and the conclusions sought.

CROSS-EXAMINATION – Examination of the other party or the other party's witnesses.

DEFENCE (PLEA) – A proceeding in which the defendant describes verbally or in writing why he thinks the lawsuit taken against him should be dismissed.

DEFENDANT – A person against whom a lawsuit is taken.

DOCTRINE – Legal texts containing opinions, written by legal writers.

EXAMINATION IN CHIEF – An examination conducted by the party who called the witness, normally at trial.

EXHIBIT – Material or a document used to support a claim. Exhibits, including expert's reports, must be communicated and filed in court according to specific rules.

EXPERT – A person who, due to certain skills and particular knowledge about a subject, gives an opinion on that subject. Whether or not an expert witness' testimony is admissible is up to the judge and follows specific rules of procedure.

FILING FEE (STAMP) – A fee the court office charges for filing certain proceedings, such as an originating application and a defence.

HEARING – A session during which the parties make their representations before the judge and sometimes call witnesses.

INSCRIPTION FOR A JUDGMENT BY DEFAULT FOR FAILURE TO FILE A DEFENCE – A proceeding issued by the court clerk at the plaintiff's request for a judgement against a defendant who has not filed an answer to the application within the legal time limit.

INSCRIPTION FOR A JUDGMENT BY DEFAULT FOR FAILURE TO FILE AN ANSWER – A proceeding issued by the court clerk at the plaintiff's request for a judgement against a defendant who has not filed an answer to the application within the legal time limit.

INSCRIPTION FOR A JUDGMENT BY DEFAULT FOR FAILURE TO PARTICIPATE IN THE MANAGEMENT CONFERENCE – A proceeding issued by the court clerk at the order of the judge who called a management conference in which the defendant did not participate without valid reason. Its purpose is to grant the originating application against the other party.

JOINT DECLARATION THAT A CASE IS READY FOR TRIAL – A document filled out by the parties or their lawyers according to specific standards prescribed by law. This document is normally filed when all the steps leading up to trial are complete.

JUDGMENT – A court decision, rendered most of the time by a judge, and usually in writing. A written judgment normally relates facts and points of law explaining the judge's decision.

JURISPRUDENCE (CASE LAW) – A set of decisions rendered by the courts which constitutes a collection of legal precedents.

LAWSUIT (LEGAL ACTION) – A means by which people exercise their right to go before a court. In most cases, a lawsuit begins with the filing of an originating application.

LEGAL COSTS – Costs normally payable by the party who loses the case or is the subject of an order. They are generally limited to legal costs such as filing fees, notification costs and costs incurred to have witnesses testify at trial.

LEGAL PERSON – A group of individuals for whom the law recognizes a separate legal personality from that of its members (business, company, union, government organization, etc.)

MANAGEMENT CONFERENCE – A conference presided by a judge in the presence of the parties or their lawyers that ensures that the proceedings and the trial go smoothly.

MEDIATION – A dispute settlement method in which a neutral person, the mediator, attempts to help the parties agree and find a satisfactory solution to their dispute.

NOTICE OF APPEAL – A proceeding instituting an appeal against a judgement. It must be filed in the Court of Appeal and served on the other party and his lawyer if he is represented by one. Where leave (permission) to appeal is required, it must be attached to the notice of appeal.

NOTIFICATION (NOTICE) – A formality whereby a party communicates a copy of a proceeding or document in a form determined by law. In some cases notification must be by bailiff, in which case the proceeding or document is said to be "served".

OFFICIAL STENOGRAPHER – An officer of the court who records the depositions of the witnesses and certifies the accuracy of the notes.

ORIGINATING APPLICATION – The proceeding according to which a lawsuit is usually instituted. The originating application is in writing and clearly states the facts on which the claim is based and the conclusions sought.

PARTY – In the context of a lawsuit, a person by or against whom a lawsuit is instituted: plaintiff, defendant, impleaded party.

PLAINTIFF – A person who takes a legal action.

PLEA (ARGUMENTS) – A statement most often made verbally at the end of the trial to convince the judge that one's claims are well-founded. The plea is made by a lawyer or the party himself, if he is self-represented.

PRE-TRIAL EXAMINATION – An examination which takes place before or after the filing of the defence, but before the trial. Following specific rules, a party may assign another party, that party's representative or a third party to be examined before trial or to provide any written document relating to the claim or the case.

PRESCRIPTION – A means of acquiring or extinguishing a right, or releasing oneself from an obligation due to the passing of time, on conditions prescribed by law.

PROCEDURE (RULES OF CIVIL PROCEDURE) – The organizational and jurisdictional rules of courts, and the rules governing the handling of a lawsuit until it is decided by a court and the decision is enforced.

PROCEEDINGS – A set of documents leading to a decision by a court, such as the originating application, answer, defence, etc.

PROOF (EVIDENCE) – The demonstration of a fact or legal act using means authorized by law.

RESPONDENT – A person against whom a motion in a case is filed or, when a judgment is appealed, the person against whom the appeal is taken.

SETTLEMENT CONFERENCE – A dispute settlement method in which a judge attempts to help the parties communicate with each other, negotiate and explore mutually satisfactory solutions.

SERVICE – A form of notification by bailiff that must be used to bring a written document, often a specific proceeding such as the originating application or a subpoena to attend a hearing, to another person's attention. Service of civil proceedings is very important and must be carried out according to specific rules.

SUBPOENA – An order issued to a witness to bring certain documents or materials in order to file them during testimony.

SUMMONS – A proceeding used to call a person before the court at a specific time on a certain date.

TRIAL – A hearing before a judge during which the parties attempt to prove their opposing claims, in accordance with the rules prescribed by law. During the trial, the parties may file documents, have witnesses testify and cross-examine those of the opposing party. When the evidence is declared closed, the lawyers or the parties themselves, if they don't have a lawyer, normally make a statement to attempt to convince the judge that their claims are well-founded (plea). At the end of the trial, the judge renders a decision (judgment) within a timeframe that varies depending on the circumstances.

WITNESS – A person who relates under oath facts he personally saw, heard or otherwise felt or observed.

NOTE : Certain words were added to the glossary even though they do not appear in the guide since they are frequently used in legal language and documents.

REPRESENTING YOURSELF IN COURT
In Civil Matters

Given the increasing number of individuals choosing to represent themselves in court without a lawyer, the Fondation du Barreau du Québec presents Representing Yourself in Court, a series of publications to provide such individuals with general information to help them better understand what is involved in the legal process and make informed choices about the steps to be taken.

STEP 1
DECIDING WHETHER OR NOT TO BE REPRESENTED BY A LAWYER

STEP 2
IDENTIFYING THE ROLE OF EVERYONE INVOLVED

STEP 3
FILING A LEGAL ACTION

STEP 4
UNDERSTANDING THE PROCEEDINGS

STEP 5
PREPARING FOR TRIAL

STEP 6
THE TRIAL

STEP 7
WHAT HAPPENS AFTER THE JUDGMENT

STEP 8
DISPUTE RESOLUTION METHODS

The Fondation du Barreau du Québec is a non-profit organization which plays an important role in legal research. By supporting work of benefit to legal professionals and providing the public with tools for finding information, the Fondation contributes to the advancement of knowledge and helps build a better future.

To do its work, the Fondation du Barreau relies on the support of generous donors. A collaborative organization that is accessible to the public and aware of its needs, the Fondation du Barreau strives to bring people together.

To find out more about the Fondation or the publications it makes available to the public free of charge, and in particular its publications on the rights of the elderly, labour law and family law, visit its web site:

www.fondationdubarreau.qc.ca

FONDATION BARREAU DU QUÉBEC