FONDATION BARREAU DU QUÉBEC

REPRESENTING YOURSELF IN COURT in FAMILY Matters

BOOKLET 2

REPRESENTING YOURSELF IN COURT

in **FAMILY** 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.

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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.

The second guide in this series is intended more specifically for those who wish to take a legal proceeding in a **family matter** before the Superior Court. It is meant to be an information tool for married people wishing to divorce or separate as well as for de facto spouses wishing to establish their rights and obligations with respect to their children or property and former spouses who wish to change a previous judgment. This guide does not cover adoption proceedings, which are under the jurisdiction of the Court of Québec.

The purpose of this guide is to demystify the different steps of a legal proceeding in a family matter and assist individuals who choose to represent themselves in court with the sometimes complex process they will be involved in from the time they file their action until judgment is rendered. Although they should not use it as an exhaustive source of information, we hope this guide will help them understand legal proceedings involving family matters.

In the same series:

REPRESENTING YOURSELF IN COURT, in Civil Matters, published in the 2nd quarter of 2009.
REPRESENTING YOURSELF IN COURT in Criminal and Penal Matters, published in the 3rd quarter of 2012.
REPRESENTING YOURSELF BEFORE AN ADMINISTRATIVE TRIBUNAL. Tribunal administratif du Québec, Commission des lésions professionnelles, Régie du logement and Commission des relations de travail, published in the 1st quarter of 2013.

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 Family Matters

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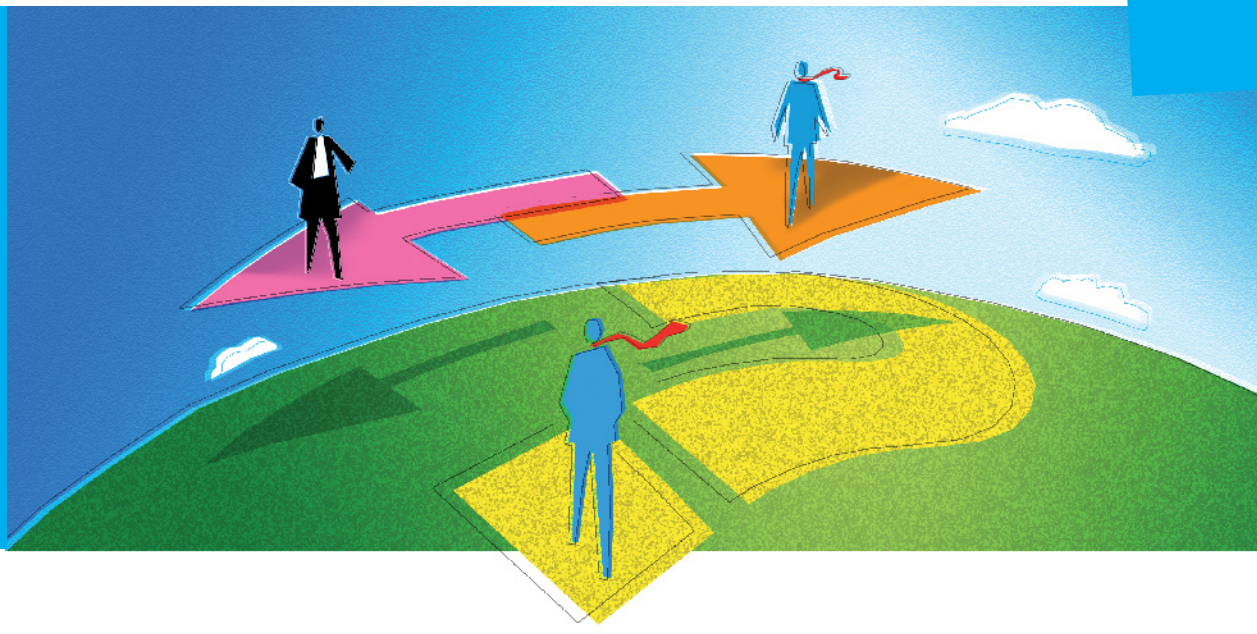


1.1 YOUR RIGHT TO BE REPRESENTED BY A LAWYER

You can always be represented by a lawyer in any family law case in which you are a **party**.

In court, you have a choice: act alone or be represented by a lawyer, who can speak on your behalf or act for you before the court.

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

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

1.2 SHOULD YOU HIRE A LAWYER OR NOT? WHAT QUESTIONS YOU SHOULD ASK YOURSELF

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 and obligations.

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, as indicated in the *Code of Civil Procedure*.

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

- You don't know your rights and what you can ask for, or the extent of your obligations;
- Your case requires drafting **proceedings** or filling out complex forms;
- The **evidence** you have to submit to the Court involves several different aspects such as child **custody**, **support** and the partition of property, and requires the presence of several **witnesses**;
- You don't know the tax consequences of the **orders** the court may render;
- You require the services of an **expert witness**, such as an appraiser to establish the value of certain property or a psychologist to establish the capacity of the parents in connection with a contested application for custody of a child;
- You don't feel comfortable speaking in public, especially about emotional subjects;
- The conflict between you and your former spouse makes it difficult to negotiate certain points;
- You don't feel comfortable with the idea of cross-examining your former spouse;
- The other party is represented by a lawyer;
- You are wondering what legal steps should be taken regarding the children.

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;
- Your relationship with your former spouse is harmonious enough to allow you to talk to or negotiate with him or his lawyer;
- You think you will be able to remain calm in the presence of your former spouse and his lawyer, even during your **cross-examination** or if derogatory remarks are made about you;
- You are able to draft proceedings, fill out forms and make the necessary calculations, as required by law;
- You are able to manage documents, file them and present them clearly;
- You have enough time to follow your file at every stage of the legal process, until the **judgment** that ends the **case**.

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

- Find out the extent of your rights;
- Draft the necessary proceedings, including the forms required to calculate support or determine the value of the property; ▶ See Step 5
- Collect and keep the documents you want to submit to the judge; ▶ See 5.2.2 and 5.3.2
- Thoroughly prepare for **trial**; ▶ See Steps 5, 6 and 7
- Examine and cross-examine witnesses, including former relatives or former friends; ▶ See 8.3.1
- Manage the documentary evidence during the trial. ▶ See 8.3.2

➲If you want to represent yourself, it is in your interest to find out the extent of your rights and whether it would be useful to assert them.

➲Before deciding that you can't afford to hire a lawyer, take the time to consider all available options.

➲Remember that a separation or divorce can be very upsetting and it is in your interest to control your emotions.

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_v4.asp**.

You can also briefly consult a lawyer to find out how much he would charge to represent you, for all or part of the **case**. For example, think about hiring a lawyer to advise you on your rights and get your file ready for court, which is less risky than trying to do everything yourself.

Finally, some referral services charge less or do not charge at all for the first thirty minutes of an initial consultation. Remember, you can always try to settle your case out of court, either through negotiation or **mediation**. As of January 1, 2016 the new *Code of Civil Procedure* provides that the parties must consider a private prevention and settlement process for their dispute before taking it to court.

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.

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:

- Determine what law applies to your situation and whether your claim is well-founded;
- Periodically help you assess what is at stake, your chance of success, your possible risks and the financial, personal and family costs;
- Draft **proceedings** and fill out the appropriate forms;
- Talk to and negotiate with the other **party** or their lawyer;
- Represent you before the court;

- Submit your **evidence** and refute that of the other party;
- Examine **witnesses** and cross-examine those of the opposing party;
- Help make your experience easier and less stressful;
- Advise you on 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 have professional liability insurance.

To ensure their services are the best quality possible, lawyers must also take professional development courses and 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 the objections made against a lawyer are valid.

When performing their 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". The judge can also render decisions involving management measures.

Judges must be impartial and independent 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.

In family matters, part of the judge's mission is to attempt to reconcile the parties. As a result, it is his duty to do whatever he can to help the parties resolve the issues between them.

The judge may, for example:

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

INFO-BUBBLE

Remember, you must not communicate with a judge to discuss your case other than during the court hearings.

KEEP IN MIND

In any decision involving a child, the main criteria that will guide the judge will be the child's interests and the respect of the child's rights.

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 applications you may submit to 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 OTHER 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 their client's interest.

However, the other party's lawyer is not prohibited from speaking to you if you are self-represented. 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 his 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.

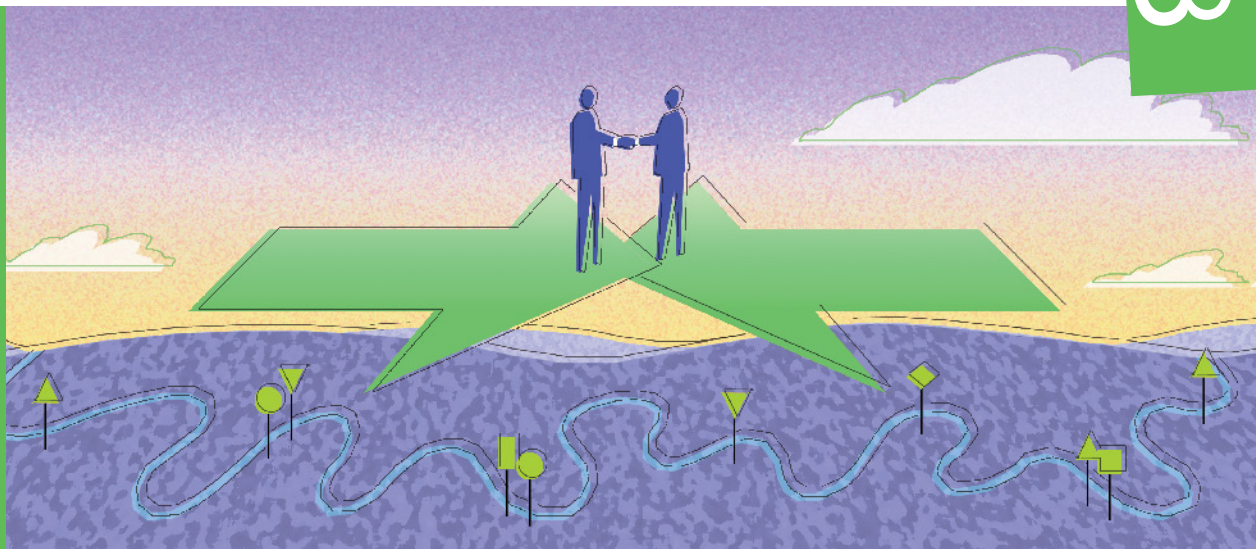
2.5 THE CHILD'S LAWYER

In some cases where child **custody** or **access rights** are involved, the court may appoint a lawyer to represent the child.

REMEMBER

- Take account of the limitations of the people involved in terms of their role in the legal process;
- Act courteously toward everyone involved who must be courteous to you as well.

DISPUTE RESOLUTION METHODS



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

3.1 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 cannot reach an agreement, the discussions and the written documents exchanged between you and your spouse may be mentioned to the judge.

Remember, in most cases where a settlement is reached on an issue involving a family matter, the agreement must be submitted to the Court for approval. Otherwise, if the agreement you have reached is not followed, you might not be able to enforce it.

3.2 MEDIATION

Family mediation is a **procedure** in which both parties meet a professional specifically trained to help them reach a negotiated solution in the case between them.

3.2.1 MEDIATION SESSIONS

Mediation sessions take place in the presence of both parties and a **certified mediator**.

As the mediation progresses, the parties themselves or the mediator may suggest suspending the mediation to allow the parties to obtain advice or think about suggestions which could lead to the settlement of certain aspects of the case.

If at any point the mediator finds that there is a serious imbalance between the parties regarding their respective ability to put forward their point of view, or if he is convinced that the mediation process is bound to fail, he ends the mediation and files a report with the family mediation service.

You may end the mediation at any time.

The information exchanged remains confidential and nothing that was said or written during a mediation session is admissible as **evidence** in a legal proceeding.

If you do not know a certified mediator working in your district, a list is available at the Superior Court's civil **court office** at courthouses across Quebec. You may also visit **www.justice.gouv.qc.ca/english/recherche/mediateur-a.asp**.

3.2.2 **THE INFORMATION SESSION**

In any case in which the interests of the parties and their children are at stake, the parties must participate in a parenting and mediation information session.

The information session is conducted in a group setting. It is given by two certified mediators. The parties may participate in the information session together or separately. If the parties wish to attend separate sessions, their wish must be respected.

INFO-BUBBLE

You can register for an information session by contacting the Ministère de la Justice at

1 866 536-5140, option 4

3.2.3 **EXEMPTION**

There are only two reasons for being exempt from the mediation information session—if a person has already participated in such an information session in connection with a prior dispute or if there has been domestic violence, on certain conditions.

3.2.4 **AGREEMENT SUMMARY**

When the parties are able to settle their disputes with the mediator's help, the mediator prepares an "Agreement Summary" which sets out in detail the agreements reached between the parties on the disputed points.

The mediator will then encourage the parties to consult an independent lawyer of their choice to ensure that the content of the agreement summary adequately reflects the parties' expectations and rights.

Once the parties' acceptance of the agreement summary is final, an agreement must still be submitted to a Superior Court judge to become an official and enforceable **judgment**.

3.2.5 **MEDIATION COSTS**

The law and applicable regulations provide that, when the rights of children are involved, the provincial government may pay for up to five hours of mediation for the parties.

KEEP IN MIND

The mediator is not the adviser of either of the parties. He is a neutral and impartial third party whose role is limited to helping the parties find a solution to their dispute.

3.3 THE SETTLEMENT CONFERENCE

Provided all the parties expressly agree and a lawsuit has been filed, a **settlement conference** may be held at any stage of the legal proceedings.

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, better understand and assess their needs, interest and positions, and explore mutually satisfactory solutions to the dispute. 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 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 to trial, saving you time and money.

You must attend the conference and you may be assisted by a 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 charged by your lawyer if you choose to 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. It is also available on-line at **www.tribunaux.qc.ca/mjq_en/c-superieure/index-cs.html**. To find your judicial district, choose the Districts tab under Montréal Division or Québec Division depending on where you live.

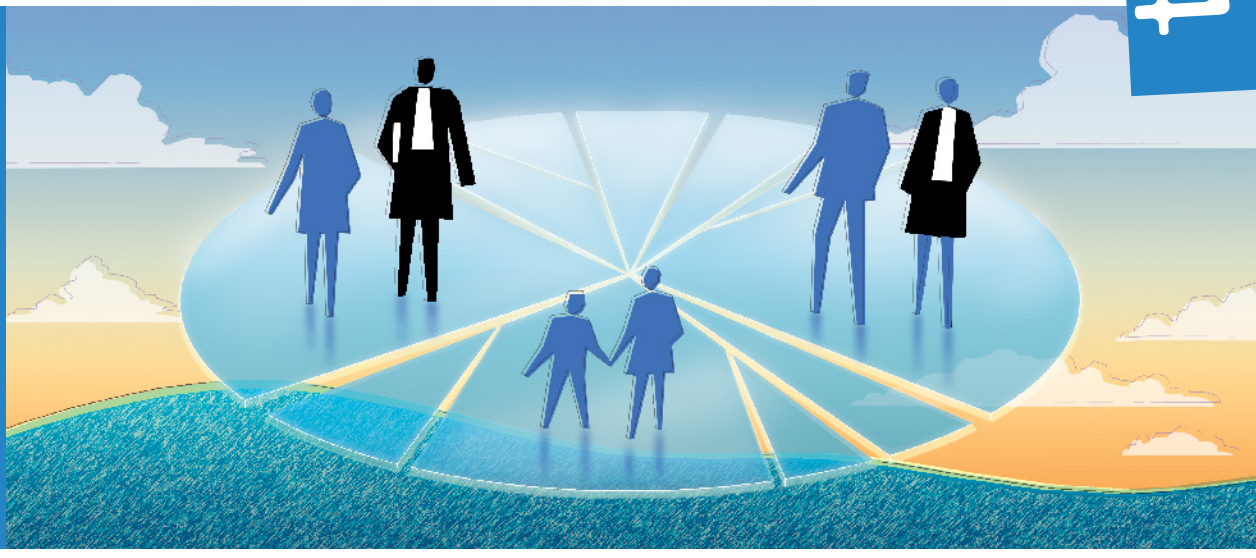
If the conference is successful and helps you find a satisfactory solution, an agreement is prepared and signed by the parties. The agreement must be complied with by each of the parties and it puts an end to the legal proceedings. If the conference does not resolve your conflict, neither the parties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

REMEMBER

- It is not always necessary to use the courts or go through a trial to exercise your rights;
- Think about the other options available to you before filing a lawsuit and throughout the legal process. An out-of-court settlement is often more advantageous for the former spouses and their children than a judgment.

TYPES OF APPLICATIONS IN FAMILY MATTERS



There are several types of applications in family matters depending on your matrimonial situation when the application is filed. The rights of married people and the related **proceedings** differ from those of **de facto spouses**.

In this step, we will discuss applications that are exclusive to married people, namely applications for divorce and for **separation from bed and board**. ▶ See 4.1

Then we will examine the claims which can be made by de facto spouses (▶ See 4.2) and applications to amend a **judgment** for both married and de facto spouses. ▶ See 4.3

We will finish with an overview of the other applications that can be made in family matters. ▶ See 4.4

4.1 APPLICATIONS FOR DIVORCE OR SEPARATION FROM BED AND BOARD

The purpose of an application for divorce is to put an end to the **parties**' marriage. An application for separation from bed and board, on the other hand, does not break the marriage bond and, as a result, does not allow the parties to remarry. However, applications for both divorce and separation from bed and board are designed to settle the consequences of the breakdown of the parties' relationship (called **corollary relief**) including, where applicable, the **custody** of and access to the children, the obligation to pay child and spousal **support** as well as the dividing up of their finances. This section discusses the grounds for and possible claims in the case of divorce and separation from bed and board.

4.1.1 THE GROUNDS

The grounds for divorce and separation differ depending on the application made.

The parties' consent to divorce is not enough to support an application for divorce. For a divorce to be granted, the court must satisfy itself that there is no possibility of the **reconciliation** of the spouses, and the party making the application must prove the breakdown of the marriage, which is established by one of the following three situations:

- The spouses have lived separate and apart for at least one year immediately preceding the date the judgment in divorce is rendered and they were living separate and apart at the commencement of the **proceeding**;

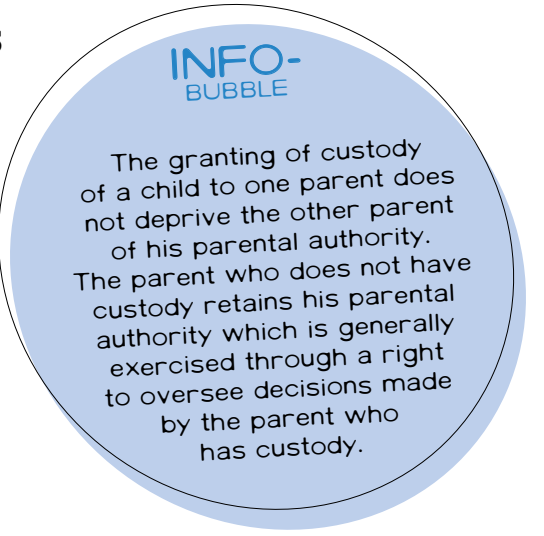
- The spouse against whom the divorce proceeding is brought has committed adultery, and the other spouse has not condoned or connived in the act or conduct complained of;

- The spouse against whom the divorce proceeding is brought has treated the other spouse with physical or mental cruelty of such a kind as to render the continued cohabitation of the spouses intolerable, and the other spouse has not condoned or connived in the act or conduct complained of.

To obtain a judgment in separation from bed and board, the plaintiff must show that the will to live together is gravely undermined.

4.1.2 CUSTODY AND ACCESS RIGHTS

In both divorce and separation from bed and board, you can ask the court to render any **order** regarding the custody of your minor children, **access rights** and important issues regarding the exercise of **parental authority**. These applications must always be based on the interests of the children.

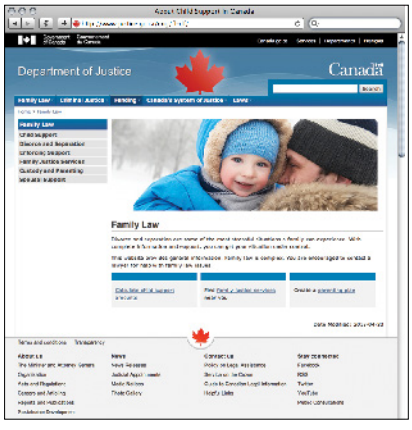


4.1.3 **CHILD SUPPORT**

When you ask for custody of one or more minor children or when a child of full age is dependent on you, you generally ask for child support.

Child support is determined according to the applicable guidelines. In Quebec, child support payments are calculated according to a table which is updated on January 1 every year. It takes into account, among other things, the parties' disposable income, the number of children covered by the application, the type of custody involved and any specific expenses for the children. See in this regard:
www.justice.gouv.qc.ca/english/publications/generale/modele-a.htm.

When one of the parents lives outside Quebec, federal guidelines apply, and the rules for determining child support are different. For further details, see:
www.justice.gc.ca/eng/fl-df.



KEEP IN MIND

Child support is tax-free for the person who receives it but it is not deductible for the person paying it.

4.1.4 **THE FAMILY PATRIMONY**

All spouses instituting proceedings for divorce or separation from bed and board in Quebec are subject to the **family patrimony** rules, although the rules may not apply to spouses married before July 1, 1989 on certain conditions.

You should be aware that not all the couple's property is included in the family patrimony. The following property forms part of the family patrimony:

- The family residence;
- The family's secondary residences;

- The furniture with which the family's residences are furnished or decorated;
- The motor vehicles used for family travel;
- The benefits accrued during the marriage under a retirement plan, including an RRSP;
- The registered earnings, during the marriage, of each spouse pursuant to the *Act respecting the Quebec Pension Plan* or similar plans.

The value of certain property may be deducted when the family patrimony is divided up, such as property devolved to one of the spouses by succession or gift before or during the marriage.

If you are subject to the family patrimony rules, you must ask for it to be divided up (partitioned) in your divorce or separation proceedings. As a rule, the family patrimony is shared equally. However, exceptionally, you may be entitled to a different amount from your spouse or even nothing at all.

In all circumstances, you must prove the value of the property making up the family patrimony at a given date, which may vary depending on your situation. You should therefore be aware of the rules which apply to your case.

4.1.5 THE MATRIMONIAL REGIME

There are three types of **matrimonial regime**:

- **Partnership of acquests**, which governs spouses married after July 1, 1970 without a marriage contract and those who choose it in a marriage contract;
- **Separation as to property**, established by a marriage contract or foreign law; and
- **Community of property**, which essentially covers spouses married before 1970.

Property not included in the family patrimony, such as bank accounts, non-RRSP investments, businesses, income property, etc., generally form part of the matrimonial regime. It is therefore essential to know which matrimonial regime governs you when the proceedings are taken, as the partition rules vary from one regime to the next.

4.1.6 THE MARRIAGE CONTRACT

If you signed a notarized marriage contract before you were married, you must include in your application for divorce or separation all the appropriate conclusions allowing for the performance or cancellation, where applicable, of all the donations and other obligations set forth in the marriage contract.

4.1.7 **SPOUSAL SUPPORT**

An application for spousal support may be included in an application for divorce or separation. Note that an application for support which is essentially based on the financial inability of the spouse claiming it must be supported by the person's statement of income and expenditures and balance sheet. It must also establish the other spouse's financial ability to pay the support claimed.

Spousal support is considered taxable income for the person receiving it and it is deductible for the person paying it. It is therefore important to be aware of and take all the tax implications into consideration in your application for spousal support.

4.1.8 **LUMP SUM**

It is possible to ask for a lump sum in an application for divorce or separation from bed and board. This involves applying for support to fill a general or specific need when the other spouse can afford to pay it. For example, a spouse could claim a lump sum amount to find a new place to live or purchase an automobile. The application must give details and be supported with legal reasons.

4.1.9 **THE COMPENSATORY ALLOWANCE**

One of the parties may ask for a compensatory allowance to compensate for his contribution of property (transfer of property or money to the spouse, etc.) or services (professional, domestic, etc.) to the enrichment of the other party's patrimony and his corresponding impoverishment. This application must be detailed and proven, and reasons for the claim must be given.

4.1.10 **THE PROVISION FOR COSTS**

On certain conditions, a party may claim a sum of money from his spouse or former spouse to pay for his **legal costs**. In legal terms, this is called a "provision for costs". This application must be detailed and supported by legal reasons. It is important to learn about the conditions for granting such an amount before you ask for it.

4.1.11 **INTEREST AND THE ADDITIONAL INDEMNITY**

It is possible to ask the court to order the other party to pay interest and an additional indemnity for certain financial applications. You would receive interest at the legal rate (5%) plus an indemnity set by law, which varies over time. Not all amounts claimed can bear interest and the additional indemnity. You should therefore find out the rules regarding this legal principle if you plan to claim them.

4.1.12 **LEGAL COSTS**

In family matters, other than in exceptional cases, each party pays their own costs, which include the **court fees (stamp)**, (▶ See 5.1.3), the **bailiff**'s fees (▶ See 5.1.4), and the **official stenographer**'s fees (▶ See 6.1.6 and 6.2.4). ▶ See 9.1

4.2 APPLICATIONS BETWEEN DE FACTO SPOUSES

Recoursess between de facto spouses are mainly related to children since status as a de facto spouse does not create any right to support or the partitioning of property (such as the family patrimony) under the *Civil Code of Québec*.

4.2.1 **CUSTODY AND ACCESS RIGHTS**

Like married spouses, de facto spouses who separate can submit applications concerning the custody of their minor children, their access rights and all important issues regarding the exercise of parental authority. Remember, these applications must always be based on the interests of the children.

The title of the **application** indicates what is being applied for (ex. custody, access rights, etc.).

4.2.2 **CHILD SUPPORT**

Like divorce or separation from bed and board, when you ask for custody of your minor children or when a child of full age is your dependent, you generally claim support for them.

Child support payments are calculated according to a provincial table taking into account, among other things, the parties' disposable income, the number of children covered by the application, the type of custody involved and any specific expenses for the children. See: **www.justice.gouv.qc.ca/english/publications/generale/modele-a.htm**.

Child support is tax-free for the person who receives it but it is not deductible for the person paying it.

4.2.3 OTHER APPLICATIONS BETWEEN DE FACTO SPOUSES

De facto spouses can attach to their application for custody or child support any other application they may have involving their patrimonial rights resulting from their life together, such as the sale or partition of the residence they hold in co-ownership, unjustified enrichment or enforcement of a cohabitation contract.

4.2.4 THE PROVISION FOR COSTS

As in divorce or separation from bed and board, a party may claim a sum of money from his former spouse called a "provision for costs" to pay for his legal costs. This application must be detailed and supported by legal reasons. It is important to learn about the conditions for granting such an amount before you ask for it.

4.2.5 LEGAL COSTS

In family matters, other than in exceptional cases, each party pays their own costs.
▶ See 4.1.12

4.3 THE APPLICATION TO AMEND A JUDGMENT

For former spouses who are divorced or legally separated as well as former de facto spouses, there may be reasons to apply to have a judgment amended. The amendment that is applied for must involve the custody of the children, access rights, exercise of parental authority, child support and support for the former spouse where a significant change has occurred in the situation of the parties or the children since the last judgment.

The plaintiff's application must set out the circumstances, such as the change justifying the amendment. The plaintiff must also be able to prove the facts in support of his application.

INFO-BUBBLE

When the two parties no longer live in the judicial district where the judgment was rendered, the application for an amendment may be filed in the judicial district where either party lives. When a child is involved, the application may be brought before the court of the child's domicile.
▶▶ See 5.1.2

KEEP IN MIND

A judgment can only be validly amended or cancelled by another judgment. Remember, the consent of the parties is not enough.

4.4 OTHER APPLICATIONS IN FAMILY MATTERS

Although more rare, other recourses are possible in family matters. Here are a few examples:

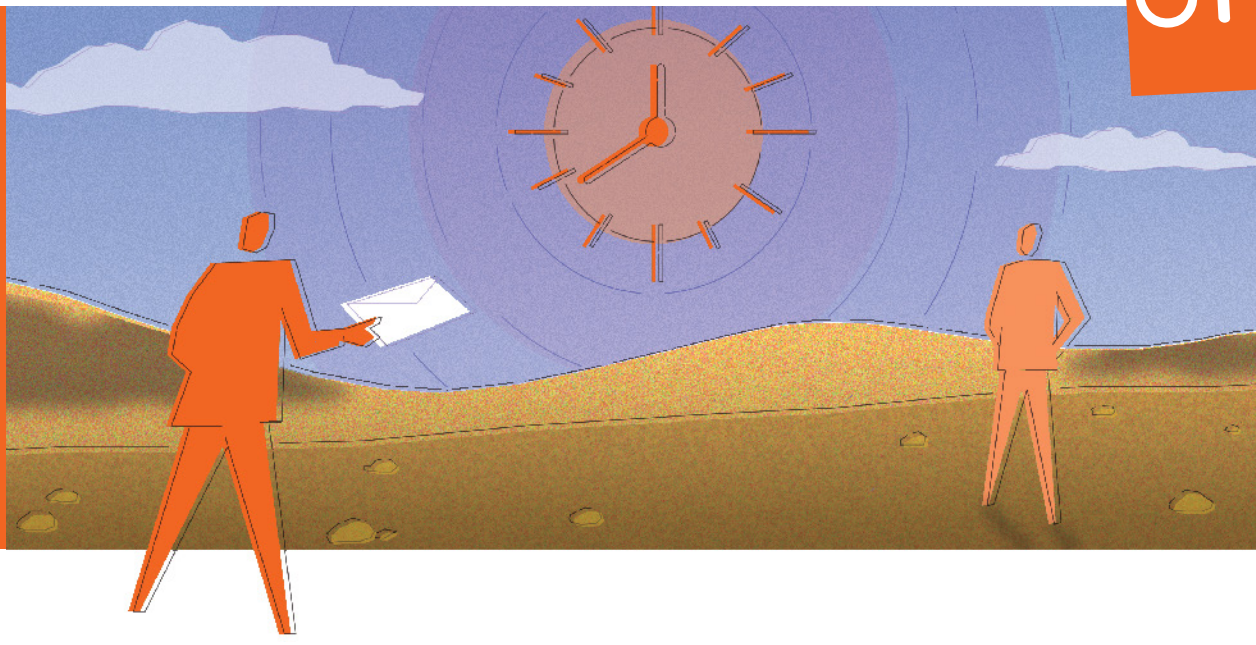
- Applications relating to **filiation**, such as an application for a declaration of parentage;
- An application to dissolve a civil union;
- An application to annul a marriage;
- Applications in family matters following a death, such as an application by the surviving spouse for support or a compensatory allowance;
- An application for separation as to property.

It is essential to know the legal rules governing each of these recourses, and in particular the **prescription**, when they can be brought, their legal consequences and any specific proceedings that may apply.

REMEMBER

The rights and obligations of married people are different from those of de facto spouses.

DRAFTING YOUR ORIGINATING APPLICATION

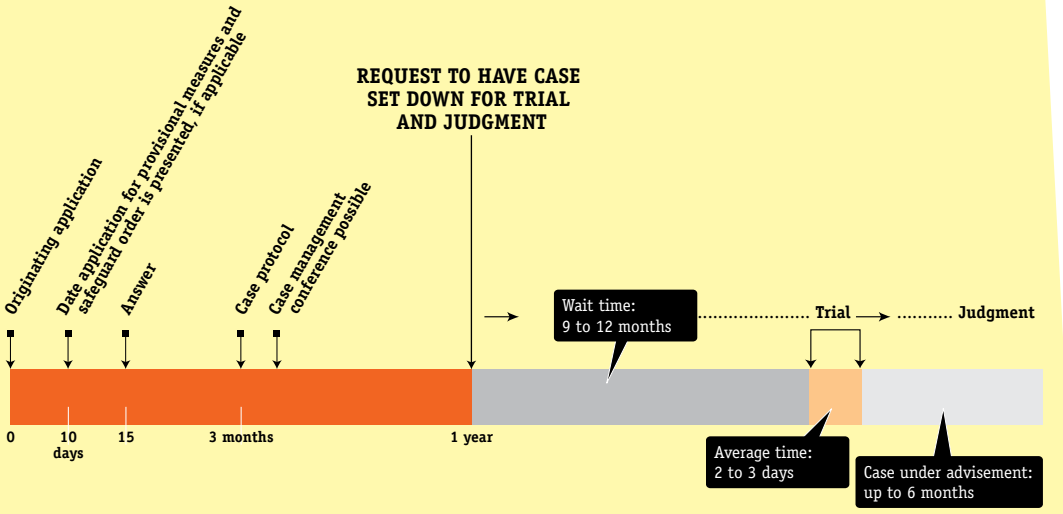


A **lawsuit** is started by filing what is called an "**originating application**". It is in writing and sets out the relevant facts of the case and the legal reasons on which the application is based as well as the conclusions sought.

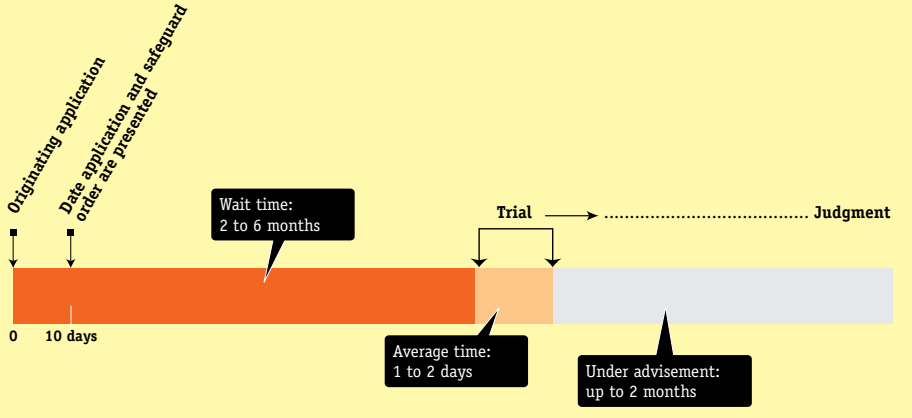
Although certain formalities apply to all applications (▶ See 5.1), the **procedure** differs depending on what the petitioner is applying for, whether divorce or **separation from bed and board** (▶ See 5.2), the resolution of a dispute between **de facto spouses** or the amendment of a **judgment**. ▶ See 5.3

If an application between de facto spouses involves patrimonial rights in addition to **custody** and child **support**, the rules respecting an application for divorce or separation must be followed, with certain adjustments.

Timeline for an application for divorce or separation from bed and board



Timeline for an application for custody or support (not including patrimonial rights) between de facto spouses or to amend a judgment



KEEP IN MIND

The originating application constitutes the basis of your legal action. It must be prepared carefully, thoroughly and concisely. It sets the tone for the **case**. Remember, if the allegations are slanderous or if your demands are exaggerated, they could harm your case, make a negotiated settlement less likely, damage your credibility and affect the outcome of a **trial**.

5.1 THE FORMALITIES APPLICABLE TO ALL APPLICATIONS

5.1.1 THE RELEVANT COURT

Generally, the court of first instance which has jurisdiction to hear family matters in Quebec is the Superior Court.

However, if you or your former spouse live outside Quebec, the Quebec Superior Court might not have jurisdiction. You should therefore do the appropriate research first.

KEEP IN MIND

To institute divorce **proceedings** in Quebec or any other Canadian province, one of the **parties** must have lived there for at least one year before the proceedings are instituted.

5.1.2 THE JUDICIAL DISTRICT

You must file your lawsuit in the **court office** for the appropriate judicial district. In general, applications in family cases are taken before the court of the common domicile of the parties or, failing such a domicile, the domicile of either of the parties. To find out the judicial district for your case, see: **www.justice.gouv.qc.ca/english/recherche/district-a.asp.**

5.1.3 THE COURT FEES (LAW STAMP)

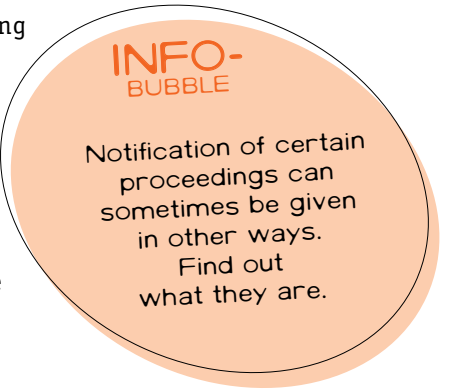
All lawsuits must be "stamped", i.e. you must have the date stamped and pay the applicable fee at the courthouse for the district where you take your action. The **court fees** vary depending on the type of application.

5.1.4 NOTIFICATION

All originating applications must be served on the other party. This means that a certified copy of the original proceeding must be sent to him. This **service**, which is by **bailiff**, must be done according to the rules in the *Code of Civil Procedure*. Remember, there are costs associated with serving any document. The originating application must be filed into the court record along with **proof** that it was served on the other party.

The other party must be notified of each proceeding following the originating application and proof of **notification** must be filed into the court record.

When a lawyer has sent you an **answer**, you can serve certain documents electronically, according to specific rules found 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.



You should check whether your application must also be served on a third party, such as the registrar of civil status, the Deputy Minister of Revenue of Quebec, the Attorney General of Quebec, a child of full age, etc.

5.2 DRAFTING YOUR APPLICATION FOR DIVORCE OR SEPARATION FROM BED AND BOARD

5.2.1 MANDATORY INFORMATION

All applications for divorce and separation from bed and board must comply with the *Rules of practice of the Superior Court of Québec in family matters*, which provides, among other things, that an application must include the following mandatory information:

- The date and place of birth of the parties and the name of their parents;
- The date and place of the marriage;
- The parties' matrimonial status when they were married;
- The parties' **matrimonial regime** when they were married and when the proceedings were instituted; ▶ See 4.1.5
- The family names, given names, age, sex and date of birth of the children of the marriage;
- Whether any of the children are the object of a court decision, a pending case before a court or an agreement with a director of youth protection;
- The residence of each party;
- The reasons for the divorce or separation from bed and board; ▶ See 4.1.1
- Whether or not the parties have agreed on **corollary relief** and, where applicable, the conclusions sought in this regard; ▶ See 4.1.2 and following
- Whether or not there have been other proceedings with respect to the marriage;

- The absence of **collusion** between the parties;
- The absence of condonation or connivence regarding the act or conduct complained of.

The *Rules of practice of the Superior Court of Québec in family matters* also provides that the application for divorce must be signed by the applicant and accompanied by a sworn statement (***affidavit***).

A sample application for divorce (Form I) is attached to the *Rules of practice of the Superior Court of Québec in family matters* which is available at:
http://tribunaux.qc.ca/c-superieure/index-cs.html.

5.2.2 THE SUMMONS

You must attach a **summons** to your application for divorce or separation from bed and board that tells the **defendant** that he must cooperate with you in preparing the **case protocol**.

A sample summons is available at:
http://elois.caij.qc.ca/default.aspx (in French only).

5.2.3 THE EXHIBITS TO BE COMMUNICATED AND FILED

The **exhibits** in support of the originating application must be indicated in the summons or be communicated to the other party with the application for divorce or separation from bed and board. They must also be filed into the court record. Some exhibits must be specifically alleged:

- A photocopy of the parties' birth certificates;
- A certified true copy of the parties' marriage certificate;
- A certified true copy of the parties' marriage contract, where applicable;
- A certified true copy of the children's birth certificates, if their **filiation** is in dispute.

INFO-BUBBLE

If you plan to use an expert's report, the report will replace the expert's testimony. You must have sent the other party a copy of the report in accordance with the time limits and rules set out in the *Code of Civil Procedure*.

5.2.4 THE NOTICE OF PRESENTATION

If your application for divorce or separation includes **provisional measures**, you must attach a notice indicating the date it will be presented. At least 10 days' notice must be given for corollary relief.

If you agree with your spouse on all corollary relief involving your divorce (custody, support, partition of the property, etc.), you may file a joint application for divorce. See in this regard: **www.justice.gouv.qc.ca/english/publications/generale/dem-conj-a.htm**.

However, it is in your interest to consult a lawyer first to ensure that the agreement is legal and enforceable

5.3 DRAFTING YOUR APPLICATION BETWEEN DE FACTO SPOUSES OR TO AMEND A JUDGMENT

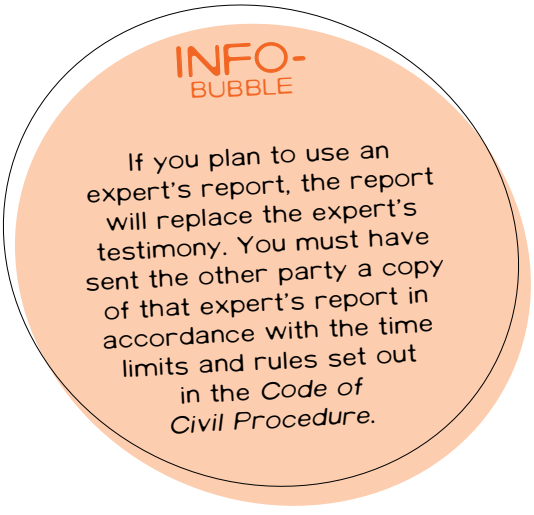
5.3.1 MANDATORY INFORMATION

The only mandatory information in applications between de facto spouses or to amend a judgment is the following:

- The family names, given names, age, sex and date of birth of any children of the marriage;
- Whether any of the children are the object of a court decision, a pending case before a court or an agreement with a director of youth protection;
- The conclusions you are seeking in your application; ▶ See 4.2 and 4.3
- In the case of an amendment, the conclusions of the judgment you wish to have amended and any arrears owed.

5.3.2 THE EXHIBITS TO BE COMMUNICATED AND FILED

No exhibit is required to be filed in this type of application. However, in the case of an application to amend a judgment, it is advisable to file a copy of the judgment you wish to have amended. All other exhibits in support of the application must be attached or a notice of communication of the exhibits must be attached to the application itself.



5.3.3 **THE NOTICE OF PRESENTATION**

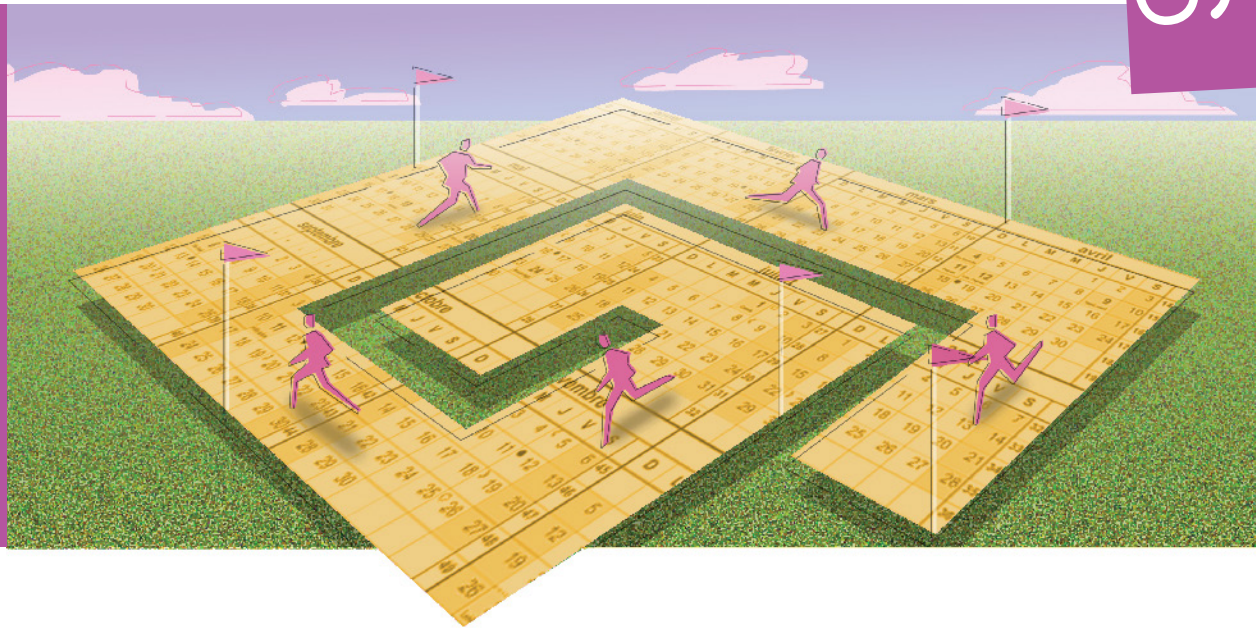
You must attach to your application a notice addressed to the other party indicating the date the application will be presented to the court.

The notice must comply with the various presentation time limits and contain the information required by the *Code of Civil Procedure*, which varies depending on the type of application presented.

REMEMBER

- Make sure your originating application includes the required information;
- Your originating application must indicate all the facts you want to submit into evidence and all the conclusions you are seeking.

HOW THE PROCEEDINGS WILL UNFOLD



Regardless what type of application is made, each **party** must prepare, within the legal time limits, certain **proceedings** before the **trial** takes place. The conduct of the proceedings varies according to the type of application, which may be divided into two categories:

Those which involve an application for divorce or **separation from bed and board** (▶ See 6.1) and those which involve an application between **de facto spouses** or to amend a **judgment**. ▶ See 6.2

6.1 HOW THE DIVORCE OR SEPARATION PROCEEDINGS WILL UNFOLD

6.1.1 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**).

6.1.2 PROVISIONAL MEASURES

An application for **provisional measures** is presentable by either the plaintiff or the **defendant** and its purpose is to govern certain rights of the parties during the **case**, including:

- Custody and **access rights** for minor children;
- Child **support**;
- Spousal support;
- Provision for costs;
- Use of the parties' furniture, automobiles and immovables;
- How the parties' financial obligations will be divided up during the case.

An application for provisional measures is written the same way as an application between de facto spouses or to amend a judgment. ▶ See 5.3. However, it does not have to be stamped because it does not begin a case.

Also, an application for provisional measures evolves independently from the main application, the same way as an application between de facto spouses or to amend a judgment. ▶ See 6.2

Like applications between de facto spouses or to amend a judgment, in an emergency a party may be granted a **safeguard order** with respect to certain conclusions sought in the application for provisional measures. ▶ See 6.2.3

6.1.3 CONSERVATORY MEASURES

During the case, on certain conditions, a party has the right and may have an interest in having property belonging to him or to which he has a right seized from the other party or a third person.

A party may also take steps to protect his rights in an immovable, such as when it was used as a family residence.

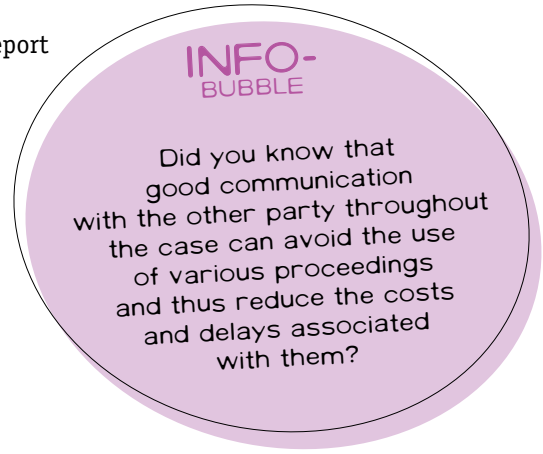
All these rights must be exercised with care given the possible consequences of their exercise (such as the **seizure** of a bank account used to pay for family expenses) and related costs.

6.1.4 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 a year. ▶ See 6.1

For example, you must indicate:

- Whether you intend to submit preliminary objections and within what timeframe; ▶ See 6.1.5
- Whether you wish to conduct **pre-trial examinations** and within what timeframe; ▶ See 6.1.6
- 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 3 months 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 judgement by default for failure to participate in the case management conference**).

The case protocol form for family matters is available on-line at **www.tribunaux.qc.ca/mjq_en/c-superieure/index-cs.html**. To find your judicial district, choose the Districts tab under Montréal Division or Québec Division depending on where you live.

6.1.5 THE PRELIMINARY OBJECTIONS

Various preliminary objections which may be used by the parties throughout the case are listed in the *Code of Civil Procedure*. 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 **legal 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.

6.1.6 THE PRE-TRIAL EXAMINATION

Each party may examine the other party before trial. The purpose of a pre-trial examination is to obtain information, clarifications or documents regarding the claims and information found in the other party's proceedings.

A pre-trial examination does not take place before the judge. The party who is conducting the examination must reserve and pay for the services of an **official stenographer** who records and transcribes everything that is said during the examination.

The testimony gathered during the pre-trial examination is **evidence** which belongs to the party who conducted the examination. That party can choose whether or not to submit the evidence.

Pre-trial examinations are governed by specific rules which must be followed by all the parties, even when they are self-represented.

6.1.7 THE FORMS TO BE FILLED OUT AND DOCUMENTS TO BE FILED

Both the plaintiff and the defendant must fill out certain forms depending on the demands made in the originating application or application for provisional measures, and certain documents may have to be attached to the forms. Read the forms carefully.

➢ **For child support** ▶ See 4.1.3

When child support is claimed, the parties must fill out and file the following forms and documents within the legal time limits:

- *Child Support Determination Form (Schedule 1)*, along with the required documents. The form and attached documents must be sent to the other party. See:
  www.justice.gouv.qc.ca/english/formulaires/modele/forfix-a.htm.

- *Sworn Statement under Article 444 of the Code of Civil Procedure*. This form does not have to be sent to the other party. See:
  www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm.

➢ **For spousal support** ▶ See 4.1.7

When spousal support is claimed, the parties must fill out and file the following forms and documents within the legal time limits:

- "*Statement of Income and Expenditures and Balance Sheet*" in the form prescribed by *Form III of the Rules of practice of the Superior Court of Québec in family matters* and attach the required documents. The form and the attached documents must be sent to the other party. See:
  http://tribunaux.qc.ca/c-superieure/index-cs.html.

INFO-BUBBLE

The person against whom an application for spousal support is made may admit his ability to pay the support claimed; in this case, he does not have to fill out the Statement of Income and Expenditures and Balance Sheet in detail.

- *Sworn Statement under Article 444 of the Code of Civil Procedure*. This form does not have to be sent to the other party. See:
  www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm.

➢ **For the mediation report** ▶ See 3.2

In any case in which the interests of the parties and their children are at stake, the case cannot go to trial unless both parties file with the court office a certificate that they have participated in a parenting and **mediation** information session.

➢ **For the family patrimony** ▶ See 4.1.4

Each party must fill out a "*Statement of the Family Patrimony*" in the form indicated in the *Rules of practice of the Superior Court of Québec in family matters* unless a party declares that the spouses are not subject to the family patrimony rules, that they waive their right to have the **family patrimony** partitioned or that they have agreed on how it will be partitioned. See: **www.tribunaux.qc.ca/mjq_en/c-superieure/index-cs.html**. To find your judicial district, choose the Districts tab under Montréal Division or Québec Division depending on where you live.

The Statement of the Family Patrimony may be sent and filed at any time according to the case protocol, but not later than when a request is made to have the case set down for trial and judgment.

➢ **For the partnership of acquests** ▶ See 4.1.5

If you are married under the **partnership of acquests**, each party must fill out a "Statement of Partnership of Acquests" in the form indicated in the *Rules of practice of the Superior Court of Québec in family matters*, available at **www.tribunaux.qc.ca/mjq_en/c-superieure/index-cs.html**. To find your judicial district, choose the Districts tab under Montréal Division or Québec Division depending on where you live.

The "Statement of Partnership of Acquests" may be sent and filed at any time according to the case protocol, but not later than when a request is made to have the case set down for trial and judgment.

6.1.8 THE DEFENCE AND CROSS-APPLICATION

The defence is a response (answer) to the originating application. When the defendant asserts his own claim that arises from the same source as the main application, the answer becomes a defence and **cross-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 can only be made in a written defence.

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.

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 ready, the defence must be sent to the other party and filed in the court office within the applicable times and according to the applicable rules. If it includes a cross-application, it must be served by **bailiff**.

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 for failure to file a defence**).

6.1.9 THE CROSS-DEFENCE

A cross-application is contested verbally unless the court asks for it in writing.

6.1.10 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 one year 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 established 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 are the applicant and the declaration is not filed within the prescribed time, you are presumed to have discontinued your application.

The Request for Setting Down for Trial and Judgment by way of a Joint Declaration in Family Matters form is available on-line at **www.tribunaux.qc.ca/mjq_en/c-superieure/index-cs.html**. To find your judicial district, choose the Districts tab under Montréal Division or Québec Division depending on where you live.

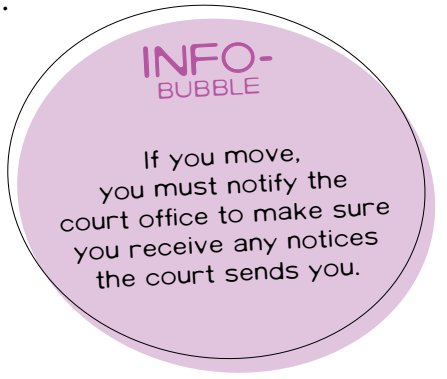
Special rules of procedure must be followed to have a case set down for trial and judgment.

6.1.11 THE ATTESTATION IN RESPECT OF THE REGISTRATION OF BIRTHS (DIVORCE ONLY)

The request to have a divorce application set down for trial and judgment must be accompanied by an Attestation in respect of the Registration of Births filled out according to *Form II of the Rules of practice of the Superior Court of Québec in family matters*. See: **http://tribunaux.qc.ca/c-superieure/index-cs.html**.

6.1.12 THE PROVISIONAL ROLL

When the proceedings are completed, the parties will be convened to a general calling of the provisional roll (list of cases to be set). During the calling of the roll, the court will check the file and set a date for the trial.



6.2 HOW THE PROCEEDINGS BETWEEN DE FACTO SPOUSES (NOT INCLUDING AN APPLICATION FOR PATRIMONIAL RIGHTS) OR TO AMEND A JUDGMENT WILL UNFOLD

6.2.1 THE NOTICE OF PRESENTATION

An answer is not required for a notice of presentation. Both parties must be present or represented by a lawyer at the time and place indicated in the notice of presentation of the application. When the case is called, the parties will state that they are present. The court will then ask the parties what their intentions are.

If the parties have come to an agreement, it will be submitted to the court. However, the parties may need time to negotiate, prepare documents or finalize an agreement. In these circumstances, they may ask the court to hear the file at a later date. This is called a "postponement".

➲If the plaintiff is absent and is not represented by a lawyer, his application could be struck, in which case it will have to be served again with a new notice of presentation before being added to the roll again.

➲If the defendant is absent and is not represented by a lawyer, the plaintiff may be asked to make his **proof** and then given a judgment from the bench.

6.2.2 **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 case because it is inadmissible in law;
- Obtain clarifications about certain vague or ambiguous allegations found in the originating application.

6.2.3 **THE SAFEGUARD ORDER**

The trial generally does not take place on the date the application is presented. However, the parties may ask the court in their respective applications to issue a safeguard order on the date indicated in their notice of presentation.

A safeguard order is a temporary emergency measure ordered by the court to preserve the rights of one of the parties to the case.

The purpose of a safeguard order is to decide on situations which cannot be left pending. Here are a few examples:

- Determine the custody of the children during the case, where they will live, the other parent's access rights, etc.;
- Set the support for a party who is unable to meet his needs or those of the children;
- Allocate the use of the furniture in the family residence during the case;
- Decide how the parties will share common expenses during the case.

For such an order to be granted, the parties must demonstrate need and the urgency of the order sought.

Such an order is generally valid for a period of time determined by the court.

The parties make their evidence by filing a detailed ***affidavit* (oath)** which completes the required forms and documents. The court does not normally hear testimony unless it decides otherwise. The parties or their lawyers must succinctly set out their arguments regarding the urgent issue submitted to the court.

6.2.4 THE PRE-TRIAL EXAMINATION

Each party may examine the other party before trial. The purpose of these examinations is to obtain information, details or documents regarding the allegations in the other party's proceedings.

A pre-trial examination does not take place before the judge. The party who is examining must reserve and pay for the services of an official stenographer who records and transcribes everything that is said during the examination.

The testimony gathered during the pre-trial examination is evidence which belongs to the party who conducted the examination. That party can choose whether or not to file the evidence.

Pre-trial examinations are governed by specific rules which must be followed by all the parties, even when they are self-represented.

6.2.5 THE DEFENCE

In this type of action, there is no written defence, only a verbal defence presented when the case is heard.

The defendant may also choose to present an application himself which will generally be heard at the same time as the plaintiff's application.

6.2.6 THE FORMS TO BE FILLED OUT AND THE DOCUMENTS TO BE FILED

Depending on what is asked for in the application, both the plaintiff and the defendant must fill out certain forms. These forms may require that the parties attach certain documents.

➢ **For child support** ▶ See 4.2.2

When child support is claimed, the parties must fill out and file the following forms and documents within the legal time limits:

- *Child Support Determination Form (Schedule 1)*, along with the required documents. The form and attached documents must be sent to the other party. See: **www.justice.gouv.qc.ca/english/formulaires/modele/forfix-a.ht**m.

- *Sworn Statement under Article 444 of the Code of Civil Procedure*. This form does not have to be sent to the other party. See: **www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm**.

➢ **For spousal support**

When a change in spousal support is claimed, the parties must fill out and file the following forms and documents within the legal time limits:

- "*Statement of Income and Expenditures and Balance Sheet*" in the form prescribed by *Form III of the Rules of practice of the Superior Court of Québec in family matters* and attach the required documents. The form and the attached documents must be sent to the other party. See: **http://tribunaux.qc.ca/c-superieure/index-cs.html**.

- *Sworn Statement under Article 444* of the *Code of Civil Procedure*. This form does not have to be sent to the other party. See: **www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm**.

INFO-BUBBLE

The person against whom an application for spousal support is made may admit his ability to pay the support claimed; in this case, he does not have to fill out the "Statement of Income and Expenditures and Balance Sheet" in detail.

➢ **Participation certificate** ▶ See 3.2.2

In any case in which the interests of the parties and their children are at stake, the case cannot go to trial unless both parties file with the court office a certificate that they have participated in a parenting and mediation information session.

6.2.7 READYING THE CASE FOR TRIAL AND HEARING DATE

If, on the date indicated in the notice of presentation of the application, the parties have filled out and filed all the forms and documents required by law (▶ See 6.2.6), the court will set a trial date. However, if the file is not complete, the court may grant a postponement or issue any other order it considers appropriate under the circumstances.

REMEMBER

- Make sure you fill out the necessary forms and attach the necessary **exhibits**;
- If you don't file an answer or a defence by the deadline or if you fail to attend an initial case management conference to which you have been summoned without a valid reason, a judgment could be rendered against you without the court hearing your point of view;
- If you don't request that your case be set down for trial and judgment within the required time, you might have to start your proceedings over again from the beginning and you could even lose your right of action.

PREPARING FOR TRIAL

If your case goes all the way to **trial**, you will have to invest a lot of time and energy preparing for the **hearing** of your case on the date that has been set.

As soon as you find out 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 taken before you appear in court.

7.1 REVIEW YOUR FILE

Since you play an important role in explaining the facts behind your case and the applications you are making to the Court, you must make sure your file contains everything that is necessary and relevant to understand it.

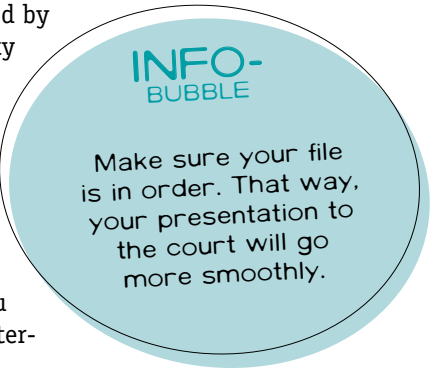
Reviewing your file is a very important step.

- First, carefully read over each of your allegations and make sure they're true. Remember, 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 them before trial.

- Second, be sure that a copy of all the important documents in your file (letters, contracts, photographs, etc.) has been sent to the other party or, at least, that the list of **exhibits** is in the court record and has been sent to the other party. Your original documents must be kept and given to the judge at trial.

- Third, be sure that the essential proceedings required by law are already in the court record and the other party has them, such as the form for calculating **support** and the statement of income and expenditures and balance sheet.

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



As this is the last step before you appear in 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 you will have to follow.

7.2 IDENTIFY AND PREPARE YOUR WITNESSES

Before calling a **witness** in a family matter, make sure the facts you want to submit into evidence with the help of that witness are essential to prove your claims and that they will help you attain the conclusions you are seeking.

Before calling such a witness before the Court, it is important to ask yourself the following questions:

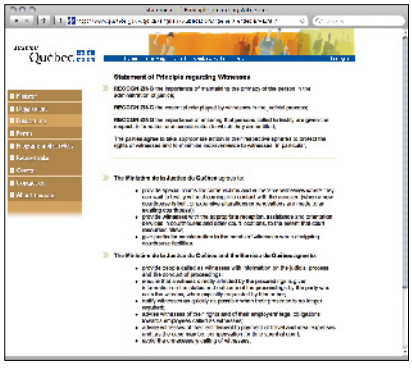
- Will this witness help me prove a specific aspect of my case in court?

- Is the witness personally aware of the facts I want to prove?

- Do I know in advance what this witness will say to the court?
- Do I need several different witnesses to prove the same thing?
- Am I convinced that the presence of these witnesses will be favourable to my case or does it risk being of more help to the other party?

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 the fee set by the government to compensate them for their travel costs, meals and overnight accommodation, as well as 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 wish to read the "Statement of Principle regarding Witnesses" signed by judges, the Quebec Bar and the Quebec Department of 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 other party's witnesses.

▶ YOUR WITNESSES

Make sure you talk to your witnesses in advance and that you have a reasonable idea of what they will say. Remember, it is rarely a good idea to ask witnesses questions if you don't know what answer they will give.

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 dress rehearsal for both you and your witnesses. It is an opportunity to ensure that all the elements of proof you have to present to the court are mentioned by your witnesses.

▶ THE OTHER PARTY'S WITNESSES

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

7.3 RESEARCH THE APPLICABLE LEGAL PRINCIPLES

At the end of the trial, the judge must assess all the facts submitted into evidence by the parties and make a decision according to the rule of law.

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 finding out what legal principles apply to your case. For example, you should read the specific laws which apply to your situation. To do so, check the *Civil Code of Québec*, the *Code of Civil Procedure,* the *Divorce Act* and the *Regulation respecting the determination of child support payments*. 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**"**(case law)**.

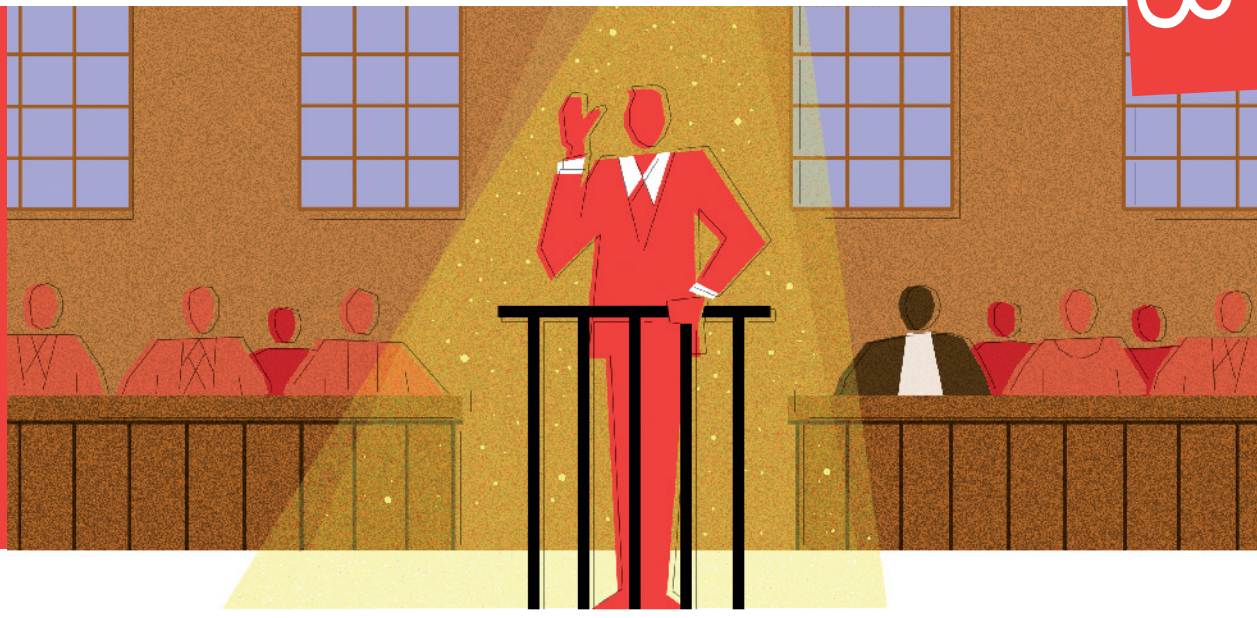
All the legal decisions and texts in support of the arguments you intend to submit to the court must be given to the other party during the trial. It is therefore important to have enough copies for the judge and each of the other parties.

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**, as well as through sites which charge a fee, including **www.azimut.soquij.qc.ca** and **www.rejbdcl.com**.

REMEMBER

- 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



When you appear before the court, be respectful, polite and calm toward the judge, the other **party**, 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.

8.1 RULES OF CONDUCT BEFORE THE COURT

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;
- Turn off your cell phone or pager before entering the hearing room;
- Stand up when the judge enters or leaves the hearing room;
- 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, the other party, his 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.

The judge must ensure that the hearing is conducted properly and efficiently. He may ask you certain questions regarding the facts you are explaining. Although you are very familiar with your file, 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 his 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 inappropriately during a hearing or who does not follow the judge's instructions could be found guilty of contempt of court.

8.2 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 are supposed 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.

Several cases may be set for hearing before the same judge that day. If your case is not the first one to be heard, you will have to leave the room since family cases are heard ***in camera***. Only the judge, the clerk, the court usher, the parties and their lawyers may attend the hearing. If you have to wait outside the courtroom, the court usher will tell you when your presence is required to begin your hearing.

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.

8.3 PRESENTING YOUR EVIDENCE

The person who made the **application** that was submitted to the Court will be asked to present his **evidence** first.

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 into 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 his notes and listen to you.

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

8.3.1 THE TESTIMONY

Testimony plays an essential role in a **trial**. As the decision-maker, the judge must analyze all the testimony he hears. He examines the credibility of the witnesses and determines whether what they say is consistent and relevent. Testimony normally is a decisive factor in the judge's final decision.

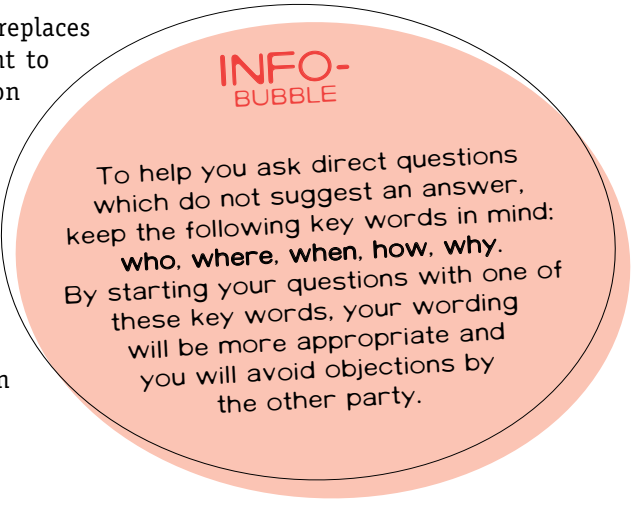
▶ THE EXAMINATION IN CHIEF

It is up to you to choose the order in which your witnesses will be 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.

Since you do not have a lawyer to ask you questions, you will have to explain the relevant facts of your case of which you are personally aware. When you have finished giving evidence, 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. Each witness must solemnly declare that he will tell the truth, and you can then ask him questions to get him to explain his version of the facts of which he has personal knowledge. You must ask direct questions which do not suggest an answer. If you suggest answers to your own witnesses, your opponent might object to your question.

Remember that an expert's report replaces his testimony. However, if you want to have an **expert witness** (a person specialized in a particular area such as an accountant, engineer, psychologist, etc.) testify to give an opinion, you must have sent a copy of his expert's report to the other party and have filed a copy into the court record in accordance with the rules. No witness other than your expert may give an opinion on the issues raised by your case.



▶ THE CROSS-EXAMINATION

After each of your witnesses testifies, the other party may then cross-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.

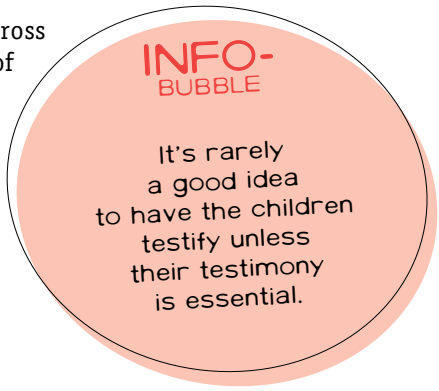
When the other party has his own witnesses testify, avoid making comments or expressing your emotions or disagreement during the testimony. You will have the chance to cross-examine them, if you feel it's necessary.

Be careful when you cross examine one of the other party's witnesses. 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 a question, it's often a good idea not to ask it.

Remain calm during the cross-examination. Remember, you should not expect the other party, or a witness called by him, to answer exactly what you want to hear. You are not allowed to argue with a witness.

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.

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



In all cases, and in particular if you have to cross-examine your former spouse, follow these rules:

- Remain polite at all times, even if you are angry or bothered by certain answers;
- Just ask questions, and avoid making comments;
- Behave in a way that will help the case go smoothly.

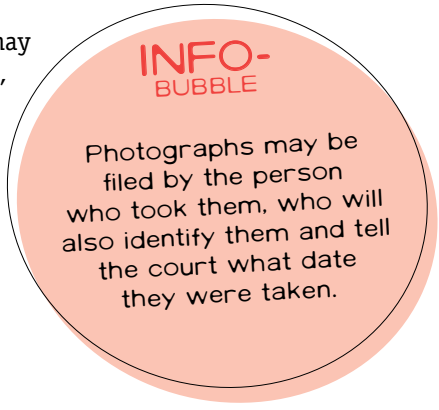
8.3.2 **FILING YOUR EXHIBITS**

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 explain how the documents support your claims.

Special rules of **procedure** must be followed to file certain documents, and in particular an expert's report.



8.4 YOUR ARGUMENTS (PLEA)

When you have filed all your exhibits and your witnesses have been 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 (plea). Once again, the person who filed the **originating application** begins. Summarize the facts presented to the court and explain why the judge should rule in your favour.

During your arguments before the court, be sure you make the connection with the legal principles you found to support your claim. There's no need to repeat the entire trial. Remember, the judge has heard all the evidence and he took notes. You need only stress the important facts. You may also point out any contradictions you might have noticed in the other party's evidence.

The judge may ask you questions about certain points of law which, in his opinion, require more explanation or clarification. Answer the questions as best you can. 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 submit **jurisprudence** and legal texts (**doctrine**) in support of your claims.

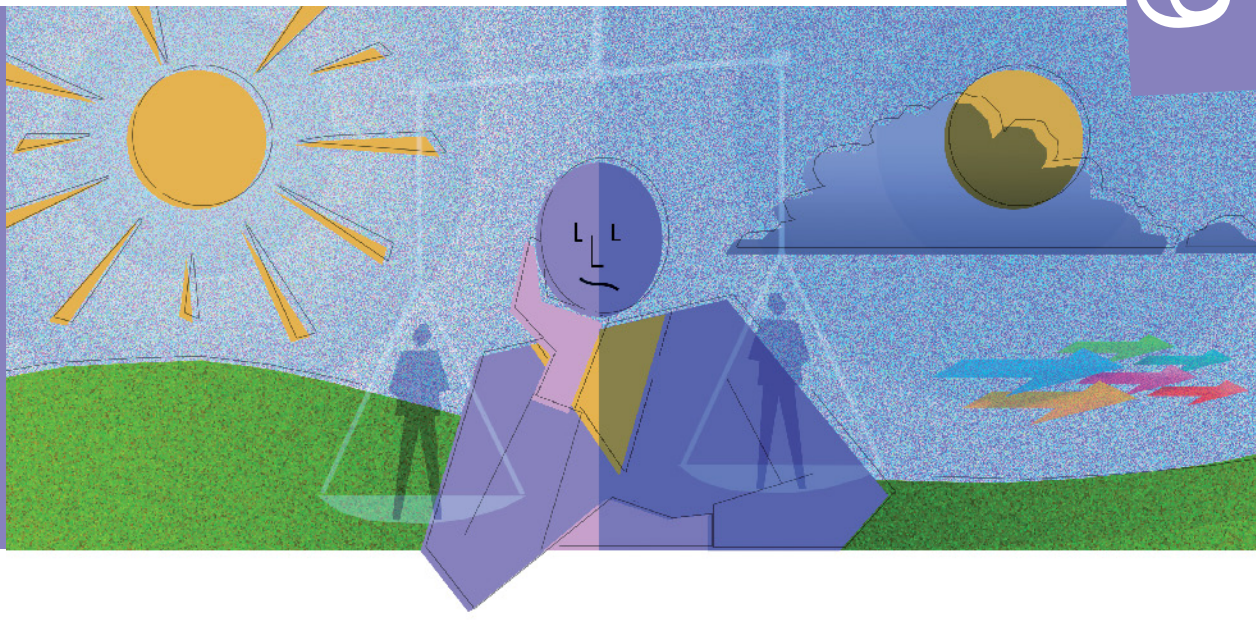
In some cases, the judge renders his decision immediately after the arguments, or "from the bench". However, in most cases, he takes the case "under advisement", i.e. he renders his decision in writing, after the trial.

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.

REMEMBER

- 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 to 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.

9.1 LEGAL COSTS

In family matters, the **legal costs** are shared by the **parties**, although the judge may order a party to pay another party the legal costs if he believes there has been an abuse of **procedure** or if a party failed to participate in a parenting and **mediation** information session. The judge may also punish wrongdoing during the **proceeding** and grant the other party compensation.

INFO-BUBBLE

Legal costs do not cover the professional fees a lawyer charges his client for the services he has provided.

In exceptional circumstances, the Court may, after hearing the parties, order one party to pay the legal costs, all or part of the other party's lawyer's fees or, if that party is not represented by a lawyer, compensation for the time spent preparing his case.

9.2 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.

INFO-BUBBLE

If the judgment provides for the partition of a pension plan or RRSP, the parties must contact the plan administrator themselves, contrary to the partition of rights under the Quebec Pension Plan (QPP), which is automatic.

When the judgment involves periodic **support**, it is valid and enforceable for ten years following the date each payment is due.

The Ministère du Revenu is responsible for enforcing the payment of support in Quebec.

KEEP IN MIND

➲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.

9.3 APPEALING THE JUDGMENT

In certain circumstances, you have the right to appeal the judgment that has been rendered. In family matters, the Quebec Court of Appeal is the appropriate court.

In most family law **cases**, appeal is "as of right", i.e. it is not necessary to ask for the Court's permission to appeal the judgment. However, in some cases permission may be necessary.

Even if your appeal is automatic or even if you are given leave to appeal to the Court of Appeal, that does not mean that the judgment you want to have reviewed will 1necessarily be changed. The evidence and arguments which will be examined by the Court of Appeal are the same as the ones that were submitted to the court of first instance. You must therefore convince the Court of Appeal that the first judge committed fundamental errors in his judgment.

The appeal does not suspend the execution of the judgment in first instance for any order rendered regarding child **custody** or support and therefore, although a decision may be appealed, the support obligations stemming from a judgment will have to be complied with until the Court of Appeal's final judgment, unless the Court orders otherwise.

REMEMBER

Take the formalities into account if you want to appeal a judgment and be aware that the deadlines for doing so are strict.

AVAILABLE RESOURCES

There are several free legal resources which 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:

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.

CENTRES DE JUSTICE DE PROXIMITÉ:
www.justicedeproximite.qc.ca
A site giving their location where information and references are available.

CHAMBRE DES HUISSIERS DE JUSTICE DU QUÉBEC:
https://www.huissiersquebec.qc.ca/Accueil
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.

PUBLICATIONS DU QUÉBEC:
https://www.publicationsduquebec.gouv.qc.ca/cspq/en/
A site which gives access to the laws and regulations of Quebec, including the Civil Code of Québec and the Code of Civil Procedure.

QUEBEC BAR:
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.

QUEBEC DEPARTMENT OF JUSTICE:
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.

STÉNOGRAPHES DU QUÉBEC:
www.barreau.qc.ca/pdf/stenographes/liste-stenographes.pdf
Site giving access to the Order of Official Stenographers.

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

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

UNIVERSITÉ DU QUÉBEC À MONTRÉAL (UQAM)
www.cliniquejuridique.uqam.ca
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

ACCESS RIGHTS (FOR CHILDREN) – One of the attributes of parental authority which gives the parent who does not have custody of a minor child visitation rights and the right to take the child on outings according to the frequency and for the amount of time agreed upon or set by the court.

***AFFIDAVIT* (OATH)** – Written statement that is sworn by the person making it, the declarant, which is received and certified by a person authorized by law to do so.

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

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 – A document prepared by the parties or their lawyers setting out several points the law requires the parties to agree on, including a schedule of the procedural steps to be completed and the deadlines, required by law.

CERTIFIED MEDIATOR – An impartial person certified following specialized training whose role is to facilitate the negotiation of an agreement between the parties.

COLLUSION – Agreement or conspiracy in which the plaintiff participates directly or indirectly in order to frustrate the administration of justice or mislead the court.

COMMUNITY OF PROPERTY – Legal matrimonial regime before July 1, 1970 pursuant to which certain common property forms a pool which will be divided equally between the spouses when the regime is dissolved.

COROLLARY RELIEF – Decisions by the court on the consequences of the breakdown of the parties' relationship in a judgment of divorce or separation from bed and board concerning, among other things, the partition of the family patrimony, the marriage contract, the matrimonial regime, custody of and access to minor children and child and spousal support.

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

COURT FEES (STAMP) – A fee the court office charges for filing certain proceedings, such as an originating application and an answer.

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.

CROSS-APPLICATION – A proceeding, usually 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 his witnesses.

CUSTODY – One of the attributes of parental authority which gives the parent who has custody the right and duty to supervise and educate his minor child, who is required to live with him.

DE FACTO SPOUSE – A person who lives in a conjugal relationship without being married.

DEFENCE (PLEA) – A proceeding in which the defendant sets out, verbally or in writing, the facts and grounds on which he is basing himself to attempt to have the lawsuit taken against him 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 must be communicated and filed in court according to specific rules.

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

FAMILY PATRIMONY – Mandatory legal regime pursuant to which certain property is divided up equally between the parties when the marriage is dissolved, on certain conditions.

FILIATION – Relationship between a child and his father or mother.

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

IN CAMERA – The hearing of a case in private, which the public is not allowed to attend.

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 judgment against a defendant who has not filed a defence within the time indicated in the case protocol or set by the court during the case management.

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 judgment against a defendant who did not file 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 proceeding filled out by the parties or their attorneys according to specific standards prescribed by law. This proceeding is normally filed when all the steps leading up to trial are complete.

JUDGMENT – A court decision, usually rendered by a judge, most often 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 a person exercises his right to go before a court. In most cases, a lawsuit begins with the filing of an originating application.

LEGAL COSTS – These costs include filing fees, notification costs and costs incurred to have witnesses testify at trial.

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.

MATRIMONIAL REGIME – Set of legal or contractual rules which govern the administration of property not included in the family patrimony as well as how it will be divided up when the regime is dissolved.

MEDIATION (FAMILY) – 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.

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 his notes.

ORDER – A decision made by a judge or a court which requires that a party do or refrain from doing something.

ORIGINATING APPLICATION – A 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.

PARENTAL AUTHORITY – A set of rights and duties which parents have toward their minor child, including custody, supervision and education.

PARTNERSHIP OF ACQUESTS – The legal regime in force since July 1, 1970 pursuant to which certain property (the acquests) is administered by a spouse independently of the other spouse during the marriage. It is divided equally between the spouses when the regime is dissolved, on certain conditions.

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 trial. Following specific rules, a party may assign another party, his representative or a third party to be examined before trial or to provide any written document relating to the application 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 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.

PROVISIONAL MEASURES – Temporary decisions by the court in a divorce or separation case involving custody of and access to minor children, child and spousal support, the provision for costs and the exclusive use of the family home and certain furniture which is valid until a judgment of divorce or separation from bed and board is rendered.

SAFEGUARD ORDER – A temporary emergency measure ordered by the court to preserve the rights of one of the parties to the case or their children in divorce or separation proceedings or between de facto spouses.

SEIZURE – A proceeding according to which movable or immovable property is placed under judicial control either to protect the enforcement of a right or to force the execution of a judgment.

SEPARATION AS TO PROPERTY – Conventional matrimonial regime under which each spouse remains the exclusive owner of his property and assumes responsibility for his debts.

SEPARATION FROM BED AND BOARD – Legal separation of spouses without breaking the marriage bond.

SERVICE – A formality according to which a written document, often a proceeding such as an originating application or a summons, must be brought to the attention of another party by bailiff. Service of civil proceedings is very important and must be carried out according to specific rules.

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.

SUBPOENA (SUMMONS) – A proceeding used to call a person before the court to give testimony about the facts of a case and/or to produce a document or give other evidence.

SUPPORT – A sum of money paid periodically to a person for their subsistence.

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 other party. When the evidence is declared closed, the attorneys 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 Family 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.

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STEP 2
THE ROLE OF EVERYONE INVOLVED

STEP 3
DISPUTE RESOLUTION METHODS

STEP 4
TYPES OF APPLICATIONS IN FAMILY MATTERS

STEP 5
DRAFTING YOUR ORIGINATING APPLICATION

STEP 6
HOW THE PROCEEDINGS WILL UNFOLD

STEP 7
PREPARING FOR TRIAL

STEP 8
THE TRIAL

STEP 9
WHAT HAPPENS AFTER THE JUDGMENT

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