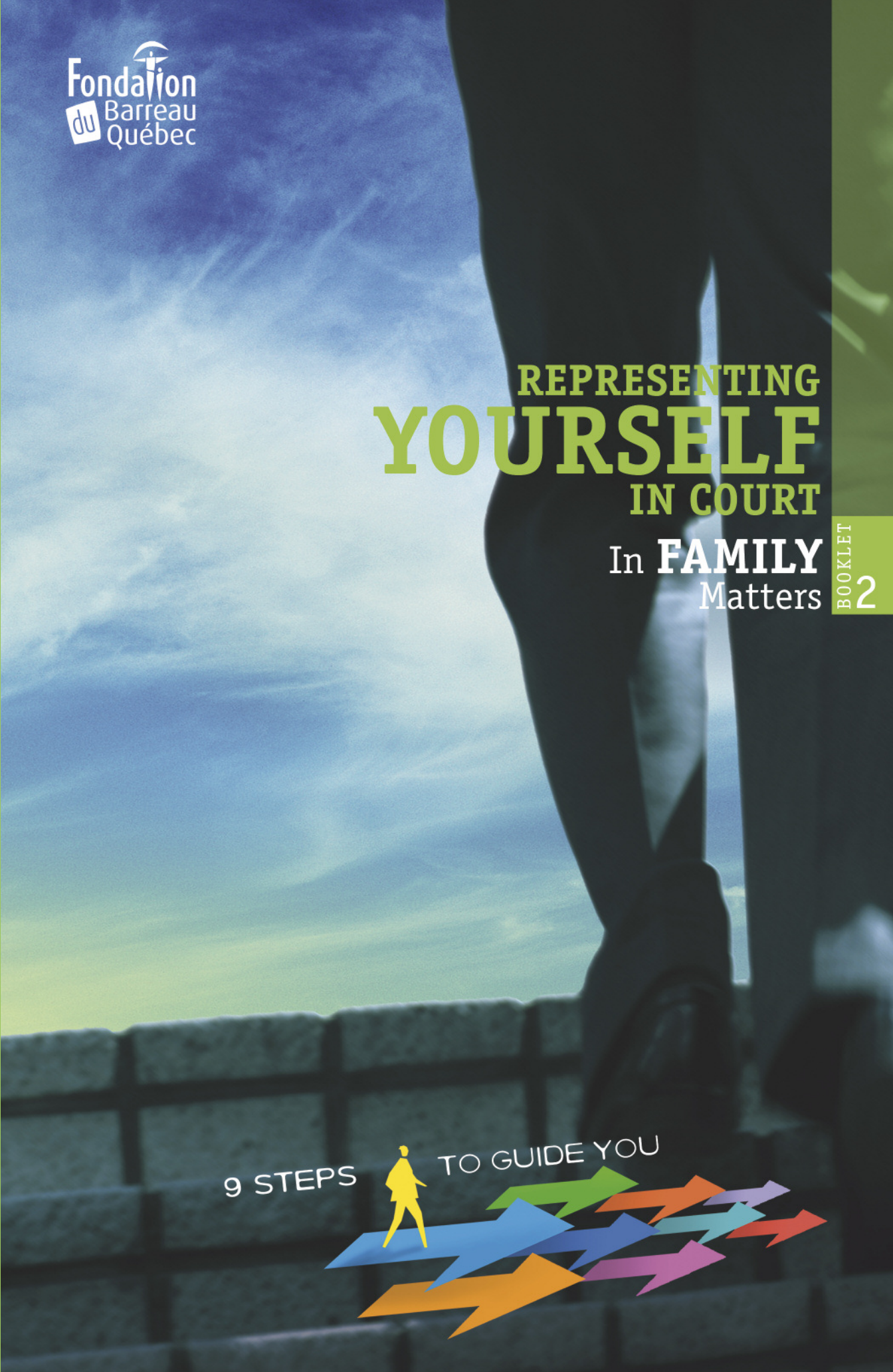
Fondation du Barreau Québec

REPRESENTING YOURSELF IN COURT

In FAMILY Matters

BOOKLET 2



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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 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:

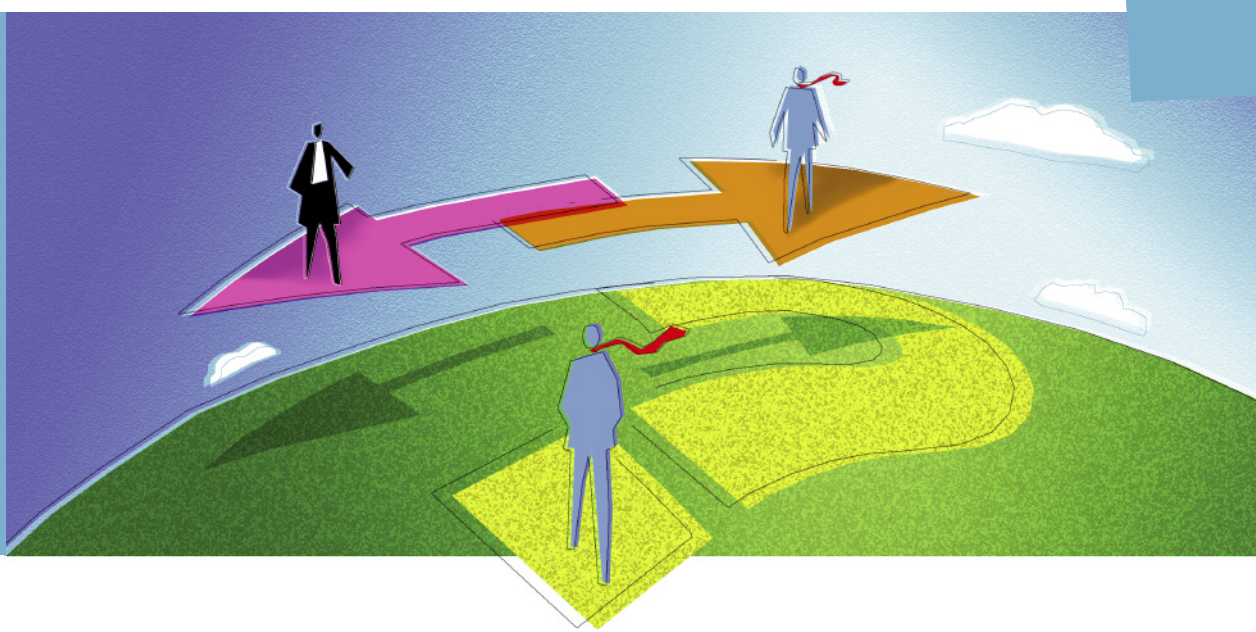
REPRESENTING YOURSELF IN COURT, In Civil Matters, published in the 2nd quarter of 2009.

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

TABLE OF CONTENTS

DECIDING WHETHER OR NOT TO REPRESENT YOURSELF



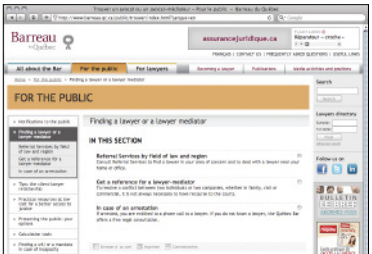
1.1 YOUR RIGHT TO BE REPRESENTED BY A LAWYER

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: be represented by a lawyer or act alone. No one other than a lawyer can speak on your behalf or act for you before the court.

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

www.barreau.qc.ca/public/trouver/index.html?Langue=en
In Montreal: 514 866-2490
In Quebec City, Beauce and Montmagny: 418 529-0301
Toll-free: 1 866 954-3528



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.

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 **appearance** of several **witnesses**;
- You don't know the tax consequences of the **orders** which 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 hinders the negotiation of 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, a question 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 final **judgment**.

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 exercise 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_v3.asp**.

You can also briefly consult a lawyer to find out how much it would cost to represent you, for all or part of the **case**. 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**.

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:

- Evaluate the law applicable to your situation and determine 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;
- Discuss 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 take out 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 well-founded.

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".

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

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 promote the settlement of the issues between the parties.

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 his 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 legal actions 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 the interests of their client.

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.

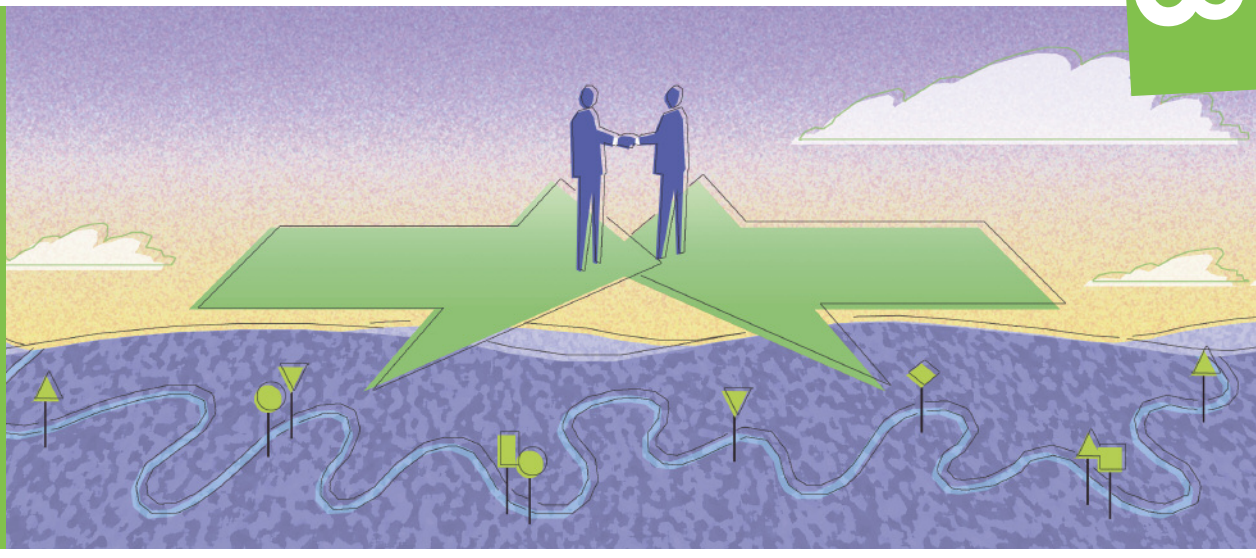
2.5 THE CHILD'S LAWYER

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 all involved with respect to their role in the legal process;
- Act courteously toward everyone involved, as they must act toward you as well.

DISPUTE RESOLUTION METHODS



Turning to the courts is not the only solution to a conflict between you and another person. You may want to look at 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 one of the dispute resolution methods, 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 are not able to 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 result of the agreement must be submitted to the Court for approval. Otherwise, if the agreement you have reached is not complied with, 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.

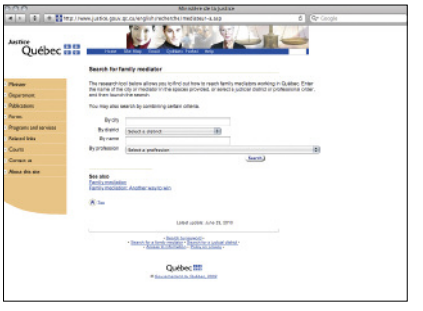
3.2.1 THE INFORMATION SESSION

The parties' participation in an information session about mediation is mandatory when their dispute involves children.

The mediation process begins with an information session which generally takes place in the presence of both parties and the **certified mediator** without anyone else. The information session may also take place in a group. This meeting is used to explain to the parties what happens in mediation and each person's role in order to reach a positive result.

After the information session, the parties decide whether they want to continue the mediation before the mediator who conducted the information session or if they plan to choose another one.

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 **MEDIATION SESSIONS**

Mediation sessions take place in the presence of both parties and the 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, 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.

3.2.3 **EXEMPTION FROM MEDIATION**

A party who has serious reasons not to participate in the mediation information session may tell the mediator of his choice, in which case the mediator prepares a report confirming that a party has serious reasons not to participate in the mediation information session, and the party may be excused.

3.2.4 **AGREEMENT SUMMARY**

When the parties are able to settle their disputes with the mediator's help, the mediator prepares a document entitled "Agreement Summary" which sets out in detail the agreements entered into 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 six mediation sessions for the parties.

As of the initial information session, the certified mediator will tell the parties what financial conditions apply to their status.

The mediator is not the adviser of any 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, identify their interests, assess their positions and explore and negotiate possible solutions for settling the case that are acceptable to both parties. It allows you to be assisted by a judge, who will act as a facilitator and help you find a satisfactory solution. Remember, however, that the judge designated to preside over the conference does not have any decision-making authority and cannot give an opinion on whether your position is well-founded. The judge is there to help the parties find a solution; the conference can allow you to settle your dispute with the other party without having to hold a 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 you are required to pay a 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.

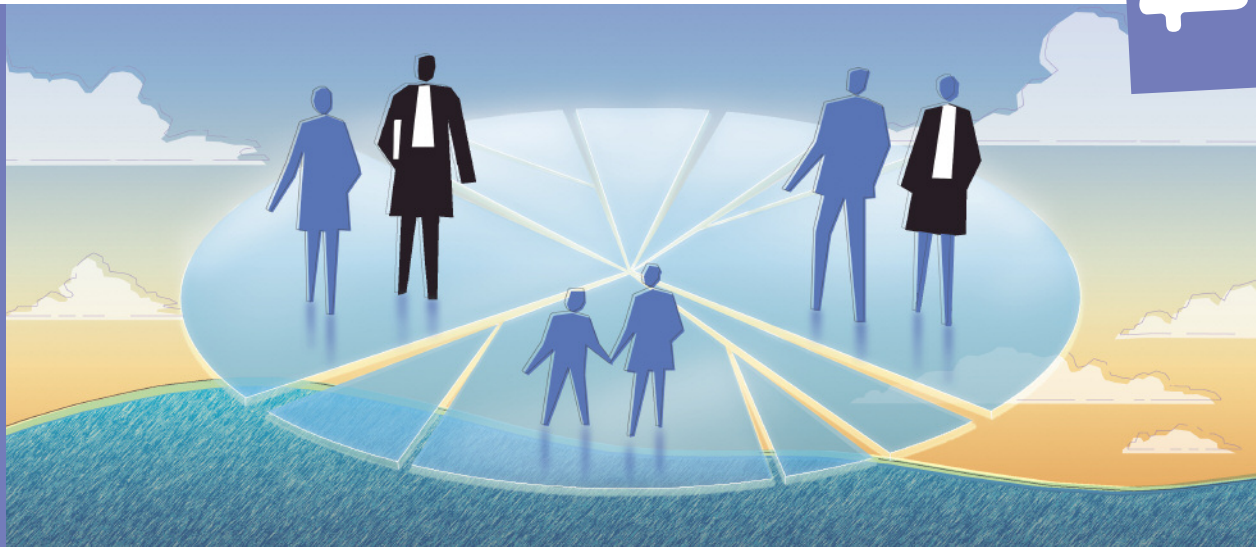
If the conference is successful and helps you find a satisfactory solution, an agreement is prepared and signed by the parties. The agreement must be complied with by each of the parties and it puts an end to the legal proceedings. If the conference does not resolve your conflict, neither the parties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

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

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;

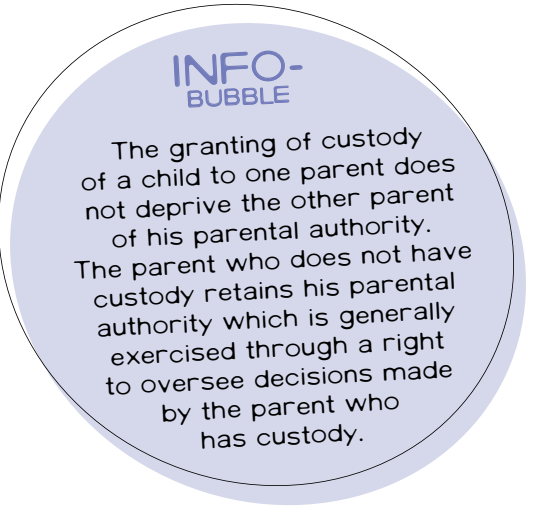
- The spouse against whom the divorce proceeding is brought has committed adultery, and the **plaintiff**'s spouse has not condoned or connived at the act or conduct complained of;

- 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 plaintiff's spouse has not condoned or connived at 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

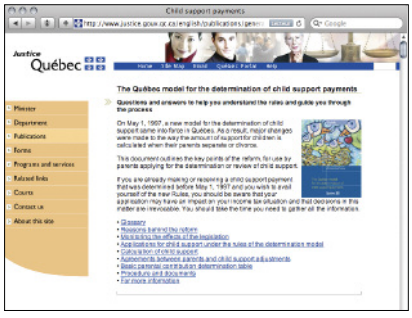
In both divorce and separation from bed and board, you can ask the court to render any **order** regarding the **custody** of your minor children, **access rights** and all important issues regarding the exercise of **parental authority**. These applications must always be based on the interests of the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



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 provincial tables 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 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/pi/fcy-fea/sup-pen/index.html**.

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, other than certain spouses married before May 15, 1989 who may be excluded from the application of the rules 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 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. Equal sharing of the value of the family patrimony is the rule. 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 into consideration all the tax implications 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 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 on 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 it.

4.1.12 **COSTS**

You can ask the court to order the other party to pay costs, which include **court fees** (law stamp) (▶ See 5.1.3), the **bailiff**'s fees (▶ See 5.1.4), the **official stenographer**'s fees (▶ See 6.1.6 and 6.2.4), part of the lawyer's fees, etc. It is possible to ask the court to order the other party to pay costs. However, the courts rarely grant costs in family cases. ▶ See 9.1

4.2 APPLICATIONS BETWEEN *DE FACTO* SPOUSES

Recourses 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 **motion** includes the name of the application (ex. motion for custody, motion for 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 provincial tables 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 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.

4.2.4 COSTS

It is possible to ask the court to order the other party to pay costs. However, the courts rarely grant costs in family cases. ▶ See 4.1.12

4.2.5 OTHER APPLICATIONS BETWEEN *DE FACTO* SPOUSES

The other recourses which *de facto* spouses could have against each other, such as the sale or partition of the residence held in co-ownership with their former spouse, unjustified enrichment or enforcement of a cohabitation contract, are governed by the rules of civil law and civil procedure. See: **www.fondationdubarreau.qc.ca/export/sites/fondation_fr/pdf/publication/seul-devant-la-cour_EN.pdf**.

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, the 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 motion must set out the circumstances justifying the application for anamendment. The plaintiff must also be able to prove the facts in support of his motion.

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.
▶ 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:

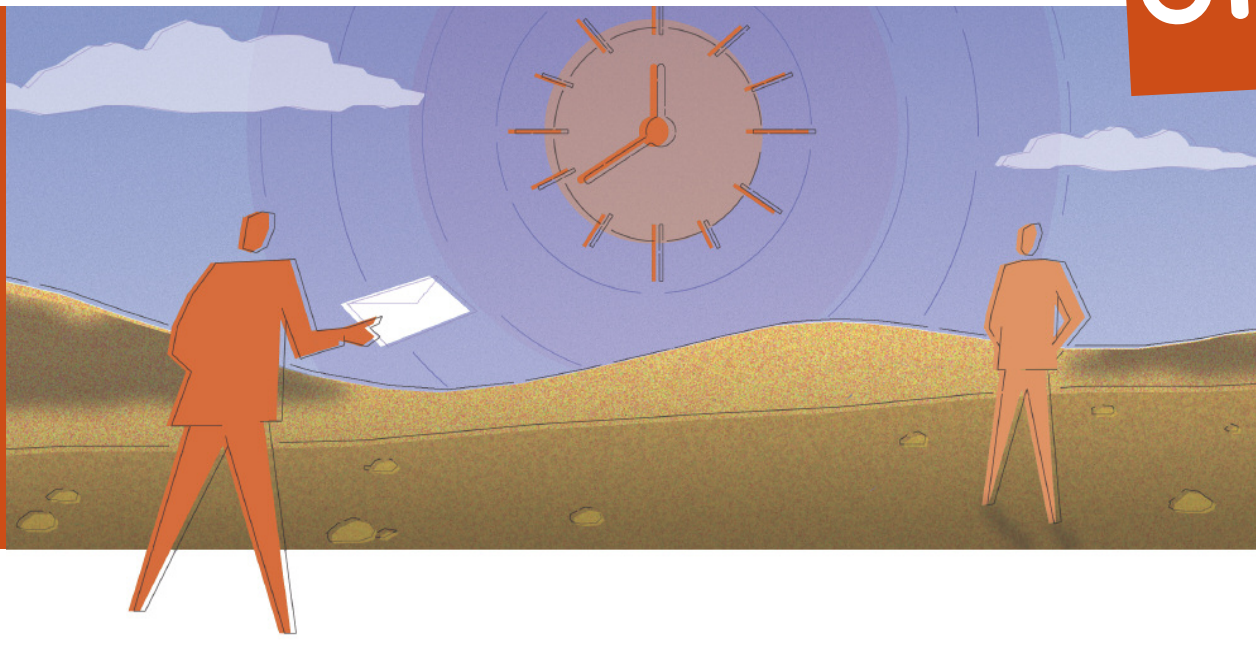
- Applications relating to **filiation**, such as a declaration of parentage and contestation of filiation application;
- An application to dissolve a civil union;
- An application to annul a marriage;
- Applications in family matters following a death, such as a motion for survival of the obligation to provide support and a motion for a compensatory allowance by the surviving spouse;
- 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**, the legal grounds, their legal consequences and the rules of particular proceedings regarding each of these applications.

REMEMBER

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

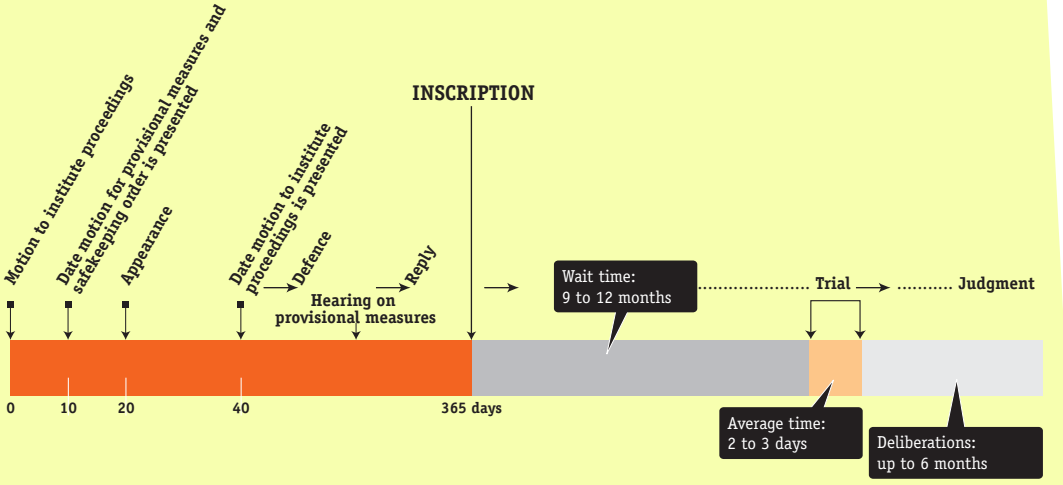
DRAFTING YOUR MOTION TO INSTITUTE PROCEEDINGS



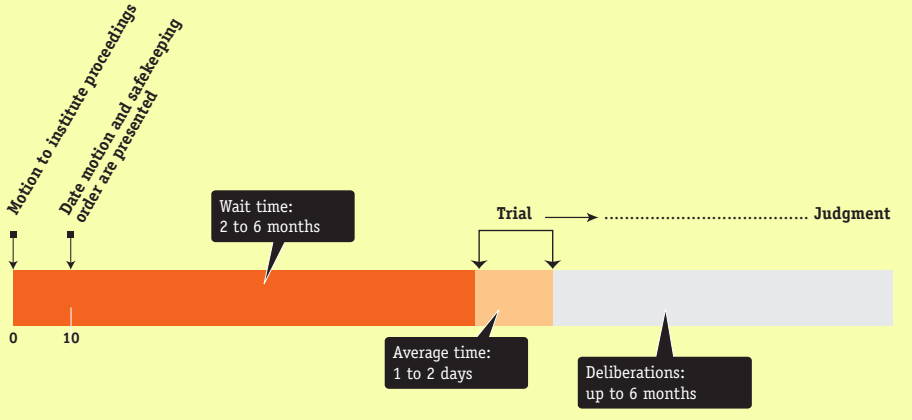
A lawsuit is started by filing an application called a "**motion to institute proceedings**". It is a written application setting out the relevant facts of the case and the legal reasons on which the application is based as well as the conclusions sought.

Although certain formalities apply to all applications (▶ See 5.1), the procedure differs depending on the nature of the motion prepared by the petitioner, i.e. whether it is an application for divorce or separation from bed and board (▶ See 5.2) or a motion between *de facto* spouses or to amend a judgment. ▶ See 5.3

Timeline for an application for divorce or separation as to bed and board



Timeline for an application between *de facto* spouses or to amend a judgment



KEEP IN MIND

The motion to institute proceedings 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, hinder the possibilities of a negotiated settlement, 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.

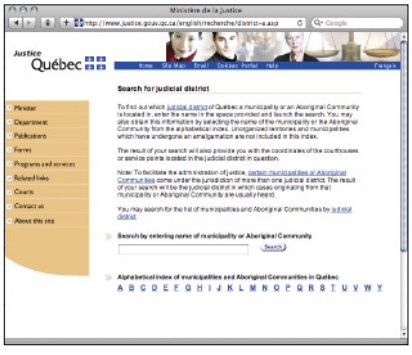
However, if you or your former spouse live outside Quebec, the Quebec Superior Court might not have jurisdiction. You should therefore do the appropriate research first.

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)

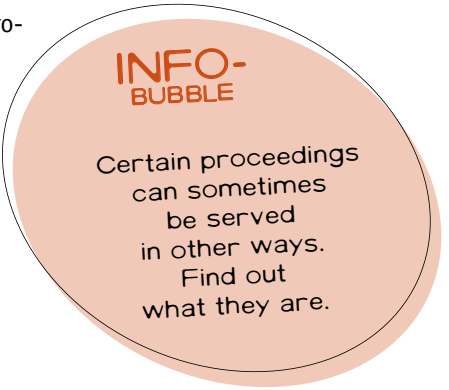
All lawsuits must be "stamped", i.e. you must have the date stamped and pay the applicable fee at the courthouse for the district where you take your action. The **court fees** vary depending on the type of application.

5.1.4 SERVING YOUR MOTION

All lawsuits must be served on the other party. This means that a copy of the proceeding must be sent to him. This **service**, which is generally 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 original motion must then be filed into the court record with **proof** that it was served on the other party.

Each proceeding following the motion to institute proceedings must also be served on the other party and filed into the court record with proof of service.

A document may be served by fax if the other party is represented by a lawyer or if you obtain the written consent of a judge or court clerk.



You should check whether your motion should also be served on a third party, such as the register 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

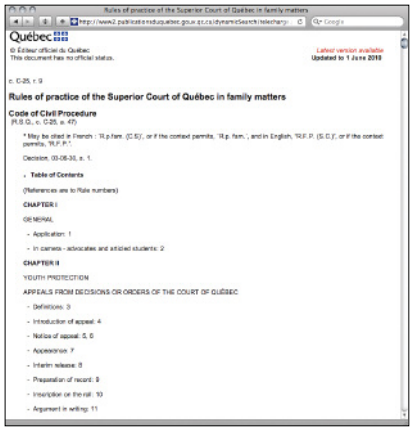
All applications for divorce and separation from bed and board must comply with the *Rules of practice in family matters*, which provide, among other things, that an application must include the following mandatory information:

- 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 there is a decision pending 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 in family matters* also provide that the application for divorce must be signed by the plaintiff and be accompanied by a **sworn statement (*affidavit*)**.

A sample application for divorce (Form 1) is attached to the *Rules of practice in family matters* which is available at: **www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=//C_25/C25R9_A.htm**.


Québec

Rules of practice of the Superior Court of Québec in family matters

Code of Civil Procedure

Table of Contents

CHAPTER I

GENERAL

CHAPTER II

YOUTH PROTECTION

APPEALS FROM DECISIONS OR ORDERS OF THE COURT OF QUÉBEC

5.2.2 THE EXHIBITS TO BE COMMUNICATED AND FILED

In accordance with the *Rules of practice in family matters*, certain **exhibits** must be communicated to the other party in an application for divorce or separation from bed and board and then filed into the Court record:

- 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 have an **expert witness** testify when your case is heard, you must have sent a copy of the report indicating what he will testify about in accordance with the rules and deadlines in the *Code of Civil Procedure*.

5.2.3 THE NOTICE OF PRESENTATION

You must attach to your application for divorce or separation from bed and board a notice addressed to the other party indicating the date the application will be presented to the court. The notice must comply with the model available at: **www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/C_25/C25R1_001_A.htm**.


Québec

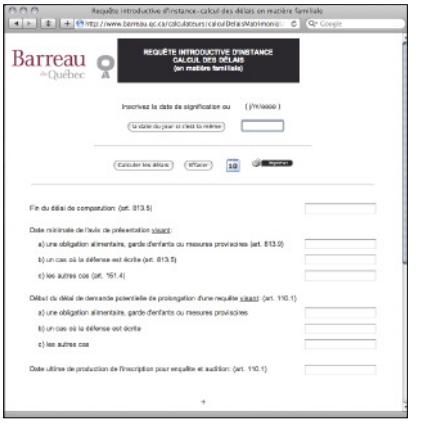
Ministerial Order respecting the notice to the defendant, notice to the defendant in family matters, notice to the debtor, and notice setting out options available to the defendant, pursuant to articles 119, 580.1, 813, and 964 of the Code of Civil Procedure

Code of Civil Procedure

SCHEDULE 1

NOTICE TO DEFENDANT

The notice must comply with the presentation time limits and give the mandatory information indicated in the *Code of Civil Procedure*. The rules for calculating time limits in family matters is available at: **www.barreau.qc.ca/calculateurs/calculDelaisMatrimonial.html** (in French only).


Barreau du Québec

REQUÊTE INTRODUCTIVE D'INSTANCE
CALCUL DES DÉLAIS
(en matière familiale)

If you include an application for **corollary relief** with your main divorce or separation proceeding, two separate notices of presentation must be attached to your proceeding, as the times for presenting them are different. ▶ See 6.1.2

KEEP IN MIND

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

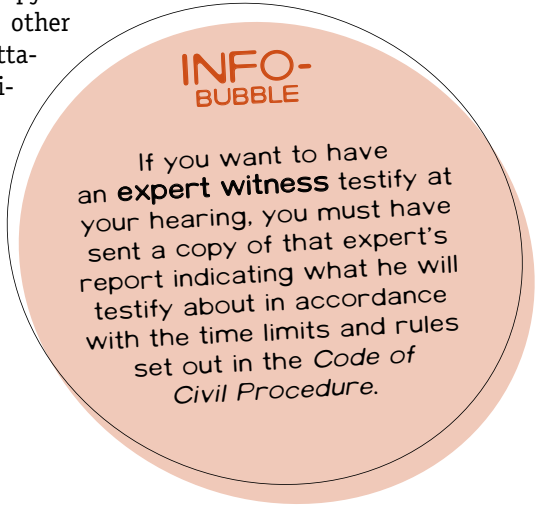
5.3.1 MANDATORY INFORMATION

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 there is a decision pending 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 motion. However, in the case of a motion 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 motion must be attached or a notice of communication of the exhibits must be attached to the motion itself.



5.3.3 **THE NOTICE OF PRESENTATION**

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

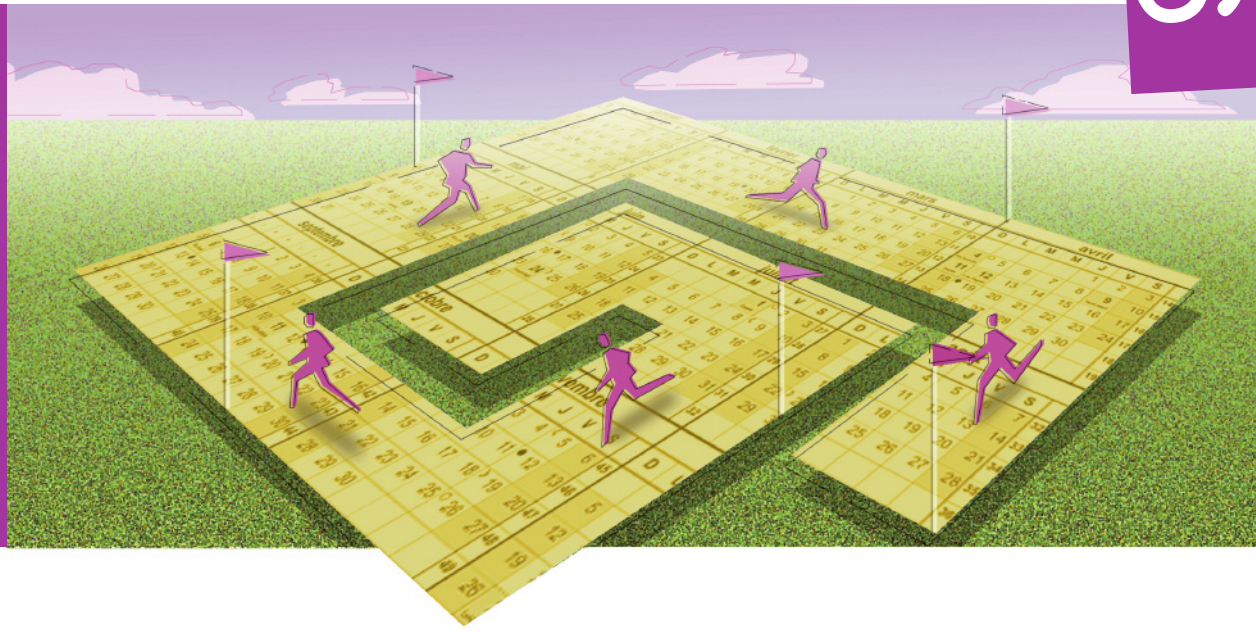
The notice must comply with the various presentation time limits and contain the information required by the *Code of Civil Procedure*, which varies depending on the type of motion presented.

A "calculator" for the presentation time limits in family matters is available at: **www.barreau.qc.ca/calculateurs/calculDelaisMatrimonial.html** (in French only).

REMEMBER

- Make sure your motion to institute proceedings includes the required information;
- Your motion to institute proceedings must contain all the facts you want to submit into evidence and all the conclusions you are seeking.

HOW THE PROCEEDINGS WILL UNFOLD



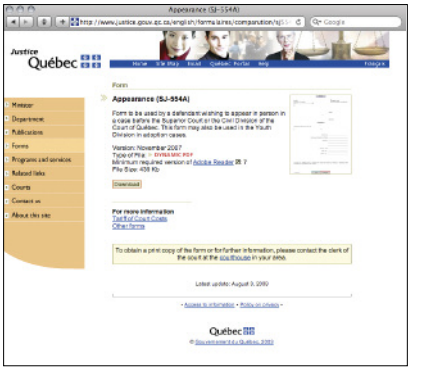
Regardless what type of application is made, each party must prepare, within the legal time limits, certain **proceedings** before the **trial** takes place. The conduct of the proceedings varies according to the type of application which may be divided into two categories:

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 APPEARANCE

The **defendant** must appear personally or through a lawyer within ten days of receiving the application. The defendant, or his lawyer, will have to prepare an **appearance** and file it with the **court office** which issued the **motion**. See: **www.justice.gouv.qc.ca/english/formulaires/comparution/sj554-a.htm**.



INFO-BUBBLE

It is recommended that the defendant contact the plaintiff or the plaintiff's lawyer to inform them of his appearance and his position regarding the claims made in the motion. This avoids unpleasant surprises, such as the defendant's employer receiving a ***subpoena*** **(summons)** to appear in court.

The appearance need not be served on the other party but it must be stamped and filed into the Court record. ▶ See 5.1.3

6.1.2 PROVISIONAL MEASURES

A motion 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;
- Partition of the parties' financial obligations.

A motion for provisional measures is written the same way as a motion 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, the hearing of a motion for provisional measures is independent of that of the main application. It is conducted the same way as a motion between *de facto* spouses or to amend a judgment. ▶ See 6.2

Like motions between *de facto* spouses or to amend a judgment, in an emergency a party may be granted a **safekeeping order** with respect to certain conclusions sought in the motion 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, in particular because 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 AGREEMENT AS TO THE CONDUCT OF THE PROCEEDINGS (SCHEDULE)

The parties must come to an **agreement as to the conduct of the proceedings (schedule)**, which must then be complied with when preparing and filing the proceedings mentioned below. A deadline must be indicated for accomplishing each of the steps, which must not take more than the 365 days allowed by law. If no agreement is reached, the court will determine the deadlines and terms applicable to the conduct of the proceedings.

6.1.5 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 motion to institute proceedings or defence.

6.1.6 THE EXAMINATION ON DISCOVERY

Each party may examine the other party before trial. The defendant may also examine the plaintiff before filing his defence. The purpose of an **examination on discovery** is to obtain information, clarifications, or documents regarding the claims and information found in the other party's proceedings.

An examination on discovery 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 examination on discovery is evidence which belongs to the party who conducted the examination. That party can choose whether or not to file the evidence.

Examinations on discovery 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 THE DOCUMENTS TO BE FILED

According to the applications set forth in the motion to institute proceedings, both the **plaintiff** and the **defendant** must fill out certain forms. 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 served on the other party. See: **www.justice.gouv.qc.ca/english/formulaires/modele/forfix-a.htm**.

- *Sworn Statement under Article 827.5 of the Code of Civil Procedure*. This form does not have to be served on 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 in family matters* and attach

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.

the required documents. The form and the attached documents must be served on the other party. See:
www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=//C_25/C25R9_A.htm.

- *Sworn Statement under Article 827.5 of the Code of Civil Procedure*. This form does not have to be served on the other party. See:
www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm.

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

In some cases, especially when the interests of the children are involved, a case cannot be heard unless a party files a mediator's report into the court record.

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

The parties must fill out a "*Statement of the Family Patrimony*" in the form indicated in *Form IV of the Rules of practice 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.

The Statement of the Family Patrimony may be served and filed at any time according to the schedule. For the plaintiff, this must be not later than the inscription and for the defendant not later than when the declaration that a file is complete is filed.

6.1.8 THE DEFENCE AND COUNTER-CLAIM

The defence is the procedure according to which the defendant responds, in writing and in detail, to the demands of the other party. It must respond in a separate paragraph to each of the **plaintiff**'s allegations, admitting or denying each paragraph of the application. The defendant also sets out his version of the facts in his defence, complying with the same requirements for drafting proceedings as those the plaintiff had to follow. If necessary, and if his application arises out of the same source as the original application, the defendant may add his own demands as if he had instituted the proceedings himself. This is called a defence and **counter-claim**.

The **defence** must be served and filed into the court office within the time indicated in the schedule. If it contains a counter-claim, it must also be stamped before being filed. ▶ See 5.1.3

6.1.9 THE REPLY AND CROSS-DEFENCE

The reply is an optional proceeding by which the plaintiff replies, in writing, to the allegations of the defence. A reply along with a cross-defence is not optional and must be filed by a plaintiff who has become the cross-defendant, failing which he will not be allowed to contest the counter-claim. Like the defence, the cross-defence must respond to each paragraph of the counter-claim in a separate paragraph which admits or denies the statement.

The reply alone or the reply and cross-defence must be served and filed at the court office within the time limits indicated in the schedule.

6.1.10 INSCRIPTION FOR PROOF AND HEARING

According to the **schedule**, but not later than one year after the motion to institute proceedings is **served**, either party, generally the plaintiff, serves on the other party and files with the court office an **inscription for proof and hearing**, a proceeding by which the court is informed that the file is complete and ready to be set for trial.

6.1.11 THE DECLARATION THAT A FILE IS COMPLETE

The person who inscribes must attach a **declaration that a file is complete** to his proceeding. This declaration must be filled out according to the *Code of Civil Procedure* and *Form II of the Rules of Practice (Superior Court)*. See:
www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=//C_25/C25R8_A.htm.

The other party must file a written statement containing the same information within thirty (30) days

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

The inscription for proof and hearing for any divorce application must be accompanied by an Attestation in respect of the Registration of Births filled out according to *Form II of the Rules of practice in family matters*. See:
www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=//C_25/C25R9_A.htm.

6.1.13 THE PROVISIONAL ROLL

When the proceedings are completed by the inscription for proof and hearing and the declarations that go with it, 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 agree to a date on which the trial will take place.

6.2 HOW THE PROCEEDINGS BETWEEN *DE FACTO* SPOUSES OR TO AMEND A JUDGMENT WILL UNFOLD

6.2.1 THE VERBAL APPEARANCE

A written appearance is not required when this type of motion is presented. However, both parties must be present or represented by a lawyer, at the time and place indicated in the notice of presentation of the motion. When the case is called, the parties will appear verbally, stating that they are present. The court will then address the parties to find out their intentions.

If the parties have come to an agreement beforehand, their agreement will be submitted to the court. However, the parties may need time to negotiate, prepare the 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 motion 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 on certain vague or ambiguous allegations found in the motion to institute proceedings.

6.2.3 THE SAFEKEEPING ORDER

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

A safekeeping 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 safekeeping 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;
- Share the parties' 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 30 days unless the court decides otherwise.

The parties traditionally make their evidence by filing a detailed **sworn statement (*affidavit*)** which completes the required forms and documents. Normally, no testimony is heard by the court 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 EXAMINATION ON DISCOVERY

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.

An **examination on discovery** 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 examination on discovery is **evidence** which belongs to the party who conducted the examination. That party can choose whether or not to file the evidence.

Examinations on discovery 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 a motion himself which will generally be heard at the same time as the plaintiff's motion.

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

According to the applications set forth in the motion, 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 served on the other party. See: **www.justice.gouv.qc.ca/english/formulaires/modele/forfix-a.htm**.

- *Sworn Statement under Article 827.5 of the Code of Civil Procedure*. This form does not have to be served on 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 in family matters* and attach the required documents. The form and the attached documents must be served on the other party. See: **www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=//C_25/C25R9_A.htm**.

- *Sworn Statement under Article 827.5*. This form does not have to be served on 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.

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

In some cases, especially when the interests of the children are involved, a case cannot be heard unless a party files a mediator's report into the court record.

6.2.7 READYING THE CASE FOR TRIAL AND HEARING DATE

If, on the date indicated in the notice of presentation of the motion, 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.tances.

REMEMBER

- Make sure you fill out the necessary forms and attach the necessary **exhibits**;
- If you don't appear or file a defence by the deadline, a judgment could be rendered against you without the court hearing your point of view;
- If you don't inscribe your case for proof and hearing 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

As 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 your claim.

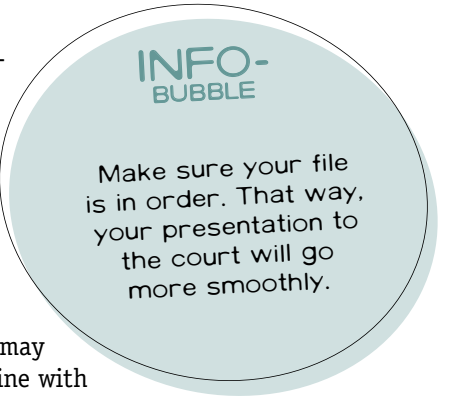
Reviewing your file is a very important step.

- 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 parties or, at least, that the list of **exhibits** is in the court record and has been sent to the other parties. Your original documents must be kept and given to the judge at trial.

- 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 IDENTIFICATION AND PREPARATION OF 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 call them as witnesses in accordance with the applicable rules and time limits. It is preferable to call witnesses long enough in advance to ensure their presence and avoid last-minute surprises or a postponement. You will have to pay your witnesses in advance according to the tariffs determined by the government to compensate them for their travel costs, meals and lodging, as well as for their time. Check with the civil **court office** to find out how much you will have to pay your witnesses.

To learn how you must act toward witnesses and what their rights are, you may 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 your opponent'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 when 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 RESEARCHING 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 informing yourself and reading about the legal principles applicable 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* and the *Divorce Act*. 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)**.

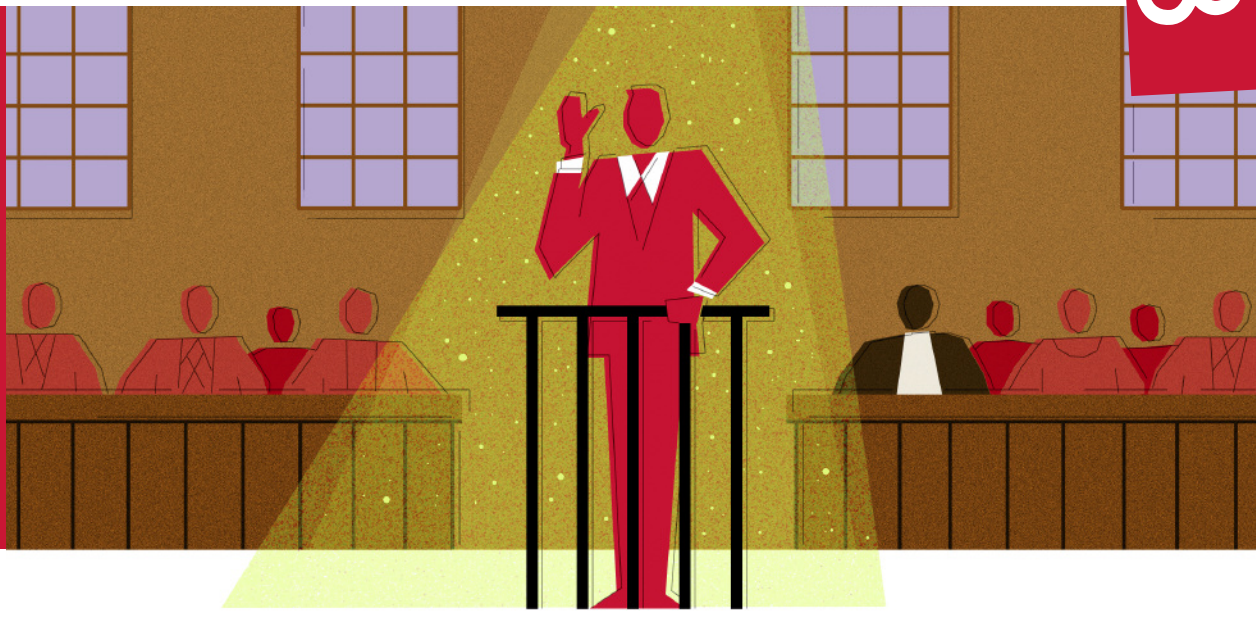
All the legal decisions and texts in support of the arguments you intend to submit to the court must be given to the other party during the trial. It is therefore important to have enough copies for the judge and each of the other parties.

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 RULE 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.

It may happen that several cases are 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 **motion** 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.

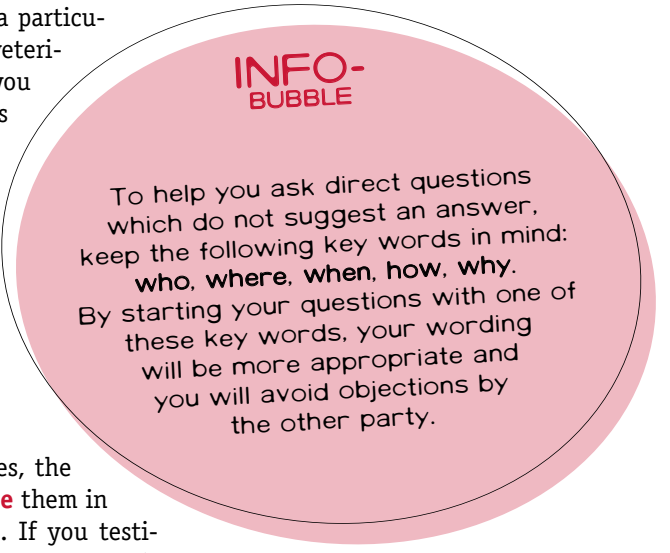
▶ THE EXAMINATION IN CHIEF

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.

As you do not have a lawyer to ask you questions, you will have to explain the relevant facts of your case of which you 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, if you want to have an **expert witness** testify, i.e. a person specialized in a particular area (an accountant, engineer, veterinarian, etc.) to give an opinion, you must have sent a copy of his expert's report to the other parties 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.

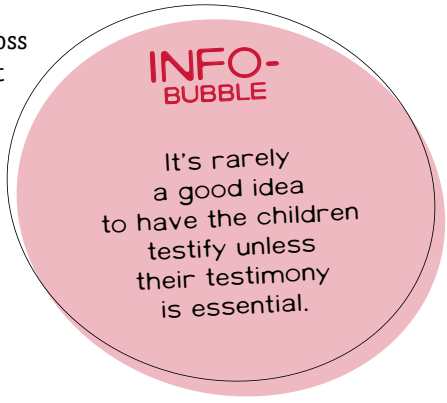
When the other party has his own witnesses testify, avoid making comments or expressing your emotions or disagreement during the testimony. You will have the chance to cross-examine them, if you feel it's necessary.

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;
- Conduct yourself in a way that will help the case go smoothly.

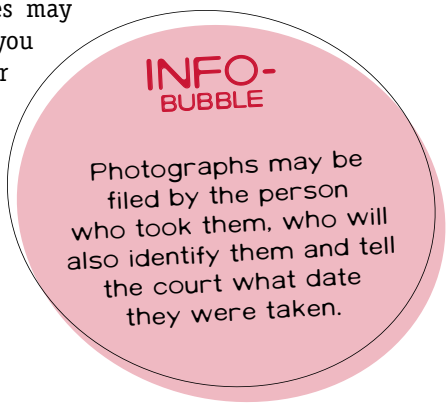
8.3.2 **FILING YOUR EXHIBITS**

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 state 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 a arguments (plea). Once again, the person who instituted the motion 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 asked 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.

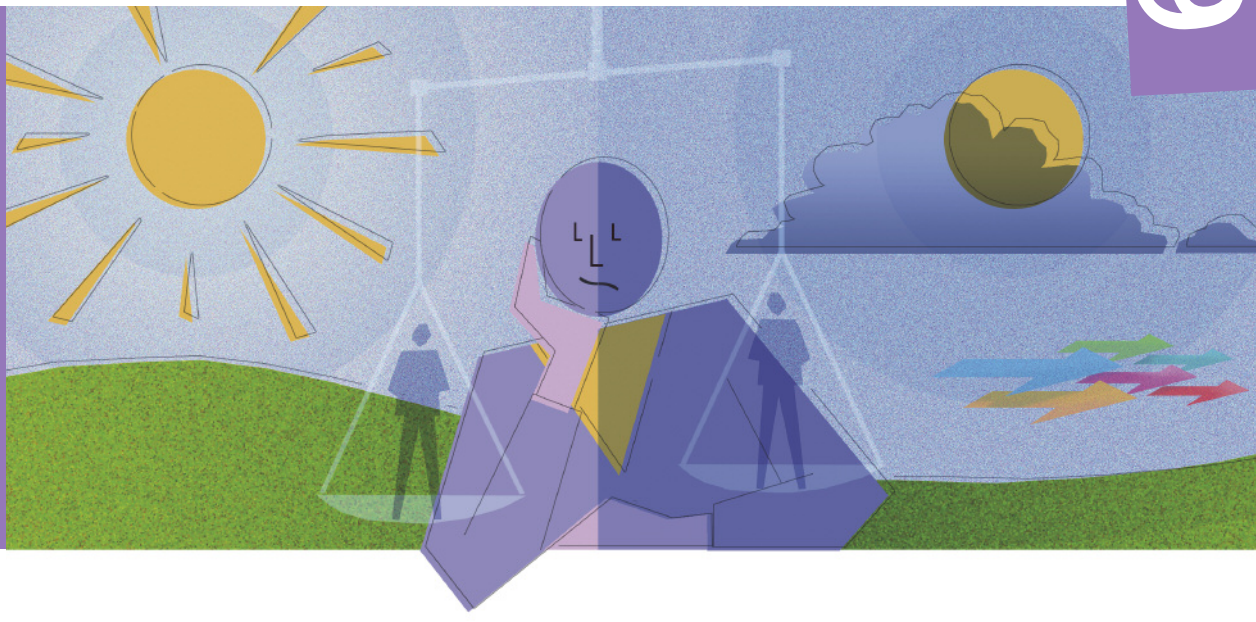
In some cases, the judge renders his decision immediately after the arguments, or "from the bench". However, in most cases, he takes the case "under advisement", i.e. he renders his decision in writing, after the trial.

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 (EXPENSES)

In most cases, judgments in family matters are rendered "each **party** paying his costs". However, in certain circumstances, the Court may order one of the parties to pay the other one what is referred to as "**legal costs**" **(expenses)**. They are certain costs which are set forth in a tariff prescribed by law.

INFO BUBBLE

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

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.

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

The Department of Revenue is responsible for enforcing the payment of support in Quebec.

INFO-BUBBLE

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

➲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 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, or leave, 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 necessarily 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:

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.

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

www.caij.qc.ca

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

CHAMBRE DES HUISSIERS DE JUSTICE DU QUÉBEC:

www.bailiffsquebec.qc.ca

A site giving access to the professional body for bailiffs.

ÉDUCALOI:

www.educaloi.qc.ca

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

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.

PUBLICATIONS DU QUÉBEC:

www.publicationsduquebec.gouv.qc.ca

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

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.

STÉNOGRAPHES DU QUÉBEC:

www.barreau.qc.ca/pdf/stenographes/tableau-stenographes.pdf

Site giving access to the Order of Official Stenographers.

LEGAL INFORMATION OFFICES

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

- University of Ottawa
  613 562-5600
- University of Montreal
  514 343-6111
- University of Sherbrooke
  819 821-8000, ext. 65221
- Université du Québec à Montréal (UQAM)
  514 987-6760
- Laval University
  418 656-7211
- McGill Legal Information Clinic
  514 398-6792

OTHER RESOURCES

SAGE*

Pilot project set up by the Montreal Bar in conjunction with other organizations which offers people who are not represented by a lawyer and who are referred by the Court a 30-minute information session given by a lawyer.

**Note that this service is only offered to people who are referred by the Court.*

DROIT DE SAVOIR

www.ledroitdesavoir.ca

Television programs on the Savoir and Télé-Québec channels which cover various public interest topics. See in particular issues 2, 4 and 8.

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 **(SWORN STATEMENT)** – 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.

AGREEMENT AS TO THE CONDUCT OF THE PROCEEDINGS (SCHEDULE) – An agreement through which the parties or their attorneys draw up a schedule of the upcoming procedural steps and the deadlines which must be met, within the limits prescribed by law.

APPEARANCE – The act of presenting oneself before the court as a witness or party.
It is also a written proceeding informing the court and third parties of a person's presence in the file. When a lawyer is hired, he files an appearance indicating his contact information and which party he represents. A party who does not have a lawyer must file a personal appearance. The proceedings and documents relevant to the lawsuit must then be communicated or served on the person who signed the appearance.

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.

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 (LAW STAMP) – Legal fees charged by a legal officer for certain documents and legal proceedings.

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-CLAIM (COUNTER-CLAIM) – 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-claim 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.

DECLARATION THAT A FILE IS COMPLETE (CERTIFICATE OF READINESS) – 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.

DEFENCE (PLEA) – A proceeding which is usually written in which the defendant sets out 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.

EXAMINATION ON DISCOVERY – 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 on discovery or to provide any written document relating to the application or the case.

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 acquired during the parties' marriage is divided up equally between them 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 PROOF AND HEARING – A proceeding which is normally filed by the plaintiff, when the file is ready to be heard by a judge. The serving and filing of this written document follows strict rules which, if they are not followed, could lead to the dismissal of the application.

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 a motion to institute proceedings.

LEGAL COSTS (EXPENSES) – Costs predetermined by law, normally payable by the party who loses the case or is the subject of an order.

LITIGATION – A dispute between two or more parties.

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.

MOTION – An application to the court to obtain an order or a decision on a point of law or procedure.

MOTION TO INSTITUTE PROCEEDINGS – A proceeding according to which a lawsuit is usually instituted. The motion to institute proceedings is in writing and clearly states the facts on which the claim is based and the conclusions sought.

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.

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.

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

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

PROCEEDINGS – A set of documents leading to a decision by a court, such as the motion to institute proceedings, appearance, defence, reply, 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.

REPLY – A proceeding in which the plaintiff sets out the facts and arguments on which he is basing himself to attempt to set aside points raised by the defence.

SAFEKEEPING ORDER – A temporary emergency measure ordered by the court to preserve the rights of one of the parties to the case.

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, is brought to the knowledge of a third party. 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) –** An order to attend court at a given place and time, under threat of penalty.

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 time-frame 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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DECIDING WHETHER OR NOT TO REPRESENT YOURSELF

STEP 2
THE ROLE OF EVERYONE INVOLVED

STEP 3
DISPUTE RESOLUTION METHODS

STEP 4
TYPES OF APPLICATIONS IN FAMILY MATTERS

STEP 5
DRAFTING YOUR MOTION TO INSTITUTE PROCEEDING

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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