Fondation du Barreau Québec

REPRESENTING YOURSELF IN COURT

In CIVIL Matters

BOOKLET 1

8 STEPS TO GUIDE YOU

REPRESENTING YOURSELF IN COURT

In CIVIL Matters

BOOKLET 1

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, so they can make informed choices about what to do.

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

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

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

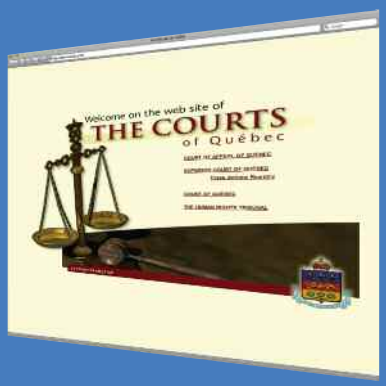
- Are you capable of acting alone?
- Should you consult a lawyer?
- Should you hire a lawyer to represent you?

This guide will help you answer those questions.

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

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

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



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

REPRESENTING YOURSELF IN COURT
In Civil Matters

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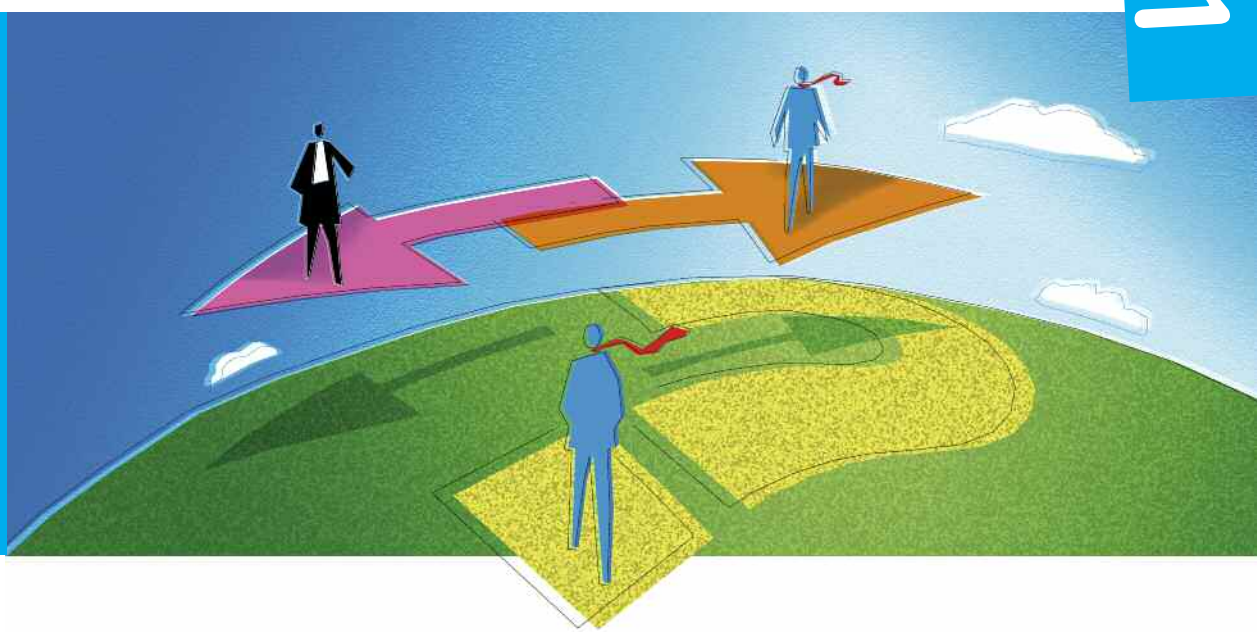
DECIDING
WHETHER OR NOT TO BE REPRESENTED BY A LAWYER



1.1 YOUR RIGHT TO BE REPRESENTED BY A LAWYER

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

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

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

www.barreau.qc.ca/en/public/trouver/index.html?Langue=en

1.2 YOUR RIGHT TO REPRESENT YOURSELF

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

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

1.3 SHOULD YOU HIRE A LAWYER OR NOT?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Don't forget, you can always attempt to use an alternative method for settling a dispute between you and one or more other people. ▶ See Step 8.

REMEMBER

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

IDENTIFYING THE ROLE OF EVERYONE INVOLVED

2.1 THE LAWYER

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

Your lawyer may, for example:

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

- Discuss and negotiate with the opposing **party** or his lawyer;
- Represent you before the court;
- Submit your **evidence** and contradict that of the opposing party;
- Examine **witnesses** and cross-examine those of the opposing party;
- Help make your experience easier and less stressful;
- Advise you 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 submit to inspections by the Bar.

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

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

2.2 THE JUDGE

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

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

The judge may, for example:

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

2.3 THE COURT OFFICE STAFF

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

For example, the court office staff may:

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

However, the court office staff may under no circumstances:

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

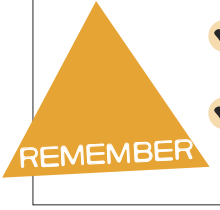
2.4 THE OPPOSING PARTY'S LAWYER

If you are self-represented whereas 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 an opinion and explain a position. You may also try to argue with him and come to a settlement. You are free to agree or disagree with him.

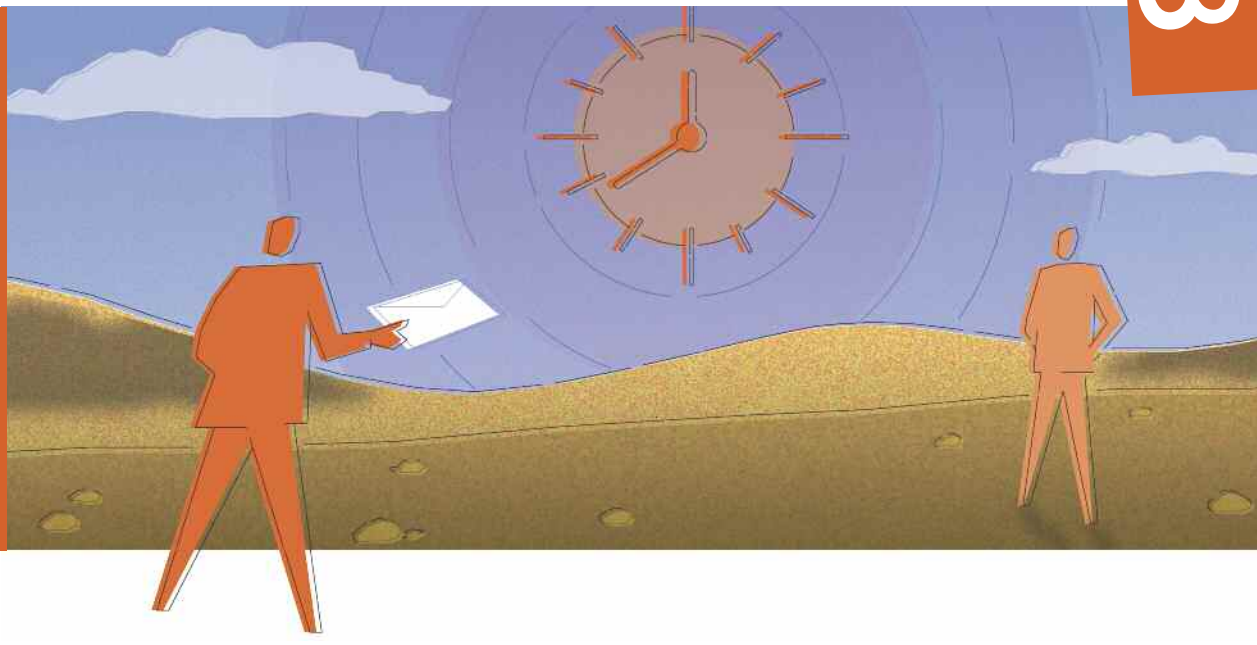
Lawyers have a duty to be courteous toward you, as well as toward everyone involved. You must act the same way toward them.

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



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

FILING
A LEGAL ACTION



3.1 THE DEFINITION OF A LEGAL ACTION

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

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

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

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

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

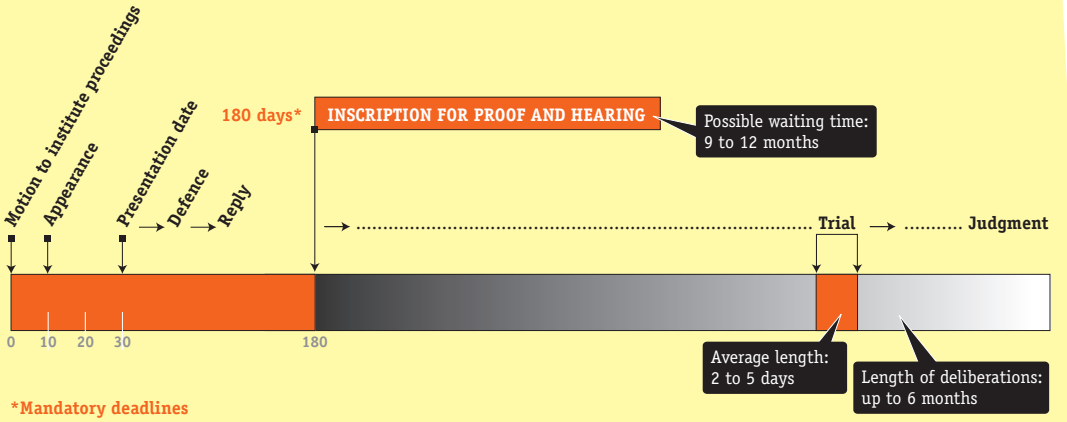
In addition, in some situations, you must have sent a particular notice beforehand, within the time prescribed by law, for example, if you had a claim against a municipality for property damage. Your application may be dismissed merely because you did not take your action within the time required by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

KEEP IN MIND

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

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

The typical path of a CIVIL LAW case



*Mandatory deadlines

3.2 THE STEPS AND RULES TO BE FOLLOWED

3.2.1 THE DEMAND LETTER

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

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

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

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

Except in an emergency, take the time to send a demand letter. A favourable response could mean you will avoid having to file the suit.

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

INFO-BUBBLE

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

KEEP IN MIND

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

3.2.2 THE MOTION TO INSTITUTE PROCEEDINGS

In most cases, a legal action is taken through a written motion to institute proceedings, which set out the relevant facts of the case and the conclusions sought.

▶ WHICH COURT WILL HEAR YOUR CASE?

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

For example, if you are claiming $70,000 or more, it must generally be brought before the Superior Court. However, if it is less than $70,000, the Court of Québec normally has jurisdiction.

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

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

▶ THE APPROPRIATE JUDICIAL DISTRICT

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

▶ DRAFTING YOUR MOTION TO INSTITUTE PROCEEDINGS

Once those choices are made, it's time to draft your motion to institute proceedings.

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

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

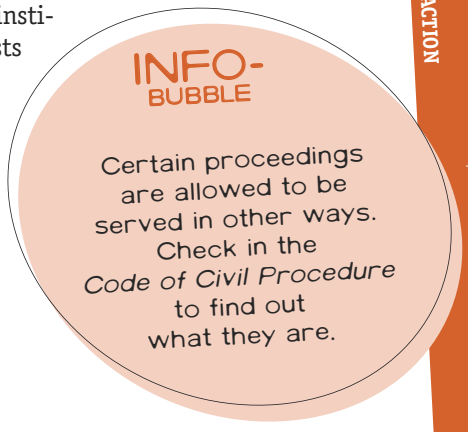
Once your motion to institute proceedings is ready, you must have it stamped with the date and pay the applicable fees at the courthouse in the district where you are required to institute your action.

3.3 THE SERVING OF YOUR MOTION

Once it is written and stamped, the motion to institute proceedings as well as the other proceedings must be served on your opponent, i.e. a copy of the proceeding must be sent to him in the manner prescribed by the rules of procedure.

For each proceeding, proof of **service** must be filed into the court record. You must ask a bailiff to serve the motion to institute proceedings for you. Remember, there are costs associated with serving any document.

When a lawyer has filed an **appearance** (▶ see 4.1), you can serve certain documents by fax, following specific rules set out in the *Code of Civil Procedure*. If the other party does not have a lawyer, you must obtain the written consent of the judge or **court clerk** to serve a document by fax.



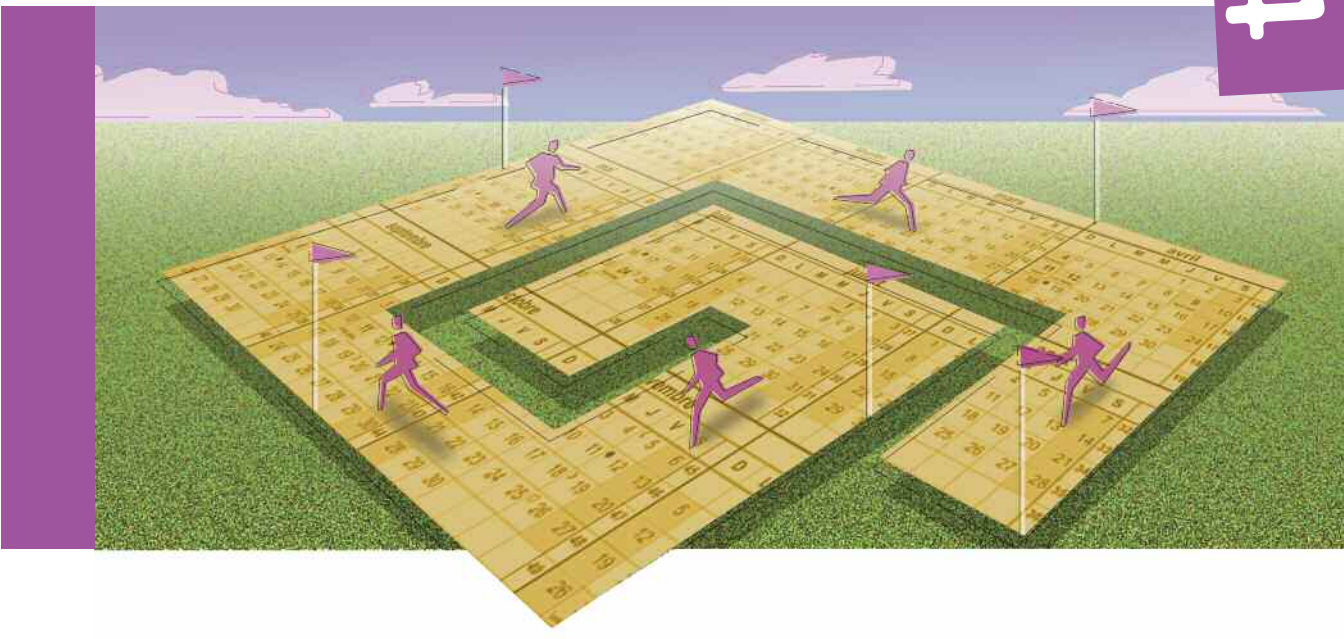
3.4 THE COSTS

The filing of a legal action and certain other proceedings in the court record leads to **legal costs (expenses)** which you have to pay immediately at the court office, in accordance with the fees set by the government.

The costs associated with certain proceedings vary depending on the amounts in question and are subject to change.

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

UNDERSTANDING THE PROCEEDINGS



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

4.1 THE APPEARANCE

If you receive a **motion to institute proceedings**, it is very important to read it carefully. The motion states what is being asked of you. The notice which accompanies the motion contains instructions you must follow to defend yourself. In particular, it indicates how much time you have to file an **appearance** in writing, either personally or through a lawyer.

An appearance is a written document you must file with the **court clerk**, upon the payment of a fee prescribed in the tariffs set by the government. Out of courtesy, you must send a copy of the appearance to each of the other parties.

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

4.2 THE PROCEEDINGS AND STEPS OF A CASE

4.2.1 THE AGREEMENT AS TO THE CONDUCT OF THE PROCEEDINGS

After the **defendant** appears, the parties must reach an **agreement as to the conduct of the proceedings (schedule)**. This is a schedule agreed to by the parties in which the proceedings and steps to be taken must be listed. A deadline must be indicated for accomplishing each of the steps, which must not take more than 180 days. ▶ See 3.1

For example, you must indicate:

- Whether you intend to submit preliminary objections and within what timeframe; ▶ See 4.2.2
- Whether you wish to conduct **examinations on discovery** and within what timeframe; ▶ See 4.2.3
- Whether you wish to submit an expert's report and within what timeframe;
- By what date the **defence** and **exhibits** must be served on the other parties; ▶ See 4.3
- The date on which the **inscription for proof and hearing** will be filed. ▶ See 4.4

Each party then signs the agreement, which must be filed in the court office. If the parties fail to agree, the court determines the timeframes and conditions applicable to the conduct of the case.

4.2.2 **THE PRELIMINARY OBJECTIONS**

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

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

4.2.3 **THE EXAMINATION ON DISCOVERY**

Unless the amount involved is less than $25,000, each party has the right to examine the opposing party before or after the defence, but before the trial. Other people may also be examined, generally with the court's permission.

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

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

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

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

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

Examinations on discovery are governed by specific rules, which must be followed by all parties, even when a party represents himself.

4.3 THE DEFENCE

The defence is a response to the motion to institute proceedings. It is normally in writing, although the rules of procedure provide for certain situations where the defence may be submitted verbally. A defence may also include a **cross-claim (counter-claim)**.

4.3.1 THE WRITTEN DEFENCE

If you are the defendant, you must admit or deny each of the paragraphs written by the **plaintiff** and explain in detail the arguments and facts on which you are basing yourself to have the opposing party's claims dismissed.

Once it is prepared, your defence must be served on your opponent and filed in the court office, in accordance with the applicable time limits and rules of procedure.

4.3.2 THE VERBAL DEFENCE

Like a written defence, the purpose of a verbal defence is to contest the motion to institute proceedings. The difference is that it is presented verbally on the day scheduled for the presentation of the motion to institute proceedings, or at any other time agreed upon by the parties or set by the judge. However, the court could ask you to state your defence briefly, verbally or sometimes in writing.

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

4.4 THE INSCRIPTION FOR PROOF AND HEARING

The inscription for proof and hearing is a proceeding in which the plaintiff informs the court that the file is complete and that he is ready to be heard by a judge.

If you're the plaintiff, it is very important to inscribe your case for proof and hearing within the time required by law, as indicated in the *Code of Civil Procedure*.

The inscription must be accompanied by another written proceeding called the "**Declaration that a File is Complete**", which must contain all the information required according to the applicable rules. Then the defendant files his Declaration that a File is Complete within the specified time. The file is then sent to the Master of the Rolls, who inscribes the case to be heard before a judge.

KEEP IN MIND

Special rules of procedure must be followed to inscribe for proof and hearing.

4.5 THE CALLING OF THE ROLL

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

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

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

REMEMBER

- ✓ Be sure you comply with the deadlines for filing your proceedings;
- ✓ If you don't appear or file a defence within the specified time, a judgment may be rendered against you without your having expressed your point of view;
- ✓ If you don't inscribe your case for proof and hearing within the specified time, you could have to start your proceedings over again from the beginning or even lose your case.

PREPARING FOR TRIAL

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

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

5.1 THE REVIEW OF YOUR FILE

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

Reviewing your file is a very important step.

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

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

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

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

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

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

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

- How to submit and present your proof and arguments;

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

5.2 THE IDENTIFICATION AND PREPARATION OF YOUR WITNESSES

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

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

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

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

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

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

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

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

When you have identified the people whose presence is necessary at trial, you must call those 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 postponements. 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 also wish to read the "Statement of Principle regarding Witnesses" signed by judges, the Barreau du Québec and Québec's Ministère de la Justice at **www.justice.gouv.qc.ca/english/publications/generale/declar-a.htm**.

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

▶ YOUR WITNESSES

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

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

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

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

▶ THE OTHER PARTY'S WITNESSES

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

5.3 RESEARCH INTO THE APPLICABLE LEGAL PRINCIPLES

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

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

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

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

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

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

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

THE TRIAL

6.1 THE RULES OF CONDUCT BEFORE THE COURT

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

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

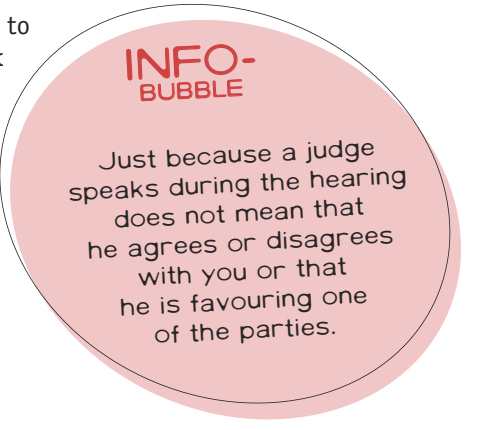
Certain rules of conduct must be followed in the **hearing** room, such as:

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

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

Judges must ensure that the hearing is conducted properly and efficiently. They may ask you certain questions regarding the facts you are explaining. Although you are very familiar with your 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 the judge's remarks and questions, and answer them as best you can.

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



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

6.2 THE DAY OF THE TRIAL

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

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

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

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

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

6.3 THE PRESENTATION OF YOUR EVIDENCE

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

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

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

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

6.3.1 **THE TESTIMONY**

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

▶ THE EXAMINATION IN CHIEF

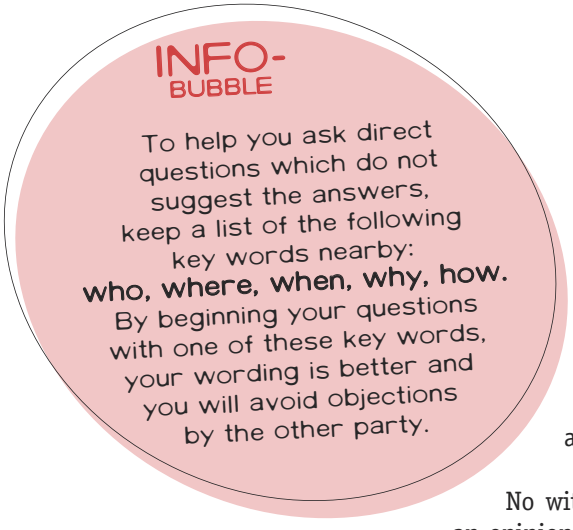
If you're the plaintiff, you are normally the first to have your witnesses heard. If you wish, you can testify yourself at the very beginning of the trial, in which case you become the first witness in your case. Like all witnesses, you will have to solemnly declare that you will tell the truth during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

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

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

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

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



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

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

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

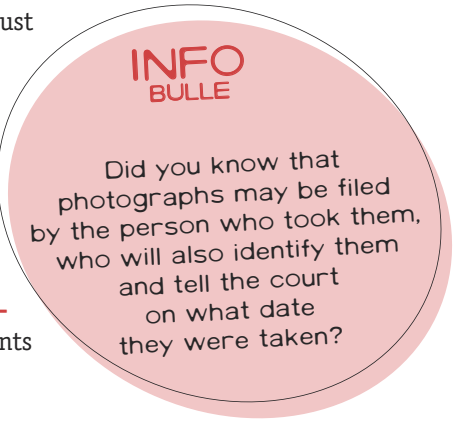
The cross-examination is a sensitive stage which requires finesse, listening and strategy.

6.3.2 **THE FILING OF YOUR EXHIBITS**

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

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

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



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

6.4 **YOUR ARGUMENTS**

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

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

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

During your arguments before the court, be sure you make the connection with the legal principles you mentioned in support of your claims.

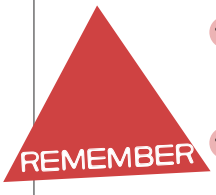
There's no need to repeat the entire trial. Remember, the judge heard all the evidence and took notes. You need only stress the important facts. You may also point out any contradictions you might have noticed.

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

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

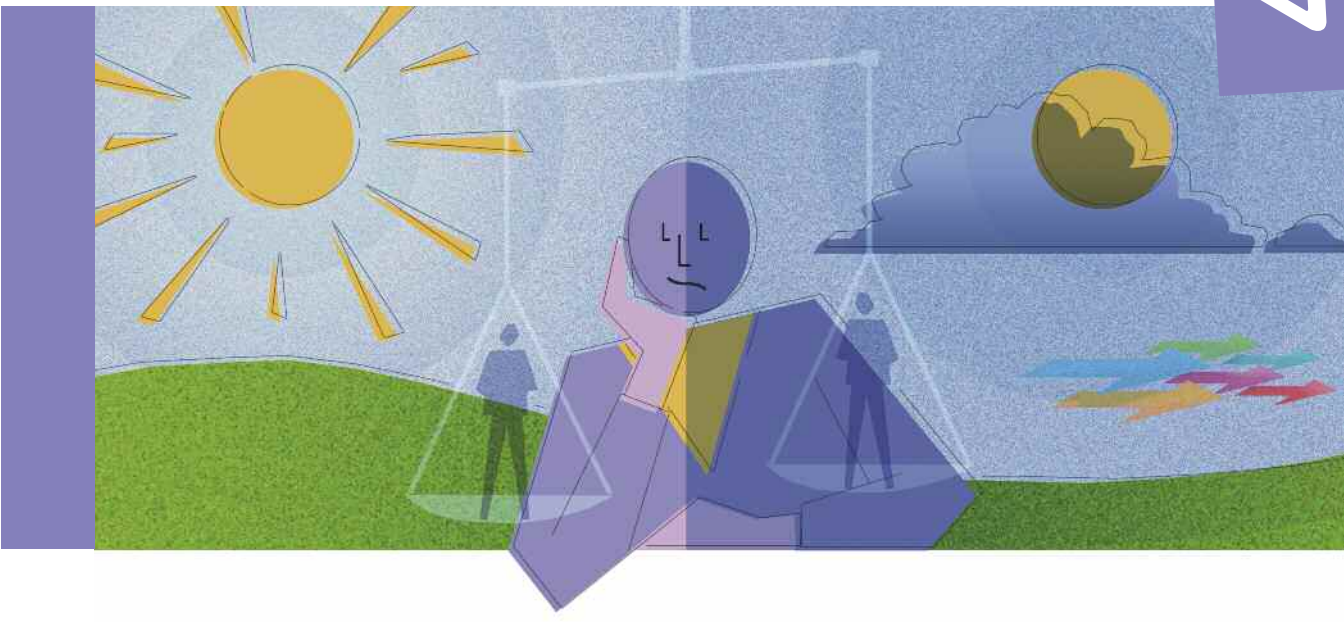
In some cases, the judge renders a decision immediately after the arguments, or "from the bench". However, in most cases, the judge takes the case "under advisement", rendering the decision in writing, after the hearing.

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



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

WHAT HAPPENS AFTER THE JUDGMENT



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

7.1 THE LEGAL COSTS (EXPENSES)

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

Legal costs include:

- Disbursements, i.e. certain disbursements you had to incur, such as the fee for filing your **motion to institute proceedings** or to file your **appearance**, some **bailiff** fees, **witness** travel costs, etc., according to the tariffs established by the government.

- Legal fees, the amount of which is set out in the *Tariff of judicial fees of advocates* adopted by the government and which may only be given to lawyers. This shouldn't be confused with the professional fees lawyers charge their client for the services performed.

To find out the terms of payment of legal costs, see the rules to that effect.

7.2 THE EXECUTION OF THE JUDGMENT

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

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

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

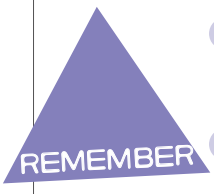
7.3 THE APPEAL OF THE JUDGMENT

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

In certain cases, an appeal is not "as of right", or automatic. Here again, special rules apply. For example, if you appeal to the Court of Appeal (**appellant**) and the amount of the award is less than $50,000, you must first ask for permission, or leave to appeal. Leave to appeal is given by **motion** presentable to the Court of Appeal, according to certain specific terms and time limits.

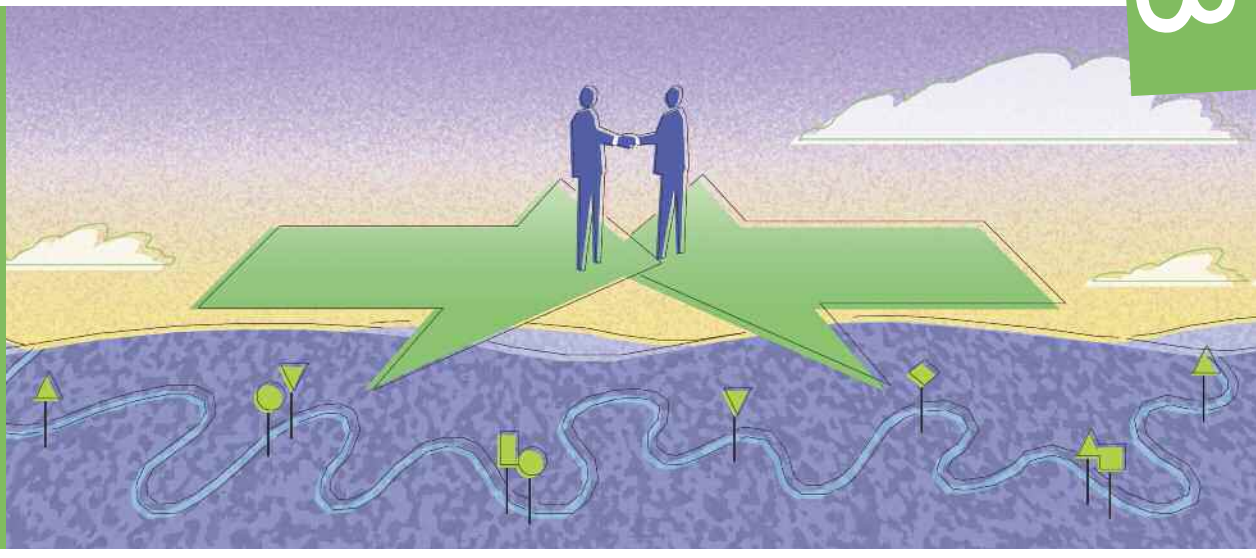
Even if your appeal is automatic or even if you are given leave to appeal to the Court of Appeal, that does not mean that the judgment you want to have reviewed will necessarily be changed. The evidence and arguments that will be examined by the Court of Appeal are the same as the ones that were submitted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

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



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

DISPUTE RESOLUTION METHODS



Turning to the courts is not the only solution to a conflict between you and another person. You may want to look at other options or dispute settlement 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 settlement methods, the **case** is settled before it goes to **trial**, and sometimes even before a **lawsuit** is filed.

8.1 NEGOTIATION

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

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

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

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

8.2 THE SETTLEMENT CONFERENCE

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

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

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

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

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

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

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

8.3 MEDIATION

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

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

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

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

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

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

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

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

BARREAU DU QUÉBEC:
www.barreau.qc.ca

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

CENTRE D'ACCÈS À L'INFORMATION JURIDIQUE (CAIJ):
www.caij.qc.ca

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

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

A site giving access to the professional body for bailiffs.

ÉDUCALOI:
www.educaloi.qc.ca

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

MINISTÈRE DE LA JUSTICE DU QUÉBEC:
www.justice.gouv.qc.ca/english/formulaires/formulaires-a.htm

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

PUBLICATIONS DU QUÉBEC:
www.publicationsduquebec.gouv.qc.ca

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

THE QUÉBEC LAW NETWORK:
www.avocat.qc.ca/english/index.htm

A site which publishes texts written by 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/fr/avocats/praticien/stenographes/index.html

Site giving access to the Order of Official Stenographers.

LEGAL INFORMATION OFFICES

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

LAVAL UNIVERSITY
www.bijlaval.ca/ **ou** 418 656-7211

MCGILL LEGAL AID CLINIC
http://mlic.mcgill.ca/site.php?lang=fr&page=legalclinic **ou** 514 398-6792

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

UNIVERSITY OF MONTREAL
www.droit.umontreal.ca/services/services_juridiques.html **ou** 514 343-7851

UNIVERSITY OF OTTAWA
www.uottawa.ca/associations/clinic/eng/main.htm **ou** 613 562-5600

UNIVERSITY OF SHERBROOKE
www.usherbrooke.ca/etudiants/services-a-la-vie-etudiante/cles/cle-de-vos-droits/
ou 819 821-8000, poste 65221

GLOSSARY

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

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 action of presenting oneself to the court, as a witness or a party.
It is also a written proceeding informing the court and third parties of one's presence in a case. When lawyers are hired, they file an appearance indicating their contact information and which party they represent. A party who is representing himself must file a personal appearance. The proceedings and relevant documents relating to the lawsuit must then be communicated to or served on the person who made the appearance.

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

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

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

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

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

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

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

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

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

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 the other party's witnesses.

DECLARATION THAT A FILE IS COMPLETE – A document filled out by the parties or their attorneys according to specific standards prescribed by law. This document is normally filed when all the steps leading up to trial are complete.

DEFENCE (PLEA) – A proceeding which is usually in writing 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 the trial. Following specific rules, a party may assign another party, that party's representative or a third party to be examined on discovery or to provide any written document relating to the claim 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 certain skills and particular knowledge about a subject, gives an opinion on that subject. Whether or not an expert witness' testimony is admissible is up to the judge and follows specific rules of procedure.

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

IMPLEADED PARTY – A person involved in a lawsuit whose role is as a third party but whose presence is necessary for the complete resolution of the case.

INSCRIPTION *EX PARTE* – A proceeding filed by the plaintiff to obtain a judgment against a defendant who has not filed a defence within the time prescribed by law.

INSCRIPTION FOR A JUDGMENT BY DEFAULT – A proceeding filed by the plaintiff to obtain a judgment against a defendant who has not appeared within the time prescribed by law.

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 action.

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

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

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

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

LITIGATION – A dispute between two or more parties.

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

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

MOTION TO INSTITUTE PROCEEDINGS – The 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 the notes.

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

PETITIONER – A person who takes the initiative to submit a motion during a case.

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.

PRECEDENT – A decision, most often from the Court of Appeal or the Supreme Court of Canada, on which a party bases himself so he will receive the same treatment on issues coming before the court again. Precedents must normally be followed by the lower courts.

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.

PRESUMPTION – A consequence which the law or the court draws from a known fact to conclude in the existence of an unknown or unproven fact.

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.

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.

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

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

SERVICE – A 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.

SUBPOENA or APPEARANCE NOTICE – An order to attend court at a given place and time, under threat of penalty.

SUBPOENA DUCES TECUM – An order mentioned in a subpoena for persons to bring certain documents or materials in order to file them during their testimony.

SWORN STATEMENT (AFFIDAVIT) - 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.

TRIAL – A hearing before a judge during which the parties attempt to prove their opposing claims, in accordance with the rules prescribed by law. During the trial, the parties may file documents, have witnesses testify and cross-examine those of the opposing party. When the evidence is declared closed, the 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.

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In Civil Matters

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DECIDING WHETHER OR NOT TO BE REPRESENTED BY A LAWYER

STEP 2
IDENTIFYING THE ROLE OF EVERYONE INVOLVED

STEP 3
FILING A LEGAL ACTION

STEP 4
UNDERSTANDING THE PROCEEDINGS

STEP 5
PREPARING FOR TRIAL

STEP 6
THE TRIAL

STEP 7
WHAT HAPPENS AFTER THE JUDGMENT

STEP 8
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