

# YOU ARE BEING SUED IN SMALL CLAIMS COURT?

WHAT YOU NEED  
TO KNOW!



An initiative of the **Table de concertation  
en matière de petites créances**

## You are being sued?

You just received documents saying you are being sued in the **Small Claims Division** of the Court of Québec (often called small claims court). The person suing is called the plaintiff, and you are the defendant.

If you want to challenge the claim, you must notify the court office within 20 days of receiving the documents. To help you decide whether to challenge, you can do these things:

- **Contact the person making the claim** (the plaintiff) to try to solve the problem without going to court.
- Consider other ways to solve the conflict, such as **negotiation** (with or without the help of a lawyer or notary), **mediation** or **conciliation**.
- Consult a lawyer or notary to get a **legal opinion** about the plaintiff's chances of winning.
- Check whether the claim was filed within the legal deadline (called the **prescription period**). If the plaintiff waited too long, you can ask that the claim be refused. But it's up to you to prove the claim was made after the deadline.
- Identify the **facts** (events, conversations, dates, etc.), the **proof** you have (documents, witnesses, etc.) and the **arguments** you can use **to defend yourself**.

Plaintiffs have the **burden of proof**. Plaintiffs must convince the judge that their version of the facts is the right one and that their claims should be allowed.

To find out about the **rules of evidence** (proof) and to get help, contact one of the organizations listed at the end of this pamphlet.

If you decide to challenge the claim, you must notify the office of the court by filling out a **response form** within **20 days** and pay the required **fee**.

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It's important to remember these things:

- You can also make a claim against the plaintiff (a **counterclaim**) or against another person involved in the conflict (a **recourse in warranty**).
- You will have to take **time off work** to go to court.
- The decision (**judgment**) of the small claims court is final. There is **no appeal**.
- The **decision is public** and accessible on various websites.

If you don't challenge the claim and are not in court for the trial, the judge can make a decision against you (a judgment by default). You can ask the court to cancel this decision (revocation) and hold a new trial. But you need a good reason for not being at the trial, such as illness.



## Can you settle out of court after challenging the claim?

Yes. You can settle **any time** before the judge decides the case, even the morning of the trial.

The court office will tell you that you can settle with the help of a mediator (a lawyer or notary). **Mediation is free** and does not delay the case.

For more information, contact the office of the Court of Québec at the courthouse closest to you.

## What happens after the case is decided?

If the plaintiff does not convince the judge, the claim will be dismissed and the case closed.

But if the plaintiff wins the case, there will be a decision against you. You then have **30 days to pay** the amount mentioned in the decision. If you didn't challenge the claim and there was a decision "by default", you have only 10 days to pay.

You can always negotiate a **payment arrangement** with the plaintiff to pay the amount in installments. The plaintiff doesn't have to agree. But it can be to the plaintiff's advantage because it avoids having to take steps to force you to pay (see below).

If you can't agree on a payment arrangement and don't pay on time, the plaintiff has **10 years to take legal action to force you to pay** (called **execution of the judgment**). This means the plaintiff can seize your property to get paid.

## What are the various kinds of seizures?

**Seizure of movable property:** items such as jewelry, musical instruments, sports equipment and electronic devices.

**Seizure in the hands of a third person:** things you own that are in the possession of another person. Examples are your salary and money in a bank account.

**Seizure of immovable property:** includes property such as a house, land or a chalet. But your main residence can't be seized unless you owe \$20,000 or more.

# How is a seizure done?

If the plaintiff wins the case, your property can be seized to pay the amount you owe. The plaintiff hires a bailiff. The bailiff prepares a document called a notice of execution and files it in court. The notice lists the property to be seized.

To avoid having your property seized, you must pay the bailiff the whole amount you owe. This amount includes these things:

- **total amount in the judge's decision**, which usually includes the fees the plaintiff paid to file the claim
- **interest accumulated** on that amount
- **cost of executing** the judgment (cost of the seizure)

If you don't pay, the bailiff will seize the property listed in the notice of execution. The bailiff can ask you questions about your financial situation (debts and income). You must reply. Depending on the type of seizure, the bailiff can sell some property and give the plaintiff the money received from the sale.

A seizure can be made Monday to Saturday between 7 a.m. and 9 p.m., except on public holidays (e.g., Labour Day) and Sundays.

## Important!

A plaintiff who wins the case can seize your salary (seizure in the hands of a third person) without hiring a bailiff.

# Can you challenge a seizure?

Yes. There are four main situations in which you can challenge a seizure:

- 1) The property seized can't legally be seized. This property is **exempt from seizure** (see page to the right).
- 2) You **already paid** the full amount to the plaintiff.
- 3) You **don't own** the property seized.
- 4) The **legal rules for seizures weren't followed** and this caused you serious harm.

To challenge the seizure, you must file a **notice of opposition** in the court office. You then have to go to court to convince the judge to stop the seizure. Usually, the bailiff must temporarily stop the seizure as soon as you file the notice of opposition.



## Some property can't be seized:

- furnishings in your main residence that you need or your family needs, up to a value of \$7,000
- food, fuel and clothing
- work tools
- your car, in some cases
- child or spousal support payments
- money received as compensation for an accident or illness
- part of your salary
- financial assistance payments
- employment insurance benefits
- old age security benefits
- some children's benefits
- your main residence, unless you owe \$20,000 or more
- etc.

## Useful Resources

### Community Justice Centers

Free legal information and support  
[justicedeproximite.qc.ca/en](http://justicedeproximite.qc.ca/en)

### Chambre des huissiers

(Quebec's professional association of bailiffs) [chjq.ca/Accueil](http://chjq.ca/Accueil) (website in French only) 514-721-1100

### Legal Aid

[csj.qc.ca](http://csj.qc.ca)  
514-873-3562

### Éducaloi

Legal information in simple language  
[educaloi.qc.ca/en](http://educaloi.qc.ca/en)

### Young Bar of Montreal

Help preparing for court  
(free 30-minute consultation - Montreal area)  
[ajbm.qc.ca/en/](http://ajbm.qc.ca/en/)  
514-954-3487

### Jeune Barreau de Québec

Help preparing for court  
(free 30-minute consultation - Quebec City area)  
[jeunebarreaudequebec.ca](http://jeunebarreaudequebec.ca)  
(website in French only)  
418-802-5816

### Juris Référence

Legal referral and small claims court preparation services  
[jurisreference.ca/en](http://jurisreference.ca/en)  
1-844-227-3781

### Justice Québec

Information on small claims  
[justice.gouv.qc.ca/en](http://justice.gouv.qc.ca/en)  
1-866-536-5140

### Office de la protection du consommateur

(consumer protection bureau)  
[opc.gouv.qc.ca/en/home](http://opc.gouv.qc.ca/en/home)

### Registre des entreprises du Québec

(Quebec business register)  
[registreentreprises.gouv.qc.ca/en](http://registreentreprises.gouv.qc.ca/en)  
1-877-644-4545

### Office of the Superintendent of Bankruptcy Canada

[ic.gc.ca/eic/site/bsf-osb.nsf/eng/home](http://ic.gc.ca/eic/site/bsf-osb.nsf/eng/home)  
1-866-941-2863

### Table de concertation en matière de petites créances

Information on small claims services available in Quebec  
[barreau.qc.ca/pdf/petites-creances/Tableau\\_Initiatives.pdf](http://barreau.qc.ca/pdf/petites-creances/Tableau_Initiatives.pdf)  
(website in French only)

### Find a lawyer or mediator

[www.barreau.qc.ca/en/public/trouver](http://www.barreau.qc.ca/en/public/trouver)

### Find a notary or mediator

[cnq.org/en](http://cnq.org/en)  
1-800-263-1793

### Votre boussole juridique

Directory of free and low-cost legal services  
[votreboussolejuridique.ca](http://votreboussolejuridique.ca)  
(website in French only)