

YOU HAVE A CLAIM WORTH \$15,000 OR LESS?

HOW TO SUE IN SMALL CLAIMS COURT



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

Do you have a good case?

Before filing your claim in the Small Claims Division of the Court of Québec (often called small claims court), you can do these things:

- Consider other ways of resolving your conflict, such as **negotiation** (with or without help from a lawyer or notary), **mediation** or **conciliation**.
- Consult a lawyer or notary to get a **legal opinion** on your chances of winning.
- Check whether you are still within the legal deadline for making a claim in court (**prescription period**). If you don't file your claim within the deadline, you could lose your rights. The deadline is not the same for all claims and is sometimes very short.
- Make sure you **claim from the right person**, especially if it is a business. Before suing a business, check the address in the Registre des entreprises du Québec (Quebec's business register). You can also hire a detective agency or bailiff to find the address.
- Check the defendant's **ability to pay**. You can ask a credit bureau or hire a bailiff or detective to help you. The defendant is the legal term for the person being sued. The person making the claim (you) is the plaintiff.
- Identify **the facts** supporting your claim (events, conversations, dates, etc.) and how you can prove them (e.g., by documents or witnesses).
- Calculate the **amount you want to claim** (e.g., lost income or the value of a defective object) and decide how to prove it.

As the person making the claim (the plaintiff), you have the **burden of proof**. You have to convince the judge that your version of the facts is the right one and that the judge should allow your claim.

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

In collaboration with



It's important to remember these things:

- It can take **several months** between the time you file your claim and when the case is heard.
- You will have to take **time off work** to go to court.
- A decision (**judgment**) of the small claims court is final. There is **no appeal**. But a person involved in the case who didn't come to court and lost the case can ask the court to cancel the decision (revocation) and hold a new trial. For a revocation, you need a good reason for not coming to court, such as illness or not knowing you had been sued.
- The **decision is public** and accessible on various websites.

Can you settle out of court after filing a claim?

Yes. You can settle the case **any time** before the judge makes a decision, even the morning of the trial. Mediation is a **free service** to help people reach an agreement and does not delay the case.

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

And if you win your case?

Important! If you win your case, the decision doesn't come with a cheque.

The person who loses (the **debtor**) has **30 days to pay** you the amount in the decision, plus some other costs. This period is 10 days if the debtor didn't challenge your claim and you got a decision "by default."

You can always negotiate a **payment arrangement** to let the debtor pay in installments.

If you can't agree on a payment arrangement and the debtor doesn't pay you on time, **you need to take legal action to force the debtor to pay (execution of the judgment)**. This means you seize the debtor's property to get paid. You have **10 years** to do this.

What are the various kinds of seizures?

Movable property: items such as musical instruments, sports equipment, electronic devices and jewelry.

In the hands of a third person: property the debtor owns that is in the possession of another person. Examples are salary and money in a bank account.

Immovable property: includes property such as a house, land or a chalet. But to seize the debtor's main residence, the debt must be \$20,000 or more.

Important!

Some types of property can't be seized (exempt from seizure).

Here are examples:

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

How is property seized?

To **seize movable or immovable property**, you must hire a bailiff. The bailiff will explain how to proceed and, based on your instructions, will prepare a document called a notice of execution.

The bailiff files the notice at the court office. Depending on the type of seizure, the bailiff then seizes the property listed in the notice, sells some property and gives you the money received from the sale.

To seize the debtor's salary (**seizure in the hands of a third person**), you don't need a bailiff. You can prepare the notice yourself. Contact the office of the Court of Québec to find out how.

Important!

In most cases, the debtor must also pay the court fee you paid to file your claim. Check the conclusions at the end of the judge's decision to see if **costs** are included. The debtor must also pay the costs of the seizure.

How much does a seizure cost?

Before seizing the debtor's property, contact a bailiff or the court office. They can tell you how much the various types of seizures cost.

If you hire a bailiff, you must first pay the bailiff the costs of the seizure. The bailiff will pay you back later from the money collected in the seizure.



Before seizing, ask yourself these questions:

What is the debtor's address?

The bailiff needs the debtor's address.

If you want to seize the debtor's bank account or salary, the bailiff needs other information, such as the name of the debtor's financial institution or employer.

If the debtor is a business, does it still exist?

Find out by checking the Registre des entreprises du Québec (Quebec's business register), accessible online.

Has the debtor become bankrupt since the court decision?

The Office of the Superintendent of Bankruptcy Canada can tell you. There is a fee to find out.

If the debtor is bankrupt, contact the debtor's trustee in bankruptcy to find out how to file a claim in the bankruptcy.

Does the debtor have property in Quebec?

If not, the seizure will be more difficult.

Can the debtor challenge the seizure?

Yes. A debtor can challenge a seizure if there is a good reason. This can be the case, for example, if the seizure includes property the law says can't be seized, the rules for seizures were not followed or the debt was already paid. The debtor must give notice of the challenge and then convince a judge to stop the seizure.



Useful Resources

Community Justice Centers

Free legal information and support
justicedeproximite.qc.ca/en

Chambre des huissiers

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

Legal Aid

csj.qc.ca
514-873-3562

Éducaloi

Legal information in simple language
educaloi.qc.ca/en

Young Bar of Montreal

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

Jeune Barreau de Québec

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

Juris Référence

Legal referral and small claims court
preparation services jurisreference.ca/en
1-844-227-3781

Justice Québec

Information on small claims
justice.gouv.qc.ca/en
1-866-536-5140

Office de la protection du consommateur

(consumer protection bureau)
opc.gouv.qc.ca/en/home

Registre des entreprises du Québec

(Quebec business register)
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
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
(website in French only)

Find a lawyer or mediator

www.barreau.qc.ca/en/public/trouver

Find a notary or mediator

cnq.org/en
1-800-263-1793

Votre boussole juridique

Directory of free and low-cost legal services
votreboussolejuridique.ca
(website in French only)