



Applying for a Divorce



ēducaloi

INFORMATION EMPOWERS

What is Éducaloi?

Éducaloi informs Quebecers about the law by providing legal information in everyday language.

Electronic Version

Are you reading a print version of this guide? You can also view an electronic version in PDF format at www.educaloi.qc.ca/guide_application_divorce

Acknowledgments

This guide was made possible thanks to the financial support of the Department of Justice Canada.

We also want to thank our many collaborators for their constructive comments and generosity.



Important Notice

This guide has general information about divorce procedures in Quebec. This information is not meant as legal advice. To learn about rules specific to your situation, [consult a legal professional](#).

This guide is **up to date to March 1, 2017**.

© **Éducaloi, 2017**. You may reproduce this guide for non-commercial purposes, without changing it.

ABOUT THIS GUIDE

The guide is for you if all these things apply in your situation:

1. You want to get a divorce decision **in Quebec**.
2. You are **married**.

If you are not married, see the section [Common-Law Couples – Separation Process](#) on Éducaloi's website.

3. You **need to go to court to get divorced**.

If you can agree with your spouse to get divorced without going to court, read our article [Divorce by Agreement](#).

4. You want to get divorced **without a lawyer**.

If you hire a lawyer, he or she will take care of all the legal papers.

The guide is divided into 14 documents, identified by the letters A to N. These documents explain

- › the **main steps** in getting a divorce decision,
- › the **documents** you must prepare,
- › the **process**, step by step, and
- › what you must do **once you have your divorce decision**.

The guide also has models.

The next page has an overview of the divorce process.



Important! The steps and rules to follow to get a divorce decision are usually the same in all regions of Quebec. But some rules explained in this guide might be different in your region.

To learn more, contact the [courthouse in your region](#).



BEFORE YOU BEGIN . . .

Getting a divorce is a very complicated process. You might want to start by looking at our overview of the process: [Things to Know Before Applying for a Divorce](#). It can help you make some decisions:

- › Should you hire a lawyer?
- › Do you need a temporary court decision while waiting for the final decision?
- › Do you absolutely need to go to court to get divorced?

You can also look at our list of Useful Resources.

THINGS TO KNOW BEFORE APPLYING FOR A DIVORCE

Getting a divorce is a complicated legal process.

It might involve negotiation or dealing with issues that are urgent. The information below will help you understand your options.

SECTION 1 – SPECIAL SITUATIONS

TEMPORARY DECISIONS

Getting a divorce decision from a court can take several months or even years.

But some decisions can't wait, such as living arrangements for children, financial support for one of the spouses or who will be allowed to live in the family home.

Do you need a temporary decision from the court while waiting for the final divorce?

YES

NO

YOUR SITUATION IS URGENT

If your situation is urgent and you and your spouse don't agree on what to do, you can ask a court for a temporary decision, called a **safeguard order**.

It can take a few days or a few weeks to get a safeguard order.

For more information, go to [Document E](#) "Asking for a Safeguard Order in Urgent Situations" and Éducaloi's article [Temporary Decisions Before a Divorce Trial](#).

YOUR SITUATION IS NOT URGENT

If you and your spouse don't agree on what to do, but your situation is NOT urgent, you can ask the court to decide on what are called **provisional measures**.

You will have to wait a few weeks or a few months to get a decision on provisional measures.

See Éducaloi's article [Temporary Decisions Before a Divorce Trial](#) for more information.

Go to the next question.

You are already divorced. Does your divorce decision need to be changed?

YES

WHAT TO DO: The procedure for making a change to a divorce decision is simpler than for getting a divorce. There are various ways to get the divorce decision changed.

For more information, see these articles on Éducaloi's website:

- > [Changes in Child Custody](#)
- > [Changing or Cancelling Spousal Support](#)
- > [Changing Child Support Using the SARPA Service](#)

NO

Go to the next section.

SECTION 2 – GOING TO COURT VERSUS NEGOTIATING

Going through a divorce trial isn't the only way to get a divorce and settle issues resulting from a breakup. Sometimes, it's better to negotiate with your spouse and come to an agreement that meets your needs and your children's needs, if you have children.

Here are a few of the differences between these options.

	DIVORCE TRIAL	DIVORCE BY AGREEMENT
What is it?	<p>You begin by applying for a divorce.</p> <p>During the court case, your spouse can argue against what you are asking for.</p>	<p>You and your spouse can agree on issues resulting from the divorce without having to go through a court trial.</p> <p>However, after you reach an agreement, the court must approve it. This is called "homologation."</p>

continued on next page >

	DIVORCE TRIAL	DIVORCE BY AGREEMENT
Usually the better option if there is little chance you and your spouse can reach an agreement. This is the case, for example, if you are not speaking to each other or if there is violence.	. . . you feel that you and your spouse can reach an agreement.
Who decides on the issues resulting from the divorce?	The court You don't know in advance what the court's decision will be. You can't predict the result.	You and your spouse (usually) You can't predict what will happen during the negotiations, but you can accept or refuse to enter into an agreement. Good to know! The court can change or refuse your agreement if, for example, it doesn't respect the law.
Amount of time for getting a divorce	Longer Several months, sometimes a few years	Shorter A few weeks to a few months
Cost	Usually higher	Usually lower
Stress	Higher A trial is stressful, even for experienced lawyers. It's also stressful for children if they have to come to court.	Lower Negotiations take place outside court. The children aren't usually present.

continued on next page >

	DIVORCE TRIAL	DIVORCE BY AGREEMENT
Warning!	<p>Be prepared for the unexpected.</p> <p>It's impossible to know the result of the court case in advance.</p> <p>There could be some surprises, even if you think you have an excellent chance of getting what you asked for.</p>	<p>Don't rush things.</p> <p>Agreeing to just anything to get a quick divorce is not a good idea.</p> <p>Keep in mind that the agreement must meet your needs. Also, it must be realistic, so that you and your spouse will be able to respect it.</p> <p>Take time to get what you want and what you are entitled to. If possible, ask a lawyer to read over the agreement.</p> <p>Important! Negotiation is not the best option in all situations. For example, it should be avoided if one spouse has more power in the relationship, or if there is family violence.</p>
It is never to late to . . .	<p>. . . negotiate.</p> <p>Sometimes negotiating gets easier with time. You can negotiate with your spouse at any time, even the morning of the court trial.</p> <p>If you agree on some of the issues involved, you can ask the court to approve your agreement.</p> <p>Then, on the day of the court trial, you only present arguments on the issues you still disagree about.</p>	<p>. . . go to trial.</p> <p>You can always go to court if the negotiations aren't working.</p>

continued on next page >

	DIVORCE TRIAL	DIVORCE BY AGREEMENT
Getting help to negotiate	<p>A mediator is a neutral third person who can help you discuss things with your spouse and reach an agreement.</p> <p>If you and your spouse have a child, you will probably be required to attend an information session on parenting and mediation. You can also participate free of charge in several family mediation sessions.</p> <p>For more information, visit the website of Justice Québec or see Éducaloi's article Family Mediation: Reaching an Agreement Without Going to Court.</p>	

SECTION 3 – WITH OR WITHOUT A LAWYER?

You can hire a lawyer to handle all or part of the divorce. You can also apply for a divorce on your own, without a lawyer.

	WITH A LAWYER	WITHOUT A LAWYER
Usually better for . . .	<p>. . . more complicated cases</p> <p>Examples:</p> <ul style="list-style-type: none"> - You and your spouse strongly disagree. - You have children under the age of 18. - You have a lot of property and money to divide with your spouse. 	<p>. . . simpler cases</p> <p>Examples:</p> <ul style="list-style-type: none"> - Your spouse agrees to negotiate. - You don't have children under the age of 18. - You do not have much property or money to divide with your spouse.

continued on next page >

	WITH A LAWYER	WITHOUT A LAWYER
Preparation of your file	<p>Your lawyer prepares the whole case.</p> <p>Most of the time, your lawyer is the one who goes to court.</p> <p>Your lawyer consults you and keeps you up to date on your file.</p>	<p>A divorce is not simpler just because you handle it on your own. You must follow the same steps and rules as if you had a lawyer.</p> <p>So, you must prepare a lot of documents, and go to the courthouse several times.</p> <p>To have a good understanding of the divorce process and the law that applies, you must read parts laws, including the <i>Divorce Act</i>, the <i>Civil Code of Quebec</i>, the <i>Code of Civil Procedure</i> and the rules of practice, which are rules about how courts function.</p> <p>Getting a divorce can take dozens of hours of work, and sometimes even more.</p>
On the day of the trial . . .	<p>. . . your lawyer presents your case to the judge.</p> <p>Your lawyer also questions you and any witnesses (other people asked to talk about the case).</p>	<p>. . . you must speak to the judge and present your case by presenting evidence to support it. You have to do more than just tell your story.</p> <p>You must also question the witnesses (for example, members of your family).</p> <p>You can't always expect help from the judge. Therefore, you must have a good understanding of the rules. You might decrease your chances of success if you don't present your case properly.</p>

continued on next page >

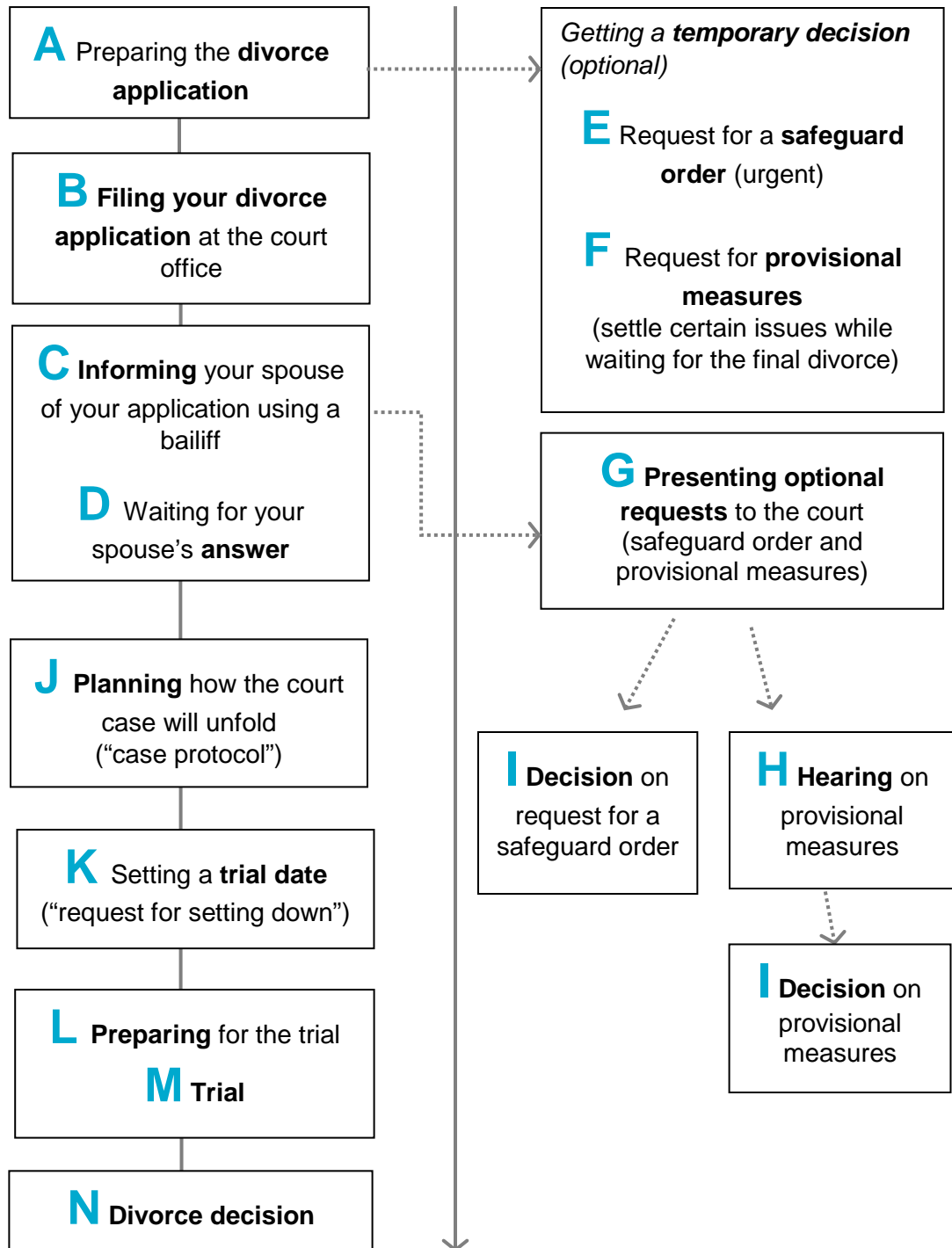
	WITH A LAWYER	WITHOUT A LAWYER
Stress level	<p>Lower</p> <p>A court case is stressful even if your lawyer speaks for you.</p> <p>However, you have a professional you can count on.</p>	<p>Higher</p> <p>A court case can be stressful, frustrating and very emotional. You need to stay calm and control your emotions.</p>
Communicating with your spouse	<p>Your lawyer can speak for you and communicate with your spouse or your spouse's lawyer.</p>	<p>The law says you must cooperate with your spouse throughout the divorce process.</p> <p>You will have to talk to your spouse or your spouse's lawyer several times.</p>
Costs	<p>Higher</p> <p>It will cost you a few thousand dollars.</p>	<p>Lower</p> <p>You don't have to pay a lawyer.</p> <p>However, you do have to pay court costs and other fees.</p>
Getting a lawyer's help for some of the steps	<p>You can do certain steps in the divorce yourself and hire a lawyer to take care of the rest.</p> <p>You can also hire a lawyer to give you advice and prepare you for court.</p> <p>This is called a "limited scope representation."</p>	

continued on next page >

	WITH A LAWYER	WITHOUT A LAWYER
Where to find a lawyer	<p>Visit the Web platform Jurisréférence or contact the Barreau du Québec's referral service.</p> <p>Finding a lawyer within your budget: Contact different lawyers to compare their rates and services. You also need to feel comfortable with the lawyer.</p> <p>Hourly rate: Most lawyers charge by the hour. The fees you end up paying are based on the number of hours the lawyer works on your case. Your lawyer can give you an estimate of the cost, but you won't know in advance the exact amount.</p> <p>Flat fee: Some lawyers charge a flat fee, which is a set amount for the whole divorce or a part of the divorce. This amount won't change, no matter how long the case takes.</p>	
Legal aid		<p>Visit the website of the Legal Services Commission to learn whether you can get the services of a lawyer free of charge or at a reduced rate. The Commission runs the government legal aid program. You can also visit a legal aid office to see whether you qualify.</p> <p>If you don't qualify for legal aid, there are other low-cost resources. To learn more, contact the Centres de justice de proximité (local legal information centres) or see the listing on the website of the Barreau du Québec.</p>

STEPS IN AN APPLICATION FOR DIVORCE

(Letters A to N refer to the 15 documents in the guide “Applying for a Divorce.”)



A. DIVORCE APPLICATION

1. WHAT IS A DIVORCE APPLICATION?

A divorce application is a legal document that asks a court to end your marriage.

In the application, you can also ask the court to make other decisions related to the divorce. These are called **corollary or ancillary measures**. Here are examples:

- > division of property and money belonging to you and your spouse (e.g., house, cars, furniture, money saved during the marriage)
- > child custody
- > child support and spousal support

If the court accepts your divorce application, you will get a certificate of divorce that officially ends your marriage.



If you have children:

You must attend an information session on parenting and mediation before the court will give you a date to hear your application. You can also take part in free family mediation sessions.

Visit Éducaloi's website [for more information](#).

2. WHAT TO ASK FOR IN YOUR DIVORCE APPLICATION

Make sure to ask the court to "pronounce the divorce of the parties." You can also ask the court to decide on related issues (see the examples below).



Important! The court can only make decisions on what you mention in your application. It can't give you something you don't ask for.

You must therefore **explain in writing EVERYTHING you would like**. Here are examples:

> **custody of children**

If you have children under the age of 18, you can ask for sole custody, shared custody or access rights (visiting rights). Custody refers to living arrangements for the children. You must show that your request is in the best interests of the children.

For more information, see Éducaloi's article [Child Custody Decisions: Criteria Used and Types of Custody](#).

> **child support**

If you have asked for sole custody or shared custody, you can request child support. If you don't have custody rights, you aren't allowed to ask for child support. Child support refers to payments one parent makes to the other for the children's needs.

The law has rules on who gets child support and how it is calculated.

For more information, see Éducaloi's articles [Child Support](#) and [Child Support: Common Questions](#).

> **spousal support**

You can ask for spousal support for yourself. A court will consider many factors when making a decision, such as your financial needs, how long you and your spouse were together, what you contributed during the marriage, the financial impact of your separation, etc.

For more information, see Éducaloi's article [Financial Support for an Ex-Spouse](#).

> **family patrimony**

The family patrimony includes a lot of the property the family uses, for example, the family home and furniture in the home, family cars and money saved in a retirement plan during the marriage.

You can ask the court to divide the value of this property, and the money, between you and your spouse. The value is usually divided equally, but sometimes you can ask for it to be divided unequally.

In certain cases, you can give up your right to the division of all or part of the family patrimony. If you do, you must ask the court to recognize that you have given up this right.

For more information, see Éducaloi's articles [Dividing the "Family Patrimony"](#) and [Property Included in the "Family Patrimony."](#)

> **matrimonial regime**

A matrimonial regime is a set of rules that decides how the value of the property and money not included in the family patrimony will be divided.

There are different types of matrimonial regimes, such as partnership of acquests, separation as to property and community of property. If you don't have a marriage contract, your matrimonial regime is the one the law applied to you when you were married. If you have a marriage contract, your matrimonial regime is the one you chose in the contract.

You can ask the court to divide the value of your property, money and debts based on the rules of your matrimonial regime. You can give up your right to this division in certain cases. If you do, you must ask the court to recognize that you have given up this right.

For more information, see Éducaloi's article [Matrimonial Regimes: Rules for Managing and Dividing Property](#).

You can also read [Matrimonial Regimes: Partnership of Acquests](#), [Separation as to Property](#) or [Community of Property](#), depending on which regime applies to you.

> **compensatory allowance**

In some situations, you can ask for an amount of money if you contributed to your spouse's wealth by providing property or services. This is called a compensatory allowance. For example, you can ask for a compensatory allowance if you helped your spouse build a successful business for many years but you were not paid for your work.

You must meet specific criteria to get a compensatory allowance.

For more information, see Éducaloi's article [Compensating the Contribution of a Spouse](#).

OTHER REQUESTS

Depending on your needs and situation, you can ask for other things in your divorce application (e.g., permission to travel with your children). If you need advice on what to ask for, contact a legal professional.

CHANGING A DIVORCE APPLICATION

You are allowed to make changes to what you asked for in your application, even after you file it at the courthouse (see [Document B](#)). You can also add to it. However, the application should be as complete as possible when you first file it.

3. WHAT YOU AND YOUR SPOUSE AGREE ON

Your divorce application can mention what you and your spouse agree on. The court can take this into account when making its decision. However, the court doesn't have to accept your suggestions.

If you and your spouse agree on **EVERYTHING**, you can file a **joint application for divorce** with the court.

For more information, see Éducaloi's article [Divorce by Agreement](#) and Justice Quebec's guide [Joint Application for Divorce on Draft Agreement](#).



Reminder! If you and your spouse have a child, you can participate in free [family mediation sessions](#).

4. JUSTIFYING AND PROVING WHAT YOU ARE ASKING FOR

You must convince the court to accept your requests. If you don't, the court might refuse one or more of them. Therefore, you should mention the relevant facts and legal elements in your application.

To know what you need to show the court, you must read the law and past court decisions (Past court decisions are sometimes called "jurisprudence.") The law and

jurisprudence tell you which legal elements you need to prove for the court to rule in your favour.

For example, if you are asking for sole custody of your children, the law says you must prove this is in the children's best interests. Past court decisions can tell you how the courts have interpreted "children's best interests."

You can use different types of proof to convince the court, such as documents, statements from people, opinions of experts, invoices, etc. You must also let your spouse know what proof you plan to use during the divorce trial (see Section 7 below). Proof is also called "evidence."

You can learn more by contacting a [legal professional](#) or by visiting [Éducaloi's website](#).

5. GETTING A TEMPORARY DECISION WHILE WAITING FOR THE DIVORCE

Getting a final divorce decision can take several months or even years, but some issues have to be settled before that. You can ask the court to make temporary decisions while you wait for the final divorce decision, for example, decisions about support payments and custody arrangements.

The best way to get a temporary decision is to ask for one at the beginning of the case, at the same time as you file your divorce application. But you can also ask for a temporary decision later on.

There are two types of temporary decisions: safeguard orders and provisional measures.

You ask for temporary decisions in an application separate from your divorce application. So, you would file two applications:

- > a divorce application
- > a separate application for a safeguard order and provisional measures

But you can also ask for everything in the same application. In you do this, you should separate each request using clear subtitles (application for divorce, safeguard order, provisional measures).

ASKING FOR A SAFEGUARD ORDER (URGENT SITUATIONS)

If your situation is urgent and you and your spouse don't agree on what to do, you can ask the court for a safeguard order.

For example, you can ask for a safeguard order if your spouse is refusing at the last minute to let you travel with your children. You can also ask for one to decide who will stay in the family home during the divorce case.

You can get a safeguard order in a few days or a few weeks. The order is only valid for a limited period. The decision giving the safeguard order mentions how long it lasts. You can ask the court to renew it if necessary.

For more information, see [Document E](#).

ASKING FOR PROVISIONAL MEASURES (NOT URGENT)

If the situation is not urgent, but you still need to settle certain issues while you wait for a decision on the divorce, you can ask for provisional measures.

It usually takes a few months to get this kind of decision. The decision is temporary and is valid until the final divorce decision.

For more information, see [Document F](#).

6. HOW TO PREPARE A DIVORCE APPLICATION

A divorce application is a court document officially called a “pleading.” There are rules to follow when you prepare pleadings, even if you are acting on your own without a lawyer.

The application must have three sections:

- > A. Heading
- > B. Statement of the Facts
- > C. Conclusions (what you are asking for)

Your application must be easy to read. Write it with a computer if possible. It should be printed on one side of the paper only.

See our model [Understanding a Pleading](#) to learn more. You can also look at our model [Application for Divorce](#).

A. HEADING

The heading has important technical information:

- region where your file will be opened

You must open your file in one of the courthouses in your region or in the region where your spouse lives. These regions are called “judicial districts.”

Justice Québec has a [tool to help you find the right courthouse](#).

- court that will hear the divorce application: the Superior Court, Family Division
- file number: Type “File No.” in your application. The court office will give you a number when you file the application (see **Document B**).
- your name and address, and your spouse’s name and address



Important! If you don’t know your spouse’s new address, you must take steps to find it out. The divorce application must be delivered to your spouse by bailiff. See **Document C** for more information on this.

B. STATEMENT OF THE FACTS

This section explains the reasons you are asking for a divorce. You must also explain why the court should decide in your favour. These are called your “statements.”

Each statement must be made in a separate, numbered paragraph.

The statements to include depend on what you are asking for.

Statements Required ([see model](#)):

- identification of the spouses: full name, date and place of birth, parents’ names
- existence of the marriage, by indicating the place and date of the marriage
- civil status of the spouses at the time of the marriage (single, widowed or divorced)

- ❑ matrimonial regime in your marriage contract (If you do not have a marriage contract, your matrimonial regime might be partnership of acquests or community of property.)
- ❑ names, sex, date of birth and ages of any children
- ❑ if you have children: whether the Director of Youth Protection (DYP) has opened a file or made a decision regarding one or several of the children, or whether an agreement has been entered into with the DYP regarding the children (If none of these has happened, you must say so.)
- ❑ spouses' current addresses and how long they have lived there



If You Have Just Moved to Quebec

To file a divorce application in Quebec, you or your spouse must have lived in Quebec for at least a year. Otherwise, you must wait for a year to pass and then file the application. While you are waiting, you can file an application for separation from bed and board ([legal separation](#)). An application for legal separation lets you settle certain issues, such as who gets custody of the children and how property will be divided, but you will still be married.

- ❑ official reason for the marriage breakdown
 - The law allows three reasons:
 - > Your spouse committed adultery (cheated on you). You must also mention that you have not forgiven your spouse for cheating.
 - > Your spouse was physically or mentally cruel to you. You must also mention that you have not forgiven your spouse for this.
 - > You and your spouse are living separately when you file the application for divorce AND you will have been living separately for at least one year on the date of the final divorce decision.



Important! You can “live separately” even if you both live at the same address. In this case, you must show that you are living separate lives under the same roof (for example, separate bedrooms, very little communication, no sexual relations).

- no collusion between the spouses (“Collusion” is when the spouses agree to lie to the court to get a divorce.)
- no other legal procedures regarding the marriage (If there are any, you must mention them.)

Statements to Include – Request for Corollary Measures:

In this section, you must explain which measures you are asking for and why. For example, you must explain why you want custody of the children or why you want spousal support.

If you have agreed on some measures with your spouse, you must mention this. You must also attach the agreement you and your spouse signed.

The statements to include depend on what you are asking for. If you are able to, contact a lawyer for advice.

Statements to Include – Request for a Safeguard Order or Provisional Measures:

If you are asking the court to make a temporary decision while you wait for the final divorce, you must explain what you are asking for and why. To get a safeguard order, you must show why your situation is urgent.

For more information, see [Document E](#) (safeguard order) and [Document F](#) (provisional measures).

C. CONCLUSIONS

At the end of the divorce application, you must put your conclusions. These are the decisions you want the court to make.

Here are examples of conclusions:

- > pronounce the divorce (give the divorce)
- > confirm any agreements you and your spouse made
- > grant sole custody of the children to the spouse asking for the divorce

- > confirm access rights (visiting rights) regarding the children, for example, every second weekend, from Friday evening to Monday morning
- > order the other spouse to pay child support each month based on the rules for calculating child support
- > order the division of the net value of the family patrimony

7. DOCUMENTS TO INCLUDE WITH THE DIVORCE APPLICATION

There are other documents to file to get a date to go to court. Many of these documents must be included with your divorce application. Others can be filed later. Some of these documents are more official than others and are called “pleadings.”

7.1 PLEADINGS THAT GO WITH THE APPLICATION

You must prepare these documents and include them with your divorce application:

- > **certificate of clerk** ([see model](#))

This is a form the court office signs when you file your divorce application at (see [Document B](#)). It is a confirmation that your application has been filed. You must prepare it in advance and bring it with you to the court office.

- > **summons** (See [Justice Quebec’s model](#).)

The summons informs your spouse that you are filing a divorce application. It also explains what your spouse can do at this point, for example, answer your application within a certain period of time, ask for a change of judicial district, etc.

The summons must also list the documents and other proof that support your application. This is called the “list of exhibits” (see sections 7.2 and 7.3 below). Each document must be properly numbered.

- > **notice of presentation** (only if you are applying for a **safeguard order** or **provisional measures** at the same time as your divorce application)

The notice of presentation notifies your spouse of the date, time and place you have chosen to present your application for a safeguard order or provisional measures to the court.

Contact the court office to find out about available dates. You can choose from these dates, and the clerk will give you the room number.

> **affidavit** (see Section 8 below)

You must include an affidavit with your divorce application. An affidavit is also called a sworn statement or a declaration under oath. In the affidavit, you state that everything you said in your application for divorce is true.

> **backing**

The backing of the divorce application is the last page. It gives basic information about the application, such as the file number, names of the parties and type of application (application for divorce).

You need a backing for each pleading. For example, if you are filing an application for a safeguard order and provisional measures separately from the divorce application, you will need a separate backing for these.

The backing must follow a specific format ([see model](#)).

7.2 DOCUMENTS TO MENTION AND INCLUDE WITH THE DIVORCE APPLICATION

You must mention these documents in your application:

- birth certificates of the spouses**
- marriage certificate or copy of an act of marriage**
- marriage contract**
- any documents regarding a **decision or agreement with the Director of Youth Protection** involving one of your children, if there is one

Contact the [Directeur de l'État civil](#) (director of civil status) to get your birth certificate and marriage certificate (or copy of an act of marriage).

These documents must be numbered (P-1, P-2, P-3, etc.) based on the order they are mentioned in the divorce application ([see model](#)). You must also list them in the list of exhibits attached to the summons (see previous section) and file them in the court record as soon as possible after filing your divorce application.

If your official documents are in a language other than English or French, you must file a translation prepared by a certified translator.



Your documents are identified by the letter “P” (for “plaintiff”). Your spouse’s documents will be numbered D-1, D-2, D-3, etc. (“D” for “defendant”).

7.3 OTHER DOCUMENTS, DEPENDING ON WHAT YOU ARE ASKING FOR

Depending on your situation, you must prepare the documents mentioned in the table below, “notify” them to your spouse and file them at the court office.

Notification means bringing it to the attention of your spouse. Notification can be done in several ways: by bailiff, mail, personal delivery and, if allowed in an agreement, using technology, such as email. **You must keep proof you notified the document and that your spouse received it.**



Important! You must prepare certain documents immediately if you are asking for a temporary decision. See **Document E** (safeguard order) and **Document F** (provisional measures) for more details.

Your Request	Documents Required	Deadlines to Notify and File in Court
Child support	<ul style="list-style-type: none"> > Child Support Determination Form – You can fill out this form on your own or with your spouse. You must sign it in front of a commissioner for oaths. (**If you are asking for support from a parent who lives in another province or territory, federal rules apply, and you must use different documents. Éducaloi’s article explains this.) > Originals of your three most recent pay stubs 	<p>You must notify (send in an official way) these documents to your spouse at the same time as you notify the application for divorce, unless you agreed, ideally in writing, that you would notify them at another time.</p> <p>You must also file these documents in the court file as soon as possible.</p>

Continued on next page >

Your Request	Documents Required	Deadlines to Notify and File in Court
Child support	<ul style="list-style-type: none"> > Originals of your provincial or federal tax return and notice of assessment for the last tax year, including all schedules > Financial statements for any business or self-employment income > Statement of income and expenses for any rental property you own > Any other relevant documents showing your income: employment contracts, amount of benefits you receive, child support payments you made for another child, union and professional dues, etc. > All documents showing childcare expenses: daycare, tuition, medical expenses, etc. > Form called “Statement Required under Article 444 of the Code of Civil Procedure” (see Justice Quebec’s model.) 	<p>File the “Statement Required under Article 444 of the Code of Civil Procedure” in the court file. You don’t have to send it to your spouse.</p>
Spousal support for yourself	<ul style="list-style-type: none"> > Form III –Statement of income and expenditures (expenses) and balance sheet. You must sign it in front a commissioner for oaths. 	<p>Notify it to your spouse at the same time as your application for spousal support.</p> <p><i>For a request for a safeguard order or provisional measures:</i></p> <p>File Form III at the clerk’s office at least 10 days</p>

Continued on next page >

Your Request	Documents Required	Deadlines to Notify and File in Court
Spousal support for yourself	<p>> Form called “Statement Required under Article 444 of the Code of Civil Procedure” (see Justice Quebec’s model.) You don’t have to file it if you already did for a request for child support.</p>	<p>before the presentation of the application for spousal support.</p> <p>Your ex-spouse must also prepare a statement of income and expenditures (expenses) and balance sheet. This must be filed at least five days before the application for spouse support is presented.</p> <p><i>For the divorce trial:</i></p> <p>You must send Form III to the other spouse at least 10 days before the divorce trial.</p> <p>File the “Statement Required under Article 444 of the Code of Civil Procedure” in the court file. You don’t have to send it to your ex-spouse.</p>
Custody of children	<p>> Documents showing that the custody arrangements requested are in the children’s best interests</p>	<p>Your list of exhibits (see Section 7.1) must mention the documents supporting your request. Your spouse can ask for copies.</p> <p>You must also file them in the court file later (see Document K).</p>

Continued on next page >

Your Request	Documents Required	Deadlines to Notify and File in Court
Division of property	<ul style="list-style-type: none"> <li data-bbox="500 352 971 426">> Statement of assets (property and money) <li data-bbox="500 468 971 604">> Calculating Statement of Family Patrimony (see model provided by the Superior Court) <li data-bbox="500 646 995 783">> Calculating Statement of Partnership of Acquests (see model provided by the Superior Court) <li data-bbox="500 825 995 1014">> Relevant documents showing the value of your assets: deed for a home, city evaluation, car loan, value of RRSP and other retirement plans, etc. 	<p data-bbox="1019 384 1450 531">File the statement of assets in the court file along with the case protocol (see Document J).</p> <p data-bbox="1019 604 1458 751">You must file these documents in the court file when you ask for a date for the divorce trial (see Document K).</p> <p data-bbox="1019 856 1458 1045">You must mention the relevant documents in your list of exhibits (see Section 7.1). Your spouse can ask for copies.</p>

8. HOW TO PREPARE AN AFFIDAVIT

An affidavit (also called a sworn statement or a declaration under oath) is a statement you make about your application. In the affidavit, you confirm your identity (full name, occupation, address) and state that everything in your application is true.

You can use Justice Québec’s [model affidavit](#).

You must sign the affidavit in front of a person authorized to administer oaths, such as a lawyer, notary or [commissioner for oaths](#). The [offices of Services Québec](#) also provide this service. Justice Québec’s website has a search tool to help you find a [commissioner for oaths](#).

9. NEXT STEP

You must file your divorce application at the courthouse. If you are filing an application for a safeguard order or provisional measures, you must file them at the courthouse too.

- > **Document B** “Filing Your Divorce Application at the Courthouse”

UNDERSTANDING A PLEADING

1. HEADING

Shows the **district** (region) and **court** where the file was opened.

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No: _____

SUPERIOR COURT
FAMILY DIVISION

2. IDENTIFICATION OF THE "PARTIES"

- Name, address, district and role of each spouse.
- The lowercase "v." means "versus."

Claudia Sbarra, residing at 1234
Sunshine Street, Montreal, H2X 1N1,
judicial district of Montreal,

Applicant

v.

Sue Brown, residing at 6789 Moonbeam
Avenue, Montreal, H2Y 9W9, judicial
district of Montreal,

Defendant

3. TITLE

- Each type of document filed in court has a different name.
- It gives a general idea of what the document is about.

Divorce Application

It is declared that:

Matrimonial Status

1. The plaintiff was born on March 1, 1980, in Sorel-Tracy, as appears from the copy of an act of birth filed as Exhibit P-1.
2. The defendant was born on [redacted] in Montreal, as appears from the copy of an act of birth filed as Exhibit P-2.
3. The marriage of the plaintiff and the defendant was celebrated on [redacted] in Quebec City, as appears from the copy of the marriage certificate filed as Exhibit P-3.
4. At the time of the marriage, the defendant was single.
5. The matrimonial regime they have chosen for the duration of the marriage was the partnership of acquests. This regime has not been changed since.

One paragraph
= One statement
= One idea

The paragraphs are numbered to make the document easy to follow.

4. STATEMENTS

• This section has all the information supporting what the applicant is asking for.

• These are also called the "**allegations**" or "alleged facts."

Residence of the Spouses

6. The applicant has been ordinarily residing in Montreal, H2X 1N1, since July 1, 2008.
7. The defendant has been ordinarily residing in [redacted] H2Y 9W9 since April 1, 2015.

The paragraphs are grouped into sections. Each section deals with a different subject.

Custody and Child Support

8. The parties do not have an agreement on corollary measures regarding the children. The applicant is requesting sole custody of the children and child support for these reasons:
- > The applicant is in the better position to care for the two minor children, Omar Brown, 8, and Rima Brown, 4.
 - > To meet the needs of the two children, Omar and Rima, the applicant needs support payments based on the child support determination rules.
 - (...)

For example, in order for the applicant to get what she wants she must do the following:

- > **In her statements** (above), **explain why** the court must give her sole custody and award child support.

AND

- > **In her conclusions** (below), **officially ask** the court to GRANT her sole custody of the children, Omar and Rima, and to ORDER the defendant to make support payments based on the rules that apply in her situation.

The court can only decide on things you ask for in the conclusions.

Conclusions

The Applicant therefore asks the court to

PRONOUNCE the divorce of the parties,
(...)
GRANT sole custody of the minor children, Omar and Rima, to the applicant,
ORDER the defendant to make support payments in accordance with *Act to facilitate the payment of support*,
(...)
Without costs.

5. CONCLUSIONS

- This is a **list of decisions** the applicant wants the court to make.
- Each conclusion must **begin with a verb** and provide enough **detail** for the court to make a decision.
- The conclusions are not numbered.

C. Sbarra

Applicant's signature

Signed at **Montreal** on **December 15, 2016**.

6. SIGNATURE,
PLACE AND DATE

CANADA
PROVINCE DE QUÉBEC

DISTRICT YOU CAN CHOOSE THE DISTRICT WHERE YOU LIVE, WHERE YOUR SPOUSE LIVES OR WHERE YOU BOTH LIVE

No.

For an **interactive version** of this template in **Word** format, visit the Separation and Divorce section of our website:
www.educaloi.qc.ca/en

SUPERIOR COURT
FAMILY DIVISION

Your first name *Your last name,*
residing at *Number Street, City,*
Province of Quebec *Postal Code,*
judicial district of *Judicial district where you live*

Applicant

v.

Spouse's first name *Spouse's last name*
name residing at *Number Street, City,*
Province of Quebec *Postal Code,*
judicial district of *Judicial district where your spouse lives*

Defendant

APPLICATION FOR DIVORCE

It is declared that:

MATRIMONIAL AND FAMILY STATUS

1. The applicant was born on [date] at [place of birth] and is [age] years old. [He / She] is the child of [name of first parent] and [name of second parent], as appears from the copy of the act of birth numbered Exhibit P-1.
2. The defendant was born on [date] at [place of birth] and is [age] years old. [He / She] is the child of [name of first parent] and [name of second parent], as appears from the copy of an act of birth numbered Exhibit P-2.
3. The marriage of the parties was solemnized on [date] at [place of marriage], as appears from the copy of an act of marriage numbered Exhibit P-3.
4. At the time of the marriage, the applicant was [marital status] – single, widowed, etc.] and the defendant was [marital status].
5. The matrimonial regime they adopted was [matrimonial regime], as appears from the original marriage contract numbered Exhibit P-4. The regime [has been changed / has

not been changed]. [If the regime has been changed, explain **all** changes and include the supporting documents as exhibits.] [If you do not have a marriage contract, mention this.]

CHILDREN OF THE MARRIAGE

6. The children of the marriage are:

	Family Name	Given Name	Age	Sex	Date of Birth
1				M/F	Month-day-year
2				M/F	Month-day-year
3				M/F	Month-day-year
4				M/F	Month-day-year
5				M/F	Month-day-year

[If you did not have children during the marriage, mention this here.]

7. There is no court decision, case before a court or agreement with a director of youth protection involving the children.

[If this kind of decision, case or agreement exists, provide details and attach all relevant documents.]

RESIDENCE OF THE SPOUSES

8. Since [month, day, year], the applicant's usual residence has been at [address].

9. Since [month, day, year], the defendant's usual residence has been at [address].

REASONS SUPPORTING THE APPLICATION FOR DIVORCE

10. There has been a breakdown of the marriage for these reason(s):

[Indicate the reasons. There can be more than one:]

- You and your spouse were living apart when you filed your application for divorce and you will have been living apart for at least one year on the date the divorce will be granted.
- Since the celebration of the marriage, the defendant has committed adultery and you have not forgiven him or her.
- Since the celebration of the marriage, the defendant has treated you with physical or mental cruelty that makes living together intolerable, and you have not forgiven him or her.

APPLICATION FOR A SAFEGUARD ORDER

11. Given the urgency of the situation, the applicant requests a safeguard order to [Indicate the issues you want settled and explain why the court must act quickly. Examples of issues include child custody, support payments or use of the family home. Use a separate, numbered paragraph for each request.]
12. ...
13. ...

APPLICATION FOR PROVISIONAL MEASURES

14. The applicant requests the following provisional measures while awaiting the final divorce judgment:
15. [List the issues you want the court to settle on a temporary basis and explain why. For example, child custody, support payments or use of the family home. Use a separate, numbered paragraph for each request.]
16. ...
17. ...

COROLLARY MEASURES

18. [If you and your spouse have agreed on certain corollary measures, mention them here and attach a copy of the agreement.]
19. The applicant requests:
20. [Mention everything you want, for example: child custody, child support, spousal support, unequal division of the family patrimony, etc. Explain why you are asking for these things. Use a separate, numbered paragraph for each request.]
21. ...
22. ...
23. ...

ABSENCE OF OTHER PROCEEDINGS

24. [There have been / have not been other court proceedings with respect to the marriage.] [If other proceedings have been taken, provide all details and file a certified copy of any court judgment or of a notice that the court proceedings have been abandoned.]

25. The parties have not cooperated, secretly or otherwise, for the purposes of obtaining a divorce. There has been no collusion between the parties.

FOR THESE REASONS:

[List a conclusion for each decision you want the court to make.]

SAFEGUARD ORDER

GRANT this safeguard order:

[For example: GRANT custody of the minor children [insert their names] to the applicant.

SET the amount of child support in accordance with the child support determination rules.

ORDER the defendant to pay the applicant child support for the children [insert their names] in accordance with the *Act to facilitate the payment of support*.

ORDER the indexation of support payments on January 1st each year.

GRANT the applicant exclusive use of the family residence located at [insert address].

GRANT the applicant temporary possession and exclusive use of the movable property in the family residence at [insert address].

etc.]

PROVISIONAL MEASURES

ORDER these provisional measures:

[For example: GRANT custody of the minor children [insert their names] to the applicant.

SET the amount of child support in accordance with the child support determination rules.

ORDER the defendant to pay the applicant child support for the children [insert their names] in accordance with the *Act to facilitate the payment of support*.

ORDER the indexation of support payments on January 1st each year;

etc.]

PRONOUNCE the divorce.

COROLLARY MEASURES

ORDER these corollary measures:

[For example:

DISSOLVE the matrimonial regime.

DISSOLVE the family patrimony.

ORDER the equal division of the family patrimony.

RECOGNIZE the waiver of the division of earnings of the parties registered with the Régie des rentes du Québec for the period of the marriage.

GRANT custody of the minor children [insert their names] to the applicant.

SET the amount of child support in accordance with the child support determination rules.

ORDER the defendant to pay the applicant child support for the children [insert their names] in accordance with the *Act to facilitate the payment of support*.

CONFIRM the agreement between the parties.

etc.]

Signed at [city], on [date]

Applicant

Certificate of Clerk

I, the undersigned clerk for the district of _____, certify that a divorce application has been received and filed in the court.

[Place and date]

(IF YOU ARE APPLYING FOR A SAFEGUARD ORDER OR PROVISIONAL MEASURES)

Notice of Presentation

TAKE NOTICE THAT this application will be presented before a judge of the Superior Court in the district of [name of district], on [MONTH/DAY/YEAR] at [time], at the [name of courthouse] courthouse located at [address], room []. If you want to contest the application, you must appear in court on this date.

CONTESTING THE APPLICATION

If you are applying for child support and your ex-spouse lives in Quebec or outside Canada, include this paragraph:

You must notify these documents to the applicant and file them in the court file at least five (5) days before the date in the first paragraph above:

- Child Support Determination Form (Schedule 1)
- your provincial or federal tax returns for [year] and the notice of assessment
- three (3) recent pay stubs
- any other document indicating your income for [year] (business income, self-employment income, etc.)

You must also file your Statement Required Under Article 444 of the Code of Civil Procedure at the court office.

If you are applying for spousal support, include this paragraph:

You must notify these documents to the applicant and enter them in the court record at least five (5) days before the date in the first paragraph above:

- Statement of Income and Expenditures and Balance Sheet (Form III)

You must also file your Statement Required Under Article 444 of the Code of Civil Procedure at the court office.

FAILURE TO APPEAR

If you do not appear on the scheduled date, a judgment might be made against you.

PLEASE ACT ACCORDINGLY.

[City], [date]

Applicant's signature

No. _____

SUPERIOR COURT
DISTRICT OF _____

v.

Applicant

Defendant

Title:

Original
(or Copy for _____)

Your contact information (first and last names, address, phone number, email address)

B. FILING YOUR DIVORCE APPLICATION AT THE COURTHOUSE

1. COURT OFFICE

Each courthouse has a court office. (In French, the office called the “greffe.”) This office is like the service counter of the courthouse. Bring your documents to this office to file them in your court file.

Employees who work in this office can sometimes guide you, but they aren't allowed to give legal advice.

2. FINDING THE RIGHT COURTHOUSE

You must open your file in one of the courthouses in the judicial district where you live or where your spouse lives. A judicial district is a region.

It's important to mention the right judicial district in the heading of your divorce application.

Justice Québec has a [tool to help you find the right courthouse](#).



If You Have Just Moved to Quebec

To file a divorce application in Quebec, you or your spouse must have lived in Quebec for at least a year. Otherwise, you must wait for a year to pass and then file the divorce application. While you are waiting, you can also file an application for [separation from bed and board \(legal separation\)](#). An application for legal separation lets you settle certain issues, such as who gets custody of the children and how property will be divided, but you will still be married.

3. PAYING COURT FEES

When you file your application, you must pay a fee. Your ex-spouse will also have to pay fees when answering your application. These fees are called officially called court “costs.”

Justice Québec has a [list of court costs on its website](#). (Look for the “Divorce and separation” section.)

4. FILING YOUR DIVORCE APPLICATION AND OTHER NECESSARY DOCUMENTS

You must prepare **one original** and **two copies** of your application and other pleadings you are filing with it (See Section 7.1 of **Document A**):

- > one original for the court
- > one copy, also for the court
- > one copy for your spouse

The original divorce application you file in court must be identical to the copy you give to your spouse. You must write “true copy” on your spouse’s copy and sign it.

The court office places a stamp or sticker on the original application and the copies and gives you a **file number**. This number is important because it will be used throughout the case.

Each pleading must have its own back page (see Section 7.1 of **Document A**). You must write “Original” on one of these pages and “Copy” on the two others.

You can file other documents in the court file when you file your divorce application (see sections 7.2 and 7.3 of **Document A**).



Important! Make sure to keep a copy for yourself of everything you file in the court office.

5. SIGNATURE OF THE CLERK'S CERTIFICATE

The court office signs a document officially called the Certificate of Clerk (see the last page of our [model divorce application](#)). This certificate confirms that your divorce application has been registered at the court office.

6. NEXT STEP

After you file your application at the courthouse, you must inform your spouse by bailiff that you have done this.

- › [Document C](#) “Informing Your Spouse of the Divorce Application by Bailiff”

C. INFORMING YOUR SPOUSE OF THE DIVORCE APPLICATION BY BAILIFF

You must inform your spouse that you have filed your application. Even if you are still on speaking terms, the law says you must **deliver a copy to your spouse by bailiff**.

1. BAILIFF AND SERVICE OF THE APPLICATION

You must send your spouse a copy of the application by using a bailiff. This step is called “service.” If you or your spouse live in a remote area, you can sometimes get permission to send your application to your spouse in another way.

You must serve your application within three months after filing it at the courthouse.

You can find a bailiff in your region by visiting the website of the Chambre des huissiers de justice du Québec (association of bailiffs). Bailiffs charge fees for serving documents.

i

Important! You must serve your divorce application BEFORE going to court to present an application for a safeguard order or provisional measures.

2. PROOF THAT YOUR SPOUSE HAS BEEN SERVED WITH YOUR DIVORCE APPLICATION

The bailiff prepares a certificate of service that proves your spouse was informed of the application. Afterwards, the bailiff can file the certificate of service in the court file (there might be additional fees for this), or give you the certificate of service and you can file it in court yourself.

i

Important! The certificate of service must be filed in the court file. It is important for you to make sure it is there.

3. IF YOU DO NOT KNOW YOUR SPOUSE'S CURRENT ADDRESS

When you prepare your divorce application, you can use your spouse's last known address and mention that it is the last known address. However, you have to make an effort to find your spouse so you can serve your application.

There are different ways to do this. For example, you can ask the court for permission to let your spouse know about the application by email or through a public notice in the newspapers.

4. NEXT STEP

You must wait for your spouse's answer.

- › **Document D** "Waiting for Your Spouse's Answer"

If you sent your spouse a notice of presentation for an application for a safeguard order or provisional measures, you must go to court with the appropriate documents on the date you chose.

- › **Document G** "Going to Court for a Temporary Decision (Safeguard Order and Provisional Measures)"

D. WAITING FOR YOUR SPOUSE'S ANSWER

1. WHAT IS AN “ANSWER”?

An answer is a short document your spouse uses to let you know what he or she plans to do in the divorce case. The answer also tells you whether your spouse will be represented by a lawyer.

Before you continue your case, you must wait for your spouse to answer your divorce application. Your spouse must do this within 15 days of learning about your application through a bailiff. (See **Document C** about service by a bailiff.)

Your spouse doesn't have to send you the answer by bailiff. The answer can be sent by email if you have an agreement that allows this. Your spouse can also send the answer by regular mail or have it delivered to you.

Your spouse must file the answer in court and pay the court fee.



If Your Spouse Doesn't Answer

Your spouse could lose the right to argue against your divorce application if he or she does not answer within 15 days. If you have not received an answer after 15 days, you can ask the court office for a “default judgment.” If the court office agrees with your request, the court might give a divorce decision without your spouse being able to explain his or her side.

To ask for a default judgment, you must file all the documents necessary to prove what you are asking for. (See Section 7.3 of **Document A**). You must also file an affidavit. (See section 8 of **Document A**.)

2. NEXT STEP

You must respect the legal deadline for filing your documents. For example, you must file a “case protocol” on time.

- › **Document J** “Planning the Main Divorce Case (Case Protocol)”

If you sent your spouse a notice that you will present an application for a safeguard order or provisional measures, you must go to court with the appropriate documents on the date you chose.

- › **Document G** “Going to Court for a Temporary Decision (Safeguard Order and Provisional Measures)”

E. ASKING FOR A SAFEGUARD ORDER IN URGENT SITUATIONS

1. WHAT IS A SAFEGUARD ORDER?

If your **situation is urgent** and you and your spouse don't agree on what to do, you can ask the court for a **safeguard order**.

For example, you can ask for a safeguard order if your spouse is refusing at the last minute to let you travel with your children. You can also ask for a safeguard order to decide who will stay in the family home during the divorce case.

You can get a safeguard order in a few days or a few weeks. For the court to act quickly, you must show that the situation is urgent.

The order is temporary and only valid for a limited period. The decision giving the safeguard order mentions how long it lasts. You can ask the court to renew it if necessary.

2. DIFFERENCE BETWEEN A SAFEGUARD ORDER AND PROVISIONAL MEASURES

Both the safeguard order and provisional measures can involve the same issue, such as child custody. You can ask for them in the same document.

The difference is that a safeguard order is for **urgent situations** only. If your situation is not urgent, you must ask for provisional measures instead (see **Document F**). Provisional measures usually apply until the end of the divorce case, when the court makes a final decision on the divorce.

3. HOW TO PREPARE AN APPLICATION FOR A SAFEGUARD ORDER

The format of an application for a safeguard order is similar to the format of a divorce application (see Section 6 of **Document A**).

You can ask for a safeguard order and provisional measures at the same time. (If this is your case, see **Document F**.) This can be done separately from your divorce application, but you can also file all these applications in one document. If you decide to do this, you must separate each application using clear subtitles.

Your application for a safeguard order must be easy to read. You should prepare it with a computer if possible. It should be printed on one side of the paper only.

Your application must have three sections:

› **A) Heading**

The heading has the same information as the heading of your divorce application. However, you don't have to include your address or your spouse's address.



The file number is the same one the court office gave you when you filed your divorce application. You must use this number when you file any other applications regarding your divorce.

› **B) Statements of Facts**

You must explain what you are asking for and why. If you want to court to act quickly, you must also explain why the situation is urgent.

Each paragraph must be numbered.

Important! If you are asking for child custody and one these situations applies to you, you must attach the appropriate documents: a file has been opened with the Director of Youth Protection (DYP) regarding your children, the DYP has made a decision regarding your children or an agreement has been entered into with the DYP regarding the children.

› **C. Conclusions (what you want)**

At the very end of the application for a safeguard order, you must mention the decisions you want the court to make. You can also mention how long you want the safeguard order to apply.

4. PREPARING AN AFFIDAVIT

You must attach an affidavit (also called a sworn statement or a declaration under oath) to your application for a safeguard order. You must file the affidavit at the court office at least two days before you present your application (see Section 5 below). You can staple your affidavit to your application for a safeguard order.

i

Remember to send (“notify”) your affidavit to your spouse (see Section 6 below).

What you say in your affidavit is very important. The court can only base its decision on information in the file and in your affidavit. Your affidavit takes the place of having you speak in court to tell the whole story.

Your affidavit should include any information not mentioned in your application for a safeguard order and that explains why you are asking for the order. For example, you must explain why it is urgent for a court to decide on your application.

Include all important details, but be as brief as you can. Some courthouses limit the length of affidavits to two pages.

Justice Québec has a [model affidavit](#) you can use.

You must sign the affidavit in front of a person authorized to administer oaths, such as a lawyer, notary or [commissioner for oaths](#). The [offices of Services Québec](#) also provide this service. Justice Québec’s website has a search tool to help you find a [commissioner for oaths](#).

5. CHOOSING A DATE TO PRESENT YOUR APPLICATION FOR A SAFEGUARD ORDER

You must include a notice of presentation with your application. The notice of presentation lets your spouse know the date you chose to present your application. It also indicates the time, place and room number.

Contact the office of the court at the courthouse (the “greffe” in French) to find out about available dates. You can choose from these dates, and the court clerk will give you the room number.

Deadlines are important! You must inform your spouse about your application for a safeguard order **at least 10 days before you present it** (see Section 6 below).

However, in your application for a safeguard order you can ask the court for permission to present it **sooner**. In this case, you must explain why it is urgent.

6. “NOTIFICATION” – OFFICIALLY INFORMING YOUR SPOUSE ABOUT YOUR APPLICATION

You must send (“notify”) your application for a safeguard order, affidavit and other relevant documents to your spouse. You must do this at least 10 days before you present it.

Applying for a Safeguard Order at the Same Time as Your Divorce Application

You can send (“notify”) your application for a safeguard order to your spouse, by bailiff, at the same time as your divorce application (see [Document C](#)).

Filing Your Application for a Safeguard Order at Another Time

There are several ways for you to inform your spouse about your application. You can have it delivered or you can send it by mail. You can send it by email if you have an agreement that allows you to do this. You can also deliver it by bailiff, but it is not necessary to use a bailiff.

IMPORTANT! You must keep proof that your spouse received your application for a safeguard order.

i

Important! If your spouse is represented by a lawyer, you must send your documents to the lawyer. If you need to discuss the case, you must contact the lawyer, not your spouse.

7. FILING YOUR APPLICATION FOR A SAFEGUARD ORDER AT THE COURTHOUSE

You must file these documents at the court office: your application for a safeguard order, the notice of presentation and proof that your spouse received your documents. These documents are necessary so the court office can enter you on the list of applications that will be presented on the date you chose.

Your affidavit and other relevant documents must also be filed in the court file before you present your application.

8. DOCUMENTS TO FILE WITH YOUR APPLICATION FOR A SAFEGUARD ORDER

- the application
- notice of presentation
- affidavit
- all other relevant documents, depending on what you have asked for (see Section 7.3 of [Document A](#))

9. NEXT STEP

On the day you present your application, you must go to the courthouse so a judge can make a decision about what are asking for.

- › [Document G](#) “Going to Court for a Temporary Decision (Safeguard Order or Provisional Measures)”



Important! If your situation changes, you can file an application to change the safeguard order or apply for a new safeguard order.

F. ASKING FOR PROVISIONAL MEASURES WHILE WAITING FOR A DIVORCE

1. WHAT ARE PROVISIONAL MEASURES?

Getting a final divorce decision can take several months or even years. But some issues can't wait that long. Therefore, you can ask for provisional measures to settle some things in the meantime, for example, support payments and living arrangements for children.

Depending where you live in Quebec, you can usually get a decision about provisional measures in a few months. This decision is temporary and is usually valid until the final divorce. Provisional measures can be changed if the spouses' situation changes.

2. DIFFERENCE BETWEEN PROVISIONAL MEASURES AND A SAFEGUARD ORDER

Both the safeguard order and provisional measures can involve the same issue, such as living arrangements for children ("custody"). You can ask for them in the same application.

The difference is that a safeguard order is for urgent situations only (see [Document E](#)).

If your situation is not urgent, you must ask for provisional measures instead. Provisional measures usually apply until the end of the divorce case, when the court makes a final divorce decision.

Final Divorce Decision

The final divorce decision settles the permanent impact of the divorce. This decision can settle things in a different way than that what was decided earlier by a safeguard order or provisional measures.

For example, the final divorce decision could grant shared custody to both parents even though one had sole custody during the court case.

3. HOW TO PREPARE AN APPLICATION FOR PROVISIONAL MEASURES

The format of an application for provisional measures is very similar the format of a divorce application (see Section 6 of [Document A](#)).

You might want to request provisional measures and a safeguard order at the same time. (If this is your case, refer to **Document E**). You can ask for both in one application, separately from your divorce application, but you can also include all three applications in one document. If you decide to do this, separate each application using clear subtitles.

Your application for provisional measures must be easy to read. You should prepare it with a computer if possible. It should be printed on one side of the paper only.

Your application must have three sections:

› **A) Heading**

The heading has the same information as the heading of your divorce application (see Section 6 of **Document A**). However, you don't have to include your address or your spouse's address.



The file number is the same one the court office gave you when you filed your divorce application. You must use this number when you file other applications regarding your divorce.

› **B) Statements of Facts**

You must explain what you are asking for and why.

Each paragraph must be numbered.



Important! If you are asking for child custody, and one of these situations applies to you, you must attach the appropriate documents: a file has been opened with the Director of Youth Protection (DYP) involving your children, the DYP has made a decision regarding your children, or an agreement has been entered into with the DYP regarding your children.

› **C) Conclusions (what you want)**

At the very end of the application for provisional measures, you must mention the decisions you want the court to make.

4. CHOOSING A DATE TO PRESENT YOUR APPLICATION FOR PROVISIONAL MEASURES

You must include a notice of presentation with your application. The notice of presentation tells your spouse which date you have chosen to present the application. It also indicates the time, place and room number.

Contact the office of the court at the courthouse to find out about available dates. You can choose from these dates, and the clerk will give you the room number.

Deadlines are important! You must inform your spouse about your application for provisional measures **at least 10 days before you present it** (see Section 6 below).

5. “NOTIFICATION” – OFFICIALLY INFORMING YOUR SPOUSE ABOUT YOUR APPLICATION

Filing Application for Provisional Measures at the Same Time as Your Divorce Application

You can send your application for provisional measures to your spouse, by bailiff, at the same time as your divorce application (see [Document C](#)).

Filing Application for Provisional Measures at Another Time

There are several ways for you to officially notify your spouse about your application. You can have it delivered by messenger or you can send it by mail. You can send it by email if you have an agreement that allows you to do this. You can also have a bailiff deliver it, but you don't have to use a bailiff.

IMPORTANT! You must keep proof that your spouse received your application for provisional measures, and you must file this proof in the court file.

i

Important! If your spouse is represented by a lawyer, you must send your documents to the lawyer. If you need to discuss the case, you must contact the lawyer, not your spouse.

6. FILING YOUR APPLICATION FOR PROVISIONAL MEASURES AT THE COURTHOUSE

You must file these documents at the court office: your application for provisional measures, the notice of presentation, and proof that your spouse has received them. You can file them at the same time as you file your divorce application, or later, when you apply for provisional measures.

7. DOCUMENTS TO FILE WITH YOUR APPLICATION FOR PROVISIONAL MEASURES

- application for provisional measures
- notice of presentation
- affidavit (see Section 8 of [Document A](#))
- all other relevant documents, depending on what you have asked for (see Section 7.3 of [Document A](#))

8. WILL THE COURT DECIDE ON PROVISIONAL MEASURES THE DAY YOU PRESENT YOUR APPLICATION?

Not usually. When you first present your application, the court must make sure that your file is complete. If all the documents are ready, you will be given a date to go back to court to discuss the provisional measures with a judge. You will also be given a room number. At certain courthouses, judges decide on provisional measures the same day, but this is quite rare.

It could take several months before you go back in front of a judge. See below.

9. NEXT STEP

You must go back to the courthouse to explain to the judge why you want provisional measures.

- › [Document G](#) “Going to Court for a Temporary Decision (Safeguard Order and Provisional Measures)”

G. GOING TO COURT FOR A TEMPORARY DECISION (SAFEGUARD ORDER AND PROVISIONAL MEASURES)

1. GOING TO THE COURTHOUSE

Go to the courthouse at the date, time and place mentioned in your notice of presentation.

i

Reminder: You included a notice of presentation when you sent your application for a safeguard order (**Document E**) or application for provisional measures (**Document F**) to your spouse.

The court will probably be looking at several applications on that day. The list of applications for the day is called the “roll,” and your case will be “on the roll” for that day. You can look at [the roll online](#) (website in French only). You can also look at a printed version at the courthouse the day you go for your application.

The special clerk, who sits at the front of the courtroom, usually calls out your name and file number when it is your turn. But some courthouses do things differently. Try to get to the courtroom a few minutes early to find out about the procedure.

2. APPLICATION FOR SAFEGUARD ORDER

When your name or file number is called, stand up and identify yourself to the special clerk. Tell the clerk you want to present a safeguard order concerning, for example, child custody and child support.

The special clerk will ask you how much time you need to present your application. This time includes reading time by the judge and the time you need to present your arguments:

- > Reading time: This is the time the judge takes to read your documents (application for a safeguard order, affidavit and other documents filed with your application).
- > Time for presenting your arguments: This is the time you need to present your position to the judge (in other words, to “argue” your application for a safeguard order).

The special clerk will ask your spouse the same question. Next, the clerk will give you a room number where you will meet with the judge. If the judge is busy with other cases, you must wait outside this room.

Even if you end up waiting outside the room for several hours, **stay close by**. You will be called in when it is your turn. If you aren't there when your name is called, you will lose your place and have to wait until you are called again. In some situations, the judge can refuse to hear your application.

JUDGE'S DECISION

Once you are in the room, you have to convince the judge that your application is urgent and justified. Your affidavit is very important here. The judge will base the decision on information in the court file (application, forms, etc.) and in affidavits you and your spouse filed. The affidavits replace telling the judge everything in the affidavits.

You can read the law or court decisions (court decisions are sometimes called "jurisprudence") to help you find legal arguments.

Your presentation to the judge must be very short (about 30 minutes). The judge will make a decision on the application either the same day or later.

3. APPLICATION FOR PROVISIONAL MEASURES: GETTING A DATE

On this first trip to the courthouse, your application for provisional measures is usually not heard by a judge right away. This first trip is usually to get a date to be heard by a judge.

When you hear your name or file number being called, stand up and identify yourself to the special clerk. Tell the clerk you want to schedule a date for an application for provisional measures.

The special clerk might ask you some questions. Usually, you must stay in the courtroom until the clerk finishes calling all the cases. The clerk will call you a second time to make sure your file is complete. Then, the clerk will give you the date to come back to court to discuss the provisional measures with a judge. The clerk will also give you a room number. It is very important that you write down this information because you will not receive any reminders.

If your file is not complete, the special clerk will give you another date to come back to court and will ask you to prepare any missing documents before then. If the documents are ready the next time, the clerk will tell you the date a judge will hear your request for provisional measures.

After you present your application the first time, it could take several months before you get to discuss it with a judge. In some courthouses, you might be heard by a judge the first time you come to court, but this is rare.

4. PRESENTING PROVISIONAL MEASURES APPLICATION: DOCUMENTS TO BRING

You should have your own copies of all documents that are in the court file (applications, forms, proof of income, etc.). Identify all the documents and organize them so you can find them easily.

5. IF YOU AND YOUR SPOUSE REACH AN AGREEMENT

If you and your spouse reach an agreement and you think you no longer need a safeguard order or provisional measures, do you still have to go to court on the date scheduled for presenting your application?

Yes, you still have to go. It's a good idea to have the court approve your agreement. You can put your agreement in writing, and both you and your spouse can sign it. On the day of the presentation, give your agreement to the court and have it "homologated" (made official). If the court accepts your agreement, it will be the same as having a temporary court decision.

6. NEW DATE FOR PRESENTING YOUR APPLICATION (POSTPONEMENT)

If you or your spouse are not ready to present your application on the scheduled date, you can change the date. This is called a "postponement." For example, you can ask for a postponement if you need more time to get your papers together.

To get a postponement, you must go to the courtroom at the time and date scheduled for presenting your application. When your name or file number is called, stand up and identify yourself to the special clerk. Explain that you want to postpone the presentation of your application. Tell the clerk whether your spouse agrees to the postponement and when you would like to come back to court.

The special clerk will either accept or refuse the postponement. If the clerk refuses the postponement, you must present your application the same day, as scheduled. Therefore, you must be ready to go before a judge that day.

If either you or your spouse disagrees with postponing, the court will decide whether to postpone.

i

Important! If your spouse agrees to the postponement, you might not have to go to the courthouse. Some courthouses let you ask for a postponement by email or telephone. Contact the [court office](#) to learn more.

7. NEXT STEP

For a safeguard order

You must obey the court's safeguard order.

- > **Document I** "Temporary Decisions (Safeguard Orders and Provisional Measures)"

For provisional measures

You must go back to the courthouse on the date scheduled by the special clerk to discuss the provisional measures. When you are heard by a judge on this date, it is like a trial. You must come prepared.

- > **Document H** "Provisional Measures: Going Before a Judge"

For the main divorce case

Your main divorce case continues even if you request a safeguard order or provisional measures. So, you must respect the legal deadlines for preparing everything for the divorce case. For example, you must file your case protocol on time.

- > **Document J** "Planning the Main Divorce Case ("Case Protocol")"

H. PROVISIONAL MEASURES: GOING BEFORE A JUDGE

1. WHAT IS A HEARING ON PROVISIONAL MEASURES?

When you go before a judge, it is called a “hearing.” A hearing is like a trial. You can speak, present documents, question witnesses, etc.

Since you are the one presenting the application for provisional measures, you go first. Stick to the issues regarding the provisional measures. You can talk about other issues during your divorce trial, which will take place several months later.

After you finish, your spouse will have a turn to speak.

i

Read **Document M** to learn about the steps in a trial. The hearing on provisional measures is very similar to a trial.

2. DOCUMENTS YOU NEED

You must bring to court all the documents you need to back up your request for provisional measures. For example, if you are asking for child support or spousal support, you need the documents the law asks for. Read Section 7.3 of **Document A** for more information.

You will need three copies of each document: one for the judge, one for your spouse and one for yourself.

3. NEXT STEP

Make sure to carefully read the judge’s decision on provisional measures and follow it.

Document I “Temporary Decisions (Safeguard Orders and Provisional Measures)”

Your main divorce case continues in the meantime. Therefore, you must respect the legal deadlines for preparing everything for the divorce case. Refer to your case protocol to learn what comes next.

Document J “Planning the Main Divorce Case (“Case Protocol”)

I. TEMPORARY DECISIONS (SAFEGUARD ORDERS AND PROVISIONAL MEASURES)

1. SAFEGUARD ORDERS

The judge usually makes a decision after you present your application (see [Document G](#)). Make sure you write down the judge’s decision because you might not get a written copy of the decision right away.

i

A few days after the judge makes a decision, you can ask for a copy of the “transcript of the judgment,” which has the judge’s conclusions. In some courthouses, you can get a copy of the transcript the same day. Contact the [court office](#) to see how to get a copy.

A safeguard order is temporary and only lasts for a certain amount of time. The order says how long it lasts.

You must start following the order as soon as the judge makes a decision.

Important! If your situation changes, you can ask for a change to the safeguard order or apply for a new one.

2. PROVISIONAL MEASURES

The judge will make a decision right after the hearing on provisional measures (see [Document H](#)) or in the following days or weeks.

If it is made the day of the hearing, make sure you write down the decision. The decision is temporary. It usually applies until the final divorce decision

You must respect the provisional measures decision as soon it is made.

Important! If your situation changes, you can ask for a change to the decision on provisional measures.

3. ASKING FOR A CHANGE TO THE DECISION

In some situations, you can challenge or ask for a change to a decision on a safeguard order or provisional measures. This is called an “appeal.” To appeal, you need special permission from the Court of Appeal, and you must get this permission quickly.

Appealing a decision is a special, complicated procedure. Consult a lawyer.

4. NEXT STEP

Your main divorce case continues even if you ask for a safeguard order or provisional measures. So you must respect the legal deadlines for filing your documents in the divorce case. For example, you must file your case protocol on time.

› **Document J** “Planning the Main Divorce Case (“Case Protocol”)

J. PLANNING THE MAIN DIVORCE CASE (“CASE PROTOCOL”)

Your main divorce case continues as planned even if you asked for a safeguard order ([Document E](#)) or provisional measures ([Document F](#)). So, you must respect the legal deadlines for preparing everything for the divorce case. Many of these deadlines are mentioned in the case protocol.

1. WHAT IS A CASE PROTOCOL?

A case protocol is a document listing steps to complete before the divorce trial. It also has a lot of details about your case.

Here are examples of what the case protocol includes:

- › issues you want the court to settle
- › safeguard orders or provisional measures you are asking for (or that you already asked for)
- › pre-trial examinations (questioning witnesses before the trial)
- › expert reports you plan to get (for example, a psychosocial report regarding children and parents)
- › deadlines for filing documents that go with a divorce application

The law says that you and your spouse must cooperate to try to prepare the case protocol together.

2. DEADLINES FOR FILING THE CASE PROTOCOL

The case protocol must be filed in the court file. **This must be done no later than three months after your spouse has been informed by bailiff about your divorce application** (see [Document C](#)).

3. MODEL DOCUMENT TO USE

There are two different case protocol models: one for [courthouses associated with the Montreal courthouse](#) and another for [courthouses associated with the Quebec City courthouse](#). Use the [Montreal model](#) if your courthouse is associated with Montreal, and [this one if your courthouse is associated with Quebec City](#).

i

Important! You must use these models as they are: you are not allowed to make any changes to them.

4. FILING A STATEMENT OF PROPERTY

If you asked for the division of the family patrimony (property and money) in your divorce application, you must file a list of property and money. This list is called a “statement of property.”

Both you and your spouse must file this statement with the court when you file the case protocol.

5. YOU AND YOUR SPOUSE DON'T AGREE ON THE CASE PROTOCOL

If your spouse refuses to complete the case protocol, or you don't agree on what to include in the protocol, you must each file a separate suggested protocol. The deadline to do this is within three months of informing your spouse by bailiff of your divorce application (see Section 2 above).

You must mention in your protocol proposal which parts of the case protocol you and your spouse do not agree on.

6. COURT REVIEWS THE CASE PROTOCOL

The court must look at the case protocol.

If the court decides that your case protocol doesn't follow proper procedure, you will be called to a case management conference (see Section 7 below).

If you have not heard from the court within 20 days of filing your case protocol, you can assume the court has accepted it.

If you have filed a suggested protocol because you and your spouse couldn't agree on the protocol, the court can do one of the following:

- › accept your proposal or your spouse's proposal
- › create a different case protocol
- › call you to a case management conference with your spouse (see Section 7 below)

7. CASE MANAGEMENT CONFERENCE

The court can call you to a case management conference, with your spouse, to clarify certain things in your file. During the conference, the judge will ask you questions and do what is needed for the case to move forward.

8. NEXT STEP

You must follow the steps and deadlines in the case protocol. If you don't, you could face certain negative consequences.



If your spouse agrees, you can change some things in the case protocol. Any changes must be made through a new case protocol filed at the court office.

Important! Some deadlines can't be changed, such as the deadline for asking for a trial date ([Document K](#)).

You must complete your file and ask the court for a trial date.

- › [Document K](#) "Asking for a Trial Date ("Request for Setting Down")"

K. ASKING FOR A TRIAL DATE (REQUEST FOR SETTING DOWN)

1. CONFIRMATION THAT YOUR FILE IS COMPLETE

Before the court gives you a trial date, your file must be complete and you and your spouse must be ready to go to a trial.

To confirm that your file is complete and you are ready, you must file a document called “**Request for Setting Down for Trial and Judgment by Way of a Joint Declaration**” at the court office. This document confirms to the court that you are ready for the trial.

This document also includes this information:

- › issues you will raise at the trial
- › evidence that will be presented during the trial
- › a list of witnesses, including the time needed to question each witness (This questioning is called “examination” and “cross-examination”. Witnesses are people called to court to speak about issues involved in the case.)
- › time the trial is expected to take

The law says you must cooperate with your spouse and file only one request for setting down. This is why the request for setting down is through a “joint” document.

2. DEADLINE FOR FILING YOUR REQUEST FOR SETTING DOWN

The deadline for filing your request is directly related to your case protocol (see [Document J](#)).

You must file your request **within one year of** one of these events, depending on what has happened in your case:

- › **The court has accepted your case protocol.**

Reminder: If the court doesn’t call you to a case management conference, the law considers that the case protocol has been accepted 20 days after you filed it in court.

- › You have participated in a **case management conference** regarding the case protocol.
- › The **court created** the case protocol.

If you filed the case protocol late, or you did not file it at all (see Section 2 of [Document J](#)), the one-year time limit begins the day you informed your spouse by bailiff of your divorce application (see [Document C](#)).

i

IMPORTANT!

You **MUST** file your request for setting down within the one-year deadline. If you don't, the court might refuse your divorce application.

If necessary, you can ask the court for more time, but you must do this **BEFORE** the deadline. To ask for more time, you must file a request to extend the deadline and explain your reasons to the court.

If you missed the deadline, you can still try to ask the court for more time, but it is much easier to simply respect the deadline.

3. DOCUMENT TO USE FOR YOUR REQUEST

You can use one of two models provided by the Superior Court. To know which model to use, visit the website of the Superior Court and check whether your courthouse is associated with the [Montreal courthouse](#) or the [Quebec City courthouse](#).

Then, pick the right model:

- › [model for courthouses associated with the Montreal courthouse](#):
 - If you think the trial will last more than two hours, you must also file a [“Joint Declaration to Fix a Hearing of More Than Two Hours”](#)
- › [model for courthouses associated with the Quebec City courthouse](#) (document in French only)
 - If you think the trial will last more than three hours, you must also complete a [joint management document for trials lasting more than three hours](#).(document in French only)

4. YOU AND YOUR SPOUSE DISAGREE ABOUT THE REQUEST

If your spouse refuses to complete the request with you, or the two of you disagree about the request, you can file the request on your own. You must file it at the court office and send a copy to your spouse.



Important! You must respect the one-year time limit (see Section 2 above).

5. DOCUMENTS TO FILE WITH YOUR REQUEST

There are several documents you must file with your request, on top of the ones you filed at the beginning of the divorce case (see sections 7.2 and 7.3 of [Document A](#)):

- › complete list of documents (“list of exhibits”) to back up what you are asking for (You must also send the list of exhibits to your spouse. Only the documents on this list can be used during the trial.)



Important! These documents must be filed in the court record at least 15 days before the trial.

- › Attestation in Respect of the Registration of Births. Use [Form II](#).
- › if you have children, a certificate that you have taken part in an [information session on parenting and mediation](#)

You must also attach **one of the documents listed below** about your family “patrimony” (property and money). The document to file depends on your situation.

- › statement of your family patrimony accompanied by an affidavit (You can use the model provided by the Superior Court: “[Calculating Statement of Family Patrimony](#).”)
- › statement that the spouses are not covered by the family patrimony rule (notarized)
- › statement that the spouses give up the right to division of the family patrimony
- › statement that the spouses agree about how to divide the family patrimony

Finally, if your matrimonial regime is the partnership of acquests, you must attach a statement of the partnership of acquests and an affidavit. You can use the model [“Calculating Statement of Partnership of Acquests”](#) from the Superior Court.

6. THE COURT OFFICE LOOKS AT THE REQUEST

The court office must make sure your file is complete.

If the file is complete, the court office will tell you which dates are available for your trial, and you can choose one. Or, the court office will give you a date to come back to the courthouse for a “calling of the provisional roll.” You will choose a trial date at that time.

If the file is incomplete, the court office usually sends a notice that something is missing. You then have 30 days to complete the file, and the court office will contact you to set a trial date.

7. NEXT STEP

You must be well prepared for your divorce trial.

- › **Document L** “Preparing for Your Divorce Trial”

L. PREPARING FOR YOUR DIVORCE TRIAL

Trials are stressful, even for people like lawyers who are often used to them. Here are tips to help you prepare.

Begin your preparation several weeks before the trial. The better prepared you are, the higher your chances of success.

1. PREPARE YOUR WITNESSES

- › **Prepare the questions you want to ask your own witnesses. Witnesses are people you call to court to talk about certain issues involved in the case.**

You can also make a list of subjects you want to cover with them. Refer to **Document M** “How a Trial Works” to learn more about questions you can ask your witnesses.

- › **Prepare your witnesses. You can meet with them in person or speak over the phone.**

Make sure you understand their version of the facts. Explain the court’s basic rules to your witnesses (see Section 6 of **Document M**).

- › **Make sure your witnesses come to court.** Closer to the trial date, remind your witnesses when they must come to court. If they got this information several weeks earlier, they might have forgotten.



You can require a witness to come to court by sending a “subpoena”, which is a document requiring someone to come to court. To send a subpoena, you can use the form from [Justice Québec](#) (Quebec department of justice). The form explains the steps to follow.

Important! There are fees for sending a subpoena. Also, witnesses must be given a kind of allowance for coming to court. This is explained in the Justice Quebec form.

- › **Prepare the questions you want to ask witnesses called by you spouse.** Make sure you only ask questions you know the answers to. Otherwise, the answers could damage your case.

2. PREPARE YOUR DOCUMENTS

- › **Make sure all the documents you plan to use in court are in the court file.** They must be filed at least 15 days before the trial. If they aren't there on time, the court could refuse to consider them.

- › **Identify your documents and put them in order.**

It can be stressful to look for a document while the judge is waiting for you. To make sure this doesn't happen, identify your documents (refer to the "list of exhibits" you filed in the court file), and put them in the order you plan to use them. You can use tabs or sticky notes to help you find them.

- › **Prepare the court decisions you want to rely on.** These court decisions are also called jurisprudence. (see **Document M**, Section 5.2). When you put them together, it is often called a "book of authorities."

Print the decisions, organize them in a logical order and keep them together using a clip or a binder. Highlight the sections you want to bring to the court's attention. Make at least three copies of your book: one for you, one for the court and one for your spouse.

Make copies of all documents.


You should have at least three copies of documents you want to present to the court: one for the judge, one for your spouse and one for you.

You should also have copies of the sections of the law you plan to use during the trial (for example, the *Civil Code of Quebec*, the *Divorce Act*, etc.).

3. OTHER TIPS

- › **Read over your documents and your spouse’s documents several times.** Spend extra time reading over your divorce application.
- › **Make a list of the points you want to cover.** You might forget some important points because of stress. Having a list will help make sure you cover everything. Refer to the sections of your divorce application when making your list.
- › **Sit in on another trial for a few minutes to get an idea of how it works.** You will probably have to go to the court office at some point before your trial. This would be a good time to sit in on another trial. You can’t attend a divorce trial because they are confidential. However, you can sit in on other kinds of trials. Ask at the information desk for a courtroom number where a “civil trial in Superior Court” is taking place. It won’t be exactly the same as a divorce trial, but it will give you a good idea of how a trial works.

If you already know the courtroom number for your divorce trial, you can look for it right away so you will know where to go on the day of your trial.

 **Tip:** On the day of your trial, ask at the information desk whether the courtroom number you were given has changed.

- › **Set aside enough time.** You need to be flexible. For example, even if your trial is scheduled for 9 a.m., it might not necessarily start at 9 a.m. You might have to wait a few hours if your case is not the first one heard that day. Also, your trial could take longer than expected, so make sure you are free.

If your trial does not end that day, you will have to come back to court another day to wrap it up. Unfortunately, because of the schedules involved (for example, the judge’s or your spouse’s), the rest of your trial might only take place a few weeks later.

- › **Arrive early.** It is important to be on time. Also, give yourself enough time to find your way around the courthouse. If you are not in the courtroom when it’s

your turn, you might lose your place or face serious problems. It's best not to take any chances.

i

If your trial is at the Montreal courthouse, it might take between 30 and 45 minutes to get through security.

M. HOW A TRIAL WORKS

1. CONFIDENTIALITY OF THE TRIAL AND DECISION

Divorce trials are confidential. They are held “in camera,” which means they take place behind closed doors. In other words, the public can’t attend. Usually, the only people allowed in the courtroom are the judge, lawyers, your spouse, the witnesses, court employees and you.

The judge’s decision is anonymous and uses initials instead of full names of the people involved. Therefore, it protects your identity and the identities of your spouse and any children. Also, the people at the trial are not allowed to reveal any information that could identify you.

2. MAIN PEOPLE INVOLVED IN THE TRIAL

Judge

The judge directs what goes on during the trial and makes the final decision about what you are asking for. The judge must be neutral and can’t help you present evidence or make your arguments.

Remember that you need to convince the judge of your version of the facts. The judge will decide whether you will get what you requested in your divorce application. The judge can ask you and your witnesses questions throughout the trial.

Court clerk

The court clerk sits in front of the judge. This person records what happens by taking notes in a document called the “minutes.” The court clerk also swears in the witnesses (has them promise to tell the truth). You must follow instructions given by the court clerk.

The court clerk arrives in the courtroom before the judge. You can therefore ask the clerk general questions about the steps in the trial, but this person doesn’t have to answer all your questions.

Your spouse

Your spouse can hire a lawyer for the divorce case. Your spouse can also decide not to have a lawyer. If your spouse does have a lawyer, the lawyer will ask the witnesses questions and speak to you and the judge.

3. MORNING OF THE TRIAL

Plan to arrive at the courthouse early. Ask at the information desk whether the room number you have for the trial is correct or whether it has been moved to another room.

Go to the room and let the court clerk know you have arrived.

There will probably be other trials scheduled in that room the same day. The judge and the court clerk will call out the cases (the “calling of the roll”). You could be asked to leave the room before the calling of the roll.

Don’t wander too far away from the room because you might be called back inside at any time. You will probably be called over the intercom, so make sure to listen carefully.

i

Important! You must be on time. If you are not in the courtroom when it’s your turn, you could lose your place or face serious consequences (such as a default judgment, which is a decision given without hearing from you). Don’t take a chance. If you are running late, try contacting the court office.

4. RIGHT BEFORE YOU BEGIN

When your name is called, enter the courtroom and walk toward the tables near the judge. Since you are the plaintiff (the person who filed for a divorce), you must sit at the table on the left. Stand and identify yourself by giving your name and saying you are the plaintiff. The trial will begin soon.

The trial is divided into two main parts: the “evidence stage” and “oral arguments.”

5. WHAT HAPPENS DURING THE TRIAL

5.1 FIRST PART – PRESENTING EVIDENCE

During this stage, you try to **prove** to the judge that what you asked for in your divorce application is justified. To prove this, you must present your “evidence.” Since you filed the divorce application, you must present your evidence first.

The information on the next page explains how to do this.

Witnesses

There are two main types of witnesses: ordinary witnesses and expert witnesses. They have slightly different roles in a trial. When these witnesses speak in court, it is called “testimony.”

An ordinary witness explains a part of the story to the judge. Ordinary witnesses can only talk about they personally did, saw or heard. They can’t speak about conversations or events they didn’t hear or see in person. This is called the rule against “hearsay.” Also, they can’t give opinions.

These people can be ordinary witnesses in this kind of case:

- > you
- > your spouse
- > a family member
- > a friend
- > your spouse’s employer
- > etc.

An expert witness gives an opinion on a technical element. In a divorce case, an expert witness might be an accountant, psychologist, appraiser or real estate agent, for example. For an expert witness to speak at the trial, a written report by the expert must have been filed in the court record ahead of time (see [Document K](#)).

This is usually what happens when one of your witness' is questioned:

1- Direct Examination

You ask your witness questions.



2- Cross-Examination (optional)

Your spouse or spouse's lawyer can ask your witness questions.



3- Re-Examination (optional)

You can ask your witness new questions, but only about new facts mentioned during cross-examination, or to explain answers your witness gave during cross-examination.

Direct examination

Your witnesses are the first ones to testify because you are the plaintiff. You can act as your own witness if you want to (see details below).

A witness must stand directly in front of the judge and court clerk. The witness begins by giving his or her name and address and then swears under oath to tell the truth. If the witness lies from this point on, there can be serious consequences.


Once the witness has promised to tell the truth (has been sworn in), you can ask your first question.

The questions you ask must be relevant to your case. In other words, they must deal with what you wrote in your divorce application. As a general rule, you must ask open questions and let your witnesses answer the questions without putting words in their

mouths. You can't ask closed or leading questions that suggest the answer. A closed question can be answered with "yes" or "no."

Here are examples of open and closed questions:

Open Questions	Closed (leading) Questions
What happened next?	Next, did you go to the shopping centre?
What did he do next?	Is it true that he met you later?

 **Tip!** To help you ask open questions, you can begin with the words "who," "what," "where," "how," "which" and "why."

There are a few situations in which you can use closed questions in your direct examination (for example, if your witness is trying to avoid answering your questions).

Cross-examination

Once you have finished with your questions, the other side (your spouse or spouse's lawyer) can question your witness. This is called cross-examination.

In cross-examination, closed questions are allowed because the witness is your witness, not the other side's. The questions during cross-examination can be much more specific, to get the witness to give detailed information. The other side can even try to suggest answers.

Listen carefully to the questions the other side asks your witnesses. You can object to a question if it is not relevant. Other reasons for objecting to a question are explained in the next section. Also, listen carefully to the answers. You will be allowed to ask your witnesses new questions if the answers they gave need to be explained or if new points were raised during cross-examination.

Objections

You can object to the questions the other side asks your witnesses or the other side's witnesses. This is called making an "objection." Here are examples:

- › The question is **not relevant** to the case.
- › The question violates [professional secrecy](#) (for example, of a lawyer or doctor).
- › The question is **closed**, but should be open instead.

To make an objection:

- › Stand.
- › Calmly say "objection."
- › Explain the reason for your objection.
- › Sit down and wait for the judge's decision.

If the judge agrees with your objection, the other side must re-word the question or ask a new one.

If the judge doesn't accept your objection, the other side can repeat the question to the witness.

Being your own witness

You are usually the best person to explain your version of the facts and what you are asking for. To do this, you can be your own witness. The rules are a little different in this situation.

Since you can't ask yourself questions, you simply tell your version of the facts to the judge. The judge can ask you questions. You can only talk about what you personally did, saw or heard (like for other witnesses). You should try to explain what happened in the order these events happened. You can also call the judge's attention to documents that support what you say.

The other party can cross-examine (question) you after you give your version of the facts. In this case, answer the questions briefly. You must tell the truth, but make sure to limit your answers to the questions asked. Don't talk too much, and don't answer questions that weren't asked. Be polite and avoid arguing with the other side.

In some cases: your child as a witness

Children who are old enough can testify at their parents' trial. The judge might want to know the children's opinion, and the children might have something they want to say. For children to testify, they must be able to express themselves and be understood. The older the child, the more weight the child's testimony will carry.

In many situations, however, the children are represented by their own lawyer.

Child witnesses are not treated the same as adult witnesses. Here are some things that can be done to protect a child:

- › Some of the courtroom formalities are removed (for example, the judge and lawyers do not wear their robes).
- › The child does not testify in front of the parents.
- › The child can be accompanied by a person who can provide help or reassurance.



It can be difficult for children to testify and be involved in their parent's conflict in this way. It's important to keep in mind that everything must be done in the best interests of the children.

Entering exhibits into evidence

When you completed your file earlier in the divorce case, you prepared a list of documents to support your divorce application (see [Document K](#)). These documents, called "exhibits," help you show the court that what you are asking for is reasonable. Here are examples of exhibits:

- › document showing the distance between your house and your child's school (if you are asking for custody)
- › copy of an email exchange with your spouse (if you are asking for custody)
- › daycare bill (to justify some of the expenses in the Child Support Determination Form)

You had to file these documents in the court file and inform the other party about them before the trial.

But filing the documents in the court file is not enough. You must also “**enter them into evidence**” during the trial so the judge can analyze them and take them into account when making a decision. Entering them means the documents officially become part of your evidence.

In most cases, the person who prepared or provided the document must refer to it when testifying. You will often be the witness who does this. When you refer to it, you can then enter it into evidence (see below).

i

If you want to enter into evidence a document not mentioned in your list of exhibits, you must ask for the judge’s permission. You aren’t allowed to take your spouse by surprise. You will need strong arguments to explain why the document was not mentioned earlier, and you must have a copy for the judge and another for your spouse.

How to enter documents into evidence

The person who prepared or provided the document must refer to it when testifying as a witness. (This person might be you.) Then it can be entered. Here are the steps:

1. Show the witness a copy of the document and ask this person to explain what it is.
2. Tell the judge that you want to “enter the document into evidence.”
3. Identify the document by reading out the title and number shown in your list of exhibits (P1, P2, etc.).
4. Give the document to the court clerk, who will hand it to the judge.

Then, you can question the witness about the document. If it is your document, you can testify about it.

Other party's evidence

Once you have finished presenting your evidence, the other side can present evidence. The other side can call witnesses and enter documents as evidence, and you will be allowed to cross-examine these witnesses.

Basically, you do the opposite of what you did earlier. For example, you are allowed to ask closed (leading) questions to the witnesses on the other side.

5.2 SECOND PART – ORAL ARGUMENTS

After both parties have finished presenting their evidence, the oral arguments begin. This is the final part of the trial, during which you present arguments to **convince** the judge of your position.

As the plaintiff, you present your arguments first. The length of time needed for the oral arguments depends on the amount of evidence. In the “Request for Setting Down for Trial and Judgment” you mention how much time you would need for your arguments (see [Document K](#)).

When presenting oral arguments, you must stand and summarize all the reasons the judge should decide in your favour. You basically summarize your version of the facts and give reasons why you should get what you are asking for. The judge can interrupt you and ask you questions.

During your arguments, you must also show that the law is on your side. At this point, you can back up your arguments by referring to the law and past decisions of the courts (“jurisprudence”), if necessary. For example, if your spouse said she voluntarily quit her job, you could explain that, according to the jurisprudence, she might still have to make support payments based on what she used to earn. You would then mention the relevant court decision and call the judge’s attention to the important sections of the decision (refer to your book of authorities).

After completing your oral arguments, the other side has a chance to convince the judge.

You will be allowed to reply if the other side raises a new point of law during the oral arguments. The court must give permission for other replies after that.

6. DURING THE TRIAL – A FEW TIPS

- › **Follow “courtroom decorum”:** Decorum is a set of rules that helps the court work efficiently and ensures respect for the court process. Everyone must be respectful in the courtroom. For example, you must stand before speaking, speak respectfully to other people and remove your hat, if you are wearing one.
- › **Stand and ask the judge’s permission before speaking.** Remain seated the rest of the time.
- › **Be calm and respectful.** Address the judge as “Mr. Justice” or “Madam Justice.”
- › **Follow instructions** given by the judge and court employees.
- › **Pay attention to instructions given by the court clerk and court usher.** They will let you know when to stand, when to speak, where to set up, etc.
- › You can **ask the judge questions** if you do not understand what is going on. The judge might explain a few things to make sure the trial runs smoothly but can’t give advice and must remain neutral.
- › **During the trial, don’t speak directly to your spouse (unless he or she is a witness) or to your spouse’s lawyer.** Ask questions directly to the witnesses. The rest of the time, address the judge, even when making objections.
- › **Dress appropriately.** For example, you can wear a shirt or blouse and dress pants or a skirt.
- › There are water jugs in the courtroom, but you are not allowed to eat food. Depending on the length of the trial, you will be given coffee breaks and a lunch break.

- › You can't use your **cell phone** in the courtroom. You might be asked to shut it off before the trial begins.
- › **You aren't allowed to make a sound recording of the trial or take pictures.**
- › You can use a **laptop computer or tablet**. However, there might be little or no Wi-Fi. So, avoid using the Internet, and save everything you need on your computer before coming to court.

i

Important! You will need paper copies of all your documents, even if you use a computer during the trial.

- › **Present your evidence and arguments at your own pace.** It's not a race. However, the judge might ask you to speed things up or avoid repeating certain information you have already given. If this happens, don't take it personally.
- › **Watch what the judge is doing.** If you see the judge taking notes, wait until he or she has finished before speaking. You can also ask whether you should continue or wait.
- › **Stay calm.** If you start feeling nervous, take a few deep breaths and think about what you are going to say before you speak.

SUMMARY OF STEPS IN A DIVORCE TRIAL

IDENTIFICATION OF THE PARTIES

The parties identify themselves: name + whether applicant or defendant

FIRST PART – EVIDENCE (PROOF) STAGE

The parties present their evidence.

(See below to learn about questioning of witnesses and objections.)

- › Applicant's evidence
- › Defendant's evidence
- › The judge can give the two parties one last chance to present evidence.

SECOND PART – ARGUMENTS

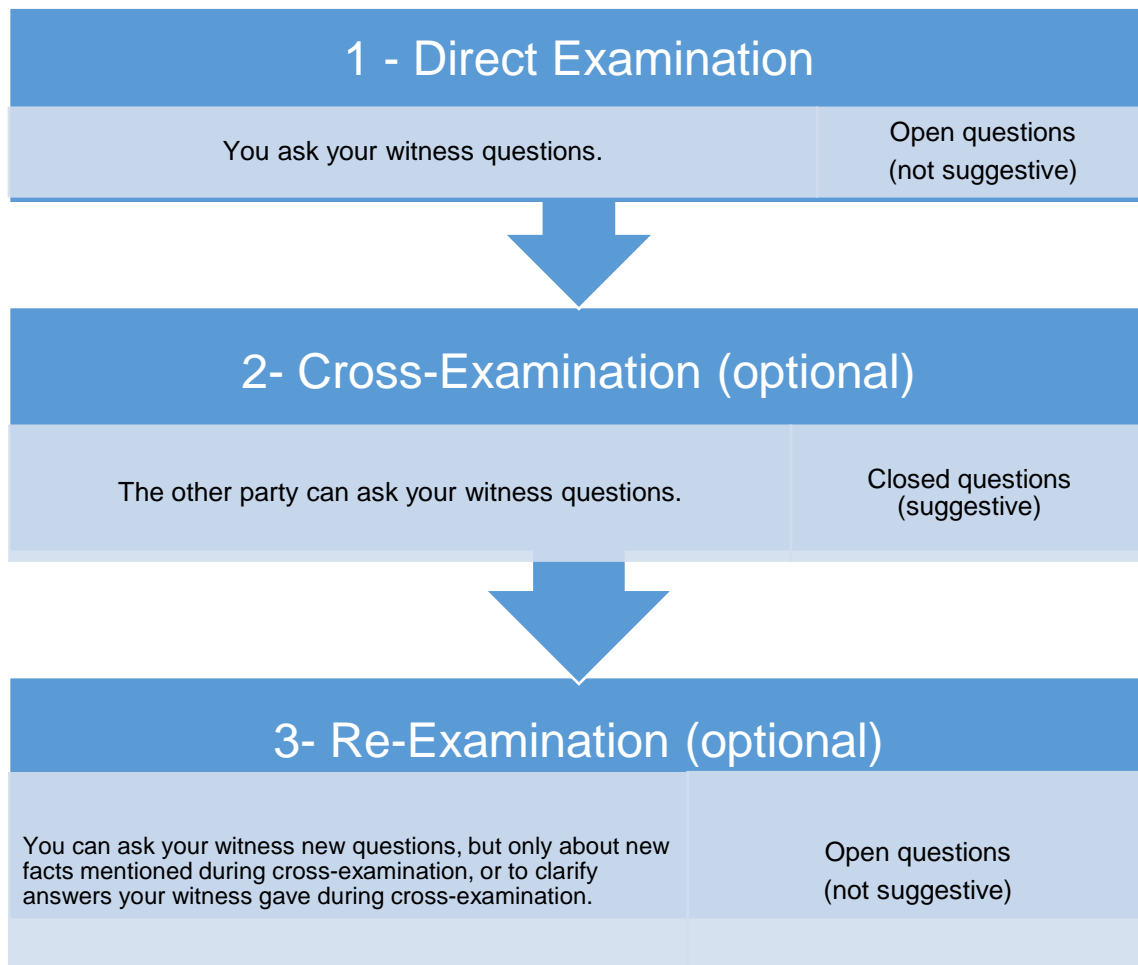
The parties summarize their versions of the facts, their requests and why the law is on their side (laws and past court decisions).

- › Applicant's arguments
- › Defendant's arguments
- › Applicant's reply
Only if the defendant raised a new point of law in the arguments
- › Defendant's reply and second reply of applicant's
Only with the judge's permission

END OF THE TRIAL

QUESTIONING AND CROSS-EXAMINATION OF WITNESSES

In this example, you are questioning your own witness:



OBJECTIONS

You can object to questions the other side asks (your witnesses or their own witnesses). This is called “objecting.”

To object, here are the steps:

- > Stand.
- > Calmly say “objection.”
- > If the judge asks you to, explain the reason for your objection.
- > Sit down.

If the judge agrees with your objection, the other side must ask the witness a different question. If the judge rejects your objection, the other side can repeat the question to the witness.

N. DIVORCE DECISION (JUDGMENT)

1. JUDGE

The judge can make a decision right at the end of the trial. The decision is called a “judgment.”

The judge can also “take the case under advisement”, which means making a decision later. The judge can take up to six months to make a decision. It might be made sooner if your divorce involves children.

Usually, a safeguard order and provisional measures continue to apply while the case is under advisement (see [Document I](#)).

2. SECTIONS OF A JUDGMENT

It’s important to read the entire judgment to understand it completely.

A judgment usually has four main sections. The first section summarizes the facts of the case, the second analyzes the law as it applies to the facts and the third explains the various decisions made by the judge.

In the fourth section, at the very end, you will see the judge’s detailed decisions for each of your requests. These decisions are called “conclusions.” Examples of conclusions are shown below. They will be based on what you or your spouse asked for in your divorce application and on the evidence presented at trial:

- › PRONOUNCES the divorce.
- › GRANTS custody of the children to a parent.
- › GRANTS access rights to a parent.
- › ORDERS a spouse to pay child support or spousal support.
- › ORDERS that a child be enrolled in a specific school.
- › CONFIRMS an agreement you made with your spouse (accepts it and makes it official).
- › ACKNOWLEDGES any renunciations made (A renunciation means someone gives up a right.)
- › ORDERS one spouse to pay money to the other spouse to divide the net value of the family patrimony.

- › ORDERS the parents to do specific things (e.g., make it easier for children to speak to the other parent by telephone).
- › ORDERS the parents to avoid talking badly about each other in front of the children.
- › ORDERS both sides to do what the judgment says.

3. WHEN THE JUDGMENT TAKES EFFECT

If the divorce judgment is not appealed (challenged), it comes into effect 31 days after the judge's decision. At that point, you will be officially divorced.

4. APPEALING THE JUDGMENT

You can appeal your divorce judgment. But the point of an appeal is not to go through another trial. Instead, you must show that the judge made a mistake and that the divorce judgment must be changed.

The deadline for filing an appeal depends on your situation:

- › If the judgment was given at the divorce trial, you have 30 days from the date of the trial to file an appeal.
- › If the judgment was given after the divorce trial (the judge took the case under advisement), you have 30 days from the date shown on the notice of judgment.

5. GETTING WHAT THE JUDGMENT ORDERS

5.1 SUPPORT

A decision that orders someone to pay support applies right away. In other words, this order must be respected as soon as the judgment is given, without waiting 31 days.

In most cases, Revenu Québec collects and pays out child support and spousal support. Once the judgment has been made, the court clerk sends a copy to Revenu Québec, which takes care of the rest. The clerk also sends Revenu Québec the statement required under Article 444 of the *Code of Civil Procedure*.

To learn more, visit [Revenu Québec's](#) website. You can also read Édoucaloi's articles:

- > [Revenu Québec Collects Support Payments](#)
- > [Paying Support Without Revenu Québec](#)



Did You Know?

You and your ex-spouse can ask the court for permission to pay support without Revenu Québec.

5.2 CHILD CUSTODY

Any conclusions about child custody apply immediately. You don't have to wait 31 days.

If one parent is not respecting custody arrangements, the other parent can ask for a change in custody. Also, the person not following a court order about custody can be found guilty of contempt of court. This can lead to a fine or jail time. If the other parent is not respecting these arrangements, don't hesitate to [seek advice](#).

5.3 DIVISION OF PROPERTY AND MONEY

The spouses must divide the value of their property and money according to the judgment.

If one spouse refuses to pay what the judgment orders, that spouse's property can be seized. A bailiff can help you in these situations.

Pensions and RRSPs

Retraite Québec automatically divides earnings accumulated in the Québec Pension Plan (QPP).

For the Canadian pension, you must [ask the federal government](#) to divide it.

For RRSPs and other funds held by private firms, the spouses must contact these firms themselves.

If the judgment orders the division of an RRSP, RRIF, PRPP or SPP, contact the Canada Revenue Agency about the [what you should do avoid tax penalties](#).



Important! If the judgment recognizes the spouses have given up (“renounced”) the right to divide the family patrimony or partnership of acquests, you must register the renunciation at the [Registre des droits personnels et réels mobiliers](#) within one year. If you don’t, the renunciation will not be recognized, and you might have to pay some money to your ex-spouse.

6. GETTING A DIVORCE CERTIFICATE

It will take a few weeks before you receive a divorce certificate. You can also get a copy by contacting the [court office](#) where the judgment was made.



Good to know! Once you get your divorce certificate, you can take back all the documents you filed at the court office.

USEFUL RESOURCES

FAMILY MEDIATION

ORGANIZATION	LINKS
Quebec justice department	Information and links to other resources Search for a family mediator

LEGAL PROCEDURES

ORGANIZATION	LINKS
Bar of Montreal guide	Applying for an “Interim/Safeguard” Family Order - guide
Community Justice Centres - legal information in person and sometimes by phone	Centres in various regions: <ul style="list-style-type: none"> - Bas-Saint-Laurent - Gaspé Peninsula-Magdalen Island - Greater Montreal - Outaouais - Québec - Saguenay-Lac-Saint-Jean
The Chambre des notaires (notaries' association)	Information on marriage, civil union and common-law couples Legal information phone line: 1-800-668-2473
Fondation du Barreau du Québec	Representing Yourself in Court in Family Matters - guide
Quebec justice department	Information on separation, divorce and ending a civil union or common-law relationship
Quebec justice department	Information on calculating child support payments in Quebec and links to forms

LEGAL RESEARCH

	LINKS
Collection de droit de l'École du Barreau du Québec – Volume 3 – Personnes, famille et successions (**French only)	<p>Examples of relevant chapters:</p> <ul style="list-style-type: none"> - La séparation de corps et le divorce : aspects généraux du traitement du litige conjugal (Overview of legal procedures for separation and divorce) - Le patrimoine familial (family patrimony) - Le partage et certains recours en cas de litige conjugal (Division of assets and certain legal proceedings) - Les aspects procéduraux (Procedural aspects of separation and divorce)
Consult laws and regulations	<p>Code of Civil Procedure</p> <p>Regulation of the Superior Court of Québec in family matters</p> <p>Civil Code of Québec</p> <p>Divorce Act</p>
Find court decisions in family law cases	<p>Centre d'accès à l'information juridique (CAIJ) - Check "Caselaw" (sic) near the top of the page, then enter your search words.</p> <p>Société québécoise d'information juridique (SOQUIJ) (Search tool in French only)</p> <p>CanLII</p>

FIND A LAWYER

ORGANIZATION	LINKS
Legal Aid – Lawyers for free or at a reduced rate (only some people are eligible)	Commission des services juridiques (legal aid commission)
JurisRéférence - help finding a lawyer	www.jurisreference.ca/en/find-a-lawyer/

Barreau du Québec – help finding a lawyer	www.barreau.qc.ca/en/public/trouver/avocat/
---	--

There are other resources depending on which region of Quebec you are in. Consult the [Boussole Juridique](#) (search tool in French only).