

7. Suggested admissions, including those which may reduce the number of witnesses to be called:

8. Authorities, jurisprudence and doctrine to which you intend to refer (make one list only and attach a schedule if necessary):

9. ATTESTATIONS AND OATHS

A. PARTY REPRESENTED BY ATTORNEY

By the party or an agent acquainted with the facts:

I, the undersigned, attest that all the exhibits in my possession that I intend to refer to at the hearing were given to my attorney for disclosure to the other parties and I acknowledge that I cannot file other exhibits without the Court's authorization after the expiry of the period provided for in Article 331.8 C.C.P.

(Signature)

(Date)

(Representative's name: _____
Position: _____)

By the attorney:

I, the undersigned, under my oath of office, certify that the facts declared in paragraphs 1, 2, 3 and 4 are accurate and that I have explained to the party I represent his obligation to disclose all the exhibits in his possession that he intends to refer to at the hearing, and that those exhibits have been disclosed to the other parties or

will be disclosed within the period provided for in Article 331.8 C.C.P.

(Signature)

(Date)

B. UNREPRESENTED PARTY

I, the undersigned, solemnly affirm that the facts declared in paragraphs 1, 2, 3 and 4 are accurate and that all the exhibits in my possession that I intend to refer to at the hearing have been disclosed to the other parties or will be within the period provided for in Article 331.8 C.C.P., and I acknowledge that I cannot file other exhibits without the Court's authorization after the expiry of that period.

(Signature)

(Date)

(Representative's: _____
Position: _____)

Sworn before: _____
(name and position, profession or capacity)

At: _____ On: _____
(Municipality and Province) (date)

(Signature of person administering the oath)''.

5. These Rules come into force ten days after their publication in the *Gazette officielle du Québec*.

2564

Notice

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

Notice is hereby given that the Rules to amend the Rules of practice of the Superior Court of Québec in family matters, the text of which appears below, were made by the judges of the Superior Court of Québec, by way of a consultation by mail, on October 16th, 1998, in accordance with article 47 of the Code of Civil Procedure (R.S.Q., c. C-25).

Montreal, 16 October 1998

LYSE LEMIEUX,
Chief Justice

Rules to amend the Rules of Practice of the Superior Court of Québec in Family Matters*

Code of Civil Procedure
(R.S.Q., c. C-25, art. 47)

1. The following Table of Contents is inserted before Division I of the Rules of Practice of the Superior Court of Québec in Family Matters:

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* The Rules of Practice of the Superior Court of Québec in Family Matters (R.R.Q. 1981, c. C-25, r. 9) were last amended by the Rules adopted on 31 January 1997 (1997, *G.O.* 2, 3340). For previous amendments, refer to the “Tableau des modifications et Index sommaire, Éditeur officiel du Québec”, 1998, updated to 1 March 1998.

Form II	Attestation in respect of the Registration of Births (Rule 22)
Form III	Statement of Income and Expenditures and Balance Sheet (Rules 26 to 30)
Form IV	Statement of the Family Patrimony (Rule 31)
Form V	Consent to Psychosocial Evaluation (Rule 33)
Form VI	Order for Psychosocial Evaluation (Rule 36)
Form VII	Communication of Records Order (Rule 36)
Form VIII	Divorce Judgment (Rule 41)
Form IX	Certificate of Divorce (Rule 42 e)
Form X	Notice of Hearing respecting Confirmation of a Provisional Order (Rule 42 i)

2. The following is substituted for Titles I and II:

“CHAPTER I GENERAL

1. Application: These Rules of Practice shall apply to all the districts of Québec.

2. In camera — Advocates and articulated students: Advocates and articulated students shall be admitted to *in camera* hearings.

CHAPTER II YOUTH PROTECTION APPEALS FROM DECISIONS OR ORDERS OF THE COURT OF QUÉBEC

3. Definitions: In this Chapter, “Court” means the Superior Court of Québec and “Court of Québec” means the Court of Québec, Youth Division.

4. Introduction of appeal: Appeals are heard by the Court, in the Family Division, unless referred by a judge to the Criminal Division.

5. Notice of appeal: In addition to the provisions of Section 101 of the Youth Protection Act (R.S.Q., c. P-34.1), the notice of appeal shall contain the object of the complaint, the conclusions of the decision or order appealed from, and the names of the parties’ attorneys in first instance.

The Court may issue any order permitted by law, whether or not it is stated in the notice of appeal.

The notice of appeal shall be signed by the appellant or his attorney and shall give the address to which any communication may be directed.

The appellant may invoke grounds not stated in the notice of appeal by filing with the Clerk of the Court a notice stating such grounds precisely and concisely, together with proof of service upon the respondent and the respondent’s attorney, before the appeal is heard and not later than 15 days after the filing of the complete transcript of the proceedings.

6. Upon deposit at the office of the Court of Québec of the notice of appeal provided for in Section 106 of the Youth Protection Act, the Clerk of that Court shall send a copy thereof to the Clerk of the Court.

7. Appearance: An attorney who, within 10 days of the deposit of the notice of appeal, files an appearance at the Office of the Court shall be the attorney of record before the Court.

8. Interim release: The Court may grant an interim release upon the deposit of the notice of appeal.

A verbal application may be made to that effect; however, one clear day’s notice of its presentation must be given to the prosecutor and be deposited with the Clerk.

9. Preparation of record:

1. Upon receipt of the notice of appeal, unless the Court orders otherwise upon motion by the appellant, the Clerk of the Court of Québec shall take all necessary steps to obtain as soon as possible a complete transcript of the proceedings. Such transcript shall include the evidence adduced and the decisions rendered both during the hearing and at the time of the final decision and, where applicable, the order.

2. As soon as the transcript is completed, the Clerk of the Court of Québec shall send the original to the Office of the Court with copies to the parties or their attorneys, by registered or certified mail or by any other means providing proof of receipt. Where it appears impossible

to obtain a complete transcript, he shall advise the Clerk of the Court and the parties, giving reasons.

3. The Judge may give any instructions deemed necessary for the application of this Rule.

10. Inscription on the roll: Upon the expiry of the time allotted for appearance, the Clerk of the Court shall enter the appeal *pro forma* on the roll of the Family Division, 15 days thereafter or on the first day of the next session, and give notice to the parties or their attorneys.

On the day fixed for the *pro forma* hearing, the parties or their attorneys must be present to inform the Court of the nature of the case and the duration of the hearing. The Judge shall then set a definitive date for the hearing of the appeal which will proceed on that date, without further notice.

If a party is absent or is not represented at the *pro forma* hearing, the Court may apply Rule 13.

11. Argument in writing: Any party who wishes to submit an argument in writing must have it served and filed within 15 days of the deposit of the complete transcript of the proceedings; the written argument must, where applicable, state the relevant facts with appropriate references to the transcript and set forth the arguments with references to the authorities relied upon.

12. Depositions: When the Court hears new evidence, it shall be taken down by a stenographer or stenotypist or recorded through an independent system that is not connected to the master recording system.

13. Powers of the Court: The Court may:

(a) dismiss the appeal, where the appellant is not ready to proceed when the case is called;

(b) allow the appellant to proceed *ex parte* against a respondent who is not ready to proceed when the case is called;

(c) upon application, or on its own initiative, dismiss an appeal where the appellant has failed to observe any of the formalities required by law or by the Rules of Court.

14. Applications and motions: All applications or motions shall be served upon the other party or that party's attorney with a notice of presentation of at least one clear juridical day. The Judge, however, may change the time limit for sufficient cause.

15. Copies of judgments: The Clerk of the Court shall send a copy of the judgment to the Judge who rendered the decision appealed from and to the Clerk of the Court of Québec, as well as to the persons listed in Section 94 of the Youth Protection Act.

16. Record: Upon expiry of the time limit for appeal to the Court of Appeal, the Clerk of the Court shall return the original record to the Clerk of the Court of Québec.

17. General provision: The Court may issue any order required in the interest of justice.

CHAPTER III DIVORCE, SEPARATION, NULLITY OF MARRIAGE AND FILIATION

DIVISION I PROCEEDINGS

§1. General

18. Child custody and tutorship: A party who applies for custody of a child or tutorship to a child must attest that the child is not the object of a court decision or of an agreement with the Director of Youth Protection, or, if such is the case, must give the particulars of such decision or agreement.

19. Safeguard of rights: The Court may, at any stage of the proceedings, order any measure likely to ensure proper processing of the record until the hearing. The Court may also, in case of emergency, issue an order to safeguard the rights of the parties for the time and under the conditions it determines.

20. Provision for costs: The Court may, at any stage of the proceedings, order a party to pay to the other a provision for costs.

§2. Divorce declaration

21. Content: A divorce declaration, supported by an affidavit and, where applicable, a notice as to contestation, shall be drawn up as far as possible in accordance with Form I, and shall be signed by the applicant.

22. Attestation of birth: In every application for divorce, an attestation of birth for each spouse, drawn up in accordance with Form II, must be enclosed with the inscription for proof and hearing, or, in the case of a joint application, with the declaration.

A case may not be inscribed or a declaration filed without such attestations.

The attestation shall be attached to the copy of the judgment that is sent to the Registrar of Civil Status.

23. Birth certificates: Providing children's birth certificates as evidence is not required unless their legitimacy is in dispute. Similarly, photocopies of the parties' birth certificates are sufficient.

§3. *Other applications by declaration*

24. Content: To the extent possible, any application in matters of nullity of marriage, separation as to property or separation as to bed and board, shall include the information required under paragraphs 1 to 7, 10 and 11 of Form I.

25. Joint application: All exhibits shall be filed with the Court Office at the same time as the joint application.

DIVISION II

PERSONAL SUPPORT FOR APPLICANT

26. Sworn statement by applicant: In order to be put on the roll of the Practice Division, any motion for the purpose of fixing or varying support for the applicant shall be accompanied with a sworn statement of the applicant's financial situation; such statement must be prepared in accordance with Form III and be served with the motion.

27. Sworn statement by respondent: At least five days before the presentation of the motion, the respondent shall serve upon the applicant and file of record a sworn statement of the respondent's financial situation in accordance with Form III, in default of which the applicant may, at the Court's discretion, proceed *ex parte*. The notice of presentation of the motion shall mention such requirement.

28. Admission of ability to pay: A party that acknowledges in Form III being able to pay the amounts claimed by the other party is not required to provide a detailed financial statement, unless the Judge decides otherwise.

29. Consent or draft agreement: The consent or draft agreement of the parties or their affidavits for judgment shall describe each party's financial resources and situation, unless they have completed and submitted a sworn financial statement in accordance with Form III or, as the case may be, with the form for fixing child support.

30. Hearing on merits: Both parties shall serve on each other a statement of their financial situation drawn up in accordance with Form III at least ten days before

the date of the hearing on the merits, or at the time fixed by the person who presides over the pre-trial conference.

DIVISION III

FAMILY PATRIMONY

31. Mandatory information: With respect to matters of separation as to bed and board, nullity of marriage or divorce, the party who inscribes the case shall communicate and file with the declaration of inscription on the roll either a declaration by the parties that they are not subject to the rules governing family patrimony, that they renounce partition, that the partition is not contested, or a statement of the family patrimony in accordance with Form IV.

Where the other party contests the statement, he shall communicate and file with his declaration of inscription on the roll a sworn statement of the family patrimony in accordance with Form IV.

DIVISION IV

PSYCHOSOCIAL EVALUATION

32. Application: Referrals to the Service d'expertise psychosociale attached to the Superior Court of Québec shall only be made in cases involving minor children.

33. Consent of parties: The Judge may only issue an order for a psychosocial evaluation with the consent of the parties and after having ascertained that it is appropriate to do so.

The consent, prepared as far as possible in accordance with Form V and signed by the parties and their attorneys, shall be filed of record.

34. Communication of evaluation: When an order for the safeguard of rights is issued, the Judge who orders the evaluation shall indicate whether the report must be forwarded to the Chief Justice or to a judge designated by the latter, or returned to him if he remains seized of the matter.

35. Order issued during hearing: The order shall be issued from the bench, in the presence of the parties.

The Clerk of the Court shall send all the relevant documents to the Service d'expertise psychosociale.

36. Content of order: The order, drawn up as far as possible in accordance with Form VI, shall indicate the specific object of the evaluation. The Court may, if applicable, issue an order in accordance with Section 19 of the Act respecting health services and social services (R.S.Q., c. S-4.2) in accordance with Form VII.

37. Evaluation report: An evaluation report shall form part of the evidence and the expert may be called upon to testify.

38. Copies to parties: Upon receipt of the report, the Judge shall provide the parties with a copy and have it filed of record under seal.

DIVISION V MOTIONS FOR VARIATION

39. Mandatory information: Any motion to vary, rescind or suspend corollary relief shall be supported by an affidavit and contain the following information:

- (a) The current marital status of the parties;
- (b) The address of the residence of the parties and their dependent childrens' address, age and sex;
- (c) The current terms and conditions of any child custody and access arrangements;
- (d) The current amount of support and the amount requested;
- (e) The amount of arrears, if any;
- (f) The changes in circumstances that support the motion.

40. Previous order issued in another case: In the case of proceedings for variation of an order issued in another case, copies of prior judgments and of the proceedings for which judgment was rendered shall be filed of record unless they have already been included.

DIVISION VI CLERK OF THE COURT

41. Judgment or Court order: The Clerk shall prepare and sign every judgment or order issued by the Court or by a judge, unless such judgment or order has been prepared and signed by the Judge.

The divorce judgment shall be prepared, as far as possible, in accordance with Form VIII and shall bear the date on which it was rendered.

DIVISION VII DIVORCE DIVISION

42. In each of the judicial districts of Québec, the Divorce Division shall be administered by the Clerk. The duties of the Clerk shall be as follows;

(a) To file separately the divorce records and to keep registers, an index, a court ledger and a special register available to the public where every divorce judgment is entered without delay;

(b) To receive and register the applications after ascertaining that they comply with the requirements of the Act and of the Rules of Practice;

(c) To keep a register of proceedings containing;

i. with respect to the application, the names and addresses of the parties and the date of filing;

ii. with respect to the divorce judgment, the names and addresses of the parties and the date it was rendered;

(d) To fill out the forms required by the Rules of Practice or the regulations made pursuant to the Divorce Act;

(e) Once the divorce has taken effect, to issue a certificate of divorce in accordance with Form IX, upon request;

(f) In accordance with Section 17 (11) of the Divorce Act, to forward, when the Court has issued an order varying a support order or custody order of another court, a certified true copy of the variation order to the other court or to any other court which had varied the original order;

(g) To forward, in the case of a provisional order, the documents provided for in Sections 18 (3) and 18 (6) of the Act;

(h) To serve upon the applicant or the applicant's attorney the notice provided for in Section 18 (5) of the Act at least 10 days before the date fixed for submitting further evidence;

(i) To serve upon the parties the notice provided for in Section 19 (2) of the Act, in accordance with Form X, accompanied by a copy of the documents received from the court which issued the provisional order;

(j) As required by Section 19(12) of the Act, to send a certified true copy of any order issued under Section 19 (7) of the Act;

(k) To forward to the competent court, following a transfer order issued under Section 6 of the Act, a true copy of the record and the order;

(l) To hire the personnel necessary for the performance of the Clerk's duties, including Deputy-Clerks,

according to the number of proceedings filed in the Court Office for which the Clerk shall have complete responsibility.”

The forms are renumbered as follows:

Form I shall remain I;

Form II shall become III;

Form III shall become VIII;

Form IV shall become IX;

Form V shall become X;

Form VI shall become V;

Form VII shall become VI;

Form VIII shall become VII;

Form XI shall become IV;

Form XII shall become II.

4. Form I, Divorce Application, is amended:

(a) by substituting “Divorce Declaration” for “Divorce Application” as the title;

(b) by inserting the word “(optional)” after the letter and number “P-5” in the second paragraph of paragraph 6;

(c) by inserting the following after “Notice to Defendant as to Contestation” and before the date and the signature (s):

“Notice of Disclosure of Exhibits (Art. 331.2 C.C.P.)
The exhibits in support of this declaration, numbered Exhibits P1 to P _____, are hereby disclosed.”

5. Form II A is revoked.

6. Form V, Consent to Psychosocial Evaluation, is amended by adding the following paragraph after the first paragraph:

“We consent that the evaluation begin after the mediator’s report is filed in accordance with Articles 814.3 *et seq* C.C.P.”

7. These Rules come into force ten days after their publication in the *Gazette officielle du Québec*.