

Draft Regulations

Draft Rules

An Act respecting municipal courts
(R.S.Q., c. C-72.01)

Courts of Justice Act
(R.S.Q., c. T-16)

Criminal Code
(R.S.C., 1985, c. C-46)

Rules of the municipal courts

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Rules of the municipal courts, the text of which appears below, may be submitted to the Government for approval on the expiry of 45 days following this publication and, if so approved, will come into force on the date of publication in the *Gazette officielle du Québec* or on a later date to be fixed.

The draft Rules were adopted by a majority of the municipal judges, on april 16 2004, in agreement with the Associate Chief Judge of the Court of Québec responsible for municipal courts. The draft Rules provide for uniform rules of practice applicable to all municipal courts in matters necessary for the exercise of their jurisdiction.

Any interested person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to the office of the Associate Chief Judge of the Court of Québec responsible for municipal courts, Palais de justice, 300, boulevard Jean-Lesage, bureau 5.01, Québec (Québec) G1K 8K6. Further information may be obtained by contacting M^e Julie Bussières ; telephone : (418) 649-3628 ; fax : (418) 650-7994.

GILLES CHAREST,
*Associate Chief Judge of the Court of Québec
responsible for municipal courts*

Rules of the municipal courts

An Act respecting municipal courts
(R.S.Q., c. C-72.01, s. 56.2)

Courts of Justice Act
(R.S.Q., c. T-16, s. 98, 3rd par., subpar. 2)

Criminal Code
(R.S.C., 1985, c. C-46, s. 482(2))

CHAPTER I PROVISIONS APPLICABLE TO ALL MATTERS

DIVISION 1 DEFINITIONS

1. Unless the context indicates otherwise,

(a) “case” means any stage of a criminal, penal or civil proceeding and a motion or application ;

(b) “court” means a municipal court of Québec ;

(c) “clerk” means a clerk, deputy clerk or replacement clerk ;

(d) “judge” means a municipal court judge ;

(e) “president judge” means, in a court where judges exercise their functions exclusively and on a full-time basis, a judge appointed by the Government to preside over a court and includes the associate president judge where that judge replaces the president judge ;

(f) “judge responsible for the court” means, in a court composed of more than one judge, a judge designated by the Government as the judge responsible for the court ;

(g) “parties” means the Queen, the prosecuting party, the prosecution, the defendant, the intervener, the impleaded party or the opposing party.

DIVISION II TIME LIMITS AND POWERS EXERCISED PURSUANT TO THESE RULES

2. Time limits or requirements. A president judge, a judge responsible for the court or a judge may, for serious reasons, shorten a time limit or grant an exemption from a requirement under these Rules.

3. Powers. Unless he or she is absent or unable to act, the powers assigned to a president judge or a judge responsible for the court under these Rules shall not be exercised by a judge of his or her court.

DIVISION III ACCESS TO RECORDS

4. Office of the court. The office of the court shall be open on juridical days from Monday to Friday, between 8:30 a.m. and 4:30 p.m.

5. Consultation of a record. A record or exhibit may be filed only in the presence of the clerk or a person designated by the clerk.

6. Copies of documents. A person may obtain a copy of documents or exhibits filed in the court record on payment of the required fees.

7. Removal of a record. A record may be removed from the office of the court only at the request or with the authorization of the judge or the clerk.

8. Removal of an exhibit. After the expiry of the time limit for appeal from the final judgment or the sentence, a party may, upon giving a receipt therefor, remove an exhibit filed by the party, unless the exhibit has been seized.

DIVISION IV COURTROOMS

9. Courtrooms. The president judge or the judge responsible for the court shall determine the use and purposes of courtrooms.

10. Judges. The president judge or the judge responsible for the court shall designate the judges who are to preside in the courtrooms of the court.

11. Assignment of cases. The president judge or the judge responsible for the court shall assign the cases to the judges assigned to the court.

DIVISION V WRITTEN MOTIONS AND APPLICATIONS

12. Reference to relevant provisions. Every motion or application shall indicate the title and the reference to the regulatory or statutory provision on which it is based.

13. Filing at the office of the court. Every motion or application shall be filed at the office of the court at least three clear juridical days before the date of presentation.

DIVISION VI ROLLS OF THE COURT

14. Preparation. The roll of the court shall be prepared by the clerk under the authority of the president judge, the judge responsible for the court or the judge.

15. Contents of the roll. The roll shall contain the name of the judge presiding over the hearing, the name of the clerk, the record numbers, the names of the parties and, where applicable, the name of the attorney, the nature of the offence, motion or application, the date and time of the sitting and the courtroom number.

16. Roll of the court. Before the hearing, a copy of the roll shall be delivered to the judge and a sufficient number of copies made available to the parties.

17. Posting of the roll. The clerk shall see to the posting of the roll at the entrance to the courtroom or at any other location designated by the president judge, the judge responsible for the court or the judge.

DIVISION VII COURT SITTINGS

18. Fixing of the dates of sittings. The sittings of the court shall be fixed by the president judge, the judge responsible for the court or the judge.

19. Time of sittings. The sittings of the court shall commence at 9:30 a.m., 2:00 p.m., 6:00 p.m. or at any other time fixed by the president judge, the judge responsible for the court or the judge.

20. Minutes of the hearing. The clerk shall draw up the minutes of the hearing which shall include the names of the parties, their attorneys and witnesses, the exhibits and documents filed during the hearing, the amendments and admissions, the nature of the objections, the decisions rendered and any other particular the judge may require.

21. Classification of exhibits. At the hearing, the clerk shall classify the exhibits by letter, in numerical order.

DIVISION VIII ORDER, DRESS CODE AND DECORUM

22. Persons present. All persons present at the hearing shall rise when the judge enters the courtroom and remain standing until the judge is seated. At a recess or adjournment, they shall rise again and remain standing until the judge has retired.

23. Opening of the session. At the opening of the session, or at an adjournment or recess, the clerk or the person acting as usher shall say aloud: "Silence. All rise please."

At the opening of the session, the clerk shall add: "The Municipal Court of ... is now in session, the Honourable ... presiding."

Once the judge is seated, the clerk or the person acting as usher shall invite those present also to be seated.

The clerk shall announce any recess or resumption.

When the judge leaves the bench, the clerk or the person acting as usher shall invite those present to rise and no one shall leave until the judge has retired.

24. Calling of the roll. The clerk shall call the roll in the presence of the judge.

25. Addressing the judge. Every person addressing the judge or a witness shall, except with leave of the judge, rise and remain standing.

26. Decorum. No conduct or demeanour which interferes with the dignity and good order of the court is permitted. During the hearing, no person shall engage in conversation with another person, address the clerk or consult a record, except with leave of the judge.

27. Good order at hearings. During hearings, no person shall read newspapers, take photographs, film, make audio or video recordings, make radio broadcastings, use pagers or cellular telephones in a resonant mode, drink, eat or chew gum.

The media are authorized to record the proceedings and the decision on audiotape, unless the judge decides otherwise; no broadcasting of any such recording is, however, permitted.

28. Dress in court. Every person appearing before the court shall be suitably attired.

29. Dress code for attorneys. Unless otherwise ordered by the judge, no attorney shall address the court unless dressed as follows:

(a) male attorneys and articulated students shall wear conservative trousers, jacket, shirt and tie or a black robe;

(b) female attorneys and articulated students shall wear a conservative skirt or trousers with a blouse and jacket or a dress, or a black robe.

DIVISION IX ADJOURNMENTS

30. Adjournment. Where a party foresees being unable to proceed on the date set for the trial or hearing, the party shall immediately notify in writing the other parties or their attorney and the judge presiding the hearing, indicating the reason, and request an adjournment, unless exempted from doing so by the judge.

31. Annulment of the summoning of witnesses. Only a party or a witness concerned may, by motion to the judge, request the annulment of the summoning of a witness in a case on the roll for hearing or trial.

32. Recording in the minutes of the hearing. Where a motion for adjournment is granted, the reasons for the adjournment shall be recorded in the minutes of the hearing.

DIVISION X ORAL OR WRITTEN ARGUMENTS

33. Copy of jurisprudence or doctrine. A party relying on jurisprudence or doctrine shall provide a copy to the judge and the parties, indicate the relevant pages and highlight the extracts cited.

34. Copies of statutory or regulatory provisions. A party relying on statutory or regulatory provisions other than those set out in the Constitution Act, 1982, (R.S.C. 1985, App. II, No. 44), the Criminal Code, the Canada Evidence Act (R.S.C. 1970, c. E-10), the Controlled Drugs and Substances Act (S.C. 1996, c. 19), the Charter of human rights and freedoms (R.S.Q., c. C-12), the Code of Penal Procedure (R.S.Q., c. C-25.1), the Highway Safety Code (R.S.Q., c. C-24.2), the Civil Code of Québec or the Code of Civil Procedure, shall provide a copy to the judge and the parties.

CHAPTER II SPECIFIC RULES FOR EACH MATTER

DIVISION I CRIMINAL AND PENAL MATTERS

§1. *Motions and applications*

35. Form. Except on an order of the judge or unless otherwise provided by law, all motions and applications presented to a judge pursuant to the Criminal Code, the Code of Penal Procedure or these Rules shall be presented orally and without notice.

36. Written motion or application. All written motions and applications shall set out the facts and grounds supporting them; they shall be accompanied by an affidavit and notice.

37. Period of service. Unless the judge decides otherwise, a written motion or application shall be served on the opposing party or that party's attorney with notice of at least 3 clear juridical days.

38. Service on an attorney. Service on an attorney shall be effected, in the case of the prosecution, at the office of the attorney of the municipality concerned, and in the case of the defendant's attorney, at the attorney's elected domicile.

§2. *Conduct of the proceedings*

39. Representation before the court. The attorney of record may be represented by an associate or another attorney mandated for that purpose.

40. Absence at the calling of the roll. An attorney who knows that his or her client will not be present in the courtroom when the client's name is called must nonetheless be present before the court.

41. Withdrawal after appearance. An attorney who has appeared for a defendant may not withdraw from the record except with leave of the judge on presentation of a motion to withdraw served on the defendant and the opposing party, unless the attorney is exempted from such service by the judge seized of the motion.

42. Content of the notice of hearing. The notice of hearing given to the defendant in penal matters shall contain the provisions of articles 62 and 63 of the Code of Penal Procedure.

43. Place of the defendant. The defendant shall remain in the assigned place or beside his or her attorney throughout the trial, except with leave of the judge. The defendant shall rise and remain standing during the reading of the information laid and the pronouncement of the judgment or the sentence, except with leave of the judge.

DIVISION II CIVIL MATTERS

§1. *Written proceedings and exhibits*

44. Written proceedings. All written proceedings shall be legibly written on one side of a good quality sheet of paper measuring 21.5 x 35.5 cm; the nature and object of the proceeding, the amount in dispute, the record number, the names of the parties and the name, address, postal code, telephone number, fax number and computer code of the attorney of the party filing the proceeding shall be indicated on the backing.

If a party is not represented by an attorney, the attorney's computer code and fax number are not required.

45. Signing of proceedings. A proceeding filed by a party shall be signed by the party's attorney. If the party is not represented by an attorney, the proceeding shall be signed by the party.

46. List of exhibits. Where a list of exhibits is submitted, the list shall enumerate and identify the exhibits to which it refers.

47. Numbering by the clerk. The clerk shall number a proceeding or exhibit on receiving it.

48. Numbering of exhibits. Each exhibit shall bear a number preceded by an identifying letter attributed to each party and which shall be used until the end of the proof. There shall be only one series of numbers per party.

49. Designation of the parties. The parties shall, in all proceedings, retain the same order and designation as in the proceeding introductive of suit.

50. Medical record and expert's report. A medical record or an expert's report prepared by a physician, a psychologist or a social worker that is filed in the record shall be kept in a sealed envelope and no person, except the parties or their attorneys, shall have access without authorization from a judge who shall fix the conditions. Access to such documents entitles the parties or attorneys to make copies, at their own expense.

§2. *Motions*

51. Service by fax. Proof of service by fax shall be stapled to the back of the original of the document served.

52. Motion for particulars. Each paragraph of a motion for particulars shall bear the same number as the paragraph of the proceeding to which it refers.

53. Amendments. Should a proceeding be amended, the additions or replacements shall be underlined or indicated in the margin by a vertical line and deletions shall be indicated by means of a dotted line in parentheses.

54. Particulars. Where particulars to a proceeding have been ordered, a new proceeding incorporating the particulars as provided in the preceding section shall be filed in the record within the allotted time.

§3. *Judgments*

55. Sending of the record for advisement. Before sending the record to the judge for advisement, the clerk shall ensure that it is complete. If the record is incomplete, the clerk shall so notify the attorneys so that they may take the necessary steps to complete it.

56. Taking of a case under advisement. No case shall be taken under advisement until the record has been completed, unless the judge decides otherwise.

CHAPTER III FINAL

57. Coming into force. These Rules come into force on the fifteenth day following the date of their publication in the *Gazette officielle du Québec*.