

Draft Regulation

An Act respecting municipal courts
(chapter C-72.01)

Courts of Justice Act
(chapter T-16)

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

Municipal Courts

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Municipal Courts Regulation, appearing below, may be submitted to the Government for approval on the expiry of 45 days following this publication.

The draft Regulation, which sets out uniform rules applicable to all municipal courts in matters necessary for the exercise of their jurisdiction, replaces the Rules of the municipal courts (chapter C-72.01, r. 1) made in 2005. It takes into account the legislative amendments since its making and ensures better consistency with the rules provided for in the Regulation of the Court of Québec (chapter C-25.01, r. 9).

Study of the matter has shown no impact on the public and on enterprises, including small and medium-sized businesses.

Further information on the draft Regulation may be obtained by contacting Julie Bussière, executive assistant of the associate chief judge of the Court of Québec responsible for municipal courts by telephone at 418-649-3628 or by email at julie.bussiere@judex.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the office of the associate chief judge of the Court of Québec responsible for municipal courts, 300, boulevard Jean-Lesage, 5.15, Québec (Québec) G1K 8K6.

SONIA LEBEL,
Minister of Justice

Municipal Courts Regulation

An Act respecting municipal courts
(chapter C-72.01, s. 56.2)

Courts of Justice Act
(chapter T-16, s. 98)

Criminal Code
(R.S.C. 1985, c. C-46, ss. 482 and 482.1)

CHAPTER I GENERAL

1. This Regulation applies to all municipal courts of Québec, subject to any special regulations made to supplement the Regulation and that are applicable only before the Municipal Court of Ville de Montréal pursuant to section 56.2 of the Act respecting municipal courts (chapter C-72.01).

2. Application exemption. In a proceeding, the judge may, in light of the particular circumstances of the case of which the judge is seized, exempt a party or person from the application of any provision of this Regulation, including the provisions relating to time limits, decorum, conduct during the hearing and applications for postponement.

3. Information technology. The terms pleading, reverse side or back, exhibit, expert report, transcript, register, record, document, copy, consultation, filing, producing and service also include, where applicable, their technology-based versions and technology-based access.

CHAPTER II PROVISIONS APPLICABLE TO ALL MATTERS

DIVISION I ADMINISTRATION

4. Keeping of registers, records, orders and judgments. The registers, records, orders and judgments necessary for the application of the Code of Civil Procedure (chapter C-25.01), the Criminal Code (R.S.C. 1985, c. C-46) and the Code of Penal Procedure (chapter C-25.1), and those required by specific Acts, must be kept in the court offices.

5. Consultation of registers, records, orders and judgments. Subject to specific legislative provisions or an order made by a judge, any person may have access to the registers, records, orders and judgments of the court during court office hours.

6. Consultation of a record. A record or an exhibit filed may be consulted only in the presence of the clerk or a person designated by the clerk from among the personnel of the court.

7. Copies of documents or exhibits. Subject to legislative provisions or an order made by a judge, any person may obtain a copy of documents or exhibits filed in the court record on payment of the fees under the tariffs of court costs.

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

9. Contact information. Parties, their lawyers and parties not represented by a lawyer must provide the court office concerned with their name, address, postal code and a telephone number and, if available, an email address where they can be contacted. They must ensure that the information is kept up to date and inform the court office without delay of any change.

DIVISION II PLEADINGS AND EXHIBITS

10. Format and font. Except if exempted by the judge, all pleadings must be written on one side only of a letter-size document measuring 21.5 x 28 cm (8½ x 11 in) using 12-point Arial font or be legibly written in the case of a handwritten pleading.

11. Reference to relevant provisions. Every application must indicate the title of and reference to the statutory or regulatory provision on which it is based.

12. Numbering of exhibits. Each exhibit number must be preceded by an identifying letter assigned to each party, and which is used until the end of the proceeding. There is only one series of numbers per party.

13. Reverse side or back. When required, the reverse side or back of a pleading must indicate the record number, the name of the parties, the nature or object of the pleading and, as applicable, the amount in dispute.

The lawyer representing a party must indicate on the reverse side or back his or her name, address, postal code, telephone number, fax number, email address and permanent court number, as applicable.

A party not represented by a lawyer must indicate on the reverse side or back his or her contact information including his or her name, address, postal code, telephone number, email address and fax number, if available.

14. Signature. Every pleading must be signed by the party, the party's lawyer or the person authorized by the lawyer's partnership.

15. Designation of the parties. In all pleadings, the parties retain the same order and designation as in the judicial application.

16. Filing of pleadings. A clerk who receives a pleading enters upon it the date and time it was received and, if applicable, numbers it and enters it in the court register.

17. Medical record. A medical record, an expert report or a document prepared by a physician, psychologist or social worker, or any other expert report of a psychosocial nature filed in the record in a sealed envelope is kept in the envelope and no person, except a person authorized by law, may have access to it without the permission of the court or a judge. The nature of the documents filed in a sealed envelope must be written on the envelope.

Access to such documents includes the right to make copies.

18. Filing of documents in a sealed envelope. Documents in a sealed envelope are filed using an envelope on the reverse side or back of which the following information in block letters must appear:

- (1) record number;
- (2) filing date;
- (3) identity of the filer and, if applicable, the party represented;
- (4) exhibit number and nature of the document filed.

The filing of a document that does not satisfy this section may be refused. If difficulties arise, the clerk refers the matter to a judge.

19. Recording of information. The name and capacity of a person consulting a document filed in a sealed envelope or requesting a copy of them are recorded by the clerk.

20. Changes and clarifying particulars. Where a change is made to a pleading, additions or substitutions must be underlined or indicated in the margin and deletions must be indicated by a dotted line or underlining between parentheses.

Where clarifying changes to a pleading have been ordered, a new pleading incorporating them must be filed in the record within the time set for doing so, following the same procedure.

21. Technology-based document. If the technological environment for court business so allows, the court may, on its own initiative or at the request of a party, permit the filing of all or any part of certain documents or testimony using technology-based media.

The technology-based document must, when the information it contains is in text form, allow key-word searches as an essential function. If there is more than one document in the same file, the documents must be accompanied by an index containing hyperlinks between the index and each document filed.

A party that files or produces a technology-based document must reveal, in addition to its essential functions, all the other functions of the document of which the party is aware, as well as all the other functions that may affect the technological environment for court business.

DIVISION III COURTROOMS AND ROLLS OF THE COURT

22. Courtrooms. The president judge or the judge responsible for the court determines the use and purposes of available courtrooms.

23. Preparation of roll. The roll is prepared by the clerk under the authority of the president judge, the judge responsible for the court or the judge.

24. Content of roll available in courtroom. The roll states the name of the presiding judge, the record number, the number of times the record has appeared on the roll since the beginning of the proceedings, the date of the last appearance on the roll, the date on which the information laid was sworn to or the ascertainment was served, the names of the parties and their lawyers, whether the presence of the defendant is required, whether the defendant is in custody, the nature of the offence, the nature of the proceeding, the number of the statement of offence, if any, the date, duration and place of the hearing, and the existence of victims' statements.

25. Copy of roll. Not later than 3:00 p.m. on the day before the hearing, a copy of the roll is delivered to the judge. On the day of the hearing, copies are available for consultation by the parties in the courtroom.

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

27. Official version of roll. Although versions of the roll are available in other media, the only official version of the roll is the version posted in the various municipal courts and, in the event of a discrepancy, that version prevails.

28. Addition of case to roll. No case may be added to the roll on the day of the hearing without authorization from the president judge, the judge responsible for the court or a judge.

29. Transfer of case. At the hearing, a party requesting the transfer of a case to another judge of the same court must first obtain authorization to do so from that other judge.

30. Setting of dates. The sittings of the court are set by the president judge, the judge responsible for the court or the judge and, in all cases, after consulting the clerk.

31. Time of sittings. The sittings of the court are held in the morning, afternoon or evening, at any time set by the president judge, the judge responsible for the court or the judge and, in all cases, after consulting the clerk.

DIVISION IV HEARING, DECORUM AND ORDER

32. Opening and adjournment of sitting. All persons present at the hearing are to rise as the judge enters the courtroom and remain standing until the judge is seated.

At the opening of the sitting, the clerk, the usher or the person acting as usher says aloud: "Silence. Please rise. The Municipal Court of [...], presided over by the Honourable Judge [...], is now in session"

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

When the judge leaves the bench, the clerk, the usher or the person acting as usher asks those present to again rise, and no one may leave his or her seat until the judge has retired.

33. Decorum. The judge may make any order to ensure the proper administration of justice, the serenity of hearings, decorum, good order, and respect for the rights of the parties or their lawyers.

The usher, or any security officer, ensures decorum and good order are respected and sees that silence is maintained and the persons present at the hearing are suitably seated. He or she assists the judge in the application of this Regulation and the guidelines concerning the use of technology in the courtroom.

34. Food and drink. Drinking, eating and chewing gum are not permitted in the courtroom.

35. Technological devices. The use of personal technological devices is permitted in accordance with the guidelines concerning the use of technology in the courtroom.

36. Dress code. Every person present in the courtroom must wear suitable attire.

Judges wear a gown either closed in front or with a black waistcoat, a white shirt, collar and bands, dark clothing and appropriate footwear at all times in the courtroom.

Lawyers wear a black gown either closed in front or with a black waistcoat, a white shirt, collar and bands, dark clothing and appropriate footwear at all times in the courtroom.

The same rule applies to articling students, minus the bands.

At all times, the clerks, ushers and other officers of the court wear a gown with plain clothing of a dark hue. Appropriate footwear must be worn.

37. Punctuality. The parties and lawyers must be present and ready to proceed at the opening of sittings or at any other set time.

38. Conduct during hearing. Every person who addresses the court or a witness must rise and remain standing.

The person must show respect, courtesy and restraint towards the judge, the opposing party, the lawyers, the witnesses and the personnel of the court.

In addition, no person may enter into a discussion with another person, including the clerk, or consult the court record.

39. Place of defendant. Throughout the trial or proceeding, the defendant is to remain in the assigned place and rise and remain standing during the reading of the information laid and the pronouncement of the judgment and the sentence, as applicable.

40. Support for party not represented. Before the hearing, a party not represented by a lawyer must take the necessary steps to obtain information on the proper manner in which the party's rights may be asserted before the court.

41. Persons with disability who need assistance. Persons with a disability who need assistance must inform the clerk as quickly as possible so that the appropriate measures may be taken.

If the request appears excessive, the clerk refers it to the judge seized of the case.

42. Swearing in. The clerk, in the presence of the judge, swears witnesses in by asking them to take an oath or make a solemn affirmation.

43. Interpreter. A party requiring the services of an interpreter must so inform the court office without delay.

In civil matters, a party requiring the assistance of an interpreter must retain and pay for the interpreter's services, except in the cases provided for in articles 298 and 299 of the Code of Civil Procedure.

44. Security in courtrooms. During a hearing, the security of the persons present and responsibility for the persons for whom detention has been ordered must be ensured by appropriate personnel designated by the municipality responsible for the court.

The hearing is held when the judge considers that security is ensured.

45. Postponement and cancellation of subpoena or summons. No case set for trial may be postponed solely by the consent of the parties or by reason of their absence.

A party foreseeing that it will not be able to proceed on the date set by the court or applying to have a subpoena or summons cancelled must immediately notify the opposing party and submit the application to the president judge, the judge responsible for the court or the judge.

Except with permission from one of the above judges, an application for the postponement of a case set for trial must be presented in writing, with reasons, at least 10 days before the date set for the trial.

Prior notice of the application of 3 working days, excepting Saturdays, must be given to all the parties.

Despite the time limit set out in the third paragraph, if the reasons for the postponement become known less than 10 days before the date set for the trial, the president judge, the judge responsible for the court or the judge may receive a written application for postponement and decides it in the best interest of justice.

When postponement is granted, the reasons for the decision are entered in the record.

DIVISION V SOUND RECORDINGS, STENOGRAPHIC NOTES AND MINUTES

46. Sound recording. The clerk is required to make a sound recording of the trial, and when so requested by the court, ensures the operation of any other technology-based means of communication.

47. Testimony outside court. Testimony given outside the court is recorded in a manner that allows it to be stored and reproduced.

When a stenographer's services are used, the stenographer may, in the event that decorum or good order is disturbed, suspend the sitting in order to obtain from the judge, as soon as possible, a decision on whether to continue.

Stenographic notes may be presented in a "4 in one" format, with an alphabetical index.

48. Transcript or copy of recording. When a transcript is ordered by the judge, the clerk provides the judge with the transcript within 30 days unless the judge decides otherwise.

Every transcript of a judgment so ordered must be submitted to the judge who rendered the judgment to allow that judge to verify its accuracy before the transcript is given to the party requesting it. The verified transcript is also filed in the court record.

Unless otherwise provided or otherwise ordered by a judge, any person may obtain a copy of the sound recording of the trial from the clerk.

49. Minutes of hearing. The clerk draws up the minutes of the hearing and enters the following:

(1) in all matters:

(a) the record number;

(b) the names of the parties;

(c) the presence or absence of the parties;

(d) the names of the lawyers, their permanent court number and the party they are representing or, if applicable, the fact that a party has declined to be represented;

(e) the name of the judge presiding the hearing;

(f) the name of the clerk and, if applicable, of the stenographer;

(g) the courtroom number, the date and time of the beginning and end of the sitting and the tape position numbers;

(h) the names of the interpreters;

(i) the names and addresses of the witnesses, and mention of the party calling them to testify;

(j) the classification code and description of all exhibits produced, by letter in numerical order;

(k) admissions;

(l) objections to evidence;

(m) the reasons for any decision on an application for postponement;

(n) the conclusions of any judgment, decision or measures rendered at the hearing by the judge;

(o) the different stages in the proceeding showing the time and, if applicable, the tape position numbers;

(2) in civil matters, the minutes must also indicate the nature of the case and the amount of claims, if any;

(3) in criminal and penal matters, the following information must also be entered:

(a) in addition to the conclusions of any decision or order made by the judge at the hearing, the sentence imposed by the judge;

(b) any waiver of language rights and notice concerning those rights.

DIVISION VI AUTHORITIES

50. Authorities. A party relying on a judgment or doctrine must provide a copy to the judge and the parties, on which the relevant passages are highlighted.

Producing only the relevant excerpts of doctrine and case law is permitted, in which case the pages immediately preceding and following the excerpts or, for case law, the reference and headnote of the decision or judgment, must be produced.

Double-sided printing is permitted.

51. List of authorities. In a given matter, a list of authorities for doctrine and case law may be established or agreed on by the parties with the consent of the judge. The authorities are considered to have been produced and the parties are exempted from reproducing them.

52. Regulatory and legislative provisions. In civil matters, a represented party relying on regulatory or legislative provisions other than those of the Civil Code, the Code of Civil Procedure, the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), (1982, c. 11), the Charter of Human Rights and Freedoms (chapter C-12) and the Consumer Protection Act (chapter P-40.1) must provide the judge and the parties with a copy of the provisions.

In criminal and penal matters, a represented party relying on regulatory or legislative provisions other than those of the Canadian Charter of Rights and Freedoms, the Criminal Code, the Canada Evidence Act (R.S.C. 1985, c. C-5), the Controlled Drugs and Substances Act (S.C. 1996, c. 19), the Charter of Human Rights and Freedoms, the Code of Penal Procedure and the Highway Safety Code (chapter C-24.2) must provide the judge and the parties with a copy of the provisions.

53. Outline of argument. The judge may require the parties to produce an outline of argument concisely setting out the points of law or fact to be discussed, with references to the supporting evidence and authorities.

CHAPTER III CRIMINAL AND PENAL PROCEEDINGS

DIVISION I CRIMINAL PROCEEDINGS

§1. Rules of practice

54. Matters subject to directive. The chief justice may establish directives on, among others, the following matters: judicial authorizations, handling of sealed materials, appearances by videoconference, joint hearings, and applications under the Canadian Charter of Rights and Freedoms.

§2. Applications

55. Application. Every application must set out the facts on which it is based and be accompanied by an affidavit from the applicant attesting to those facts, and by a notice of presentation.

The application must contain

- (1) a concise description of its object;
- (2) a description of the arguments that will be pleaded; and
- (3) a detailed description of its factual basis, specific to the case.

If the judge requires a transcript in order to decide the application, the applicant must serve the transcript and file it with the application and supporting exhibits.

56. Service. Every application must be served on the opposing party or the lawyer for that party when so required, and on the president judge, the judge responsible for the court or the judge, with a notice of presentation of at least 5 working days.

An application under the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, must be served within at least 30 days.

The application must also be filed at the court office as soon as possible after service.

Proof of service must be attached to the original of the document served.

57. Time limit for filing application. A judge may refuse to enter on a roll any application that has not been filed with the court office one working day before the date scheduled for its presentation.

58. Service on lawyer. Service on a lawyer is made at the lawyer's office.

§3. Appearance and withdrawal of a lawyer

59. Representation of lawyer. The defendant's lawyer of record may be represented by an associate or by another lawyer mandated for the purpose.

60. Presence of lawyer. A lawyer whose client fails to appear in the courtroom when his or her name is called must nonetheless appear before the court.

61. Withdrawal of lawyer. A lawyer who has appeared for a defendant may not withdraw from the matter unless an application to that effect has been made and served on the defendant and on the opposing party.

§4. Case management conference, pre-hearing conference and facilitation conference

62. Case management conference. In accordance with section 551.3 of the Criminal Code, an appointed judge may hold a case management conference in the presence of the defendant and the lawyers of record to define the issues genuinely in dispute and to establish appropriate means to simplify the proceedings and reduce the duration of the hearing.

63. Pre-hearing conference. A pre-hearing conference under section 625.1 of the Criminal Code is held on the date and at the time and place set by the judge.

64. Facilitation conference. A judge may hold a facilitation conference with the parties' lawyers to seek partial or full resolution of the matter.

65. Appointment of judge responsible for case management. An application for a case management conference is made under sections 551.1 and 551.7 of the Criminal Code.

DIVISION II PENAL PROCEEDINGS

66. Provisions applicable. The provisions of Division I of this Chapter apply, with the necessary modifications, to all matters under the Code of Penal Procedure.

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

68. Designation of judge responsible for case management. An application to have a case management judge designated is made in accordance with articles 186.1 and 186.3 of the Code of Penal Procedure.

69. Pre-hearing conference. A pre-hearing conference may be held under article 218.0.1 of the Code of Penal Procedure on a judge's own initiative or on a party's application.

CHAPTER IV PROVISIONS APPLICABLE IN CIVIL MATTERS

§1. Record

70. Court register. When a record is to be forwarded to the court or the judge, an updated extract from the court register is filed in it and all previous extracts are destroyed.

§2. Applications presented in civil practice and to judge sitting in chambers

71. Content. A written application presented in civil practice or to a judge sitting in chambers must indicate its nature and object and provide a reference to the legislative or regulatory provision on which it is based.

An application presented in connection with a case management conference must indicate its nature and object, be accompanied by all that is necessary for its analysis, and provide a reference to the legislative or regulatory provision on which it is based.

§3. Case management and pre-trial conference

72. Examination of case protocol. The case protocol is examined and the case management conference is held by the court.

73. Technological means. The court may, on its own initiative or at the written request of a party, hear an application using any appropriate technological means. The use of such technology is contingent on the quality of the equipment used and its availability. After examining the application, the judge communicates the decision to the parties.

Where applicable, the parties make representations in the courtroom before the judge, in a suitably equipped room, or in the judge's chambers.

The parties and their lawyers are responsible for providing the judge's office with the contact information to be used and for being available and able to be contacted at the set time.

In all instances, a sound recording is required for conservation and reproduction purposes.

74. Examinations. The judge may authorize a pre-trial examination, an examination by affidavit or an examination of a witness outside the court using videoconference facilities or any other means of communication, if the means proposed appears to the judge to be reliable and proportionate to the circumstances of the case, taking into account the quality of the equipment used and its availability, and the possibility for the court of taking cognizance of and using the content of the examination. The judge must take into consideration, for the court, the technological environment for court business.

75. Application to set date by priority. Every application to have a date set by priority for a case must be in writing, give reasons, and be presented to the president judge, the judge responsible for the court or a judge.

The application may be made for any serious reason, in particular the complexity of the case and the number of witnesses.

§4. *Readiness for trial and setting down by default*

76. Readiness for trial. After the filing of the joint declaration, the parties must immediately inform the court of any proceeding or circumstance that could modify the status of the case.

Similarly, in the event of a discontinuance, transaction or bankruptcy, the parties must immediately inform the court office and file, without delay, a copy of the notice of bankruptcy or the declaration evidencing the discontinuance or transaction.

77. Setting down by default. A setting down by default after a failure by a party to answer a summons, attend a case management conference without valid reason or defend the application must specify the nature of the case and the amount in dispute.

§5. *Advisement and judgment*

78. Advisement. Before submitting the record to the judge to be taken under advisement, the clerk ensures that it is complete. If the record is incomplete, the clerk so informs the lawyers or parties so that they may remedy the situation within the time set by the judge.

No case is taken under advisement until the record has been completed, unless the judge decides otherwise.

79. Judgment signed on pleading. A judgment written and signed on a pleading presented to the judge does not need to be written out and signed again on a separate sheet, and a certified true copy of it may be issued by the clerk.

80. Incomplete trial or record. If the parties fail to complete the trial or the record within the time set by the judge when trying a case, whether contested or not, the judge may withdraw from the adjudication, render judgment on the basis of the record as constituted or make any other order the judge considers appropriate.

CHAPTER V FINAL

81. This Regulation replaces the Rules of the municipal courts (chapter C-72.01, r. 1).

82. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.

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