

Draft Regulation

Code of Civil Procedure
(chapter C-25.01)

Superior Court of Québec in family matters — Amendment

Notice is hereby given, in accordance with article 64 of the Code of Civil Procedure (chapter C-25.01), that the Chief Justice of the Superior Court of Québec is publishing the Regulation to amend the Regulation of the Superior Court of Québec in family matters, appearing below. The draft Regulation will be adopted on the expiry of 45 days following the date of this publication.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Véronique Boucher, Director, Service de recherche, Superior Court, 300, boulevard Jean-Lesage, Bureau R-3.04, Québec (Québec), G1K 8K6; email: veronique.boucher@judex.qc.ca.

The Honourable JACQUES R. FOURNIER
Chief Justice of the Superior Court

Regulation to amend the Regulation of the Superior Court of Québec in family matters

Code of Civil Procedure
(chapter C-25.01, art. 63)

1. The Regulation of the Superior Court of Québec in family matters (chapter C-25.01, r. 0.2.4) is amended in section 4 by replacing the fourth paragraph by the following:

“The appellant may invoke grounds not stated in the notice of appeal by filing a notice with the clerk of the Court stating such grounds precisely and concisely, together with proof of notification to the respondent or the respondent’s lawyer, before the appeal is heard and not later than 15 days after the filing of the complete transcript of the proceedings.”

2. Section 8 is amended by replacing “served” by “notified”.

3. Section 11 is amended by replacing “served” by “notified”.

4. Section 15 is replaced by the following:

“15. Interim release in the field of youth criminal justice: The Court may, after the filing of the notice of appeal or an application for review of the sentencing decision, upon a written application presented with at least 3 days’ written notice, notified to the prosecutor and filed with the court office, order the interim release of the appellant and set conditions.”

5. Section 16 is replaced by the following:

“16. Mandatory information: In all pending cases, the parties must attest to whether or not they are subject to

(a) a civil protection order provided for in article 509 of the Code of Civil Procedure (chapter C-25.01) or an application concerning such an order;

(b) an order, an application, an agreement or a decision relating to youth protection; or

(c) an order, an indictment, an undertaking or a recognizance relating to a criminal matter.

A party in one of the situations referred to in subparagraph *a* or *c* of the first paragraph must file a notice with the court office and, if the other party or a child concerned by the proceedings is named, include a copy of the order, undertaking, recognizance, indictment or application concerning a protection order.

A party in the situation referred to in subparagraph *b* of the first paragraph must file a notice with the court office and, if a child concerned by the proceedings is named, include a copy of the order, application, agreement or decision.

If the situation changes in the course of the proceedings, the party concerned must, as soon as possible, file a new notice with the court office and, if the other party or a child concerned by the proceedings is named, include the documents that show that fact.

A model notice is posted on the Superior Court website.”

6. Section 17 is replaced by the following:

“17. Documents attesting to the birth of the parties: In every application for divorce, separation, the annulment of marriage, or the annulment or dissolution of a civil union, a photocopy of the birth certificate, of the copy of the act of birth or of any other document issued by a competent authority other than the registrar of civil

status in Québec and attesting to the birth of the parties concerned by the application must be filed; however, if the information shown in the photocopy is contested, the original must be filed.”

7. The following is inserted after section 17:

“17.1. Documents attesting to the birth of a child: In every originating application concerning custody, access, parenting time, contact or tutorship to a child, a photocopy of the birth certificate, of the copy of the act of birth or of any other document issued by a competent authority other than the registrar of civil status in Québec attesting to the birth of the child concerned by the application must be filed; however, if the information shown in the photocopy is contested, the original must be filed.

In every application concerning the filiation of a child, the original of the child’s birth certificate, of the copy of the child’s act of birth or of any other document issued by a competent authority other than the registrar of civil status in Québec attesting to the child’s birth must be filed.

“17.2. Documents attesting to marriage: In every application for divorce, separation or the annulment of marriage, a photocopy of the marriage certificate or of the copy of the act of marriage must be filed, unless the information shown in the photocopy is contested or the document was issued by a competent authority other than the registrar of civil status in Québec, in which case the original must be filed.

In every application for the annulment or dissolution of a civil union, a photocopy of the civil union certificate or of the copy of the act of civil union must be filed as evidence, unless the information shown in the photocopy is contested or the document was issued by a competent authority other than the registrar of civil status in Québec, in which case the original must be filed.”

8. The following is inserted after section 18:

“18.1. Attestation: An application for divorce and any pleading filed by a party in response to such an application must include a statement by that party that it is aware of its obligations under sections 7.1 to 7.5 of the Divorce Act (R.S.C. 1985, c. 3 (2nd Supp)).

An application for divorce and any pleading filed in response to such an application by a lawyer or notary must include a statement attesting that the lawyer or notary has complied with the obligations imposed by section 7.7 of the Divorce Act.”

9. Section 21 is amended by replacing “déposées” in the French text by “produites”.

10. The heading of Division II of Chapter III is replaced by the following: “SUPPORT FOR A SPOUSE, FORMER SPOUSE OR CHILD”.

11. Section 22 is replaced by the following:

“22. In any application for support for a spouse or former spouse or for the varying of support, the parties must complete Form III, notify it and file it with the court office within the time prescribed in the second paragraph of article 413 of the Code of Civil Procedure (chapter C-25-01).”

12. Sections 23 and 24 are revoked.

13. Section 26 is replaced by the following:

“26. Trial on the merits: Both parties must notify to each other an up-to-date statement of their financial situation drawn up in accordance with Form III and an up-to-date child support determination form at least 10 days before the date of the trial on the merits, or at the time fixed by the person who presides over the pre-trial conference.”

14. The following is inserted after section 26:

“26.1. In every application concerning the parents’ obligation of support towards their children, the parties must file, in addition to the child support determination form duly completed by each parent, the statement of the tax calculations, if any, used to determine their income or the expenses claimed for the benefit of their children.”

15. Section 27 is replaced by the following:

“27. Mandatory information: In every application for separation as to bed and board, the annulment of marriage, divorce, or the annulment or dissolution of a civil union, the applicant must communicate to the respondent and file in the court record either a declaration by the parties that they are not subject to the rules governing family patrimony, a renunciation of partition, a declaration that partition is not contested, or a form used to calculate the state of the family patrimony accompanied by a sworn statement within 180 days of serving the application.

If the respondent contests the form used to calculate the state of the family patrimony, the respondent must communicate to the applicant and file in the court record the respondent’s own form used to calculate the state of the family patrimony supported by a sworn statement within 30 days after the applicant communicated the original form used to calculate the state of the family patrimony.

The form used to calculate the state of the family patrimony is drawn up as established by directive by the Chief Justice and published on the Superior Court website.”

16. Section 29 is replaced by the following:

“29. Mandatory information: In every application for separation as to bed and board, the annulment of marriage, divorce, or the annulment or dissolution of a civil union, the applicant must communicate to the respondent and file in the court record a form used to calculate the state of the partnership of acquests supported by a sworn statement within 180 days of service of the application.

If the respondent contests the form used to calculate the state of the partnership of acquests, the respondent must communicate to the applicant and file in the court record the respondent’s own form used to calculate the state of the partnership of acquests within 30 days after the applicant communicated the original form used to calculate the state of the partnership of acquests.

The form used to calculate the state of the partnership of acquests is drawn up as established by directive by the Chief Justice and published on the Superior Court website.”

17. The heading of Division V of Chapter III is replaced by the following: “PSYCHOSOCIAL EVALUATION AND REPORTS TO BE FILED IN A SEALED ENVELOPE”.

18. Section 31 is amended

(1) by inserting “, access rights, the allocation and exercise of parenting time or contact,” after “child custody” in the first paragraph;

(2) by replacing the second paragraph by the following:

“Where applicable, consent, drafted in accordance with Form IV and signed by the parties, their lawyers and the child if 14 years of age or older, is filed in the record.”

19. Section 32 is amended by replacing “**Forwarding of expert report**” by “**Forwarding of report from the Service d’expertise psychosociale**”.

20. Section 34 is amended

(1) by replacing “Form V,” by “Form V or made by judgment,”;

(2) by replacing “on the same form” by “in the same order or judgment, authorize access to the judicial record or”.

21. Section 35 is amended by replacing “**Submission of report**” by “**Submission of report from the Service d’expertise psychosociale**”.

22. The following is inserted after section 35:

“35.1. Medical record and expert report. The medical record, the report on a physical or mental examination and the psychosocial evaluation report must be filed and kept in the record in a sealed envelope.”

23. Section 36 is amended by replacing “article” by “articles 293 and”.

24. The heading of Division VI of Chapter III is amended by replacing “SUPERVISED ACCESS” by “SUPERVISED ACCESS, PARENTING TIME OR CONTACT”.

25. Section 37 is replaced by the following:

“37. Supervised access rights, parenting time or contact: Every request or offer to exercise supervised access rights, parenting time or contact with respect to a minor child, made by a natural person other than a supervision resource, must include a written commitment by that designated person to comply with the requirements of Schedule A.

The order fixing supervised access rights, parenting time or contact must be notified to the designated supervisor and include the notice in Schedule A to this Regulation, unless the judge decides otherwise.”

26. Section 38 is replaced by the following:

“38. Mandatory information: Every application to vary the conclusions of a previous judgment or order must be supported by an affidavit and contain the following information:

(a) the current civil status of the parties;

(b) the residential address of the parties and the residential address, age and sex of their dependent children;

(c) the current arrangements for custody, access, the allocation of parenting time, contact and the exercise of parental authority and parental decision-making responsibility;

(d) the current amount of support and the amount requested;

(e) the amount of arrears, if any;

(f) the changes presented to support the application and, if applicable, the notice of relocation provided for in subsection 16.9(1) of the Divorce Act (R.S.C. 1985, c. 3 (2nd Supp.)).

Every application made under the Divorce Act to vary a support order, with respect to a respondent who resides in another province or territory of Canada and has not filed a defence or requested a conversion, must be accompanied by written proof of its notification to the administrator of a last resort assistance program in the province or territory to which the debt may have been assigned.”

27. Section 39 is replaced by the following:

“39. Previous judgment or order issued in another case: In the case of an application for the variation of a judgment or order issued in another case, copies of the prior judgments and of any pleadings on which the judgment or order was rendered must be filed in the record by the applicant unless they have already been included.”.

28. Section 42 is replaced by the following:

“42. Duties of the clerk: In each of the judicial districts of Québec, the Divorce Office is administered by the clerk. The duties of the clerk are 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 applications after ascertaining that they comply with the requirements of the Divorce Act (R.S.C. 1985, c. 3 (2nd Suppl.)) and of the Rules of Practice;

(c) to keep a register of pleadings containing

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

ii. with respect to each 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 VIII, upon request;

(f) in accordance with subsection 17(11) of the Divorce Act, to forward, when the Court has issued an order varying a support order, parenting order or contact order

made by another court, a copy of the variation order certified as true by a judge or officer to that other court or to any other court that varied the original order;

(g) to forward to the competent court, following a transfer order issued under section 6, 6.1 or 6.2 of the Divorce Act, a certified true copy of the record and the order;

(h) to hire the personnel necessary for the performance of the clerk’s duties, including deputy clerks, according to the number of cases filed in the Divorce Office for which the clerk has complete responsibility.”.

29. Schedule A is replaced by the following:

**“SCHEDULE A
NOTICE TO SUPERVISORS OF ACCESS
RIGHTS, PARENTING TIME OR CONTACT IN
ACCORDANCE WITH SECTION 37 OF THIS
REGULATION**

You have been designated by an order of the Superior Court, a copy of which is appended to this notice, to act as a supervisor of access rights, parenting time or contact. The order allows a parent to see his or her child or children, or a third person to have contact with one or more children, on certain conditions. The “exercise of access rights or parenting time” is the time during which the parent sees his or her child or children. The “exercise of contact” is the time during which a third person sees or communicates with one or more children.

As a result, you must

be present for each and every exercise of access rights, parenting time or contact;

be present for the entire duration of the exercise of access rights, parenting time or contact.

You cannot choose to stop acting as the supervisor of access rights, parenting time or contact or have yourself replaced at your own convenience or discretion.

If you are no longer willing or able to act as the supervisor of access rights, parenting time or contact, you must advise both parents and, where applicable, the third person in whose favour a contact order has been made, in writing and as soon as possible, in other words well in advance of the next scheduled exercise of access rights, parenting time or contact.”.

30. Form I is replaced by the form in Schedule I.

31. Form V is amended

(1) by replacing de “PAR CES MOTIFS” in the French text by “POUR CES MOTIFS”;

(2) by replacing the choices under “ORDERS that the evaluation address” by the following:

“ Allocation of parenting or custody time and/or access rights (married, divorced or separated parents);

Contact with the child or children;

Other issues affecting the child or children – specify:”.

32. Form VII is amended

(1) by replacing “(s. 8, Divorce Act, 1985)” by “(s. 8, Divorce Act)”;

(2) by striking out “20” under “NO.”;

(3) by replacing “Par ces motifs” in the French text by “Pour ces motifs”;

(4) by striking out “OR CLERK” under the signature line.

33. Form VIII is amended by replacing “s. 12(7), Divorce Act, 1985” by “s. 12(7), Divorce Act”.

34. Form IX is revoked.

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

SCHEDULE I

Section 18

FORM I

(A summons in conformity with the model established by the Minister of Justice must be attached to the application for divorce)

CANADA

SUPERIOR COURT
(Family Chamber)

PROVINCE OF QUÉBEC

District of

APPLICANT(S)

NO.

and, if appropriate,

RESPONDENT

APPLICATION FOR DIVORCE

It is declared that:

Civil and family status

1. The spouse was born on (date) _____ at (place) _____, and is (age) _____ years old and the child of _____ and _____ as appears from the photocopy of the birth certificate, copy of the act of birth or document issued by a competent authority other than the registrar of civil status in Québec numbered Exhibit P-1;

(If the information shown in the photocopy of the birth certificate, copy of the act of birth or document issued by a competent authority other than the registrar of civil status in Québec is contested, the original must be filed.)

1.1 At the time of the marriage, the spouse's civil status was (indicate the civil status)

2. The spouse was born on (date) _____ at (place) _____, and is (age) _____ years old and the child of _____ and _____ as appears from the photocopy of the birth certificate, copy of the act of birth or document issued by a competent authority other than the registrar of civil status in Québec numbered Exhibit P-1;

(If the information shown in the photocopy of the birth certificate, copy of the act of birth or document issued by a competent authority other than the registrar of civil status in Québec is contested, the original must be filed.)

2.1 At the time of the marriage, the spouse's civil status was (indicate the civil status)

3. The marriage of the parties was solemnized on _____ (date) at _____ (place) as appears from a photocopy of the marriage certificate or the act of marriage numbered Exhibit P-3;

(If the information shown in the photocopy of the marriage certificate or the copy of the act of marriage is contested, or if the document was issued by a competent authority other than the registrar of civil status in Québec, the original must be filed.)

4. The matrimonial regime adopted by the spouses was _____ as appears from a photocopy of the supporting documents numbered Exhibit P-4;

There has been no change to this regime.

(If changes to the matrimonial regime have occurred, specify them and file a photocopy of the supporting documents.)

5. The parties are or are not subject to an order, an indictment, an undertaking or a recognizance relating to a criminal matter.

(A party subject to such a document must file a notice with the court office and, if the other party or a child concerned by the proceedings is named, include a copy of the order, indictment, undertaking or recognizance. If the situation changes in the course of the proceedings, the party concerned must, as soon as possible, file a new notice with the court office and, if the other party or a child concerned by the proceedings is named, include the documents that show that fact.)

5.1 .The parties are or are not subject to a civil protection order provided for in article 509 of the *Code of Civil Procedure* or an application concerning such an order.

(A party subject to such an order must file a notice with the court office and, if the other party or a child concerned by the proceedings is named, include a copy of the protection order or application for an order. If the situation changes in the course of the proceedings the party concerned must, as soon as possible, file a new notice with the court office and, if the other party or a child concerned by the proceedings is named, include the documents that show that fact.)

5.2. The parties are or are not subject to an order, application, agreement or decision relating to youth protection.

(A party subject to such a document must file a notice with the court office and, if the other party or a child concerned by the proceedings is named, include a copy of the order, application, agreement or decision. If the situation changes in the course of the proceedings, the party concerned must, as soon as possible, file a new notice with the court office and, if the other party or a child concerned by the proceedings is named, include the documents that show that fact.)

6. The family name, given name, age, sex and date of birth of each child of the marriage are as follow:

	Family name	Given name	Age	Sex	Date of birth
1.					
2.					
3.					
4.					
5.					

The photocopies of the birth certificate, of the copy of the act of birth or of the document issued by a competent authority other than the registrar of civil status in Québec attesting to the birth of each child concerned by the application are numbered Exhibit P-5.

(If the information shown in the photocopy of the birth certificate, copy of the act of birth or document issued by a competent authority other than the registrar of civil status in Québec is contested, the original must be filed.)

Residence

7. The spouse ordinarily resides at _____ (no.) _____
_____ (street) _____ (city)
_____ (province) _____ since _____ (day) _____
_____ (month) _____ (year) _____

The spouse ordinarily resides at _____ (no.) _____
_____ (street) _____ (city)
_____ (province) _____ since _____ (day) _____
_____ (month) _____ (year) _____

Reasons

8. There has been a breakdown of the marriage for the following reasons:

(Give here particulars of the grounds for divorce, as provided in section 8(2) of the Divorce Act)

Reconciliation and mediation

9. Before this application was signed,

(A) The lawyer or notary for the applicant(s) has discussed the possibility of reconciliation and provided information about marriage counselling or guidance services.

(If not, give reasons.)

(B) The lawyer or notary has given the applicant(s) information about the family justice services that may help resolve the points covered by the order and discussed the need to negotiate those points.

(C) The lawyer or notary has informed the applicant(s) of the obligations of the parties under the Divorce Act.

Safeguard and provisional measures (if the application contains conclusions to that effect), corollary relief and other claims

10. (A) There is an agreement between the parties as to corollary relief, a copy of which is numbered Exhibit P-6;

or

(B) There is no agreement between the parties as to all safeguard and provisional measures and corollary relief, and

i. the grounds in support of the conclusions for provisional relief are (enumerate the facts):

ii. the grounds in support of corollary relief are (enumerate the facts):

Other proceedings

11. There have been no other proceedings with respect to the marriage; (otherwise, give all details and file a certified true copy of all previous judgments).

12. There has been no collusion between the parties.

13. (Where the application is based on section 8(2) b). There has been no condonation or connivance at the act or conduct complained of.

WHEREFORE, may it please this Court to:

ISSUE the following safeguard orders, if applicable:

ISSUE the following provisional orders, if applicable:

PRONOUNCE the divorce of the parties;

ISSUE the following orders of corollary relief (if applicable):

and GRANT the following additional conclusions (if applicable):

(or)

RATIFY the agreement between the parties and ORDER the parties to conform therewith,
_____ costs.

Signed at _____, on _____

20_____

APPLICANT(S)

DECLARATION BY THE LAWYER OR NOTARY

I, the undersigned lawyer or notary for the applicant(s), hereby certify that I have complied with the requirements of section 7.7 of the Divorce Act.

Signed at _____, on _____

20_____

Lawyer or notary for the APPLICANT(S)

DECLARATION BY THE APPLICANT(S)

I (We), the undersigned, attest that I (we) am (are) aware of my (our) obligations under sections 7.1 to 7.5 of the Divorce Act:

7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.

7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.

7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.

7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.

7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

Signed _____ at _____, on
 _____ 20_____

 APPLICANT(S)

CERTIFICATE OF CLERK

I, the undersigned, clerk for the District of _____
 certify that an application for divorce, a declaration by the lawyer or notary, a declaration by the applicant(s) and (where applicable) a notice from the respondent concerning contestation have been received and filed with the court office.

(Place and date)

 CLERK