

COMMUNIQUÉ
WRITTEN EXAMINATION FORM
AND SWORN STATEMENT REGARDING THE FINANCIAL SITUATION

The "[Written Examination Form](#)"* is a new tool available to lawyers which may prove very useful in certain matters, notably in family law.

To the extent that the *Code of Civil Procedure* does not limit a party to either a written or oral examination, the use of this form will not preclude the parties from conducting an oral examination, provided that the principle of proportionality is respected.

In collaboration with the Centre Communautaire Juridique de Montreal, who started this project, the Bar of Montreal has prepared a "Written Examination Form" and a "Sworn Statement Regarding the Financial Situation" which are intended to be practical tools for family law lawyers.

WRITTEN EXAMINATION FORM

Please note that the provisions of articles 223 to 225 C.C.P. apply only to questions 1a) to 1e) of the "Written Examination Form".

Should lawyers wish to include additional questions to Question 1, they must be drafted in a clear and precise manner so that the absence of an answer may be construed by the Court as an admission by the party of the facts to which the questions pertain.

SWORN STATEMENT REGARDING THE FINANCIAL SITUATION

Although the "Written Examination Form" takes into consideration many possible scenarios, the list of questions provided is not exhaustive. As such, the Form has been drafted to be easily modified and adapted.

Please note, however, that in accordance with the principles of the *Code of Civil Procedure* and, in particular, the principle of proportionality (art. 18 C.C.P.), lawyers are invited to pay particular attention to the content of the Sworn Statement Regarding the Financial Situation in order to adapt the questions to the particular circumstances of their case and the identity of the party concerned. In this regard, it is necessary to emphasize that the courts have established that failure to respect the principle of proportionality may constitute an abuse as contemplated by the *Code of Civil Procedure* and/or may result in the application of art. 342 C.C.P.

Furthermore, the questions set out in the Sworn Statement Regarding the Financial Situation are not governed by the provisions relating to written examinations. Consequently, the absence of a reply cannot be interpreted by the Court as an admission of the party, or of the person examined, of the facts to which the questions pertain. Nevertheless, the answers to these questions can be relied upon to assess the parties' obligations of collaboration and transparency required throughout the proceedings (art. 20 C.C.P.).

The answers provided in the Sworn Statement Regarding the Financial Situation may also be used as a guide for an oral examination on discovery.

HOW TO USE THE WRITTEN EXAMINATION FORM

- Notice of a Written Examination: a party must be given a time limit of 15 days to reply to a written examination. However, by virtue of art. 223 al.1 C.C.P. this time limit may be extended to one month to adapt to the particular circumstances of the file.
- Several spaces are shaded so that you may add relevant details, such as the years for which the information is being sought.
- In the event that the space provided to reply to the questions is insufficient, the party or person examined may add supplementary pages.
- Cross references are inserted in the “Written Examination Form” in order to facilitate its use and avoid modifying the numbering.
- The numbering of the undertakings relates to the question to which they are associated (e.g. Undertaking 4 is related to Question 4).
- Section 17: The list of expenses has been included for matters relating to child custody and child support where the parties are not married. It may be appropriate to eliminate this section in divorce matters considering that the parties already have the obligation to file a “Statement of Income and Expenses and Balance Sheet” (Form III) under the provisions of the *Code of Civil Procedure*.
- In the event that you wish to eliminate one or more sections, you simply have to select the entire document (“Ctrl A”) and press “F9” to adjust the numbering automatically.
- Attention: if you modify the “Written Examination Form” and wish to avoid neutralizing the automatic update function, please ensure that you do not change the style of the Word document.
- In circumstances where a party has completed only the “Written Examination Form” without completing the “Sworn Statement Regarding the Financial Situation”, the sworn statement on the last page of the document provides the option to check one or the other or both.

RELEVANT CASELAW

Lawyers are invited to consult *Droit de la famille – 17937*, 2017 QCCS 1768¹ wherein Justice Francine Nantel applied the rules regarding a written examination and *Droit de la famille-161543*, 2016 QCCS 2994² wherein the Court was called upon to determine whether a written examination was possible in the absence of same in the case protocol and, in particular, in those matters where no case protocol is required. Justice Martin Bureau held as follows:

“[20] Le Tribunal considère que ce que le législateur établit à l’article 221 al. 1 C.p.c. en mentionnant qu’aucun interrogatoire ne peut être fait que s’il a été prévu dans le protocole de l’instance, ne s’applique que lorsqu’un tel protocole est requis. Toutefois, rien n’exclut la possibilité d’interrogatoire dans les dossiers où la production d’un protocole n’est pas exigée.”

*Also available in French : [Modèle d’interrogatoire écrit](#)

¹ Available online : <https://www.canlii.org/fr/qc/qccs/doc/2017/2017qccs1768/2017qccs1768.pdf>

² Available online : <https://www.canlii.org/fr/qc/qccs/doc/2016/2016qccs2994/2016qccs2994.pdf>