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APPLYING FOR AN “INTERIM/SAFEGUARD” FAMILY ORDER

FAMILY LAW SELF-HELP GUIDE

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The Bar of
Montreal

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APPLYING FOR AN “INTERIM/SAFEGUARD” FAMILY ORDER

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LIST OF USEFUL WEB SITES at www.barreaudemontreal.qc.ca/en/public/links

IMPORTANT!

This guide, produced by the Bar of Montreal¹, is intended to be used as a guide only and is not considered to be a comprehensive legal resource. The information provided does not replace a lawyer's advice and cannot teach you everything you need to know.

Contested family law matters are complicated. Although it is your right to represent yourself, you will not receive special treatment by the Courts as a result of your decision. A judge cannot and will not give you any legal advice or opinions. You must know the law and the proper procedure. Even if you do decide to proceed without a lawyer, you should consult a lawyer for the interpretation of the law that applies to your case and for other legal advice.

The information provided in this guide is believed to be correct as at the date of publication in conformity with the provisions of the *Divorce Act*, R.S.C., 1985, c. 3, the *Civil Code of Quebec* (C.C.Q.), the *Code of Civil Procedure* (C.C.P.) and other legislation as it relates to family matters.

Useful information :

- Referral Service of the Bar of Montreal (www.barreaudemontreal.qc.ca/en/public/referral-service)
To obtain the name of a member of the Bar who is willing to give a preliminary half-hour consultation for a nominal fixed fee of \$30 or to have access to a lawyer willing to make only part of your case (limited scope services).
Tel. : 514 866-2490 | reference@barreaudemontreal.qc.ca
- Association of Family Mediators (www.mediationquebec.ca/en)
To hire a mediator to assist you to resolve your dispute with your spouse.
Tel. : 514 990-4011 or 1-800-667-7559 | info@mediationquebec.ca
- Quebec Collaborative Law Group (www.quebeccollaborativelaw.ca)
If you want to consider a collaborative approach to the resolution of your dispute.
- Educaloi (www.educaloi.qc.ca)
For a large variety of legal information in everyday language.
- Centres de justice de proximité (www.justicedeproximite.qc.ca/montreal)
Legal information, support and guidance services offered to complement the existing resources.

1. The Bar of Montreal thanks the Government of Yukon who has authorized him to use the Family Law Self-help Guide and fact sheets produced by Court Services on March 2009, to produce this guide.

THE ROLE OF THE SAFEGUARD ORDERS

Legal proceedings in family law are often complex and are comprised of several steps. For married couples, the different phases of legal proceedings include notably the safeguard order, the provisional measures and a final trial. For common-law spouses, the different phases of legal proceedings include notably the safeguard order and a final trial.

This guide provides a step-by-step instruction for applying to the Quebec Superior Court for an “interim/safeguard” order (safeguard orders) which deals with matters under the *Civil Code of Quebec* and the *Divorce Act*, such as spousal support, child support, parental authority, custody, access and use of the family residence when there is an urgent issue to be resolved.

The objective of the legal process is to settle matters definitively, having studied the global situation of the parties and their children, or the family situation as a whole. To this end, a **final trial**, takes place in which a judge renders a judgment regarding the rights and obligations of the parties as well as vis-à-vis their children.

Since there are numerous proceedings and other steps which must be completed before the parties may proceed to this final trial, it is possible to ask the Court to render a provisional judgment setting out the rights and obligations to be respected by the parties during the course of their proceedings. This step is considered the “**provisional measures**” phase of the proceedings.

When appropriate, prior to even reaching a provisional measures phase, the parties may request one or more **safeguard orders** concerning subjects such as spousal support, child support, custody and access rights, parental authority or use of the family residence. Such orders, the subject of this guide, may be heard by a Court within 10 days and requests for such safeguard orders must clearly announce the conclusions sought.

The Safeguard Order is a decision of the Court on an urgent matter that cannot wait the stage of the provisional measures or of the final trial. As any other Court order, the decision must be followed by the persons named in the order.

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It is important to note that the safeguard order is **not a necessary procedure**. In order for the Courts to render a safeguard order, the requesting party must demonstrate the existence of an urgent situation necessitating the **immediate intervention** of the Court. In fact, all other requests, regardless of how justified they may be, if they do not possess such urgency, must be addressed during the provisional measures or the final trial, as discussed above.

In summary, the safeguard orders referred to in this guide represent only one of several procedures available during the course of a family law file. The ultimate objective of these proceedings remains the establishment of the rights and obligations of the parties on a definitive basis, by means of a **final trial**. Meanwhile, the parties may request that the Court determine the modalities to be respected during the proceedings (**provisional measures**) in cases of divorce or separation from bed and board. During this hearing on provisional measures, the parties may call witnesses. In any cases, if urgency exists, the parties may request that the Court adjudicate said urgencies by way of a **safeguard order**.

ALTERNATIVES TO COURT

Not everyone goes to Court to work out the details of a divorce or separation. It is possible to resolve the legal issues of custody, access, parental authority, child support, spousal support and division of property and debt without ever going to Court. You do not need to be friends with the other person to work out your legal issues. What is important is that you both have a common goal, such as finding the best way to parent your children after separation.

CAUTION: Alternative Dispute Resolution is based on equality. It is not counseling, and it is not appropriate where violence or another form of power imbalance is a factor. If either of the partners in a relationship is unable to speak about their personal views or is afraid for their safety or that of their children, a more formal approach to resolving issues may be more appropriate.

Whenever possible, work together to try to come to an agreement before going to Court. You may not be able to agree on every issue and can still go to Court to ask a judge to decide about the things you cannot agree on. When you have settled as much as you can with the other party outside of Court, you are more likely to get a judgment that will work in the best interests of your changing family.

Direct Negotiation, Mediation, Collaborative Family Law and Family Law Settlement Conference are Alternative Dispute Resolution methods.

Prior to starting negotiations, you should always consult a lawyer to understand your rights and obligations. If you need an attorney, do not hesitate to contact the Lawyer Referral Service at the Bar of Montreal at 514 866-2490. You may have a preliminary half hour consultation for a nominal fee of \$30.

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- **Direct Negotiation**

Direct negotiation involves talking directly with the other person to find solutions to various legal issues. This could take place wherever both of you are comfortable talking.

Family law issues are adult problems. Do not involve your children in your negotiations with the other party. Always communicate with the other parent directly, never through the children.

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- **Mediation**

In family law matters, mediation involves a neutral third party (mediator) who assists you and the other person in a family dispute to come to an agreement. Mediators help the parties identify and clarify their needs and interests. The mediation process is confidential to enable the parties to speak freely and to direct their efforts towards settlement. Nothing said in this process can be repeated by either party if the case goes to Court or if it is not settled.

If you have dependant children, you may be entitled to up to 5 hours of free mediation with a certified family mediator. You will have to attend the parenting after separation session and may retain the services of a mediator.

- Consult the website of the *Barreau du Québec* (www.barreau.qc.ca/en/public/trouver/mediateur/index.html) to obtain a list of lawyers in your area who are certified mediators or the Quebec Department of Justice website (www.justice.gouv.qc.ca/english/recherche/mediateur-a.asp) to obtain a list of all the certified mediators in family matters in your area. **(CAUTION: Make sure that the mediator accepts the tariff established by the Quebec Department of Justice, if not, you may be required to pay for his or her services.)**
- Contact the Quebec Department of Justice (1-866-536-5146, option 4) to attend a parenting after separation information session.

- **Collaborative Family Law**

This is a process wherein clients and their attorneys agree that they will not go to Court and that they shall work as a team to find solutions which best serve the clients' needs and interests as well as those of the children.

More information is available at www.quebeccollaborativelaw.ca.

- **Family Law Settlement Conference**

Subject to the consent of the parties, the Courts have the ability to attempt reconciliation between the parties to help them achieve settlements. Once proceedings have been started, the parties may request a Settlement Conference at which time a judge can be designated to assist them in finding a solution to their dispute, like mediation. This process is confidential and nothing said during the conference can be repeated by either party at Court if the case is not settled.

For further information consult the website of the Superior Court of Quebec at www.tribunaux.qc.ca.

A Combined Approach

You may also use a combination of methods to resolve family issues. Some people, for example, use mediation to come to an agreement for custody and access but they have their lawyers help negotiate or go to Court to reach a settlement on how to divide the property. Some people ask a lawyer for advice at the beginning of their separation and to draft a Consent Order or Agreement at the end of the process, but they do all the negotiation in the middle of the process themselves.

When Both Parties Agree

Once you and the other party have reached an agreement, you can file a Consent Order or Agreement with the Court. You should not sign any Consent Orders or Agreements unless you have had a lawyer carefully review it.

At any step in your family law proceeding, you and the other party may come to an agreement. You can sign a Consent Order or Agreement and a judgment can be pronounced which homologates the Consent Order or Agreement. A judge or Special Clerk will review your Consent Order or Agreement. The Court will issue a judgment based upon the consent or agreement. The original judgment will be kept in the Court file and you may obtain a copy of the judgment at Room 1.140 of the Montreal Courthouse. If the judge or special clerk does not homologate the Consent Order or Agreement, you may be instructed to provide more information to the Court (by submitting another Sworn Statement or other documents) or schedule a trial before the Court.

Helpful Hints on Using Alternative Dispute Resolution Methods

- **Information.** Understand the law when negotiating a legal agreement. Do your research. Obtain independent legal advice.
- **Objectivity.** When you cannot agree, think about what a judge would decide based upon the law.
- **Relevancy.** Stay on topic. Focus on the issues today, not disagreements from the past.
- **Communication.** Find a way to communicate that works for you, whether it be in a neutral place, over the telephone or by email.
- **Calm.** Separation can be a very emotional experience. Staying calm will help you to communicate effectively and make thoughtful decisions.
- **Listen.** Take the time to hear what the other person is saying.

APPLYING FOR AN “INTERIM/SAFEGUARD” ORDER

Anyone who is able to make a claim under the *Civil Code of Quebec* or the *Divorce Act* can apply for a safeguard order. A judge will decide the safeguard orders dealing with urgent issues such as spousal support, child support, parental authority, child custody, access and use of the family residence. The judge will make a decision based on the information (evidence) provided by both parties and the laws that apply to each situation, including the *Regulation respecting the determination of child support payments* if children are involved.

Safeguard orders are granted only when there is an urgency. These orders are temporary in nature and are granted for a maximum term of six months, which may be extended upon request. This delay permits the parties to file all necessary documents to proceed to the next step, if necessary.

Parental authority

Parental authority includes all the rights and responsibilities of parents toward their minor children, including making all decisions concerning them. Parental authority is legally granted to both parents, regardless of their marital status. Also, despite separation or divorce, both parents retain parental authority. The custodial parent therefore exercises parental authority on a daily basis, while the other parent must be consulted for important decisions regarding the children.

Following divorce or separation, disagreement may arise between the parents as to the exercise of parental authority. If the parents cannot reach an agreement, a party may ask a judge to settle the matter, such as authorization to travel, consultation for important decisions or communication of important information about the children. For example, when parents disagree, one of them may apply to the Tribunal for an authorization to travel outside the country with the children. It is important to note that this authorization must be granted by the Tribunal to allow you to travel with your children.

Child Support

Child support is a child’s right and a parent’s responsibility under the law. If children are involved in your family law matter, understand the law before you begin. The *Regulation respecting the determination of child support payments* (the “Guidelines”) came into effect in May 1997. The Guidelines apply when both parties live in the Province of Quebec for children born in a common-law relationship or not. Please note that if in divorce proceedings one of the parties lives outside the Province of Quebec, the *Federal Child Support Guidelines* are used to determine child support.

Useful information :

- Quebec Department of Justice (www.justice.gouv.qc.ca)
To obtain information on how child support is calculated and the *Regulation respecting the determination of child support payments*.
- Department of Justice Canada (www.justice.gc.ca)
For the Federal Child Support Guidelines.

APPLYING FOR AN “INTERIM/SAFEGUARD” ORDER : STEP-BY-STEP

| | |
|---------|---|
| Step 1 | Research the laws and rules that apply to your family law matter |
| Step 2 | Prepare and complete the required documents |
| Step 3 | Make copies of all of your documents |
| Step 4 | Have your documents duly signed before a Commissioner of Oaths |
| Step 5 | File your documents with the Superior Court |
| Step 6 | Make sure you have notified your documents on the other party |
| Step 7 | File the documents together with a Proof of Notification |
| Step 8 | Wait for a response from the other party |
| Step 9 | Prepare a responding Sworn Statement |
| Step 10 | Appear at Court for the hearing on the Application for an Interim / Safeguard Order |
| Step 11 | Obtain a certified copy of the Judgment |

Step 1 Research the laws and rules that apply to your family law matter

Before you begin, you should research the laws and rules that apply to your situation. A list of resources to which you may refer to understand the law and the procedure required to obtain a safeguard order is available on the website of the Bar of Montreal at www.barreaudemontreal.qc.ca. **Read other publications produced by the Quebec Department of Justice and the Fondation du Barreau du Québec.**

You should consult a lawyer for interpretation of the law that applies to your case and for other legal advice.

In the province of Quebec, there are different legal rules which apply for married spouses and common-law spouses. You must research the laws that apply to your situation.

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The following chart indicates the legislation which may be applicable to your situation.

| Divorce | | |
|--------------------------|--|------------------------------|
| Situation | <i>Divorce Act</i> | <i>Civil Code of Quebec</i> |
| Married without children | Divorce, Spousal support | Property |
| Married with children | Divorce, Spousal support, Child Support, Custody, Access | Property, Parental authority |

| Legal Separation (separation from bed and board) | | |
|--|--------------------|---|
| Situation | <i>Divorce Act</i> | <i>Civil Code of Quebec</i> |
| Married without children | | Property, Spousal support |
| Married with children | | Property, Spousal support, Child support, Custody, Access, Parental authority |
| Common-law with children | | Child support, Custody, Access, Parental authority |

| Child support | | |
|--|---|---|
| Situation | <i>Federal Child Support Guidelines</i> | <i>Provincial Guidelines relating to the determination of child support</i> |
| Married residing in Quebec | | √ |
| Married, one parent not residing in Quebec | √ | |
| Common-law with children | | √ |

Any person who applies for custody of children must state that the child is not the object of a decision of a Court nor a pending case before a Court or of any agreement with a Director of Youth Protection.

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Laws and regulations that may apply to your separation and/or divorce :

- *Civil Code of Quebec*
- *Code of Civil Procedure*
- *Act to facilitate the payment of support*
- *Act respecting income support, employment assistance and social solidarity*
- *Divorce Act (Canada)*
- *Regulation of the Superior Court of Quebec in civil matters*
- *Regulation of the Superior Court of Quebec in family matters*
- *Regulation of the Superior Court of Quebec in civil and family matters for the district of Montreal*
- *Tariff of judicial fees in civil matters*

All of these laws and regulations can be found at the Quebec or Canada Department of Justice website (www.justice.gouv.qc.ca / www.justice.gc.ca).

Step 2 Prepare and complete the required documents

In order to apply for a safeguard order, you will need to complete forms to submit to the Superior Court Clerk with information specific to your case. Some Superior Court forms can be found at the Quebec Department of Justice website (www.justice.gouv.qc.ca). Many forms come with instructions throughout the body of the document on how to fill them out. Please follow them carefully.

If you and the other party were married, you will be required to file the original of your marriage certificate, copy of your birth certificate and that of the other party and an original of your marriage contract, if applicable.

You will not be required to file your children's birth certificates, unless their filiation is dispute. Then, a copy is sufficient.

Generally, the forms that you will need to file when applying for a safeguard order are :

- (a) Application to Institute Proceedings in Divorce or Separation from Bed and Board, or Application for Custody and Child Support, as Applications for a Safeguard order are often part of these applications;
- (b) Summons and Notice of Presentation;
- (c) Certificate of Court Clerk, in case of an Application for Divorce;
- (d) Sworn Statement;
- (e) *Child Support Determination Form* (Schedule 1), if requesting child support, with all the requested documents;
- (f) *Statement of Income and Expenditures and Balance Sheet* (Form III of the *Regulation of the Superior Court of Quebec in family matters*), if you are seeking spousal support, with your Federal and Provincial Income Tax returns with assessment notices for the last taxation year;
- (g) Attestation with respect to the registration of births, in case of an Application for Divorce;
- (h) Sworn Statement under Article 444 of the *Code of Civil Procedure*;
- (i) Attestation of Attendance to a Parenting after Separation Information Session.



(a) Application to Institute Proceedings in Divorce or Separation from Bed and Board, or Application for Custody and Child Support

If you are married : you may start either Legal Separation (also known as "Separation from Bed and Board") or Divorce proceedings. Although parties who become legally separated no longer live together, the marriage is not ended. If you wish to legally terminate your marriage, you must institute divorce proceedings.

To initiate divorce proceedings in Quebec, one of the parties must have been resident in the province for at least one year preceding the commencement of the proceeding.

A model of Application to Institute Proceedings in Divorce is available on the website of Publications Québec at: www.legisquebec.gouv.qc.ca/en/ShowDoc/cr/C.25.01,%20r.%200.2.4.

Whether you ask for a legal separation or a divorce, you may request custody, access, child support, spousal support, right of use of the family residence and use of the movable property, division of assets and/or other relief. Your principal application may also include an application for a safeguard order and provisional measures.

If you are not married : and wish to claim custody and/or child support, you may file an Application for Custody and Child Support.

(b) Summons and Notice of Presentation

The Summons will advise the other party that your Application to institute proceedings has been filed with the Superior Court of Quebec. It will also tell the other party what exhibits you have filed into Court. It tells the other party that they must file an answer with the Superior Court of Quebec within a certain delay and that if they do not file an answer, a judgment can be rendered by default.

The Summons must be the one established by the Quebec Department of Justice, which is available on the website of Justice Québec at: www.justice.gouv.qc.ca/english/themes/ncpc/pdf/145_Avis_assignment-a.pdf.

A Notice of Presentation of your Application for a Safeguard Order must also be attached to the Application. In this notice, you must indicate to the other party the date and place of the hearing of the application for a safeguard order. You must give the other party at least 10 days notice before you present your safeguard application. The Notice must also include an indication of which documents the other party has to bring to Court on the date of trial.

(c) Certificate of Court Clerk

Once all of your forms are completed together with the documents in support of your forms, they are filed at the Superior Court of Quebec in the judicial district where you live. When you file your forms, there are fees to be paid. Payment may be made by cash, debit card, credit card, bank money order or by way of certified cheque. If your forms are properly completed, the Clerk will open a file for you, will give you a Court file number, and, in case of an Application for Divorce, the required Certificate of Court Clerk.

(d) Sworn Statement

The Sworn Statement is a very important document because it contains most of your evidence. It is a written statement of facts sworn under oath as being the truth. Your Sworn Statement and other documents must be sworn and signed before a Commissioner of Oaths (see Step 4). There are specific rules for preparing a Sworn Statement. Articles 105, 106, 222 and 414 of the *Code of Civil Procedure* set out the rules when preparing a Sworn Statement.

You may file a Sworn Statement in support of your Interim/Safeguard Application and one in reply to the Sworn Statement of the other party (other Sworn Statements may be filed during the proceeding with permission of the Court). Generally, the other party must be notified with a copy of your Sworn Statement 10 days before a trial.

A Sworn Statement is a document that states any information that you wish the judge to know. Be sure that your evidence in a Sworn Statement is complete, accurate, clear and relevant to your application. Dealing with family law matters can be a very emotional experience. When you are preparing a Sworn Statement, remain calm and make logical, factual statements. Stay focused on the issues and avoid denigrating the other party or making comments or stating opinions.

IMPORTANT NOTICE: In a Sworn Statement you can only say things that you know personally to be true or things that you believe to be true (but you must give a reason for that belief). The other party or other party's lawyer can also cross-examine you about anything you include in your Sworn Statement. You must, in all cases, tell the truth and beware of defamatory statements. There are serious legal consequences for not telling the truth or damage the reputation of the other party by false or defamatory statements in a sworn document.

Completing a Sworn Statement

First you must indicate that you are the applicant and complete the information that must be included in every Sworn Statement, such as your full name, occupation and residential address.

Then, begin to list the factual points that you wish the judge to know in numbered paragraphs. Keep each paragraph brief and to the point.

Sworn Statements often contain the following information (**CAUTION! Every situation is different. The list of potential topics provided in this guide is intended as a starting point only**):

- Date of birth of the parties;
- Occupation, employment status and income of each of the parties;
- Details of your relationship, such as:
 - Were you married? If yes, when and where?
 - Did you live together? If yes, when and where?
 - When did you separate?
 - Any other relevant details about the relationship.
- Age and date of birth of any children;
- Information about a child's health and well-being and about any decision rendered by the Court of Quebec, Youth Division or arrangement or agreement made with a Director of Youth Protection regarding that child, as the case may be;
- What parenting duties and activities was each party responsible for during the relationship?
- What parenting duties and activities does each party fulfill now?
- Current custody and/or access arrangements;
- Requested custody and/or access arrangements;
- Why it is urgent to get a safeguard order and all the facts that support your belief that there is an urgency;
- Any other relevant facts you wish the judge to know.

Documents that support the information or claims you are making in a Sworn Statement are called exhibits. If you have more than one document to file in support of your Sworn Statement, you must prepare a list of exhibits and place consequently numbered tabs on the first page of each exhibit. Each page of each individual exhibit must be numbered consecutively.

Make sure you do not attach any third party testimony in those exhibits. The other party could object to its production, as it is not allowed.

(e) Child Support Determination Form (Schedule I)

If children are involved, this form provides information you wish the judge to know regarding child support **only**. If you are requesting child support or being asked to pay child support, you must complete the Child Support Determination Form – Schedule I. The form provides a detailed explanation as to how it should be completed.

You must state your income from all sources and disclose your assets and liabilities. You must attach all supporting documents such as your income tax returns, pay slips and financial statements. Your Child Support Determination Form must be sworn before a Commissioner of Oaths (see Step 4).

To download this form and learn how child support is calculated, consult the website of the Quebec Department of Justice at www.justice.gouv.qc.ca/english/formulaires/modele/forfix-a.htm.

(f) Statement of Income and Expenditures and Balance Sheet (Form III of the *Regulation of the Superior Court of Quebec in family matters*)

You must complete and file this Form if you are requesting spousal support or being asked to pay for spousal support. This form provides a judge with some of the information required to decide whether or not you are entitled to support and, if so, what amount would be fair. You must be truthful when you prepare any legal documents. Be as accurate as possible when stating your income, expenses, assets and liabilities. Follow the instructions when completing the form. It must also be signed before a Commissioner of Oaths (see Step 4).

In the event that you acknowledge your ability to pay the amount of spousal support claimed, but deny that the other party is entitled to receive the amounts claimed, you are not obliged to complete the entire Statement of Income and Expenditures and Balance Sheet. Simply check the space provided for this purpose on the first page of the form.

A model of Statement of Income and Expenditures and Balance Sheet is available on the website of Publications Québec at www.legisquebec.gouv.qc.ca/en/ShowDoc/cr/C.25.01,%20r:%200.2.4.

(g) Attestation with respect to the registration of births

This document must also be completed and filed with an Application to Institute Proceedings in Divorce. A model of Attestation with respect to the registration of births (Form II of the *Regulation of the Superior Court of Quebec in family matters*) is available on the website of Publications Québec at www.legisquebec.gouv.qc.ca/en/ShowDoc/cr/C.25.01,%20r:%200.2.4.

(h) Sworn Statement under Article 444 of the *Code of Civil Procedure*

Under the *Act to facilitate the payment of support*, all support must be paid to Revenu Québec, also known as the “*Percepteur*”. The *Percepteur*, in turn, pays the support to the other party. Sworn Statement under Article 444 of the *Code of Civil Procedure* must be completed and filed at Court every time you ask for support, either for yourself or your children or if your spouse is claiming support from you. This document will be sent to the *Percepteur* who will collect the support for you. You and your spouse can decide, upon certain conditions, that the *Percepteur* not collect support.

To download this form, consult the website of the Quebec Department of Justice at www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm.

(i) Attestation of attendance to a parenting after separation information session

Although this document is not necessary to obtain a safeguard order, it must be completed by the trainer and filed with the Superior Court of Quebec in order to proceed to the next step of your legal process. You are required by law to attend this information session unless you are exempted to attend for statutory reasons.

To get informed on upcoming sessions and register in order to attend the session, you may consult the website of the Quebec Department of Justice at www.justice.gouv.qc.ca/english/programmes/mediation/seance-parentalite-a.htm.

Step 3 Make copies of all of your documents

You will generally need four sets of your documents (application, sworn statement, forms, etc.) to submit for filing. The original of each form or document will always remain in the Court file at the Courthouse (see Step 5) and three sets of the copies will be returned to you. Keep one set for your own records, notify the other set on the other party and attach one set to the Proof of Notification. You must also provide a copy of your documents to other parties, if applicable.

Step 4 Have your documents duly signed before a Commissioner of Oaths

Bring all copies of your documents with proof of identification with you to be sworn before a Commissioner of Oaths. The following persons may be able to administer oaths: Court clerks and deputy clerks, lawyers, notaries, mayors, clerks and secretary-treasurers in all municipalities. At the Montreal Courthouse, you can also attend Room 1.140 to have all of your documents signed before a Commissioner of Oaths.

To find a Commissioner of Oaths, visit the Quebec Department of Justice website at www.assermentation.justice.gouv.qc.ca/ServicesPublicsConsultation/Commissaires/Proximite/Criteres.aspx.

Step 5 File your documents with the Superior Court

When you bring your forms to the Clerk of the Superior Court for filing, the Clerk will review your forms before accepting them. The Clerk will look to see if you have followed the Rules of the Court but will not provide any advice or comment on the content of your documents. When the Clerk accepts your Application, Sworn Statement, Child Support Determination Form and/or Statement of Income and Expenditures and Balance Sheet, a Court file will be opened and a Superior Court file number will be assigned to your case. A sticker with the Court file number will be placed on the back page of your Application and in one other copy and will be used to reference your case throughout your Court proceedings. You should record this number on all forms. Your forms will be stamped by the Clerk with the date on which they were filed.

When you file a new Application with the Superior Court Clerk, fees generally apply. You can find a list of fees online at www.justice.gouv.qc.ca to find out how much money you will need to pay. The Superior Court Clerk will generally accept payment by cash, cheque, debit card, credit card or money order.

Step 6 Make sure you have notified your documents on the other party

Whenever you file an Application or forms with the Court, you always have to notify the other party and the other parties, if applicable, with a copy. Notification of documents on the other party may be made by any appropriate method that provides the sender with proof that the document was delivered. Some pleadings must however be notified by bailiff, including the initial application, and is then called service of documents. The rules are written in the *Code of Civil Procedure* (article 109 and following).

A fee is charged for the service done by a bailiff. In order to find a bailiff in your area, consult the *Chambre des Huissiers de Justice du Québec* at www.huissiersquebec.qc.ca.

Give the bailiff original and one copy of all documents that must be served on the other party. The original will be returned by the bailiff with his Proof of Service, where he must swear that your documents have been served to the other party.

Step 7 File the documents with a Proof of Notification

The Application and forms together with the Proof of Notification must be filed with the Clerk of the Superior Court two clear days prior to the scheduled date of trial, to make sure that your documents are in the file on the day of the trial.

Step 8 Wait for a response from the other party

The other party can oppose or contest your Application to institute proceedings or your Application for an interim / safeguard family order. The amount of time the other party is given to answer to your Application is set out in the Summons which you completed at Step 2 (b).

If no Answer is filed, the Application for an interim / safeguard order can proceed at Court on an uncontested basis. In the absence of the other party, a judgment by default could be rendered.

Step 9 Prepare a responding Sworn Statement

If, after you receive responding forms or Sworn Statement from the other party, there is more information that you would like the Court to know, you are entitled to file one Reply Sworn Statement. After you have completed your Reply Sworn Statement, you will have to notify the other party with the Reply Sworn Statement and then file the original in the Court record with the Proof of Notification.

It is important to remember that the judge will make his or her decision based upon the evidence. Responding to documents filed with the Court is a way to present additional information as evidence, not a means to “argue” with the other party.

i.

Step 10 Appear at Court for the Hearing of the Application for an Interim / Safeguard Order

Bring all your files and supporting documents, as well as a pen and paper with you. Unless a judge specifically asks you, do not bring your children with you to Court.

The *Fondation du Barreau du Québec* has published “Representing Yourself in Court” to help you prepare for Court. You may pick up a copy at the Courthouse or download it from the website of the *Fondation* at www.fondationdubarreau.qc.ca.

i.

On the date set for your trial on your Application for safeguard order, you must first attend Courtroom 2.17 of the Montreal Courthouse at 9:00 a.m. for the call of the roll. In the Courtroom, you may consult the Court roll which indicates your name and Court file number.

When your case is called, you must tell the Special Clerk that you wish to obtain a safeguard order. The case may then be transferred to either Courtroom 2.11 or 2.12 of the Montreal Courthouse. In the Province of Quebec, family law hearings are held in private. Therefore, you are not allowed to go into the Courtroom 2.11 or 2.12 to hear other cases. You must wait in the corridor until your case is called.

When your case is called, you must be prepared to proceed. You will be asked to present your case to the judge. Be prepared to answer questions from the judge. The only facts you can discuss in Court are the ones that are included in your Sworn Statement(s) or the Application or Sworn Statement(s) from the other party.

When you are in the courtroom, some rules of conduct must be respected: it is called "courtroom decorum". You must therefore :

- stand when the judge enters the room or gets up to leave the room and wait to be asked to sit;
- be quiet;
- switch off your cellphone;
- be polite with the judge and the other judicial actors;
- give your answers to the judge, even though the questions are asked by the other party;
- stand when you address the judge;
- dress appropriately (sober and proper clothing).

i.

Step 11 Obtain a certified copy of the Judgment

After the judge has heard all of the representations and arguments, he or she may render a judgment immediately or at a later date.

The judge will make a decision based on the evidence provided by both parties and the laws that apply to your situation, including the *Regulation respecting the determination of child support payments* if children are involved.

Once the judge has made his or her order, you should obtain a certified copy of the judgment for your files. Within several days, you can obtain a certified copy of the judgment at the “*Division des Jugements*” located at room 1.140 of the Montreal Courthouse.

If the judge renders his judgment at a later date, you will receive a certified copy of the judgment by mail or you reconvene the Court for judgment.



These key words will help you understand some of the legal terms that you may come across as you represent yourself in a family law matter.

These definitions do not replace legal advice from a lawyer on what these terms mean and how they may apply in your situation.

These definitions may be worded differently than the definition in a law or statute so that they are easier to understand. Please note that if there is a conflict between a definition here and what is in a law, the definition in the law applies. This list is not an exhaustive list of all the terms you must know.

- A -

Access: Access is the right of parents whose children do not live with them (non-custodial parent), to visit or spend time with their children. A Court order describes the access permitted.

Accessory Measures (Order): (also referred to as **Corollary Relief Order**) This is a Court order issued on or after the date of divorce judgment. It usually addresses custody, access, child support, spousal support, compensatory allowance, the division of the family patrimony and the liquidation of the matrimonial regime.

Act to Facilitate the Payment of Support: All support payments shall be paid in the manner and according to the terms and conditions prescribed by this Act. Revenu Québec (*Percepteur des pensions alimentaires*) collects the support payments from the debtor, and pays them to the creditor of support.

Adjournment: When a trial is delayed or postponed, it is called an adjournment.

Adultery: When people who are married have sexual relations with someone other than their spouse, they commit adultery. Adultery is grounds for divorce.

Age of majority: The age of majority is when children reach the full legal age of adulthood. The age of majority in Quebec is 18 years. This age is not the same in all provinces and territories.

Alternative dispute resolution (ADR): This term refers to ways to settle disputes or differences without involving the Courts. Methods of alternative dispute resolution include settlement conferences, mediation, collaborative law or negotiation.

Answer: This form is filed with the Court and notified on the applicant, by which the Defendant or the Defendant's lawyer tells the Court who is the person to be contacted for the file (the person "on record"). It does not mean that you will have to physically "appear" in Court.

Appeal: A person who does not agree with the decision of a Court, that believes that the judgment contains a serious error, may apply to appeal the decision and try to have it changed by the Quebec Court of Appeal.

Appeal file: This is the Court file that contains appeal documents.

Appellant: The person who appeals a decision of the Superior Court to the Quebec Court of Appeal.

Application: A person who wants to ask the Court to make an order files an Application. The title of the Application describes what type of order the person wants, and the Application includes the reason for the request.

Application to vary: An Application whereby a person applies to a Court to modify an existing order. An Application to vary is usually filed when financial circumstances of the parties or the care and control of dependents have changed since the existing order was made. Parties have the right to oppose the other's application to vary. The party applying to vary a previous order must show that there has been a material change of circumstances since the last order was made.

Applicant: The Applicant is a person who starts an application in Court.

Arrears: This is an amount of money that is owed under a Court order or agreement but has not yet been paid. The amount of arrears grows larger each time a payment is missed. Arrears may be claimed against a person's estate.

- B -

Basic parental contribution: This is the contribution by the parents to meet the nine (9) basic needs of the children, namely: food, housing, communication, housekeeping, personal care, clothing, furniture, transport and recreation.

Best interest: This is the test that judges use when they make custody and access decisions about children. The needs and well-being of the children are the most important factors. The judge must decide what is best for the children rather than what is best for the parents.

Business name: This is the name chosen by a person for his or her business. It is also called a “trade name”. A business name is important when identifying financial assets and income.

- C -

Certificate of divorce: This is the document issued by the Court that says that a divorce is final. It constitutes proof of the dissolution of the marriage and the new civil status of the ex-spouses.

Child support: Money paid by one parent to the other parent for the support of their children is called child support. In conformity with the *Act to facilitate the payment of support*, the debtor of support shall make his or her support payments, including arrears, to Revenu Québec for the benefit of the creditor of support.

Child Support Determination Form – Schedule I: This form calculates child support and provides the information you want the judge to know with regards with your assets and liabilities. It must be sworn in front of someone who is authorized to take an oath such as a lawyer, notary or a Commissioner of Oaths (Montreal Courthouse, room 1.156).

Child support amount: This is the amount of child support that one parent is ordered to pay to the other. In most cases, it will correspond to the amount in the Child Support Determination Form plus, in some cases, an amount for special expenses. In some cases, the amount in the Child Support Determination Form may be increased or reduced due to “undue hardship” for either parent. The amount of child support may also be different if both parties agree subject to the Court being satisfied that the needs of the child are adequately provided for.

Child Support Guidelines: This term refers to the rules for calculating how much child support a parent will have to pay. The *Regulation respecting the determination of child support payments* and the *Federal Child Support Guidelines* (depending on the circumstances) give you the rules, the form, and the tables that apply to any application concerning the parents’ obligation of support towards their minor children.

Claimant (also referred as **Alimentary Creditor** or **Creditor of support**): is a person who is applying to receive support/maintenance or who receives support/maintenance.

Common-law spouse: unmarried cohabitation, *de facto* spouses. Two persons of the same or opposite sex that live together in consortium outside marriage.

Consent to Judgment (also referred to as **Consent Order or Agreement**): A consent voluntarily filed with the Court where both parties have agreed to the terms.

Contempt of Court: This is a charge that can occur when a person intentionally does not follow the terms of a Court order such as a support order or, access rights. This charge can lead to arrest or jail.

Contested trial: A contested trial takes place when one or both parents do not agree with what the other is asking the Court to do.

Contract: A written or oral agreement that is legally binding is called a contract. Some spheres of family law require written agreements.

Corollary Relief Order (see **Accessory Measures**)

Cross-Demand: This document is used when the Defendant who opposes the Applicant's Application wants to make a claim of his or her own if it arises from the same source.

Court Clerk: The Court Clerk is the Court officer in charge of the administrative part and verification of the files' conformity. During trials, witnesses are sworn before the Clerk and the Clerk receives all the documents and exhibits filed by the parties and the witnesses.

Court order: A Court order is a decision by a judge that the people named in it must follow. A Court order deals with the issues presented to the Court such as custody, access, child support, spousal support, compensatory allowance, family patrimony, matrimonial regime.

Creditor: A creditor is a person who is owed money.

Custodial parent: The parent with whom the children usually live is called the custodial or residential parent. The other parent is the non-custodial parent. In sole custody situations, one parent is the custodial parent. In shared custody situations, both parties are custodial parents and both are the residential parent.

Custody: This is a legal term that says which parent or other person is responsible for making day-to-day decisions involving the children. The concept of custody is included in the concept of parental authority of which custody is one of the main attributes. The three types of custody are sole custody, shared custody and split custody.

- (a) **Sole custody:** Sole custody means that the children live with one parent (the custodial parent) and the other parent usually has the right to visit with the children. The custodial parent is responsible for making day-to-day decisions about the children but all important matters shall be decided by both parents, the custodial parent and non-custodial parent.
- (b) **Shared custody:** Shared custody is the term used when both parents make day-to-day decisions about the children when the children are in their care. Parents make major decisions about the children together. In some cases, the children may live with one parent most of the time, but they see the other parent regularly. In other cases, the children may spend equal amounts of time living with each parent.
- (c) **Split custody:** Split custody is the term used when the parents have more than one child and each parent has custody of one or more of those children.

- D -

Debtor (also referred to as **Alimentary Debtor** or **Debtor of support**): is a person who owes money to another person.

Defendant: The Defendant is a person against whom an Application is "made".

Divorce: The legal ending of marriage.

Divorce judgment: A divorce judgment is an order from the Court that says that two people are divorced.

- E -

Evidence: Evidence is information presented to the Court. It can be given by the parties or by other witnesses. Evidence is given orally or in writing in a Sworn Statement. Judges use this information to help them make decisions.

Exclusive use: This is the right of one party to be the only one to use a residence or other asset, usually the family home or its contents. This may be one of the terms of a consent agreement or the Court may award exclusive use when one of the parties applies for it.

Exhibit: This is a paper, document or piece of physical evidence provided to the Court at a trial or attached to a Sworn Statement.

- F -

Family patrimony: It is composed of the following property owned by one or the other of the spouses :

- (a) the family's primary residence;
- (b) the family's secondary residence or residences;
- (c) the furniture in these residences;
- (d) motor vehicles used for family purposes;
- (e) accrued benefits under a pension plan during marriage, including RRSPs;
- (f) registered earnings of each spouse during the marriage under the *Act respecting the Quebec Pension Plan* or similar plans.

There are certain exclusions or deductions provided by law if property is acquired by donation, inheritance or acquired prior to marriage.

Family residence: The family residence is the residence where spouses choose to live together and raise their children, if they have any. A married couple need not have children in order for the residence to be considered a family residence.

Family Law Settlement Conference: A meeting with the judge and parties involved to discuss alternative dispute resolution methods. If parties come to a written agreement during the settlement conference, it can be filed to be ratified by the Court.

Filing documents: This is a process of adding documents to a Court file by giving the original and one or more copies to the Court clerk at the Court registry. There is a fee to file some documents, as an example, to file an Answer.

Final order or judgment: This is a Court order that ends a family Court process.

- G -

Grounds: The reason for a divorce is referred to as grounds for a divorce. The only grounds for divorce is a breakdown of the marriage. There are three (3) ways to establish this breakdown :

- (a) The parties have lived separate and apart for one year;
- (b) Adultery;
- (c) Physical or mental cruelty.

- H -

Homologation: When a Court homologates an Agreement or a Consent it turns the Agreement into a Judgment of the Court such that the parties must abide by it.

- I -

Imputed income: This term is used to describe an amount of income decided by a judge where the evidence shows that a paying person's income or income potential is not fairly represented.

Indexation: Any order for support is automatically indexed annually in accordance with Article 590 of the *Civil Code of Quebec*.

Interim Order (also referred to as **Safeguard Order**): This is a temporary order that deals with matters that are considered urgent such as use of the family residence, custody, child support, and spousal support. An interim order is granted for a maximum of six months unless the period is extended by consent or by the Court.

- L -

Legal costs: A judge may order one side or the other to pay legal costs after a contested trial. Legal costs generally do not cover lawyers' fees.

Legal fees: The parties must pay legal fees to file documents or to obtain a legal document such as an order.

- M -

Maintenance: See **Support**.

Maintenance Order: See **Support Order**.

Mediation: This is a type of alternative dispute resolution between the parties, where a trained, impartial mediator helps people reach an agreement.

- N -

Non-custodial parent: This is the parent who does not have custody of their children.

Notice of Presentation: This form is filed at Court and notified on the other party to advise as to when and where the Application will be presented before the Court.

Notification: Notification is the formal means of delivering Court documents to the proper person, with proof that it was indeed delivered. Documents notified usually give notice of a legal proceeding. Some documents, stipulated by the law, must be notified by bailiff, it's called service, or left with a designated person on behalf of the named person. Other documents can be simply notified on the other party by any appropriate method that provides the party with proof that the document was delivered, these methods being specified in the *Code of Civil Procedure* (article 109 and following).

- O -

Oath: People swear an oath to declare or affirm that their testimony or written statement (i.e. Sworn Statement) is true and correct. An oath is taken by a person authorized to do so, such as a lawyer, notary or Commissioner of Oaths.

Order (or notice): An order is a document that directs the sheriff or other person to carry out its terms (e.g. to seize property or money or to make some other specified action). Some orders are issued by the Court and some orders are filed with the Court.

- P -

Parental authority: Parental authority refers to all of the rights and duties that parents have towards their children once they are born. Parental authority entitles parents to make the following decisions: choice of school, choice of residence, choice of daycare centre, consent to care required by their state of health, religious practices, etc.

Parties: The parties are the people who are formally named in legal proceedings. Parties have the right to appear in Court and ask the Court for an order. See Applicant and Defendant.

Partnership of Acquests: Partnership of acquests is one of the three matrimonial regimes applicable to couples who reside and marry or have a civil union in Quebec, and specific rules govern the division of property and debts between spouses upon a breakdown of the marriage. Since July 1, 1970, if you have not chosen a specific matrimonial regime, the partnership of acquests automatically applies to you.

Paying Parents/Payor: This is the person paying support for their children or spouse.

Pleading: This is a formal legal statement that details the claim or defenses in a proceeding.

Proceeding: This is the term for all formal Court matters, ranging from the original Application to the final order.

Proof of Notification: This form tells the Court what documents were notified, when, where and upon whom.

Psychosocial assessment: This is an evaluation done by a professional to investigate, assess and make recommendations to the Court regarding the needs of the children and the ability of the parties to meet those needs. With the consent of the parties, the judge may order the psychosocial evaluation.

- R -

Recipient: See **Claimant**.

Residential parent: See **Custodial parent**.

Regulation of the Superior Court of Quebec in family matters: These rules are procedures which people must follow. The regulation also includes forms that must be used when a person is filing documents with the Court.

- S -

Safeguard Order (see **Interim Order**)

Seizure in the hands of a third person: This is the manner in which Revenu Québec can collect money for support payments from the payor's salary, other incomes (e.g. investment income) or other money (e.g. tax refunds, bank accounts, etc).

Separation: Two people who are married or who lived in a common-law relationship but who no longer live together are separated.

Separation agreement: A separation agreement is a contract between two parties who used to live together. The agreement states the terms and conditions for their separation. These usually include custody and access of any minor children, spousal support, compensatory allowance, partition of the family patrimony and dissolution of the matrimonial regime.

Separation as to Property: One of the matrimonial regimes, whereby each spouse remains the sole owner of properties he or she owns upon separation, except for property that is part of the family patrimony.

Separation from Bed and Board: This legal separation may be sought by spouses who do not want to get divorced or do not fill the grounds of divorce. The parties are still married, even though they no longer live together.

Service (see **Notification**)

Shared custody (see **Custody**)

Sole custody (see **Custody**)

Special Clerk: This lawyer is a Court officer charged with legal powers specified in the *Code of Civil Procedure*, including the homologation of agreements settling all questions of child custody or child support.

Spousal support: An amount of money paid by one spouse to the other spouse for their support and maintenance.

Statement of Income and Expenditures and Balance Sheet – Form III: This is a document that sets out a person's income from all sources and estimates of their monthly expenses. It also lists a person's assets and debts. This Statement must be sworn under oath.

Subpoena: This is a document that tells a person that she or he is required by law to appear to give evidence at a Court trial. A person who is notified with a subpoena but who fails to appear as required may be held in contempt of Court and/or arrested.

Subpoena duces tecum: This is a document that tells a person that she or he is required by law to appear to give evidence at a Court trial and to bring with them the documents listed on the subpoena. The person who is notified with a subpoena duces tecum but who fails to appear and to bring the documents as required may be in contempt of Court.

Summons: This form is filed at the Courthouse and notified to the other party to advise her of the delays within which they must file and serve upon the Applicant their Answer, Child Support Determination Form, Sworn Statement under Article 444 C.c.p. and income tax returns for specific years.

Support: (Also referred to as **Maintenance**) This is the money paid as child support or as spousal support.

Support Order: (Also referred to as **Maintenance Order**) This is an order of the Court that sets out the amount and details of support that a parent, spouse or other party must pay.

Swear/affirm: These words are used when any witness swears on a holy book (such as the Bible) or makes a solemn affirmation (a promise) to confirm that they are telling the truth to the Court.

Sworn Statement: A Sworn Statement is a written statement of facts sworn under oath as being the truth which a person may file as a way to give evidence to the Court. A Sworn Statement is sworn in front of someone who is authorized to take an oath such as a lawyer, notary or a Commissioner of Oaths (Montreal Courthouse, room 1.156).

- T -

Trial: When a matter is heard by a judge in a Courtroom, it is called a trial.

- U -

Uncontested trial: This is a Court trial where no one disagrees or contests with what the Court is being asked to order.

Undue hardship: Undue hardship refers to the notion that it would cause too excessive difficulties for a parent or a child if the paying parent were required to pay the "Guideline" amount of child support. Such hardship may be the result of a parent's obligation to provide support to children not named in the application. In such a case, it would be the paying parent who would seek to pay less than the Guidelines amount by arguing undue hardship. Such a request may be made as well when the cost involved in exercising visitation rights, because of an obligation to provide support to a third party, or because of reasonable debts incurred to meet family needs.

- W -

Witness: This is a person who gives information and evidence to the Court so that a judge can make a decision.

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