

2nd Edition

GUIDE TO BEST PRACTICES



THE BAR OF MONTREAL

Foreword

The practice of law is based on an impressive body of rules and the way they are used can make a difference. To facilitate access to the courts and reduce costs, it is essential to maintain a proper balance between procedural means and the issues in dispute. The Guide to Best Practices provides advice of a substantive and technical nature with the object of aiding lawyers to efficiently manage litigious issues in the interest of both their clients and the administration of justice. It will be taught at the *École du Barreau* so that new lawyers will be aware of these best practices and the philosophy that inspires them.

As the practice of law is in constant evolution, the Guide to Best Practices is intended to be revised annually and members of the Bar are invited to submit their comments or suggest new topics at guide@bar-reaudemontreal.qc.ca. The Guide to Best Practices is available both in English and French on the website of the Bar of Montreal.

This Guide is the result of an initiative undertaken by the Bâtonnier Nicolas Plourde. The Committee wishes to thank the representatives of the Court of Appeal, Superior Court and Court of Quebec for their comments and suggestions, as well as M^e Lysanne Pariseau-Legault for her special contribution to the new section on the appeal.

Finally, I wish to thank the members of the committee that contributed to the Guide and its update.

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President
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TABLE OF CONTENTS

Preamble	2
I Pre-Judicial Phase	3
Theory of the Case	3
The Mandate with the Client	3
The Formal Demand	3
Use of Mediation	4
Proportionality	4
II Judicial Phase	4
The Principle of Proportionality	4
Drafting Pleadings	5
Affidavit	5
Service of the Proceedings	5
Exhibits	5
Agreement on the Conduct of the Proceeding	6
Case management notice	7
Preliminary or Interlocutory Exceptions	7
Use of Technology	7
Examinations Prior to Trial	7
Experts	8
Admissions and Satisfaction of the Plaintiff's Claim	9
Settlement Conference and Mediation	9
Communications Between Lawyers	9
Fixing Cases for Trial (Inscription on the Roll for Hearing) ...	10
Motion to Cease Representing	10
Witnesses	10
Submission of Authorities to the Court	11
The <i>Sub Judice</i> Rule	11
Bill of Costs	11
III Special Cases	12
Interim Injunction	12
Superior Court in Family Matters	12
Commercial Division of the Superior Court	13
Class Action Division of the Superior Court	14
Court of Quebec, Civil Division	14
Parties Representing Themselves	14
IV Appeal	15
Leave to Appeal	15
Appeal as of Right	15
Suspension of Execution of Judgment Notwithstanding Appeal	16
The Appeal Proceeding	16
Premature Dismissal of the Appeal	16
The Argument or Factum	16
Book of Authorities	16
The Hearing	16
Comments	16
Notes	17

PREAMBLE

The Guide to Best Practices is intended as a tool for lawyers to assist them in advising clients faced with a legal dispute. It contains advice on managing litigious files, whether or not before the courts, with the aim of facilitating the evolution of the files and streamlining the litigation process, thereby reducing costs and improving access to justice.

It is neither a substitute for the rules of the *Code of Civil Procedure* nor the rules of practice, nor is it a codification of the ethical rules. In respect of relations between colleagues, the courts and their clients, members of the Bar are encouraged to consult the [Guide of Professional Courtesy](#)¹.

I PRE-JUDICIAL PHASE

THEORY OF THE CASE ²

When accepting a mandate, whether litigious or not, the duty of competence and duty to advise³ requires the lawyer to develop a theory of the case for the file. This is the starting point for the proper conduct of any file and will guide the court in the administration of justice⁴.

Thus, a file will be properly prepared when it is clear, complete, well documented, and especially, when it can be easily reviewed by a colleague not familiar with the facts and issues involved. The theory of the case is essentially a dynamic work process aimed at developing the legal reasoning in support of the case. It consists of determining the legal framework for the case, the relevance of the facts and evidence, anticipating the opposing party's strategy, and assessing the evidence as a whole.

Moreover, this operation must be repeated throughout the process as the case proceeds (even before meeting the opposing party's lawyer, for example, or before asserting any claim before the court).

THE MANDATE WITH THE CLIENT

To avoid any misunderstanding, it is recommended that the lawyer agree with the client at inception of the professional relationship, on the scope of the mandate to be performed, on the nature of the remuneration and the method of billing for the services to be performed. The client must be provided with all useful information on the nature of the professional services and the related financial terms and conditions⁵.

It is therefore in the lawyer's best interest to use a written fee agreement which accurately describes the object of the mandate, and to write to the client in preference to verbal communication, whenever possible. If the mandate is changed while underway, or a new mandate is given, the lawyer is advised to draw up a new or additional mandate in writing in order to clearly document the understanding with the client.

The following points should always be confirmed in writing⁶ :

- What steps and measures are to be taken;
- The possibility that urgent proceedings may be necessary;
- The instructions received;
- Any change or update in the instructions received;
- All legal opinions and recommendations;
- All important decisions made in the file;
- The client's refusal to follow advice;
- The end of the mandate.

i

Several models of fee agreements and retainer letters have been developed by the Canadian Bar Association and the Professional Inspection Department of the Barreau du Québec⁷.

THE FORMAL DEMAND ⁸

To avoid unnecessary litigation in respect of a dispute, it may be helpful to draft the original demand letter in a way that opens the door to dialogue and the exchange of information.

The demand letter should :

- Accurately describe the facts underlying the claim, the reasons supporting the claim of liability, and the details of the amount claimed;
- Include a copy of all supporting documents;
- Invite the other party to a meeting to encourage the exchange of information, where appropriate;
- Open the door to a joint expert witness, where appropriate.

Where no agreement is reached, the response should :

- Accurately explain the reasons for the author's position, both on the issues of liability and quantum;
- Set out all the relevant information;
- Suggest dates and places for meetings to encourage the exchange of information and for scheduling of future proceedings, all of which may help to bring about an eventual settlement
- Respond to the offer to use a joint expert witness, where appropriate.

Subject to applicable prescriptive period(s), at subsequent meetings, the parties may set a timeframe for the exchange of additional information, provide for joint expert testimony to be given, and consider the possibility of negotiating a settlement of the dispute.

Thus, if the negotiations fail, the parties are in a better position to understand the issues on which they disagree. This should enable the parties to ensure that any legal proceedings that may be instituted comply with the principle of proportionality set out in the *Code of Civil Procedure*.

USE OF MEDIATION

It is not necessary to wait until legal proceedings have been instituted and significant costs have been incurred before considering mediation. There are numerous advantages to submitting a case to a mediator⁹ before legal proceedings are instituted :

- Unlike proceedings instituted before the courts, except where a transaction (settlement) is sanctioned by the court, the file remains completely confidential;
- The parties will be more amenable to maintaining a civil relationship once the problem is resolved, a very important consideration when disputes arise between parents, neighbours and companies carrying on a business relationship;
- Disputes are often settled more quickly;
- While the cost of the mediator is borne by the parties¹⁰, this option is generally less costly than the legal process.

PROPORTIONALITY

When advising a client, a lawyer must take into account the financial realities and the costs associated with the various available options. It will be up to the client to choose the option that best suits his situation.

II JUDICIAL PHASE

THE PRINCIPLE OF PROPORTIONALITY

Proportionality is a codified principle (art. 4.2 C.C.P.) whose purpose is to foster and maintain a balance between the various stakes involved in the litigation, the clients' resources and the judicial resources. The recourse to the judicial process must respect the principles of good faith and not give rise to an abuse of the court system. This rule applies equally to motions for leave to appeal¹¹.

Articles 4.1 and 4.2 C.C.P. must henceforth be read in conjunction with articles 54.1 et seq. of the C.C.P.¹², which permit the court, on request or on its own initiative, to declare that an action or pleading is improper and impose a sanction¹³ or condition upon the party concerned which may have severe consequences for the party¹⁴.

The Supreme Court of Canada has affirmed that the principle of proportionality is not a mere interpretative rule, holding that it confers real power to the courts in respect of the conduct of the proceeding¹⁵. The Court of Appeal and the Superior Court are relying on it more and more frequently. For example, they have invoked this principle to :

- refuse disproportionate requests for undertakings¹⁶;
- refuse the communication of tens of thousands of invoices to cross-check an allegation made in the defence¹⁷;
- refuse the examination after defence of the plaintiff's former representative¹⁸;
- determine the security for costs, after the court found that joint expert testimony for the defendants would reduce the costs¹⁹;
- invite the trial judge to impose a reasonable limit on additional evidence to be adduced at the trial²⁰;
- decide whether it was appropriate to hold a medical examination and the conditions for doing so²¹;
- refuse to sever the cross-demand from the main action²²;
- refuse to sever the action in warranty from the main action²³;
- deny a motion for leave to appeal²⁴.

DRAFTING PLEADINGS

A written pleading that is excessively long and detailed forces the opposing party to devote an inordinate amount of time in response, unnecessarily complicates the proceedings, lengthens the hearings, and increases the costs of trial. Only the relevant facts and conclusions sought should be alleged, and the writing of a novel or usage of inappropriate words which only add fuel to the fire are to be avoided.

i

It is always useful to consult the guidelines on drafting principles (l'aide-mémoire des principes de rédaction)²⁵ prepared by the École du Barreau du Québec.

AFFIDAVIT

A motion does not require a supporting affidavit when the relevant evidence is already contained in the court file. If this is not the case, the motion should be supported by an affidavit signed by a person with knowledge of the alleged facts. The simple affidavit is an accessory to the pleading²⁶.

Where the *Code of Civil Procedure* requires a detailed affidavit²⁷, the affiant need not repeat the allegations contained in the motion at length. He affirms that the paragraphs relevant to his testimony are true and, when appropriate, he attests to relevant evidence that is not already contained in the motion²⁸.

Unless the lawyer is the only person capable of attesting to the facts, he should avoid signing an affidavit in support of the motion, since this exposes him to being examined by the opposing party. Moreover, the opposing party should avoid examining the lawyer in such a case, unless required by the file. By examining a lawyer on his affidavit without having serious grounds for doing so, the opposing party and his lawyer are opening themselves up to sanction by the court under article 54.1 et seq. of the C.C.P.²⁹.

When a party contests the integrity of a technology-based document, the contestation must be supported by an affidavit, as required by article 89(4) C.C.P.³⁰. Note that article 89 C.C.P. also provides for other cases in which an affidavit is required to contest the validity of a writing.

SERVICE OF THE PROCEEDINGS

Every proceeding must be served on all the parties to the case, including by way of example, whether they are involved in the principal action or an action in warranty. Subject to specific delays provided by law, if the opposing party is given a reasonable time to respond to a demand letter, to a motion to institute proceedings, or to a motion presented during the proceeding, adjournments will be avoided and the file will proceed much more expeditiously.

Although service by e-mail has not as yet been adopted by applicable legislation, nothing prevents the lawyers from making use thereof by consent for the service of any proceedings during the course of the case, the whole subject to the rules of procedure³¹. Moreover, the interactive model agreement on the conduct of the proceeding specifically provides for the use of e-mail³².

Proof of service by e-mail can be obtained by asking for an acknowledgment of receipt or read notification when the e-mail is sent, which will be filed with the e-mail in a sub-directory created in the e-mail management application or saved in a document management system³³.

EXHIBITS

PAGE NUMBERING OF EXHIBITS

Before they are submitted to the other parties and filed in court, the pages of any voluminous document intended to be produced into evidence (medical file, accounting documents, e-mail exchanges, etc.) should be numbered. This practice allows for the efficient use of the court time for the hearing, and facilitates the testimony of witnesses and references to the evidence during the hearing and oral arguments.

SUBDIVISION OF EXHIBIT NUMBERS

Exhibits filed together in a bundle (*en liasse*) using a single letter-number combination may be further subdivided for ease of reference (for example, P-7A, P-7B).

ADDITIONAL EXHIBITS

Subject to the applicable rules of evidence, if additional exhibits are filed during the trial, it is customary practice to make a sufficient number of copies for all persons involved in the proceeding (judge, opposing party, witness, etc.).

ELECTRONIC COMMUNICATION OF EXHIBITS

From the start of the file and provided that the legal requirements are complied with, the parties should consider communicating exhibits to each other electronically³⁴. Moreover, it is suggested that the parties provide for the communication and service of exhibits electronically in the agreement on the conduct of the proceeding.

CONFIDENTIAL EXHIBITS

When documents must remain confidential, other than those whose confidentiality is already protected by the rules of practice³⁵, they should be filed in the court under seal, and a confidentiality undertaking should be signed and ultimately approved by the court.

COSTS OF EXHIBITS

The costs of reproducing and assembling the exhibits are at the expense of the party who must communicate and file them.

AGREEMENT ON THE CONDUCT OF THE PROCEEDING ³⁶

The drafting of the agreement on the conduct of the proceeding should be based on the lawyer's reflection and conclusions concerning the theory of the case, and should be discussed or negotiated with the opposing party's lawyer.

DATE OF PRESENTATION OF THE MOTION TO INSTITUTE PROCEEDINGS

The date set for the presentation of the motion, as determined by the applicant's lawyer, should give the parties sufficient time to ensure that they, their lawyers and the court are realistically committed to a process that will lead to a hearing within a reasonable time, even if it means postponing the date of presentation and the filing of the agreement. This period of time should allow the lawyers of record to exchange information and available documents, consider the issues at the heart of the dispute, and determine the need for expert witnesses, where appropriate.

By permitting each lawyer of record to negotiate and agree, after consultation with his client, on every step to be taken in the proceeding, the parties will be able to agree on a realistic and reasonable duration for each of these steps.

CONTENT OF AGREEMENT

The agreement, as drawn up, must conform to the principle of proportionality (art. 4.2 C.C.P.). The parties must determine the various proceedings to be undertaken taking into consideration what is at stake and the costs involved. In particular, they should determine the duration of each stage of proceedings, agree on specific dates for examinations, and make note of the agreed dates in their legal agendas, the whole to ensure the agreement is respected and adjournments are avoided.

SETTLEMENT CONFERENCE AND NEGOTIATION OF SETTLEMENT

When establishing the terms of the agreement, the parties should consider holding a settlement conference as soon as possible³⁷. It is also recommended that the parties provide for adequate time in the agreement for the negotiation of a potential settlement.

EXAMINATIONS ON DISCOVERY

In line with the principle of proportionality, the parties should identify in the agreement the persons they intend to examine, ensure that such examinations are relevant given the issues in dispute, note the estimated duration of the examinations, and set the dates thereof. In addition, it is recommended to proceed with the examination of all the parties in one session; the defendant should therefore examine the plaintiff after defence.

COMMUNICATION OF DOCUMENTS

Prior to the examinations, the lawyers should furnish the others with all necessary documents which have not as of yet been communicated, and which are not contested by the parties. The agreement should set out a reasonable time limit for the submission of the documents requested by the examining party prior to the date of the examination. The requests for authorization to obtain documents from third parties (medical files, for example) should be exchanged as soon as possible given the time generally required to obtain such documents.

UNDERTAKINGS

The parties must plan for a reasonable period of time to obtain the stenographer's transcript and submit the answers to the undertakings given at the examinations. It is suggested that the parties agree to the electronic communication of the undertakings, as well as the exhibits filed in support of proceedings.

OBJECTIONS

Apart from exceptional cases that must be submitted to the court, objections to requests for the communication of documents or to questions posed during an examination should not suspend the proceeding and delay the date set in the agreement for the readiness of the file. So as not to hinder the conduct of an examination, the lawyers should consider allowing answers to objectionable questions to be given under reserve of the objection or, if they are able to anticipate the objection(s), to submit the objection(s) to the court prior to the examination being held³⁸.

EXPERT WITNESSES

Where the issue lends itself to doing so, the parties should identify the issues that may require an expert report with a view to considering the joint use of an expert. Failing same, the parties should submit the experts reports in support of their proceedings as soon as possible, and not simply at the time they attest that the file is complete. The parties should also agree on the premises that are to form the basis of the experts' opinions.

In the same manner, a meeting between the experts to identify the points they do not agree upon will enable the parties to focus on the true issues and disregard non-litigious matters.

VACATIONS AND OTHER HOLIDAYS

The scheduling of the proceedings in the agreement should take into account the summer vacation period, the Christmas holidays, religious holidays and school breaks.

180-DAY TIME LIMIT³⁹

In complex cases involving more than two parties or several experts, it may be necessary to increase the period allotted for bringing the file to a state of readiness. Where the parties know that the 180-day deadline will be exceeded, they should submit the request for an extension to the court at the time they file the agreement, and the preamble of the agreement should set out the reasons for the required extension.

CASE MANAGEMENT NOTICE⁴⁰

When the parties are unable to abide by the time limits in the agreement signed by the lawyers and filed with the court at the start of the proceeding, the terms of article 4.1 C.C.P. allow the court, upon the application of a party, to manage the proceeding issue by issue. In addition, a notice under article 4.1 C.C.P. may be presented by telephone⁴¹.

For example⁴², the court can intervene in the following cases :

- any difficulty on the terms contained in the agreement on the conduct of the proceeding and on compliance therewith;
- exhibits or other documents to be communicated;
- difficulties in managing the preliminary exceptions;
- in relation to examinations out of court :
 - managing how the examinations are held;
 - communication of exhibits and other documents before the examinations are held;
 - adjudication of anticipated objections;
 - managing the undertakings;
 - examinations of third parties and re-examinations;
- in relation to expert testimony :
 - accessibility of exhibits, other documents or objects relevant to the expert testimony;
 - filing deadline;
 - new expert testimony or expert testimony by the opposing party, where appropriate;
 - meeting of experts (413.1 C.C.P.);
- any issue of delay due, for example, to an amendment, the intervention of a third party, or the substitution of the attorneys of record; and
- any case management issue requiring the judge's intervention after issuance of the attestation that the file is complete.

PRELIMINARY OR INTERLOCUTORY EXCEPTIONS

SECURITY FOR COSTS

The parties should agree that the amount to be deposited as security for costs of a non-resident party be kept in the trust account of the lawyer of the party that was ordered to furnish the security. This method offers more flexibility at less expense than depositing the amount with the court.

Generally speaking, the amount of the security is determined by the tariff of judicial fees, plus a certain additional amount to cover disbursements, but this may vary according to the lawyers' pretensions. For more complex cases, the tariff of judicial fees is adjusted in accordance with the criteria developed by the case law⁴³.

USE OF TECHNOLOGY

TELEPHONE ROOM⁴⁴

The telephone room may be used to present motions for the extension of the time limit of 180 days or 365 days, notices of case management conferences⁴⁵, motions to examine a third party by consent, or for rulings on foreseeable objections.

Motions and notices for case management are heard at the dates and times indicated by the court. In the telephone room, the judge presides over the conference as soon as he is able to hear the matter.

EXAMINATIONS BY VIDEOCONFERENCE

Law firms that have the necessary equipment may hold examinations by videoconference with the consent of the parties alone. Those wishing to use the equipment at the courthouse must request by motion to do so or by giving notice at a case management conference.

EXAMINATIONS PRIOR TO TRIAL⁴⁶

SUBPOENAING WITNESSES AND TRAVEL EXPENSES

To examine a representative of the opposing party, it is recommended that all of the lawyers of record agree on the date for examination, and that a subpoena only be used in the absence of cooperation.

When a witness is subpoenaed, whether or not the witness is a party to the proceeding, the witness's traveling expenses must be paid to him in advance. If the witness is not subpoenaed, the traveling expenses are only advanced if required by the opposing party. If the witness is not required to attend, traveling expenses which have been advanced should be reimbursed. A party requiring an examination following the filing of a detailed affidavit is not required to advance traveling expenses⁴⁷.

A party may compensate a witness for the loss of income caused by his testimony. This rule also applies to testimony given at trial. Such compensation is only intended to indemnify a witness required to participate in a proceeding which does not concern him and not to reward him for his testimony⁴⁸. The ethics committee of the Barreau du Québec does not believe that the lawyer is obligated to disclose this compensation although, in such a case, he is putting himself in a "[translation] *dangerous situation because he is acting as the sole judge of the reasonableness of the compensation offered*"⁴⁹.

The examination of a third party always requires the authorization of the court. Same may be obtained at the time the agreement on the conduct of the proceeding is filed. The parties cannot simply agree to these examinations.

UNDERTAKINGS

Where the witness of a party undertakes to communicate information and documents, follow-up on providing the undertaking should be made as soon as the examination is completed, without necessarily waiting for the receipt of the stenographer's transcript.

Failing agreement between the parties, the reproduction costs of the undertakings should be borne by the party requesting the undertakings. In case of disagreement, the parties should submit their dispute to the court by means of a case management notice.

OBJECTIONS

Where the lawyers choose to argue objections, they must submit a copy of the transcript of the examination and a chart listing the objections to the judge hearing same, and to the clerk who is preparing the minutes of hearing.

CONFIDENTIALITY OF EXAMINATIONS ON DISCOVERY

The information obtained during an examination on discovery is protected by a confidentiality rule. Unless the court relieves the parties of this obligation⁵⁰, they are bound by this rule until the transcript of the examination is used during a public hearing – on the pleading of objections or at trial – in which case only the excerpts filed into the court record become public. This rule does not apply to examinations held under section 163 of the *Bankruptcy and Insolvency Act*⁵¹.

Therefore, until an examination has been filed into the court record, the lawyers who do not represent the deposed witness may not disclose the contents of the examination or provide a copy to third parties. They may disclose and provide a copy to their client(s), the client's representative – whether a current or former employee – and their expert(s). These persons must however be advised that they are under obligation to abide by the same confidentiality rule as their lawyer⁵².

CONDUCT OF EXAMINATION

When a witness is examined by more than one party, the lawyers may refer to the initial examination – making use of the questions and answers as if they were their own – and file the deposition obtained in court⁵³.

FILING

Even though the transcript of an examination lists the exhibits identified during the examination, the exhibits should be specifically identified when the list of exhibits is prepared.

Since the answers to undertakings do not form part of the court record when the examination is filed, a party wishing to

file the answers should identify them and communicate and file them as exhibits.

Finally, the examinations themselves should be marked as exhibits when communicated to the other party to facilitate the identification thereof.

EXPERTS

ROLE

The expert's role is to assist the court in understanding and assessing the evidence on scientific or technical issues⁵⁴. The expert should be reminded that his duty is to be objective and impartial toward the court and is paramount to any obligation he may have to the party that hired him or who is paying for his services. Moreover, the expert's role is not under any circumstances to be substituted for that of the judge, who has the sole responsibility for assessing the evidence⁵⁵.

NUMBER

Where the nature of the technical or scientific opinions involved requires that the judge obtain differing viewpoints on a specific issue, insofar as possible, each party should be limited to one expert on any given subject, with the focus being on the quality of the opinion over the quantity⁵⁶.

JOINT EXPERTS

Where the parties agree to the use of a joint expert, the communications between the lawyers involved and the chosen expert must be frank and courteous. Conversations between the expert and one of the lawyers should only be held after the other lawyer is given the opportunity to be present. If he chooses not to be present, a follow-up letter should be sent to the absent lawyer describing the content of the conversation.

Unless they are protected by professional privilege, all documents and information in a party's possession which the expert considers necessary to fulfill his mandate should be provided to him on his simple request.

Since the judge is ultimately responsible for determining the facts, each lawyer is free to submit to the joint expert the version of the facts he feels he is able to prove, and the theories he would like an opinion on. Thus, depending on the finding of facts made by the judge, he will be in a position to draw the necessary conclusions.

The joint expert's costs are to be paid equally, in advance, by each of the parties involved, and the losing party must subsequently reimburse each of the other parties for the amount paid⁵⁷.

MEETING OF EXPERTS

Rather than waiting for the court to apply article 413.1 C.C.P., the parties may agree that the chosen experts discuss the issues, on a without prejudice basis, with or without the lawyers in atten-

dance, and without the parties being bound by conclusions of their discussions. This will allow the opinions to be reconciled and identify the points on which they differ⁵⁸.

FILING OF THE REPORT

It is recommended that the expert's report be marked as an exhibit when it is communicated and filed in the record pursuant to a notice under article 402.1 C.C.P.

In addition, the party who produces an expert report must at the same time produce its author's curriculum vitae, a statement of account to date and the expert's current fee schedule for the expert's presence at a trial on the merits⁵⁹.

TESTIMONY

Before examining the expert, the lawyer must first establish his qualifications. He should then ask the court to recognize the witness as an expert in a clearly defined area of expertise.

FEES

The expert's fees, both for the plaintiff and the defendant, should be claimed as costs and not as damages⁶⁰. However, the parties must still prove the expert's fees incurred by them, including not only his fees for the drafting of the report, but his preparation for court and testimony at the hearing on the merits⁶¹.

ADMISSIONS AND SATISFACTION OF THE PLAINTIFF'S CLAIM

ADMISSIONS

Admissions simplify the proceedings, reduce costs and reduce the number of witnesses required to attend.

Although the decision whether one should admit specific facts alleged by the opposing party is important, every effort should be made to avoid the systematic refusal of admissions for fear of making mistakes, even those that simplify the conduct of the proceeding. To avoid the attendance of unnecessary witnesses, one should therefore assess, in good faith, the facts that can be responsibly and realistically admitted.

Admissions may sometimes be made subject to restrictions. For example, a party making an admission may restrict it to the filing of the document, so that he can still contest the contents and basis thereof.



Admissions are easier to make once you have determined the theory of the case.

SATISFACTION OF THE PLAINTIFF'S CLAIM

Where the plaintiff is an innocent victim who will not incur liability, and where it is clear that the defendants (principal and in warranty) are fully liable in law, the value of the claim should be assessed and the defendants should agree between themselves to pay the plaintiff and satisfy his claim, this while they continue the proceedings between themselves on the apportionment of liability. The process must be structured in a way that prevents the innocent victim from being dragged into a long and costly debate caused by the litigation between the defendants.

The same applies to a situation in which several actions have been brought based on the same event and several innocent victims (neighbours, etc.) must wait for a final judgment to be rendered in a test case. Where the parties ascertain that one or more of the claimants is/are not liable, they should settle those claims on a provisional basis, even if they must subsequently readjust the apportionment of the amounts between themselves according to the circumstances.

Of course, financial and insolvency issues may interfere with this process, but where the defendants are all insured, the claims of the innocent victims should be satisfied before the issue of liability is addressed.

SETTLEMENT CONFERENCE AND MEDIATION

It is recommended that the client be informed as soon as possible of the option of participating in a settlement conference or mediation⁶². Participation in this process at an early stage of the proceeding reduces costs. Where a judge will be presiding over the conference, the parties must also include the lead time between the date the conference is requested and the date it is held in planning the proceedings.

COMMUNICATIONS BETWEEN LAWYERS

The content of communications between lawyers should adhere to the rules set out in the Guide of Professional Courtesy⁶³ and only address the issues involved in the litigation. The tone of such communications should be professional and free of emotion.

Any request made to a lawyer should also be communicated to the other lawyers affected by the request.

Except where warranted by special circumstances or unless authorized by the court in advance, communications between lawyers should not be sent to the judge. If they are sent to the judge, they must also be provided to all the lawyers of record and all parties representing themselves⁶⁴.

The primary focus, throughout the entire process, should be continued dialogue between counsel, with the mutual objective of avoiding unnecessary legal proceedings and court appearances.

FIXING CASES FOR TRIAL (Inscription on the Roll for Hearing)

At the Superior Court, lawyers are invited to use the “Joint Declaration that a File is Complete” prepared by the Bar of Montreal⁶⁵ to reduce the length of trials and expedite the process of setting hearing dates in civil matters and in the commercial division.

To avoid delay in setting the case down for trial, where the lawyers expect that they will need more than five days of hearings in civil matters or more than two days in the commercial division, they should file a “Joint Declaration that a File is Complete”, as the Superior Court may require that it be filed when the provisional roll is called. In any event, the lawyers should seriously explore together all the various ways of conducting the trial more effectively and shortening its duration.

The parties and their lawyers are responsible for cooperating with the court in order to avoid exceeding the allotted time for the hearing.

MOTION TO CEASE REPRESENTING

Where the date of the hearing has been determined, a lawyer who wishes to cease representing must obtain the authorization of the court.

WITNESSES

The following rules apply both to examinations on discovery and to trials.

Examinations or cross-examinations must never be vexatious or abusive⁶⁶. In addition to observing the rules of courtesy⁶⁷ in communications with witnesses, the lawyer must also abide by the rules contained in the Statement of Principle regarding Witnesses⁶⁸ and other uncodified rules⁶⁹.

SUBPOENAING WITNESSES FOR TRIAL⁷⁰

Firstly, a lawyer should meet any person he is considering calling as a witness to determine the relevance of his testimony and to prepare the witness⁷¹.

The lawyer should notify all his witnesses without delay of the hearing date as soon as it is known. A letter should be sent with the subpoena explaining the context in which the witness’s testimony is required and inviting him, if he is not represented by a lawyer, to contact the lawyer who issued the subpoena in order to prepare him for court. If the subpoena requires the witness to bring a document already known to the parties, a copy of this document should also accompany the subpoena to facilitate the identification thereof. If the witness is represented by a lawyer, it is recommended that counsel communicate with the lawyer to ensure the witness’s attendance in court. If the witness is uncooperative, a copy of the subpoena should be sent to his lawyer.

If there is a lengthy time period between the communication of the hearing date and the actual date of hearing, a letter should be sent to the witness reminding him and confirming the date of his appearance in court.

Finally, if there is an out-of-court settlement or if a request for adjournment is granted, lawyers should promptly notify any person summoned to attend the hearing in order to avoid unnecessary travel.

INTERACTION WITH THE WITNESS DURING THE EXAMINATION⁷²

When a lawyer introduces a witness in his examination in chief, he may not speak to the witness about the testimony he is or will be giving prior to the cross-examination, or while it is underway, except where there are special circumstances, and he has obtained authorization from his fellow counsel or the judge. The purpose of the rule against communication with the witness is to prevent the witness’s testimony from being altered or otherwise affected, even if only inadvertently, by the communication. Such authorization from counsel or the court should as well be obtained for communication with the witness between the conclusion of the cross-examination and the re-examination, but should not be refused except in special circumstances. Indeed, given the purpose of the re-examination (art. 315 C.C.P.), prohibiting such discussions could deprive the court of new and highly relevant facts.

While the rules in the foregoing paragraph also apply to examinations on discovery of the opposing party, they must not prevent otherwise legitimate communications between a lawyer and his client, especially where the examination is adjourned for several days.

Moreover, when the examination is completed subject to the communication of undertakings, the lawyer should be involved in providing the undertakings.

The foregoing rules do not apply to cases where a lawyer produces a witness whose testimony is adverse to his client’s case⁷³. In such a case, he may speak to the witness during the various stages of his examination, subject to the ethical rule prohibiting communications between a lawyer and a party represented by counsel⁷⁴.

EXCLUSION OF WITNESSES

On request (art. 294 C.C.P.), the court has the discretion to permit the exclusion of witnesses⁷⁵, including in exceptional circumstances an expert witness⁷⁶. The lawyer must then advise his witnesses and client that they must exercise restraint in their communications until the end of the trial, failing which they are at risk of being charged with contempt of court⁷⁷. On the other hand, this exclusion does not prevent a lawyer from discussing with his witnesses that have not yet testified the facts and documents referred to in the proceedings, provided the lawyer does not reveal the questions and answers given by the witnesses that have already testified⁷⁸.

The rules concerning the exclusion of witnesses apply equally to examinations on discovery⁷⁹. In such a case, the parties should agree on the scope of this exclusion, i.e., does it apply just to the examinations on discovery or until trial. Failing agreement, the parties should apply to the court for a ruling by means of a case management notice under article 4.1 C.C.P.⁸⁰.

EMPLOYEES AND EX-EMPLOYEES OF A PARTY REPRESENTED BY COUNSEL

The ethical rule prohibiting communication with a party represented by counsel, where his counsel is not present⁸¹, does not automatically apply where the potential witness is not associated or affiliated to a party to the case⁸² or where the witness is a current or former employee of said party. The only witness benefiting from this prohibition⁸³ is one who can be likened to the party itself due to his decision-making power or his strategic role within the organization, or a witness who owes the party a statutory duty of professional privilege of information.

CONFRONTING A WITNESS WITH A PRIOR STATEMENT

It is not necessary to file an excerpt or all of the transcript of an examination on discovery in the court record before confronting a witness with his prior statement. However, after doing so, the lawyer must file the prior statement or examination (or excerpts thereof) as an exhibit.

SUBMISSION OF AUTHORITIES TO THE COURT

The authorities should be organized in a way that facilitates reference to the relevant excerpts⁸⁴ by the court and the other lawyers. The lawyers should :

- Limit the use of doctrine and case law to the issues relevant to the theory of the case;
- Only cite the most significant decision where several decisions address the same point of law;
- Group together and distinguish decisions on points of principle from those which apply to the facts of the case.

When available, the plan of legal argument should be submitted to the court and to opposing counsel on a computer storage device in word processing format in order to allow the court to incorporate it into the written judgment, where appropriate.

THE SUB JUDICE RULE

It is the courts' role to deal with legal issues that are brought before them. The courts' role should not be usurped by others making public statements about how these issues should be dealt with⁸⁵. Lawyers should avoid commenting on files which they are acting in and that are pending before the courts. They should also avoid giving an opinion on the conduct of a file that is before the courts.

BILL OF COSTS

To avoid unnecessary costs, a bill of costs should be submitted to the lawyer for the party against whom costs were awarded for comments and payment, before it is served and taxed. Failing agreement and payment the lawyer should then proceed to have the bill of costs taxed in accordance with the prescribed procedure.

III SPECIAL CASES

INTERIM INJUNCTION

Although the *Code of Civil Procedure* does not require the service of the motion for an interim interlocutory injunction, it is customary, except in special circumstances, to notify the respondent before the motion is presented. The proceeding does not need to be served, but it should be sent to the opposing party or its lawyer, if known to the applicant.

A draft judgment must be prepared and submitted to the judge, ideally same should be presented on a USB key, to allow him to make changes immediately. The draft judgment should be sent to the opposing party before the start of the hearing, so that all parties understand what conclusions are being sought and requested from the judge.

SUPERIOR COURT IN FAMILY MATTERS

Although special rules apply in family matters, these rules are part of the general framework of the *Code of Civil Procedure*. The best practices contained in this Guide therefore also apply, with the necessary adjustments, to family proceedings.

RELATIONSHIP WITH THE CLIENT

The lawyer is advised to establish the terms of the mandate jointly with the client based on the client's needs and considering the social context of the law⁸⁶.

ARTICLE 827.5 C.C.P.

Lawyers are advised to file the form required under article 827.5 C.C.P. at the very start of the proceeding, and should carefully complete the information in the form. The processing of the application for the collection of support payments will be delayed if the form is not filed on a timely basis, or if there is erroneous or missing information. The collector of support payments must have all the requisite information to process the application.



Several software programs are available to calculate support payments. Some of them can as well produce the legal forms required in a divorce or separation proceeding⁸⁸.

SAFEGUARD ORDERS

Since safeguard orders are a form of interim injunction, the criterion of urgency is an essential element for the granting of same⁸⁹. Accordingly, both the arguments and the conclusions of the motion must therefore be concisely worded.

The affidavits must be limited to three in number, regardless of the number of motions being heard⁹⁰, and must meet the following conditions⁹¹:

- All affidavits must be divided into two sections :
 - 1) The facts relating to the urgency of the motion – to be set out in a maximum of two pages, each paragraph containing only one fact;
 - 2) The facts relating to the merits of the requested order;
- All affidavits, both in demand and in defence, must have been communicated before the day fixed for hearing;
- The relevant exhibits must be attached.

CASE MANAGEMENT ROOM

A party may refer any difficulties they wish to the family case management room. The issues should be set out in a case management notice served on the opposing party. The issues will be heard by the judge sitting in the family case management room.

For example, the following matters may be dealt with in a case management notice :

- Requests for postponement of cases already fixed in room 2.01 or on the merits (in room 15.07);
- Motions originally presented in room 2.17, such as :
 - motions for the filing of documents;
 - motions to quash subpoenae;
 - motions for a fourth or additional postponement;



The Barreau du Québec has prepared a number of family law checklists to help lawyers prepare their files more effectively. Some of the topics covered include the initial interview, the subjects to be discussed at the interview, and the information that should be taken down before legal proceedings are instituted⁸⁷.

PREPARING THE PROCEEDINGS AND FORMS

In support applications, several forms are required, including :

- The child support determination form (including the various possible scenarios) and the requisite accompanying documents (art. 825.9 C.C.P.);
- The statement of income and expenses and balance sheet (form III of the R.F.P. (S.C.));
- The sworn statement containing the information prescribed by regulation (827.5 C.C.P.).

- Refusals by the special clerk to inscribe a matter on the roll;
- Submissions concerning the agreement on the conduct of the proceeding.

CASES PROCEEDING BY DEFAULT

DEFAULT CASES WITH A COURT HEARING

A draft judgment should be prepared in accordance with the guidelines on affidavit evidence in family matters. Two copies should be provided and it should be available in an electronic format so that changes can be made to it at the hearing.



The guidelines (“aide-mémoire”) entitled “Matières familiales : Analyse des dossiers matrimoniaux quand la preuve se fait par affidavits” are available online at www.tribunaux.qc.ca, in the menu for the Superior Court under the heading “aide-mémoire”.

DEFAULT CASES REFERRED TO THE RÉDACTION DES JUGEMENTS DEPARTMENT

By adhering to the guidelines (“aide-mémoire”) on affidavit evidence in family matters⁹² lawyers will avoid receiving incomplete file notices which delay the process of obtaining judgments.



To ensure that they file all the requisite documents, a checklist for lawyers (“Liste de vérification des documents à produire”)⁹³ is available at www.barreaudemontreal.qc.ca (members section/services/standard legal documents).

FILING OF CONSENTS BY ENVELOPE

Except where the amount of the support is different from the amount specified in the support determination tables, the waiting time in room 2.17 and the associated costs can be avoided by filing a final consent or consent on safeguard measures in an envelope with the court. To do so, the lawyer must :

- File the consents in an envelope in room 2.17 by 11:00 a.m. at the latest;
- Attach the request for homologation and the checklist of documents to be filed (“*liste de vérification des documents à produire*”)⁹⁴.

Since no notice of acceptance or refusal is issued, lawyers will have to verify the *plumitif* 72 hours after filing of the consent in room 2.17 to insure that homologation of same has been accorded.

APPLICATION FOR RENEWAL OF SAFEGUARD ORDER BY ENVELOPE

Requests for the renewal of a safeguard order may be filed in an envelope, thereby avoiding the wait in room 2.17 and associated costs. To do so, the lawyer must :

- complete the appropriate form, ensuring that all the conditions in the form are complied with⁹⁵;
- file the form in an envelope in room 2.17 by 11:00 a.m. at the latest.

CALLING OF THE PROVISIONAL ROLL

The calling of the provisional roll can now be held by telephone conference call. The procedure to be followed is set out in a Notice of the Superior Court⁹⁶.

CHILDREN’S LAWYER

The lawyer must inform his client in the event that a lawyer is appointed to represent a child or children involved, a Legal Aid mandate will be issued to this lawyer. In such a case, if the parent is not eligible for Legal Aid, he or she will be billed for all or a part of the fees paid to the children’s lawyer. In addition, where a lawyer represents several children from the same family, he is entitled as determined in accordance with the Tariff of Fees to bill for the services rendered on behalf of each of the children represented by him⁹⁷.

COMMERCIAL DIVISION OF THE SUPERIOR COURT

LATE SERVICE

When court proceedings are served on short notice prior to the hearing date, requests for postponements often occur, as the parties have not been provided sufficient time to familiarize themselves with the documents. From inception of the case the lawyers should therefore agree on a minimum time period for service and no document should be served or sent after 5:00 p.m. on the day before the presentation of the proceeding⁹⁸.

MODEL ORDERS

The use of various model orders developed by the Bar of Montreal is compulsory in the commercial division⁹⁹, the terms of these orders may be subject to variances to be determined by the court, depending on the specific circumstances of each case.

When a lawyer wishes to vary the form of a model order, he must clearly indicate to the court all variances sought to be made to the model order.

MOTION TO APPEAL

The *Bankruptcy and Insolvency Act* allows a motion to be filed to appeal a decision rendered by the registrar or trustee, such as the disallowance of a proof of claim. In such a case, the motion to appeal must be filed within ten (10) days following the decision of the registrar or within thirty (30) days following the service of the notice of disallowance sent by the trustee¹⁰⁰. Similarly, orders rendered under the *Companies' Creditors Arrangement Act*¹⁰¹ sometimes allow motions to be filed to appeal decisions rendered by the monitor. In such cases, the time for appeal is set out in the order.

CLASS ACTION DIVISION OF THE SUPERIOR COURT

Class actions are governed by articles 999 to 1051 C.C.P. and rules 55 to 69 of the *Rules of practice of the Superior Court in civil matters*. Lawyers must therefore ensure that their proceedings conform to these rules, while keeping in mind that the principles of good faith and proportionality provided for in articles 4.1 and 4.2 C.C.P. govern the conduct of class actions both before and after authorization¹⁰².

Any notices to the class members should be drafted in simple and clear language at every stage of the proceeding.

AUTHORIZATION STAGE

To avoid changing the class representative in mid-stream, the proposed representative should be informed at the very start of the proceeding of the significant responsibility that this role entails.

The description of the class, the facts giving rise to the recourse and the collective issues should be sufficiently precise to meet the requirements of article 1003 C.C.P., the whole in order to permit the court to render a judgment that will be binding on the class.

If a lawyer intends to present a motion to submit relevant evidence under article 1002 C.C.P., it should be filed before the hearing of the motion for authorization in order to avoid any surprises during that motion and to limit the debate. Also, the judge will be in a better position to rule on such a motion if he is informed in advance of the nature of such evidence.

All newly instituted recourses must be entered in the Class Actions Registry of the Superior Court available on the Courts of Quebec website (www.tribunaux.qc.ca). This registry lists all class actions instituted since January 1, 2009. Class actions launched prior to that date can be consulted in the national class action database (www.cba.org/ClassActions/main/gate/index/) of the Canadian Bar Association (www.cba.org).

ONCE THE ACTION IS AUTHORIZED

While specific rules apply to class actions, they remain a part of the general framework of the *Code of Civil Procedure*, whose provisions apply where they are not inconsistent with the class action provisions (art. 1051 C.C.P.). The best practices set out in this guide apply equally to class actions, with the necessary adjustments.

COURT OF QUEBEC, CIVIL DIVISION

FIXING OF CASES FOR HEARING (Inscription on the roll)

CIVIL MATTERS / VIRTUAL CALLING OF THE PROVISIONAL ROLL

In the districts where the Court of Quebec proceeds by way of a calling of the provisional roll, it is not necessary to attend to set dates for trials for two days of hearings or less. Once a lawyer receives the notice of the calling of the provisional roll, he needs only to fill out and submit the form, available online, requesting that the case be placed on the roll (*formulaire de Demande de mise au rôle*)¹⁰³. Confirmation of the chosen date will be sent by e-mail within 24 hours.

TAX CASES

It is not necessary to wait for one of the two annual dates set in June and December for the calling of the provisional roll in order to fix cases for trial which are scheduled for three days of hearings or less, same may be fixed by consent of the parties. The lawyers may jointly determine the dates on which they are available and then contact the master of the rolls by telephone to set a date. Once the date for trial has been fixed verbally, the lawyers must confirm the date by letter to the master of the rolls, who will return an initialled copy thereof officially confirming the trial date. As with any request to fix a case for hearing, the declarations required under articles 274.1 and 274.2 C.C.P. must be filed before doing so.

PARTIES REPRESENTING THEMSELVES¹⁰⁴

A lawyer's communications with a party not represented by counsel should be in a language that is easily understood by the layman.

The lawyer should warn the self-represented party that he is not permitted to give any advice and he should act in a transparent manner in his communications in order to avoid taking him by surprise. The lawyer should recommend that the individual obtain independent legal advice; it is strongly suggested that this warning be put in writing.

IV APPEAL

The right of appeal is a statutory right. The *Code of Civil Procedure* or some special statutes may prohibit an appeal. In such a case, the lawyer will have to consider the other possible recourses available to him¹⁰⁵.

The best practices referred to under the heading “*Judicial Phase*” also apply to appeals, with the necessary adjustments.

LEAVE TO APPEAL

The appeal may require that leave be obtained. The lawyer’s role is to verify whether the criteria for obtaining leave are met. Since obtaining leave is far from automatic, the lawyer should carefully review articles 26, 29 and 511 C.C.P. and properly research the issue. He should take into account the principle of proportionality under article 4.2 C.C.P.¹⁰⁶ and, therefore, the economic implications, as well as the costs associated with the appeal process. In all cases in which a final judgment is being appealed, the motion should establish that the matter at issue is a question of principle, a new issue or a question of law that has given rise to conflicting judicial precedents, and that the interests of justice favour the granting of leave. The fact that there are errors of fact or law in the judgment appealed from is not sufficient by itself.

If the appeal is from an interlocutory decision, the motion should, on the one hand, refer to one of the three situations set out in the first paragraph of article 29 C.C.P. and, on the other hand, show that the “[translation] *matter appears to be serious and would contribute to the proper functioning of the judicial process*”¹⁰⁷.

Some motions for leave to appeal may be filed under various legislative provisions other than the *Code of Civil Procedure*. These motions are subject to their own criteria and time limits. For example, in certain circumstances, the *Bankruptcy and Insolvency Act* allows a motion for leave to appeal to be filed within ten (10) days of the judgment or order rendered¹⁰⁸. Under the *Companies’ Creditors Arrangement Act*, the time limit is twenty-one (21) days¹⁰⁹. For motions appealing decisions rendered by the registrar or a notice of disallowance of a proof of claim, please refer to the section on the commercial division.

In all cases, the motion for leave to appeal **must** be accompanied by the judgment at first instance as well as the proceedings and exhibits which are useful for understanding the appeal. This motion must be presented as soon as possible. The date of presentation should however give the respondent sufficient time to prepare and to allow for a discussion with the respondent on a draft case management plan. The clerk of the judge assigned to motions is the appropriate person to contact at the court concerning

requests for adjournment or to arrange for the use of a technology (telephone conference call, videoconferencing).

APPEAL AS OF RIGHT

An appeal as of right is brought by filing an inscription in appeal within the specified time limit with the court office of the court at first instance. The drafting of the inscription in appeal is extremely important. “[Translation] *We note, once again, that the appeal is not an occasion to retry the case*”¹¹⁰. A new theory of the case must be developed based on the judgment at first instance : what are the errors in the judgment ? If they are proven, would this allow the court to intervene ? A well-written inscription in appeal will make it difficult to obtain the dismissal of the appeal upon a simple motion to this effect.

Specific statutes may permit the filing of a notice of appeal, the *Bankruptcy and Insolvency Act* being one example. Where the *Bankruptcy and Insolvency Act* provides for a full right of appeal, the time for appeal is ten (10) days. It is crucial to verify whether there is in fact a full right of appeal and, if so, the applicable deadline. Once again, it is essential to do the appropriate research.

To develop the theory of the case on appeal, the lawyer must master the standards of review laid down by the Supreme Court in the area of law involved on the appeal. One must therefore read the key court decisions in the relevant area of law¹¹¹.

As a general rule, the inscription in appeal must show that there are errors of law or clearly identify palpable and overriding errors in the judgment, which led the judge to make erroneous conclusions. In this last situation, the appellant will have a triple burden, to : (1) identify the error, and show (2) that it is palpable, and (3) critical in its scope. If this is not shown, the respondent may present a motion to dismiss the appeal. This motion must then prove that the judgment is unassailable and that the appellant has not met his obligation to prove the contrary. As a general rule, the motion to dismiss should be short and concise, since, by taking several pages to show that an appeal is futile or bound to fail, one risks proving the opposite.

SUSPENSION OF EXECUTION OF JUDGMENT NOTWITHSTANDING APPEAL

If the provisional execution of the judgment at first instance is ordered notwithstanding the appeal, or provisional execution occurs as of right despite the appeal¹¹², the lawyer will wish to apply for the suspension of the execution of the judgment as soon as possible, since the appeal does not suspend the execution of such a judgment. If the lawyer delays in seeking the suspension, he may risk having his appeal dismissed on grounds that it has become moot because the judgment at first instance has been executed¹¹³.

THE APPEAL PROCEEDING

An appearance should be filed quickly by any party who intends to participate actively in the file to ensure the effective management of the proceeding.

As soon as the appeal file is opened, the lawyer should consider whether his client may wish to use the judicial mediation service offered by the Court of Appeal. Judicial mediation may often permit a more satisfactory resolution of the dispute than a judgment on appeal. In any event, the mediating judge is excluded from the panel of judges charged with hearing the appeal¹¹⁴.

From the very start of the appeal file, the lawyers should reflect on how it should be managed. When the motion for leave to appeal is presented, it is recommended that the lawyers take the opportunity to set up the case management of the file with the judge. The same applies in the event an interlocutory motion is presented to the court. In the case of an appeal as of right, it is also possible to send a joint case management proposal to the court clerk who will submit it for approval to the motions judge. If a consensus cannot be reached, a motion for case management of the file can also be made to a judge¹¹⁵. The purpose of case management is to find ways to reduce costs, shorten wait times, allow for the electronic filing of evidence and exhibits, and even set a hearing date if the case is urgent.

The cost of transcribing the testimony is certainly the greatest initial expense incurred. The lawyer should verify with his opponent whether it is possible to agree on a partial or complete joint statement of facts¹¹⁶. This exercise can reduce or eliminate the cost of transcripts.

PREMATURE DISMISSAL OF THE APPEAL

Before submitting a motion to dismiss the appeal, the respondent should assess the costs and chances of success of this process. Would justice be better served by agreeing to a faster and less costly case management of the appeal? Each case should be assessed based not only on the stakes involved in the appeal, but the parties' financial means, since the serious drafting and presentation of a motion to dismiss the appeal will require numerous hours of work.

THE ARGUMENT OR FACTUM

The argument or factum should be drafted in a succinct and concise manner. The goal should certainly not be to reach the maximum number of pages at all costs. If any arguments have been abandoned, it should be indicated. In the contrary event, if any matters were omitted, one should ask for permission to amend the inscription in appeal to include them. It is suggested that the respondent should unequivocally concede anything that is indisputable. In any event, the arguments pleaded at first instance but not upheld by the judge should be submitted to the Court of Appeal to prevent a round-trip of the file back to the court at first instance¹¹⁷.

When they draft their factums, the lawyers may get a different perspective on their case. If so, it is never too late to ask for a session of judicial mediation.

BOOK OF AUTHORITIES

Refer to the rules of the Court of Appeal¹¹⁸ and avoid submitting decisions by the Supreme Court on the standard of review of the Court of Appeal. The recommendations made in the section entitled "*Submission of Authorities to the Court*" under the heading "*Judicial Phase*" also apply to the appeal.

THE HEARING

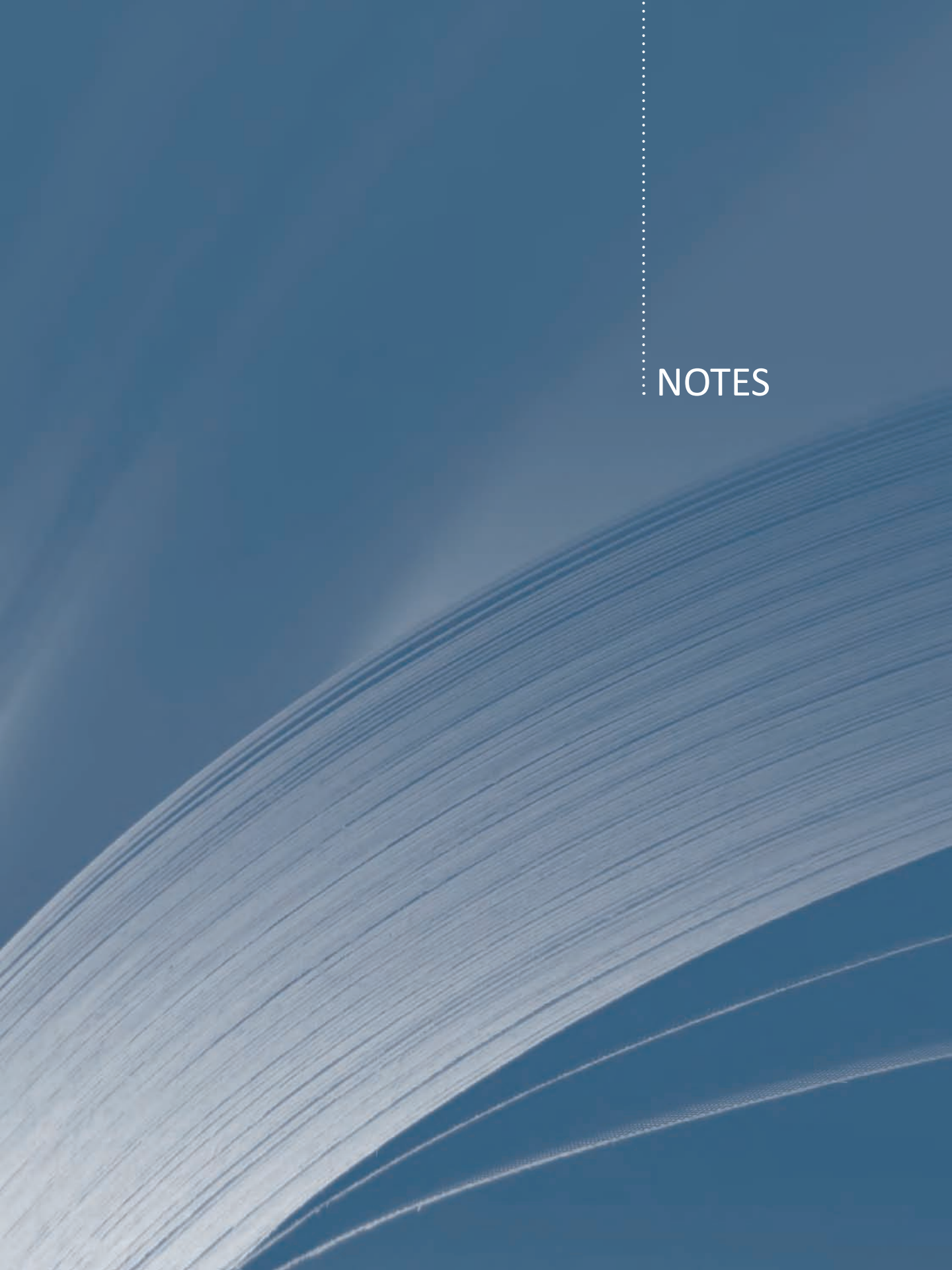
Generally speaking, the time allowed for submissions on a motion is 15 minutes per lawyer. If this time is insufficient, the lawyer should contact the court clerk assigned to the hearing room as soon as possible so that the roll can be adjusted accordingly.

The time allowed for a case at the hearing on the merits is indicated on the roll for hearing. It is imperative that the lawyer not exceed his allotted time. In files where the lawyers must share the allotted time, they are strongly advised to confer on the allocation of this time prior to the start of the hearing.

COMMENTS

For any practical issues that arise, the lawyer will wish to consult the Court of Appeal's website, which contains a variety of useful information, including : model proceedings, checklists, frequently asked questions, the rules of the court, hearing schedules, etc.¹¹⁹.

In addition, it is essential to consult more in-depth works dealing with appeals¹²⁰.



NOTES

- ¹ Guide of Professional Courtesy of The Bar of Montreal, online : www.barreaudemontreal.qc.ca/loads/Guides/GuideCourtoisieProfessionnelle_an.pdf.
- ² Monique Dupuis, “L’élaboration de la théorie d’une cause”, in *Collection des habiletés 2006-2007*, École du Barreau du Québec, *Théorie d’une cause* (Montreal, École du Barreau du Québec, 2006) at 5. This is a working method developed and taught exclusively at the École du Barreau du Québec.
- ³ *Code of ethics of advocates*, R.R.Q. 1981, c. B-1, r.1, s. 3.00.01 [*Code of ethics of advocates*].
- ⁴ Art. 4.2 C.C.P.; *Wightman c. Widdrington (Succession de)*, 2007 QCCA 440 (CanLII); *St-Adolphe-d’Howard (Municipalité de) c. Chalets St-Adolphe inc.*, 2007 QCCA 1421 (CanLII).
- ⁵ *Code of ethics of advocates*, s. 3.08.04.
- ⁶ PROFESSIONAL LIABILITY INSURANCE FUND OF THE BARREAU DU QUÉBEC, *PREVENTIO*, September 2008, Self-assessment questionnaire to evaluate customer service, online : www.assurance-barreau.com/en/pdf/auto-evaluation.pdf.
- ⁷ The Canadian Bar Association and the Barreau du Québec have created various documents available online at www.cba.org/ABC/groups_f/conflicts/toolkit2.aspx and at www.barreau.qc.ca/pdf/formulaires/avocats/modeles/convention_honoraires_fr.pdf (in French only).
- ⁸ This section is inspired by pre-action protocols in force in England. To learn more about this topic, see : Guy Gagnon, “The «Pre-Action Protocol», Is It Part of the Solution ? Reflection on civil procedure”, March 2009, online : www.tribunaux.qc.ca/mjq_en/c-quebec/Communiqués/Pre_Action_Protocol_Anglais.pdf; Guy Gagnon, “Développements récents et tendances nouvelles en procédure civile”, in *Développements récents*, vol. 320, *Développements récents et tendances en procédure civile* (2010) (Montreal, Barreau du Québec, 2010), online : www.caj.qc.ca/doctrine/developpements_recents/320/1747/1747.pdf (in French only).
- ⁹ The certified mediators list of the Barreau du Québec is available by practice area at www.barreau.qc.ca/public/trouver/mediateur/index.html?Langue=en.
- ¹⁰ Note that since 1997, family mediation is free, in whole or in part, for couples with children, independently of their income, through a Family Mediation Service of the Superior Court. For more information, see : Simon Descoteaux, “La médiation familiale” in *Collection de droit 2010-2011*, École du Barreau du Québec, Vol. 3, *Personnes, famille et successions* (Montreal, Barreau du Québec, 2010), online : www.caj.qc.ca/doctrine/collection_de_droit/2010/3/ii/1850/1850.pdf (in French only).
- ¹¹ *Société en commandite Les bois de Pierrefonds c. Domaine de parc Cloverdale*, 2007 QCCA 292 (CanLII).
- ¹² *Acadia Subaru v. Michaud*, 2011 QCCA 1037 (CanLII); *Préfontaine c. Lefebvre*, 2011 QCCA 196 (CanLII); *Walker Nappert (Succession de)*, 2009 QCCS 4784 (CanLII) : “[70] Le tribunal note que le législateur, à l’article 54.1 C.C.P., édicte que l’abus peut résulter d’une demande justice ou d’un acte de procédure manifestement mal fondé ou même frivole ou dilatoire ou d’un comportement vexatoire ou en quérulent. Le législateur mentionne également que l’abus peut aussi résulter de la mauvaise foi, de l’utilisation de la procédure de manière excessive ou déraisonnable ou de manière à nuire à autrui.[...] Or, les termes utilisés par le législateur à l’article 54.1 sont identiques à ceux qu’il utilise à l’article 4.1 C.C.P. qui prévoit que les parties sont tenues de ne pas agir en vue de nuire à autrui ou d’une manière excessive ou déraisonnable allant ainsi à l’encontre des exigences de la bonne foi.”; *Nissan Perla c. 6715826 Canada inc.*, 2009 QCCS 3891 (CanLII).
- ¹³ *Tannenbaum v. Lazare*, 2009 QCCS 5072 (CanLII) (under appeal); *Structure Laferté inc. c. Cosoltec inc.*, 2009 QCCS 3326 (CanLII) (leave to appeal to C.A. granted, 500-09-019868-090); *Walker Nappert (Succession de)*, 2009 QCCS 4784 (CanLII); *Droit de la famille — 092794*, 2009 QCCS 5237 (CanLII); *Bernard c. Desrochers*, 2009 QCCS 5535 (CanLII).
- ¹⁴ *Nissan Perla c. 6715826 Canada inc.*, 2009 QCCS 3891 (CanLII).
- ¹⁵ *Marcotte v. Longueuil (City)*, 2009 SCC 43, [2009] 3 S.C.R. 65.
- ¹⁶ *Geysens c. Gonder*, 2010 QCCA 2301.
- ¹⁷ *Aviva, compagnie d’assurances du Canada c. René Poisson inc.*, 2010 QCCA 246.
- ¹⁸ *Ali Excavation inc. c. Construction De Castel inc.*, 2011 QCCS 1093.
- ¹⁹ *Smith c. Bélanger*, 2009 QCCS 4272 (CanLII).
- ²⁰ *Wightman c. Widdrington (Succession de)*, 2007 QCCA 440 (CanLII).
- ²¹ *Compagnie d’assurance Standard Life du Canada c. Beaudry*, 2009 QCCA 1174.
- ²² *Cosoltec inc. c. Structure Laferté inc.*, 2010 QCCA 1600.
- ²³ *Préfontaine c. Lefebvre*, 2011 QCCA 196.
- ²⁴ *Société en commandite Les bois de Pierrefonds c. Domaine de parc Cloverdale*, 2007 QCCA 292.
- ²⁵ René Gauthier & Josée Payette, “Rédaction”, in *Collection des habiletés 2009-2010* (Montreal, École du Barreau du Québec, 2010, 90 pages); *Association des propriétaires de Boisés de la Beauce c. Monde forestier*, 2009 QCCA 48 (CanLII).

- ²⁶ C.C.P., art. 88; Pierre Tessier & Monique Dupuis, “Les qualités et les moyens de preuve”, in Collection de droit 2010-2011, École du Barreau du Québec, vol. 2, *Preuve et procédure* (Montréal, Barreau du Québec, 2010), at 223, online at : www.caij.qc.ca/doctrine/collection_de_droit/2010/2/ii/1840/1840.pdf.
- ²⁷ C.C.P., arts. 196, 404, 754.1, 813.10 and 835.3.
- ²⁸ C.C.P., art. 93.1; Monique Dupuis entitled “*Les qualités et les moyens de preuve*”, *supra*, note 26.
- ²⁹ *Anber c. Piché*, 2009 QCCS 4159 (CanLII).
- ³⁰ *Bouchard c. Société industrielle de décolletage et d’outillage S.I.D.O. ltée*, 2007 QCCS 2272 (CanLII).
- ³¹ Art. 151.1 C.C.P.
- ³² Art. 151.2 C.C.P. See *infra*, note 35.
- ³³ *Regulation respecting accounting and standards of professional practice of advocates* [unofficial translation], online at : www.barreau.qc.ca/pdf/avis/reglement-comptabilite_en.pdf.
- ³⁴ Arts. 2837ff C.C.Q.; An Act to establish a Legal framework for information technology, R.S.Q. c. C-1.1; *Citadelle (La), Cie d’assurances générales c. Montréal (Ville) et als.*, CanLII 24709 (QC C.S.).
- ³⁵ *Rules of practice of the Superior Court of Québec in civil matters*, R.R.Q. 1981, c. C-25, r.8, s. 3 [Rules of practice]; *Regulation of the Court of Québec*, c. C-25, r. 1.01.1, s. 19.
- ³⁶ The interactive model agreement on the conduct of the proceeding developed by the Bar of Montreal in collaboration with the Superior Court is available online at www.barreaudemontreal.qc.ca/loads/form-EntenteDeroulementInstance.pdf (in French only).
- ³⁷ See comments relating to section “Settlement Conference and Mediation”, page 9.
- ³⁸ Art. 396.3 C.C.P. : “Before an examination on discovery is held, the parties may, by mutual consent, submit any foreseeable objection to the judge for a determination.”
- ³⁹ In family matters, the peremptory time limit is one year (Art. 110.1 C.C.P.).
- ⁴⁰ Standard notices of a case management conference for the Superior Court and for the Court of Quebec are available online at www.barreaudemontreal.qc.ca, under the heading “Publications”; See also the non-exhaustive list of subjects that may be dealt with at a case management conference, online : www.barreaudemontreal.qc.ca/loads/DocumentsCours/SujetsGestionInstance.pdf.
- ⁴¹ See also the section entitled “Telephone Room”, page 7.
- ⁴² See the non-exhaustive list of subjects that may be dealt with at a case management conference, online : www.barreaudemontreal.qc.ca/loads/DocumentsCours/SujetsGestionInstance.pdf.
- ⁴³ See generally *Bertrix Corporation c. Valeurs mobilières Desjardins inc.*, 1999 CanLII 13165 (QC C.A.).
- ⁴⁴ See the modalities for proceeding by telephone on the notice of the Superior Court to members of the Bar – Montreal division, online : www.barreaudemontreal.qc.ca/loads/DocumentsCours/AvisMembresBarreau_Coursuperieure.pdf. The telephone room is available for civil and family matters.
- ⁴⁵ *Supra*, note 40.
- ⁴⁶ See also sections entitled “Interaction with the Witness during the Examination” and “Exclusion of Witnesses”, page 10.
- ⁴⁷ *Innu-science Canada inc. c. Laboratoire Choisy ltée*, 1999 CanLII 13503 (QC C.A.).
- ⁴⁸ Art. 3.02.02 of the *Code of ethics of advocates* : “Paragraph g of section 3.02.01 must not be interpreted as preventing the advocate from guaranteeing payment of or agreeing to pay :
a) reasonable expenses incurred by a witness to appear or testify;
b) reasonable compensation to a witness for loss of time in appearing or testifying.”
- ⁴⁹ Ethics Committee [unofficial translation], “Opinion 43 - Paiement de certains frais à un témoin – obligation d’en informer la partie adverse”, issued on April 29, 2005, online : www.barreau.qc.ca/avocats/deontologie/capsules/opinions/43.html (in French only).
- ⁵⁰ *Lac d’Amiante du Québec Ltée v. 2858-0702 Québec Inc.*, 2001 SCC 51, [2001] 2 S.C.R. 743; *Jacolson-Sulitzer c. Sulitzer*, 2003 CanLII 35403 (QC C.A.); *Lanthier c. Institut québécois de planification financière*, [2002] n° AZ 02019033 (C.A.) : “Les règles qui régissent les informations divulguées dans le contexte d’un interrogatoire au préalable sont suffisantes pour protéger la confidentialité.”; *Industrie Remac inc. c. Construction CLD 1985 (inc.)*, EYB 2008-135245 (C.S.).
- ⁵¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
- ⁵² See also the section entitled “Exclusion of Witnesses”, page 10.
- ⁵³ *Pellemans c. Lacroix*, 2008 QCCS 5260 (CanLII); *Lafortune-Coulombe c. Assurance-vie Desjardins*, [1997] R.J.Q. 2746 (C.S.).
- ⁵⁴ Jean-Claude Royer & Sophie Lavallée, *La preuve civile*, 4th ed. (Cowansville, Yvon Blais, 2008), at Para. 465; *Hôtel Central (Victoriaville) inc. c. Compagnie d’assurances Reliance*, 1998 CanLII 12934 (QC C.A.); *R. v. Mohan*, [1994] 2 S.C.R. 9; *Roberge v. Bolduc*, [1991] 1 S.C.R. 374.

- ⁵⁵ “Rapport du sous-comité magistrature-justice-Barreau sur les expertises”, section IV, at para. n° 2, p. 39, online : www.barreau.qc.ca/pdf/medias/positions/2007/200707-expertises.pdf (in French only).
- ⁵⁶ BARREAU DU QUÉBEC, “La position du Comité sur la procédure civile concernant l’utilisation des expertises lors de recours civils et commerciaux et la position du Comité sur le droit de la famille concernant l’utilisation des expertises en matière familiale”, August 2005, online : www.barreau.qc.ca/pdf/medias/positions/2005/200508-expertises.pdf (in French only).
- ⁵⁷ Art. 477 C.C.P.
- ⁵⁸ “Rapport du sous-comité magistrature-justice-Barreau sur les expertises”, section IV, n° 8, p. 70, online : www.barreau.qc.ca/pdf/medias/positions/2007/200707-expertises.pdf (in French only); see also the notice of the Bar of Montreal on the reconciliation of experts’ reports, online : www.barreaudemontreal.qc.ca/loads/DocumentsCours/Avis_Conciliationexpertises.pdf (in French only).
- ⁵⁹ *Rules of practice of the Superior Court of Québec in civil matters*, RRQ 1981, c C-25, r 8, s. 18.2.
- ⁶⁰ *La Maison Simons inc. c. Lizotte*, 2010 QCCA 2126.
- ⁶¹ *Rules of practice of the Superior Court*, s. 18.2.
- ⁶² *Supra*, note 9.
- ⁶³ *Supra*, note 1.
- ⁶⁴ Article 4.02.01(b)(i) of the *Code of ethics of advocates* : “4.02.01. In addition to the derogatory acts referred to in sections 57, 58, 59.1 and those determined pursuant to the second paragraph of section 152 of the Professional Code (R.S.Q., c. C-26), the following are derogatory to the dignity of the profession of advocate : [...]”
- b) in contested matters, communicating, in respect of that matter, with the judge or any person holding a judicial or quasi-judicial office before whom such matter is pending, except :
- i. in writing, if he promptly delivers a copy to the opposite party who has appeared or to his attorney [...]”
- ⁶⁵ A model is available online at : www.barreaudemontreal.qc.ca, under the heading “Publications”.
- ⁶⁶ *Fillion c. Chiasson*, 2007 QCCA 570 at paras. 43ff.
- ⁶⁷ *Guide of Professional Courtesy of The Bar of Montreal*, *supra*, note 1.
- ⁶⁸ See the “Statement of Principle regarding Witnesses” dated June 1, 1998, between The Ministère de la Justice du Québec, The Judiciary and the Barreau du Québec, online at : www.justice.gouv.qc.ca/francais/publications/generale/declar.htm.
- ⁶⁹ *Widdrington v. Wightman & al.*, 2001 CanLII 15048 (QC C.S.); *Banque Nationale du Canada c. Société de développement industriel du Québec*, [1997] R.J.Q. 979 (C.S.).
- ⁷⁰ See the section entitled : “The lawyer’s conduct toward witnesses” of the *Guide of Professional Courtesy of The Bar of Montreal*, *supra*, note 1; “Statement of Principle regarding Witnesses”, *supra*, note 68.
- ⁷¹ Réal Goulet, “La préparation des témoins” in *Collection des habiletés 2010-2011*, École du Barreau du Québec, *Representation*, (Montréal, École du Barreau du Québec, 2010), p. 15.
- ⁷² *Supra*, note 69; *Brouillette c. R.*, [1992] n° AZ-92012090 (C.A.), J. Tyndale at 2785, J. Proulx at 2792; *Berg v. Schochet*, (1995) O.J. No. 2983; 413528 *Ontario Ltd. v. 951 Wilson Avenue Inc.*, (1989) 71 O.R. (2^d) 40; Earl A. Cherniak, “The ethics of advocacy” in Franklin R. Mostkoff, Q.C., ed., *Advocacy in Court. A tribute to Arthur Maloney*, Q.C. (Toronto, Canada Law Book, 1986) at 105; Canadian Bar Association, *Code of professional conduct*, Ottawa, CBA, 2009, Chapter IX, note 18, online : www.cba.org/CBA/activities/pdf/codeofconduct.pdf; John Sopinka, Sidney N. Lederman & Alan W. Bryant, *The law of evidence in Canada*, 2nd ed. (Toronto, Butterworths, 1999) at para. 16; Hon. D.W. Griffiths, “View from the bench” in Mark J. Frieman & Mark L. Berenblut, ed., *The litigator’s guide to expert witness* (Aurora, Canada Law Book, 1997) at 31.
- ⁷³ Cherniak, *supra*, note 72 at 106; Canadian Bar Association *supra*, note 72.
- ⁷⁴ Art. 3.02.01(h) of the *Code of ethics of advocates* : “3.02.01. The following acts, among others, are a breach of the obligation to act with integrity :
- h) communicating in a matter with a person whom he knows to be represented by an advocate except in the latter’s presence or with his consent or unless he is authorized to do so by law.”
- ⁷⁵ *Hôtel-Dieu de Québec c. Bois* [1977] n° AZ-77011161 (C.A.).
- ⁷⁶ *Léger c. Montpetit*, 1999 CanLII 13802 (QC C.A.).
- ⁷⁷ Pierre Tessier & Monique Dupuis, “La preuve à l’instruction”, in *Collection de droit 2010-2011*, École du Barreau du Québec, vol. 2, *Preuve et procédure* (Montréal, Barreau du Québec, 2010) at 381, online : www.caij.qc.ca/doctrine/collection_de_droit/2010/2/ij/1842/1842.pdf (in French only).
- ⁷⁸ Cherniak, *supra* note 72 at 107.
- ⁷⁹ Arts. 395 and 294 C.C.P.
- ⁸⁰ See the section entitled “Case Management Notice”, page 7.

- ⁸¹ *Caisse populaire Desjardins de La Malbaie c. Tremblay*, 2006 QCCA 697 (CanLII); *Sodexo Québec ltée inc. c. Compagnie de chemin de fer du littoral Nord de Québec et du Labrador inc.*, 2007 QCCA 1782 (CanLII).
- ⁸² *Code of ethics of advocates*, s. 3.02.01 h).
- ⁸³ *Caisse populaire Desjardins de La Malbaie c. Tremblay*, 2006 QCCA 697 (CanLII); *Axa Assurances inc. c. Groupe de sécurité Garda inc.*, 2008 QCCS 280 (CanLII); Royer & Lavallée, *supra* note 54 at para. 1179.
- ⁸⁴ For example, in civil matters, the Superior Court requests that quoted passages be marked (*Rules of practice*, *supra* note 59, s. 31).
- ⁸⁵ Ministry of the Attorney General of Ontario : www.attorneygeneral.jus.gov.on.ca/english/legis/subjudicerule.asp : “The term *sub judice* literally means “under judicial consideration”. The *sub judice* rule is part of the law relating to contempt of court. The rule governs what public statements can be made about ongoing legal proceedings before, principally, the courts.”
- ⁸⁶ Jean-François Gaudreault-DesBiens & Diane Labrèche, “Le contexte social du droit dans le Québec contemporain” in Collection de droit 2010-2011, vol. 1 *Éthique, déontologie et pratique professionnelle* (Montreal, Barreau du Québec, 2010), online : www.caij.qc.ca/doctrine/collection_de_droit/2010/1/ii/1824/1824.pdf (in French only).
- ⁸⁷ See the checklist on the initial interview of the Barreau du Québec online at www.barreau.qc.ca/pdf/listes-registres/famille-entrevue-matiere-familiale.doc (in French only). Checklists for various family law proceedings are also available on the Barreau du Québec Website. A table of contents can also be accessed online at www.barreau.qc.ca/pdf/listes-registres/famille-tdm.pdf (in French only).
- ⁸⁸ See generally the JuriFamille application, online : jurifamille.com and the Aliform application, online : www.cch.ca.
- ⁸⁹ Art. 813.3 para. 2 C.C.P.; See also the notice of the Superior Court to members of the Bar dated December 18, 2009, online : www.tribunaux.qc.ca/c-superieure/avis/index_avis.html.
- ⁹⁰ Art. 813.10 C.C.P. : “If the parties so wish, they each may present their evidence by means of a single affidavit, which must be sufficiently detailed to establish all facts in support of their claims. If the respondent proceeds in this manner, the applicant is entitled to serve one additional detailed affidavit on the respondent as a reply. Any further detailed affidavit must be authorized by the court.”
- ⁹¹ See the Notice of the Superior Court to members of the Bar dated December 18, 2009, online at www.tribunaux.qc.ca/c-superieure/avis/index_avis.html.
- ⁹² The Aide Memoire entitled “*Matières familiales : Analyse des dossiers matrimoniaux quand la preuve se fait par affidavits*” is available online at www.tribunaux.qc.ca/c-superieure/aide-memoire/Aide-memoire_Familial.pdf (in French only).
- ⁹³ *Liste de vérification des documents à produire* (in French only).
- ⁹⁴ *Ibid.*
- ⁹⁵ The form is available at the following link : www.barreaudemontreal.qc.ca/loads/DocumentsCours/Demande de renouvellement.pdf (in French only).
- ⁹⁶ See the notice to the members of the Bar dated December 8, 2010 : www.tribunaux.qc.ca/mjq_en/c-superieure/avis/MTL_Role_FM_Conf_Call.html.
- ⁹⁷ *Barreau du Québec c. Centre communautaire juridique de Montréal*, 2006 QCCQ 11874 (CanLII).
- ⁹⁸ S. 3.7 of the new *General Rules of the Commercial Division*, which took effect on August 1, 2011 : “No party or attorney shall send any proceeding or exhibit by e-mail to a judge of the Commercial Division unless authorized to do so by that judge. Where same is permitted, no such e-mail may be sent after 5 p.m. on the juridical day preceding the date of hearing, unless previously authorized by the judge.”
- ⁹⁹ The Standard Initial Order Short Form, the Standard Provisions relating to Interim Financing and the Standard Short Form relating to Claims and Meetings Procedure Order are available online at : www.barreaudemontreal.qc.ca, under the heading “Publications”.
- ¹⁰⁰ S. 30 of the *Bankruptcy and Insolvency General Rules*, CRC, c 368.
- ¹⁰¹ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36.
- ¹⁰² *Marcotte v. Longueuil (City)*, 2009 SCC 43, [2009] 3 S.C.R. 65.
- ¹⁰³ The information about how to proceed is available online at : www.tribunaux.qc.ca/c-quebec/roles/Role_Civil.htm (in French only).
- ¹⁰⁴ BARREAU DU QUÉBEC, “*Guide pratique de l’accès à la justice*” (Montréal, Protégez-Vous, 2009, 70 pages); FONDATION DU BARREAU DU QUÉBEC, “*Representing yourself in Court in civil matters*”, online : www.fondationdubarreau.qc.ca/publications; FONDATION DU BARREAU DU QUÉBEC, “*Representing yourself in Court in family matters*”, online : www.fondationdubarreau.qc.ca/publications.
- ¹⁰⁵ For example : s. 164 of *An Act respecting administrative justice* applied in *Michalakopoulos v. Montréal (Ville de)*, 2009 QCCA 308; C.C.P., s. 273.2 applied in *Aliments Breton (Canada) inc. c. Bal Global Finance Canada Corporation*, 2008 QCCA 1420.
- ¹⁰⁶ *A.M. v. Klinger*, 2011 QCCA 17.
- ¹⁰⁷ *Fleury c. Québec (Procureure générale)*, 2009 QCCA 1968 (CanLII), page 4; C.C.P., art. 511.
- ¹⁰⁸ S. 31 of the *Bankruptcy and Insolvency General Rules*, *supra* note 100.
- ¹⁰⁹ S. 14 CCAA.

¹¹⁰ *Regroupement des CHSLD Christ-Roy c. Comité provincial des malades*, 2007 QCCA 1068, paras. 54-55.

¹¹¹ *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235; *H. L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 SCR 401; *Matte c. Charron*, 2010 QCCA 1496, paras. 46-49; *Droit de la famille - 101922*, 2010 QCCA 1440, para. 9; on provisional measures : *Droit de la famille - 10960*, 2010 QCCA 872; on quantum of damages : *Morel c. Tremblay*, 2010 QCCA 600, para. 12.

¹¹² C.C.P., arts. 469.1 and 547; Belleau, Charles - L'exécution forcée des jugements, in Collection de droit 2010-2011, Volume 2, Preuve et procédure, Titre I, La procédure, online : www.caij.qc.ca/doctrine/collection_de_droit/2010/2/i/1837/1837.pdf; Pariseau-Legault, Lysanne - L'appel, in Collection de droit 2010-2011, Volume 2, Preuve et procédure, Titre I, La procédure, online : www.caij.qc.ca/doctrine/collection_de_droit/2010/2/i/1835/1835.pdf.

¹¹³ *Forest v. Raymor Industries inc.*, 2010 QCCA 578 (CanLII) :

[Translation] "[8] The respondents asked for and obtained an order from the judge at first instance for provisional execution notwithstanding the appeal .

"[9] The appellant did not immediately ask the court to suspend the order for provisional execution notwithstanding the appeal. [...]

The effect of these developments is that, independently of the appellant's apparent lack of legal interest, the appeal has become moot because the reorganization of Raymor has been implemented."

¹¹⁴ C.C.P., art. 508.1.

¹¹⁵ C.C.P., art. 508.2.

¹¹⁶ S. 65(2) of the *Rules of the Court of Appeal of Québec in Civil Matters*, D. 06-04-17, 2006 G.O. 2, 5800 (hereinafter "*Rules in Civil Matters*").

¹¹⁷ *Syndicat des métaux, section locale 2843 c. 3539491 Canada inc.*, 2011 QCCA 264, paras. 24-29.

¹¹⁸ Ss. 85 to 87 of the *Rules in Civil Matters* : "85. Authorities.

[...]

(2) The book of authorities may be limited to relevant excerpts only, in which case the pages immediately preceding and immediately following any excerpt shall also be included, as well as the citation and the headnote of the decision, if there is one.

[...]

(5) When the book of authorities contains judgments or extracts of judgments rendered by the Supreme Court of Canada, such version must be that published in the Reports of the Supreme Court of Canada, or any computer based version that has the same paragraph numbering as the version published in the Reports of the Supreme Court of Canada."

¹¹⁹ www.tribunaux.qc.ca.

¹²⁰ For example, see Louise Mailhot and Lysanne Pariseau-Legault, *L'appel*, 2nd ed., Cowansville, Éd. Yvon Blais, 2008.



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