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## Legal Brief\*

Vol. 4

Number 14

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### I'VE JUST RECEIVED PROCEEDINGS FROM MY EX- *DEMYSTIFYING THE NOTICE OF PRESENTATION*

Paul receives an *Application for divorce* and a *Motion for provisional measures* from his ex-wife, which contains the following **Notice of presentation** at the end:

**“TAKE NOTICE** that the present motion will be presented for a ruling at a hearing before a judge of the Superior Court sitting at the (City) Courthouse located at (address), on (date) at 9:00 a.m., in courtroom (number).

Moreover, **TAKE NOTICE** that, pursuant to article 825.10 of the Code of Civil Procedure (C.C.P.), you must, not less than five (5) clear days before the presentation of the present motion, serve upon the plaintiff a copy of the **CHILD SUPPORT DETERMINATION FORM** and/or **FORM III**, the sworn statement provided for under article 827.5 of the C.C.P. and the prescribed documents, including a mediator's report if the dispute involves a child. Do govern yourself accordingly.”

Paul can consult a lawyer or he can contact the lawyer representing his ex in order to negotiate a settlement. But first, Paul would like to understand the nature of the documents he is being asked to bring to court. Fortunately, these documents are available on government websites.

#### **Child support determination form (Schedule I)**

<http://www.justice.gouv.qc.ca/english/formulaires/modele/forfix-a.htm>.

You must attach to this form a copy of your federal and provincial income tax returns and the assessment notices for the previous fiscal year. You must also attach any other document used to establish income, such as:

*Financial statements showing income from a business or self-employment;*  
*A statement of income and expenses for an immovable;*  
*The most recent pay cheque stub (work, unemployment, insurance);*  
*Proof of your assets and liabilities.*

Section 9 of the *Regulation respecting the determination of child support payments*<sup>1</sup> sets out the obligation for parents to disclose their income from all sources in order to pay fair and appropriate support for their children. The Court of Appeal has ruled that this disclosure obligation applies to the parties because it is of public order.<sup>2</sup>

If the information provided by the parents is incomplete, inaccurate or contested, the court itself may determine the income, as provided for in article 825.12 of the C.C.P.

<sup>1</sup> R.R.Q., c. C-25, r 6.

<sup>2</sup> *Droit de la famille-101619*, 2010 QCCA 1324, available on the site [www.jugements.qc.ca](http://www.jugements.qc.ca).

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\* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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#### Sworn statement pursuant to article 827.5 of the Code of Civil Procedure

<http://www.justice.gouv.qc.ca/english/formulaires/modele/sj766-a.htm>

In this form, you must declare your address, telephone number, social insurance number and date of birth, the name and address of your employer as well as your income.

#### FORM III: Sworn statement of income and expenditures and balance sheet

<http://www.barreau.qc.ca/quebec/5/1/pdf-b/03-bilan.pdf> - Cf.: Website of the Barreau du Québec

This form is necessary when a party is asking for support for himself or herself or when a party wants to plead the existence of a great difficulty in order to pay a lower amount than provided for in the determination tables.

#### Mediation report

<http://www.justice.gouv.qc.ca/english/recherche/mediateur-a.asp>

When the dispute involves a child, the parties must participate in information sessions with a certified mediator or obtain a mediation exemption from a mediator.

N.B.: Since December 1, 2012, parenting after separation information sessions have been offered free of charge in the courthouses. The schedule of sessions and information regarding the family mediation program are available at:

<http://www.justice.gouv.qc.ca/english/programmes/mediation/seance-parentalite-a.htm>

For more information or to register for one of these sessions, interested parents should contact the justice department, toll free, at 1-866-536-5140 and choose option 4. While participation in these sessions is not yet mandatory, it is strongly recommended.

After consulting these documents, Paul will have to decide whether he wants to fill them out with or without the help of a lawyer. One thing is certain: Paul now understands that in order to proceed to a hearing before a judge or in order to file a settlement agreement, the filing of the documents described above is a necessary preliminary step in the judicial process. In order to minimize costs and delays, it is advisable to have the required documents.

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