



# PRAEVENTIO

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*Success always comes when opportunity meets preparation.*

**Albert Einstein**

ACTIVITIES • FREE TRAINING ACTIVITIES • FREE TRAINING

## NEW TRAINING ACTIVITY NON-RESPECT DES DÉLAIS : SURVIE PRATIQUE POUR LIMITER LES RISQUES!

The failure to act within specific time limits is a major source of malpractice. Many lawyers are sued because they failed to act within the prescribed time limit. While missed deadlines sometimes result from a lack of legal knowledge, they are often due to lawyers' poor organization of their practice.

Lawyers therefore have the obligation to keep an up-to-date system to remind them of prescription dates and other deadlines likely to impact their clients' legal proceedings, be it prescription periods, procedural deadlines or any other type of time limit.

These time limits may pose a challenge and can even be a source of stress, like a sword of Damocles hanging over a lawyer.

Take advantage of this new training activity which identifies tools that will help you get a better grasp on managing deadlines so as to prevent the risk of facing malpractice proceedings.

**NON-RESPECT DES DÉLAIS : SURVIE PRATIQUE POUR LIMITER LES RISQUES!** is a 3-hour training activity recognized by the Barreau du Québec and is **offered free of charge** by the *Professional Liability Insurance Fund of the Barreau du Québec*.

## MAÎTRES EN AFFAIRES! – MAÎTRES EN MÉMOIRE!

### Fall 2017 Schedule

The tour continues. Following the highly successful and sold out training activities offered at no cost by the Insurance Fund in various cities throughout the province, we are pleased to present the new fall schedule for

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**MAÎTRES EN AFFAIRES!** (business law) and **MAÎTRES EN MÉMOIRE!** (criminal law and family law).

These training activities, each of which has been recognized for 3 hours and in which a number judges have participated, are designed for all lawyers and are intended to reduce the risk of malpractice proceedings.

The **training activities are offered free of charge**—just one more reason to register and fulfil part of your continuing education requirements!

Date	Location	Time	Recognized duration
<b>NON-RESPECT DES DÉLAIS : SURVIE PRATIQUE POUR LIMITER LES RISQUES!</b>			

November 17, 2017	Gatineau (Sheraton Four Points)	9 a.m. – 12 p.m.	3 hours
December 1, 2017	Montreal (Holiday Inn Montreal Centreville Downtown)	9 a.m. – 12 p.m.	3 hours
February 23, 2018	Joliette (Château Joliette)	9 a.m. – 12 p.m.	3 hours
March 2, 2018	Trois-Rivières (Musée québécois de culture populaire)	9 a.m. – 12 p.m.	3 hours

<b>MAÎTRES EN AFFAIRES!</b>			
October 13, 2017 (morning)	Montreal (Holiday Inn Montreal Centreville Downtown)	9 a.m. – 12 p.m.	3 hours
October 20, 2017 (morning)	Sherbrooke (Grand Times Hotel)	9 a.m. – 12 p.m.	3 hours
November 10, 2017 (morning)	Laval (Sheraton Hotel)	9 a.m. – 12 p.m.	3 hours
November 24, 2017 (morning)	Québec City (Château Laurier Hotel)	9 a.m. – 12 p.m.	3 hours

October 13, 2017 (morning)	Montreal (Holiday Inn Montreal Centreville Downtown)	9 a.m. – 12 p.m.	3 hours
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November 24, 2017 (morning)	Québec City (Château Laurier Hotel)	9 a.m. – 12 p.m.	3 hours

<b>MAÎTRES EN MÉMOIRE!</b>			
October 13, 2017 (afternoon)	Montreal (Holiday Inn Montreal Centreville Downtown)	1:30 p.m. – 4:30 p.m.	3 hours
October 27, 2017 (morning)	Saint-Jérôme (Best Western Hotel)	9 a.m. – 12 p.m.	3 hours
November 3, 2017 (morning)	Longueuil (Université de Sherbrooke – Longueuil Campus)	9 a.m. – 12 p.m.	3 hours
November 10, 2017 (afternoon)	Laval (Sheraton Hotel)	1:30 p.m. – 4:30 p.m.	3 hours
November 24, 2017 (afternoon)	Québec City (Château Laurier Hotel)	1:30 p.m. – 4:30 p.m.	3 hours

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To register, go to the website of the Barreau du Québec at [www.barreau.qc.ca](http://www.barreau.qc.ca) under *Formation continue* / *Formations offertes par le Barreau* / *Cours en salle* / **NON-RESPECT DES DÉLAIS : SURVIE PRATIQUE POUR LIMITER LES RISQUES!** and/or **MAÎTRES EN AFFAIRES!** and/or **MAÎTRES EN MÉMOIRE!** (in alphabetical order) and choose the appropriate date and location, or go directly to the following link:

**NON-RESPECT DES DÉLAIS : SURVIE PRATIQUE POUR LIMITER LES RISQUES!** <http://www.barreau.qc.ca/formation/activite.jsp?noActiv=2536&namePage=activite.jsp&Langue=fr>

**MAÎTRES EN AFFAIRES!** <http://www.barreau.qc.ca/formation/activite.jsp?noActiv=2024&namePage=activite.jsp&Langue=fr>

**MAÎTRES EN MÉMOIRE!** <http://www.barreau.qc.ca/formation/activite.jsp?noActiv=2387&namePage=activite.jsp&Langue=fr>

If you have any questions, please contact Me Guylaine LeBrun at 514 954-3452.

**We hope many of you will register for the activity and take advantage of this practical solution for fulfilling your continuing education requirements at no cost!** ☂

## YOU'VE PLANNED YOUR VACATION, BUT HAVE YOU PLANNED YOUR ABSENCE?

Perhaps you're planning to take a summer break very soon and are already enjoying the feeling that comes with knowing you'll be able to relax, but have you thought about planning your absence?

Here is some practical advice to ensure a worry-free return to work:

- Check your **agenda** and make sure no appointments have been scheduled during your absence.
- Set up an **out-of-office message** in your voice mailbox and e-mail program, and don't forget to mention your return date and a contact person in case of emergency. Upon your return, don't forget to deactivate the messages!
- Make the necessary arrangements to avoid a having a **deadline** expire during your absence.
- Inform your clients** and **co-workers** of your absence.
- Give your computer **passwords** to a trustworthy person, in case your return is delayed.
- If you are a **sole practitioner**, it is important that a member of your office staff be present during your absence to read your mail. Make sure this person can contact one of your colleagues in the event of an emergency.

■ If you practice in a **partnership or company**, take the necessary measures to have a colleague supervise your files and reply to any urgent matters.

■ If a client **consults** you before your departure, don't accept a new mandate unless you have time to check the various possible deadlines. If measures must absolutely be taken during your absence, refer the client to a colleague or, if this is not possible, refuse the mandate and inform the client in writing.

In short, plan your time off and enjoy your vacation! ☂



## PREVENTION QUIZ

### Which Answer Doesn't Belong?

The following is a quiz focusing on a variety of preventive measures to ward off malpractice complaints.

Test your knowledge by finding **WHICH ANSWER DOESN'T BELONG** from among the 4 statements suggested under each question.

#### 1. New client

- A. Realistic expectations
- B. Sufficient availability and expertise
- C. Ability to pay fees
- D. Finally, a mandate!

#### 2. Client relations

- A. Always say yes to the client
- B. Listen actively
- C. Return calls
- D. Fulfil commitments

#### 3. Active listening

- A. Objectivity
- B. No distractions during interviews
- C. Legal aspect only
- D. Listen without preconceptions

#### 4. Managing risks

- A. Confirm the mandate in writing
- B. Confirm advice in writing
- C. Let the client win at golf
- D. Confirm progress in writing

#### 5. Traps to avoid

- A. Discussion of fees and costs
- B. Mandate from family member or friend
- C. Last-minute mandate
- D. You are the third lawyer consulted

#### 6. Results

- A. 86% of files closed in 2016 were closed without the payment of an indemnity (discontinuance, inactivity, favourable judgment or other) (90% in 2015)
- B. Number of claims relatively stable for the past 20 years
- C. In 2016, 24.2% of claims were the result of a counterclaim following an action on account for unpaid fees
- D. Defence costs increased in 2016

#### 7. Confidentiality

- A. Be reserved and discreet
- B. Discuss cases at the club house, in the elevator and in the washroom
- C. Shred confidential documents
- D. E-mail: exact address

#### 8. Defamatory allegation

- A. Causes harm
- B. False
- C. Irrelevant
- D. Made in good faith

#### 9. Outreach

- A. Regular publication of *Praeventio* and production of preventive videos
- B. Last resort insurance for lawyers serving as directors or officers
- C. Recognized training offered in the regional bars
- D. Production of a musical

The answers are on page 4 of the bulletin. ☂

## FOCUS ON THE NEW CODE OF CIVIL PROCEDURE

By *M<sup>e</sup> Annie Guillemette*  
Analyst in the Claims Department

### Revocation of Judgment

In this column, we will discuss applications for the revocation of judgment. The provisions of the new *Code of Civil Procedure* dealing with the revocation of judgment differ from those of the former Code, primarily with respect to procedure.

First, article 345 of the new Code sets out the general reason for the revocation of a judgment, i.e., a judgment that would



tend to bring the administration of justice into disrepute. Article 345 also settles the uncertainty that existed under the former Code, namely, whether the circumstances listed in article 483 of the former *C.C.P.* were restrictive. It is now clear that the circumstances listed in article 345 are not exhaustive,<sup>1</sup> which gives greater discretion to judges ruling on applications for the revocation of a judgment. Moreover, unlike article 346, the wording of article 345 does not impose the obligation to disclose the grounds of defence in the application for revocation.

As for the other reasons that may justify a revocation, they have not changed and are set out in article 346. Just as under article 482 of the former Code, the application must contain the reasons for the revocation as well as the grounds of defence against the original application.

The procedure for the revocation of judgment has been simplified in the new Code. The reception of the application is no longer part of the process. Rather than having two steps, the process is handled in one step during the presentation of the application.

Article 347 states that the application for revocation **must be served within thirty days** after the cause preventing the party from filing a defence ceased to exist or after the party became aware of the judgment or evidence that constitutes grounds for the revocation. The application must be supported by an affidavit.

Paragraph 2 states that the application **must be presented within thirty days** after service, but it can no longer be presented if more than six months have elapsed since the judgment.

The time limits mentioned hereinabove are strict time limits. It appears that the court can relieve a party from the consequences of its failure to act within a time limit if the party proves that it was impossible in fact for it to act sooner, as provided for in article 84.

It is important to note that merely serving an application for the revocation of a judgment does not stay the execution of the judgment (article 350, para. 1).

When the application is presented, the court will determine whether the application satisfies the requirements of article 347, whether the reasons are sufficient to justify the revocation and whether the grounds of defence appear to be serious. If the court is satisfied, the parties will be restored to their former state and the execution of the judgment will be stayed.

1 – CHAMBERLAND, L. (dir.), *Le grand collectif. Code de procédure civile. Commentaires et annotations*, vol. 1, Cowansville, Éditions Yvon Blais, 2015, p. 1572.

Unlike under the former Code, the court no longer accepts the allegations in the application as fact, because it is an application made in the course of a proceeding. Thus, contradictory evidence can be presented, which implies that the parties can examine witnesses, including the persons who signed an affidavit. The parties can also ask the court to consider the proceedings and exhibits.

If the circumstances permit, article 348 of the new Code allows the court to rule on the merits of the case when the application for revocation is presented. Otherwise, the original proceeding continues and a case protocol is agreed upon.

Lastly, where a defendant has been negligent in handling his affairs, the court will have to show more or less clemency depending on the seriousness of the grounds of defence presented.

In conclusion, although the new Code has somewhat changed the procedure for presenting an application for the revocation of a judgment, it has not changed the principle holding that revocation is the exception and that the irrevocability of judgments must prevail. ☂

## Quiz: Answers

- 1) D) Finally, a mandate!
- 2) A) Always say yes to the client
- 3) C) Legal aspect only
- 4) C) Let the client win at golf
- 5) A) Discussion of fees and costs
- 6) D) Defence costs increased in 2016
- 7) B) Discuss cases at the club house, in the elevator and in the washroom
- 8) D) Made in good faith
- 9) D) Production of a musical

## NOTICE

### Service de prévention

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