



PRAEVENTIO

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*Believe in your dreams and they may come true.
Believe in yourself and they will come true.*

Martin Luther King

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TRAINING • NEW FREE TRAINING • NEW FREE TRAINING

FREE TRAINING ACTIVITIES – THE TOUR CONTINUES...

Here is the fall 2018 calendar of training activities offered at no cost by the Professional Liability Insurance Fund of the Barreau du Québec:

Date	Location	Time	Recognized duration
NON-RESPECT DES DÉLAIS : SURVIE PRATIQUE POUR LIMITER LES RISQUES!			
September 20, 2018	Sherbrooke (Grand Times Hotel)	9 a.m. – 12 p.m.	3 hours
October 4, 2018	Longueuil (Université de Sherbrooke – Longueuil Campus)	9 a.m. – 12 p.m.	3 hours
October 18, 2018	Saint-Jean-sur-Richelieu (Hotel to be determined)	9 a.m. – 12 p.m.	3 hours
October 19, 2018	Saint-Jérôme (Hotel to be determined)	9 a.m. – 12 p.m.	3 hours
November 2, 2018	Québec City (Hotel Château Laurier)	9 a.m. – 12 p.m.	3 hours
November 8, 2018	Gatineau (Sheraton Four Points)	9 a.m. – 12 p.m.	3 hours
November 23, 2018	Montreal (Holiday Inn Montreal Centreville Downtown)	9 a.m. – 12 p.m.	3 hours
MAÎTRES EN MÉMOIRE! (Professional liability in criminal law and family law)			
November 30, 2018	Gatineau (Sheraton Four Points)	9 a.m. – 12 p.m.	3 hours

Date	Location	Time	Recognized duration
LE DÉFI DE L'AVOCAT FACE AUX PERSONNALITÉS DIFFICILES			
November 1, 2018	Québec City (Hotel Château Laurier)	9 a.m. – 12 p.m.	3 hours
November 16, 2018	Trois-Rivières (Hotel to be determined)	9 a.m. – 12 p.m.	3 hours
November 22, 2018	Laval (Hotel to be determined)	9 a.m. – 12 p.m.	3 hours
November 29, 2018	Bromont (Hotel to be determined)	9 a.m. – 12 p.m.	3 hours
December 6, 2018	Montreal (Holiday Inn Montreal Centreville Downtown)	9 a.m. – 12 p.m.	3 hours
December 7, 2018	Longueuil (Université de Sherbrooke – Longueuil Campus)	9 a.m. – 12 p.m.	3 hours

To register, go to the website of the Barreau du Québec at www.barreau.qc.ca. On the home page, in the section entitled Ressources pour les avocats, select *Formation continue / Les formations du Barreau / Accédez au catalogue complet / Développement et pratique professionnels*, then scroll down in alphabetical order and choose the training activity you want. Just choose the date and time that suits you. You can also use the following direct links:

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 MÉMOIRE!

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

LE DÉFI DE L'AVOCAT FACE AUX PERSONNALITÉS DIFFICILES

<https://www.barreau.qc.ca/formation/activite.jsp?noActiv=2631&namePage=activite.jsp&Langue=fr>

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

Free training activities: One more reason to choose the training activities offered by the Insurance Fund in order to fulfil your continuing education requirements! ☂

There are many reasons — some good, some bad, some explainable, some not (lack of time, difficulty reaching the client, procrastination, etc.) — that cause us to sometimes carry out this step of the case a little too quickly. The predictable delays for obtaining a trial date may contribute to the false impression that there is room to manoeuvre before the trial in order to amend the record.

The following, decision, however, is a reminder of the importance with which trial readiness must be treated.

7754795 Canada inc. v. 9127-5834 Québec inc., 2018 QCCS 648

In this Superior Court judgment, the Honourable Claude Auclair, J.C.S., drawing on the ruling in *Striva*,¹ reiterates the various factors a judge must consider when exercising his discretion to allow the late filing of an exhibit, a report or testimony:

- 1) the reasons that prevented a party from disclosing all of its evidence in a timely manner;
- 2) the harm the party will suffer if permission is denied;

¹ – *Modes Striva inc. v. Banque Nationale du Canada*, 2002 CanLII 34212 (QC CA).

THE IMPORTANCE OF TRIAL READINESS

By Me Marie-Eve Charbonneau-Trudel,
Legal Department

Have you ever signed a request for setting down for trial and judgment by means of a joint declaration and thought to yourself, “Eh! The trial won’t take place for at least one or two years. By then, we’ll amend the pleadings if necessary and add exhibits.”

- 3) the harm the other party will suffer;
- 4) the responsibility of the lawyer and the client having caused the delay;
- 5) the lawyers' conduct of the case since it began; and
- 6) the sound administration of justice.

In this case, a few days before the trial, the plaintiffs informed the defendant of their intention to file additional exhibits, representing over 200 pages of invoices, cheques and photographs, and amended their originating application. After receiving an opposition to the amendments from the defendant, the plaintiffs presented a notice of management so that the opposition and the application to file additional exhibits could be considered.

Based on the aforementioned factors, the judge refused the notice of management and the filing of additional exhibits, reminding the parties that preparing for trial at the last minute has been a thing of the past for many years.

The judge concluded that the only purpose of the amended application was to introduce new exhibits. He emphasized the fact that no affidavit or evidence had been submitted to explain or justify the failure to act earlier. In this regard, the court noted that allowing such a tardy filing of exhibits in the absence of a sworn explanation would discredit justice and be contrary to the sound administration of justice.

The judge further noted the plaintiffs' failure to seek the authorization of the court, as required pursuant to the second paragraph of article 248 C.C.P.²

Moreover, the judge stated that the plaintiffs had not acted in a timely manner when invoking the process under article 264 C.C.P.—which requires that a formal notice be given to the other party to admit the origin of a document or the integrity of the information it contains—adding that this failure would prolong the trial and require additional witnesses.

Still drawing on the ruling in *Striva*, the judge pointed out the importance of trial readiness, which allows for full disclosure of the evidence, ensures a fair and open debate, avoids adjournments and is intended to counter delays in the justice system.

Arguing that the judge had erred and had rendered an unreasonable decision, the plaintiffs sought leave to appeal the judgment. Their application was denied.³ The Honourable Manon Savard, J.C.A., was of the opinion that the trial judge's analysis had not been made in error and fell within his discretionary power. Justice Savard concluded as follows:

[TRANSLATION]

*"I conclude by emphasizing one of the trial judge's reasons, that is, the issue of judicial delays. After reiterating that the Court, in a 2002 judgment written by Justice Rochon, had previously indicated the problems resulting from such delays, he added that, [TRANSLATION] 'in 2017 and 2018, lengthy delays are still a great source of dissatisfaction among litigants, going as far as to jeopardize litigants' access to the justice system.' As the Court recently pointed out, all judicial system stakeholders, including judges, lawyers and parties, must address this issue if the current delay problems are to be resolved."*⁴

Don't delay any longer ... Prioritizing timely and complete trial readiness will help you avoid unnecessary and costly disputes, surprises a few days before the trial, as well as the risk of causing your clients to lose some of their rights. ☂

WHEN A PARTNER STOPS BEING A PARTNER

It happens frequently and for a variety of reasons: A lawyer who is partner ceases to be a partner and has to leave the partnership (be it a general partnership, a limited liability partnership, a corporation, or a nominal partnership or cost-sharing partnership).

2 – **Article 248 C.C.P.:** *A party in possession of evidence it intends to use at trial must send it to the other parties not later than with the declaration accompanying the request for setting down for trial. The party is dispensed from doing so if the evidence is an exhibit in support of a pleading or if the case protocol provides otherwise. In any other case, the evidence must be sent to the other parties within 30 days after the order to set down for trial is issued or the date of the trial is set, unless the court determines another time limit.*

A party that has failed to so disclose evidence cannot produce it at trial except with the authorization of the court.

3 – 7754795 Canada inc. v. 9127-5834 Québec inc, 2018 QCCA 505.

4 – *Ibid*, para. 8.

Now imagine that this lawyer is one of your partners and that the partnership has decided to end the relationship with this partner. The former partner asks your permission to remain on the premises for a few more months until he can find new premises and organize his new practice.

You consent and verbally agree that, for a few months, he will be able to continue to use his current office as well as certain common services, including the partnership's telephone number and e-mail, the fax machine, as well as secretarial and receptionist services.

However, you transfer the considerable number of active cases for which he was responsible to another lawyer in the firm. Unfortunately, due to emergencies, trials and deadlines, clients are not informed about the termination of the relationship with the former partner. In addition, there is no advertising to inform third parties about this major change, and the firm's inventory of stationery, which has become obsolete, is used up.

The former partner, who is still in the firm's premises, accepts a new mandate, but fails to institute proceedings for damages on behalf of his client before the prescription period expires.

The client institutes legal proceedings against the former partner, the partnership and all the partners. You and the partnership are, therefore, necessarily involved. The partners and the partnership argue that they are not liable for the acts of the former partner, who is no longer their partner.

The client accuses the firm of not having informed him about the termination of the partnership with the former partner and of having allowed the former partner to use certain common office property and resources, such as the partnership's e-mail address, leading the client to believe that the former partner was still a member of the partnership. He alleges that he would never have given the former partner the mandate if he had known that the former partner was no longer a member of the firm.

Certain measures must be taken when a partner leaves a firm:

- Don't allow him to continue using the firm's facilities, or at least its resources;
- Notify all interested institutions and stakeholders;
- Promptly update all of the firm's advertising and stationery as well as its website; and

■ If you practise within a limited liability partnership (LLP) or a joint-stock company (corporation), don't forget to inform the Registry Office of the Barreau du Québec about the change, both via the Déclaration annuelle de modifications ou modifications à l'engagement de la société and via the Déclaration du membre du Barreau du Québec – Cessation des activités professionnelles for the cessation of the former partner's professional activities within the partnership or corporation, in accordance with the Règlement sur l'exercice de la profession d'avocat en société et en multidisciplinarité, and do so within the applicable time limits.

For more information, follow this link: <https://www.barreau.qc.ca/en/ressources-avocats/tableau-ordre/exercice-societe-multidisciplinarite/>

Taking these measures will avoid any confusion or the illusion that the former partner is still part of the partnership.

Share an office... without sharing liability! ☂

FINALLY, IT'S VACATION TIME!

It's here: the vacation you've been waiting for. You'll soon be taking some time off during this hard-earned break. Plan your absence properly in order to ensure a smooth return to work.

Enjoy this well earned rest and HAVE A GOOD VACATION! ☂

This publication is an information tool which has been compiled for the purpose of minimizing the risks of legal claims for professional fault. Its content shall not be considered to be an exhaustive study of the topics covered, legal advice, nor as suggesting minimum standards of professional conduct. Where the context permits, the masculine gender includes women as well as men.

This Loss Prevention Bulletin is published by the Professional Liability Insurance Fund of the Barreau du Québec.

Service de prévention

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