

# HUMAN RIGHTS TRIBUNAL

## Guide for the Defendant's Factum

### DEFENDANT'S FACTUM

Section 115 of the *Charter of Human Rights and Freedoms*, CQLR, c. C-12

This guide contains information on how to complete and submit your factum to the Human Rights Tribunal. This is a practical tool and has no legal value.

Follow the steps described in the guide to complete your factum (*Form 4*).

For more information on the Tribunal and proceedings, refer to the brochure *The Human Rights Tribunal – How to assert your rights*, available on the Tribunal's website at [http://www.tribunaux.qc.ca/mjq\\_en/TDP/Guide\\_anglais.html](http://www.tribunaux.qc.ca/mjq_en/TDP/Guide_anglais.html).

### Defendant's factum

Once you have received the plaintiff's application to institute proceedings and factum, **you can decide whether or not to file** a factum in order to inform the Tribunal of the main elements of your case. If you choose to file a factum, you must explain what evidence you intend to file and indicate how you intend to support your defence. You must also provide an estimate of the number of witnesses and the time required to present your evidence and arguments.

### Who is the form for?

To complete this form, you must meet all of the following conditions:

- Legal proceedings have been taken against you before the Tribunal;
- You are not a business;
- You wish to contest the allegations;
- You are not represented by an attorney.

### Time limit

From the day on which the plaintiff's factum was served on you, you have **30 days** to file your factum with the office of the Court of Québec of the same judicial district.

All requests for an **extension of the time limit** to file the factum must be submitted to the Tribunal in writing. The extension will be granted if the Tribunal considers it necessary in the interest of justice.

### Form

Your factum must be written legibly, on one side only of a 8½ x 11 (regular) paper (recto).

### **Number of copies**

- You must file five copies of your factum, i.e. the original and four copies for the Tribunal.
- You must also file an additional copy for each of the other parties to the case. The Tribunal will serve the copies on the parties (see explanation in the Service section below).

### **Service**

You **do not have to send** your factum to the other parties; the Tribunal will do so.

### **Changes**

You must immediately inform the Tribunal of any change to the information provided, by **telephone** at (514) 393-6649, by **email** at [greffe.tribunal.personne@judex.qc.ca](mailto:greffe.tribunal.personne@judex.qc.ca) or by **fax** at (514) 873-7354. **If the Tribunal is unable to reach you, it could render a judgment by default against you.**

### **Consulting the records**

Any person can access the Tribunal's records during business hours at the office of the Court of Québec. Records cannot be consulted at the Tribunal.

## **HOW TO COMPLETE THE FORM**

### **DISTRICT AND RECORD NUMBER**

Enter the district at the top of the page, as well as the record number that appears on the application to institute proceedings that the plaintiff has served on you. Please note that you must indicate the record number in all correspondence that you exchange with the Tribunal and on all documents that you send to the Tribunal.

### **IDENTIFICATION OF THE PARTIES**

Enter the names of the plaintiff(s) and defendant(s) in the spaces provided. It is not necessary to enter the parties' contact information.

### **Question 1: Defendant(s)**

- Enter all your current contact information (name, address, telephone number, etc.).
- Immediately notify the Tribunal of any change of address, otherwise you may not receive the procedures or notifications regarding your case.

## **Question 2: Defence regarding the allegations made in the plaintiff's application and factum**

You have the possibility of giving the Tribunal your version of the facts. Provide a defence for each allegation of discrimination, harassment or exploitation mentioned in the plaintiff's application and factum.

Describe one event per paragraph, so as to make it easier to read and understand your factum. Proceed in chronological order. Mention all the incidents and provide the necessary details for each one (date, place, what happened, who was there, who was involved and what they said or did, etc.).

Indicate the following:

- The alleged facts that you agree with;
- The alleged facts that you disagree with, and your reasons;
- Any additional element of information that you have;
- Any defence that you intend to use.

## **Question 3: Conclusions sought**

Explain to the Tribunal what you want the outcome of the trial to be.

**However, please note that, for the following conclusions, you must send a written application by way of a motion:**

- You want the Tribunal to dismiss the application to institute proceedings even before a trial on the merits of the case is held.
- You want to ask the Tribunal for an extension of the time limit to file your factum.

## **Question 4: Exhibits in support of your defence**

This is the evidence that you intend to bring to the trial (documents, forms, written testimonies, photographs, videos, letters, emails, etc.).

The list of exhibits, along with the **original** exhibits, must be filed in 5 copies at the office of the Court of Québec where the application to institute proceedings was filed, **no later than 15 days before the beginning of the hearing**.

Please complete *Form 5* provided for that purpose. If you add exhibits after you file your factum, please complete another *Form 5* and continue to number your exhibits.

## **Question 5: Witnesses**

Your witnesses are the persons whose testimony is, in your opinion, necessary to support your contentions. You can summon them by means of a ***subpoena***

issued by a judge of the Court of Québec, a clerk of the Court of Québec or an attorney of the district in which the case is to be heard or of any other district, and **served at least 10 clear days before appearance.**

- Enter the number of anticipated witnesses.

### **Question 6: Expert opinions**

If you wish to file an expert report (expert medical opinion, expert social opinion, etc.), you must file it at the office of the Court of Québec and serve a notice and copy on the other parties **at least 60 days before the date set for the hearing before the Tribunal.**

- Enter the number of anticipated expert witnesses.
- You must include the **list of expert opinions** in the list of exhibits (*Form 5*).

### **Question 7: Time required to present your evidence and your arguments**

At the hearing, you can present your case by **testifying personally**, by **questioning** your witnesses and by **cross-examining** those of the other party. You can also make **representations** by summarizing your legal arguments.

- Indicate the number of hours or days you estimate will be necessary to present your evidence and arguments.

### **Question 8: List of doctrine and jurisprudence that you intend to submit**

These are the laws, court decisions and doctrine (law books or law review articles) on which you base your case. In this regard, you can refer to the Tribunal's decisions available at [www.jugements.qc.ca](http://www.jugements.qc.ca).

A list of the decisions most often cited by parties before the Tribunal is available on the Tribunal's website at <http://www.tribunaux.qc.ca/TDP/index-tdp.html>.

Please note that a list and copy of the authorities must be submitted during the hearing.

### **Question 9: Amicable settlement conference**

At any step of the proceedings, the Tribunal offers the parties the possibility of taking part in an amicable settlement conference (ASC), presided by a judge, in order to help the parties settle their dispute. The purpose of the ASC is to help the parties communicate, negotiate, identify their interests, assess their positions and explore mutually satisfying solutions. It is held *in camera*, free of charge and informally. The ASC is optional and can be held only with the consent of all the parties.

### **Question 10: Signatures**

- You must sign all the documents that you file with the Tribunal.

- If there are several defendants submitting a joint defence, each defendant must sign the documents.

### **Reverse Side**

The last page of the Form is the Reverse side of your Factum. It mentions: the file's number, the judicial district, the name of the parties, the title of the procedure you are filing, and your updated contact information.

You don't need to complete the Reverse Side, as the information will be filled automatically when you complete the other sections of the Form.

You need to staple the Reverse Side to the back of your Factum.