

# HUMAN RIGHTS TRIBUNAL

## Guide for the Plaintiff's Factum

### PLAINTIFF'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 2*).

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).

### Plaintiff's factum

Once you have filed your application to institute proceedings with the office of the Court of Québec, you have 15 days to file a second document, called a "factum". This is a more detailed document than the application to institute proceedings and is used to inform the Tribunal of the main elements of your case and explain why you believe that you are in the right.

Among other things, you must indicate the evidence you intend to file, the laws and jurisprudence in support of your application, and an estimate of the number of witnesses and of the time required to present your evidence and arguments.

### Who is the form for?

To complete *Form 2*, you must meet all of the following conditions:

- You have already filed your application to institute proceedings with the office of the Court of Québec;
- You have served your application on all the parties;
- You are not represented by an attorney.

### Time limit

You must file your factum with the office of the Court of Québec **no later than 15 days** after filing your application to institute proceedings, otherwise your suit could be dismissed.

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.

### **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).

### **Reverse side**

You must add a reverse side (*Form 6*) to each copy of your factum. You must enter your name, address, postal code, telephone number, email address and fax number (if you have one) in the last section of the reverse side.

### **Service**

Contrary to the application to institute proceedings, 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.

### **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, along with the record number that the office of the Court of Québec assigned to you when you filed the application to institute proceedings. 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 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: You believe you were a victim of...**

The Charter prohibits discrimination (section 10) and harassment (section 10.1). It also prohibits the exploitation of aged or handicapped persons (section 48).

- Check the box(es) corresponding to the alleged behaviour of the person or organization against whom you have initiated legal proceedings.

**Question 2: Ground(s) of the alleged discrimination or harassment**

- The prohibited grounds of discrimination or harassment are listed in section 10 of the Charter.
- The Charter also prohibits **discrimination in employment** due to a person's **criminal record** (section 18.2 of the Charter).
- You **cannot add** grounds of discrimination other than those in the Charter, mentioned on the form, **and you cannot amend** an existing ground.
- Check the box(es) corresponding to each ground of discrimination or harassment that, in your opinion, applies to your case.

**Question 3: Fields(s) or sectors(s) of activity concerned**

The Charter prohibits discrimination or harassment in certain fields or sectors of activity.

- Check the box(es) corresponding to each field or sector of activity that applies to your case.

<b>Access to a means of transportation or a public place</b>	The Charter guarantees all citizens the right to have access, without discrimination, to transportation and public places (section 15).  Within the meaning of the Charter, services, transportation and public places include commercial establishments, hotels, restaurants, theatres, cinemas, parks, camping grounds or trailer parks.
<b>A juridical act concerning goods or services ordinarily offered to the public</b>	The Charter prohibits discrimination in juridical acts concerning goods and services, such as a commercial contract, an insurance contract, a residential lease, a contract of admission to an educational or a childcare service (section 12).
<b>A discriminatory clause in a juridical act</b>	The Charter prohibits any person from stipulating a discriminatory clause in a juridical act, in particular, a collective agreement, a residential lease, an employment or service contract, an insurance contract (section 13).
<b>Economic and social rights</b>	Economic and social rights include, in particular, the right to free public education, the right to information, the right to financial assistance, the right to fair and reasonable conditions of employment, and the right to a healthful environment (sections 39 to 47).

<b>Judicial rights</b>	Judicial rights protect the rights of a person arrested or detained, and the rights of a person appearing before a tribunal (sections 23 to 38).
<b>Political rights</b>	Political rights concern the right to vote and to be a candidate in an election, and the right of petition to the National Assembly (sections 21 and 22).
<b>Hiring/Employment</b>	<p>The Charter prohibits discrimination in the field of employment, particularly in respect to hiring, apprenticeship, duration of probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension or dismissal, as well as in the establishment of categories or classes of employment (sections 16 to 18.1).</p> <p>Furthermore, the Charter prohibits employers from granting, in a discriminatory manner, different salary or wages to the members of the personnel who perform equivalent work at the same place (section 19).</p> <p>The Charter also prohibits discrimination in employment due to a person's criminal record, if the offence was in no way connected with the employment or if the person has obtained a pardon (section 18.2).</p>
<b>Fundamental freedoms and rights</b>	Fundamental freedoms and rights include, in particular, the right to life, and to personal security, inviolability and freedom; freedom of conscience, religion, opinion, expression, peaceful assembly and association; the right to the safeguard of one's dignity, honour and reputation; the right to respect for one's private life; the right to the peaceful enjoyment and free disposition of one's property; the right to the inviolability of one's home; and the right to respect for one's private property (sections 1 to 9).
<b>Profiling</b>	Profiling designates any action taken by one or more persons in authority, for safety, security or public protection reasons, in regard to a person or group of persons, according to actual or presumed factors of affinity (such as race, colour, political convictions, ethnic or national origin, religion, or social condition), with no real ground or reasonable suspicion, and that has the effect of exposing the person to examination or differential treatment.

	Profiling also includes any action of persons in authority who apply a measure disproportionately to segments of the population, especially by reason of their being part of a group contemplated by one of the grounds listed in section 10 of the Charter.
<b>Discriminatory publicity</b>	The Charter prohibits the distribution, publication or public exhibition of a notice, symbol or sign involving discrimination. It also prohibits authorizing anyone to do so (section 11).
<b>Reprisals</b>	The Charter prohibits anyone from attempting to take or taking reprisals against a person, group or organization having an interest in the handling of a case of discrimination or exploitation or having participated therein either as the victim, the complainant, a witness or otherwise (section 82).

#### **Question 4: Facts in support of your application**

You must indicate why you have taken legal action against the defendant.

Your description of the facts must be as accurate and complete as possible. You must provide the details of each incident of discrimination, harassment or exploitation that you intend to raise at the hearing.

- Describe what occurred that led you to believe that, on the basis of one of the grounds listed in the Charter, you were the victim of discrimination, harassment or exploitation by the defendant.
- Describe one event per paragraph, so as to make it easier to read and understand your factum.
- Proceed in chronological order. Start with the first incident and finish with the day of the last incident.
- 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.).
- If you were treated differently from other people, please explain this as well.
- You must explain why you believe that the way you were treated is related to the prohibited grounds of discrimination or harassment mentioned in question 2.
- Explain how the treatment you were subjected to violated your rights.
- Describe the repercussions the acts of discrimination, harassment or exploitation had on your financial situation, your state of health, your personal, social or professional life, etc.

### **Question 5: Conclusions sought**

If the Tribunal decides that there was discrimination, it may order that damages be paid to you as compensation for the prejudice that you have suffered.

You must mark the exact amounts that you are claiming from the defendant and you must explain why you are claiming each amount.

The Tribunal can order any or several of the following remedies:

#### **5.1 Material damages**

Material damages are amounts that you lost or were forced to pay as a result of the discrimination, harassment or exploitation of which you were a victim, for example, loss of salary, increase in rent or moving expenses.

#### **5.2 Moral damages**

Moral damages concern the harm that the discrimination, harassment or exploitation of which you were a victim caused to your dignity, feelings, self-respect, or emotional or mental health (disorders, inconveniences, lack of sleep, anxiety, distress, loss of quality of life, loss of self-esteem, etc.).

#### **5.3 Punitive damages**

The Tribunal may order the payment of punitive damages if the discrimination, harassment or exploitation of which you were a victim was intentional in nature, that is, if the consequences were intended or, at the very least, predictable. **Explain how the defendant's act was intentional.**

#### **5.4 Other orders**

The Tribunal may order the defendant to take the necessary measures to correct the harm done and to restore the situation to what it would have been if you had not been the victim of discrimination, harassment or exploitation. For example, the Tribunal could order that you be reinstated in your position or, if your employer refuses to take the appropriate measures deemed necessary for you, the Tribunal could order the employer to do so.

### **Question 6: Exhibits in support of your application**

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 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 3* provided for this purpose. If you add exhibits after you file your factum, please complete another *Form 3* and continue to number the exhibits.

### **Question 7: Witnesses**

Your witnesses are the persons whose testimony is, in your opinion, necessary to support your contentions. You yourself must summon your witnesses to testify at the hearing by means of a *subpoena* issued by a clerk of the Court of Québec.

- Enter the number of witnesses.

### **Question 8: 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 notice and copy on the other parties **at least 60 days before the date set for the hearing before the Tribunal.**

You must enumerate the **list of expert opinions** in the list of exhibits (*Form 3*).

### **Question 9: 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 10: 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 11: Signatures**

- You must sign all documents you file with the Tribunal (application to institute proceedings, factum, etc.).
- If there are several plaintiffs, each plaintiff must sign the documents.