

HUMAN RIGHTS TRIBUNAL

Guide for the Application to Institute Proceedings

APPLICATION TO INSTITUTE PROCEEDINGS

Section 84 of the *Charter of Human Rights and Freedoms*, CQLR, c. C-12

This guide contains information on how to complete and submit an application to institute proceedings with the Human Rights Tribunal. This is a practical tool and has no legal value.

Follow the steps described in the guide to complete your application (*Form 1*).

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.

Application to institute proceedings

The application to institute proceedings is a short document that explains the facts, the acts committed against you by the person or organization named in your complaint, as well as the conclusions you are seeking, i.e. what you hope to obtain.

Who is the form for?

To complete *Form 1*, you must meet all of the following conditions:

- You have filed a complaint with the Commission des droits de la personne et des droits de la jeunesse (the Commission);
- You have received notification (a letter) from the Commission informing you that after having conducted an investigation, the Commission considers that your complaint is founded, yet has decided to withdraw from the case;
- You received the notification from the Commission less than 90 days ago;
- You are not represented by an attorney.

Time limit

You have 90 days, from the day you received the notification from the Commission, to submit an application to institute proceedings with the Tribunal. Failure to submit your application within this time period **will entail** the dismissal of your application.

Form

Your application to institute proceedings 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 application, 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. You must have the copies served on the parties by bailiff (see explanation in the Service section below).

Filing the application to institute proceedings

- You must **file your application at the office** (counter) of the Court of Québec in the judicial district where the defendant lives or has its principal place of business (e.g. head office). Your application will be heard in the courthouse of that district.
- You will receive a record number, which must appear on all of the documents or proceedings that you will subsequently file.

Judicial costs

Judicial costs are payable when you file your application. The clerk of the Court of Québec of the judicial district where you will file your application will inform you of the amount of the costs.

Service of the application to institute proceedings

- Service is the act of officially transmitting a copy of your proceedings to each party against whom you are taking legal action (persons or organizations).
- Service must be carried out by bailiff.
- It is important to keep the document proving that the parties have received your application, as you must file this document with the office of the Court of Québec.

Time limit to file the factum

No later than 15 days after filing your application, you must file a factum (*Form 2*), which is a document explaining the case in more detail. Failure to file your factum within the time limit may entail the dismissal of your application.

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 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

Identification of parties

First, enter the names of the parties in the space provided for that purpose.

Question 1: Plaintiff(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.
- If you consent to receive notification of all documents and future judgements from the Tribunal by email, please check the box provided.
- If the Tribunal is unable to contact you, your application may be dismissed.

Question 2: Defendant(s)

- Enter the full and exact name of each person or organization against whom you are taking legal proceedings.
- If there are several defendants, each one is considered as a distinct defendant.
- If you are suing a company, a business, an organization or an association, make sure the name you indicate is accurate.
You can conduct a search to find the official name of an organization and its legal contact information on the Registraire des entreprises du Québec at www.registreentreprises.gouv.qc.ca.

Question 3: Date of complaint with the Commission

Enter the date on which you filed your complaint with the Commission.

Question 4: Date of receipt of the notification from the Commission

Enter the date on which you received the notification (letter) from the Commission informing you that after conducting an investigation, the Commission considered that your complaint was founded, yet decided to withdraw from the case.

Question 5: Documents to be included

You must include, with your application, a copy of the notification from the Commission informing you that you can appear before the Tribunal, as well as a copy of the resolution that the Commission has sent you.

Question 6: You believe you were a victim of...

The Charter prohibits discrimination (section 10) and harassment (section 10.1). The Charter 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 are initiating legal proceedings.

Question 7: 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 8: Field(s) or sector(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.

<p>Access to a means of transportation or a public place</p>	<p>The Charter guarantees all citizens the right to have access, without discrimination, to transportation and public places (section 15).</p> <p>Within the meaning of the Charter, services, transportation and public places include commercial establishments, hotels, restaurants, theatres, cinemas, parks, camping grounds or trailer parks.</p>
<p>A juridical act concerning goods or services ordinarily offered to the public</p>	<p>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).</p>
<p>A discriminatory clause in a juridical act</p>	<p>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).</p>
<p>Economic and social rights</p>	<p>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).</p>
<p>Judicial rights</p>	<p>Judicial rights protect the rights of a person</p>

	arrested or detained, and the rights of a person appearing before a tribunal (sections 23 to 38).
Political rights	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).
Hiring/Employment	<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 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>
Fundamental freedoms and rights	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).
Profiling	<p>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.</p> <p>Profiling also includes any action of persons in</p>

	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.
Discriminatory publicity	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).
Reprisals	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 9: Brief description of the alleged acts

Briefly describe the facts for which you consider the defendant at fault. You will have the opportunity to give a more detailed explanation in your factum.

Question 10: Conclusions sought

If the Tribunal allows your application, it may order that damages be paid to you as compensation for the prejudice that you have suffered. Indicate the amounts that you are claiming. **In your factum, you will have to explain how you have arrived at these amounts.**

If the Tribunal establishes that there has been discrimination, it can order four types of remedies:

10.1 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.

10.2 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, emotional or mental health (disorders, inconveniences, lack of sleep, anxiety, distress, loss of quality of life, loss of self-esteem, etc.).

10.3 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. **If you are claiming punitive damages, you must explain in your factum how the defendant's act was intentional.**

10.5 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 11: 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 12: Signatures

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

Reverse Side

The last page of the Form is the Reverse side of your Application to Institute Proceedings. 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 Application to Institute Proceedings.