

Regulations and other acts

Draft Rules

Charter of human rights and freedoms
(R.S.Q., c. C-12)

Rules of Procedure and Practice of the Human Rights Tribunal — Amendments

Notice is hereby given that the president of the Human Rights Tribunal, with the support of the majority of the other members of the Tribunal, has adopted the Rules of Procedure and Practice of the Human Rights Tribunal, the text of which appears below.

Montréal, 9 August 2000

MICHÈLE RIVET,
President

Rules of Procedure and Practice of the Human Rights Tribunal

Charter of human rights and freedoms
(R.S.Q., c. C-12, s. 110)

CHAPTER I GENERAL

1. These rules of procedure and practice have been devised in compliance with the Charter of human rights and freedoms of Québec. The relevant sections of the Charter have not been reproduced herein in their entirety, and should therefore be referred to.

2. In the absence of a specific rule of procedure and practice, the Code of Civil Procedure, adapted as required, applies to the proceedings brought before the Tribunal.

3. In these Rules, unless the context indicates otherwise,

“Charter” means the Charter of human rights and freedoms (R.S.Q., c. C-12); (*Charte*)

“clerk” means a public servant with the Ministère de la Justice working in an office of the Court of Québec and appointed for that purpose according to law; (*greffier*)

“court office” means the office of the Court of Québec where legal proceedings are instituted; (*greffe*)

“judge” means a judge of the Human Rights Tribunal acting in chambers or presiding in a courtroom; (*juge*)

“office of the Tribunal” means the office of the Human Rights Tribunal; (*greffe du Tribunal*)

“president” means the judge acting as president of the Human Rights Tribunal; (*président*)

“special clerk” means the clerk or the deputy clerk appointed by order of the Minister of Justice, with the consent of the president of the Tribunal, to perform in the Tribunal, in addition to other duties, the duties related to such position; (*greffier adjoint*)

“Tribunal” means the Human Rights Tribunal. (*Tribunal*)

4. If the date fixed for doing anything falls on a non-judicial day within the meaning of article 6 of the Code of Civil Procedure, such thing may validly be done on the first following judicial day. The judge may depart from this rule in an emergency.

For the purposes of the first paragraph, Saturday is considered a non-judicial day.

CHAPTER II COURT OFFICE AND OFFICE OF THE TRIBUNAL

DIVISION 1 COURT OFFICE

5. A record may be consulted only in the presence of the clerk. If the clerk is unable to be present during such consultation, he shall obtain a written acknowledgement of it, which must remain in the record.

6. The clerk and staff of the Court of Québec of the district in which an application is filed or in which the Tribunal or a division or member of the Tribunal sits shall provide it or him with the services they usually provide to the Court of Québec.

Bailiffs are *ex officio* bailiffs of the Tribunal and may make a return to the Tribunal, under their oath of office, of any service they make.

DIVISION 2
OFFICE OF THE TRIBUNAL

7. The office of the Tribunal shall be open on all juridical days from Monday to Friday, between the hours of 8:30 a.m. and 4:30 p.m. Any person may have access to the registers of the office of the Tribunal during those hours.

DIVISION 3
DUTIES OF THE CLERK AND SPECIAL CLERK

8. The clerk shall receive and register proceedings and exhibits that comply with the requirements of the *prima facie* law and these Rules.

9. The clerk shall tax the witness fees at the request of the parties or the witnesses themselves.

10. The clerk shall ensure the filing, custody and preservation of the notebooks or tapes of transcripts made by stenography, stenotype or mechanical recording.

11. The clerk shall tax the bill of costs.

12. The special clerk shall immediately inform the president of all proceedings filed and send them to the president at once by messenger or by any other appropriate means.

13. The special clerk shall prepare the roll in accordance with the procedure set forth by the president.

14. The special clerk shall verify that the records are complete and, if they are not, shall require the parties to complete them before the roll is called.

DIVISION 4
SUMMONING WITNESSES

15. A party that summons a witness to testify may do so by a writ of subpoena issued by a judge, clerk or attorney of the district where the case is to be heard or any other district and served at least five clear days before the appearance. However, a writ to summon a minister or deputy minister of the Government shall be served at least ten clear days before the appearance.

In an emergency, a judge or clerk may, by special order specified on the writ of subpoena, reduce the time limit for service, but it may not be made less than twelve hours before the time fixed for the appearance.

DIVISION 5
REGISTERS OF THE COURT OFFICE

16. The clerk shall keep a plunitif in the form of books, cards, films or tape recordings or in any other form determined by the president in agreement with the administration containing the following information:

(a) the number of each record;

(b) the names of the parties;

(c) the nature of the application;

(d) a description and the date of receipt of each proceeding, exhibit or document filed at the court office;

(e) the date and nature of all incidental decisions;

(f) the date of the hearing;

(g) the date on which the matter was taken under advisement;

(h) an indication of the manner in which the record was definitively closed, the date on which it was closed and on which a certified copy of the decision was forwarded to the Superior Court, if applicable;

(i) the date on which a motion for leave to appeal the decision was filed;

(j) the dates on which the record was transcribed and forwarded to the office of the Court of Appeal;

(k) the date on which the record was returned from the office of the Court of Appeal;

(l) the date and conclusions of the judgment of the Court of Appeal.

17. The registers, indexes and files necessary to enforce the Charter of human rights and freedoms shall be kept at the court office in accordance with the president's instructions.

CHAPTER III
PROCEDURE

DIVISION 1
WRITTEN PROCEEDINGS AND EXHIBITS

18. The application introductive of suit and all other written proceedings shall be filed at the office of the Court of Québec.

19. The application introductive of suit shall include the surnames, given names and domiciles of the applicant and the parties to the application. It shall state the complaint, the grounds and the redress sought.

20. Where the Commission des droits de la personne has notified a complainant of its decision not to submit an application to the Tribunal for the benefit of the complainant, the complainant may, within 90 days after receiving such notification, submit an application to the Tribunal. The complainant shall attach to the application a copy of the notification provided by the Commission and cite the date on which the complainant received it.

21. Within 15 days of the filing of an application other than a preliminary or incidental application or an application under section 81 or 82 of the Charter, the applicant shall file at the court office a brief setting out the allegations, including:

(a) the facts and exhibits that the plaintiff intends to adduce;

(b) the questions of law in issue;

(c) the conclusions sought;

(d) the list of known expert evidence to be presented;

(e) the legislation, case-law and authorities to be referred to;

(f) the number of witnesses and anticipated amount of time required for the hearing.

22. A plaintiff who fails to file a brief within that time limit may be convened by the president to explain why the application should not be dismissed. Notice of such convening shall be given to the various parties to the application.

23. Within 30 days of the service of the applicant's brief, the parties to the application may file a brief of their own. Such brief shall contain the information prescribed in section 21.

24. The time limits provided for in sections 21 and 23 may be extended only in exceptional circumstances on the president's authorization with the parties' consent, or on a motion to the Tribunal.

25. Unless expressly otherwise provided, any application in the course of proceedings shall be in the form of a motion supported by an affidavit attesting the truth

of all facts alleged for which proof has not already been provided in the record. Such motion may be contested orally.

An application in the course of the hearing may be submitted orally.

26. The redress sought by a motion shall be set out in the form of a conclusion.

27. All proceedings shall be legibly written on one side only of legal paper measuring 21.5 cm x 35.5 cm; on the back shall be indicated the nature and object of the proceeding, any amount of money at issue, the number of the record, the names of the parties, as well as the name, address, postal code, telephone number, fax number and computer code of the attorney filing it or of the party if the party is not represented.

28. All written proceedings must be signed by the party's attorney. If an attorney does not represent the party or representation is not necessary, the proceeding must carry the party's signature.

29. The allegations contained in a written proceeding shall be stated in separate, consecutively numbered paragraphs.

30. References to a law or a regulation in a written proceeding shall cite its title and reference and the provision referred to.

31. Documents referred to in support of a written proceeding shall be filed at the court office with a list thereof 20 days before the date fixed for the hearing.

A party that fails to comply with this provision may, on an objection by the opposing party, be deprived of the right to use such a document.

32. Each list of exhibits shall indicate all the exhibits it accompanies, the number of the application, the names of the parties, and the date, nature and number of each exhibit.

33. An identifying letter specific to each party shall precede the number of each exhibit.

34. The record number and exhibit number shall appear on the front of each exhibit and on the back, if applicable.

35. The clerk shall number each proceeding and record on it the date and time of receipt.

36. Where the record is sent to the Tribunal or to the judge, a copy of the up-to-date plumeitif shall be included in the file.

37. Where the parties or their attorneys wish to use an expert's report, they shall file it at the court office and serve a notice and a copy thereof on the parties at least 20 days before the date fixed for the hearing.

Except with a judge's permission, an expert witness shall not be heard unless his written report is filed in compliance with the foregoing.

38. Medical records and any expert's report prepared by a physician, psychologist or social worker filed of record in any judicial proceeding shall be kept in a sealed envelope and no person, barring the parties and their attorneys, may access the contents without the permission of the Tribunal or a judge. Access to such documents includes the right to make copies at one's own expense.

39. Where a party refers, in a written proceeding, to an exhibit or document in the possession of the opposing party, it may apply to the Tribunal for an order to have such exhibit or document produced at the hearing.

40. Every written proceeding and exhibit shall be filed in five copies.

41. A party referring to a judgment or doctrine shall indicate the relevant pages and mark the passages cited by means of a vertical line in the margin.

42. A party referring to regulatory provisions or to provisions of law other than those of the Charter, the Civil Code or the Code of Civil Procedure shall furnish the number of copies thereof provided for in section 40.

43. In case of changes made to a written proceeding, the information added or replaced shall be underlined or indicated in the margin by using a vertical line and the deletions shall be indicated by using an ellipsis in parentheses.

44. Where particulars have been ordered for a written proceeding, a new proceeding including the particulars shall be filed of record within the required time limits.

DIVISION 2

SERVICE

45. Every proceeding shall be served in accordance with the rules provided in the Code of Civil Procedure. The authorization required by the Code for service purposes may be obtained from the office of the Court of Québec.

46. The special clerk of the Tribunal shall serve the briefs filed with the office of the Tribunal on the parties to the application. The parties shall provide five copies of the briefs and an additional number that corresponds to the number of parties to the application.

47. Written proceedings may be served by bailiff, by registered or certified mail, by messenger service with a delivery receipt, or by any other means that a judge determines on motion or on his own initiative.

Service between attorneys may also be effected by signing "copy received" on the original of the proceeding.

CHAPTER IV

PRE-HEARING CONFERENCE

48. The president shall identify the applications in respect of which pre-hearing conferences are necessary and designate a member of the Tribunal to preside.

49. A pre-hearing judge who presides the hearing on the merits may be assisted by the two assessors who will be hearing the case.

50. The purpose of the pre-hearing conference is to

(a) define the questions to be argued during the hearing;

(b) assess the advisability of amendments to the written proceedings in order to clarify them or add more details;

(c) promote the exchange between the parties of documents to be produced at the hearing;

(d) plan the proceedings and proof at the hearing;

(e) examine the possibility of admitting certain facts or their proof by affidavit;

(f) examine any other question that may simplify and accelerate proceedings; and

(g) examine the possibility of an out-of-court settlement.

51. Where the parties or their attorneys are called to a pre-hearing conference, each shall forward to the other party and to the presiding members, in advance,

(a) a summary of the admitted facts and those to be proved;

(b) a summary of the questions of law in dispute containing a reference to the relevant provisions of law and principal authorities.

52. The member presiding the conference shall have the matters on which the parties have reached agreement as well as the judge's instructions set out in the minutes of the pre-hearing conference. A copy of the minutes shall be forwarded to the parties or to their attorneys. The minutes shall be filed in the record and shall serve as an admission of facts.

53. The member presiding the conference may, with the consent of the attorneys or the parties, hold such conference by telephone.

CHAPTER V HEARING

DIVISION 1 DATE OF THE HEARING

54. Where an application on the merits is ready to be heard, the president shall determine the date of the hearing with the parties or their attorneys either at a meeting or by a conference call.

55. A preliminary or incidental application or an application under section 81 or 82 of the Charter shall be heard on the date fixed by the president or by the judge to whom the application has been referred.

56. Where it is impossible to contact the person on whom the conclusions of the application may be imposed, or where the person does not appear after being called in accordance with section 55, the date of the hearing shall be fixed with the plaintiff.

57. Notice of the date of the hearing shall be served by the clerk on the parties and their attorneys within the time and under the conditions provided for in section 120 of the Charter.

58. Any application may be heard by a division composed of three members of the Tribunal, particularly where it is likely to terminate the proceedings, or where the president so decides.

DIVISION 2 MOTION FOR POSTPONEMENT

59. A motion for postponement of a case for which a hearing was fixed shall be submitted in writing with supporting grounds to the president or a judge designated by the president at least ten days before the date fixed for the hearing.

60. Notwithstanding the foregoing time limit, if the grounds for postponement are discovered less than 10 days before the date fixed for the hearing, the president or designated judge may accept an oral motion for postponement and shall decide in the best interests of justice. Such a motion may be submitted to the judge on the day of the hearing.

DIVISION 3 THE HEARING

61. The hearings of the Tribunal shall be public wherever they may be held, but a judge may, ex officio or on motion and in the interests of morality or public order, order that a hearing be held *in camera*, or ban or restrict the disclosure, publication or release of any specified information or document.

62. All persons present at the hearing shall rise when the member or members of the Tribunal enter the courtroom and remain standing until the court usher asks them to be seated.

At the adjournment they shall again rise but shall not leave their places until the members have retired.

63. At the opening of the sitting, the court usher shall say in a loud voice: "Silence! The Human Rights Tribunal is now in session, the Honourable _____ presiding."

64. When hearing an application on the merits, members of the Tribunal shall wear the gown appropriate to their office unless they are exempted from doing so by the president.

65. In matters contested on the merits, no member of the Bar shall address the Tribunal unless he is wearing a black gown, black jacket and dark trousers, with a white shirt, collar and bands or a black gown tied at the front with a raised collar, long sleeves and white bands.

A female attorney may wear instead a black gown with white bands, a dark, long-sleeved dress or a dark skirt or trousers and a white long-sleeved blouse.

66. In matters contested on the merits, an articling student shall not address the Tribunal unless he is wearing a black gown, a dark suit, white shirt and dark tie or a black gown tied at the front with a raised collar and long sleeves.

A female articling student may instead wear a black gown with a dark skirt or trousers and a white long-sleeved blouse, or a dark garment.

67. In matters in which a gown is not required, members of the Bar or articling students shall wear plain trousers, jacket, shirt and tie; female attorneys and articling students shall wear a plain skirt or trousers with a blouse and jacket, or a dress or suit.

68. During the sittings of the Tribunal, clerks, court ushers and other officers of the court shall wear at all times one of the outfits described in section 64.

69. Any person appearing before the Tribunal shall be appropriately attired.

70. Every officer of the court who performs some function at the hearing shall attend the hearing from the opening until the adjournment in the place assigned to that officer.

71. Anything that interferes with the decorum and good order of the Tribunal is prohibited.

Reading newspapers, taking photographs, filming and radio or television broadcasts are prohibited during hearings.

Sound recordings by the media of the proceedings and of the decision are permitted unless prohibited by the judge. Such recordings shall not be broadcast.

72. The clerk shall draw up the minutes of the hearing in which shall be recorded and numbered the exhibits produced at the sittings and any decisions of the Tribunal. The clerk shall enter in the minutes the admissions dictated or mechanically recorded.

73. Stenography or the recording of hearings shall be carried out in compliance with the rules in respect of stenography and mechanical recordings in ordinary courts of law.

CHAPTER VI MATTERS UNDER ADVISEMENT

74. The clerk shall verify that the record to be taken under advisement is complete before sending it to the judge. If the record is incomplete, the clerk shall notify the parties so that they may complete it.

75. No case shall be taken under advisement until the record has been completed, unless the judge decides otherwise.

76. It is not necessary to draw up and sign again on a separate sheet judgments already written and signed on a proceeding submitted to the judge. The clerk may issue an authentic copy of such judgment.

77. The judge may suspend advisement to order additional evidence where such evidence is useful for the purposes of his decision. He shall so notify the parties immediately.

Advisement may also be suspended at the request of a party for any reason deemed valid.

78. Should the parties fail to conclude the proof or complete the record within the period fixed by the judge at the hearing of a case, whether contested or not, the judge may remove himself from the case or hand down a judgment on the case as it stands or any other order he deems appropriate.

79. In the first week of each month, the clerk shall inform the president of the applications that have been under advisement for over five months. Upon the president's decision, and with the consent of the parties, the application may be referred to another judge who, with regard to the proof, may rely on the transcription of stenographic notes or rehear the application.

CHAPTER VII OUT-OF-COURT SETTLEMENTS

80. Where there is an out-of-court settlement, the parties shall file at the office of the Court of Québec where the application was filed a statement signed by them or by their attorneys.

81. Where it is impossible to obtain the signature of a party, the Tribunal may, on a motion, declare the record closed.

CHAPTER VIII COMING INTO FORCE

82. These Rules come into force on *(insert here the date of the coming into force of this Rules)*

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