

FACTUMS

A GUIDE FOR SELF-REPRESENTED LITIGANTS

(FOR CIVIL APPEALS)

Updated September 2025

This document explains what to do to prepare and file a factum in a civil appeal. It includes information and best practices to help you. It applies equally to preparing an appellant’s factum and a respondent’s factum. Further and more detailed instructions on how to complete a factum can be found in “Guidelines for the Civil Appeal Process” on the Court of Appeal website.

This is a GUIDE only. Anything in this Guide may be varied by a judge’s directions in a particular case.

This Guide is based on the *Court of Appeal Civil Rules, 2025*.

What is the purpose of a factum?

The appellant's factum contains your written argument about why you believe the judge made an error in your case. An appeal is not a re-hearing. You must argue that the trial court made an error of law or an obvious and material error of fact that affected the result of your case. You may also argue the trial judge made a clear error in applying the law to your facts. The appellant's factum should tell the Court what you want the Court to do with your case. For example, how do you want the trial judgment changed? Do you want a new trial?

If you are a respondent, your respondent's factum should contain your written argument explaining why the trial judgment is correct or why it should not be changed. You should also tell the Court what you would like the outcome to be. Keep in mind that if you are asking for a result that is different from the trial judgment, you may have to file a cross-appeal. You can consult the Court Registry staff about this. See the final page of this document for specific information relevant for writing a respondent's factum.

Your factum gives the judges a sense of what your appeal is about before you appear in Court. It is probably the most important document you will file in your appeal. You can be sure that each of the judges will have read all of the factums before the appeal hearing. Your factum may be used again when the judges decide your appeal. Be precise and to the point. Try to explain your arguments in simple terms.

How do I file a factum?

The appellant has 60 days to file the appellant's factum after the completion date marked on the transcript or, if no transcript is being prepared, within 120 days of the notice of appeal being filed. The appellant's factum, appeal book, and parts of the transcript of the evidence necessary for the determination of issues on appeal must be filed at the same time.

After being served with the appellant's factum, appeal book and transcript, each respondent has 30 days to file the respondent's factum. These time limits can be increased with the Court's permission.

The Court normally requires four (4) copies of each factum (including one original copy), as well as an electronic copy (in a searchable format) provided by CD or flash drive and, as well, an extra printed copy must be delivered to the other party or parties to the appeal, or to the other party or parties' lawyer. Keep another copy for yourself.

What does a factum look like?

When preparing your factum, please remember that all factums should:

- Have line-spacing of one and a half
- Be printed in font size 14
- Use page numbers for every page except for the cover page. Pages must be numbered consecutively
- Use consecutive paragraph numbers
- Be printed on one side of each sheet of paper (single-sided)
- Be printed on 8.5x11 paper (letter-sized)
- Have printed pages appear on the right
- Be bound
 - The Court prefers plastic comb bindings
- Use tabs to mark each Appendix and each document in Appendix A and Appendix B
- Have buff or yellow cover pages for the appellant's factum
- Have blue cover pages for the respondent's factum
- Have green cover pages for an intervenor's factum

What goes into a factum?

All factums must include:

1) A cover page with the names of the parties, and the Court of Appeal file number (see an example at next page). Same format as appeal book cover

2) An index

3) Five parts, each beginning on a new page:

PART I – Overview

PART II – A concise statement of the facts

PART III – A list of the issues

PART IV – Argument

PART V – A description of the order or relief being sought

4) An appendix A (with an index) of copies of all case authorities referred to in the Argument

5) An appendix B (with an index) of copies of relevant legislation or regulations

The next pages are meant to assist you in creating your factum. They contain detailed descriptions of what goes into each part of your factum.

(1) Cover Page

Your cover page should be printed on buff or yellow cardstock if you are the appellant and blue cardstock if you are the respondent. Intervenors use green covers. Please make sure to indicate the assigned Court of Appeal number, the full names of the appellant and the respondent, and whose factum this is. The format should be the same as the cover for the appeal book.

Example Cover Page

2017 01H 400

← The assigned Court of Appeal file number

COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

BETWEEN: LUPIN WOLFE

← Appellant's full name

APPELLANT*

AND: THE THREE LITTLE PIGS INC

← Respondent's full name

RESPONDENT*

APPELLANT'S FACTUM

← Or respondent's factum if you are the respondent

Lupin Wolfe
1 Windy Road
Codroy, NL
A2C 5T3
709-987-6543

← Your full name, address, and telephone number is normally included

TO:

← The recipient's full name, address, and telephone number is normally included

The Three Little Pigs Inc.
2 Windy Road
Codroy, NL
A1B 2B2
709-123-4567

* If there is more than one appellant or respondent, list the parties names and list "First Appellant", "Second Appellant", "First Respondent", "Second Respondent", etc., as needed. Join the parties using "AND".

(2) Index

Your index should appear after your cover page. It should indicate at what page each part of your factum appears.

Example Index

Index		←	Title
			Page
1.	Part I – Overview		6
2.	Part II – Statement of Facts		7
3.	Part III – List of the Issues		11
4.	Part IV – Argument		12
5.	Part V – Order or relief sought		17
6.	Appendix A – Case Authorities		TAB 1
7.	Appendix B – Legislation		TAB 4

← List appropriate page numbers here

(3) Part I – Overview

Your overview should summarize what the appeal is about, the nature of your argument and the desired result.

(4) Part II - Concise Statement of Facts

Your concise statement of facts should tell the Court what facts you will rely on for your appeal. The facts you rely on must have been entered at trial – normally you cannot introduce new facts here. If you want to introduce new facts at the appeal, you must apply to the Court for permission first. Please contact the Registry for more information. The “Concise Statement of Facts” section of your factum must be 15 pages or less, unless the Chief Justice gives you permission to file a longer statement of facts. You should reference page numbers or paragraph numbers in the trial judge’s decision and/or in the transcript that support your position or that you want to challenge.

Remember, this is where the judges will first learn about your case so try to be thorough and clear. Imagine you are telling someone about your case and your appeal for the very first time. What should you tell them? How should you tell them?

Be clear and make the facts easy to understand. You can use headings if you would like. It often helps to use the parties’ names instead of “the appellant” and “the respondent”, though you can choose a short form of a party’s name if you wish.

(5) Part III – List of the Issues

Here you list the issues that you are appealing and that you will address in your argument. The issues you raise should be errors of law, errors of fact, or errors of mixed fact and law that you believe the trial judge made. You will address each of the issues in your argument.

Focus on significant issues that would change how your case would have been decided. At the same time, don’t save issues to raise at the hearing – deal with all of the points you want to make on your appeal in your factum. It can help to keep your issues narrow. It can be easy to lose track of broad issues.

If possible, tie each issue to the facts of your case and to the errors you think the trial judge made. State your issues clearly.

(6) Part IV - Argument

This is where you tell the judges *how* you should win your appeal. For each of your issues, you should tell the Court about the relevant facts of your case, the law, and your conclusion about how the law applies to your case. Be persuasive. Say what your point is and give reasons for your position. This is where you persuade the judges about what

went wrong in your case and how it should be fixed.

Don't worry about using legal jargon. It is much more important to make your points clearly. Be brief. Write simply. If you think it will help your reader, you can use headings and/or lists. Imagine that you are explaining your arguments to your neighbour. Your argument must be 40 pages or less, unless the Chief Justice authorizes you to file a longer argument. Make your argument only as long as necessary to make your points. You do not need to fill all 40 pages.

You can use legal authorities – cases, textbooks, articles, legislation, and regulations – to support your points. You can also quote from legal authorities. Try to use quotations only where they would be more convincing than your own words.

The Court of Appeal can't re-try your case. It is limited to reviewing your case for errors. The Court doesn't treat all errors the same. The Court of Appeal reviews errors of law when there is a straightforward error. It reviews errors of fact and errors of mixed fact and law when there is a "palpable and overriding error", that is, a material and obvious error that changed the result of the case. You should say what type of error the trial judge made in your case. This is called the standard of review.

Finish your argument with a conclusion that tells the Court why it should grant your relief.

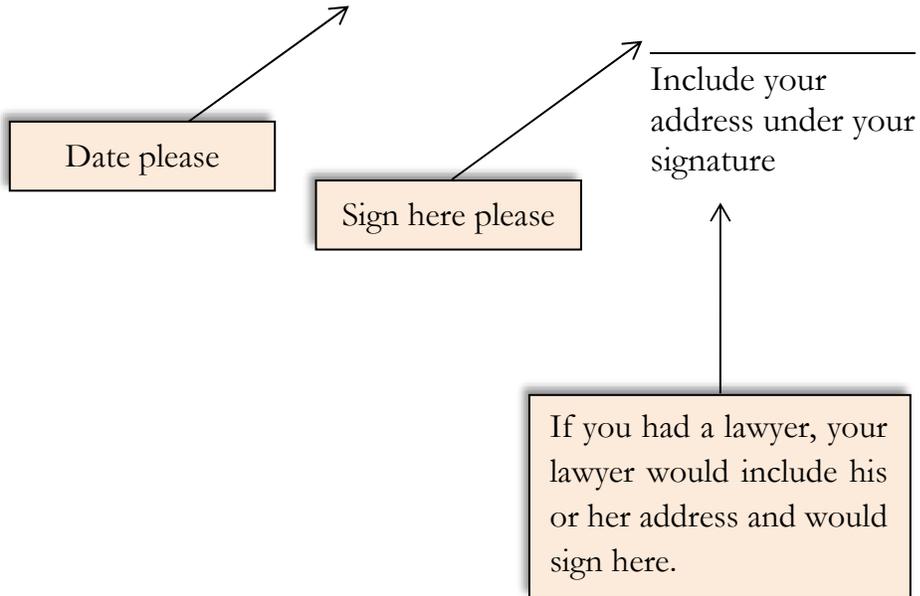
(7) Part V – Order or Relief Sought

This is where you ask the Court for the order you would like. For example, you may ask the Court to "allow the appeal" or to "dismiss the appeal". You may ask the Court to substitute a new decision for the one made by the trial judge or you may ask for a new trial. You may request costs against the other party or parties from the proceedings at the Court of Appeal and/or from the Court or Courts below.

This is the last section in your factum before Appendix A and Appendix B. You will need to sign and date your factum here.

Part V of the factum normally ends with the following:

All of which is respectfully submitted this _____ day of _____, 20__.



(8) Appendix A – Index of Authorities

This Appendix includes copies of cases and other materials that you relied on in your argument. Your Appendix A should be found after the relief sought part of your factum. It begins with an Index of Authorities consisting of case authorities listed in alphabetical order. Each of the materials in your Appendix A should be each tabbed separately. Your Index should be at the first tab. That is why there is no “Tab 1” listed in the example.

Example

Appendix A – Index of Authorities

← Title

Tab

<i>Housen v. Nikolaisen</i> , 2002 SCC 33, [2002] 2 S.C.R. 235	2
<i>R.J.R. – MacDonald Inc. v. Canada (Attorney General)</i> , [1994] 1 S.C.R. 311	3

↑
List the authorities you relied on
in your argument here

↑
List appropriate
tab numbers here

The font size of case authorities should be minimum of 14. The case authorities may be printed on both sides of a page and can be bound with the factum or in separate volumes where necessary. Where there is more than one volume of case authorities, there must be a label on the spine of each volume indicating “Authorities, Volume..., Tabs ... to ...”

(9) Appendix B – Index of Legislation

Here you must include copies of all relevant portions of legislation or regulations that you relied on in your argument. Again, your Appendix begins with an index listing the authorities in alphabetical order. The index and each of the materials in your Appendix B should be each tabbed separately. Your index should appear at the first tab after the last authority in your Appendix A materials. That is why there is no “Tab 4” listed in the example.

Example

Appendix B – Index of Legislation

← Title

Tab

Intestate Succession Act, RSNL 1990,
c. I-21

5

↑
List the legislation and/or
regulations you relied on here

↑
List appropriate
tab numbers here

The font size of authorities in Appendix B should be minimum of 14. The authorities may be printed on both sides of a page and can be bound with the factum or in separate volumes where necessary. Where there is more than one volume of case authorities, there must be a label on the spine of each volume indicating “Authorities, Volume..., Tabs ... to ...”

What about respondents?

Most of this document applies equally to appellants and respondents. However, a respondent's factum is a little different from an appellant's factum because it must respond to the issues raised by the appellant. If you're writing a respondent's factum, try to remember:

- Don't repeat the facts of the case that the appellant presented unless you think they are inadequate, or you disagree with the appellant's version. You may, however, add additional facts if they are relevant to your argument.
- The respondent's factum should be a stand-alone document – someone should be able to read it without referring to the appellant's factum.
- You can follow the structure the appellant used in the appellant's factum but you don't have to.

As the respondent, you will normally want the Court of Appeal to dismiss the appeal and uphold the trial judge's decision. Often you will want to explain why the trial judge was right. You can rely on the trial judge's decision to make your points and, like the appellant, you can also use your own words and other legal authorities.