



*Commission  
des droits de la personne  
et des droits de la jeunesse*

Québec

## **THE QUÉBEC CHARTER OF HUMAN RIGHTS AND FREEDOMS**

(R.S.Q.C-12)

## **PREAMBLE**

**Whereas** every human being possesses intrinsic rights and freedoms designed to ensure his protection and development;

**Whereas** all human beings are equal in worth and dignity, and are entitled to equal protection of the law;

**Whereas** respect for the dignity of the human being and recognition of his rights and freedoms constitute the foundation of justice and peace;

**Whereas** the rights and freedoms of the human person are inseparable from the rights and freedoms of others and from the common well-being;

**Whereas** it is expedient to solemnly declare the fundamental human rights and freedoms in a Charter, so that they may be guaranteed by the collective will and better protected against any violation;

**Therefore**, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows.

## **PART I HUMAN RIGHTS AND FREEDOMS**

### **Chapter I Fundamental freedoms and rights**

1. Every human being has a right to life, and to personal security, inviolability and freedom. He also possesses juridical personality.

2. Every human being whose life is in peril has a right to assistance.

Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to himself or a third person, or he has another valid reason.

3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association.

4. Every person has a right to the safeguard of his dignity, honour and reputation.

5. Every person has a right to respect for his private life.

6. Every person has a right to the peaceful enjoyment and free disposition of his property, except to the extent provided by law.

7. A person's home is inviolable.

8. No one may enter upon the property of another or take anything therefrom without his express or implied consent.

9. Every person has a right to non-disclosure of confidential information.

No person bound to professional secrecy by law and no priest or other minister of religion may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law.

The Tribunal must, ex officio, ensure that professional secrecy is respected.

9.1 In exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

In this respect, the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.

## **Chapter I.1**

### **Right to equal recognition and exercise of rights and freedoms**

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

10.1 No one may harass a person on the basis of any ground mentioned in section 10.

11. No one may distribute, publish or publicly exhibit a notice, symbol or sign involving discrimination, or authorize anyone to do so.

12. No one may, through discrimination, refuse to make a juridical act concerning goods or services ordinarily offered to the public.

13. No one may in a juridical act stipulate a clause involving discrimination.

Such a clause is without effect.

14. The prohibitions contemplated in sections 12 and 13 do not apply to the person who leases a room situated in a dwelling if the lessor or his family resides in such dwelling, leases only one room and does not advertise the room for lease by a notice or any other public means of solicitation.

15. No one may, through discrimination, inhibit the access of another to public transportation or a public place, such as a commercial establishment, hotel, restaurant, theatre, cinema, park, camping ground or trailer park, or his obtaining the goods and services available there.

16. No one may practise discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

17. No one may practise discrimination in respect of the admission, enjoyment of benefits, suspension or expulsion of a person to, of or from an association of employers or employees or any professional corporation or association of persons carrying on the same occupation.

18. No employment bureau may practise discrimination in respect of the reception, classification or processing of a job application or in any document intended for submitting an application to a prospective employer.

18.1 No one may, in an employment application form or employment interview, require a person to give information regarding any ground mentioned in section 10 unless the information is useful for the application of section 20 or the implementation of an affirmative action program in existence at the time of the application.

18.2 No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.

19. Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place.

A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel.

Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the Pay Equity Act (R.S.Q., c. E-12.001).

20. A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religious, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

20.1 In an insurance or pension contract, a social benefits plan, a retirement, pension or insurance plan, or a public pension or public insurance plan, a distinction, exclusion or preference based on age, sex or civil status is deemed non-discriminatory where the use thereof is warranted and the basis therefor is a risk determination factor based on actuarial data.

In such contracts or plans, the use of health as a risk determination factor does not constitute discrimination within the meaning of section 10.

## **Chapter II Political rights**

21. Every person has a right of petition to the National Assembly for the redress of grievances.

22. Every person legally capable and qualified has the right to be a candidate and to vote at an election.

## **Chapter III Judicial rights**

23. Every person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.

The tribunal may decide to sit in camera, however, in the interest of morality or public order.

24. No one may be deprived of his liberty or of his rights except on grounds provided by law and in accordance with prescribed procedure.

24.1 No one may be subjected to unreasonable search or seizure.

25. Every person arrested or detained must be treated with humanity and with the respect due to the human person.

26. Every person confined to a house of detention has the right to separate treatment appropriate to his sex, his age and his physical or mental condition.

27. Every person confined to a house of detention while awaiting the outcome of his trial has the right to be kept apart, until final judgment, from prisoners serving sentence.

28. Every person arrested or detained has a right to be promptly informed, in a language he understands, of the grounds of his arrest or detention.

28.1 Every accused person has a right to be promptly informed of the specific offence with which he is charged.

29. Every person arrested or detained has a right to immediately advise his next of kin thereof and to have recourse to the assistance of an advocate. He has a right to be informed promptly of those rights.

30. Every person arrested or detained must be brought promptly before the competent tribunal or released.

31. No person arrested or detained may be deprived without just cause of the right to be released on undertaking, with or without deposit or surety, to appear before the tribunal at the appointed time.

32. Every person deprived of his liberty has a right of recourse to habeas corpus.

32.1 Every accused person has a right to be tried within a reasonable time.

33. Every accused person is presumed innocent until proven guilty according to law.

33.1 No accused person may be compelled to testify against himself at his trial.

34. Every person has a right to be represented by an advocate or to be assisted by one before any tribunal.

35. Every accused person has a right to a full and complete defence and has the right to examine and cross-examine witnesses.

36. Every accused person has a right to be assisted free of charge by an interpreter if he does not understand the language used at the hearing or if he is deaf.

37. No accused person may be held guilty on account of any act or omission which, at the time when it was committed, did not constitute a violation of the law.

37.1 No person may be tried again for an offence of which he has been acquitted or of which he has been found guilty by a judgment that has acquired status as *res judicata*.

37.2 Where the punishment for an offence has been varied between the time of Commission and the time of sentencing, the accused person has a right to the lesser punishment.

38. No testimony before a tribunal may be used to incriminate the person who gives it, except in a prosecution for perjury or for the giving of contradictory evidence.

#### **Chapter IV Economic and social rights**

39. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing.

40. Every person has a right, to the extent and according to the standards provided for by law, to free public education.

41. Parents or the persons acting in their stead have a right to give their children a religious and moral education in keeping with their convictions and with proper regard for their children's rights and interests.

42. Parents or the persons acting in their stead have a right to choose private educational establishments for their children, provided such establishments comply with the standards prescribed or approved by virtue of the law.

43. Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group.

44. Every person has a right to information to the extent provided by law.

45. Every person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living.

46. Every person who works has a right, in accordance with the law, to fair and reasonable conditions of employment which have proper regard for his health, safety and physical wellbeing.

46.1 Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law.

47. Married or civil union spouses have, in the marriage or civil union, the same rights, obligations and responsibilities.

Together they provide the moral guidance and material support of the family and the education of their common offspring.

48. Every aged person and every handicapped person has a right to protection against any form of exploitation.

Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead.

## **Chapter V Special and interpretative provisions**

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom. In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.

49.1 Any complaint, dispute or remedy the subject-matter of which is covered by the Pay Equity Act (1996, chapter 43) shall be dealt with exclusively in accordance with the provisions of the Act.

Moreover, any question concerning pay equity between a predominantly female job class and a predominantly male job class in an enterprise employing fewer than 10 employees shall be settled by the Commission de l'équité salariale in accordance with section 19 of this Charter.

50. The Charter shall not be so interpreted as to suppress or limit the enjoyment or exercise of any human right or freedom not enumerated herein.

51. The Charter shall not be so interpreted as to extend, limit or amend the scope of a provision of law except to the extent provided in section 52.

52. No provision of any Act, even subsequent to the Charter, may derogate from sections 1 to 38, except so far as provided by those sections, unless such Act expressly states that it applies despite the Charter.

53. If any doubt arises in the interpretation of a provision of the act, it shall be resolved in keeping with the intent of the Charter.

54. The Charter binds the State.

55. The Charter affects those matters that come under the legislative authority of Québec.

56. In sections 9, 23, 30, 31, 34 and 38, in Chapter III of Part II and in Part IV, the word "tribunal" includes a coroner, a fire investigation commissioner, an inquiry commission, and any person or agency exercising quasi-judicial functions.

In section 19, the words "salary" and "wages" include the compensations or benefits or pecuniary value connected with the employment.

In the Charter, the word "law" or "act" includes a regulation, a decree, an ordinance or an order in council made under the authority of any act.

## **PART II**

### **COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE**

#### **Chapter I**

##### **Constitution**

57. A body, hereinafter called "the Commission" is established under the name of "Commission des droits de la personne et des droits de la jeunesse".

The mission of the Commission is to ensure that the principles set forth in this Charter are upheld, that the interests of children are protected and that their rights recognized by the Youth Protection Act (R.S.Q., c. P-34.1) are respected; for such purposes, the Commission shall exercise the functions and powers conferred on it by this Charter and the Youth Protection Act.

Moreover, the Commission is responsible for the administration of the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms (R.S.Q., c. A-2.01). For such purposes, the Commission shall exercise the functions and powers conferred on it by that Act and this Charter.

58. The Commission shall be composed of thirteen members, including the president and two vice-presidents. (*Disposition concerning the number of members is not in force*)

The members of the Commission shall be appointed by the National Assembly upon the motion of the Prime Minister. Such appointments must be approved by two-thirds of the Members of the National Assembly.

58.1 Five members of the Commission shall be chosen from among persons capable of making a notable contribution to the examination and resolution of problems relating to human rights and freedoms, and five other members from among persons capable of making a notable contribution to the examination and resolution of problems relating to the protection of the rights of young persons.

58.2 (Repealed.)

58.3 The term of office of the members of the Commission may not exceed ten years. Once determined, it shall not be reduced.

59. The Government shall fix the salary and the conditions of employment or, as the case may be, the additional salary, fees or allowances of each member of the Commission.

Their salary, additional salary, fees and allowances, once determined, shall not be reduced.

60. The members of the Commission shall remain in office until they are replaced, except in the case of resignation.

61. The Commission may establish a complaints committee composed of three of its members designated in writing by the Commission and delegate certain responsibilities to it by regulation.

62. The Commission shall appoint the personnel it requires for the performance of its functions; they may be dismissed by order of the Government but only on the recommendation of the Commission.

The Commission may, in writing, give to a person other than a member of its personnel the mandate to either make an investigation or endeavour to effect a settlement between the parties under the terms of subparagraph 1 or 2 of the second paragraph of section 71, with the obligation to report to the Commission within a specified time.

For the arbitration of a matter, the Commission shall designate an arbitrator to act alone from among persons having notable experience and expertise in, sensitivity to and interest for matters of human rights and freedoms and included in the panel of arbitrators established periodically by the Government according to the recruitment and selection procedure prescribed by government regulation. The arbitrator shall act in accordance with the rules set out in Book VII, except Chapter II of Title I, of the Code of Civil Procedure, adapted as required.

No person having taken part in the investigation may be given the mandate to endeavour to effect a settlement or act as an arbitrator except with the consent of the parties.

63. The Government shall establish standards and scales applicable to the remuneration or allowances and other conditions of employment to be borne by the Commission in respect of its personnel, its mandataries and the arbitrators it designates.

64. Before entering office, the members and mandataries of the Commission, the members of its personnel and the arbitrators designated by it shall make the oaths provided in Schedule I before the President of the National Assembly in the case of the members of the Commission and before the president of the Commission in all other cases.

65. The president and the vice-presidents shall devote their time exclusively to the duties of their office. In particular, they shall see to it that the mandates conferred on the Commission by this Charter or by the Youth Protection Act are fully carried out.

The president shall designate a vice-president who shall be responsible more particularly for the mandate entrusted to the Commission by this Charter, and another vice-president who shall be responsible more particularly for the mandate entrusted by the Youth Protection Act. The president shall inform the President of the National Assembly thereof, who shall inform the Assembly.

66. The president is responsible for the administration and management of the affairs of the Commission within the scope of the regulations, governing the administration of this Charter. He may, by delegation, exercise the powers of the Commission under section 61, the second and third paragraphs of section 62 and the first paragraph of section 77.

The president shall preside the sittings of the Commission

67. The vice-president designated by the Government shall ex officio and temporarily, replace the president if he is absent or unable to act or if the office of president is vacant. If the vice-president called upon to replace the president is himself absent or unable to act, or if that office is vacant, the other vice-president shall replace the president. Otherwise, the Government shall designate another member of the Commission and, if need be, shall fix the additional salary, fees or allowances of that other member.

68. In no case may the Commission, any member or mandatory of the Commission or any member of its personnel be prosecuted for any omission or any act done in good faith in the performance of his or its duties.



Moreover, they are, for the purposes of an investigation, vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

69. The Commission shall have its seat in the city of Québec or Montréal as the Government may decide by an order which shall come into force upon publication in the Gazette officielle du Québec; it shall also have an office in the territory of the other city.

The Commission may establish offices anywhere in Québec.

It may hold its sittings anywhere in Québec.

70. The Commission may make by-laws for its internal management.

## **Chapter II Functions**

71. The Commission shall promote and uphold, by every appropriate measure, the principles enunciated in this Charter.

The responsibilities of the Commission include, without being limited to, the following:

(1) to make a non-adversary investigation, on its own initiative or following receipt of a complaint, into any situation, except those referred to in section 49.1, which appears to the Commission to be either a case of discrimination within the meaning of sections 10 to 19, including a case contemplated by section 86, or a violation of the right of aged or handicapped persons against exploitation enunciated in the first paragraph of section 48;

(2) to foster a settlement between a person whose rights allegedly have been violated, or the person or organization representing him, and the person to whom the violation is attributed;

(3) to report to the Public Curator any case it becomes aware of in the exercise of its functions where, in its opinion, protective supervision within the jurisdiction of the Public Curator is required;

(4) to develop and conduct a program of public information and education designed to promote an understanding and acceptance of the object and provisions of this Charter;

(5) to direct and encourage research and publications relating to fundamental rights and freedoms;

(6) to point out any provision in the laws of Québec that may be contrary to this Charter and make the appropriate recommendations to the Government;

(7) to receive and examine suggestions, recommendations and requests made to it concerning human rights and freedoms, possibly by inviting any interested person or body of persons to present his or its views before the Commission where it believes that the interest of the public or of a body of persons so requires, with a view to making the appropriate recommendations to the Government;

(8) to cooperate with any organization, dedicated to the promotion of human rights and freedoms in or outside Québec;

(9) to make an investigation into any act of reprisal or attempted reprisals and into any other act or omission which, in the opinion of the Commission, constitutes an offence under this Charter, and report its findings to the Attorney General and to the Director of Criminal and Penal Prosecutions.

72. The Commission, its members, personnel and mandataries and any complaints committee established by the Commission shall lend their assistance to any person, group or organization requesting it for the carrying out of the objects within the jurisdiction of the Commission under Chapter III of this Part, Parts III and IV and the regulations hereunder.

They shall, in addition, lend their assistance for the drafting of any complaint, any settlement reached between parties or any applications that must be made in writing to the Commission.

73. Not later than 30 June each year, the Commission shall submit to the president of the National Assembly a report on its activities for the preceding fiscal year together with its recommendations regarding the promotion and protection of human rights, the promotion and protection of children's rights and the protection of the interests of children.

The report shall be tabled in the National Assembly if it is in session or, if it is not, within 30 days after the opening of the next session. The report shall be published and distributed by the Québec Official Publisher on the terms determined and in the manner deemed appropriate by the Commission.

### **Chapter III Complaints**

74. Any person who believes he has been the victim of a violation of rights that is within the sphere of investigation of the Commission may file a complaint with the Commission. If several persons believe they have suffered a violation of their rights in similar circumstances, they may form a group to file a complaint. Every complaint must be made in writing.

A complaint may be filed on behalf of a victim or group of victims by any organization dedicated to the defence of human rights and freedoms or to the welfare of a group of persons. The written consent of the victim or victims is required except in the case of exploitation of aged persons or handicapped persons contemplated by the first paragraph of section 48.

75. The Public Protector shall transmit to the Commission every complaint he receives that is within the sphere of investigation of the Commission, unless the complainant objects thereto. Any complaint transmitted to the Commission is deemed to be received by the Commission on the day it is filed with the Public Protector.

76. Prescription of any civil action respecting the facts alleged in a complaint or revealed by means of an investigation is suspended from the day the complaint is filed with the Commission or the day an investigation is commenced by the Commission on its own initiative until the earliest of

- (1) the day on which a settlement is reached between the parties;
- (2) the day on which the victim and the complainant are notified that the Commission is referring the matter to a tribunal;
- (3) the day on which the victim or the complainant personally institutes proceedings in regard to one of the remedies provided for in sections 49 and 80; and
- (4) the day on which the victim and the complainant are notified that the Commission refuses or is ceasing to act.

77. The Commission shall refuse or cease to act in favour of the victim where

- (1) the victim or the complainant so requests, subject to the Commission's ascertaining that such request is made freely and voluntarily;
- (2) the victim or the complainant has, on the basis of the same facts, personally pursued one of the remedies provided for in sections 49 and 80.

The Commission may refuse or cease to act in favour of the victim where

- (1) the complaint is based on acts or omissions the last of which occurred more than two years before the filing of the complaint;
- (2) the victim or the complainant does not have a sufficient interest;
- (3) the complaint is frivolous, vexatious or made in bad faith;
- (4) the victim or the complainant has, on the basis of the same facts, personally pursued a remedy other than those provided for in sections 49 and 80.

The decision of the Commission shall state in writing the reasons on which it is based and indicate any remedy which the Commission may consider appropriate; it shall be notified to the victim and the complainant.

78. The Commission shall seek, in respect of every situation reported in the complaint or revealed in the course of the investigation, any evidence allowing it to decide whether it is expedient to foster the negotiation of a settlement between the parties, to propose the submission of the dispute to arbitration or to refer any unsettled issue to a tribunal.

The Commission may cease to act where it believes it would be futile to seek further evidence or where the evidence collected is insufficient. Its decision shall state in writing the reasons on which it is based and indicate any remedy which the Commission may consider appropriate; it shall be notified to the victim and the complainant. Where the Commission decides to cease to act, it shall give notice thereof to any person to whom a violation of rights is attributed in the complaint.

79. Where a settlement is reached between the parties, it shall be evidenced in writing.

If no settlement is possible, the Commission shall again propose arbitration to the parties; it may also propose to the parties, taking into account the public interest and the interest of the victim, any measure of redress, such as the admission of the violation of a right, the cessation of the act complained of, the performance of any act or the payment of compensation or punitive damages, within such time as it fixes.

80. Where the parties will not agree to negotiation of a settlement or to arbitration of the dispute or where the proposal of the Commission has not been implemented to its satisfaction within the allotted time, the Commission may apply to a tribunal to obtain, where consistent with the public interest, any appropriate measure against the person at fault or to demand, in favour of the victim, any measure of redress it considers appropriate at that time.

81. Where the Commission has reason to believe that the life, health or safety of a person involved in a case of discrimination or exploitation is threatened or that any evidence or clue pertaining to such a case could be lost, it may apply to a tribunal for any emergency measure capable of putting an end to the threat or risk of loss.

82. The Commission may also apply to a tribunal for any appropriate measure against any person who attempts to take or takes 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.

The Commission may, in particular, request the tribunal to order that, on such date as it deems fair and expedient under the circumstances, the injured person be instated in the position or dwelling he would have occupied had it not been for the contravention.

83. Where the Commission applies to a tribunal, pursuant to sections 80 to 82, for measures for a person's benefit, it must obtain the person's written consent, except in the case of a person contemplated by the first paragraph of section 48.

84. Where, following the filing of a complaint, the Commission exercises its discretionary power not to submit an application to a tribunal to pursue, for a person's benefit, a remedy provided for in sections 80 to 82, it shall notify the complainant of its decision, stating the reasons on which it is based.

Within 90 days after he receives such notification, the complainant may, at his own expense, submit an application to the Human Rights Tribunal to pursue such remedy and, in that case, he is, for the pursuit of the remedy, substituted by operation of law for the Commission with the same effects as if the remedy had been pursued by the Commission.

85. The victim may intervene at any stage of proceedings to which the Commission is party pursuant to sections 80 to 82 and in which he has an interest. If the victim does intervene, the Commission cannot bring an appeal without his consent.

Subject to the second paragraph of section III, the victim may personally pursue the remedies provided for in sections 80 to 82 or bring an appeal, even though he was not party to the proceedings in first instance.

In all such cases, the Commission shall give the victim access to the record which concerns him.

### **PART III AFFIRMATIVE ACTION PROGRAMS**

86. The object of an affirmative action program is to remedy the situation of persons belonging to groups discriminated against in employment, or in the sector of education or of health services and other services generally available to the public.

An affirmative action program is deemed non-discriminatory if it is established in conformity with the Charter.

An equal access employment program is deemed not to discriminate on the basis of race, colour, gender or ethnic origin if it is established in accordance with the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms (R.S.Q. c. A-2.01).

An equal access to employment program established for a handicapped person within the meaning of the Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration (chapter E-20.1) is deemed to be non-discriminatory if it is established in conformity with the Act respecting equal access to employment in public bodies (chapter A-2.201).

87. Every affirmative action program must be approved by the Commission, unless it is imposed by order of a tribunal. (*Not in force*)

The Commission shall, on request, lend assistance for the devising of an affirmative action program.

88. If, after investigation, the Commission confirms the existence of a situation involving discrimination referred to in section 86, it may propose the implementation of an affirmative action program within such time as it may fix.

Where its proposal has not been followed, the Commission may apply to a tribunal and, on proof of the existence of a situation contemplated in section 86, obtain, within the time fixed by the tribunal, an order to devise and implement a program. The program thus devised is filed with the tribunal which may, in accordance with the Charter, make the modifications it considers appropriate.

89. The Commission shall supervise the administration of the affirmative action programs. It may make investigations and require reports.

90. Where the Commission becomes aware that an affirmative action program has not been implemented within the allotted time or is not being complied with, it may, in the case of a program it has approved, withdraw its approval or, if it proposed implementation of the program, it may apply to a tribunal in accordance with the second paragraph of section 88.

91. A program contemplated in section 88 may be modified, postponed or cancelled if new facts warrant it.

If the Commission and the person required or having consented to implement the affirmative action program agree on its modification, postponement or cancellation, the agreement shall be evidenced in writing.

Failing agreement, either party may request the tribunal to which the Commission has applied pursuant to the second paragraph of section 88 to decide whether the new facts warrant the modification, postponement or cancellation of the program.

All modifications must conform to the Charter.

92. The Government must require its departments and agencies whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1) to implement affirmative action programs within such time as it may fix.

Sections 86 to 92 do not apply to the programs contemplated in this section. The programs must, however, be the object of a consultation with the Commission before being implemented.

#### **PART IV CONFIDENTIALITY**

93. Notwithstanding sections 9 and 83 of the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q., chapter A-2.1), any information or document furnished voluntarily to the Commission and held by it for the purposes of the devising or implementation of or compliance with an affirmative action program established under this Charter or an equal access employment program established under the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms is confidential and may be used only for the purposes for which it was furnished; it shall not be disclosed or used otherwise, except with the consent of the person or organization having furnished it.

No such information or document may be revealed before a tribunal by or on behalf of the Commission or, despite paragraph 9 of section 71, reported to the Attorney General, except with the consent of the person or organization having furnished the information or document to the Commission and the consent of the parties to the dispute.

Moreover, such information or the contents of such document must, on request, be communicated by the Commission to the minister responsible for the administration of Part III of this Charter and the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms in order to allow the minister to assess the carrying out of that Part and that Act.

This section shall not be construed as limiting the power to compel the person or organization, by way of a summons, warrant or order, to communicate any information or document relating to an affirmative action program.

94. Nothing said or written in the course of the negotiation of a settlement pursuant to section 78 may be revealed, even in judicial proceedings, except with the consent of the parties to the negotiation and the parties to the dispute.

95. Subject to article 61 of the Code of Penal Procedure (R.S.Q., c. C-25.1), no member or mandatary of the Commission or member of its personnel may be compelled to give testimony before a tribunal as to information obtained in the performance of his duties or to produce a document containing any such information, except for the purpose of ascertaining whether it is confidential.

96. No civil action may be taken by reason or in consequence of the publication of a report emanating from the Commission or the publication, in good faith, of an abstract from or summary of such a report.

#### **PART V REGULATIONS**

97. The Government, by regulation:

(1) (paragraph repealed);

(2) may fix the criteria, norms, scales, conditions or modalities applicable for the devising, implementation or carrying out of affirmative action programs, define their limits and determine anything necessary or useful for those purposes;

(3) shall prescribe the procedure for the recruitment and selection of persons apt for designation to the function of arbitrator or appointment to the function of assessor with the Human Rights Tribunal.

The regulation made under subparagraph 3 of the first paragraph shall, among other things:

(1) determine the minimum proportion of advocates that must be maintained on the panel provided for in the third paragraph of section 62;

(2) determine the forms of publicity that must be used for the purpose of establishing such panel;

(3) determine the manner in which a person may apply;

(4) authorize the Minister of Justice to form a selection committee charged with evaluating the aptitude of applicants and advising him as to applicants and to fix the composition and mode of appointment of the members of the committee;

(5) determine the criteria of selection on which the committee is to base its decisions, the information it may require of applicants and the consultations it may make;

(6) prescribe that the panel of persons apt for designation to the function of arbitrator or appointment to the function of assessor with the Human Rights Tribunal be recorded in a register established for that purpose at the Ministère de la Justice. The members of a selection committee receive no remuneration except in such cases, on such conditions and to such extent as may be determined by the Government. They are, however, entitled to reimbursement for expenses incurred in the performance of their duties, on the conditions and to the extent determined by the Government.

98. The Government, after consultation with the Commission, shall publish the draft regulation in the Gazette officielle du Québec with a notice stating the time after which the draft will be tabled before the Standing Committee on Institutions and stating that it may be adopted on the expiry of 45 days after the Committee reports to the National Assembly.

The Government may subsequently amend the draft regulation. It must, in that case, publish the amended draft regulation in the Gazette officielle du Québec with a notice stating that it will be adopted without amendment at the expiry of 45 days after the publication.

99. The Commission, by regulation,

(1) may delegate to a complaints committee established under section 61 such responsibilities as it indicates;

(2) shall prescribe the other rules, procedures, terms or conditions applicable with respect to the mechanisms provided for in Chapters II and III of Part II and in Parts III and IV, including the form and content of the related reports.

Every regulation hereunder is subject to the approval of the Government; the Government may, when granting its approval, amend the regulation.

## **PART VI HUMAN RIGHTS TRIBUNAL**

### **Chapter I Establishment and organization**

100. The Human Rights Tribunal, referred to in this Part as the "Tribunal", is hereby established.

101. The Tribunal is composed of not fewer than seven members, including a president and assessors, appointed by the Government. The president shall be chosen, after consultation with the chief judge of the Court of Québec, from among the judges of that court having notable experience and expertise in, sensitivity to and interest for matters of human rights and freedoms; the assessors shall be chosen from among the persons included in the panel provided for in the third paragraph of section 62.

The term of office of the members of the Tribunal is five years. It may be renewed for a shorter determined time.

The Government shall establish the standards and scales governing the remuneration and conditions of employment or, where applicable, the allowances of the assessors.

102. Before entering office, the members shall make the oaths provided in Schedule II; the president shall do so before the chief judge of the Court of Québec and the other members, before the president.

103. The Government may, on the request of the president and after consultation with the chief judge of the Court of Québec, designate another judge of that court having notable experience and expertise in, sensitivity to and interest for matters of human rights and freedoms to sit as a member of the Tribunal either to hear and decide an application or for a determined period.

104. To hear an application, the Tribunal shall sit in a division composed of three members, that is, the judge presiding the division and two assessors assisting him, designated by the president. The member presiding the division shall decide the application alone. However, a preliminary or incidental application or an application under section 81 or 82 shall be heard and decided by the president or by the judge to whom he refers the application; such an application shall be referred to a division of the Tribunal in the cases determined by the rules of procedure and practice or where the president so decides.

105. 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 itself.

The bailiffs are ex officio bailiffs of the Tribunal and may make a return to the Tribunal, under their oath of office, of any service made by them.

106. The president of the Tribunal shall devote his time exclusively to the duties of his office. His duties include

- (1) fostering a consensus among the members concerning the general orientation of the Tribunal;
- (2) coordinating the work of the Tribunal and distributing it among the members; the members shall, in that regard, comply with his orders and directives and see to their proper implementation;
- (3) prescribing a code of ethics and ensuring that it is observed. The code of ethics shall come into force 15 days after its publication in the Gazette officielle du Québec or at any later date indicated therein.

107. A judge designated under section 103 shall replace the president if he is absent or unable to act or if the office of president is vacant.

108. A judge of the Tribunal, even if no longer in office, shall render a decision on every application heard by him. If no decision is rendered within 90 days, the application shall be referred by the president to another judge of the Tribunal with the consent of the parties or heard anew.

109. Except on a question of jurisdiction, no recourse provided for in articles 33 and 834 to 850 of the Code of Civil Procedure may be exercised nor any injunction granted against the Tribunal, its president or any other member acting in its or his official capacity.

A judge of the Court of Appeal may, upon a motion, annul summarily any decision, order or injunction issued or granted contrary to the first paragraph.

110. The president of the Tribunal may, with the assistance of the majority of the other members, adopt such rules of procedure and practice as are considered necessary for the performance of the functions of the Tribunal.

## **Chapter II**

### **Jurisdiction and powers**

111. The Tribunal is competent to hear and dispose of any application submitted under section 80, 81 or 82, in particular in matters of employment or housing or in connection with goods and services generally available to the public, and any application submitted under section 88, 90 or 91 in respect of an affirmative action program.

Only the Commission may initially submit an application to the Tribunal to pursue any of the remedies provided for in any of the said sections, subject to the substitution provided for in section 84 in favour of a complainant and to the pursuit of the remedy provided for in section 91 by a person on whom the Tribunal has previously imposed an affirmative action program.

111.1 The Tribunal is also competent to hear and dispose of any application submitted under section 6, 18 or 19 of the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms regarding an equal access employment program.

Only the Commission or one of its members may initially submit an application to the Tribunal to pursue any of the remedies provided for in those sections, except the remedy provided for in section 19 of that Act in the event of a disagreement relating to new facts that may warrant the modification, postponement or cancellation of an equal access employment program.

112. The Tribunal and its divisions and judges are, in the performance of their functions, vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions, except the power to impose imprisonment.

113. In the absence of an applicable rule of procedure and practice, the Tribunal may, on the basis of the Code of Civil Procedure, adapted as required, render such rulings and orders of procedure and practice as the performance of its functions may require.

Moreover, in the absence of a provision applicable to a particular case, the Tribunal may, in a matter submitted to it, prescribe with the same effect any act or formality which could have been prescribed in the rules of procedure and practice.

## **Chapter III**

### **Proof and procedure**

114. Every application shall be submitted to the Tribunal in writing and served in accordance with the rules provided in the Code of Civil Procedure, unless it is made in the course of a hearing. Where the said Code provides that a mode of service requires authorization, it may be obtained from the Tribunal.

The application shall be filed at the office of the Court of Québec in the judicial district where the person on whom the conclusions of the application may be imposed or, in the case of the implementation of an affirmative action program, the person on whom the program has been or may be imposed has his domicile or, failing that, his residence or principal business establishment.

115. Within 15 days of the filing of an application other than an application referred to in the second paragraph of section 104, the plaintiff shall file a factum setting out his pretensions, which the Tribunal shall serve on every interested person or organization. Within 30 days of the service, every interested person or organization wishing to do so may file a factum of this or its own, which the Tribunal shall serve on the plaintiff.

Failure to comply with this section on the part of the plaintiff may entail the dismissal of the application.

116. The Commission, the victim, the group of victims, the complainant before the Commission, any person or organization on whom or which an application is served and the person on whom an affirmative action program has been or may be imposed are parties to the application by operation of law and may intervene at any time before the execution of the decision.



Any other person, group or organization may, at any time before the execution of the decision, become a party to the application if the Tribunal is satisfied that he or it has a sufficient interest to intervene; however, the person, group or organization must obtain leave from the Tribunal each time he or it wishes to produce, examine or cross-examine witnesses, or examine any evidence in the record and comment or refute it.

117. An application may be amended at any time before the decision on the conditions the Tribunal deems necessary to safeguard the rights of all parties. However, except with the consent of the parties, no amendment which would result in an entirely new application unrelated to the original shall be allowed.

118. Any party may, before the hearing or at any time before the decision provided he shows that he has been diligent, request the recusation of any member of the Tribunal. The request shall be addressed to the president of the Tribunal who shall rule upon the request or refer it to a judge of the Tribunal, in particular where the request concerns him personally.

Any member of the Tribunal who is aware of a valid ground of recusation to which he is liable is bound to make and file in the record a written declaration thereof.

119. The Tribunal shall sit in the judicial district at the office of which the application was filed. However, the president of the Tribunal and the member presiding the division to which the application may decide, on their own initiative or on the request of a party, that the hearing shall be held in another judicial district if the public interest and the interest of the parties so require.

120. On his own initiative or on request, the president of the Tribunal or the member designated by him to preside the hearing shall fix the date of the hearing.

The Tribunal shall give written notice of the hearing to every party and to his attorney, unless the party has waived his right thereto, not less than one clear day before the hearing in the case of an application under the second paragraph of section 104 and not less than 10 clear days before the hearing in all other cases. The notice shall set out:

- (1) the purpose of the hearing;
- (2) the date, time and place of the hearing;
- (3) the right of every party to be assisted or represented by an advocate;
- (4) the right of every party to waive a viva voce hearing and present his views in writing;
- (5) the right of every party to request that the hearing be held in camera or that an order be issued banning or restricting the disclosure, publication or release of any information or document;
- (6) the power of the Tribunal to hear the application and to render any decision or issue any order without further time or notice, despite the default or absence of any party or of his attorney.

121. The Tribunal may, on its own initiative or on request and in the interest of morality or public order, ban or restrict the disclosure, publication or release of any information or document it indicates, to preserve the confidentiality of the source of the information or document or to protect a person's rights and freedoms.

122. The Tribunal may hear the application and render a decision or issue an order despite the absence of a party or his attorney who, although duly notified of the hearing, fails to present himself on the day of the hearing at the appointed time and place, refuses to be heard or fails to present his views in writing as required.

The Tribunal is required to postpone the hearing, however, if the absent party or attorney has given the Tribunal a valid excuse for his absence.

123. The Tribunal, though bound by the general principles of justice, may admit any evidence useful and relevant to the application submitted to it and allow any means of proof.

The Tribunal is not bound by the special rules of evidence applicable in civil matters, except to the extent determined in this Part.

124. Depositions shall be recorded unless the parties agree expressly to dispense with recording.

#### **Chapter IV**

##### **Decision and execution**

125. Every decision of the Tribunal must be rendered in writing and filed at the office of the Court of Québec where the application was filed. It shall contain, in addition to the purview, a statement of any ban or restriction on the disclosure, publication or release of any information or document it indicates and the reasons therefore.

Subject to any such ban or restriction, any person may, at his expense, obtain a copy of or extract from the decision.

126. The Tribunal may, in a final decision, condemn one of the parties who appeared in the proceedings to the payment of the costs and disbursements or apportion them among them as it determines.

127. The Tribunal may, without any formality, correct a decision it has rendered which contains an error in writing or in calculation or any other clerical error provided that the decision has not been executed or appealed from.

128. The Tribunal may, on its own initiative or on the request of an interested person or organization, revise or revoke any decision it has rendered provided that it has not been executed or appealed from,

(1) where a new fact is discovered which, if it had been known in due time, might have justified a different decision;

(2) where an interested person or organization was unable, for reasons deemed sufficient, to be heard;

(3) where a substantive or procedural defect is likely to invalidate the decision.

However, in the case described in subparagraph 3 of the first paragraph, a judge of the Tribunal cannot revise or revoke a decision rendered on an application heard by him.

129. The clerk of the Court of Québec of the district where the application was filed shall cause every final decision to be served on all parties who appeared in the proceedings and on all parties contemplated by the first paragraph of section 116, as soon as it is filed at the office of the Court.

However, where a decision is rendered in the presence of a party or his attorney, it is deemed to be served on them on being so rendered.

130. A decision of the Tribunal condemning a person to pay a sum of money becomes executory as a judgment of the Court of Québec or the Superior Court, according to their respective jurisdictions, and has all the effects thereof from the date of its filing at the office of the Court of Québec or of its homologation in Superior Court.

Homologation of the decision is obtained by the filing by the clerk of the Court of Québec of the district where the decision of the Tribunal was filed of a certified copy of the decision at the office of the prothonotary of the Superior Court of the district where the condemned person has his domicile or, failing that, his residence or principal business establishment.

A final decision of the Tribunal other than a decision described in the first paragraph is executory upon the expiry of the time for appeal, in accordance with the terms and conditions set out in the decision, unless the Tribunal orders provisional execution of the decision upon its service or at any specified later date.

Any other decision of the Tribunal is executory upon its service and notwithstanding appeal, unless the appeal tribunal orders otherwise.

131. Every person who fails to comply with a decision of the Tribunal which has been duly served on him and which does not require to be homologated in Superior Court is guilty of contempt of court and may be condemned, with or without imprisonment for not over one year, and without prejudice to any suit for damages, to a fine not exceeding \$50,000.

Every person who contravenes a ban or restriction on disclosure, publication or release imposed by a decision of the Tribunal rendered under section 121 is liable to the same sanction, except that the amount of the fine shall not exceed \$5,000.

## **Chapter V Appeal**

132. Any final decision of the Tribunal may be appealed from to the Court of Appeal with leave from one of the judges thereof.

133. Subject to section 85, the rules relating to appeals set out in the Code of Civil Procedure, adapted as required, apply to any appeal under this Chapter.

## **PART VII FINAL PROVISIONS**

134. Every person is guilty of an offence

- (1) who contravenes any of sections 10 to 19 or the first paragraph of section 48;
- (2) who, being a member or mandatary of the Commission or a member of its personnel, reveals, without being duly authorized to do so, anything of which he has gained knowledge in the performance of its or his duties;
- (3) who attempts to obstruct or obstructs the Commission, a complaints committee, a member or mandatary of the Commission or a member of its personnel in the performance of its or his duties;
- (4) who contravenes a ban or restriction on the disclosure, publication or release of any information or document contemplated by Part IV or by any regulation under section 99;
- (5) who attempts to take or takes reprisals as described in section 82.

135. If a legal person commits an offence referred to in section 134, any officer, director, employee or representative of such legal person who prescribed or authorized the committing of the offence, or who consented thereto or acquiesced or participated therein, is deemed to be a party to the offence whether or not the legal person has been prosecuted or found guilty.

136. Penal proceedings for an offence under a provision of this Act may be instituted by the Commission.

The cost is transmitted to the Commission by the defendant with the plea belong to the Commission, where the proceedings are instituted by the Commission.

137. (Repealed)

138. The Minister of Justice has charge of the application of this Charter.

## **SCHEDULE I**

### **Oaths of office and secrecy**

(Section 64)

*"I, (name of person), declare under oath that I will fulfil the duties of my office honestly, impartially and justly and that I will accept no sum of money or other consideration for what I may have done or will do in the performance of my duties, other than what may be allowed me according to law.*

*Furthermore, I declare under oath that I will neither reveal nor disclose, without being duly authorized to do so, any information or document I may gain knowledge of in the performance of my duties."*

## **SCHEDULE II**

### **Oaths of office and secrecy**

(Section 102)

*"I, (name of person), declare under oath that I will fulfil the duties of my office faithfully, impartially, honestly, free from any influence and to the best of my knowledge and abilities, and exercise all the powers thereof.*

*Furthermore, I declare under oath that I will neither reveal nor disclose, without being duly authorized to do so, any information or document I may gain knowledge of in the performance of my duties."*