



PRESS RELEASE
FOR IMMEDIATE PUBLICATION

**THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE
PROPOSES AN UPDATE OF THE *CHARTER OF HUMAN RIGHTS AND FREEDOMS***

Montréal, November 20, 2003 – The Commission des droits de la personne et des droits de la jeunesse today released a major review of the application of the *Charter of human rights and freedoms*. As a result of its review, the Commission makes 25 recommendations concerning ways to enhance the Charter to ensure that it retains its effectiveness in light of new social realities. (The complete list of the recommendations made by the Commission follows this press release.)

“The unanimous adoption of the Charter by the National Assembly in 1975 reaffirmed certain values, such as dignity, freedom, equality and democracy, within the political, economic and demographic context of the period”, explains the Commission’s president, Pierre Marois. *“After 25 years, the population of Québec remains as attached as ever to these values, but many other things have changed. It was time to update the Charter to ensure that our actions and priorities continue to focus on the same values.”*

Over the coming weeks and months, the Commission will organize various activities to ensure that its proposals are as widely debated as possible. At the end of this process, it expects that its recommendations will be brought before the National Assembly and that the necessary amendments will be made to the *Charter*, the cornerstone of democracy in Québec.

PROGRESS AND RESISTANCE TO CHANGE

The report released by the Commission is in two parts. The first part contains six studies that examine how human rights and freedoms have evolved in Québec since 1975, and the second part sets out 25 recommended amendments to the *Charter*. The Commission consulted almost one hundred people from community groups, unions, employers’ groups and universities before beginning to draft its report, and representatives from many of the organizations consulted were present at the press conference this morning.

Since the adoption of the *Charter*, Québec society has undergone many changes. Remarkable progress has been made in recognizing the social equality of certain groups, especially women, sexual minorities and, in some respects, the disabled and the elderly. The principles of the *Charter* have also been integrated into the procedures of many institutions, as seen in charters of patients’ and students’ rights, for example, and policies on harassment in the workplace. Jurisprudence has developed in various areas, such as drug detection tests, video surveillance, and refusals to rent residential properties to couples with children or single parents.

Nevertheless, many inequalities remain and new threats have emerged. The gap between rich and poor has widened, and in the field of employment, there is also a growing gap between the members of visible minorities and the members of the majority group. New developments in the field of information technologies have created an unprecedented level of risk for fundamental freedoms, especially given current concerns about terrorism.

At the same time, both the Commission and the Human Rights Tribunal, which were established specifically to promote and defend human rights and freedoms, have seen a gradual erosion of their jurisdiction and their ability to act against discrimination.

ECONOMIC AND SOCIAL RIGHTS

The recommendations made by the Commission can be grouped under two main headings, reflecting the difficulties noted in the report and the new social realities. They are intended, first, to extend the rights guaranteed by the *Charter*, and second, to reintroduce certain recourses and strengthen the institutions involved in the protection of rights and freedoms.

The need to combat poverty and exclusion, whose direct and indirect effects lead to most infringements of rights and freedoms, underlie the recommendations made to extend the scope of the *Charter* in the area of economic and social rights. The Commission recommends that these rights should also be given precedence over the effects of other Québec legislation to make them more effective. Future Québec legislation will have to take into account the “**essential content**” of these rights, in contrast to the situation prevailing today.

The term “economic and social rights” covers a range of rights relating, in particular, to child protection, family support, the cultural rights of minorities, financial assistance measures and employment conditions. According to the Commission’s recommendations, some of these rights must be redefined in light of current realities, and other rights should be added to the group, such as the right to employment access measures, the right to receive healthcare products and services, and the right to obtain housing.

The Commission also makes recommendations concerning the right to information, the right to obtain education and religious instruction, the right to pursue union activities, recognition for the existence of Native peoples and recognition of their right to self-determination.

STRONGER INSTITUTIONS

Extension of the mandate and jurisdiction of the Commission

Currently, the Commission can investigate cases where the rights of children are infringed under the *Youth Protection Act*, and it would perhaps be advisable for the Commission to have the power to investigate other cases where the rights or freedoms of children are jeopardized and bring them before the Human Rights Tribunal.

Access to the Human Rights Tribunal

The Commission considers that the jurisdiction of the Commission and the Human Rights Tribunal to investigate and hear cases involving discrimination in unionized workplaces should be re-established. According to the Commission’s own data, 23% of its investigations in the employment field concern unionized workplaces where, in some cases, the interests of the workers differ from those of the union representing them.

Placing the Commission under the direct authority of the National Assembly

The Commission recommends that it should be placed under the direct authority of the National Assembly, like the Public Protector and the Auditor General. In the same way as these two institutions, the Commission has responsibilities that require it to remain independent of the Executive. Similarly, the Commission considers that the unique status of the *Charter* should be formally enshrined in Québec’s legislation by a statement recognizing its constitutional nature.

In the words of Pierre Marois, “*For many reasons, such as the growing gap between rich and poor, the increasing influence of economic and technological decisions, the regression of the welfare state, the new complexity in intercultural relations, changes in the workplace and the family, and new concerns about terrorism, the Québec of the 21st century is different from the Québec of 1975. When we see the scope of these changes, we must think about how the Charter will work in the future. Québec’s Charter of Human Rights and Freedoms is a political and social project. It reflects how Québec society views itself, and must*

change over time. A fixed, unchanging Charter would contradict the original intention of this fundamental text.”

The two-volume report, *Après 25 ans, la Charte des droits et libertés de la personne*, is available for consultation on the Commission’s website at www.cdpcj.qc.ca (under "Charte - Bilan", in the french zone).

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Source

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RECOMMENDATIONS MADE BY THE COMMISSION: THE COMPLETE LIST

◆ Rights and Freedoms

Recommendation 1

That the economic and social rights recognized in sections 39 to 48 of the Charter be reinforced in a triple approach:

- § by adding a general provision, before section 39, stating that all legislation must be consistent with the essential content of economic and social rights;
- § by including sections 39 to 48 in the sections of the Charter that take precedence over other legislation, as provided for in section 52;

by bringing the precedence clause into force gradually, limited at first to subsequent legislation, and then extended to existing legislation.

Recommendation 2

That the right to a sufficient dwelling be explicitly recognized as a component of the right to social and financial measures that ensure an acceptable standard of living, guaranteed by section 45 of the Charter.

Recommendation 3

That the Charter recognize the right of every person to benefit from the programs, goods, services, facilities and conditions that will allow that person to enjoy the highest state of physical and mental health of which the person is capable.

Recommendation 4

That the Charter recognize the right to measures and programs designed to promote, among other things, the highest possible level of employment, access to employment and vocational training and insertion.

Recommendation 5

That section 46 of the Charter also recognize the right to conditions of employment that respect workers' dignity and psychological integrity.

Recommendation 6

That the right to education, including human rights education, be recognized by the Charter.

Recommendation 7

That section 41 of the Charter no longer impose a positive obligation on public schools concerning religious education.

Recommendation 8

That section 43 of the Charter also recognize the right of persons belonging to linguistic and religious minorities, with the other members of their group, to profess and practise their own religion and to use their own language.

Recommendation 9

That the right of families to support measures be recognized in the Charter.

Recommendation 10

That persons with disabilities be considered a target group within the meaning of the *Act respecting equal access to employment in public bodies*;

That section 86 of the Charter be amended to allow this recommendation to be implemented.

Recommendation 11

That the Charter prohibit public incitement of discrimination.

Recommendation 12

That the advisability of including the right to access to information as a fundamental right and freedom be considered.

Recommendation 13

That section 3 of the Charter explicitly recognize, as a part of the fundamental freedom of association, the right to organize unions and to be a member of a union to protect one's interests;

That the right, for legally accredited workers' associations, to negotiate conditions of employment and to strike, where applicable in a manner consistent with essential services, be recognized in the Chapter on economic and social rights.

Recommendation 14

That the Preamble of the Charter underline the existence, in Québec, of Native peoples with their own identity and specific rights.

That the Charter state that Québec recognizes, in exercising its constitutional competencies, the right of Native peoples to self-determination, and the obligation to define their specific rights in collaboration with the Native peoples.

◆ Remedies in the event of discrimination or exploitation**Recommendation 15**

That subparagraph 2 of the first paragraph of section 77 of the Charter be repealed;

That subparagraph 4 of the second paragraph be amended to authorize the Commission to refuse or cease to act if the victim or complainant has, on the basis of the same facts, personally pursued another remedy.

Recommendation 16

That section 111 of the Charter be amended to indicate that the Human Rights Tribunal has jurisdiction in cases of discrimination or harassment, notwithstanding any inconsistent provision of another Act.

Recommendation 17

That section 111 of the Charter be amended by the addition of a paragraph stating that, notwithstanding sections 428 and 442 of the *Act respecting industrial accidents and occupational diseases* the Tribunal may, in the areas under its jurisdiction, order the payment of moral damages and punitive damages.

Recommendation 18

That section 84 of the Charter allow a complainant to act personally before the Tribunal in cases where the Commission has ceased to act for the complainant.

◆ Autonomy of the Commission

Recommendation 19

That the Commission des droits de la personne et des droits de la jeunesse be placed under the authority of the National Assembly of Québec as regards all aspects of its management, including the financial aspects.

◆ Constitutionalization of the Charter

Recommendation 20

That a preliminary provision of the Charter state that the Charter is a fundamental law of a constitutional nature;

That section 52 state in positive terms that the Charter takes precedence over other legislation, subject to the possibility of derogation set out in that section.

Recommendation 21

That section 52 of the Charter authorize derogations from sections 1 to 48, without distinction, only to the extent that a derogation is required by the situation and that the derogation is explicitly provided for by law;

That no derogation be permitted from the sections of the Charter that correspond to the standards referred to in article 4, § 2 of the *International Covenant on Civil and Political Rights*.

Recommendation 22

That the Preamble of the Charter underline that Québec is founded on the primacy of law, the respect of democratic and social values, and the protection of the rights of minorities.

Recommendation 23

That the Preamble of the Charter state that the Charter is inspired by international legal instruments relating to human rights and freedoms, and in particular the *Universal Declaration of Human Rights*, the two international covenants, and the *Convention on the Rights of the Child*.

Recommendation 24

That any amendment to the provisions of Part I of the Charter (the current sections 1 to 48) be subject to the approval of two-thirds of the Members of the National Assembly.

Recommendation 25

That any amendment to the provisions of Part I of the Charter (the current sections 1 to 48) be submitted for general public consultation, held under the authority of the relevant Committee of the National Assembly.
