

1982, chapter 61

AN ACT TO AMEND THE CHARTER OF HUMAN RIGHTS AND FREEDOMS

Bill No. 86

Introduced by Mr Marc-André Bédard, Minister of Justice

First reading: 22 June 1982

Second reading: 6 December 1982

Third reading: 17 December 1982

Assented to: 18 December 1982

Coming into force: by proclamation of the Government

Acts amended:

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

Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1)

Civil Service Act (R.S.Q., chapter F-3.1)



CHAPTER 61

An Act to amend the Charter
of human rights and freedoms

[Assented to 18 December 1982]

HER MAJESTY, with the advice and consent of the National
Assembly of Québec, enacts as follows:

R.S.Q., c.
C-12, Part
I, Chap. I,
heading,
s. 1,
replaced.

1. The Charter of human rights and freedoms (R.S.Q., chapter C-12) is amended by replacing the heading of Chapter I of Part I and section 1 by the following:

“CHAPTER I

“FUNDAMENTAL FREEDOMS AND RIGHTS

Right to
life.

“1. Every human being has a right to life, and to personal security, inviolability and freedom.

Juridical
personality.

He also possesses juridical personality.”

R.S.Q., c.
C-12, s. 9.1,
added,
Chap. 1.1,
heading,
added.

2. The said Charter is amended by inserting, after section 9, the following section:

Exercise of
rights and
freedoms.

“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.

Scope fixed
by law.

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”.

R.S.Q., c.
C-12, s.
10, am.

3. Section 10 of the said Charter is amended by replacing the first paragraph by the following paragraph:

Discrimina-
tion
forbidden.

“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.”

R.S.Q., c.
C-12, s.
10.1,
added.

4. The said Charter is amended by inserting, after section 10, the following section:

Harass-
ment.

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

R.S.Q., c.
C-12, ss.
18.1-18.2,
added.

5. The said Charter is amended by inserting, after section 18, the following sections:

Informa-
tion on job
application.

“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.

Penal or
criminal
offence.

“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 found guilty or that he pleaded guilty to 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.”

R.S.Q., c.
C-12, s.
20, am.

6. Section 20 of the said Charter is amended

(1) by striking out the words “in good faith” in the second line, and

(2) by adding the following paragraph:

Non-
discrimina-
tory data.

“Similarly, under an insurance or pension contract, a social benefits plan or a retirement, pension or insurance plan, or under a public pension or public insurance plan, a distinction, exclusion or preference based on risk determining factors or actuarial data fixed by regulation is deemed non-discriminatory.”

R.S.Q., c.
C-12, s.
24.1,
added.

7. The said Charter is amended by inserting, after section 24, the following section:

Search and seizure.

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

R.S.Q., c.
C-12, s.
28.1,
added.

8. The said Charter is amended by inserting, after section 28, the following section:

Rights of accused person.

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

R.S.Q., c.
C-12, s.
29, am.

9. Section 29 of the said Charter is amended

(1) by replacing the words “to the services” by the words “to the assistance”;

(2) by adding, at the end, the following: “He has a right to be informed promptly of those rights.”

R.S.Q., c.
C-12, s.
30,
replaced.

10. Section 30 of the said Charter is replaced by the following section:

Right to be brought before tribunal.

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

R.S.Q., c.
C-12, s.
32.1,
added.

11. The said Charter is amended by inserting, after section 32, the following section:

Right to trial.

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

R.S.Q., c.
C-12, s.
33.1,
added.

12. The said Charter is amended by inserting, after section 33, the following section:

Self-incrimination.

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

R.S.Q., c.
C-12, s.
36,
replaced.

13. Section 36 of the said Charter is replaced by the following section:

Interpreter.

“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.”

R.S.Q., c.
C-12, ss.
37.1, 37.2,
added.

14. The said Charter is amended by inserting, after section 37, the following sections:

*Res
judicata.*

"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*.

*Lesser
punish-
ment.*

"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."

*R.S.Q., c.
C-12, s.
38,
replaced.*

15. Section 38 of the said Charter is replaced by the following section:

*Self-
incrimina-
tion.*

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

*R.S.Q., c.
C-12, s.
52,
replaced.*

16. Section 52 of the said Charter is replaced by the following section:

*Sections to
prevail
over subse-
quent Act.*

"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."

*R.S.Q., c.
C-12, s.
67, am.*

17. Section 67 of the said Charter is amended by replacing paragraph *d* by the following paragraph:

"(d) make an analysis of any Québec statutes that may be inconsistent with the Charter and make the appropriate recommendations to the Government;"

*R.S.Q., c.
C-12,
s. 70.1,
added.*

18. The said Charter is amended by inserting, after section 70, the following section:

*Suspension
of
prescrip-
tion.*

"70.1 A request for an investigation, on being made to the Commission, suspends the prescription of any civil claim for the same object for one year or until the Commission has notified the applicant in the cases provided for in section 79 or has informed him of the result of its investigation in accordance with section 82, whichever time is shorter."

*R.S.Q., c.
C-12, s.
83.1 and
83.2,
added.*

19. The said Charter is amended by inserting, after section 83, the following sections:

Reprisals.

"83.1 No person may attempt to take or take reprisals against a person, a group of persons or an organization who or which has, in good faith, requested an investigation or has given evidence or otherwise taken part in an investigation undertaken by or on behalf of the Commission.

Reprisals. The same applies also to a person for whom an investigation was requested without that person's consent under the second paragraph of section 70.

Injunction. **"83.2** The Commission, with the written consent of the victim or the organization who or which has made a request for an investigation on behalf of another person by virtue of the second paragraph of section 70, may apply to the court for an injunction against a person who contravenes the first paragraph of section 83.1.

Order. The judge may then order any appropriate measure, including instatement of the injured person, on the date the judge considers fair and expedient under the circumstances, in the position he would have occupied had it not been for the contravention."

R.S.Q., c. C-12, s. 84, replaced. **20.** Section 84 of the said Charter is replaced by the following section:

Victim's right of recourse. **"84.** The victim may, if he prefers, exercise himself the recourses provided for in section 83 or 83.2. Where the recourses were exercised by the Commission in first instance, the victim may himself bring an appeal. He may also, at any stage of the proceedings, join his application to that of the Commission. In such cases, the Commission must allow him to consult his record.

Appeal. Where the victim has joined his application to that of the Commission, the Commission is not entitled to bring an appeal alone except with the written consent of the victim."

R.S.Q., c. C-12, Parts III, IV, ss. 86.1-86.10, added. **21.** The said Charter is amended by inserting, after section 86, the following Parts:

"PART III

"AFFIRMATIVE ACTION PROGRAMS

Affirmative action. **"86.1** 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.

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

Approval. **"86.2** Every affirmative action program must be approved by the Commission, unless it is imposed by order of the court.

Assistance. The Commission must, whenever required, lend assistance for the devising of an affirmative action program.

Recom-
mendation.

“86.3 If, after investigation, the Commission confirms the existence of a situation involving discrimination referred to in section 86.1, it may recommend the implementation of an affirmative action program within such time as it may fix.

Application
to the
court.

Where its recommendation has not been followed, the Commission may apply to the court and, on proof of the existence of a situation contemplated in section 86.1, obtain, within the time fixed by the court, an order to devise and implement a program. The program thus devised is filed with the court which may, in accordance with the Charter, make the modifications it considers appropriate.

Administra-
tion.

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

Withdraw-
al of
approval.

“86.5 Where the Commission becomes aware that an affirmative action program has not been implemented or is not being followed, it may, in the case of a program it has approved, withdraw its approval or, if it recommended implementation of the program, it may apply to the Court as in the second paragraph of section 86.3.

Modifica-
tions.

“86.6 A program contemplated in section 86.3 may be modified, postponed or cancelled if new facts warrant it.

Agree-
ment.

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

Application
to the
court.

Failing agreement, either party may request the court to decide whether the new facts warrant the modification, postponement or cancellation of the program.

Modifica-
tions.

All modifications must conform to the Charter.

Implemen-
tation.

“86.7 The Government must require its departments and agencies to implement affirmative action programs within such time as it may fix.

Inap-
plicable
provisions.

Sections 86.2 to 86.6 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

“REGULATIONS

Regula-
tions.

“86.8 The Government may, by regulation,

(a) fix the actuarial data and the risk determining factors that are non-discriminatory under an insurance or pension contract, a social

benefits plan or a retirement, pension or insurance plan, or a public pension or public insurance plan, determine in which cases and according to what kind of contract or plan the data and factors are deemed non-discriminatory, and make, for the purposes of those contracts and plans, every provision incident to the application of the principle of non-discrimination and the rules relating to the notion of spouse;

(b) 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.

Draft
regula-
tions.

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

Amend-
ment and
publica-
tion.

The Government may then amend the draft regulation. It must, in that case, publish the amended draft regulation in the *Gazette officielle du Québec* with a notice indicating that it will be adopted without amendments at the expiry of thirty days after such publication.

Coming in-
to force.

“**86.10** Every regulation comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date indicated therein.”

R.S.Q., c.
C-12, Part
III,
renum-
bered.
R.S.Q., c.
C-12, s.
87, am.

22. Part III of the said Charter is renumbered Part V.

23. Section 87 of the said Charter is amended

(1) by replacing paragraph *a* by the following paragraph:

“(a) who contravenes sections 10 to 19 and 83.1;”;

(2) by striking out paragraphs *d* and *e*.

R.S.Q., c.
C-12, s.
89,
replaced.
Proceed-
ings.

24. Section 89 of the said Charter is replaced by the following section:

“**89.** Penal proceedings under this Act are instituted by the Commission or by the Attorney General or the person authorized by him for that purpose.”

R.S.Q., c.
C-12, s.
90,
repealed.
R.S.Q., c.
E-20.1, s.
72.1,
added.

25. Section 90 of the said Charter is repealed.

26. The Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1) is amended by inserting, after section 72, the following section:

Applicability.

“72.1 Sections 63 to 63.3 apply notwithstanding the Charter of human rights and freedoms (R.S.Q., chapter C-12).”

R.S.Q., c. F-3.1, s. 68.1, repealed.

27. Section 68.1 of the Civil Service Act (R.S.Q., chapter F-3.1), enacted by section 100 of chapter 32 of the statutes of 1982, is repealed.

Insurance and pension contracts.

28. Where, at the coming into force of a regulation under paragraph *a* of section 86.8 of the Charter of human rights and freedoms, an insurance or pension contract, a social benefits plan or a retirement, pension or insurance plan, or a public pension plan or public insurance plan is not in conformity with the Charter or, as the case may be, the regulation, it must be modified to bring it into conformity, upon its renewal or within two years of the coming into force of the regulation, whichever occurs first.

Collective agreement.

However, in the case of a plan or a contract negotiated as part of a collective labour agreement, the time is extended till renewal of the agreement.

Legislative amendments.

29. Within two years of the coming into force of a regulation under paragraph *a* of section 86.8 of the Charter of human rights and freedoms, the Government shall prepare the necessary amendments to the Acts and regulations for the implementation of the principle of non-discrimination in insurance or pension contracts, social benefits plans, pension, retirement or insurance plans, and public pension plans and public insurance plans, and, where such is the case, any necessary exemptions.

Presumption.

30. An affirmative action program in existence at the coming into force of this Act that must be submitted to the Commission des droits de la personne for approval is deemed non-discriminatory until the Commission renders its decision on the matter.

Required sums.

31. The sums required for the administration of this Act in the financial years 1982-1983 and 1983-1984 shall be taken out of the consolidated revenue fund.

Exception.

32. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

Coming into force of ss. 20 and 25.

33. The second paragraph of section 20 of the Charter of human rights and freedoms, enacted by section 6 of this Act, and section 25 of this Act will come into force on the day of the coming into force of a regulation under paragraph *a* of section 86.8 of the Charter of human rights and freedoms.

Coming in-
to force of
s. 16,
effect of
s. 52.

34. Section 16 of this Act will come into force on the date fixed by proclamation of the Government, and section 52 of the Charter of human rights and freedoms, enacted by such section 16, will have effect from that date in respect of the precedence of sections 1 to 8 of that Charter over Acts subsequent to that date.

Prece-
dence.

Concerning the precedence of sections 1 to 8 over Acts preceding the date fixed by proclamation contemplated in the first paragraph, and the precedence of sections 9 to 38 over Acts preceding 27 June 1975, section 52 will have effect from the date fixed by another proclamation of the Government or not later than 1 January 1986.

Prece-
dence.

However, concerning the precedence of sections 9 to 38 over Acts subsequent to 27 June 1975, section 52 has effect from that date.

Coming in-
to force.

35. Subject to sections 33 and 34, this Act will come into force on the date fixed by proclamation of the Government, except the provisions excluded by that proclamation, which will come into force on such later dates as are fixed by proclamation of the Government.