

THIRD SESSION

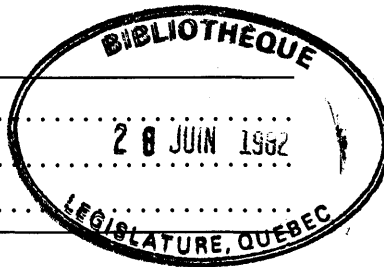
THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 86

**An Act to amend the Charter
of human rights and freedoms**

First reading
Second reading
Third reading



M. MARC-ANDRÉ BÉDARD

Minister of Justice

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EXPLANATORY NOTES

The object of this bill is to amend various aspects of the Charter of human rights and freedoms in order to better adapt it to the needs of Québec society and insure better protection of the rights of its members.

The proposed amendments may be grouped under five themes: precedence of the Charter, new rights, social benefits, equal opportunities programs and powers of the Commission des droits de la personne.

In respect of the first theme, the bill proposes to extend the precedence of the Charter to embrace the rights and freedoms contemplated in sections 1 to 8; in other respects, priority of the Charter will operate with regard to all the provisions of the laws of Québec whether they were enacted before or after the Charter, unless they expressly state that they apply despite the Charter.

The new rights introduced by the bill comprise, in particular,

— inclusion of age and pregnancy as unlawful grounds for discrimination;

— prohibition of harassment based on any of the unlawful grounds for discrimination;

— prohibition from requiring job applicants to give any information pertaining to grounds for discrimination;

— the inclusion or extension of certain juridical rights such as a person's right not to be tried a second time for an offence of which he has been acquitted or of which he has been found guilty, or the right of an accused person to be promptly informed of the offence with which he is charged and to be tried within a reasonable time.

A further object of the bill is to prohibit discrimination in the domain of social benefits, i.e. in social benefits plans, retirement plans, pension plans or insurance plans, in public plans and in insurance contracts. Only those distinctions, exclusions or preferences that are based on risk determining factors or on actuarial

data established by the government regulation are to be permitted. The regulations are to be prepared by the Government in consultation with the Commission des droits de la personne. These draft regulations, just as any other draft regulation under the Charter, will be published and tabled before the Standing Committee on Justice before being adopted.

The bill provides other amendments to the Charter to institute equal opportunities programs to remedy the situation of persons belonging to groups discriminated against in employment, education, health services and other services generally available to the public. These programs will be implemented on a voluntary basis after being approved by the Commission des droits de la personne, or recommended by the Commission after investigation, or imposed by the Court on proof of discrimination against a group where the Commission's recommendation has not been followed.

Furthermore, the Government binds itself to implement equal opportunities programs in its departments and gives itself the power to impose similar programs in its agencies.

Lastly, the bill provides for the broadening of certain powers of the Commission des droits de la personne. In addition to the powers relating to equal opportunities programs, the Commission will be authorized to apply to the Court for an injunction against any person who retaliates or attempts to retaliate against a person or agency who or which has requested that an investigation be held or has taken part in an investigation by the Commission, or against a person for whom an investigation was requested. The Commission will also be authorized to institute proceedings for offences against certain provisions of the Charter.

Finally, the bill provides that a request for an investigation to the Commission des droits de la personne suspends prescription in any civil action for the same object.

Bill 86

An Act to amend the Charter
of human rights and freedoms

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

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

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

He also possesses juridical personality.”

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

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

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”.

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

“**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, the fact that he is handicapped or the fact that he uses any means to palliate a handicap.”

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

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

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

“**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.”

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:

“Similarly, under an insurance 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.”

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

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

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

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

9. Section 29 of the said Charter is amended by adding, at the end, the following: “He has a right to be informed promptly of those rights.”

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

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

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

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

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

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

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

“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.”

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

“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 a *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.”

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

“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.”

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

“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.”

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;”.

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

“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.”

19. The said Charter is amended by inserting, after section 86, the following Parts:

“PART III

“EQUAL OPPORTUNITIES PROGRAMS

“86.1 The object of an equal opportunities 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 equal opportunities program is deemed non-discriminatory if it is established in conformity with the Charter.

“86.2 Every equal opportunities program must be approved by the Commission, unless it is imposed by order of the court.

The Commission must, whenever required, lend assistance for the devising of an equal opportunities program.

“86.3 The Commission, if, after investigation, it confirms the existence of a situation involving discrimination referred to in section 86.1, may recommend the implementation within such time as it

may fix of an equal opportunities program that it has devised in conformity with the Charter.

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

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

“86.5 Where the Commission becomes aware that an equal opportunities 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.

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

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

Failing agreement, either party may request the court to decide whether the new facts warrant the modification, postponement or cancellation of the program and to fix the time limit for the implementation of the original plan or modified plan.

All modifications must conform to the Charter.

“86.7 The Commission may apply to the court for an injunction against a person whom the court has ordered to implement a program and who refuses or neglects to implement, apply or modify it despite his obligation to do so.

“86.8 The Government shall, within such time as it may fix, implement equal opportunities programs in its departments.

The Government may also require its agencies to devise and implement equal opportunities programs.

Sections 86.2 to 86.7 do not apply to programs contemplated in this section.

“PART IV

“REGULATIONS

“86.9 The Government may, by regulation,

(a) fix the risk determining factors or actuarial data that are non-discriminatory under an insurance contract, a social benefits plan or a retirement, pension or insurance plan, or a public pension or public insurance plan;

(b) fix the criteria, norms, scales, conditions or modalities applicable for the devising, implementation or carrying out of equal opportunities programs, define their limits and determine anything necessary or useful for those purposes.

“86.10 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 parliamentary 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.

The Government may, before adopting the draft regulation, amend it without further notice.

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

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

21. The said Charter is amended by inserting, after section 87, the following section:

“87.1 The Commission, with the written consent of the victim or the organization that 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 paragraph *d* or *e* of section 87.

The judge may then order any appropriate measure, including, in the field of employment, instatement of the injured person in the position he would have occupied had it not been for the contravention.”

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

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

23. Section 90 of the said Charter is repealed.

24. Where, at the coming into force of a regulation under paragraph *a* of section 86.9 of the Charter of human rights and freedoms, an insurance 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.

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.

25. Within two years of the coming into force of a regulation under paragraph *a* of section 86.9 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 contracts, social benefits plans, pension, retirement or insurance plans, and public pension plans and public insurance plans, and any necessary exemptions.

26. An equal opportunities 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.

[[**27.** 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.]]

28. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (*insert here the reference to the chapter number of the Canada Act in the compilation of the Acts of the Parliament of the United Kingdom for 1982*).

29. The second paragraph of section 20 of the Charter of human rights and freedoms, enacted by section 6 of this Act, and section 23 of this Act will come into force on the day of the coming into force of a regulation under paragraph *a* of section 86.9 of the Charter.

30. 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 be effective from that date in respect of the precedence of sections 1 to 8 of that Charter over Acts subsequent to that date.

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.

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

31. Subject to sections 29 and 30, 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.