

1989, chapter 51

**AN ACT TO AMEND THE CHARTER OF HUMAN RIGHTS
AND FREEDOMS CONCERNING THE COMMISSION
AND ESTABLISHING THE TRIBUNAL DES DROITS
DE LA PERSONNE**

Bill 140

Introduced by Mr Gil Rémillard, Minister of Justice

Introduced 15 May 1989

Passage in principle 31 May 1989

Passage 21 June 1989

Assented to 22 June 1989

Coming into force: on the date or dates to be fixed by the Government

Act amended:

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





CHAPTER 51

An Act to amend the Charter of human rights and freedoms concerning the commission and establishing the Tribunal des droits de la personne

[Assented to 22 June 1989]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. C-12,
s. 38,
English
text, am.

1. Section 38 of the Charter of human rights and freedoms (R.S.Q., chapter C-12) is amended by replacing the word “court” in the first line of the English text by the word “tribunal”.

c. C-12,
s. 56, am.

2. Section 56 of the said Charter is amended

(1) by adding, after the figure “38” in the first line of subsection 1, the following: “, in Chapter III of Part II and in Part IV”;

(2) by replacing the word “adoptés” in the second line of subsection 3 of the French text by the word “pris”.

c. C-12,
s. 58, am.

3. Section 58 of the said Charter is amended by adding, after the second paragraph, the following paragraph:

Term of
office

“The term of office, once determined, shall not be reduced.”

c. C-12,
s. 59, am.

4. Section 59 of the said Charter is amended by replacing the words “and term of office” in the first line of the second paragraph by the words “, additional salary, fees and allowances”.

c. C-12,
ss. 60-86,
replaced

5. Sections 60 to 65 and Chapter II of Part II of the said Charter are replaced by the following:

Continuance
in office

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

Complaints committee	<p>“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.</p>
Personal	<p>“62. The commission shall appoint the personnel it requires for the performance of its functions; their number shall be determined by the Government; they may be dismissed by order of the Government but only on the recommendation of the commission.</p>
Investigation or settlement	<p>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.</p>
Arbitration	<p>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.</p>
Restriction	<p>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.</p>
Standards and scales of remuneration or allowances	<p>“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.</p>
Oath	<p>“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 or solemn affirmations 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.</p>
Exclusive duties	<p>“65. The president and the vice-president shall devote their time exclusively to the duties of their office.</p>
Duties of president	<p>“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,</p>

the second and third paragraphs of section 62 and the first paragraph of section 77.

Duties of
president

The president shall preside the sittings of the commission.

Vice-
president

“67. The vice-president 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, while he is called upon to replace the president, is himself absent or unable to act, or if the office of vice-president is vacant, the Government shall designate another member of the commission to replace him temporarily and, if need be, shall fix the additional salary, fees or allowances of that other member.

Immunity

“68. In no case may the commission, any member or mandatary of the commission, any member of its personnel or a complaints committee established by the commission be prosecuted for any omission or any act done in good faith in the performance of his or its duties.

Powers

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.

Seat

“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 other city.

Other
offices

The commission may establish offices anywhere in Québec.

Sittings

It may hold its sittings anywhere in Québec.

Internal
by-laws

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

“CHAPTER II

“FUNCTIONS

Functions

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

Responsibili-
ties

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 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.

Assistance

“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.

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

Report and recommendations **“73.** Not later than 31 March each year, the commission shall submit to the President of the National Assembly a report on its activities and recommendations for the preceding calendar year.

Tabling of report in National Assembly 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 by order of the Government.

“CHAPTER III

“COMPLAINTS

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.

Written complaint Every complaint must be made in writing.

Complaint filed on behalf of victim 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.

Public Protector **“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.

Receipt of complaint Any complaint transmitted to the commission is deemed to be received by the commission on the day it is filed with the Public Protector.

Prescription **“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.

Grounds for refusal

“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.

Grounds for refusal

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.

Decision

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.

Evidence

“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.

Insufficient
evidence

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.

Settlement
in writing

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

Arbitration

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 exemplary damages, within such time as it fixes.

Applica-
tion to a
tribunal

“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.

Emergency
measures

“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.

Reprisals

“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.

Reinstatement

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.

Written
consent of
beneficiary

“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.

Discretionary power

“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.

Remedy pursued by complainant

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.

Intervention by victim

“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.

Remedies pursued by victim

Subject to the second paragraph of section 111, 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.

Access to record

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

c. C-12, s. 86.2, am.

6. Section 86.2 of the said Charter, amended by section 21 of chapter 61 of the statutes of 1982, is again amended

(1) by replacing the words “the courts” in the second line of the first paragraph by the words “a tribunal”;

(2) by replacing the words “must, whenever required” in the first line of the second paragraph by the words “shall, on request”.

c. C-12, s. 86.3, am.

7. Section 86.3 of the said Charter is amended

(1) by replacing the figure and words “86.1, it may recommend” in the third line of the first paragraph by the figure and words “86, it may propose”;

(2) by replacing the word “recommendation” in the first line of the second paragraph by the word “proposal”;

(3) by replacing the words “the court” in the second line of the second paragraph by the words “a tribunal”;

(4) by replacing the figure “86.1” in the third line of the second paragraph by the figure “86”;

(5) by replacing the word “court” in the fourth and in the fifth lines of the second paragraph by the word “tribunal”.

c. C-12,
s. 86.5, am.

8. Section 86.5 of the said Charter is amended

(1) by replacing the words “or is not being followed” in the second line by the words “within the allotted time or is not being complied with”;

(2) by replacing the word “recommended” in the fourth line by the word “proposed”;

(3) by replacing the words “the Court as in” in the fifth line by the words “a tribunal in accordance with”;

(4) by replacing the figure “86.3” in the fifth line by the figure “88”.

c. C-12,
s. 86.6, am.

9. Section 86.6 of the said Charter is amended

(1) by replacing the figure “86.3” in the first line of the first paragraph by the figure “88”;

(2) by inserting the words “or having consented” after the word “required” in the first line of the second paragraph;

(3) by replacing the word “court” in the first line of the third paragraph by the words “tribunal to which the commission has applied pursuant to the second paragraph of section 88”.

c. C-12,
s. 86.7, am.

10. Section 86.7 of the said Charter is amended by replacing the word and figures “86.2 to 86.6” in the first line of the second paragraph by the word and figures “87 to 91”.

c. C-12,
ss. 86.1-86.7,
renumbered

11. Sections 86.1 to 86.7 of the said Charter become sections 86 to 92.

c. C-12,
ss. 93-96,
added

12. The said Charter is amended by inserting, immediately before Part IV, the following Part:

“PART IV

“CONFIDENTIALITY

Confidentiality of information or documents

“**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 purpose of the devising or implementation of or compliance with an affirmative action program 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.

Consent required before disclosure

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.

Obligation to supply certain information or documents

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.

Confidentiality of negotiations

“**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.

Information obtained in performance of duties

“**95.** Notwithstanding any provision to the contrary, 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.

Immunity

“**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.”

c. C-12, Part IV becomes Part V

13. Part IV of the said Charter becomes Part V.

c. C-12, s. 86.8, renumbered and am.

14. Section 86.8 of the said Charter becomes section 97 and is amended

(1) by striking out the word “may” in the first line;

(2) by replacing the letter “(a)” in the first line of paragraph *a* by the figure and word “(1) may”;

(3) by replacing the letter “(b)” in the first line of paragraph *b* by the figure and word “(2) may”;

(4) by adding, at the end, the following:

“(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.

Arbitrators
and assess-
sors

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.

Expenses

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.”

c. C-12,
ss. 86.9 and
86.10,
replaced

15. Sections 86.9 and 86.10 of the said Charter are replaced by the following sections:

Draft
regulation

“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.

Amendment
and publica-
tion

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 on the expiry of 45 days after the publication.

Regulations
of the
commission

“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.

Government
approval

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

c. C-12,
ss. 100-
133, added

16. The said Charter is amended by inserting, immediately before Part V, the following Part:

“PART VI

“HUMAN RIGHTS TRIBUNAL

“CHAPTER I

“ESTABLISHMENT AND ORGANIZATION

Human
Rights
Tribunal

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

Composition

“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.

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

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

Oath “**102.** Before entering office, the members shall make the oaths or solemn affirmations 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.

Judge of the Court of Québec “**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.

Hearing “**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.

Preliminary or incidental application 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.

Services of clerk and staff of the Court “**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.

Bailiffs 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.

Exclusive duties “**106.** The president of the Tribunal shall devote his time exclusively to the duties of his office.

Duties of president

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.

Replacement of president

“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.

Decision of judge no longer in office

“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.

Recourse or injunction prohibited

“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.

Motion to annul

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.

Rules of procedure and practice

“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

Jurisdiction

“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.

Application submitted by commission
 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.

Powers and immunity
“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.

Rules of procedure
“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.

Other acts or formalities
 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

Written application
“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.

Filing
 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 place of business.

Factum
“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 his or its own, which the Tribunal shall serve on the plaintiff.

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

Parties to 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.

Sufficient interest 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.

Amendment **“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.

Recusation **“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.

Valid ground 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.

Judicial district **“119.** The Tribunal shall sit in the judicial district at the office of which the application was filed.

Judicial district However, the president of the Tribunal and the member presiding the division to which the application is referred 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.

Date of hearing **“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.

Notice

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.

Banned publication or release

“**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.

Absence of a party or his attorney

“**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.

Postponement

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.

Useful and relevant evidence

“**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.

Rules of evidence

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

Recording
of deposi-
tions

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

“CHAPTER IV

“DECISION AND EXECUTION

Decisions

“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 therefor.

Copies or
extracts

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

Costs and
disburse-
ments

“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.

Clerical
error

“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.

Revision or
revocation
of decision

“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.

Restriction

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.

Service
of final
decision

“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.

Decision
deemed
served

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.

Decision
involving
payment of
money

“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

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 place of business.

Executory
decision

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.

Executory
decision

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

Contempt
of court

“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.

Unauthor-
ized
disclosure

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

Leave to 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.

Procedure for appeals **“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.”

c. C-12, Part V becomes Part VII **17.** Part V of the said Charter becomes Part VII.

c. C-12, s. 87, replaced Offences **18.** Section 87 of the said Charter is replaced by the following section:

“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 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.”

c. C-12, s. 88, am. **19.** Section 88 of the said Charter is amended by replacing the figure “87” in the first line by the figure “134”.

c. C-12, s. 89, am. **20.** Section 89 of the said Charter is amended by replacing the word “Act” in the first line by the word “Charter”.

c. C-12, ss. 88-91, renumbered **21.** Sections 88 to 91 of the said Charter become sections 135 to 138.

c. C-12, Schedules A and B, replaced **22.** Schedules A and B to the said Charter are replaced by the following schedules:

“SCHEDULE I

“OATHS OR DECLARATIONS OF OFFICE AND SECRECY

“(Section 64)”

“I, (*name of person*), swear (*or solemnly declare*) 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 swear (*or solemnly declare*) 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.

(In the case of an oath, add: “So help me God.”)

“SCHEDULE II

“OATHS OR DECLARATIONS OF OFFICE AND SECRECY

“(Section 102)”

“I, (*name of person*), swear (*or solemnly declare*) 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 swear (*or solemnly declare*) 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.

(In the case of an oath, add: “So help me God.”)

Coming into
force

23. The provisions of this Act come into force on the date or dates to be fixed by the Government.