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

1999
Annual
Report

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The Honourable Jean-Pierre Charbonneau
President of the National Assembly
Parliament Building
Québec City, Québec
Mr. President,

In accordance with section 73 of the Charter of Human Rights and Freedoms, I am honoured to present the report on the activities of the Commission des droits de la personne et des droits de la jeunesse for the year 1999.

The report covers the activities and recommendations of the Commission concerning the promotion and enforcement of human rights, the protection of children's interests and the promotion and enforcement of children's rights.

Yours sincerely,

Claude Filion

President

Montreal, May 2000

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Message from the President

The activities of the Commission des droits de la personne et des droits de la jeunesse bear witness to one reality: the most unfortunate in Quebec society — those without any power or voice, the marginalized — still have major hurdles to cross to gain access as of right to dignity, equality and treatment that is free of discrimination.

In this regard, the development of a certain new collective wealth arising, among other things, from the knowledge-based economy must not mask the persistence of unacceptable inequalities, those that are cruelly experienced by all types of excluded persons: the poor, young people on the street, women who head single-parent families, short-term workers, welfare recipients, the illiterate, young people of visible minorities, for whom the unemployment rate is absolutely frightening, the clientele of youth protection, young offenders requiring rehabilitation, drop-outs of all sorts, etc.

These are very often the clienteles that contact the Commission and constitute “so to speak” the backdrop for its activities.

However, we can rejoice that these activities also bear witness to a number of significant advances and breakthroughs in the struggle for the recognition and exercise of human rights and freedoms and of youth rights. Thus, concerning the promotion and defence of youth rights, primarily those who are receiving protection services, the Commission has acted on several fronts:

- publication in 1999 of the conclusion of an investigation on the Centres jeunesse des Laurentides, where the situation necessitated, in our opinion, a curatorship, which the government, moreover, imposed;
- realization, with the Centres jeunesse de la Mauricie et du Centre-du-Québec, of a joint study which proved to be a novel formula for improving youth services and the protection of youth rights. We should be assessing the results of the study during the course of the year 2000;
- organization of a Rights and Freedoms Forum on the little known problem of the rights of street youth, several of whom have been able to benefit from the youth protection system;
- intervention, in conjunction with a Forum organized by the Association des centres jeunesse, in favour of the creation of a Conseil des directeurs de la protection de la jeunesse which would be entrusted with advising the minister responsible and emphasizing the required cooperation of youth protection services throughout Québec;
- adoption of opinions on *La prévention de la récidive des agressions sexuelles commises contre les enfants*, as well as on the police checks of criminal records of persons called up to work with youth, among other things;
- implementation of an awareness program regarding the *Convention on the Rights of the Child* which celebrated its tenth anniversary in 1999.

The Commission also intervened in favour of young offenders’ rights by insistently requesting that the federal legislator maintain the current *Young Offenders Act*, which is based on rehabilitation, rather than adopt Bill C-3, which may take an essentially repressive approach to the treatment of young offenders.

Regarding young people on the job market, we have endeavoured to promote and defend their rights by proposing various amendments to Bill 67 pertaining to disparity of treatment (“orphan” clauses), while continuing our investigations on complaints of pay disparity based on age. Young people in short-term job situations on the employment market were also the subject of a study, and this enabled us to better direct our interventions in this area.

Finally, we too often forget that the rights of youth are involved in the debate on the place of religion in schools. We intervened on their behalf in a standing committee to request, in particular, the abolition of the possibility of granting a confessional status to public schools and of adopting an educational plan of a religious nature in which the rights of students with other religious beliefs might be compromised.

Furthermore, in connection with the International Year of Older Persons, the Commission was concerned with the disregarded problem of the exploitation of these persons. This problem, which may increase with the aging of the population, will necessitate a cooperative approach between various types of advocates and institutions. Aware of this major challenge, the Commission took the initiative of organizing a public consultation on this question in order to better identify this problem and to increase the effectiveness of methods that might keep it in check. This consultation has already produced much interest, and its results, which will be made public in 2000, will have a major influence in this area in the coming years.

The Commission also increased its efforts at reconciliation with members of community and ethno-cultural groups, in order to better inform them of their rights, of course, but also to better identify the specific problems which these groups must face. A series of meetings to be held in the various Montréal neighbourhoods in the fall of 1999 should enable us to define new means of intervention on their behalf.

Finally, cooperation with the central labour congresses was established by the organization of a joint conference with the Centrale de l'enseignement du Québec (CEQ), as had been done in 1998 with the Confédération des syndicats nationaux (CSN) and the Fédération des travailleuses et des travailleurs du Québec (FTQ).

These few examples reinforce our conviction that the promotion of rights and freedoms is not just the prerogative of only the Commission des droits de la personne et des droits de la jeunesse. The objectives being sought are often shared by many associations or organizations with which we are endeavouring to maintain regular contacts and productive collaborations.

It is also from the viewpoint of promoting a culture of rights that we are continuing our rights-education efforts in schools and in the workplace, increasing our contacts with the media, distributing tens of thousands of documents, and expanding the content of the Commission's Internet site.

The workplace, in all respects, remains a preferred field of action since 67% of investigation files for discrimination or harassment that were opened in 1999 originated from this sector of activity. In this context, the report on affirmative action programs published by the Commission in January 1999 is promising. By pointing out the successes obtained in the implementation of these programs, and the gaps that persist, we believe we have helped produce administrative decisions and possibly legislative amendments that should further, particularly in the public service and the parapublic sector, the effectiveness and multiplication of these programs, which remain a tried and true method of combating discrimination in the workplace.

Our opinion on "*La filature et la surveillance des salariés absents pour raison de santé*", which aimed to clarify the rights of all those concerned, also raised considerable interest in the workplace.

Regarding the investigations conducted by the Commission with respect to the *Charter of Human Rights and Freedoms*, we have continued our efforts to reduce our clients' waiting periods while maintaining the quality of our interventions on behalf of victims of discrimination, harassment and exploitation, with a settlement rate that is more than satisfactory.

The investigations conducted under the *Youth Protection Act* — which are dealt with separately — have uncovered a large number of violations of the rights of youth who receive services in rehabilitation centres. The Commission intends to intensify its interventions in this area.

Regarding the Commission's judicial activities, they are now part of the Québec media scene, in which the decisions arising from the proceedings brought by the Commission are echoed widely. Important judgments have confirmed, for example:

- the right of a pregnant worker to obtain the renewal of an employment contract;
- the right of a woman not to be dismissed because she does not have the physical characteristics desired by the employer;

- the right for a short-term worker not to be discriminated against in the rental of housing;
- the right not to be refused employment on the basis of the results of certain psychological tests not related to the job.

All this effort at promoting and defending rights has been continuing now for close to 25 years. This anniversary, which we will celebrate in the year 2000, deserves to be marked. For this reason, the Commission has undertaken the preparation of an extensive review of human rights in Québec, which we will publish at the end of the year 2000, and which will serve to better direct our future interventions in an ever-changing society.

However, it is also important to point out — and we say this regretfully — that the Commission is currently threatened with a number of setbacks. In fact, Bill 82, the *Public Service Act*, presented by the Chairman of the Conseil du Trésor, could impose serious restrictions on the Commission's autonomy in the face of government machinery. In addition, the government's judicial activity has been systematically contesting the Commission's jurisdiction to conduct investigations and to address the tribunal in cases where a legislative provision appears to constitute a violation of a right. In these respects, the Commission will continue to struggle to protect its independence and the appearance of its independence, which are so important for the stability of democratic institutions in Québec.

In both cases, the setbacks would be prejudicial to the full exercise of the rights and freedoms of citizens in a society in which the harsh realities of discrimination, harassment, exploitation, violence, and the negation of rights are still present. It is not by weakening the powers of organizations which, like the Commission, are endeavouring to find a remedy for this that society will win out. For this reason, we will do our utmost to counter these threats to the Commission's independence and powers in order to ensure the full respect of the rights and freedoms of everyone, especially the most underprivileged and the most vulnerable.

For, in the end, the evolution of Québec society will be measured by the battle that we will wage together against all forms of exclusions, and especially against the exclusion of those that have no voice in the social forum.

The President,
Claude Filion

Part One

The Commission's Legislative, Administrative and Budgetary Context

Chapter 1

The Legislative Framework

Secretary's Office

1.1 Constitution

The Commission des droits de la personne et des droits de la jeunesse was constituted under the *Charter of Human Rights and Freedoms*. The Charter was adopted by the National Assembly on June 27, 1975, and was promulgated on June 28, 1976. The *Act respecting the Commission des droits de la personne et des droits de la jeunesse* came into force on November 29, 1995, amending the Charter provisions governing the Commission's mission and the composition.

1.2 Mission

The Commission's mission is to ensure that the principles set forth in the *Charter of Human Rights and Freedoms* are upheld, that the interests of children are protected, and that their rights under the *Youth Protection Act* are respected.

1.3 Composition

The Commission is composed of fifteen members, including a president and two vice-presidents. Its members are appointed by a two-thirds majority of the National Assembly following a motion by the Premier.

Seven members of the Commission, including one of the vice-presidents, must be selected from among persons capable of making a significant contribution to the examination and resolution of problems relating to human rights and freedoms.

Seven other members, including the other vice-president, must be chosen from among persons capable of making a significant contribution to the examination and resolution of problems relating to the protection of youth rights.

On December 31, 1999, the Commission des droits de la personne et des droits de la jeunesse was composed of the following people:

Members of the Commission	Date of Appointment
President	
Mtre. Claude Filion	05/08/1996
Vice-Presidents	
Mtre. Céline Giroux	29/11/1995
Mtre. Jennifer Stoddart	05/08/1996
Members	
Mtre. Louis-Marie Chabot	29/11/1995
Mr. François Chénier	29/11/1995
Mr. Dominique de Pasquale	05/08/1996
Mr. Emerson Douyon	17/06/1999
Mtre. Nicole Duplé	05/08/1996
Dr. Danielle Grenier	17/06/1999
Mrs. Louise Fournier	29/11/1995
Mtre. Martial Giroux	29/11/1995
Mrs. Jocelyne Myre	29/11/1995
Mr. Fo Niemi	05/08/1996
Mrs. Diane F. Raymond	05/08/1996
Mrs. Michèle Rouleau	05/08/1996

1.4 Mandates Under the *Charter of Human Rights and Freedoms* and the *Youth Protection Act*

1.4.1 Mandates Under the *Charter of Human Rights and Freedoms*

The Commission is required to take every appropriate measure to ensure that the principles set out in the Charter are promoted and upheld. In particular, its responsibilities include the following:

- On its own initiative or after receiving a complaint, the Commission must investigate any situation that, in its view, constitutes a case of discrimination or harassment, or a violation of the right of elderly and handicapped people to be protected against exploitation. The grounds for discrimination are: race, colour, sex, pregnancy, sexual orientation, civil status, age (except as provided by law), religion, political convictions, language, ethnic or national origin, social condition, handicap, or the use of a means to palliate a handicap. In the area of employment, a criminal record is also a ground for discrimination.
- The Commission promotes settlements between individuals whose rights have been violated and the individuals responsible for the violation.
- It proposes the submission of disputes to arbitration or refers unsettled issues to a tribunal. In the latter case, only the Commission may initially seize the Human Rights Tribunal of cases over which the Tribunal has jurisdiction.
- Where, in the Commission's opinion, protective supervision under the jurisdiction of the Public Curator is required, it must report that case to the Public Curator as soon as it becomes aware of its existence in the exercise of its functions.
- It develops and implements a program of information and education destined to promote understanding and acceptance of the object and provisions of the Charter.
- It directs and encourages research and publications on fundamental rights and freedoms.
- It identifies provisions in the laws of Québec that may be contrary to the Charter, and makes the appropriate recommendations to the Government.
- It receives suggestions, recommendations and requests concerning human rights and freedoms, holding public hearings whenever necessary, and makes the appropriate recommendations to the Government.
- It cooperates with organizations dedicated to the promotion of human rights in and outside Québec.
- It investigates acts of reprisal or attempted reprisal, as well as any other action or omission that, in its opinion, constitutes an offence under the Charter, and reports its findings to the Attorney General.
- In the field of affirmative action programs, the Commission gives assistance, upon request, in the development of voluntary programs in the employment, education and health sectors, and in any other service offered to the public.
- As part of its Contract Compliance Program, the Québec government has entrusted the Commission with the task of acting as an expert consultant for the Secrétariat aux services gouvernementaux and for government departments, in order to assess how well businesses have complied with their commitment to implement affirmative action programs for women, visible minorities and Aboriginal people.

1.4.2 Mandates Under the *Youth Protection Act*

The Commission has the following responsibilities, in accordance with the provisions of the Act:

- It takes all appropriate measures to promote and protect the rights granted to children by the *Youth Protection Act* and the *Young Offenders Act*.

- Upon request or on its own initiative, it may investigate any situation where it has reasons to believe that the rights of a child or a group of children have been violated by individuals, institutions or organizations, unless the Tribunal has already been seized of the case;
- It takes any legal steps it considers necessary to correct a situation in which a child's rights have been violated.
- It develops and implements information and education programs designed to inform the public, in general, and children, in particular, about children's rights.
- It may make recommendations at any time, in particular to the Minister of Health and Social Services, the Minister of Education and the Minister of Justice.
- It may conduct or commission studies and research on any issue under its jurisdiction, either on its own initiative or following a request from the Minister of Health and Social Services or the Minister of Justice.

1.5 The Ministers Responsible

1.5.1 The Ministers Responsible for the *Charter of Human Rights and Freedoms*

The Minister of Justice is responsible for the application of the Charter, except for sections 57 to 96, subparagraph 2 of the first paragraph of section 97, and section 99, for which the Minister of Relations with Citizens and Immigration is responsible.

1.5.2 The Ministers Responsible for the *Youth Protection Act*

The Minister of Justice is responsible for the application of sections 97, 73 to 131, 134 to 136, 154, and 155.

The Minister of Relations with Citizens and Immigration is responsible for the application of sections 23 to 27.

The Minister of Health and Social Services is responsible for the application of the other sections of the Act.

1.6 Amendments to the *Charter of Human Rights and Freedoms* and the *Youth Protection Act*

In 1999, in accordance with section 46 of the *Act to harmonize public statutes with the Civil Code* (1999, chapter 40), the *Charter of Human Rights and Freedoms* was amended:

- (1) by striking out "deemed" in the second paragraph of section 13;
- (2) by replacing "exemplary damages" in the second paragraphs of sections 49 and 79 by "punitive damages";
- (3) by replacing "the Crown" in section 54 by "the State";
- (4) by striking out "or solemn affirmations" in sections 64 and 102;
- (5) by replacing "principal place of business" in the second paragraphs of sections 114 and 130 by "principal business establishment";
- (6) (a) by replacing "corporation" in section 135 by "legal person";
(b) by replacing, in the French text, "officier" in section 135 by "dirigeant";
- (7) (a) by striking out "OR DECLARATIONS" in the headings of Schedules I and II;
(b) by replacing "swear (or solemnly declare)" in the first and second paragraphs of Schedules I and II by "declare under oath";
(c) by striking out the third paragraphs of Schedules I and II.

In accordance with section 226 of the said Act, the *Youth Protection Act* was amended:

- (1) by replacing, in the English text, "delay" in the third paragraphs of sections 25 and 35.3 by "time";
- (2) by striking out "temporarily" in section 31.1;
- (3) by replacing "damage" in the second and third paragraphs of section 47 by "harm";
- (4) by replacing, in the English text, "delays" and "delay" in the second paragraph of section 98 and sections 117 and 126 by "periods" and "period";

- (5) (a) by replacing “must be considered” in the first paragraph of section 131 by “is”;
(b) by striking out “considered” in the second paragraph of section 131.

1.7 The Work of the Commission’s Members

1.7.1 The Work of Members in Plenary Sessions

In 1999, the Commission held ten plenary sessions, eight regular sessions and two special sessions.

At these various sessions, the members of the Commission considered and adopted a number of briefs to be submitted to the National Assembly’s standing committees. The briefs included the following:

- Brief on Bill 67, *An Act to amend the Act respecting labour standards as regards differences in treatment*, presented to the Committee on Labour and the Economy;
- Brief on the place of religion in schools, presented to the Committee on Education.

A brief on Bill C-3, *An Act in respect of criminal justice for young persons and to amend and repeal other Acts*, was adopted for the House of Commons Standing Committee on Justice and Human Rights.

The Commissioners also considered and adopted documents intended for various government or other authorities:

- Police checks of the criminal records of persons called upon to work with a vulnerable clientele;
- The posting of corporate names and trademarks;
- Comments on the draft regulation regarding allowances for handicapped children;
- The shadowing and supervision of employees absent for health reasons: compliance with the Charter;
- Comments on Bill 51, *An Act to amend the Public Service Act and the Act respecting the accountability of deputy ministers and chief executive officers of Public Bodies*;
- Comments on Bill 50, *An Act to amend the Act respecting labour standards and other legislative provisions concerning work performed by children*;
- Comments on Bill 32, *An Act to amend various legislative provisions concerning de facto spouses*;
- Comments on Bill 1, *An Act respecting the obligation to establish one’s identity before voting and amending other legislative provisions pertaining to elections*;
- Religious symbols and rituals in public institutions;
- Restrictions on the freedom of peaceful assembly in connection with municipal regulations;
- The position of the Commission des droits de la personne et des droits de la jeunesse concerning out-of-region placements and transfers (under the *Youth Protection Act*);

All these briefs and documents are available from the Commission’s Documentation and Information Distribution Centre.

1.7.2 The Work of the Members of the Complaints Committee (Charter)

Under the *Charter of Human Rights and Freedoms*, the Commission may form a complaints committee composed of three of its members, who are designated in writing, and may pass by-laws to delegate responsibilities to the committee. The President may form such committees by delegating, as stipulated by law.

In 1999, the Commission members sitting on the Complaints Committee held a total of 14 regular sessions and two special sessions, during which they closed 424 investigation files. They asked for additional investigations of legal opinions in 48 other cases, and decided to propose measures of redress in 45 cases.

By delegating, as stipulated by law, the President of the Commission may order the administrative closing of files in which settlements have been reached or the complaints have been

withdrawn. In 1999, 425 files were closed in this way, 221 of which were the result of settlements and 204 the result of withdrawals.

1.7.3 The Work of Members Sitting on the Investigation Committee (Youth)

Under the *Youth Protection Act*, responsibility for investigations lies with a group of at least three members of the Commission. This group is composed of the President or the Vice-President who is appointed pursuant to the second paragraph of section 58.1 of the *Charter of Human Rights and Freedoms*, together with two members designated by the President, drawn primarily from the commissioners who are appointed pursuant to the same paragraph.

In 1999, the Commission members sitting on the Investigation Committee held 14 regular working sessions and six special sessions, during which they examined 121 investigation files. In 103 cases, the Commission made a decision concerning a rights violation.

The processing of complaints, requests for interventions and investigations is described in Chapter 2 of Part 2 of this Report.

1.7.4 CASHRA – 1999

The President of the Commission is a *de facto* member of the Continuing Committee of Officials on Human Rights and of the Canadian Association of Statutory Human Rights Agencies, better known by its acronym CASHRA. He was President of the Association in 1999.

The Commission hosted the annual conference of CASHRA in 1999, held on May 30, 31 and June 1 in Montréal under the theme “Human Rights, A Springboard for a More Humane World.”

The conference was attended by 150 people from various human rights commissions and boards in the provinces and territories of Canada as well as representatives of non-governmental organizations. The conference was a clear success. The proceedings of the conference were sent to the participants.

In the year 2000, the annual CASHRA conference will be held under the auspices of the Alberta Human Rights and Citizenship Commission from May 7 to 9. The theme of the conference will be: “Making Human Rights a Way of Life: The Tools of Transformation”.

1.7.5 Children’s Advocates (CCPCA)

As in previous years (since 1994), the Commission, represented by Vice-President Céline Giroux, took part in the implementation and activities of the Canadian Council of Provincial Children’s Advocates.

Three inter-provincial meetings of the CCPCA were held in 1999. The first was held in Toronto in January, the second in May in Saskatoon and the third in October in Vancouver.

The first two meetings were reserved for provincial officials.

The Toronto meeting dealt with matters of the second report that Canada is to produce on the application of the Convention on the Rights of the Child and the celebration of its tenth anniversary; with the eventual creation of a position of Canadian Children’s Rights Commissioner; with projected amendments to the *Young Offenders Act*; with the judicial procedure tabled in Ontario to have section 43 of the Criminal Code declared unconstitutional; and with child visitation and custody rights.

In Saskatoon, the meeting was held with coroners and forensic pathologists of the provinces of Canada in order to obtain an overall view of the various existing systems of investigations concerning the deaths of children and of methods of prevention that could be developed, especially in relation with the “shaken baby syndrome.”

A meeting of certain representatives of the CCPCA was planned with youth-protection directors of all provinces concerning the long-term placement of children who are taken in charge.

In Vancouver, the annual three-day conference included several employees of the various provincial offices. A new member was welcomed, namely the Nova Scotia children’s ombudsman. There were discussions over the Alberta act on the sexual exploitation of minors and the revision of the act creating the office of Children’s Advocate; on the study of the needs of children placed in host families; on the problem of street children; on the frequent non-existence of services for 16–18 year-old adolescents; and on the scope of the role of “advocacy” from a systemic viewpoint.

Finally, it should be noted that the Quebec cell of the National Youth in Care Network (NYIC) is ready to be set up owing to the contribution of the Commission, which will continue to train these young people in order for them to better assert their rights.

1.8 Access to Information

The Secretary of the Commission is responsible by delegation for the application of the *Act respecting access to documents held by public bodies and the protection of personal information*.

In 1999, the Secretary answered 63 requests for access to documents held by the Commission. Three requests for reviews of decisions by the person responsible for access to documents were filed with the Commission d’accès à l’information, two of which were settled amicably before the hearings. One request for review went to a hearing.

Any consideration of a request for access requires the analysis of all the documents requested under the *Act respecting access to documents held by public bodies and the protection of personal information*, as well as the jurisprudence developed by the Commission d'accès à l'information. The time allowed to answer a request is 20 calendar days. Any refusal to gain access to a document must be based on legal grounds. After receiving the answer, the applicant has 30 days to ask for a review.

1.9 Committee for the Protection of Personal Information

The Commission has set up a Committee for the Protection of Personal Information in accordance with the Government Action Plan on the protection of personal information.

The committee met three times in 1999. It defined for the entire organization a general framework for the protection of personal information. It adopted and circulated a policy for the use of facsimile machines, prepared directives concerning access to the medical diagnosis of employees, the destruction of personal information, and measures to be implemented to insure the confidentiality of personal information during its processing.

The Administrative Services Department, in cooperation with the committee, is working toward the establishment of a policy pertaining to the security of information and informational assets on computer medium.

The committee's work was brought to the attention of the Commission's Coordination and Management Committee, and the Proceedings of the committee's meetings have been made available to all employees.

For the year 2000-2001, the Commission plans to intensify the training of personnel responsible for the protection of personal information, information and the awareness of all its employees on matters regarding the protection of personal information and the responsibility of one and all in this regard.

Chapter 2

The Administrative Framework

Administrative Services Department

2.1 Management and Administration

The President is responsible for the management and administration of the Commission's affairs. He chairs the sittings of the Commission.

In particular, the President and the Vice-Presidents must ensure that the mandates conferred on the Commission by the *Charter of Human Rights and Freedoms* and the *Youth Protection Act* are fully carried out.

2.1.1 Administrative Restructuring

In 1999, the Commission transformed its Communication Service to a Communications Department, linking it to the Documentation and Information Distribution Centre. In addition, it combined its responsibilities for education and cooperation under the Education and Cooperation Department.

2.2 Administrative Flow Chart*

2.3 The Administrative Units

The Commission has its head office in Montréal and it another office in Québec City, in accordance with the provisions of the Charter. Since it may also establish offices elsewhere in Québec, it has an office in each of the following cities: Sept-Îles, Rimouski, Chicoutimi, Trois-Rivières, Sherbrooke, Longueuil, Saint-Jérôme, Hull, and Val-d'Or.

2.3.1 The President's Office

The President's Office exercises the responsibilities arising from the duties conferred by the Charter and by the Act, and generally coordinates the Commission's affairs. The responsibilities of the Vice-Presidents depend on the mandates conferred on them by the President.

2.3.2 The Legal Department

The Legal Department handles the Commission's legal affairs. Its attorneys act in applications where the Commission supports the complainant, in motions where the Commission is the respondent or defendant, and in cases where the Commission intervenes in issues relating to human rights and youth rights.

The Legal Department is also called upon to provide legal opinions for the Commission and the members of its staff, and to answer requests of a legal nature from outside the Commission. It helps train staff members and contributes to raising the Commission's profile.

2.3.3 The Secretary's Office and the Investigation and Regional Representation Department

The Commission Secretary's Office prepares and follows up on the plenary sessions and the sittings of the investigation and complaints committees. It also uses computer-based systems to manage the intervention and investigation files of the human rights and youth rights sectors.

The Investigation and Regional Representation Department is composed of the Montreal office, the Québec City office and the regional offices, which are separate administrative entities.

The personnel in these offices respond to requests for information on human rights and freedoms and on youth rights, and refer requests for assistance that fall outside the Commission's jurisdiction to the relevant organizations. In the field of human rights, they examine the admissibility of requests for investigations, carry out investigations and, where necessary, help the parties to negotiate an amicable settlement. In the field of youth rights, they verify that the Commission has jurisdiction to act, intervene to remedy situations and, where necessary, carry out investigations. The offices are also asked to participate in investigations undertaken on the Commission's own initiative, in the field s of both human rights and youth rights.

In addition to answering requests and carrying out investigations, the Department's employees offer information services and, like the Commission's other departments, cooperate with organizations dedicated to the promotion and defence of human rights and freedoms and youth rights.

2.3.4 The Research and Planning Department

The Research and Planning Department analyzes Québec's legislation to ensure that it complies with the Charter. It prepares and drafts the comments, opinions and briefs used as a basis for the Commission's recommendations to the National Assembly, the Government and other intervenors, as part of its mission under the Charter and the *Youth Protection Act*. It carries out research and publishes legal or socio-economic documents on the scope and application of human rights and freedoms and youth rights. The Department also prepares intervention tools for complaint processing and rights-promotion activities, and assists in the preparation of reports on the implementation of international human and youth rights instruments in Québec. It provides the Commission's staff with specialized training. Lastly, the members of the Department help raise the Commission's public profile by giving speeches and acting as resource persons or experts at conventions and conferences, and by sitting on scientific-appraisal and research-preparation committees.

The Department also oversees the Commission's strategic and operational planning.

2.3.5 The Affirmative Action Programs Department

The Affirmative Action Programs Department helps develop voluntary affirmative action programs in the employment, education and health sectors, and in any other service ordinarily offered to the public. It is also responsible for overseeing the implementation of programs recommended by the Commission following an investigation or ordered by a court, and acts as a consultant for the Government prior to the implementation of affirmative action programs in government departments and bodies. In addition, it provides expert services to the Conseil du trésor (Government Suppliers File) and other government departments by helping to assess whether or not businesses have fulfilled their commitment to establish affirmative action programs for women, visible minorities and Aboriginal people under the Québec government's Contract Compliance Program.

2.3.6 The Education and Cooperation Department

The Education and Cooperation Department develops and implements the Commission's information and education programs, which are designed to help the public understand and accept the intent and provisions of the Charter, and to inform the public in general, and children and adolescents in particular, of their rights. It offers training sessions for all the Commission's clients.

The Cooperation Department oversees and gives impetus to the Commission's relations with organizations, associations and groups dedicated to the promotion of human rights and freedoms and youth rights in Québec and elsewhere, in accordance with the Commission's mandates. Its main role is to promote and defend group interests by means of education and awareness-raising activities, but it also helps organize special motivational or discussion events, always in conjunction with partners.

2.3.7 The Communications Service

The Communications Service provides the Commission with an appropriate and effective communication channel with the people of Québec through various means of communication, including the written and electronic media. The Service is responsible for preparing and producing the Commission's information tools, and promotes the circulation of information within the Commission.

The Rights Information Centre forms an integral part of the Communications Service, and its mission is to support all internal and external clients by providing documentation and information.

2.3.8 The Administrative Services Department

The Administrative Services Department provides the entire Commission apparatus with administrative support for its human resources and labour relations, financial and material resources and computer resources. It plans, coordinates and controls the activities related to these resources.

2.4 The Commission's Human Resources

Pursuant to section 62 of the *Charter of Human Rights and Freedoms*, the Commission appoints the members of its personnel. The authorized workforce to the 1999-2000 budget year was 155 FTEs (full-time equivalents). On December 31, 1999, the permanent workforce was 138 persons.

2.4.1 Distribution of Permanent Employees in the Administrative Units

The members of the Commission's personnel are distributed as follows: 74% in Montréal, 7% in Québec City and 19% in the regional offices.

2.4.2 Presence of Target Group Members in the Workforce

2.4.3 Special Programs

In 1999, 30 persons benefited from the plan to organize and reduce working hours. One executive, 14 professionals and 15 technicians and office employees took advantage of the plan.

For 1999, the Commission fulfilled the obligation to invest at least 1% of its payroll in training. It spent \$196,560, investing 4,188 hours for eligible training expenses both internally and externally.

2.4.4 Labour Relations

In 1998, two groups (the CSN and the SPGQ) had filed an application to represent all or part of the Commission's unionized personnel. In a decision handed down on January 14, 1999, the Labour Commissioner allowed the application filed by the CSN union and accredited the Syndicat des employées et employés de la Commission des droits de la personne et des droits de la jeunesse.

In the last months of 1999, the Union and the Commission began negotiation sessions in order to reach an agreement on a new labour contract.

TABLE 1 Permanent Workforce of the Commission des droits de la personne et des droits et des droits de la jeunesse on December 31, 1999

	Executives	Professionals	Technicians	Office Staff	Total
President's Office and Vice-Presidents	—	—	—	2	2
Legal Department	—	7	—	3	10
Secretary's Office and Investigation and Regional Representation Office	1	16	4	7	28
Montréal Regional Office	—	4	—	1	5
• Longueuil	1	5	1	3	10
Québec City Regional Office	1	2	—	1	4
Regional Offices - Department	—	1	—	1	2
• Chicoutimi	—	1	—	1	2
• Rimouski	—	1	—	1	2
• Sept-Îles	—	2	—	1	3
• Trois-Rivières	—	2	—	1	3
• Hull	—	1	—	1	2
• Val-d'Or	—	1	—	1	2
• Sherbrooke	—	4	—	1	5
• Saint-Jérôme	1	8	—	2	11
Education and Cooperation Department	1	5	1	1	8
Affirmative Action Programs Department	1	7	—	2	10
Research and Planning Department					

Administrative Services Department	1	4	3	4	12
Communications Service	1	5	2	2	10
TOTAL	9	79	12	38	138

The positions of President and Vice-President are not included in the total workforce calculation.

TABLE 2 Presence of Target Group Members in the Workforce*

	CATEGORIES									
	Executives		Professionals		Technicians		Office Staff			
	Total									
Target Groups (n)	N	%	N	%	N	%	N	%	N	%
1. Aboriginal people	—		1	(1.3%)	—		—		1	0.7%
2. Women	4	(44.4%)	40	(50.0%)	12	(92.3%)	45	(95.7%)	101	67.8%
3. Minorities:										
- ethnic	—		8	(10.0%)	—		—		8	5.4%
- visible	1	(11.1%)	4	(4.9%)	1	(7.7%)	2	(4.3%)	8	5.4%
4. Handicapped people	—		1	(1.2%)	1	(7.7%)	1	(2.2%)	3	2.0%

* In addition to the permanent workforce (138 people) shown in the previous table, the above table includes eleven (11) includes eleven (11) people employed on a temporary basis, i.e. as replacements for permanent staff or as supernumeraries. This supplementary workforce can be divided into the following categories: professionals 1, office staff 9, and technicians 1.

Chapter 3

The Budget Framework

3.1 Financial, Material and Operational Resources

TABLE 3 Financial Resources Budget 1999-2000

Categories	Credits	
	1998-1999	1999-2000
Salaries	\$6,598,900	\$6,848,900
Operations	\$2,428,300	\$2,481,100
Capital	\$65,000	\$80,000
Advance	\$3,000	\$3,000
TOTAL	\$9,095,200	\$9,413,000
Amortization		\$45,800

The 1999-2000 budget was adjusted by an amount of \$250,000 in order to palliate recurrent underfunding of the payroll. Despite this addition, the problem of funding salaries is not completely resolved. Recourse to additional credits is therefore necessary to balance this budget item.

As in past years, the Commission benefited from specific credits (\$23,000) to hire students during the summer of 1999 and for trainees.

During the year, the Commission moved some of its offices. The Québec City office moved, as well as the Saint-Jérôme, Trois-Rivières and Longueuil offices, and the Rouyn office went to Val-d'Or. At the Montréal head office, a major reorganization was undertaken in the last months of 1999 following a proposal by the owner of the occupied building.

The Commission installed a new telephone system for its head office in Montréal. This change was required to ensure greater reliability, increase the flexibility of operations and render the voice-mail system year-2000 compliant. The Commission's other offices also benefited from new technologies in order to improve customer service.

3.2 Computer Development

In 1999, the Commission continued to implement its computer development plan undertaken in previous years.

The development of a communications server and the connection to the Internet system was carried out on a priority basis in order to facilitate the circulation of information.

The Commission was required to ensure the compliance of its systems and hardware for the transition to the year 2000. After developing an action plan, a statement of work progress was produced regularly in order to ensure an effective control of this operation. The largest project was related to the conversion of three sub-systems of the Affirmative Action Programs Department. A contract was entrusted to a specialized firm in order to carry out this conversion.

At the end of November 1999, the Commission confirmed that the work concerning the adaptation to the year 2000 was completed for the systems and their technological infrastructure as well as for the hardware and the occupied buildings.

The Commission also undertook the development of various data bases required for its operations. In addition, a common address base for mailings, an application for the management of the workforce and salaries, as well as a management base for the management of "Youth" files were developed and now meet management requirements.

Part Two

Promoting and Defending Rights in Everyday Life

Chapter 1

Research — The Core Element of Social Choice

Research and Planning Department

In 1999, the Research and Planning Department prepared most of the Commission's briefs, official opinions, studies, and recommendations. Its professionals provided expertise to Commission staff and the public, answering 195 requests for legal consultation and socio-economic expertise submitted from both inside and outside the Commission. In connection with their mandate to examine the compliance of legislation with the Charter, they analyzed 109 parliamentary bills or draft bills tabled before the National Assembly, as well as each regulatory text and order in council published in the *Gazette officielle*. The Commission's most noteworthy research activities carried out in 1999 are provided below, grouped by theme.

1. Right to Equality and Non-discrimination

Under the theme of the right to equality and non-discrimination, guaranteed by section 10 of the Charter, The Research and Planning Department prepared numerous opinions and studies, in addition to causing other departments of the Commission, in particular the Investigations Department and the Legal Department, to benefit from the expertise of its professionals.

1.1 Recognition of *De Facto* Spouses

Since 1978, the Commission has been pressing the legislator to repeal a section of the Charter that legitimizes certain forms of discrimination based on sexual orientation. In this respect, the Commission impatiently awaited the recognition of *de facto* spouses of the same sex in all Québec legislation, in the same capacity as heterosexual *de facto* spouses. Bill 32 (*An Act to amend various legislative provisions concerning de facto spouses*, adopted by the National Assembly in June) met this expectation, but the Commission suggested certain improvements to the legislator.

The Commission suggested that a general, interpretive provision, similar to the provisions set out in the regulation, be set out to ensure that in all legislations where rights are granted to *de facto* spouses, these rights would also be granted to same-sex spouses. In addition, the various definitions of *de facto* spouses vary, in particular regarding the length of common life that is required and regarding the requirement or lack of same that persons present themselves publicly as spouses. The Commission recommended that the legislator proceed as quickly as possible with a revision of these various definitions in order to make them uniform.

1.2 “Orphan” Clauses

The Commission continued to play an important role in the debate concerning disparity-of-treatment — or “orphan” clauses — by presenting a brief to the National Assembly on Bill 67 — *An Act to amend the Act respecting labour standards as regards differences in treatment*, which was passed in December. In this brief, the Commission identified certain gaps in the Bill, in particular deploring the fact that only “orphan” clauses with a permanent effect are prohibited, whereas the law does not prohibit, for example, a lengthening of the period enabling new employees to attain the same working conditions as older employees. On the other hand, the Commission's recommendations pertaining to the immediate coming into force of the law and its permanency were followed by the legislator.

1.3 Religious Symbols and Rituals in Public Institutions

Having been seized with complaints contesting the reciting of prayers in certain municipal councils, the Commission requested the Department to inform it of the attitude to adopt when complaints involve the use of religious rituals or symbols in Québec public institutions. The Department prepared a study, which was adopted by the Commission in November. The situation

is analyzed in it in light of comparative law, constitutional law and Charter provisions pertaining to fundamental freedoms of conscience and religion and the right to equality.

The Commission concluded that the Charter does not object to the expression of a faith or a religious membership that are otherwise legitimate in a pluralistic society, provided that no constraint is exercised on the behaviour of individuals. In this regard, with exceptions, the presence of a *religious symbol* in a public institution will not raise any particular problem from the viewpoint of the Charter. Clearly more problematical, on the other hand, will be the existence of pressure to compel someone to participate against his will in a *religious ritual* such as prayer, or to reveal his beliefs (or non-beliefs). To the extent that such pressure affects a fundamental freedom, it justifies the intervention of the Commission, whether it be in the capacity of its general mandate to promote the principles of the Charter or in connection with its jurisdiction to investigate (the harm generally also including a discriminatory aspect).

The Commission also points out that through religious symbols and rituals, public institutions project an image of what is, or should be, the state nation. From this viewpoint, the presence of religious symbols and rituals in public institutions also presents a challenge of political ethics. In fact, the presence of religious symbols and rituals in public institutions asks the fundamental question of the relations between the State and citizens of various beliefs and traditions. It is becoming increasingly difficult to justify such practices to the extent that they are likely to undermine, among citizens who do not see themselves in them, an attachment and a confidence towards public institutions. In the opinion of the Commission, institutions that have abolished religious symbols or replaced prayer by more neutral actions, such as the observation of a moment of silence or meditation, demonstrate one of the courses to take. The Commission's conclusions in this regard were transmitted to numerous intervenors.

1.4 Discrimination Based on Pregnancy

In the area of discrimination based on pregnancy, the Department is frequently called upon to provide its professional expertise to other departments of the Commission as well as to external intervenors. In 1999, a Branch professional prepared an appraisal in connection with a dispute (that was the subject of an amicable settlement) before the Human Rights Tribunal, and testified as an expert before the arbitration tribunal. This testimony highlighted certain discriminatory consequences that may arise from the interruption of work for maternity or parental leave, for example the reduction in vacation pay or the loss of a job.

1.5 Discrimination Based on Sex

A Branch professional testified as an expert before the Human Rights Tribunal in connection with a dispute between the Commission and the Sûreté du Québec (T.D.P. no. 450-53000001-996). This dispute pertains to the (non-)discriminatory character of job requirements differentiated according to sex, in relation to hair length. The testimony presented by the Branch professional pertains to the changes in social perceptions in relation to the wearing of men's hair. This case is under advisement.

1.6 Discrimination Based on Social Condition

A Branch professional testified as an expert before the Human Rights Tribunal in connection with a dispute between the Commission and an owner who refused to rent housing to a person because of the uncertain nature of the person's income (Commission des droits de la personne et des droits de la jeunesse c. Sinatra, T.D.P. no. 500-53-000102-986). The Tribunal found in favour of the Commission, which alleged that the complainant, a short-term freelance worker, had been the victim of discrimination based on his social condition. The judgment relied on the testimony of the Commission's expert, who highlighted the negative prejudice that is generally attached to this type of job status.

1.7 Pay Equity

The Branch acted as a consultant to the Commission's Legal Department in connection with the preparation of a pay-equity dispute involving Université Laval (T.D.P. no. 200-53-000013-982). The Department's contribution consisted, in particular, of carrying out a critical analysis of the expert's report filed by the respondent. The case is under advisement. The Department also contributed to the orientation of several of the Commission's investigations in this area.

1.8 Follow-up of the Review of Affirmative Action Programs

After contributing actively to the preparation of the Review of affirmative action programs prepared by the Commission, the Branch participated in 1999 in the public launch of the Review. It is currently cooperating with the Affirmative Action Programs Branch in following up the recommendations of the Review as well as in the preparation of a data-gathering grid for use in the next review, planned for the year 2002.

In June, the Research and Planning Branch and the Affirmative Action Programs Branch jointly prepared the Commission's comments on Bill 51 (*An Act to amend the Public Service Act and the Act respecting the accountability of deputy ministers and chief executive officers of public bodies*). The Commission based most of its comments on one of the measures proposed in the Bill (which was eventually passed), namely the abolition of selection according to level, which is intended to increase the presence of members of certain target groups within the public service. According to the Commission, this measure, in addition to being premature, includes certain risks: that of introducing a certain arbitrariness in the public-servant selection process and that of discrediting the applications of target-group members that are eventually accepted. The Commission recommended that before abolishing ranking by level, a re-assessment should be made of the current applicant-selection tools and methods and that the prejudicial effects which are observed should be corrected. The Commission also reiterated all the recommendations made in the Review.

1.9 Ethnic and Racial Discrimination in the Montreal Housing Sector

In 1999, the Commission continued the study on the phenomenon of ethnic and racial pockets that are observed in certain residential areas of Montréal. The object of this research is to better understand the logic on which the selection process of certain owners is based, and the results will facilitate the Commission's investigative work in the housing sector.

1.10 The Charter and Collective Labour Relations

The Commission is also continuing the study of the implementation of the right to equality in collective labour relations undertaken with Montréal's Research Centre on Public Law. This large-scale project, dealing with a corpus of over 200 arbitration awards and judgments of the Human Rights Tribunal, is interested in the consequences of the duality of competent forums (Commission and Tribunal, grievance arbitrators) on the implementation of the right to equality. In particular, the project will enable the evaluation and, if need be, the recommendation of options that are likely to ensure a genuine primacy of the right to equality in collective labour relations.

2. The Right to be Protected Against Any Form of Exploitation

On the occasion of the International Year of Older Persons, the Commission undertook to evaluate the effectiveness of its interventions regarding section 48 of the Charter, which gives any aged person the right to protection against any form of exploitation. In particular, the Commission decided to hold large public consultations in this regard at the beginning of the year 2000. However, in an initial step, the Commission asked the Department to examine the problems raised by section 48. The working document prepared on this question highlights certain application problems due, in particular, to the vagueness of the notice of exploitation, the problem of acting legally when certain information exchanges are necessary and finally, more broadly, the effective coordination of all possible intervenors. The working document served as a basis for the

consultation document, which forms the framework of the public hearings in the spring of 2000 and will direct the Commission's subsequent work.

3. The Protection of Fundamental Rights and Freedoms

The fundamental rights and freedoms guaranteed by the Charter are a major field of intervention and preoccupation for the Commission. In 1999, the Commission dealt with the following areas in this regard.

3.1 The Surveillance of Employees Absent for Health Reasons

Employers or, occasionally, administrative organizations with employees who are absent for health reasons may have them followed in order to determine whether they are carrying on activities that are incompatible with their presumed state of health. The procedure generally consists of following, for a few days, the comings and goings of the employee on leave, as well as recording on videotape the activities of the employee when he is at home, on his property in particular, and even inside his residence using a telephoto lens.

The Commission considered this practice to be of sufficient concern to justify an official notice based on the provisions of the Charter. The notice first states that the shadowing and the surveillance by videotape recording of employees absent for reasons of health interferes with the right to respect private life guaranteed by section 5. The Commission stated that the reasonable expectation of respect for private life exists even when the employee is found in a public place or a place that is visible to the public. Moreover, the employer cannot claim that the status of the employee includes a relinquishment of private life on the employee's part since relinquishment in this case cannot be considered free.

However, in accordance with the principle set out in section 9.1, the existence of such surveillance may be justified as a last resort in certain situations. In such cases, the employer or the administrative organization assumes the burden of proving that conditions for the application of section 9.1 are met. In particular, the employer or the administrative organization must meet the criterion of minimal interference with the right to respect for his private life. Any means of investigation not interfering with private life must be used first; shadowing and video surveillance must only be used if there is no other adequate method. In all cases, the triggering of a surveillance procedure must be based on serious, specific and consistent grounds and not simply on impressions. Finally, the surveillance must always refer to a particular situation. Shadowing or generalized surveillance of employees absent for health reasons or surveillance done randomly represent unacceptable interference with the right to respect for private life.

In the ruling *Syndicat des travailleurs de Bridgestone-Firestone (CSN) c. Bridgestone-Firestone Canada* (C.A.M. 500-09-001456-953), the Court of Appeal of Québec considered that the Commission's opinion "*clearly identified the nature and the limits of the right to the protection of private life in such a context.*" The principles set out by the Commission were reiterated by the Court of Appeal.

3.2 The Place of Religion in Schools

In the wake of the Proulx report on the place of religion in schools, the Commissions presented a brief to the National Assembly. The brief addresses five aspects: the denominational status of schools, teaching content, pastoral activities, the denominational character of corporate structures, and the use of notwithstanding clauses to justify privileges currently granted to the Catholic and Protestant denominations, and interference with the fundamental freedoms of conscience and religion, as well as the right to equality arising therefrom.

In Québec, the recourse to a notwithstanding clause is at times presented as a legitimate method of accommodating relations between school and religions. According to this thesis, historical or cultural factors specific to a society could therefore justify certain discrepancies in relation to "disembodied" legal standards, such as that of equality. Therefore, in the current debate

on the place of religion in schools, it may be said that the recourse to notwithstanding clauses would be an acceptable measure to take because the importance of the Christian heritage in Québec is reflected in the organization and operation of the school system.

The Commission undertook to set the record straight in the face of what it considered a trivialization, if not a perversion, of the recourse to notwithstanding clauses. It noted that the recourse to notwithstanding clauses to justify certain denominational privileges went directly against international legal instruments, according to which no clause of this type must interfere with the freedoms of conscience and religion, or entail discrimination based on religion. The Commission also pointed out that recourse to a notwithstanding clause was to be at the service of rights and freedoms, and therefore must not serve as a pretext to legitimize measures interfering with a right without being able to justify itself by the protection of another right. In the case at hand, none of the denominational privileges granted in Québec can be claimed under the Charter or under a universally shared conception of human rights. The Commission therefore formally exhorted the legislator to abolish the notwithstanding clauses in force and, with the prospect of a reform, to abstain from resorting to new notwithstanding clauses.

Regarding the substance of the question, the Commission recommended the abolition of the confessional status of schools and corporate structures, this status being contrary to the fundamental freedoms of conscience and religion as well as the right to equality. It requested the abolition of Catholic and Protestant religious teaching, leaving it up to the legislator, however, to determine whether such teaching should be replaced by the cultural teaching of religion. Concerning pastoral activities, the Commission pointed out the discriminatory nature of current arrangements, which limit such activities to the Catholic and Protestant religions, and urged the legislator either to create a common pastoral-activities service or to abolish them in any form.. Finally, to facilitate the implementation of its recommendations, the Commission urged the legislator to reword section 41 of the Charter, which, while requiring the State to organize religious teaching in public school, goes well beyond what is provided for by the pertinent international legal texts.

3.3 Restrictions on the Freedom of Municipal Demonstration

Seized by a citizen of certain restrictions on the freedom of peaceful assembly and demonstration in a municipality, the Commission adopted an official opinion dealing with restrictions on these freedoms in municipalities. In this opinion, the Commission pointed out that the restrictions on the right to demonstrate, established by municipal by-law, conflict with the freedom of expression and, accordingly, with the freedom of peaceful assembly, as guaranteed by section 3 of the Charter. In all cases, it is up to the city or town concerned, if there is a dispute in this regard, to show that the limitations on the right to demonstrate remain compatible with the requirements of section 9.1. In particular, it must be shown that these restrictions interfere as little as possible with the freedom of expression and peaceful assembly, and comply with the constitutional objectives and values that underlie these freedoms.

For example, the Commission considered, in the case with which it was seized, that the obligations pertaining to security, liability insurance, and the assistance of a private security agency, in the current state of the municipal by-law which left the decision to impose requirements to the entire discretion of the police chief, did not comply with the criterion of minimal interference.

3.4 Posting of Corporate Names and Trademarks

At the request of the Conseil de la langue française, the Commission produced an official notice to identify the leeway the legislator has to regulate the public posting of corporate names and trademarks, taking into account the legal guarantees applicable to the freedom of commercial expression. On the basis of Québec, Canadian and international legal texts and case law, the Commission concluded that the posting of a corporate name or a trademark was to be considered

as arising from the exercise of the freedom of commercial expression. However, the exercise of this freedom must be the subject of limits aimed at ensuring and maintaining the French fact of Québec. In this case, to the extent that they provide for the predominance of French, the current provisions of Bill 101 interfere with the freedom of commercial expression. However, this interference is justified because the use of another language is permitted. If the latter requirement is respected, any measure aimed at ensuring the French face of Québec will meet the requirements of the aforementioned texts, according to the Commission.

3.5 Identification of Voters

The Commission examined Bill 1 — *An Act respecting the obligation to establish one's identity before voting and amending other legislative provisions pertaining to elections*, which was passed in June. After analysis, it concluded, taking into account the amendments tabled before a parliamentary committee, that the Bill did not interfere with the rights and freedoms recognized by the Charter. In fact, provisions enable a voter who has none of the identification documents set out in the Bill (health insurance card, driver's licence, Canadian passport) to identify himself by means of other documents or by asking a person accompanying him to make a sworn statement.

3.6 Unified Management of Identity

The Commission participated, as an observer, in the Table de concertation sur la gestion unifiée de l'identité set up by the Direction de l'état civil of the Ministère des Relations avec les citoyens et de l'Immigration. The interventions of the rights-protection organizations (Commission des droits, Public Protector, Commission d'accès à l'information) enabled the orientation of the draft on the unified management of identity to be modified in order that it might better respect the principle of the partitioning of information files set out in the *Access to Information Act* and take more account of citizens' rights to the respect of their private life.

3.7 Acceptance and Treatment of Cognitively Impaired Persons in the Judicial System

The Commission is participating in the work of the Table de concertation sur l'accueil et le traitement des personnes ayant une déficience intellectuelle au sein du système judiciaire. This table was set up in the wake of a study produced by the Commission in 1997. Its mission is to propose concrete measures by which to accept and treat the people concerned, whether they be accuseds, victims or witnesses. Among the challenges discussed around this table, which combines the areas of justice, rehabilitation and the defence of rights, are: mechanisms to identify persons who are cognitively impaired and the dangers of stigmatization; the partitioning of services; the dangers of incarceration; the distinction between representation mechanisms and accompaniment; and the respect for confidentiality.

3.8 Psychological Harassment in the Workplace

In September, the Commission joined the interministerial committee on psychological harassment, set up by the Ministère du Travail. This committee has the three-fold mandate of examining psychological harassment in the workplace, consulting those involved and formulating recommendations to the Minister of Labour for the end of the year 2000. Various pieces of research are planned in connection with the mandate, one of which is under the jurisdiction of the Commission and is aimed at identifying the causes, consequences and manifestations of psychological harassment in the harassment complaints it handles.

3.9 Criminal Records of Persons Called Upon to Work With Vulnerable Clients

In 1999, the Commission ensured the follow-up of the opinion on the police verification of criminal records of persons called upon to work with a vulnerable clientele described in its 1998 annual report. This opinion was presented at a session which included the Commission's partners. The Commission was subsequently consulted on several occasions to comment on the modified verification protocols.

4. Protection of Rights and Interests of Children

The Department dealt with the following matters connected with children's rights and interests.

4.1 Penal Justice for Young Offenders

In December, the Commission adopted a brief addressed to the House of Commons Justice and Human Rights Committee, in connection with the examination of Bill C-3 — *Youth Criminal Justice Act*. The Commission considers that the approach proposed in the Bill is in opposition to the re-education intervention framework which Québec has been able to develop successfully over the years, with the utmost respect for the principles of the *Young Offenders Act*. The Commission also said it was very concerned about the shift that the Bill represents with regard to the respect of several rights of adolescents, including the right to their private life.

For the Commission, the repressive approach espoused by the Bill undoes the balance of such principles and even goes so far as to eliminate the right to treatment from any intervention with minors, therefore making it difficult for them to reintegrate into society. Moreover, the proposed reform does not respect the principles recognized in international law, in particular the *Convention on the Rights of the Child*. The objectives underlying Bill C-3 will lead to a restricted intervention regarding young offenders which will not, in the treatment of young accuseds, take into account their development and their situation. Convinced that a law based on this approach would go against the interests of young Quebecers and would run counter to their rights, particularly the right to be treated in consideration of their degree of development and maturity, the Commission des droits de la personne et des droits de la jeunesse recommended that the federal legislator not adopt Bill C-3.

4.2 The Beaumont Affair

In October, the Commission ended its intervention before the Centre jeunesse de Québec, the establishment responsible for ensuring the protection of the children concerned by the Beaumont Affair (see the Commission's 1998 annual report). The Commission recognized the relevance and the scope of the changes made to the organization and the operation of the establishment. It is of the opinion that these changes are likely to substantially improve the quality of the social services given to all children benefiting from the protection system in the Québec City region. To the extent that their implementation will be rigorous, these changes are likely to prevent the repetition of a situation comparable to that which was observed in the investigation of the case of the mistreated children in Beaumont.

Moreover, the Commission decided to pursue its interventions before the Minister of Health and Social Services, who, in October 1999, had given no response to the recommendations that had been sent to him in April 1998 at the end of the investigation of these children's cases. The recommendations concerned, in particular, the adoption of an internal by-law by each establishment, the setting up of interdisciplinary health teams, the obligation for an intervention plan, and the certification of establishments.

4.3 Child Employment

The Commission presented to the National Assembly a brief on Bill 50 — *An Act to amend the Act respecting labour standards and other legislative provisions concerning work performed by children*, which was adopted in November. It considers that the prohibition against night work for any children subject to the obligation to attend school, which is provided for by the Bill, was fully justified. However, it is concerned about the fact that the prohibition against night work may be circumvented in cases provided for by regulation. The Commission urged the government to use this regulatory power only with the greatest circumspection.

The Commission is delighted by the fact that its recommendation to subject employers of not-for-profit organizations to the same obligations as other employers, concerning the minimum age of access to employment, has been followed by the legislator. However, it regrets that holders of

parental authority may consent that a child work even when he has not attained the minimum age prescribed. On this point, the legislation is not formally in agreement with the provisions of international law, which do not provide for such consent. Finally, the Commission deplores that no weekly limit to the duration of children's work has been established.

4.4 Allowance for Handicapped Children

In March, the Commission adopted *Commentaires relatifs au projet de règlement sur l'allocation pour enfant handicapé*, which it addressed to the Régie des rentes du Québec. Following the analysis of a provision of the draft regulation which set out the discontinuance of allowances for handicapped children when the treatments or measures likely to improve their conditions were not applied or followed, the Commission formulated two recommendations intended to minimize the interference that the application of this provision would have been likely to entail.

First, it recommended that section 10 of the regulation provide for the suspension of the allowance, rather than the discontinuance of the right, by invoking that this sanction would not have such damaging effects for the child since the suspension could end once the conditions were again complied with. The Commission also recommended that the provision be worded in such a way that the suspension of the right occur only when the refusal to apply or follow the treatments or measures likely to improve the condition of the child is based on an invalid reason. This modification was aimed at protecting the right to the child's integrity, which includes the right to choose his treatment.

Taking into account these two recommendations, the government modified the provisions in the manner proposed by the Commission. Enacted in December 1999, the *Regulation respecting the allowance for handicapped children* came into force on February 1, 2000, pursuant to Order in Council 1480-99 dated 17 December 1999, (2000) 132 *Gazette officielle* II, p. 13.

4.5 Children Who are Victims of Certain Abuses, Ill Treatment or an Absence of Care

The Commission was invited by the Ministère de la Justice to comment on a multisectorial draft agreement pertaining to children who are victims of sexual abuse, physical ill treatment, or an absence of care threatening their physical health. It pointed out that the concerted approach should respect the rights of all parties involved (child, family members, presumed abuser). The Commission observed that the draft agreement concerned all the elements that make a concerted approach successful in this context, namely: a precise definition of the responsibilities of each of the participants involved, prior and renewed training of intervenors, an adaptation of the rules of confidentiality, and a valid mechanism for monitoring and evaluation. However, the Commission noted that certain aspects were insufficient and made several suggestions in this regard.

4.6 Police Intervention in Schools

The Commission prepared new comments on reworked versions of the draft *Cadre de référence relatif à la présence policière dans les établissements scolaires*, drawn up by the *Table de concertation sur la violence, les jeunes et le milieu scolaire* (see Commission's 1998 annual report). Its comments deal particularly with the guidelines that are proposed regarding the search of students' lockers and the repercussions of these guidelines on the respect of the right to students' private lives.

4.7 Isolation Measures

The implementation of policies and standards pertaining to the use of isolation measures remains a constant preoccupation of the Commission. From this standpoint, Branch staff have maintained regular cooperation with the Commission's Investigation Branch in order to support the Youth Centres that have decided to establish a system for monitoring the use of these measures.

During the year, work was continued with the staff of the Batshaw Youth and Family Centres. This work, which will end during the year 2000, has already enabled the identification of various elements with which to organize programs that should be modified in order to maintain the exceptional character of the withdrawal measures.

5. Fight Against Poverty

Under the theme of the fight against poverty, the Department followed up previous recommendations and collaborated with the other Commission departments in the preparation of strategies for fighting against interference with rights and freedoms arising from poverty.

5.1 Income Security Reform

The Commission was delighted with the indefinite postponement of the coming into force of certain legislative provisions, which were introduced in 1998 during the reform of income security, and which set out the direct payment to the landlord of the portion of the income security payment devoted to accommodation. It will be recalled that the Commission had always doubted the existence of a non-payment problem specific to income security recipients, and that it had serious reservations regarding the impact of that measure. The Commission noted with satisfaction that at the time of announcing its decision to stay the coming into force of this measure, the government publicly acknowledged the merit of the Commission's previous representations.

However, the Commission continues to be concerned about the future coming into force of the provisions pertaining to the obligation, for young people under 25 years of age, to participate in an integration program or to incur a financial penalty. The Commission explained in its 1998 annual report why it considers that this measure, slated to come into force in the autumn of 2000, did not meet the criteria of rationality and proportionality that permit an assessment of the validity of interference with the right to equality.

5.2 Direction of the Commission's Activities

A few years ago, the Commission established an internal committee of various departments, dealing with poverty. The committee is entrusted with consulting and stimulating the work and reflection related to the issue of poverty and with directing the Commission's initiatives in this regard. A representative of the Branch is actively participating in the work of this committee.

6. Institutional Research on Complainants and the Commission's Investigation Process

Any public organization must follow up on its clients and periodically evaluate the results of its interventions. The Commission is currently conducting certain studies on the results of its investigative interventions. In 1995, it began a cycle of studies on the various components of its investigation process, including complainant profiles, investigation times and outcomes, factors governing withdrawals and file closures, and difficulties encountered in establishing evidence. A comparative analysis of complainants in the Montréal office in 1995 and 1997 was carried out, as well as exploratory studies dealing with unsettled files on the grounds of "sex" and "pregnancy". However, as in previous years, the completion of these projects will depend on the Commission's progress in computerizing the relevant data.

7. Other Matters of Interest

7.1 Autonomy and Independence of the Commission

In the month of August, the Branch took cognizance of the government policy statement preceding the tabling of Bill 82 — *Public Administration Act*. It drew the Commission's attention to the risks which several measures that were provided for in the policy statement involved, in regard to its independence and autonomy vis-à-vis the government, in particular concerning the approval of its strategic plan by the government and the tabling of its annual report before the National Assembly. The Commission's concerns were conveyed to the Conseil du trésor. This preliminary analysis permitted the subsequent adoption of a resolution in which the Commission

members were unanimously opposed to the fact that the Commission was among the public organizations concerned by the Bill. The Commission is continuing its efforts in order to preserve the independence and autonomy that are essential to the accomplishment of the mandate entrusted to it by the National Assembly.

7.2 The Implementation of International Human-Rights Conventions

The standards contained in the international legal instruments pertaining to human rights are a source of constant inspiration to the Commission in connection with its activities. In compliance with an agreement entered into in 1987, the Commission contributes to the preparation of official reports from Québec to international authorities, by making periodic reports of its activities (the preparation of the final report being made by governmental authorities. In 1999, the Commission reported on its activities in the application of the *Convention 111 on Discrimination in Employment and Occupations* of the International Labour Organization (OLI), for the period extending from July 1, 1997 to May 31, 1999.

Pursuant to the same agreement, the Commission is participating, as an attentive and heard observer, in the work of the Federal-Provincial-Territorial Continuing Committee of Officials on Human Rights. In this respect, the director of research and planning participated in the meetings of this committee held in Montreal in May and in Hull in December.

Finally, after an agreement with the Ministère des Relations internationales, the Department prepared an information document entitled *Le dispositif juridique et administratif de lutte contre la discrimination raciale au Québec et ses résultats d'application*. This document is destined to be used in the preparation of the World Conference on Racism and Discrimination, which will be held under the auspices of the United Nations in 2001.

8. The Commission's Visibility

The Branch members are frequently asked to share the results of their research at conferences, seminars and other public events that help enhance the Commission's visibility.. In 1999, the following activities were undertaken:

8.1 Assistance With the Design of Events Organized by the Commission

Department professionals helped designed two major events organized by the Commission, namely the *Forum on "Orphan" Clauses* on April 12 and the *Forum on Street Kids* on November 16. The Department members contributed to the general orientation of these events, the choice of themes as well as the choice of speakers. They also worked on the subsequent publication of the Proceedings of these forums, in addition to hosting certain sessions and acting as workshop reporters. Moreover, the Department participated in the planning of the activities organized by the Commission to mark the 10th anniversary of the *Convention on the Rights of the Child*.

A Branch professional was also a member of the program committee of the International Conference on Isolation and Contention Practices, held in November under the auspices of the A.G.I.D.D.-S.M.Q., at which several Commission representatives participated as speakers.

8.2 List of Conferences and Scientific Papers Presented by Department Members in 1999

Forum on Equity Between Generations and "Orphan" Clauses, Montreal, April 12:

- Michel Coutu, "Equity Between Generations and "Orphan" Clauses: Impact of the *Charter of Human Rights and Freedoms*"

Conference on Human Rights and Freedoms and Labour Relations, organized jointly with the Centrale de l'enseignement du Québec, Montréal, May 20:

- Claire Bernard, "The Right to Dignity and the Right to Respect for Private Life in the Workplace: Medical Examinations and Drug Screening Tests"
- Pierre Bosset, "Economic and Social Rights, Poor Cousins of the Québec Charter?"
- Michel Coutu, "Shadowing and Surveillance of Employees in the Workplace"

1999 Annual Conference of the Canadian Association of Human Rights Commissions, Montréal, May 31-June 1:

- Pierre Bosset, "Against Poverty, Economic and Social Rights"

Forum on the Rights of Street Kids, Montréal, November 16.

- Claire Bernard, "For Street Kids, What Rights Are We Talking About?"

Other public activities:

- Marc Bélanger, "The Prevention of Isolation in Rehabilitation Centres for Youth", International Conference *Isolation and Contention* of the Association des groupes d'intervention en défense des droits en santé mentale du Québec (A.G.I.D.D.-S.M.Q.), Valleyfield, November 10 and 11
- Claire Bernard, "The Rights of the Child in Québec and Canada after the United Nations Convention on the Rights of the Child", Summit of Members of the Human Rights Tribunal of Québec, Trois-Rivières, September 29
- Claire Bernard, presentation with Mrs. Céline Giroux, Vice-President, on the role of the Commission in its youth mandate on the Child Advocate Committee of New Brunswick, videoconference, March 17
- Pierre Bosset, "The Taking into Account of Cultures and Religions by Law", Sherbrooke, Intercultural Research Group, February 18
- Pierre Bosset, "Economic and Social Rights", Panel Discussion on Economic, Social and Cultural Rights, Concordia University School of Community and Public Affairs, Montréal, March 24

- Pierre Bosset, “The Universal Declaration of Human Rights and its Impact on the Québec Charter”, *Tribune on Human Rights: Reflections, Research and Action*, Institut de recherche et de formation interculturelles, Québec, June 12
- Pierre Bosset, “Relationships Between Québec and International Standards Pertaining to Human Rights”, Centre québécois de formation pour les jeunes en matière de droits de la personne, Ormstown, October 9
- Pierre Bosset, “The Québec and Canadian Rights Charters: General Aspects”, Civil Liberties Union, training session for members of the Union’s educators’ network, October 17
- Pierre Bosset, “Civil Society Participation in the Process of Reporting and Monitoring the Implementation of International Human Rights Standards: Issues and Prospects”, *Human Rights Linkage Initiatives (National Consultation on Human Rights)*, Ottawa, November 26
- Daniel Carpentier, “The Use of Videocameras in Isolation Rooms As Seen from the Viewpoint of the Charter of Human Rights”, *Colloque international Contention et isolement* of the Association des groupes d’intervention en défense des droits en santé mentale du Québec (A.G.I.D.D.-S.M.Q.), Valleyfield, November 10 and 11
- Michel Coutu, “Citizenship and Fundamental Rights. Update on the Thinking of T.S. Marshall”, *Conférences scientifiques* of the law department of the Université du Québec à Montréal, February 24
- Michel Coutu, “Equity and Social Policies”, in connection with *Vers une société équitable*, a consultation prior to the Sommet du Québec et de la jeunesse, Montréal, September 20
- Lucie France Dagenais, “Egalitarian Approaches Between the Sexes: Limiting Oneself to Diversifying Female Education or Targeting the Equality of Results”, *Colloque international Zoom sur les femmes et les métiers non traditionnels*, Montréal, 12 novembre
- Muriel Garon, “School Integration: a Matter of Law and Politics”, Conference of the Institut québécois de la déficience intellectuelle, Québec, October
- Alberte Ledoyen and Claire Bernard, “The Struggle Against the Exploitation of the Elderly: the Québec model”, paper presented by Alberte Ledoyen, *4th World Conference on Aging*, International Aging Federation, Montréal, September 6
- Alberte Ledoyen and Constance Leduc, “Exploitation of the Elderly”, Conference of the Aînés de l’Île de Montréal, *Rights and Freedoms at All Ages*, Montréal, October 23.

8.3 Scientific Publications

The Branch has coordinated the publication of the Official Record of the Forum on “Orphan” Clauses (*Equity Between the Generations and “Orphan” Clauses: Rights to be Defended*, the Commission, 1999). It is currently working on the coming publication of the Official Record of the International Conference *Fundamental Rights and Citizenship*, held in Spain in 1998 under the auspices of the Centre de recherche en droit public de l’Université de Montréal and the International Institute of Legal Sociology.

In 1999, the Branch’s professionals published the following scientific texts:

- BERNARD, Claire, “Le statut juridique de la famille recomposée et l’intérêt de l’enfant”, (1999) 33 *Revue juridique Thémis* 343-372
- DAGENAI, Lucie France, “Inequality and Higher Education in Canada”, in *Hard Work in the Academy* (ed.), Helsinki University Press, 1999.

8.4 Contribution to the Public Activities of the Commission’s President

The Branch members contribute to the public activities of the Commission’s Presidency in the form of suggestions for guidelines or content. In 1999, they contributed to the following activities:

- Mr. Claude Filion, President, “‘Orphan’ Clauses: a Challenge for Human Rights and Québec Society”, in *Les enjeux des clauses “orphelin”* (ed.), Montréal, Les Intouchables, 1999, pp. 77-88 (contributions of Pierre Bosset and Michel Coutu)

- Mrs. Céline Giroux, Vice-President, La Commission des droits de la personne et des droits de la jeunesse and Contention and Isolation Measures, presentation to the *Colloque international Contention et isolement*, Association of groups defending mental health rights, Valleyfield, November 11, 1999, (contribution of Claire Bernard)
- Mrs. Céline Giroux, Vice-President, “The Rights Granted to Children and the Tensions Inherent in a Protection System”, presentation to the *Forum québécois sur les jeunes en grande détresse*, Association des centres jeunesse du Québec, Montréal, November 25, 1999 (contributions of Marc Bélanger and Claire Bernard)
- Mr. Claude Filion, President, “Rights and Freedoms and Non-Violence: a Joint Cause”, presentation to the Colloque international et interdisciplinaire *Violences, victimes et vengences* of the Société de philosophie du Québec, Montréal, December 4, 1999

8.5 Media Interviews

In 1999, the Branch members gave 26 interviews in their fields of competence. Among the subjects that solicited a particularly high number of interview requests from the written and electronic media were the corporal punishment of children, the prevention of repeated sexual assaults, video surveillance of employees, and religious rituals and symbols in public institutions.

Chapter 2

Screening and Complaint-Processing

Investigations and Regional Representation Department

- Montréal office
- Québec City office
- Regional offices

Every year, the Commission receives thousands of requests concerning the scope and enforcement of human rights. The requests are received by telephone, through the mail, or from people who come in person to the Commission's offices.

In fact, many people think, quite naturally, that the Commission des droits de la personne et des droits de la jeunesse can intervene whenever a right is violated. If they do not know where to go to obtain a service or a solution to a problem, they call, write or go to the Commission's offices. Thus, in addition to its responsibility of screening the requests that fall within its jurisdiction, the Commission also finds itself in the more general position of giving information on the rights and recourses that exist in Québec, in all sorts of areas.

A large part of the Commission's screening work consists in listening to the problems encountered by people in the workplace or in different situations in their daily lives, and in working with those people to seek the most relevant solutions. One of these may be to file a complaint with the Commission, but in most cases this is not the best course of action. The person will therefore be directed to the relevant body, or invited to seek different conflict-resolution methods in his or her own environment.

The Commission is often considered to be a last-resort solution for settling an injustice. In such circumstances, it is not always easy to make the person understand and accept the limits of the Commission's investigative jurisdiction under the Charter or the *Youth Protection Act*. It is a task that requires tact and skill on the part of the Commission's officers.

In 1999, the Commission responded to 45,982 requests for information, investigations and interventions. In addition to listening to problems and directing applicants to the relevant resources, the screening staff in each of the three branches that assume responsibility for investigations at the Commission must be able to identify, from the thousands of requests received, those that constitute possible complaints within the Commission's jurisdiction, in other words, those where a right protected by the Charter or the *Youth Protection Act* has been violated.

Of these 45,982 requests, of which 95% were received by telephone, 4.5% in interviews and 1.5% by mail, 28,613 requests did not come under the Commission's jurisdiction and were directed to the appropriate resources (Commission des normes du travail, Régie du logement, Office de la protection du consommateur, Protecteur du citoyen, etc.), 13,283 were received by the human rights sector and 4,080 were received by the youth rights sector. In addition, the Commission received 1,762 requests for documentation, and 189 were from the media.

The requests received under the *Charter of Human Rights and Freedoms* and those received under the *Youth Protection Act* will be dealt with separately.

1. Admissibility of Complaints and Investigations Led Under the *Charter of Human Rights and Freedoms*

In 1991, 1,791 of the 13,283 requests received by the human rights sector were examined for admissibility.

A request is automatically examined for admissibility in each case where it relates to an infringement of a right protected under the Charter and there is a link between the infringement and one of the 13 grounds for discrimination listed in section 10, and in section 18.2 when there is a criminal record, or where it involves the exploitation of elderly or handicapped people as specified in the first paragraph of section 48.

Requests that clearly do not satisfy the criteria for an infringement linked to a ground for discrimination are dealt with by providing information on the Charter or encouraging the applicant to find other solutions to the problem.

The examination for admissibility consists in working for and with the person making the request in order to establish whether or not a written complaint should be submitted and an investigation begun.

Not all the requests that are examined for admissibility actually lead to an investigation. In some cases, steps can be taken to settle the dispute at this early stage, leading to a successful outcome. In other cases, the situation does not fall within the Commission's authority, or else the complainant, after considering the strengths and weaknesses of the case, decides not to continue with the complaint, or decides to investigate other ways of solving the problem.

In 1999, 5% of the 1,791 cases examined for admissibility were settled between the parties at this stage of the process, 11 received an explanatory notice because they did not fall under the jurisdiction of the Commission, and 18% were not continued because they were withdrawn by the applicant or the applicant could not be reached.

In 50% of the cases, the investigator/mediator assessed that the request gave rise to the filing of a written complaint, and a form was sent to the complainant for completion. In these cases, in accordance with section 72 of the Charter, it is important to assist the complainant in drawing up the complaint and to provide the necessary information concerning the procedure and the various steps in the investigation.

1.1 Investigation Files Processed in 1999

An investigation begins officially when a written complaint is received. The Commission can deal with the situation in various ways: it can seek a settlement, propose arbitration, bring the case before a tribunal after proposing remedial measures, or close the case because of insufficient evidence or because it is futile to continue to seek evidence.

In 1999, the Commission received 883 new complaints of discrimination or exploitation, in addition to the 1,508 files active on December 31, 1998. During the same period, it closed 916 files at the investigation stage, bringing the number of active investigation files on December 31, 1999 to 1,475, which is 33 fewer files than at the beginning of 1999.

Compared to 1998, despite a slight increase in the number of investigation files opened at the Commission during the course of 1999, the significant increase in the number of investigation files that were closed during the course of the year (165 files more than in 1998) brought the number of active files on December 31, 1999 to 1,475. It should be noted that this is the first time in several years that the Commission has closed more files than it has opened, a result that must be attributed to the sustained efforts of investigative staff to improve productivity and reduce the time required to process files.

1.2 Investigation Results in 1999

There are five possible outcomes to an investigation conducted by the Commission. The first three are brought about by a decision made by the parties, whereas the last two result from a decision by the Commission:

- the parties can decide to settle their dispute amicably – this is the solution promoted by the legislator and the primary objective of the investigator;
- the complainant can decide to withdraw the complaint;
- the parties can decide to refer their dispute to arbitration;
- the Commission can decide to propose remedial measures because there is sufficient evidence;
- the Commission can decide to close the file because there is insufficient evidence or it is futile to continue seeking evidence.

The following table summarizes the investigation files in respect of which a decision was made by the Complaints Committee (on whether to propose remedial measures or to close the file) or by the President (following a settlement or withdrawal). Since no files were referred to arbitration, this category is not shown in the table.

It is important to note that although the files in which remedial measures are proposed remain active at the Commission until a judgment or out-of-court settlement occurs, they are, for all intents and purposes, closed from the point of view of the Investigation Department because they are taken over by the Legal Department. This explains the difference between the 916 files closed in 1999, as shown in Table 4, and the 894 completed files shown in Table 8. In Table 4, the figure of 916 represents all files closed by the Commission, whether at the investigation stage or when taken over by the Legal Department following a decision to propose remedial measures. In Table 8, the figure of 894 represents all files closed at the investigation stage by decisions of the Complaints Committee or following a settlement or withdrawal, in addition to 45 files for which the Complaints Committee decided to propose remedial measures during 1999 and which were thus transferred to the Legal Department.

The 1999 results differ from the 1998 results with respect to the increase in the number of investigation files closed following a settlement or withdrawal, or following a decision by the Complaints Committee, and with respect to the decrease in the number of files in which remedial measures were proposed. In fact, except for the increase in the number of settled files – which we hope to see continue in future years – the 1999 results compare closely with the results obtained in 1997.

1.2.1 Settlements Between the Parties

An amicable settlement can occur at any point during the investigation process. The role of the investigator-mediator is to promote a settlement where requested by the parties, or where the circumstances are conducive to a settlement, and to give the parties impartial information on the factors that may influence their decision to reach a settlement.

The form of the settlement depends to a large extent on whether or not the Commission, during its investigation, has been able to gather evidence of the alleged violation, the identity of the parties and the sector of the alleged violation, and details of any other proceedings instituted that may have led the parties to settle their dispute before another authority or to reach an agreement.

A settlement may take the form of monetary compensation, as was the case in 60% of the cases settled in 1999. It may also involve the performance of actions to remedy the harm suffered by the complainant and, over and above the specific situation for which the complaint was filed, the correction of any policies or practices liable to affect other people.

Some of the actions most frequently performed include, in the field of employment: reinstating an employee with all former seniority, hiring an applicant, providing references and/or a written apology; in the field of housing: agreeing to rent to a prospective tenant; in the field of education: accepting a handicapped child in regular classes and/or drawing up a personalized education plan.

From the viewpoint of the results obtained, 1999 stands out with respect to the increased number of investigations that were completed by a settlement to the satisfaction of the parties. Both in absolute numbers and as a percentage, the number of settlements has not been higher for several years than it was in 1999. This bodes well for the future since the Branch has made the increase of settlements one of its objectives and has acquired the resources to attain this objective through the intensive training in mediation that it gave its staff in the fall of 1999.

1.2.2 Proposed Remedial Measures

Where a settlement cannot be reached, the parties, where they fail to refer the dispute to arbitration or where the complainant does not withdraw the complaint, the investigation results in the dispute being referred to a tribunal if sufficient evidence has been gathered (section 78).

Following the investigation and on the basis of the material and moral damage suffered, the Commission may propose an admission of fault, for example in the form of a written apology; a discontinuance of the offending action, such as harassment; the performance of an action, such as reinstatement in a job; or the payment of monetary compensation or damages where the discrimination was intentional.

If remedial measures are proposed but not accepted by the respondent party within the time fixed by the Commission, the case may be taken before the Human Rights Tribunal.

After the significant increase recorded in 1998 in the number of files in which remedial measures were proposed (75), 1999 brought investigation files ending with remedial measures back to a level comparable to that of 1997.

We believe that this decrease in relation to 1998 is a temporary occurrence that should be curtailed with the efforts that are currently being made regarding the establishment of a complaint-processing method and an efficient investigation procedure that is free of any procedural rigidity, as well as regarding the strict compliance with the standards we have acquired with regard to processing times.

1.2.3 Files Closed by the Complaints Committee

Most of the investigations conducted by the Commission lead to a decision by the Commission to refuse or cease to act in the case, rather than to a settlement, court action or arbitration. In 1999, 424 files were closed following a decision of the Complaints Committee – in other words, one-half of all the files for which investigations were completed.

1.2.4 Time Taken to Process Files

The overall reduction of file-processing times goes along with the reduction of the number of investigation files opened for over 18 months. In fact, it is impossible to reduce our overall times and to process in less than 12 months a new complaint that is filed with the Commission if the investigator's workload requires that he deal with files that have piled up and may be two, sometimes three and even four years old.

The Direction des enquêtes et de la représentation régionale worked toward meeting this dual objective in 1999: processing new complaint files in fewer than 12 months and closing "old" files so that they do not increase average processing times or slow down the processing of new files.

The result of these efforts was reflected in the closing of a record number of "old" files, in particular those in which the complaint was over one year old. These files constitute 51.1% of the files closed by the Commission in 1999, in comparison with 45.4% and 38.8% for 1998 and 1997. If we consider only files that are two years old or over, these files constituted 24% of files closed in 1999 in comparison with 18.7% and 15.8% of files closed in 1998 and 1997.

This work did not prevent the Direction des enquêtes et de la représentation régionale from completing, in fewer than 12 months, 49% of the investigation files that were closed in 1999, and 64% in fewer than 18 months. The objective of reducing processing times remains a crucial element of the Commission's strategic planning, and the Commission intends to devote all necessary efforts to it.

However, despite the Commission's best efforts, there is a basic correlation between the satisfactory and effective processing of complaints and the availability of human resources. An investigation is a highly personalized service, where the staff member must take the time to listen to all points of view, process each file in accordance with the rules of procedural fairness and take into account the individual circumstances of each case.

2 The Admissibility of Requests and Investigations Under the Youth Protection Act

2.1 Legal Framework

Under the *Youth Protection Act*, the Commission carries out several responsibilities pertaining to the promotion and respect of the rights of the child recognized by the *Youth Protection Act* and by the *Young Offenders Act*. To fulfil its mission, the Commission investigates, in particular, any situation in which it has reason to believe that the rights of a child or a group of children have been injured and takes the legal means it considers necessary in order to remedy the situation in which the rights of a child are injured.

2.2 Screening and Other Services in the Youth Sector

In 1999, 4,080 communications related to the Commission's youth mandate were received in all regions of Québec. As a result of these requests, the Commission's staff provided information on the application of the *Youth Protection Act* and the *Young Offenders Act*, and the rights of youth and their families. Some information led to a referral to another resource in the youth network. Others led to more personalized assistance to advise a youth or a parent in a procedure that concerned him, in connection with the application of either of these laws. Therefore, screening – which is essential to serve the public well – constitutes an important part of the services dispensed to the public in all regions of Québec.

Requests for Intervention Processed by the Regional Representatives

Of all these communications, 511 were requests for intervention addressed to the Commission and were processed by the regional representatives to determine their admissibility in relation to the mandate of the organization. In 1999, the requests for intervention were divided among the administrative regions and originate from the following applicants:

TABLE 12

Distribution of Requests for Intervention Addressed to the Commission in Accordance With the Administrative Regions

Administrative Regions	Number	%
01 Bas-Saint-Laurent	26	5.1
02 Saguenay-Lac-Saint-Jean	11	2.2
03 Québec	26	5.1
04 Mauricie et Centre-du-Québec	52	10.2
05 Eastern Townships	44	8.6
06 Montréal	68	13.3
07 Outaouais	37	7.2
08 Abitibi-Témiscamingue	82	16.0
09 Côte-Nord	13	2.5
10 Nord-du-Québec	16	3.1
11 Gaspésie-Îles-de-la-Madeleine	3	0.6
12 Chaudière-Appalaches	10	2.0
13 Laval	1	0.2
14 Lanaudière	12	2.3
15 Laurentians	53	10.4
16 Montérégie	57	11.2
Total	511	100.0

TABLE 13

Applicants Making Requests for Intervention to the Commission

Applicants	Number	%
Parents	259	48.8
Children	85	16.0
Family – neighbours	40	7.5
Foster family	32	6.0
Other lawyers and judges	25	4.7
Child's lawyer	23	4.3
Case worker – Centres jeunesse	20	3.8
Commission initiative	18	3.4
Others	12	2.3
Case worker – other than CPEJ case worker	11	2.1
Education community	6	1.1
Total	531	100.0

(20 files include more than one applicant)

The Commission's jurisdiction in youth matters is above all related to the application of the *Youth Protection Act* and the *Young Offenders Act*. Therefore, 64 of the requests for intervention were not retained by the regional representatives, and the applicants were directed to the appropriate services with all the information necessary to find a quick answer to their request.

When a corrective measure appears feasible and desirable, the regional representative suggests this measure to the applicant and sometimes assists him in solving the problem to his satisfaction. The file is then closed, and the applicant is invited to re-contact the Commission if the measure taken does not provide the expected results. In this context, 201 requests for intervention considered to be within the Commission's jurisdiction were closed by the regional representatives.

Requests for Interventions Submitted to Directors

Pursuant to section 23.1 of the *Youth Protection Act*, the decision to hold an investigation is taken by the president of the Commission or any other person designated by the president from among the members or staff of the body. In 1999, this responsibility was devolved on the three regional directors.

In 1999, 246 requests for intervention were processed by the regional directors. The grounds for dissatisfaction at the root of such requests are presented in the following table.

TABLE 14

Distribution of Requests for Intervention Submitted to the Directors in Accordance With the Principal Grounds for Dissatisfaction

Grounds for Dissatisfaction	Number
Quality of services of those taken in charge	78
Services in foster care resources	38
Appropriate place of foster care	37
Quality of evaluation	28
Contestation of a decision of DYP	24
Time frame or absence of services	17
Other grounds	17
Right to communicate	7
Total	246

On the basis of information collated by the regional representative, the director decides whether there is a ground for believing that the rights of a child are or have been violated. As the case may be, he can decide that additional information is required, that an intervention of the Commission must be carried out to correct the situation submitted by the applicant, or that an investigation must be authorized to establish whether there has been a violation of rights.

In 1999, the directors closed 164 requests for intervention for the following grounds:

TABLE 15

Distribution of Requests for Intervention Closed by the Directors in Accordance With the Grounds Justifying Their Closing

Grounds for Closing	Number
No ground to believe	62
Successful intervention	35
Situation corrected	33
Other grounds	20
Outside jurisdiction or tribunal seized	14
Total	164

The interventions carried out by the Commission following the receipt of a request may take several forms and permit the re-establishment of the rights of the child without carrying out an investigation. In this way, 35 cases were closed following a successful intervention. These interventions concern existing situations, for example, files awaiting evaluation or taking into charge, reporting not retained, the orientation of the child's situation, communications between the family and the case worker, or the clarification of the intervention plan. In these cases, the regional representative intervenes before the director of youth protection in order to inform him of the facts brought to his attention from the viewpoint of correcting the problem described by the applicant.

Authorized Investigations in 1999

In 1999, the directors (or the president of the Commission for investigations instigated by the body) authorized 80 investigations, pertaining to situations giving them grounds to believe that the rights of a child or a group of children were or had been violated by persons, establishments or bodies.

These investigations mainly concern presumptions of rights violations in the case of children or groups of children subject to the *Youth Protection Act*.

2.3 Files Examined by the Investigation Committees

Sitting on investigation committees, as provided by section 23.1 of the *Youth Protection Act*, the Commission members met 20 times in 1999, namely at 14 ordinary investigation-committee meetings and 6 extraordinary investigation-committee meetings.

The investigation committees examined 121 situations regarding children (the same situation may present itself several times). In 103 cases, a decision was rendered during the year as regards the respect of the rights of the child or a group of children. These rights were deemed violated in 45% of the situations and respected in 33% of the cases. Finally, on 22 occasions, the investigation committees did not rule on the conclusion of the investigation, considering that it was not expedient to pursue it or noting that the tribunal was seized of the same facts.

Table 16 gives an overview of the situations resolved by the investigation committees in 1999 as well as the decisions taken in these files.

TABLE 16

Distribution of Investigation Conclusions on the Basis of the Type of Decision or Principal Ground of the Investigation

Principal Grounds for Investigation	Decisions						Total	
	Rights Violated		Rights Respected		No Ruling			
	%	N	%	N	%			
Adequacy of services at rehabilitation centres	23	48	6	18	7	32	36	35
Adequacy of services in connection with taking in charge	16	33	12	37	6	27	34	33
Adequacy of services in connection with the reporting process	7	15	11	33	5	23	23	22
Other	2	4	4	12	4	18	10	10
Total	48	100	33	100	22	100	103	100

It can be noted that, as in previous years, investigations concerning the adequacy of services in rehabilitation centres occupies a relatively significant place in the 103 investigations concluded in 1999, representing 35% of the files. These files deal with the application of disciplinary measures, way of life, withdrawal, isolation, and education services. Added to these files are those dealing with the appropriateness of the place of foster care, which generally deal with the lack of resources and the mixed clientele in the living units.

Investigations that involve the services offered in rehabilitation centres are also those in which the investigation committees find the largest proportion of violated rights, namely in 48% of cases manifesting violated rights. These investigations are also the ones which involve more recommendations of the systemic type and in which there are more numerous and longer follow-ups.

In the Eastern Townships, the proliferation of complaints arising from young offenders in rehabilitation centres led the Commission to conduct an exhaustive study of the life style of these young people. In addition to this investigation, others were conducted last year for the same centre concerning the detention and intensive supervision units for girls. In the last few years, the results of these investigations and the conclusions thereof in all of Québec on the services offered in rehabilitation centres are of great concern to the Commission with regard to the respect of the rights of children who are lodged therein.

The investigations on the adequacy of services in connection with taking in charge involve various situations: intervention plans, time taken for assignments, the nature and frequency of social services, the right to communicate with the foster family, transfers from one foster family to another, and the adequacy of education services. Thirty-three percent (33%) of the investigations

conducted on this ground led to a conclusion of violated rights. In 1999, these investigations generally targeted individual and family situations.

The adequacy of services in connection with the processing of reporting refers to the time limits within which the reporting is evaluated, the application of emergency measures, prohibitions against communication imposed by the DYP at the time of evaluation, and the adequacy of orientation decisions taken following the evaluation. These investigations manifest the highest proportion of respected rights.

In general, four administrative regions, the Bas-Saint-Laurent, the Mauricie/Centre-du-Québec, the Eastern Townships, and the Laurentians, account for proportionally more investigations resulting in violated rights than the other regions, namely half or more of the investigations conducted in each of these regions.

When the rights of a child or a group of children are considered to be violated, the investigation committees evaluate where it is expedient to make recommendations.

In the 48 investigation files showing violated rights, nine files gave rise to recommendations concerning the child's situation. In such situations, the Commission asked the director of youth protection to intervene in order to develop an individualized-services or intervention plan, or to carry out a review of the child's situation.

Sixteen investigations raised problems in relation to policies and procedures having impacts on groups of children or involving joint efforts with other intervenors, and gave rise to recommendations of a more systemic nature.

2.4 An Interesting Initiative: A Joint Study with the Centres jeunesse de la Mauricie et du Centre-du-Québec

Management in the Québec City office coordinated a field study led jointly by the Commission and the Centres jeunesse de la Mauricie et du Centre-du-Québec. This resolutely innovative measure was made possible through the involvement of two of the Commission's professionals originating from the Mauricie/Bois-Francs and Montérégie regions. They worked jointly with representatives of the *Centres jeunesse* to highlight, through the use of a 60-file sample, the various problems that may jeopardize the rights of youth. With a view to improving services, the establishment undertook to develop effective, permanent corrective measures. The operation is at the process of implementing corrective measures, and a subsequent stage to review the improvements is planned for June 2000.

TABLE 4
Investigation Files Processed in 1999

	Montréal		Bureaux		Year
Files active on December 31, 1998	504	131	873	1,508	
Files opened in 1999	299	110	474	883	835
Filed closed in 1999	349	96	471	916	751
Active files on December 31, 1999	454	145	876	1,475	

TABLE 5

Files Opened in 1999

Distribution by Ground for Discrimination and Sector of Violation

			Act Legal Access					Transportation	
Handicap	163	15	40	8	0	226	25.6	21.7	
Sex	147	3	15	1	0	166	18.8	19.9	
Race-colour									
Ethnic and national origin	55	34	31	7	0	127	14.3	16.7	
Age	74	22	10	2	0	108	12.2	12.2	
Social condition	13	32	9	3	0	57	6.5	7.5	
Civil status	29	3	12	0	0	44	5.0	5.9	
Sexual orientation	13	1	11	3	0	28	3.2	3.4	
Pregnancy	42	0	0	0	0	42	4.8	3.8	
Criminal record	29	0	1	0	0	30	3.4	3.5	
Exploitation of aged persons	0	0	0	0	14	14	1.6	2.1	
Exploitation of handicapped persons	0	0	0	0	0	2	2	0.2	
Language	12	0	5	0	0	17	1.9	1.6	
Religion	10	1	3	0	0	14	1.6	1.0	
Political convictions	5	0	3	0	0	8	0.9	0.8	
TOTAL	592	111	140	24	16	883			
% year 99	67.0	12.6	15.9	2.7	1.8		100.0		
% year 98	66.3	12.7	17.4	1.4	2.2			100.0	

TABLE 6 Files Involving Discrimination and Harassment in the Workplace – Distribution by Violation of Rights

								%	%
Sex	11	52	1	49	0	34	147	24.8	27.6
Handicap	38	66	5	30	0	24	163	27.5	21.7
Age	11	34	4	10	0	15	74	12.5	13.5
Race-colour ethnic or national origin	3	25	0	18	0	9	55	9.3	
Civil status	7	16	0	4	0	2	29	4.9	6.0
Criminal record	13	13	1	0	0	2	29	4.9	4.9
Pregnancy	9	26	0	5	0	2	42	7.1	4.5
Social condition	6	3	1	2	0	1	13	2.2	2.5
Sexual orientation	0	5	0	3	0	5	13	2.2	2.3
Language	6	0	0	0	4	12	2.0	1.4	
Religion	1	2	0	0	0	0	3	0.5	1.4
Political convictions	3	1	0	1	0	0	5	0.8	0.4
Total	104	250	12	126	0	100	592		
%	17.6	42.2	2.0	21.3	0.0	16.9		100.0	100.0

TABLE 7 Files Opened in 1999 — Distribution by Respondent Party

Respondent Party	Total	% 1999	% 1998
Public and parapublic administration	312	35.33	34.98
Industries, transportation, building and public works	142	16.08	16.05
Services	90	10.19	7.54
Real estate (housing)	102	11.55	11.98
Commerce	92	10.42	11.26
Food services and lodging	70	7.93	7.07
Individuals	28	3.17	3.9
Finance, insurance, real estate	25	2.83	3.3
Unions and professional associations	12	1.36	1.6
Agriculture, forests, mines	5	0.57	1.4
Public utility services	5	0.57	0.7

Total				883		100.0		100.0
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TABLE 8

Investigation Results

	1999		1998		1997	
	Number	%	Number	%	Number	%
Decisions to issue remedial measures	45	5.0	75	9.5	43	4.7
Decisions to close	424	47.4	390	49.8	444	48.6
Settlement	221	24.7	146	18.6	210	23.3
Withdrawals	204	22.8	172	21.9	216	23.7
Total	894	100.0	783	100.0	913	100.0

TABLE 9 Files Closed in 1999 After Settlement — Distribution by Type of Settlement

			Acts		Access			
							%	%
Monetary compensation	102	13	8	5	4	132	59.7	45.9
Performance of an act	25	8	17	4	0	54	24.4	29.5
Agreement between parties	12	4	6	1	1	24	10.9	15.1
Settlement before another authority	6	0	0	0	0	6	2.7	4.8
Satisfaction of complainants	0	0	1	2	0	3	1.4	4.1
Discontinuance of the act complained of	0	0	0	1	1	0	2	0.9
TOTAL	145	25	33	13	5	221		
% year 1999	65.6	11.3	14.9	5.9	2.3		100.0	
% year 1998	69.2	10.3	15.8	3.4	1.4			100.0

TABLE 10 Investigation Files for Which Remedial Measures Were Proposed in 1999 — Distribution by Ground for Discrimination and Sector of Violation

GROUNDS			Acts		Legal Access		Transportation	
Sex	13	0	0	0	1	14	31.1	29.4
Handicap	2	0	0	4	0	6	13.3	17.3
Sexual orientation	1	0	5	0	0	6	13.3	12.0
Age	4	0	0	1	0	5	11.1	8.0
Race-colour								
Ethnic or national origin	1	0	1	3	0	5	11.1	13.3
Social condition	0	3	0	0	0	3	6.7	8.0
Language	0	2	0	0	0	2	4.5	—
Civil status	0	0	0	0	1	2.2	4.0	
Pregnancy	1	0	1	0	0	2	4.5	2.7
Religion								2.7
Criminal record	1	0	0	0	0	1	2.2	1.3
Exploitation	0	0	0	0	0	0	—	1.3
Total	24	5	7	8	1	45		
% year 1999	53.3	11.1	15.6	17.8	2.2		100.0	
% year 1998	56.0	16.0	20.0	4.0	4.0			100.0

TABLE 11 Files Closed in 1999 Following a Decision of the Complaints Committee — Distribution by Reason for Closure

			Acts		Legal Access		Transportation	
Proof insufficient and no opportunity to seize the Human Rights Tribunal					149	29	36	4
Not useful to continue gathering evidence	78		26	22	3	6	135	31.8
Case not within the jurisdiction of the Charter or the legislative jurisdiction of Québec	16				3	3	13	1
Dual recourse and section 77	28	0	5	0	0	33	7.8	8.3
Total	271	58	76	8	11	424		
% year 1999	63.9	13.7	17.9	1.9	2.6		100.0	

% year 1998	66.8	12.2	18.4	2.1	0.5	100.0
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Chapter 3

The Commission's Judicial Activity

Legal Department

The Legal Department's lawyers provide legal opinions, advise the Commission des droits de la personne et des droits de la jeunesse and its staff, and represent the Commission before the courts. They are asked to train the personnel, and enhance the Commission's visibility by participating in conferences and other similar events.

The Commission's general mandate includes the protection and defence of the rights recognized by the *Charter of Human Rights and Freedoms* and the *Youth Protection Act*. The Legal Department's work covers the Commission's entire mandate, and its workload is therefore considerable, given the breadth and diversity of the legal problems raised by these two Acts and the Commission's duty to integrate interventions under its dual mandate.

For quite a long period during the year, the Legal Department was required to provide the usual services despite the absence of two lawyers, which led the team to make very considerable efforts in order to assume its various responsibilities.

1. Legal Actions Taken by the Commission

According to its mandate, the Legal Department took charge of the litigious files of the Commission des droits de la personne et des droits de la jeunesse, under both the *Charter of Human Rights and Freedoms* and the *Youth Protection Act*.

Forty legal actions were instituted under the *Charter*, and one action in permanent injunction was filed in the youth protection sector, excluding motions for leave to appeal and inscriptions in appeal.

1.1 Charter Cases

The Commission des droits de la personne et des droits de la jeunesse made 40 applications to the Human Rights Tribunal. The following is a breakdown by ground and sector.

Access to Public Places

The Commission brought five actions pertaining to access to public places. Three deal with refusal of access to a restaurant, based on race and colour, one alleges a refusal of lodging because of the presence of a child, and another, a refusal of transportation based on handicap (use of a guide dog).

Housing

The Commission brought four actions for discriminatory refusal to rent. Two are based on social condition, one on race and colour, and one on both social conditions and ethnic and national origin.

Services Ordinarily Offered to the Public

The Commission brought five actions in the sector of services ordinarily offered to the public and in the sector of discriminatory clauses that form part of the legal acts pertaining to services ordinarily offered to the public. Two of them pertain to clauses excluding same-sex spouses in insurance contracts and mortgage-loan contracts. Two deal with the discriminatory effects of the *Act respecting municipal taxation* on same-sex spouses. Another action deals with a refusal, based on pregnancy, to grant benefits under the *Act respecting income security* (Apport Program).

Work

Twenty-six actions were brought in the work sector. Seven of them deal with sexual-harassment situations. Five deal with discriminatory dismissals in which the grounds invoked are respectively civil status, sexual orientation, race and colour, sex, and pregnancy. Seven deal with refusals to hire, including six on the basis of age and one because of the existence of a criminal

record. One action deals with salary discrimination based on sex, and five allege discriminatory working conditions on the basis of handicap, sex and pregnancy, respectively. One application deals with the establishment of an affirmative action program.

1.2 Youth Cases

The Commission brought an action in permanent injunction based on both the *Youth Protection Act* and the *Charter of Human Rights and Freedoms* to obtain the closing of a place of foster care that did not meet the requirements set out by law.

2. Cases in Which the Commission was Respondent or Defendant and Other Motions of a Procedural Nature

The Legal Department also represented the Commission in cases where it was a respondent and its jurisdiction was challenged, or where procedural decisions of the Commission or the Human Rights Tribunal were challenged.

2.1 Proceedings in Which the Jurisdiction of the Commission was Contested

• Cases of Dual Recourses

The investigative jurisdiction of the Commission has been the subject of more and more frequent contestations where the object of the complaint brought against the Commission is derived, in particular, from a matter that could be the subject of a grievance under a collective agreement.

Such contestations were undertaken in six files, either before the Human Rights Tribunal or before the Superior Court. One of these files was also continued on appeal and is the subject on the part of the Commission of a motion for leave to appeal before the Supreme Court of Canada.

• Cases Where the Attorney General of Québec Contests the Jurisdiction of the Commission to Act When the Discrimination is Derived from a Law or the Application of a Law

In 1999, three motions to dismiss, which contested the Commission's jurisdiction to act in favour of complainants when the alleged discrimination is derived from the interpretation of a law's application, were filed by the Attorney General of Québec.

• Procedural Motions

Eight procedural motions were pleaded or brought by the Legal Department in 1999. Among these are two motions in judicial review having a bearing on the Commission's investigative jurisdiction, which were pleaded in Superior Court, and a motion pertaining to the confidentiality of the name of a complainant, which was pleaded in the Court of Appeal.

Another of these motions dealt with the jurisdiction of the Human Rights Tribunal to be seized by the Commission of a request to establish an affirmative action program the observance of which observation was challenged.

3. Out-of-Court Settlements

Of the 35 settlements negotiated by the Legal Department's lawyers, 22 were obtained after legal action had been brought, and 13 after the parties had received proposals for measures of redress. In addition to monetary compensation, some settlements required redress in the form of commitments to act, such as the amendment of contractual clauses or hiring policies.

4. Judgments Delivered

Thirty-four judgments were rendered in cases in which the Commission was a party. Thirty-three judgments were rendered in cases brought under the *Charter of Human Rights and Freedoms*, and one of the cases was brought under the *Youth Protection Act*.

Among the *Charter* judgments, 22 were rendered by the Human Rights Tribunal. Twelve dealt with cases pleaded on the merits and ten on motions. Three judgments were also rendered by the Superior Court, four by the Court of Appeal, and six by the Supreme Court.

Certain judgments require particular attention.

The Court of Appeal of Québec confirmed the judgment obtained in the trial court by the Commission in the case of a teacher whose contract had not been renewed because of pregnancy (*Commission scolaire Jean-Rivard v. CDPDJ for T. Sasseville*). The Court of Appeal ruled, as

had the Human Rights Tribunal, that the non-renewal of an employment contract resulting from requirements of availability for work that do not take into account the need of pregnant workers to take a maternity leave constitutes discrimination based on pregnancy.

In the housing sector, the Commission obtained a judgment that confirmed its interpretation that persons whose occupation is uncertain and characterized by a low income may benefit from *Charter* protection against discrimination based on social condition (*CDPDJ for F. Bia-Domingo v. F. Sinatra*). In this matter, the defendant had refused to rent housing to the plaintiff on the ground that he did not have a steady job and worked as a freelancer. He had also indicated that he feared that the complainant would be out of work and that he would leave Québec. The Human Rights Tribunal therefore granted the action of the Commission, which alleged discrimination based on social condition and national origin, and sentenced the defendant to pay the complainant an amount of \$4,000 for psychological harm and \$1,000 in exemplary damages.

Regarding discrimination based on sex, the Commission obtained a judgement in a case in which it acted in favour of a complainant that had been dismissed because she did not have the physical characteristics desired by the employer to hold a job as a waitress in a pub, characteristics pertaining to breast size and volume (*CDPDJ for C. Landriau v. Beaublanc et al.*). Confirming the position pleaded by the Commission, the Tribunal ruled that a dismissal effected “for the simple reason that a person does not correspond to the physiological requirement imposed or to a skimpy vision of women is deeply humiliating, it constitutes a serious violation of human dignity, and of dignity as a woman, a violation which cannot be tolerated, and is contrary to the provisions of the *Charter*.” The defendants were sentenced to pay the complainant an amount of \$3,000 for psychological harm.

The Commission also obtained an important judgment in the area of psychological tests imposed on applicants before they are hired. In this matter, a psychological test, generally used in a context of therapy and intended to measure a co-dependency syndrome that is sometimes associated with dysfunctional families, was imposed on applicants during the hiring process as an integral part of the selection process (*CDPDJ for S. Arsenault v. Demers inc. et al.*). The Commission acted in favour of the complainant, a person whose application had been rejected after passing the test, alleging discrimination based primarily on civil status and handicap. The action also alleged a contravention of section 18.1 of the *Charter*, which prohibits an employer, in an employment interview, from using questions that refer to an unlawful ground of discrimination, unless the questions are necessary to assess the qualities or aptitudes required by the job sought. The Tribunal found that the test imposed by the defendant violated the rights guaranteed by section 18.1. It also found that the selection process included, in respect of the complainant, discrimination based on handicap, and it sentenced the defendants to pay her an amount of \$5,000 for psychological harm and \$2,500 for lost opportunity by reason of the obligation to undergo the test. A motion for leave to appeal this judgment was granted by the Superior Court.

In the area of handicap, the Commission obtained a judgment in favour of a complainant who had been excluded from a travel agents’ professional training program because he stuttered (*CDPDJ for M. Lalonde v. Commission scolaire des Draveurs*). The Tribunal deemed that the School Commission omitted to propose accommodation measures to the complainant in order to take into account the disadvantage he faced because of the assessment methods applied by the defendant, methods which very severely penalized his shortcomings with regard to elocution. The Tribunal ruled that such accommodation was possible without causing excessive constraints for the defendant and prejudice to the other students. The Tribunal therefore sentenced the defendant to pay the complainant an amount of \$5,000 for psychological harm.

This year, the Commission’s jurisdiction was contested on several occasions. In a file in which the Attorney General of Québec contested the Commission’s jurisdiction to act in favour of a complainant who alleged discrimination based on sexual orientation in the payment of a tax, the

Human Rights Tribunal, seized of a motion to dismiss, ruled that the Commission had jurisdiction to contest the validity of the interpretation and the application of a law when such contestation falls within the context of a discrimination complaint (*CDPDJ for B. Blais and J. Crevier v. Ville de Candiac*). The Attorney General of Québec seized the Superior Court of an application for judicial review of this decision.

Finally, the Commission opposed the contestation lodged against the jurisdiction of the Human Rights Tribunal to hear an application filed by the Commission pertaining to the establishment of an affirmative action program, regarding a disagreement that existed between the Commission and the defendant School Board. The Human Rights Tribunal confirmed its jurisdiction under sections 88 and 91 of the *Charter*. A motion to appeal this judgment was granted by the Court of Appeal (*CDPDJ v. Commission scolaire des Samares*).

5. Opinions and Legal Advice

One of the mandates of the Legal Department is to provide legal advice and opinions to the Commission and the members of its staff. In 1999, 161 legal opinions were issued, 132 under the *Charter of human rights and freedoms* and 29 under the *Youth Protection Act* or the *Young Offenders Act*. Verbal consultations were not recorded or compiled.

The opinions included some general opinions on the Commission's fields of activity. For instance, in youth protection, the Legal Department reflected on the legal framework of investigations. An opinion was also issued on out-of-region transfers of children placed under the *Youth Protection Act*. These opinions were the subject of the following official positions, adopted by the Commission:

- Investigative Responsibilities and Powers – Proposal for a clarification of roles and responsibilities in investigations carried out under the *Youth Protection Act* (June 1999).
- Placements and Out-of-Region Transfers under the *Youth Protection Act* (December 1999).

The Legal Department also acted as counsel for the Commission in systemic investigations regarding pay equity. In addition, it worked actively in the ongoing reflection concerning the follow-up to the Report on Affirmative Action Programs.

6. Participation of Legal Department Members in Various Committees and Contribution to Conferences and Training Sessions

6.1 In-House Training Activities

The members of the Legal Department were asked to contribute to training sessions for the Commission's personnel on various topics related to the application of the *Charter*, the *Youth Protection Act* and the *Young Offenders Act*. Of particular note was the training on evidence and procedure in the Commission's investigations, an assessment of recent case law, and the impact of certain higher court judgments, in particular in the matter of reasonable accommodation.

6.2 Participation on Various Committees

Internally, the Legal Department acted as consultant in systemic youth protection investigations.

The Legal Department Manager sits on the Poverty Committee, whose objective is to ensure coordination and cooperation between the Commission's departments in work which it has planned regarding this issue, as well as to develop strategies to improve the services offered by the Commission in the fight against exclusions related to poverty.

The Legal Department coordinates a committee dealing with systemic discrimination aimed at perfecting its investigative methods and developing conceptual tools in this area.

One lawyer has participated, as a legal advisor, in the preparatory work of the hearings on the exploitation of aged persons.

Some management members participate in the Task Force on Reference Documents and the Advisory Committee on Information Processing.

6.3 Conferences

The Legal Department's lawyers presented papers at the following events:

Pierre-Yves Bourdeau

Presentation of a training seminar dealing with the *Charter of Human Rights and Freedoms of Québec* at the Faculty of Law of the Université de Montréal, community legal services office .

Marc-André Dowd

Paper presented at a conference of the Barreau du Québec dealing with harassment and violence at work: *“Harassment at Work: Implementation of the Charter of Human Rights and Freedoms”*.

Hélène Tessier

Conference organized by Infonex, L'École du monde des affaires: *“Obligation to Accommodate: the Particular Case of Handicap”*.

Paper presented at the Conference “Recent Developments in Education Law”, organized by the Continuing Education Department of the Barreau du Québec: *“Harassment in Education: Legal Responsibility and Educational Problems”*.

Paper presented at the 15th Convention of the Canadian Association Against Sexual Harassment in Higher Education: *“Legal Problems Specific to Sexual Harassment in Educational Services”*.

Béatrice Vizkelety

Paper presented at A National Forum on Equality Rights, organized by the Women's Legal Education and Action Fund (LEAF) on *“The Right to Equality and the Changing Workplace”* in Vancouver.

Paper presented at the *Conference on the Status of Women on the Eve of the 21st Century*, organized by the Minerva Centre for Human Rights, Hebrew University of Jerusalem, *“Towards Equality at Work – The Canadian Perspective”* in Jerusalem (Israel).

7. Cases of Judicial Action in 1999

7.1 Proceedings Brought under the Charter of Human Rights and Freedoms

Access to a public place – Civil status (presence of children)

CDPDJ for P. Perreault and C. Rivest -and- P. Lambert and M. Lambert / Human Rights Tribunal, district of St-François. file no. 450-53-000002-994 / Date proceedings began: December 1999 / Refusal to rent a room in a Bed and Breakfast, based on civil status, by reason of the presence of a young child / Remedy claimed: Compensation of \$3,000

Access to a public place – Race-colour and ethnic origin

CDPDJ for J. A. Agnant -and- 2955-5158 Québec inc. doing business under the name of Restaurant Pub O'Toole and C. Mac Intoch / TDP (Joliette) 705-53-000014-996 / Refusal of restaurant access to a person of Haitian origin / Remedy claimed: Compensation of \$3,500

CDPDJ for P. J. Agnant -and- 2955-5158 Québec inc. doing business under the name of Restaurant Pub O'Toole and C. Mac Intoch / TDP (Joliette) 705-53-000013-998 / Refusal of restaurant access to a person of Haitian origin / Remedy claimed: Compensation of \$3,500

CDPDJ for F. Bernier -and- 2955-5158 Québec inc. doing business under the name of Restaurant Pub O'Toole and C. Mac Intoch / TDP (Joliette) 705-53-000012-990 / Refusal of restaurant access to someone accompanying a person of Haitian origin / Remedy claimed: Compensation of \$1,000

Access to a means of transportation – Handicap

CDPDJ for L. Lapointe -and- W. R. Huot / TDP (Montréal) 500-53-000110-997 / March 1999 / Refusal of taxi-cab access to a handicapped person using a guide dog / Remedy claimed: Compensation of \$3,000 [See section 7.4]

Peaceful Enjoyment of Property – Sexual Orientation

CDPDJ for B. Blais and J. Crevier -and- Ville de Candiac and the Attorney General of Québec / TDP (Longueuil) 505-53-000001-997 / January 1999 / Violation of free disposition of property by reason of sexual orientation (Obligation to pay the welcome tax) / Remedy sought: \$1,532 for B. Blais and \$1,000 for J.. Crevier and performance of an act

CDPDJ for M. Boisvert and A. Dubois -and- Ville de Châteauguay and the Attorney General of Québec / TDP (Beauharnois) 760-53-000001-998 / April 1999 / Violation of free disposition of property by reason of sexual orientation (Obligation to pay the welcome tax) / Remedy claimed: \$1,462 for A. Dubois and \$1,000 for M. Boisvert and performance of an act

Housing – Social Condition

CDPDJ for *R. Chevrier and L. Larouche -and- M. Tremblay* / TDP (Québec) 200-53-000014-998 / January 1999 / Refusal to rent, based on social condition, because the complainant was receiving employment insurance benefits / Remedy claimed: Compensation of \$5,840 / Judgement [See section 7.6]

CDPDJ for *L. Lavigne -and- P. Latreille* / TDP (Laval) 540-53-000012-991 / November 1999 / Refusal to rent based on social condition, to a person receiving income-security benefits / Remedy claimed: Compensation of \$5,000

Housing – Social Condition and Ethnic or National Origin

CDPDJ for *M. Valma -and- Corporation Laverdure* / TDP (Montréal) 500-53-000106-995 / January 1999 / Refusal to rent to a person of French origin (Guadeloupe) whose income was deemed insufficient / Remedy claimed: Compensation of \$9,480 / Settlement [See section 7.4]

Housing – Race-Colour

CDPDJ for *S. Allen -and- Gestion S.I.B. and Ugimo inc.* / TDP (Montréal) 500-53-000107-993 / February 1999 / Refusal to rent based on race or colour / Remedy claimed: Compensation of \$4,000 / Judgment on the merits in 2000

Services Ordinarily Offered to the Public – Sexual Orientation

CDPDJ for *G. Beauchamp -and- La Personnelle Vie. Corporation d'assurance and the Attorney General of Québec and the Canadian Union of Public Employees (F.T.Q.)* / TDP (Montréal) 500-53-000111-995 / May 1999 / Non-recognition of same-sex spouses for family protection in an insurance policy / Remedy claimed: Compensation of \$3,000 and performance of an act

CDPDJ for *M. Gagnon -and- Association de bienfaisance et de retraite des policiers et policières de la Communauté urbaine de Montréal -and- Communauté urbaine de Montréal -and- La Fraternité des policiers et des policières de la Communauté urbaine de Montréal* / TDP (Montréal) 500-53-000123-990 / October 1999 / Non-recognition of same-sex spouses for a mortgage-loan application / Remedy claimed: Compensation of \$2,000 and performance of an act

Services Ordinarily Offered to the Public – Pregnancy and Sex

CDPDJ for *C. Charrette -and- Ministre de la Sécurité du revenu et La Procureure générale du Québec* / TDP (Montréal) 500-53-000115-996 / July 1999 / Refusal to grant benefits under the Programme d'Aide aux parents pour leurs revenus de travail (APPORT), based on pregnancy / Remedy claimed: Compensation of \$5,088 and performance of an act

Employment – Conditions of Employment – Pregnancy

CDPDJ for *D. Perreault -and- Centre hospitalier régional de Lanaudière (CHRD) et al.* / TDP (Joliette) 705-53-000009-996 / February 1999 / Discrimination based on pregnancy, in the application of a section of the collective agreement pertaining to the calculation of annual vacation for part-time employees / Remedy claimed: Compensation of \$2,958 and performance of an act / Settlement [See section 7.4]

Employment – Conditions of Employment – Handicap

CDPDJ for *M. Charest -and- Hydro-Québec* / TDP (Montréal) 500-53-000109-999 / March 1999 / Refusal to grant a promotion to an estimator's position because of laxity in one knee / Remedy claimed: Compensation of \$64,578

CDPDJ for *Y. Lecomte -and- Inglis limitée et Syndicat des travailleurs Inglis. C.S.D.* / TDP (Montmagny) 300-53-000001-993 / November 1999 / Refusal to reinstate in an assembler's position, based on handicap (epilepsy) / Remedy claimed: Compensation of \$48,043 and performance of an act

Employment – Conditions of Employment – Harassment – Sex

CDPDJ for *S. Anber -and- 132466 Canada inc. doing business under the name of Manoir du West Island and J. Karakas* / TDP (Montréal) 500-53-000120-996 / October 1999 / Discriminatory harassment against a nurse / Remedy claimed: Compensation of \$5,000 and letter of apology / Settlement [See section 7.4]

CDPDJ for *P. Brochu -and- Produits Forestiers Domtar inc. and R. Landry* / TDP (Abitibi) 615-53-000004-998 / May 1999 / Discriminatory harassment against a female employee / Remedy claimed: Compensation of \$10,000 / Under advisement

CDPDJ for *D. Clément -and- Lomaco inc. and C. Lagarde* / TDP (Joliette) 705-53-000011-992 / June 1999 / Discriminatory harassment against a female employee in a beauty salon / Remedy claimed: Compensation of \$8,627 \$ / Settlement [See section 7.4]

CDPDJ for *L. Coutu -and- 3172317 Canada inc. doing business under the name of Nicholas B. et J. Baccichet -and- Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc.* / TDP (Montréal) 500-53-000121-994 / October /1999 / Discriminatory harassment against a seamstress / Remedy claimed: Compensation of \$5,000 and letters of apology

CDPDJ for *J. McDonald -and- Café Java Haus inc. and S. Jankovic -and- Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc.* / TDP (Montréal) 500-53-000127-991 / December 1999 / Discriminatory harassment toward a waitress in a café-restaurant / Remedy claimed: Compensation of \$12,964

CDPDJ for *G. Poirier -and- 3172317 Canada inc. also doing business under the name of Nicholas B. et J. Baccichet -and- Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc.* / TDP (Montréal) 500-53-000122-991 / October 1999 / Discriminatory harassment against a seamstress / Remedy claimed: Compensation of \$48,000 and letters of apology

CDPDJ for *L. Stolar -and- K. Birkett -and- Groupe d'aide et d'information sur le harcèlement sexuel au travail de la province de Québec inc.* / TDP (Montréal) 500-53-000125-995 / December 1999 / Discriminatory harassment against a telemarketing representative / Remedy claimed: Compensation of \$7,000

Employment – Conditions of Employment – Sex

CDPDJ for *B. Bourgeois, J. Perron, C. Potvin, D. Lavoie, N. Vachon, D. Larouche, S. Bilodeau, D. Pamerleau, É. Pouliot and L. Tremblay) -and- Société d'électrolyse et de chimie Alcan ltée* / TDP (Montréal) 500-53-000108-991 / March 1999 / A group of ten women, then office employees of the defendant company, filed a complaint to the Commission alleging discrimination based on sex following the recall of male employees with less seniority than that of the complainants. The alleged systemic discrimination had the effect of preventing equal access to positions that had become vacant in the company's factories and, in case of the reduction of personnel, of preventing the women from benefiting from inter-certification and inter-plant transfers in the same manner as the male employees / Remedy claimed: Compensation for each complainant / Settlement [See section 7.4]

CDPDJ for *D. Martin -and- Sûreté du Québec* / TDP (Saint-François) 450-53-000001-996 / February 1999 / Disciplinary sanction given to a policeman for hair length, according to a directive whose application is different according to sex / Remedy claimed: Compensation of \$2,000 and performance of an act / Under advisement

Employment – Conditions of Employment – Sex – Equivalent Work –

CDPDJ for *C. Fortier -and- Les Restaurants D.A.C.C. inc. doing business under the name "Rôtisserie St-Hubert"* / TDP (Longueuil) 505-53-000002-995 / July 1999 / Salary discrimination based on sex for a position of kitchen assistant manager / Remedy claimed: Compensation of \$23,470

Employment – Dismissal – Civil Status

CDPDJ for C. Hudon -and- A.E. McKenzie Co. inc. and M. J. Fearon / TDP (Laval) 540-53-000013-999 / December 1999 / Dismissal based on civil status, because of a kinship with employees of the company / Remedy claimed: Compensation of \$12,140

Employment – Dismissal – Sexual Orientation

CDPDJ for N. Bergeron -and- Beauce Carnaval inc. et al. / TDP (Beauce) 350-53-000001-998 / July 1999 / Dismissal of a ride operator, who was the victim of physical aggression and insults, based on sexual orientation / Remedy claimed: Compensation of \$45,000 / Withdrawal after the complaint's death

Employment – Dismissal – Race-Colour

CDPDJ for *J.-R. Sévère -and- Société de transport de la Communauté urbaine de Montréal* / TDP (Montréal) 500-53-000124-998 / November 1999 / Dismissal and discriminatory harassment against a maintenance employee / Remedy claimed: Compensation of \$32,046, reinstatement in his position and efficient implementation of an affirmative action program

Employment – Dismissal – Sex

CDPDJ for *L. Gagnon -and- Mines Seleine, Division of the Société canadienne de sel, Itée -and- Syndicat des travailleurs et travailleuses de Mines Seleine (C.S.N.)* / TDP (Montréal) 500-53-000117-992 / August 1999 / Dismissal based on sex, from a job as a day labourer on the pretext that she did not have the physical strength required for the job / Remedy claimed: Compensation of \$122,568 and reintegration in an equivalent position at the time of the dismissal and seniority and benefits derived from the pension fund

Labour – Dismissal – Sex, Pregnancy and Civil Status

CDPDJ for *C. Lyzotte -and- 9059-8475 Québec inc. doing business under the corporate name of “Bar Sept-Îles”* / TDP (Mingan) 650-53-000003-997 / October 1999 / Dismissal of a waitress, after she returned to work after a maternity leave / Remedy claimed: Compensation of \$6,000

Employment – Establishment of an Affirmative Action Program

CDPDJ for *T. Chaput, N. Larocque, L. Lavergne, P. Major and L. Rainville -and- Commission scolaire des Samares -and- Syndicat de l’enseignement du Lanaudière* / TDP (Joliette) 705-53-000010-994 / May 1999 / Application to obtain orders to establish an affirmative action program / Remedy claimed: Performance of an act

Employment – Refusal to hire – Age

CDPDJ for *M. Briggs -and- C. Lemay* / TDP (Laval) 540-53-000008-999 / January 1999 / Following the dismissal of all the staff of a restaurant, an advertisement was published for the hiring of new waiters and waitresses. Rehiring of the former waiters and waitresses under forty years of ages / Remedy claimed: Compensation of \$13,655 / Settlement [See section 7.4]

CDPDJ for *D. Houde -and- C. Lemay* / TDP (Laval) 540-53-000009-997 / January 1999 / Remedy claimed: Compensation of \$7,690 / Settlement [See section 7.4]

CDPDJ for *B. Kraft -and- C. Lemay* / TDP (Laval) 540-53-000011-993 / January 1999 / Remedy claimed: Compensation of \$7,992 / Settlement [See section 7.4]

CDPDJ for *L. Latulippe -and- C. Lemay* / TDP (Laval) 540-53-000010-995 / January 1999 / Remedy claimed: Compensation of \$18,928 / Settlement [See section 7.4]

CDPDJ for *N. Marcheterre -and- C. Lemay* / TDP (Laval) 540-53-000007-991 / January 1999 / Remedy claimed: Compensation of \$14,294 / Settlement [See section 7.4]

CDPDJ for *O. Werz -and- C. Lemay* / TDP (Laval) 540-53-000006-993 / January 1999 / Remedy claimed: Compensation of \$8,660 / Settlement [See section 7.4]

Employment – Refusal to Hire – Criminal Record

CDPDJ for *J. S. -and- Communauté urbaine de Montréal* / TDP (Montréal) 500-53-000119-998 / October 1999 / Refusal of on-the-job training and refusal to consider an application as a police cadet because of a criminal record / Remedy claimed: Compensation of \$13,675

7.2 Proceedings Brought Under the Youth Protection Act

CDPDJ c. *Les Centres Jeunesse de la Montérégie and al.* / Superior Court (Longueuil) 505-05-005201-998 / March 1999 / Motion for interlocutory injunction and action for a permanent injunction – Injunction to close a place of foster care that did not meet the criteria of the *Youth Protection Act* and the *Charter of Human Rights and Freedoms*

J. A. v. Les Centres Jeunesse des Laurentides -and- CDPDJ / Court of Québec, Youth Division (Terrebonne) 700-04-005464-992 / February 1999 / Motion for issue of the writ of *habeas corpus*

7.3 Contestation of the Commission's Jurisdiction or Legal Actions

7.3.1 Based on the fact that the complaint may eventually fall within the jurisdiction of a grievance arbitrator

Inadmissibility of an application invoked before the Human Rights Tribunal
CDPDJ for G. Beauchamp -and- La Personnelle Vie, Corporation d'assurance and the Attorney General of Québec and the Canadian Union of Public Employees (F.T.Q.) / TDP (Montréal) 500-53-000111-995 / May 1999 / Non-recognition of same-sex spouses for family protection in an insurance policy / Judgment on motion in objection to the jurisdiction *rationae materiae* based on the exclusive jurisdiction of the grievance arbitrator and in inadmissibility / Judgment: motion dismissed in February 2000

CDPDJ for C. Carrier, M. Coallier, M. Cool, G. Côté, R. Hevey and J. Paquin -and- Les Résidences Laurendeau, Légaré and Louvain / TDP (Montréal) 500-53-000105-989 / December 1998 / Discrimination based on sex, in application of a policy to sexualize positions. Refusal to grant to female staff positions of reception centre attendants reserved for male staff and refusal to permit them to replace employees in positions reserved for male employees / Motion in inadmissibility based on the exclusive jurisdiction of the grievance arbitrator / Judgment: Motion dismissed

CDPDJ for S. Roussin -and- Centre hospitalier régional de Lanaudière (CHRD) et al. / TDP (Joliette) 705-53-000007-982 / May 1998 / Discrimination based on pregnancy, in the application of a section of the collective agreement pertaining to the calculation of the annual vacations of part-time employees / Motion in inadmissibility based on the exclusive jurisdiction of the grievance arbitrator / Judgment: motion dismissed

Jurisdiction of the Commission or the Human Rights Commission Contested Before the Superior Court

CDPDJ for C. Carrier, M. Coallier, M. Cool, G. Côté, R. Hevey and J. Paquin -and- Les Résidences Laurendeau, Légaré and Louvain / CS (Montréal) 500-05-051480-992 / July 1997 / Application for judicial review of the decision of the Human Rights Tribunal / Judgment: Application dismissed in 2000

Centre hospitalier de l'Université de Montréal (CHUM) et al. v. CDPDJ et al. / CS (Montréal) 500-05-049717-992 / May 1999 / Motion for declaratory judgement contesting the investigative jurisdiction of the Commission based on the jurisdiction of the grievance arbitrator / Under advisement

Communauté urbaine de Montréal v. CDPDJ and N. Vachon / CS (Montréal) 500-05-049717-992 / April 1999 / Motion for declaratory judgement contesting the investigative jurisdiction of the Commission based on the competence of the grievance arbitrator / Hearing March 2000

Jurisdiction of the Commission Contested Before the Court of Appeal

CDPDJ v. Centre d'hébergement et de soins de longue durée Champlain-Manoir de Verdun et al. / CA (Montréal) 500-09-007442-981 / June 1998 / Motion for dismissal of the appeal lodged by the Commission against a judgment of the Superior Court that compelled the Commission to cease its investigation in the case of a complaint for which a grievance had been lodged / Judgment: motion granted and appeal dismissed / Motion for leave to appeal before the Supreme Court of Canada

7.3.2 Contestation of the Commission's Jurisdiction Where the Alleged Discrimination Arises From the Interpretation or Application of a Law

CDPDJ for B. Blais and J. Crevier -and- Ville de Candiac and Le Procureur général du Québec / TDP (Longueuil) 505-53-000001-997 / January 1999 / Motion in objection to the

jurisdiction *rationae materiae* and in inadmissibility / Judgment of the Human Rights Tribunal: motion dismissed / Motion for a judicial review before the Superior Court / Under advisement

CDPDJ for C. Charrette -and- Ministre de la Sécurité du revenu and the Attorney General of Québec / TDP (Montréal) 500-53-000115-996 / July 1999 / Refusal to grant benefits under the program Aide aux parents pour leurs revenus de travail (APPORT), based on pregnancy / Motion in objection to the jurisdiction and in inadmissibility based on the Commission's absence of jurisdiction to act in favour of the victim before the Human Rights Tribunal / Under advisement

7.3.3 Contestation of the Jurisdiction of the Human Rights Tribunal on Matters Pertaining to the Establishment of the Unobserved Affirmative Action Program

CDPDJ for T. Chaput, N. Larocque, L. Lavergne, P. Major and L. Rainville -and- Commission scolaire des Samares -and- Syndicat de l'enseignement du Lanaudière / TDP (Joliette) 705-53-000010-994 / May 1999 / Application to obtain orders to ensure the establishment of an unobserved affirmative action program / Motion in inadmissibility / Judgment: motion dismissed / On appeal / Leave to appeal granted

7.3.4 Other Procedural Motions

Before the Human Rights Tribunal

CDPDJ for S. Allen -and- Gestion S.I.B. and Ugimo inc. / TDP (Montréal) 500-53-000107-993 / February 1999 / Refusal to rent based on race or colour / Motion to strike and allegation / Judgment: motion granted

CDPDJ for C. Carrier, M. Coallier, M. Cool, G. Côté, R. Hevey and J. Paquin -and- Les Résidences Laurendeau, Légaré and Louvain / TDP (Montréal) 500-53-000105-989 / December 1998 / Motion to suspend the time for producing a brief by the defendant / Judgment: motion granted

Motion of the defendant to reopen the debates / Judgment: motion granted

CDPDJ for L. Lapointe -and- Dr G. Doucet / TDP (Québec) 200-53-000012-984 / September 1998 / Refusal to provide medical services ordinarily offered to the public, namely a consultation for her and her two-year-old son because she lived in a self-help centre for drug addicts / Motion to strike irrelevant allegations / Judgment: motion granted

CDPDJ for J. S. -and- Communauté urbaine de Montréal / TDP (Montréal) 500-53-000119-998 / October 1999 / Refusal of on-the-job training and refusal to consider an application as a police officer / Judgment on interim motion to prohibit disclosure, publication and distribution of the name and other information / Judgment: motion granted

Judgment on motion to prohibit disclosure, publication and distribution of other information concerning the complainant / Judgment: motion granted

Before the Superior Court

Communauté urbaine de Montréal (Service de police) v. CDPDJ (S.N.) and Human Rights Tribunal / SC (Montréal) 500-05-054821-944 / December 1999 / Motion for judicial review of a decision of the Human Rights Tribunal maintaining an objection to the evidence

J.-G. Fleurent v. Association des courtiers et agents immobiliers du Québec and CDPDJ / CQ (Longueuil) 505-05-005901-993 / November 1999 / Motion for a declaratory judgment brought by a complainant alleging non-recognition of his rights

Attorney General of Québec v. Human Rights Tribunal la personne and R. Choinière and CDPDJ / SC (Montréal) 500-05-044100-988 / August 1998 / Motion for a judicial review having an incidence on the jurisdiction of the Commission and the Human Rights Tribunal / Judgment: motion granted

Ville de Montréal v. Human Rights Tribunal and G. Lafleur and CDPDJ / SC (Montréal) 500-05-039510-985 / August 1998 / Motion for a judicial review / Judgment: motion granted

Before the Court of Appeal

Communauté urbaine de Montréal (Service de police) v. CDPDJ and S. N. / CA (Montréal) 500-09-006851-984 / May 1998 / Refusal to consider an application for a policeman's position, based on a criminal record / Appeal of a decision of the Human Rights Tribunal to prohibit the disclosure, publication and distribution of the name and other information concerning the complainant granted / Appeal dismissed

Before the Supreme Court

British Columbia Human Rights Commission. Commissioner of Investigation and Mediation. The British Columbia Human Rights Tribunal v. Robin Blencœ -and- CDPDJ -et- al. / CSC 26789/ April 1999 / Motion for leave to intervene / Judgment: intervention authorized / Hearing on the merits in January 2000

C. Spence v. CDPDJ / CSC 26823 / October 1997 / Motion in evocation / Motion for leave to appeal to the Supreme Court of Canada / Judgment: appeal dismissed / Request for re-examination dismissed

7.4 Settlements in Charter Cases After Legal Action

Access to a Means of Transportation – Handicap

CDPDJ for L. Lapointe -and- W. R. Huot / TDP (Montréal) 500-53-000110-997 / March 1999 / Access to a taxi cab refused to a handicapped person using a guide dog / Settlement: Compensation of \$750

Housing – Social Condition and Ethnic or National Origin

CDPDJ for M. Valma -and- Corporation Laverdure / TDP (Montréal) 500-53-000106-995 / January 1999 / Refusal to rent to a person of French origin (Guadeloupe) whose income was deemed insufficient / Settlement: Compensation of \$4,000

Housing – Civil Status and Age

CDPDJ for J.-D. Perron -and- O. Deschênes / TDP (Joliette) 705-53-000008-980 / July 1998 / Refusal to rent because of the presence of a child / Settlement: Compensation of \$2,500

Housing – Race-Colour

CDPDJ for S. St-Louis -and- Les Trans-Actions immobilières L & W inc. and R. Hamelin / TDP (Montréal) 500-53-000101-988 / November 1998 / Refusal to rent based on race and colour / Settlement: Compensation of \$2,500

Offensive Remarks – Ethnic or National Origin, Race-Colour

CDPDJ for M. Wilhelm-White -and- J.-B. Bourcier and Ville de Châteauguay -and- Association des droits des minorités du Grand Châteauguay - The Minority Rights Association of Greater Châteauguay / TDP (Beauharnois) 760-53-000001-972 / December 1997 / Allegation of discriminatory remarks by the mayor at a public meeting of the city council / Settlement: confidential

Services Ordinarily Offered to the Public – Social Condition

CDPDJ for F. Bouchard -and- Visa Desjardins / TDP (Montréal) 500-53-000103-984 / December 1998 / Refusal to issue a credit card to a person receiving income-security benefits / Settlement: confidential

Employment – Conditions of Employment – Pregnancy

CDPDJ for D. Perreault -and- Centre hospitalier régional de Lanaudière (CHRD) et al. / TDP (Joliette) 705-53-000009-996 / February 1999 / Discrimination based on pregnancy, in the application of a section of the collective agreement pertaining to the calculation of the annual vacation of part-time employees / Settlement: Compensation of \$1,458 and recommendation that the establishments of the health and social services sector and the unions amend the collective agreement

CDPDJ for S. Roussin -and- Centre hospitalier régional de Lanaudière (CHRD) et al. / TDP (Joliette) 705-53-000007-982 / May 1998 / Discrimination based on pregnancy, in the

application of a section of the collective agreement pertaining to the calculation of the annual vacation of part-time employees / Settlement: Compensation of \$1,245 and recommendation to the establishment of the health and social services sector and to the unions to amend the collective agreement

Employment – Conditions of Employment – Harassment – Sex

CDPDJ for *S. Anber -and- 132466 Canada inc. doing business under the name of Manoir du West Island and J. Karakas* / TDP (Montréal) 500-53-000120-996 / October 1999 / Allegation of discriminatory harassment toward a nurse / Settlement: confidential

CDPDJ for *D. Clément -and- Lomaco inc. and C. Lagarde* / TDP (Joliette) 705-53-000011-992 / June 1999 / Discriminatory harassment toward a manicurist in a beauty salon / Settlement: Compensation of \$4,000

Employment – Conditions of Employment – Sex

CDPDJ for *B. Bourgeois, J. Perron, C. Potvin, D. Lavoie, N. Vachon, D. Larouche, S. Bilodeau, D. Pamerleau, É. Pouliot and L. Tremblay -and- Société d'électrolyse and de chimie Alcan ltée* / TDP (Montréal) 500-53-000108-991 / March 1999 / A group of 10 women, then office employees of the defendant company, filed a complaint with the Commission alleging discrimination based on sex following the recall of male employees with less seniority than that of the complainants. The systemic discrimination alleged had the effect of preventing equal access to the positions that had become vacant in the Company's factories, and in case of the reduction of staff, of preventing the women from benefiting from inter-certification and inter-factory transfers in the same manner as the male employees / Settlement: Compensation of \$8,500 for the group of complainants.

Employment – Dismissal – Age

CDPDJ for *B. Stollow -and- Orchestre symphonique de Montréal and Guilde des musiciens du Québec* / TDP (Montréal) 500-53-000096-980 / August 1998 / Retirement of a permanent violin player's position, following a compulsory retirement policy written in the collective agreement / Settlement: confidential

Employment – Dismissal – Sex

CDPDJ for *J. Beaulieu -and- Scobus (1992) inc. and R. Côté* / TDP (Rimouski) 100-53-000005-980 / November 1998 / Lay-off by reason of sex / Settlement: confidential

Employment – Refusal to Hire – Age

CDPDJ for *M. Briggs -and- C. Lemay* / TDP (Laval) 540-53-000008-999 / January 1999 / Following the dismissal of all the staff of a restaurant, publication of an advertisement for new waiters and waitresses. Rehiring of the former waiters and waitresses under 40 years of age / Settlement: confidential

CDPDJ for *D. Houde -and- C. Lemay* / TDP (Laval) 540-53-000009-997 / January 1999 / Settlement: confidential

CDPDJ for *B. Kraft -and- C. Lemay* / TDP (Laval) 540-53-000011-993 / January 1999 / Settlement: confidential

CDPDJ for *L. Latulippe -and- C. Lemay* / TDP (Laval) 540-53-000010-995 / January 1999 / Settlement: confidential

CDPDJ for *N. Marcheterre -and- C. Lemay* / TDP (Laval) 540-53-000007-991 / January 1999 / Settlement: confidential

CDPDJ for *O. Werz -and- C. Lemay* / TDP (Laval) 540-53-000006-993 / January 1999 / Settlement: confidential

Employment – Refusal to Hire – Handicap

CDPDJ for G. Lefebvre -and- Les Technologies industrielles SNC inc. / TDP (Québec) 200-53-000010-988 / May 1998 / Refusal to award a contract to clear a military firing range because of a handicap, namely that of being obese / Settlement: Compensation of \$33,500

CDPDJ for G. Maltais -and- Société de l'assurance automobile du Québec / TDP (Québec) 200-53-000011-986 / August 1998 / Refusal to hire as a highway controller because of a spinal cord defect discovered during an X-ray / Settlement: Compensation of \$2,000

Employment – Refusal to Hire – Ethnic or National origin

CDPDJ for R. Swasson -and- Attorney General of Québec for the Ministère de l'Environnement et de la Faune / TDP (Rimouski) 100-53-000003-985 / April 1998 / Allegation of discrimination bases on aboriginal origin in the calculation of seniority as a wildlife conservation agent / Settlement: Compensation of \$4,000

7.5 Settlements in Charter Cases Before Action, Following a Recommendation to Proceed

Housing – Social Condition

I. D. and S. G. -and- An owner / June 1999 / Refusal to rent to a couple receiving income-security benefits / Settlement: Compensation of \$1,500

L. P. -and- An owner / May 1999 / Refusal to rent to a recipient of income-security benefits / Settlement: Compensation of \$1,250

Services Ordinarily Offered to the Public – Handicap

S. K. -and- A cegep / June 1999 / Refusal of admission to a police techniques course because of myopia / Settlement: Compensation of \$2,000

Services Ordinarily Offered to the Public – Sexual Orientation

T. C. -and- An insurance company / December 1999 / Non-recognition of same-sex spouses living together for over 2 years, in an accident insurance policy / Settlement: Compensation of \$1,566

M. D. -and- An insurance company / March 1999 / Refusal to amend an insurance policy granting family protection, based on sexual orientation / Settlement: Compensation of \$2,000 and extension of family protection to same-sex spouses

A. F. and D-R. L. -and- A governmental organization / November 1999 / Non-recognition of same-sex spouses for exemption from payment of the sales tax in connection with the gift of an automobile / Settlement: Compensation of \$187.50

G. S. -and- An insurance company / March 1999 / Refusal to modify insurance coverage granting family protection, based on sexual orientation / Settlement: Compensation of \$2,000 and family protection in the insurance policy

Services Ordinarily Offered to the Public – Religion

S. K. K. -and- A school / June 1999 / Refusal of access to a kindergarten because the child wore a turban, hence contravening a school regulation prohibiting the wearing of headgear / Settlement: Compensation of \$3,000

Employment – Conditions of Employment – Religion

J. P. -and- A pharmaceutical company / February 1999 / Refusal to grant a religious holiday / Settlement: Compensation of \$13,000

Employment – Dismissal – Harassment – Sex

J. E. -and- A company / March 1999 / Dismissal and discriminatory harassment toward an employee / Settlement: Compensation of \$15,000

Employment – Refusal to Hire – Civil Status

M. L. -and- A non-profit organization / May 1999 / Refusal to renew a contract of employment, based on civil status / Settlement: Compensation of \$2,000

Employment – Refusal to Hire – Handicap

Y. D. -and- A government department / Refusal to hire based on handicap (spinal cord defect) revealed during a medical examination / Settlement: Compensation of \$10,000

M. V. -and- A forestry company / June 1999 / Refusal to hire for a mechanic's position, in connection with drug testing during the selection process / Settlement: Compensation of \$2,000 and modification of the hiring policy

7.6 Judgments Rendered in Charter Cases

Judgments Rendered on the Merits by the Human Rights Tribunal

Housing – Social Condition

CDPDJ for R. Chevrier and L. Larouche -and- M. Tremblay / TDP (Québec) 200-53-000014-998 / January 1999 / Refusal to rent based on social condition, the complainants because the complainants were recipients of employment insurance / Judgment: action dismissed with costs

Housing – Social Condition, Ethnic or National Origin

CDPDJ for F. Bia-Domingo -and- F. Sinatra / TDP (Montréal) 500-53-000102-986 / December 1998 / Refusal to rent based on social condition and ethnic or national origin / Judgment: action granted. Compensation granted – \$4,000 for psychological harm and \$1,000 in exemplary damages

Housing – Civil Status, Race-Colour and Ethnic or National Origin

CDPDJ for N. Gagnon -and- D. Quévillon / TDP (Terrebonne) 700-53-000004-980 / September 1998 / Refusal to rent based on colour and national origin because the spouse of the future tenant is of Moroccan origin / Judgment: action granted. Compensation granted – \$2,400 for material harm and 5 000 \$ for psychological harm

Offensive Remarks – Race-Colour and Ethnic or National Origin

CDPDJ for A. Mohammed -and- H.-P. Bouffard, doing business under the corporate name of Alimentation Servance enr. / TDP (Saint-François) 450-53-000001-988 / October 1998 / Racist remarks toward a client and expulsion of a corner-store operator. Discriminatory violation of dignity / Judgment: action granted. Compensation granted – \$3,000 for psychological harm and \$1,000 in exemplary damages

Services Ordinarily Offered to the Public – Handicap

CDPDJ for L. Lapointe -and- Dr G. Doucet / TDP (Québec) 200-53-000012-984 / September 1998 / Refusal to provide medical services ordinarily offered to the public, namely a consultation for the complainant and her two-year-old son because the complainant had lived in a self-help centre for drug addicts / Judgment: action dismissed with costs

CDPDJ for M. Lalonde -and- Commission scolaire des Draveurs / TDP (Hull) 550-53-000005-986 / July 1998 / Exclusion of a student enrolled in a professional training course for travel agents because of his handicap (problem of stuttering) / Judgment: action granted. Compensation granted – \$5,000 for psychological harm

Employment – Conditions of Employment – Harassment – Handicap

CDPDJ for F. Panneton -and- Emballage Graham du Canada ltée / TDP (Montréal) 500-53-000098-986 / August 1998 / Layoff for a medical reason (epilepsy) / Judgment: action granted. Compensation granted – \$20,239 for material harm and \$7,000 for psychological harm / Motion for leave to appeal dismissed by the Court of Appeal and motion for leave to appeal dismissed by the Supreme Court of Canada

Employment – Conditions of Employment – Harassment – Sex

CDPDJ for A. Roberge -and- Buffet Trio inc. and als. and Groupe d'aide et d'information sur le harcèlement sexuel au travail / TDP (Montréal) 500-53-000086-981 / January 1998 / Forced resignation from a job as a cook-pastrycook because of discriminatory conditions of employment / Judgment: action dismissed with costs

Employment – Dismissal – Civil Status

CDPDJ for L. Chrétien -and- Sécurité Serca. division de Gestion Serca inc. and C. Poirier / TDP (Beauharnois) 760-53-000001-980 / September 1998 / Dismissal of a security guard because of his son's unpleasant dealings with the employer / Judgment: action granted, compensation granted – \$2,596 for material harm, \$2,000 for psychological harm and \$1,000 in exemplary damages

Employment – Dismissal – Sex

CDPDJ for C. Landriau -and- Beaublanc inc. and A. Beaulieu and Brasserie La Vieille 300 and J. Soucy / TDP (Montréal) 500-53-000097-988 / July 1998 / Dismissal of a waitress because of physical characteristics / Judgment: action granted, compensation granted – \$3,000 for psychological harm

Employment – Refusal to Hire – Handicap and Civil Status

CDPDJ for S. Arsenault -and- Institut Demers inc. and Groupe Conseil G.S.T. inc. / TDP (Longueuil) 505-53-000008-976 / December 1997 / Discrimination during a job interview and pre-hiring tests written / Judgment: action granted, compensation granted – \$5,000 for psychological harm, \$2,500 for exemplary damages and order to cease using such tests for personnel recruitment / On appeal

Employment – Refusal to Hire – Sex

CDPDJ for D. Lamoureux -and- Coopérative forestière de Petit-Paris / TDP (Roberval) 155-53-000001-983 / July 1998 / Refusal to hire based on sex for employment as a busher / Judgment: action dismissed with costs

Judgments rendered on the merits by the Court of Appeal

Right to Education – Harassment – Sex

F. Habachi v. CDPDJ and M. Hachey and L. Langlois / CA (Montréal) 500-09-000724-922 / May 1991 / Discrimination and harassment based on sex in a teaching institution / Judgment: appeal granted partially regarding the complainant L. Langlois

Employment – Refusal to hire – Pregnancy

Commission scolaire Jean-Rivard v. CDPDJ and T. Sasseville / CA (Québec) 200-09-000425-956 / August 1994 / Refusal to grant teaching contracts for the 1991-1992 school year because of pregnancy / Judgment: appeal dismissed

Judgments on Motions for Leave to Appeal Rendered by the Supreme Court of Canada

Employment – Conditions of Employment – Harassment – Age

CDPDJ v. Compagnie minière Québec Cartier -and- G. Blais / CSC 27128 / June 1993 / Discrimination based on age. Forced retirement and company restructuring / Motion for leave to appeal the judgment of the Court of Appeal, which had reversed the judgment of the Human Rights Tribunal / Judgment: motion dismissed

Employment – Conditions of Employment – Religion

CDPDJ v. Les Autobus Legault inc. -and- D. Bédard / CSC 27073 / March 1994 / Discrimination based on religion. Reasonable accommodation / Motion for leave to appeal the judgment of the Court of Appeal, which had reversed the judgment of the Human Rights Tribunal / Motion for leave to appeal / Judgment: motion dismissed

7.7 Judgments Rendered in Youth Protection Cases

CDPDJ -and- Les Centres jeunesse de l’Outaouais / Court of Québec. Youth Division (Hull) 550-41-000168-912. 550-41-000039-931 and 550-41-000002-961 / October 1996 / Motion to remedy a situation in which the rights of a child are violated / Judgment: ordered that the consequences of abrupt moving of a child be examined within the scope of a therapeutic approach.

Chapter 4

Implementing Affirmative Action

Affirmative Action Programs Department

The Affirmative Action Programs (AAP) Department has the triple mandate of supporting the development of voluntary affirmative action programs, acting as an expert for the government in appraising the performance of companies covered by the Contract Compliance Program, and overseeing the application of affirmative action programs recommended following investigations.

In 1999, the AAP Department was active in 272 cases. The Department's operations took place under four different program headings:

- the promotion program, combining information and training activities;
- the consulting program, providing assistance for companies and organizations in the development of affirmative action programs;
- the development program, covering the design, development and updating of intervention tools and methods;
- the Contract Compliance Program, involving appraisal of companies' compliance with their commitment to introduce affirmative action programs in accordance with the Charter.

In 1999, the staff of the Affirmative Action Programs Department was composed of eight people, namely one executive, two office employees and five professionals.

1. The Promotion Program

The promotion program created by the Department has two objectives: first, through information activities, to present the object and scope of AAPs to members of target groups, employers and unions; and second, through training activities, to ensure that participants are capable of implementing and maintaining an AAP in their company or organization, in compliance with the *Charter of Human Rights and Freedoms*.

In 1999, most of the information activities of the Department consisted of speeches to groups interested in the job market, cultural diversity and the *Charter's* impact on human resource management policies.

Exploratory efforts were also undertaken in cooperation with representatives of aboriginal women in respect of an employability program in urban centres and its interrelationship with the development of AAPs in companies.

In addition, Department members participated in the community meeting program organized by the Commission in the Montréal metropolitan area. One of the objectives of the meetings was to strengthen contacts with the clientele of ethnocultural and Anglophone communities. In connection with certain recommendations made in the recent Review of AAPs in Québec, published at the beginning of the year, discussions with these groups highlighted the problems in the establishments of AAPs, particularly in public services, and on the need to consolidate the actions of all partners.

In 1999, we could not offer public training sessions to companies and unions. However, upon request, we gave individualized sessions to companies, in particular on preferred solutions in the development and establishment of their programs, and on the development of action plans based on the experience acquired by other companies.

2. The Consulting Program

The Department's consulting program – not the same as its Company Evaluation Program, which is subject to the government's Contract Compliance Program – is directed on request to companies and organizations preparing voluntary employment AAPs.

These companies can ask for the Department's help in a variety of areas during the development of their AAPs. For example, they can request help in structuring and collecting their employment data, including the validation of training and experience requirements, availability analysis and calculation of the under-use of target groups in the organization's employment

structure, and its job groupings. In some cases, the Department can also help organizations to analyze different components of their human resources management policies and practices for compliance with the *Charter*.

The 46 active consulting files with companies and organizations that are developing “voluntary” AAPs were distributed as follows on December 31, 1999.

TABLE 17

Consulting Files Active on December 31, 1999

Municipal affairs*	13
Health and social services	2
Education	8
Government departments, bodies, Crown corporations	11
Private sector	11
Education AAP	1
Total	46

* including police forces, transportation services and municipal/para-municipal bodies

3. The Development Program

Of all the efforts made by the Affirmative Action Programs Department to develop and update tools and methods for its clients, the importance of statistical and computer analyses of availability and job groups deserves special mention.

In the last 12 months, a total of 220 availability analyses were carried out after the companies concerned had updated their personnel and job data.

The precision with which the availability analyses were carried out is intended essentially to provide the companies with the most realistic representation objectives possible, taking into account the official statistics available. These statistics are not intended to correct an “under-representation” of the target groups in relation to their demographic presence in the surrounding population, but to correct their “under-use” in relation to the members of these groups who have qualifications for a specific job in the relevant recruitment pool.

For this purpose, the Department completed the set-up of new personnel analysis and availability processing software. On November 30, 1999, each of the Department’s client companies received this new software developed in a computer environment that will provide more flexibility and precision in information exchanges between the companies and the Department.

4. The Contract Compliance Program

The Contract Compliance Program, which came into effect in April 1989 following a decision of the Québec Cabinet, requires companies with 100 employees or more to implement an affirmative action program when they obtain contracts or subsidies worth \$1,000,000 or more from the government.

Under the Program, the companies must gradually ensure that the three target groups designated by the government – women, visible minorities and aboriginal people – are represented fairly in their workplaces. At the same time, they must eliminate any human resources management rules and practices likely to produce discriminatory effects.

The government entrusted the Commission with the responsibility of appraising the performance of the companies in complying with their undertakings, and reporting back to it.

Since the program came into effect in 1989, 278 companies have come under its jurisdiction. According to the information given to the Commission by the government, a total of 214 such firms have in fact received contracts or subsidies of at least \$100,000 and have been required to implement AAPs in accordance with the *Charter*. Among these companies, 12 did not comply with their undertakings. They have been penalized by the government and cannot seek other contracts or subsidies until they have met the terms of their initial agreements. In addition, 33 files have been

closed by the Conseil du Trésor (Secrétariat aux services gouvernementaux) since the beginning of the program, for a variety of reasons including company closures, mergers and bankruptcies.

During the year, the Secrétariat aux services gouvernementaux gave the Commission the names of nine companies which have been recently subjected to the Program. During the same period, two companies were penalized by the government for refusing to comply with their commitment.

On December 31, 1999, 169 companies, including two companies that completed their programs, were subject to the obligation to establish an AAP. As shown in the following table, 80 of them provide goods and 46 of them services, and 43 received a subsidy.

TABLE 18

General Data on Companies Subject to the Contract Compliance Program on December 31, 1999

Administrative Regions	Total Regions	Goods(B) Services(S) Subsidies(A)	Number of Employees	Diagnosis	Development	1	2	3	4	5	6
01	3 *	B: 1	423					1			
		A: 2	775	1							
02	4 *	B: 2	296						2		
		S: 1	105			1 *					
		A: 1	211				1				
03	25 *	B: 6	1,082	1		1 *	1		1	2	
		S: 11	3,529		2	1 *	1	1	2	3	1
		A: 8	2,911	3	2		2	1	1		
04	5 *	B: 3	1,117		1			1	1		
		S: 1	188							1	
		A: 1	400	1							
05	2 *	B: 2	715					1		1	
06	74 *	B: 35	34,124	3		4 *	3	5	13	5	2
		S: 24	31,311	1	2	4 *	4	5	3	4	1
		A: 15	19,129	6	1	2 *	2	4			
08	6 *	A: 6	2,384	2		1 *	1	2			
10	2 *	A: 2	689				1		1		
11	1 *	B: 1	176					1			
12	12 *	B: 7*	1,881	1		2 *		1	2	1	
		S: 4	2,004		2			2			
		A: 1	175		1						
13	8 *	B: 5	1,282			1 *	1	1	1	1	
		S: 3	1,172				1	1	1		
14	1 *	B: 1	873							1	
15	4 *	B: 3	5,451					1	1	1	
		A: 1	134						1		
16	21 *	B: 14	5,035				5	6	1	2	
		S: 1	1,154						1		
		A: 6	1,033	2	1			2	1		
17		B:									
		S: 1	125	1							
		A:									
Sub-totals		B: 80*	52,455	5	1	8 *	10	18	22	14	2
		S: 46	39,588	2	6	6 *	6	9	7	8	2
		A: 43	27,841	15	4	4 *	7	9	4	—	
TOTAL	169 *	169	119,884	22	11	18 *	23	36	33	22	4

* The numbers followed by an asterisk (*) include the two companies that have completed their programs.

Of the 169 companies concerned, 22 were at the diagnosis phase, 11 others were at the stage of developing their action plan and 134 are implementing the measures of their program, with 16 of these doing so for the first year, 23 for the second year, 36 for the third year, 33 for the fourth year, 22 for the fifth year and 4 for the sixth year. Two companies completed their programs and received certificates of merit from the government.

Each of the files was obligatorily the subject of a regular follow-up on the part of the Branch's professionals, either by telephone contact or by company visits. The companies are also regularly in contact with their advisors to obtain opinions on discrimination-free human resource management and on the development of their AAPs. In addition to this consulting function is the appraisal of *Charter* compliance of AAPs in companies subject to the obligation to develop and

implement this type of program. The evaluation of reports submitted by companies in 1999 is summarized in the table below:

TABLE 19

Evaluation of Reports Submitted by Companies Between January 1, 1999 and December 31, 1999

Reports	Diagnosis	Development	Year	Year	Implementation		Year	Year	Total
	Stage	Phase	I	II	Year	Year	V	VI	
Received	13	6	3	12	23	19	9	0	85
Produced	10	9	6	10	9	10	3	0	57

5. A Major Case: the Commission scolaire de l'Industrie

The amalgamation in 1998 of the Commission scolaire de l'Industrie with the new Commission scolaire des Samares led to numerous legal proceedings that to a large extent affected the smooth running of this first affirmative action program, which resulted from an investigation of the Commission.

6. Review of Affirmative Action Programs in Québec

The Review of AAPs in Québec, made public by the Commission at the beginning of 1999, highlighted the experience which had been acquired over more than ten years of the implementation of AAPs.

The plan had a dual objective: to situate the framework in which the programs have been developed in Québec and to present the results of this first period of implementation. It is not a matter of revisiting the issue of the justification for these programs but one of demonstrating their very great appropriateness for resolving the situation of persons forming part of groups that are more frequently victims of discrimination, in order to enable the continuation and multiplication of AAPs in Québec, and to increase their scope.

From this perspective, the Commission has therefore made recommendations to the legislator and the government in order to implement any suitable methods to consolidate this preferred tool in the fight against discrimination.

Certain indications lead us to believe that these recommendations are beginning to pay dividends and that the government has cleared the first hurdle in the re-assessment of its AAPs. On the one hand, the Conseil du Trésor has undertaken the review of the AAPs for women and cultural communities in government departments and organizations. On the other hand, the government has manifested its intention to subject to the obligation to implement AAPs those public bodies whose employees are not governed by the *Public Service Act*, as well as Crown corporations, health, social-services and education network institutions, in addition to the municipal affairs sector.

In parallel, the *Public Service Act* was amended to permit the appointment of a civil servant from among all the applicants declared qualified following a competition, therefore eliminating selection according to level, and also to compel government departments and bodies to render account, in a specific section of their annual reports, of the results obtained in relation to the objectives of an AAP. An amendment was also made to the *Act respecting the accountability of deputy ministers and chief executive officers of public bodies* in order that the latter report the results obtained in relation to the objectives of the AAPs.

Concerning the Contract Compliance Program, the Commission's review showed that important steps were made by private-sector companies and that the total representation of women as well as that of visible minorities experienced improvements, despite a difficult economic climate. Accordingly, the Commission is of the opinion that the Contract Compliance Program should be extended to a larger number of companies and that its criteria and terms and conditions of application should be reviewed.

For its part, the Commission will continue its interventions with its partners in order to promote recognition of the importance of AAPs in the search for a fair and equitable society.

Chapter 5

The Commission Working in its Areas of Activity

Department of Education and Cooperation

In connection with the administrative reorganizations carried out in September 1999, the responsibilities for education and cooperation were combined under the same department. Thus, this report contains activities carried out for the most part under two different departments.

These activities are primarily focused on means of intervention, which include training sessions, courses, workshops and conferences. They also include consultation and support activities and partnership projects with various bodies. In total, 269 activities were carried out in 1999. Of this number, 106 were in the workplace, 97 in the community and 66 in schools. These activities took place in various sectors among diversified populations.

The written preparation of documents and the development of tools using new information technologies constitute another aspect of the work of the Department of Education and Cooperation. The Department is also responsible for the design and organization of annual events, such as forums designed to carry on discussions with the Commission's partners concerning specific problems, and the Prix Droits et Libertés, established to highlight the contribution of groups or persons to the defence and promotion of human rights and freedoms. The Department's activities take place primarily in Québec, but national and international cooperation also form an integral part of its activities.

1. Activities in the Employment Sector

The implications of the *Charter of Human Rights and Freedoms* in the workplace comprise numerous aspects. Human resources management, access to discrimination-free employment, the application of policies to counteract sexual harassment, and diversity in personnel are among the recurrent themes during the training sessions and courses offered.

This year, 106 activities were conducted in this sector. More than one-third of these activities, namely 39, targeted groups of persons registered in job-search or integration programs.

1.1 The *Charter* and Employment

Sessions and courses on the theme *The Charter and Employment* were given to representatives of various community groups, groups of young adults registered in job-integration programs, adult members of cultural communities, managers and union members.

Numerous educational institutions throughout the province also benefited from these programs. These include the Université de Montréal, Université de Sherbrooke and Concordia University, ENAP in Hull and Alma, Collège Laflèche in Trois-Rivières, the Trois-Lacs, Marie-Victorin, Laval, Wilfrid-Laurier, and Montreal school boards.

1.2 The *Charter* and Policies for Counteracting Sexual Harassment

Sessions for counteracting sexual harassment in the workplace were offered throughout the network of Batshaw Youth and Family Centres, in companies, hospitals, educational institutions and universities.

1.3 The *Charter* and Management of Diversity

Sessions requiring three activities on management of diversity were given to Canada Post managers.

1.4 The *Charter* and Beneficiaries' Rights

Committees of Québec hospital beneficiaries were able to learn more about their rights in connection with these sessions, a topic that was also the subject of a presentation at the annual conference of the Association des bègues du Québec.

1.5 Conferences

The Department, with the cooperation of the Research and Planning Department as well as the Investigations Department, was responsible for the organization of a joint conference with the

Centrale de l'enseignement du Québec on labour rights and relations. The conference was attended by over 75 people. The Department also participated in a conference on the revision of the labour code, organized by the Legal Department of UQAM.

2. The Educational Sector

The variety of means used to establish contact with people working in the educational sector as well as with young people characterizes the activities of the Department of Education and Cooperation in this sector of activities. In addition to the 51 training sessions offered this year, the Department produced pedagogical documents for teachers, developed tools using new information technologies and participated in over 15 consultation meetings and conferences to share its concerns with other partners and also to field their questions.

The activities in the educational sector deal with various subjects, including the issue of the school integration of intellectually handicapped students and students with learning difficulties, which remains current. Finally, a novel intervention taking the form of a program of activities under the theme of bringing together Quebecers and Aborigines completes this area of intervention.

2.1 Sessions or Workshops Offered in Schools

Sessions on themes such as education in rights and democracy, the code of behaviour in schools, and rights and responsibilities, intolerance, violence and sexual harassment have allowed groups of young people throughout Québec to reflect on this matter. Whether in comprehensive or secondary schools, in school boards, colleges or universities, the Department has done its utmost to convey the Commission's messages and to sensitize the educational community to the various aspects of rights and freedoms.

2.2 Sessions Offered to Groups or Associations

Numerous associations combining parents, professionals working with young people, groups of intellectually handicapped adults, and persons with learning difficulties have also participated in the sessions offered by the Department. Numerous events were the subject of papers, such as the Forum interdisciplinaire Éducation et citoyenneté, held at the Université de Montréal under the theme "human rights at the heart of citizens' training"; the forum on the integration of immigrant students and citizenship education from a world perspective, the meeting of the Canadian Association of Statutory Human Rights Agency (CASHRA) and the 17th annual conference of the Association des utilisateurs de l'ordinateur au primaire et au secondaire.

2.3 Written Documents and Tools Using New Information Technologies

During the year, the Department produced the document *Droits et libertés, un parcours de luttes et d'espoir* for human rights and freedoms education at the college and university levels (teacher training). This document was prepared in collaboration with the College Intercultural Department, and it completes the two documents already prepared for the elementary and secondary levels. The college document describes the situation regarding rights and freedoms on an international level. It was prepared in connection with the 50th anniversary of the *Universal Declaration of Human Rights*, and a second volume is being prepared on the situation of human rights and freedoms in Québec and Canada. The document was launched in connection with the annual conference of college teachers.

The Department also prepared comments and proposals on the Proulx report *Laïcité et religions*, in view of the preparation of a brief for the Commission on the place of religion in schools.

2.4 Use of Information Technologies and Communication in the Protection of Human Rights and Freedoms

This aspect is composed essentially of a project called *Les trois D: parlons droits, parlons démocratie, parlons didactique* and includes three components:

- Since June 1998, the electronic distribution list entitled *Les trois D: parlons droits, parlons démocratie, parlons didactique* has permitted an on-going discussion group on human rights education to discuss various themes, some of which are controversial, such as for example the use of corporal punishment in children's education, others of which allow the sharing of information through an alternative method. Everyone who so desires writes, replies and discusses thoughts, comments and news in a direct and lively fashion that reflects the current status of human rights. In 1999, some 300 messages circulated through the distribution list, which has 200 subscribers. They come primarily from Québec and Canada, but also from France, Belgium, Burkina Faso, Switzerland, England, Argentina and the United States.
- The database Infodroits, a collection of on-line Internet Web sites on human rights currently includes 110 sites with French content. These sites are grouped by category and by classification. Their content is described, and those offering interactive activities on their sites are identified. The themes, types of activities and target publics are included among the information available. The national legislative texts and international legal instruments in French are also accessible.
- The virtual class with specific interactive training modules according to the clientele that are targeted. This component is still at the research stage.

2.5 Bringing Together Quebecers and Aboriginal Peoples

The bringing together of Quebecers and Aboriginal peoples presents a program of activities carried out with the Montagnais Cultural and Educational Institute. The program includes a preparatory meeting in schools, where the activities take place, the holding of a training workshop for teachers and activity days under the *shaputuan*, a large traditional camp that can accommodate some 60 students. The project required the preparation of accompanying documents. Other information documents for teachers are being prepared and should be available in the year 2000.

In 1999, three secondary schools, the Victoriaville cegep and the Université Laval participated in this activity, in addition to four activities of the Department at the Musée de la civilisation, in Québec City. The same project also includes a community component, in connection with which the *shaputuan* was successfully constructed at the Fête des neiges de Montréal, the event *Présence autochtone 1999*, also in Montréal, and the Centre de la petite enfance Le Petit Prince, in Longueuil.

3. Youth

Although primarily associated with the educational community, young people are also the subject of activities in other regards. The development of a Québec network, a member of the National Youth in Care Network, enabled trainers to acquire the knowledge required to transmit the skills of advocacy to young people from the youth protection network. The setting up of a youth body in Québec that will have the mandate to enable young people to assert their rights is a primary objective.

Other bodies have been the subject of activities for the purpose of dealing with the issue of youth rights, at times with young people, and at other times with parents. The Association des locataires de Place Normandie, the Association des familles d'accueil du Montréal métropolitain and the Maison père enfant du Québec have been made aware of the rights of children and the rights of parents; for its part, the Confédération des organismes familiaux du Québec was given a presentation on family rights and the *Youth Protection Act*.

3.1 Special Events – the 10th Anniversary of the *Convention on the Rights of the Child*

The year 1999 marked the tenth anniversary of the enactment of the *Convention on the Rights of the Child*. To commemorate this event, the Department of Education and Cooperation initiated and carried out projects and collaborated with other departments in the establishment of activities.

In this way, the Department proposed training sessions on the Convention theme for all elementary and secondary schools in Québec. It also put together an awareness workshop for young people targeted toward the Regroupement des maisons de jeunes du Québec.

An information document, *La Convention relative aux droits de l'enfant +10 ans, des promesses à la réalité*, was also published in connection with this anniversary. In cooperation with the intercultural affairs division of the Ville de Montréal, the Education and Cooperation Department designed and conducted a training session for entertainers, designers and actors at the Fête des enfants de Montréal, and the play *Le Pont*, presented in 15 vacation clubs in the summer of 1999.

3.2 Rights and Freedoms Forums

In conjunction with the Rights and Freedoms Forums organized annually, the Department of Education and Cooperation held a special forum in relation with the *Convention on the Rights of the Child* on the theme “What do rights and freedoms mean to street youth?” This meeting, held in November 1999, was attended by approximately 100 participants and it was the chance for interesting debates and discussions, which were subsequently consolidated in the Proceedings of the Forum.

The Forum was the second event of this nature organized in 1999, since a first Forum, held last spring, dealt with the theme of equity between generations and “orphan” clauses. In this case also, the participation was excellent, the debates beneficial and the Proceedings widely distributed. The organization of the Forums is done in cooperation with other departments of the Commission, particularly with the Department of Research and Planning.

3.3 Prix Droits et Libertés

For over ten years, the Commission has been awarding the Prix Droits et Libertés (See Chapter 7). This year, in conjunction with the celebration of the Convention on the Rights of the Child, the award was presented to an organization working with young people. For this event, the Department of Education and Cooperation organized a special evening, on December 10, which featured young artists from the music, song and dance communities. An adult story-teller captivated the audience.

4. The Community Sector

The activities of education and cooperation that were conducted with community groups underwent significant development in 1999. This component is divided into three parts:

- education and awareness;
- consolidation and revitalization to help organizations do strategic planning and evaluation;
- the defence of rights through the development of projects and information, education and action campaigns (grassroots campaigns).

Regarding the first component, education and awareness, the Department offers training sessions described in its folder *Des voix multiples pour une voie commune* to members of non-governmental organizations, community groups, ethnic associations and action committees. The sessions propose the following subjects: how to equip oneself to better defend one's rights; rights education, a process of taking in charge – or empowerment; racial harassment; discrimination in housing; intolerance; and peaceful conflict resolution.

4.1 Sessions and Workshops Offered in Communities

During the year, the Department organized and gave several sessions and workshops to community groups. For example, a presentation on religious and cultural diversity was given to the Institut interculturel de Montréal; the Mouvement les personnes d'abord, in the Mauricie region, was made aware of the social integration of cognitively impaired persons; and the Centre communautaire des femmes sud-asiatiques participated in four sessions dealing with sexual and racial harassment.

The issue of racism was in turn dealt with among groups such as the Carrefour d'aide aux nouveaux arrivants de Ahuntsic, Tikva, a golden age group of the Côte-de-Neiges Jewish community, the International Bangladesh Society and The Tolerance Caravan.

A presentation on sexual harassment was made to the Kahnawake Women's Centre; the Black Community Resource Centre was informed about sexual and racial harassment and participated in an information session on the Commission and its mandates. A session on racism was given to the Canadian Council for Refugees.

The “Women's Y”, the Comité Alterte Centre Sud, the Canadian Forum on Volunteerism, and the Groupe Information Travail for various youth and adult groups in the process of reintegration

into society, the Mouvement fraternité Haïti-Québec and the Centre d'accueil pour les réfugiés et immigrants de Saint-Laurent constitute some of the organizations that participated in the activities organized by the Department.

The Department of Education and Cooperation was also active at conferences, in particular the World Conference on Civil Society and at the conference of the Association des groupes d'intervention en défense de droits en santé mentale du Québec on isolation and contention..

4.2 The Ethno-Cultural Circuit

Several consultation meetings among ethno-cultural community groups of different neighbourhoods in the Ville de Montréal and Laval were organized by the Department of Education and Cooperation in the Fall of 1999. These meetings, in which representatives of the various departments of the Commission participated, were intended to inform the Commission of situations of discrimination, harassment and exploitation experienced by community members in these various neighbourhoods. The meetings also provided the opportunity to inform groups on the services offered by the Commission. Various recommendations were transmitted to the Commission and an action plan will be developed. The following cities and neighbourhoods were the subject of consultations: Montréal-Nord/Rivière-des-Prairies, Côte-des-Neiges/Notre-Dame-de-Grâce, Parc Extension/Villeray, Petite Bourgogne/Saint-Henri/Pointe-Saint-Charles/Centre-ville/Verdun, and Laval.

4.3 The Regional Metro

Thirty-five awareness sessions were offered in a few regions of Québec – the Bas-Saint-Laurent, the Gaspésie, the Îles-de-la-Madeleine, the Outaouais – in conjunction with a project called Metro regional, which has been in progress for a few years. The regions the Commission visits vary annually, and the people it meets with originate from the socio-community and youth sectors, and also from the institutional and educational, health and para-governmental services networks. Close to 500 people were thus contacted, confirming the interest and need for this type of training. A complete documentary kit, developed in conjunction with this project, is given to each participant.

5. The Elderly

Activities for the elderly have represented an unexplored area until just recently. The International Year of Older Persons contributed toward making the population aware of the realities experienced by older persons, but the aging of Québec's population has also increased this awareness. Thus, various projects are being developed or completed. The following are a few examples:

- preparation of a Web training module on rights and freedoms for older persons with particular attention placed on protection against exploitation;
- preparation of a document entitled "Données sur l'exploitation des personnes âgées portant sur cinq années à la Commission 1994, 1995, 1996, 1997, 1998";
- organization of 10 awareness meetings in conjunction with the Métro régional with associations of the elderly from the regions of Bas-Saint-Laurent, Gaspésie, Îles-de-la-Madeleine and Outaouais;
- organization of awareness workshops with the elderly, members of associations and case workers of the CLSC-CHSLD;
- training on abuse and violence toward the elderly, offered by the Centre québécois de consultation sur l'abus envers les aînés, René-Cassin CLSC.

6. Canada-wide Project

The Department coordinated the CASHRA 1999 conference, with the cooperation of the Administrative Services Department and an investigator of the Direction régionale de Montréal. This large-scale conference, on the theme "Human Rights, A Springboard for a More Humane

World” was an unqualified success. It gave rise to a project of collaboration and discussion with the education officers and promotion of human rights commissions throughout Canada.

7. International Projects

The Department of Education and Cooperation participated again this year in the training session at the Strasbourg Summer University, “Éducation aux droits et libertés en milieu scolaire – les droits de l’enfant, de la protection vers l’autonomie”, which was held in July 1999. This session, offered annually since 1994 in cooperation with the International Institute of Human Rights of Strasbourg, brings together for two weeks close to 30 participants in an academic setting. These participants are primarily from the French-speaking African countries and Eastern Europe. Conferences, pedagogical-activity workshops and discussions are used to train the participants in the various aspects of rights education at the elementary and secondary education levels. The evaluation of the session and the Proceedings are produced annually.

The Department also participated in the training of The International Federation of Christian Action for the Abolition of Torture in Yaoundé, Cameroon; it led a module on rights education and on participatory methodology.

In connection with the cooperation project with Komnas Ham, the Indonesian National Commission on Human Rights, and the Network of Trainers in Human Rights of Indonesia, the Department participated in the session in Yogyakarta, Java, from February 15 to 19, 1999. This was the third phase of a project initiated in 1996. The last meeting concerned the setting up of a team of trainers working in rights and freedoms education throughout the country.

Finally, the Department participated in the cooperation project Programme intégré d’appui à la démocratie et aux droits de la personne (PIAD) in Cotonou, Benin. Two missions were carried out in connection with the project. In the first mission, the training requirements were analyzed and in the second, a training session was held on human rights education adapted to the situation in Benin. The project was conducted in cooperation with the Ministère des Relations internationales du Québec.

Chapter 6

Distribution of Information

Communications Department

The Commission has the mandate of preparing and implementing an information program aimed at promoting an understanding and acceptance of the subject and provisions of the *Charter of Human Rights and Freedoms of Québec* and of the *Youth Protection Act*.

It has entrusted to the Communications Department, which includes the Centre d'information sur les droits (CID), the responsibility of updating this mandate. From June 1998 to September 1999, the Centre was connected to the Department of Cooperation. The CID is composed of a team of four persons who provide library services, as well as documentation distribution and “specialized” information. The two CID professionals are also responsible for the Commission’s web site, as infomaster and technical webmaster. In short, the Department provides:

- media relations;
- preparation of communication plans with the public or with specific clientele;
- preparation and production of information tools on human rights and youth rights;
- holding of information sessions;
- distribution of documents published by the Commission (studies and opinions, analyses of Québec laws, folders, brochures, etc.);
- replies to requests for “specialized” information;
- development of the Commission’s web site;
- public access to a specialized library;
- documentary management and management of the Commission’s archives.

1. Proactive Communications

In 1999, the Commission issued 26 press releases, convened the media six times and granted several interviews.

The subjects of the principal press releases describe the importance of subjects that concerned the Commission:

- Launching of a publication on new forms of non-regular work, entitled *Travail éclaté: protection sociale et égalité*;
- The Commission recommends that the Centres jeunesse des Laurentides be placed under trusteeship;
- Affirmative action programs in Québec: the report is positive, but the government must expand the field of action;
- The Commission organizes a public debate on so-called “orphan” clauses;
- Efforts to put an end to sexual aggression toward children and adolescents must be increased and coordinated;
- Problem of non-payment of rent; the Commission is delighted with the government’s decision to stay the measures provided for;
- The Act respecting disparities in treatment must better protect the right to equality for youth;
- Investigation of the case of mistreated children in Beaumont: the Commission puts an end to its intervention at the Centre jeunesse de Québec;
- Launching of a first public consultation on the exploitation of aged persons;
- Public forum of the Commission: what do rights and freedoms mean for street youth?
- The place of religion in public schools: the respect of the Charter must be the guiding principle in the school system;
- *Prix Droits et Libertés* — the 1999 edition awarded to the Association québécoise pour les troubles d’apprentissage;

- Compensation of \$700,000 for 99 beneficiaries at the former reception centre Pavillon Saint-Théophile de Laval.

The media were also convened to five press conferences, on the themes:

- The view of affirmative action programs;
- The Commission's recommendation to place the Centres jeunesse de la région des Laurentides under trusteeship;
- The efforts to be agreed upon to put an end to sexual aggression toward children and adolescents;
- Follow-up of the Commission's recommendations in the case of the children of Beaumont;
- Consultation on the exploitation of the elderly.

The communication efforts surrounding the publication of the review of affirmative action programs in Québec were particularly significant. Initially, the Commission believed it expedient to first present this review to those primarily concerned, namely employers and the groups targeted by these programs (women, visible minorities, Aborigines and others). Approximately one hundred people thus answered the Commission's invitation and attended the premiere of the disclosure of the review's results and the Commission's recommendations. It was not until after this presentation that the media took cognizance of the review in a press conference that same day.

Among the noteworthy activities before the media were, in particular, the holding of a press conference that gathered together news directors and journalists from the major dailies around the legal obligation to respect the anonymity of youth taken in charge under the *Youth Protection Act* or the *Young Offenders Act*.

Two observations arise from this process: as a preliminary to this meeting, a summary study done by the Commission showed that when the identity of a child or an adolescent was revealed by the media, this type of revelation had more of an effect on children under protective measures, as opposed to young offenders. The second observation, this one arising from media representatives: the protection of the identity of youth is difficult in a context of journalistic competitiveness or, if you will, the race for the "scoop". However, this meeting contributed to a clear improvement of the situation.

In 1999, added to this proactive communication activity, was the response to over 250 individual requests from journalists, about certain investigation files of the Commission and judgments rendered by the courts, as well as a wide variety of current events such as the video-camera supervision of babysitters, abusive searches in schools, the supervision of workers by the CSST, marriages between same-sex couples, the situation of the Serbs and Kosovars in Québec, requirements of the Red Cross for blood donations, etc.; nor did the Commission escape questions dealing with the Ville de Montréal settlement on the disposal of household garbage, which provided for the search of garbage bags.

The print media reported on this as follows: from January to December 1999, 263 articles directly mentioned the Commission. A great majority of these articles were published in the dailies of the major centres (La Presse, le Soleil, The Gazette, le Journal de Montréal), whereas some were published in the regional dailies (La Tribune, le Nouvelliste, etc.) or in magazines with a wide circulation (Femme plus, etc.) or in specialized journals (Journal du Barreau, etc.).

Approximately one-quarter of these articles include only one mention of the Commission's name or a reference to the Charter of the *Youth Protection Act*, and the subject is not always related to the Commission's activities. On the other hand, in the majority of the cases, the articles describe files or subjects in which the Commission plays a primary role.

Several themes are noteworthy because of the number of articles they produced:

- the results of the investigation of the Centres jeunesse des Laurentides (23 articles);
- young teachers and the so-called "orphan" clauses (11);
- corporal punishment of children (10);

- follow-up of the Beaumont affair (9);
- review of affirmative action programs in the province of Québec (9);
- the Centre d'hébergement Saint-Luc and the aftermath of the Commission's intervention (9);
- suicide among young people who are subject to protective measures (7);
- the Forum on so-called "orphan" clauses (7);
- surveillance of employees absent for health reasons (7);
- the Proulx report and the parliamentary committee on the place of religion in public schools (6).

It is therefore clear that the ongoing relations maintained with the press ensure that the Commission, as well as the rights it defends and promotes, occupy an important and regular place in the news reflected by the media.

Finally, there could have been some apprehension, in 1995, that the amalgamation of the Commission des droits de la personne and the Commission de protection de la jeunesse would dilute the interventions in the area of the protection of children's rights. Now, what is observed is that the new Commission holds an important place on this subject as far as the media is concerned, and that its credibility has been acknowledged.

2. Edition in the Service of Rights

The Communications Department provides edition services for the entire Commission. This includes, in addition to the linguistic revision of certain documents prior to publication, advisory services in the area of publications, certain illustration work and edition per se. All the edition work, from graphic design to printing, is produced at the Commission itself.

In 1999, certain information documents were re-edited.

- the house edition of the text of Charter (French and English);
- the folder on the services offered by the Commission (French and English);
- the brochure entitled the *Charte... en résumé*, henceforth published under the title *Your Rights and Freedoms According to the Charter of Human Rights and Freedoms of Québec* (French and English);
- the brochure entitled *Protect our Children. Hear the Cry and Break the Silence* (French and English);
- the French and English versions of a folder on discrimination in housing.

As for the original material produced during the year, this consists of:

- a brochure on investigations under the Charter: this brochure will be replaced by a new information tool, the writing of which began in 1999;
- a folder on educational services offered to members of the ethnocultural communities (French and English);
- documents pertaining to the holding of two forums organized by the Commission, one dealing with the so-called "orphan" clauses, the other on the situation of street youth (programs and Proceedings);
- a set of documents for the holding, in Montréal, of the annual meeting of the Canadian Association of Statutory Human Rights Agencies: folder, program, posters, letterhead;
- an aide-mémoire leaflet on the exploitation of the elderly (French and English);
- the design, illustration and edition of various awareness tools, for the 10th anniversary of the adoption of the Convention on the Rights of the Child: poster (in French and English), button, letterhead, streamer and colouring book to be used at the Fête des enfants, organized by the Ville de Montréal in August;
- the French edition of an information brochure for the organization *Children's Advocate*;
- the design, illustration and production of various documents in support of the project, placed under the theme *Rencontre Québécois-Autochtones: un beau défi* – a documentation portfolio, folder, exhibition material;

- in conjunction with the “summer university” in Strasbourg, a set of documents : session program, participant’s notebook, evaluation book and a list of courses given the previous year;
- new promotional material in connection with the awarding of the *Prix Droits et Libertés* (application form and letterhead);
- illustration of a pack of cards – *Familles pleins droits* – which will be made public in the year 2000 by the Education and Cooperation Branch, namely the production of 30 original illustrations of characters from a pedagogical document, and the follow-up of the graphic realization of the game.

3. Meeting Groups

It goes without saying that information requires a presence in the field that promotes a knowledge of the population's needs.

For this reason, for example, in 1999, the Commission participated in a conference organized by the Centre de recherche et d'action sur les relations raciales (CRARR) on the media's treatment of our respective clienteles, set up an information booth at a conference on fairness in employment, which was organized by the Conseil des communautés culturelles, and set up an information booth at the Tour de l'Île des enfants.

In addition, the Communications Department responded to requests for information sessions on the Charter and on youth protection. In 1999, some twenty meetings were held among widely diversified groups and settings: a secondary school, a group of students in social service and a gay and lesbian association in a cegep, a group of parents and tutors of intellectually handicapped persons placed in a public establishment, an intercultural committee in a municipality, a group of volunteers in a CLSC, a recreation centre for youth, a mental health assistance group, a referral centre, an assistance service for immigrants, a community centre, a group of deaf women, a governmental organization, etc. These meetings have given rise to discussion, for example, on:

- the problems of persons receiving social assistance or ex-psychiatric patients who have only limited access to courses that can provide for their reintegration because of government rules governing the status of persons that are unable to work;
- the difficulty for newly arrived immigrants in Québec to clearly distinguish between what is under the jurisdiction of the *Charter* and the provisions of immigration laws;
- the questioning of the respect for professional secrecy and the respect for privacy of a group of government employees having access to data banks, in particular when they suspect cases of fraud;
- the case of immigrant parents who feel incompetent toward their children, who are thrown into a new culture much before they are.

4. So-called "Specialized" Information

As will be seen in item 5, the CID annually responds to thousands of requests for documents. In the very large majority of cases, the response to these requests calls for a clarification of needs, which permits the detection of a number of problems that necessitate, more than the sending of documents, so-called "specialized" information, namely a procedure to prevent or resolve conflicts of rights.

When people express the desire to find, above all, methods to learn to conciliate the rights of two parties on their own, they are offered the opportunity to share ideas in order to bring about possible ways of solving the problems they have encountered. The following are some examples of the questions dealt with in 1999.

- What is the protection a secretary can have if she refuses to perform certain tasks that may constitute discrimination prohibited by the Charter?
- Can the board of directors of a day-care centre adopt a regulation to refuse access to its services to the children of its teachers, in order to avoid any appearance of favouritism?
- What is the responsibility of a telemarketing company in a case where members of its personnel are victims of sexual harassment on the part of clients that are impossible to identify?
- Can an organization offering courses aimed at reintegration and the development of autonomy refuse access to its services to persons receiving social assistance?
- In an effort at showing neutrality, can an employer require that one of his employees who is on sick leave undergo a medical examination performed by a doctor practising in another municipality, even if the employee is not able to travel easily?

- Can a person whose house has burned down refuse to undergo a polygraph test required by his insurance company in order to obtain compensation?
- Can young people living in a rehabilitation centre contest a regulation prohibiting the wearing of “body jewellery”?
- Can the collective agreement of a company set out a clause establishing minimum salaries for summer jobs, given that these jobs require investments for training even though the length of service will be limited in time?
- Can a company coming to the aid of persons in distress, and alleging to want to protect both its employees and its clientele, systematically record telephone conversations unbeknownst to the persons concerned?
- What can be done by employees of an organization dedicated to the protection of AIDS victims when their employer shouts out the names of the members of his staff, who themselves are victims of the disease?

5. <http://www.cdpedj.qc.ca>

In 1999, the information officer and secretary attached to the CID responded to 7,124 requests for documents (2,360 in 1998, an increase of 202%). These requests, a large majority of which are made by telephone, necessitated the distribution of 101,887 documents (86,182 in 1998, an increase of 18%).

The abundance of requests for documentation highlights the importance of investing in the development of the Commission’s web site. The site, which has been on line since May 1998, now constitutes a powerful information tool for our organization. Moreover, we will see in what follows the effect that visits to the site have on certain traditional services of the Commission, namely the distribution of documentation and library access.

The content of the site offers, in particular, information on the Charter, the rights it asserts and the means for ensuring that these rights are respected, a section specifically dedicated to youth protection, press releases and information on the services offered by the Commission, particularly in the area of rights education, a pedagogical-discussion forum, links to decisions of the Human Rights Tribunal and the Supreme Court, etc.

The statistical data on visits to the site, from January to December 1999, speak for themselves:

- number of sessions: 36,670
- number of HTML pages printed: 150,315
- PDF files requested on-line: 10,360

Visits to the site have followed a constant progression throughout the year. Thus, the number of sessions, which stood at 2,275 in January, increased to 3,486 in December. The same progression was seen for printing of HTML pages (8,222 in January, 19,759 in December) and the requests for PDF files (399 in January, 1,342 in December).

It should be noted that during the first semester, the site offered only a few titles in PDF format. In June, the directory of documents distributed by the Commission was added to the services offered on line, enabling, in particular, the consultation of approximately one hundred opinions and studies.

The expansion of the web site resulted not only in making certain documents more accessible, and in a more efficient manner when these documents are linked to questions of current interest, but also in notably reducing the costs pertaining to the distribution of documentation. Thus, certain titles have stood out among the most requested files:

- the full text of the *Youth Protection Act*: 3,864 requests
- the Commission’s annual reports (1997 and 1998): 802
- the Commission’s review of affirmative action programs: 701
- the Commission’s opinion on the shadowing and surveillance of employees who are absent for health reasons: 590

- the Commission's opinion on the prevention of repeat offences regarding sexual aggressions committed against children: 162
- the Commission's comments on Bill 32 concerning de facto spouses: 155
- the Commission's opinion on police checks of criminal records of persons required to work among a vulnerable clientele: 123.

Certain documents, massively distributed in hard-copy format for years, are also among the most requested files. During the last two months of the year, this was the case, for example, for opinions of the Commission on medical examinations at work (99 requests), the use of video cameras on work premises (94), religious pluralism (88), as well as job applications and job interviews (63).

The usefulness of the Commission's site as a primary information and rights education tool is thus largely confirmed. However, in this volatile universe of Internet communications, the investments must remain constant. For this reason, in December, the Commission's webmasters began a major overhaul of all the site's components, including the directory of distributed documents, in order to make the site's content more complete, more user-friendly and even more dynamic.

6. The Library in Times of Technological Change

As shown by the table that closes this chapter, the actual visits to the library by persons from the outside dropped significantly in 1999, a decrease that is directly attributable to the information offered on the Commission's web site, more particularly with regard to access to the Commission's opinions and the judgments of the Human Rights Tribunal.

In addition, consultation of the Tribunal's judgments took precedence over consultation of the Commission's decisions in its investigation files. This is understandable – especially from the viewpoint of journalists and researchers – if we consider the Commission's obligation to maintain the confidentiality of personal information. Interest in the Commission's investigation decisions is therefore now directed more toward the statistical compilation of files, in particular with regard to discrimination and harassment complaints.

Although the external clienteles of the library are becoming more scarce, there is a large increase in internal library visits. In 1999, library services were sought in particular by the staff of the Commission's regional offices. Consultation of the Commission's decisions in investigation files is the most frequent, given, for example, the interest there is in relying on precedents.

Since the library's information holdings cannot meet all requirements, inter-library loans constitute, contrary to document acquisition, the best means of improving the collection at a lower cost. For all governmental and institutional libraries, it also represents an exchange of proper procedures, inter-library loans having become for them the only means of surviving and assuming their mandates effectively in a context of budget reductions and restrictions.

❑ Computerization: the way of the future for the library

The Commission's library is part of an integrated network of government libraries which produces a collective catalogue accessible via the Internet. In conjunction with the computerization of the library and for the purposes of making the catalogue accessible online, the documentation technician transferred all the files corresponding to available documents and entered, on the screen, the identification of the catalogue in the computer system. This operation represents the entry of over 6,600 titles.

In 1999, a multidisciplinary committee – composed of library representatives, the Research and Planning Department, the Legal Department, the Administrative Services Branch computer team and two trainees – began the implementation of a "reference-document base".

This base will contain the opinions prepared by the Research and Planning Branch, the legal opinions originating from the Legal Department, as well as analyses and summaries of the

judgments rendered by the courts in the area of human rights, since the Commission was established almost twenty-five years ago.

The operation of standardizing descriptors (key words) was undertaken in 1999 and will continue in the first few months of the year 2000. This database, on Access support, will thus be made available to Commission staff in all regions of Québec.

❑ Documentary Management and Archives

The librarian is also responsible for documentary management and archiving of all the Commission's files. Within this framework, she provides supervision and technical support to all of the Commission's staff.

In 1999, she was assisted in this task by five college- and university-level trainees in document management and records management, and this led to significant progress in this area. Moreover, this cooperation will have led to an increase in the physical document inventory, a "weeding" of documents already archived, the development of an internal procedure manual for documentary management and the creation of a conservation calendar on computer support. The validation of the conservation calendar and the process of approval from the Archives nationales du Québec are to continue in the year 2000.

Another stage remains to be completed: the development and implementation of an internal procedure manual for the conservation of electronic documentation (electronic mail and electronic document management).

TABLE 20

Library Activities

	1999	1998	± %
External Visits			
Organizations	54	52	
Government	104	121	
Private enterprise	48	27	
Teaching sector	82	147	
Jurists	58	98	
Journalists	3	3	
Complainants	28	27	
Others	125	129	
By telephone	388	412	- 6 %
In person	114	195	- 41 %
TOTAL	502	607	- 17 %
Internal visits			
Presences	1,982	1,786	+ 10 %
References	1,085	833	+ 30 %
Regional offices	216	108	+ 50 %
Internal and external loans			
Loan requests	1,100	1,053	+ 4 %
On-site consultation	4,236	3,668	+ 15 %
Inter-library loans			
Borrowed	293	267	+ 10 %
Loaned	93	74	+ 25 %
Consultation			
Commission's opinions and studies	257	389	- 33 %
Commission's decisions	93	139	- 33 %
Archive requests			
Total requests	105	82	+ 28 %
Number of document requests	136	101	
Computer time			
Consultation of banks, CIDREQ, etc.	38¼ h	49 h	- 26 %

Chapter 7

Prix Droits et Libertés 1999

This year, the *Prix Droits et Libertés*, awarded annually by the Commission des droits de la personne et des droits de la jeunesse, marked the commitment of the **Association québécoise pour les troubles d'apprentissage** (AQETA) to the right to education and social development for children with learning difficulties.

The award was given to Mrs. Louise Lafleur, President of the organization, at a ceremony that took place at the Maison de la culture Frontenac in Montréal on the evening of December 10. The President of the Commission, Mr. Claude Filion, greeted numerous guests – and their children, in this year marking the anniversary of the adoption of the *Convention on the Rights of the Child* – in the company of Mrs. Céline Giroux, Vice-President, who led the jury.

Formed over thirty years ago, AQETA now has 1,500 volunteer members engaged in active listening, information and representation work. Its objective is to ensure that, for children with learning difficulties, lip service is not simply paid to the right to education and that this right actually leads to academic success and not to lack of self-esteem, dropping out and delinquency.

A learning difficulty has been qualified as an “invisible handicap” whose presence is suspected only after repeated failures. It reflects a deficiency that relates not to intelligence but to the acquisition and processing of information; dyslexia and attention deficit disorder are well-known examples.

AQETA has been and remains the organization that has enabled this reality to be recognized. To the extent that studies estimate that learning disabilities affect 10 to 15 percent of the population, they must be considered to be a major problem in the exercise of the right to education and social integration in Québec.

Honourable Mentions

The jury of the *Prix Droits et Libertés 1999* was also anxious to highlight the action of two other organizations whose applications had been submitted.

An honourable mention was awarded to the Missing Children's Network Canada, which is dedicated to the protection of children, particularly from the viewpoint of the search for missing children. Since it was created in 1985, the Missing Children's Network has found and reunited with their families 172 kidnapped or run-away children. On the one hand, in creating its own network or contributing to international child-find networks, the organization devotes on the other hand its efforts both to the support of parents affected by such disappearances and to very numerous prevention activities toward the children themselves.

An honourable mention was also awarded to L'Aquarelle, a safe house for women who are victims of violence or in difficulty. Founded 14 years ago in Chibougamau by women of the community, L'Aquarelle works at denouncing all forms of violence, promotes egalitarian relationships between the sexes and, in this small community far removed from the major centres, offers resources to women and children, both with regard to lodging and telephone listening services, accompaniment and post-shelter follow-up.

Awarded on the occasion of the adoption of the *Universal Declaration of Human Rights*, to mark an exemplary commitment or an achievement in the promotion and defence of human rights and freedoms, the *Prix Droits et Libertés 1999* also wished to particularly mark, this year, the 10th anniversary of the adoption of the *Convention on the Rights of the Child* by rewarding an organization whose action is directed primarily toward children and adolescents.

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