

INTERNATIONAL HUMAN RIGHTS STANDARDS: THE QUEBEC PERSPECTIVE

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This year, Quebec is celebrating the 25 anniversary of the *Charter of Human Rights and freedoms*¹, adopted in the wake of the *International Covenant on Civil and Political Rights*² and the *national Covenant on Economic, Social and Cultural Rights*³.

I. THE QUEBEC CHARTER

General comments

The Quebec *Charter*, which applies both to private relationships and to the citizens' relations with the State, is said to be a legislation of a fundamental and quasi-constitutional character, because most of the rights it recognizes (the fundamental rights, the political rights, the judicial rights and the right to be treated equally) cannot be countermanded by any provision of any other law except if such a law specifies it applies despite the *Charter* (sec. 52).

Under the chapter entitled "*Fundamental Freedoms and Rights*", the *Charter* recognizes among others:

- ◆ the right to life, to personal security, inviolability and freedom (sec. 1);
- ◆ the right of every human being whose life is in peril to assistance (sec. 2);
- ◆ the right to the safeguard of dignity, honour and reputation (sec. 4) and
- ◆ the right to respect for private life (sec. 5).

The *Charter* also devotes a chapter to Economic and social rights such as:

- ◆ The right of children to the protection, security and attention that their parents or the persons acting in their stead are capable of providing (sec. 39);
- ◆ The right, to the extent and according to the standards provided for by law, to free public education (sec. 40);
- ◆ The right of every person in need, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living (sec. 45)⁴;

¹ R.S.Q., c. C-12.

² (1976) 999 U.N.T.S. 171, [1976] C.T.S. 47.

³ (1976) 993 U.N.T.S. 3, [1976] C.T.S. 46.

⁴ Section 45 was inspired by Section 11 of the International Covenant on Economic, Social and Cultural Rights which reads as follows:

1. « The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. [...] »

- ◆ The right in accordance with the law to fair and reasonable conditions of employment with proper regard for the person's health, safety and physical well-being (sec. 46);
- ◆ The right of aged and handicapped people to security and to the protection of their families or the people acting in their stead, and the right to protection from all forms of exploitation (sec. 48).

This chapter on *Economic and Social Rights* does not however benefit from any precedence over the legislation pursuant to section 52 of the *Charter*.

The Quebec *Charter* also prohibits discrimination based on prohibited grounds in the exercise of the rights and freedoms guaranteed under the *Charter* and harassment on prohibited grounds. The prohibited grounds 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 any means to palliate a handicap (sec. 10 et 10.1⁵).

Social condition

The prohibition of discrimination based on social condition is a precious guarantee in the fight against poverty and against interference with rights and freedoms arising from poverty.

There is no statutory definition for the concept of social condition, but it has been defined by the courts as: a person's standing in society, determined by his or her occupation, income or education level or family background and the perceptions that are drawn from these various objective points of reference⁶.

For example, in the housing sector ruling, the Court of Appeal⁷ confirmed the judgment of the Human Rights Tribunal, which had ruled that a refusal to rent housing to a person with a very low income due to fears based on a summary appraisal of the person's ability to pay constituted discrimination based on social condition.

⁵ 10. "Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right."

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

See for example *Commission des droits de la personne du Québec c. Gauthier*, [1994] R.J.Q. 253 (T.D.P.Q.);

⁷ *Whittom c. Commission des droits de la personne du Québec*, [1997] R.J.Q. 1823 (C.A.); (1997) 29 C.H.R.R. D/1 (C.A.).

The Court of Appeal's ruling therefore confirmed that the fact of being a welfare recipient constitutes a social condition within the meaning of section 10 of the *Charter*, and that poverty, or insufficient income, also constitutes a relevant element in establishing a person's social condition.

More recently, in the *Bia-Domingo*⁸ case, the Human Rights Tribunal granted the action of the Commission, which alleged that the complainant, a short-term freelance worker, had been the victim of discrimination based on his social condition and national origin. 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 Quebec. 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.

II. THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

Pursuant to the *Paris Principle*⁹, the Quebec Commission assumes a responsibility to promote and ensure the harmonisation of national legislations and practices with international human rights treaties.

The international legal instruments pertaining to human rights do in fact have an important influence on the Quebec Commission's activities.

For instance, in its various studies and reports, the Commission frequently refers to international standards in defining and promoting the human rights and freedoms guaranteed by the *Charter*. The Commission has also invoked International Standards before the tribunals.

According to the Commission, such a recourse to international documents is justified considering that Quebec should not legislate in a manner which would be incompatible with its international commitments. Hence, the laws and, therefore *Charter*, should be constructed in a manner compatible with them. Also, from a historic point of view, the elaboration and the adoption of the *Charter* was very influenced by the existing international standards.

In compliance with an agreement entered into in 1987, the Commission also contributes to the preparation of official reports from Quebec to international authorities regarding the

⁸ *Commission des droits de la personne et des droits de la jeunesse (Bia-Domingo) c. Sinatra*, T.D.P.Q., Montréal, No 500-53-000102-986, 21 septembre 1999, j. Rivet.

⁹ *National Institutions for the Promotion and Protection of Human Rights*, General Assembly Resolution 48/134, U.N. Doc. A/RES/48/134, 20 December 1993 (Annex).

Implementation of International Human Rights Conventions, by making periodic reports of its own activities. For example, in July 2000, the Commission made a report on the application of the *International Covenant on Economic, Social and Cultural Rights*, for the period of October 1994 to September 1999 and on its activities in the application of the *ILO. Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*¹⁰ (covering the period from June 1, 1998 to May 31, 2000).

III- CASE LAW

The Human Rights Tribunal's Key Principle Interpretation

The Human Rights Tribunal has been created on December 10, 1990, the anniversary of the *Universal Declaration of Human Rights*¹¹.

It has a specialized jurisdiction to hear and rule complaints concerning discrimination and harassment grounded on one of the motives set out in article 10 of the *Charter*. The Tribunal also has jurisdiction to hear cases having regards to the exploitation of aged or handicapped people.

The Tribunal has expressly declared that, one of its key principles of interpretation was the following:

*"A large and liberal interpretation, enlightened by the international law of Human Rights and concerned with the primacy of human dignity"*¹²

According to the Human Rights Tribunal:

*"A reading enlightened by international law, [...] is an interpretation of the Charter coherent with international agreements on human rights ratified by Canada and adopted in Quebec through provincial legislation."*¹³

The Tribunal also stated that:

In participating to the adoption and enforcement of international conventions regarding human rights (such as the Universal Declaration of Human Rights, the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention regarding the Rights of the Child and the International Convention on the

¹⁰ (1953) 165 U.N.T.S. 303, [1973] C.T.S. 37, Cmd. 5039.

¹¹ Signed Dec. 10, 1948, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), reprinted in [1948] U.N.Y.B. 465.

¹² Web site of the Human Rights Tribunal: <http://www2.lexum.umontreal.ca/qctdp>.

¹³ *Id.*

Elimination of all Forms of Racial Discrimination, to cite only the most fundamental) Canada and Quebec have bound themselves internationally to guarantee within their borders the respect and protection of a number of fundamental rights and freedoms.

It is worth noting that the Quebec legislator was essentially inspired by these international treaties during the preliminary documents for the adoption of the Charter, hence the usefulness of referring to them in interpreting certain provisions, their nature and purpose. These treaties are relevant and persuasive for a better understanding and application of the Charter's principles. Thus, the Tribunal does not hesitate in using them as "backdrop" for interpretation of the Charter. For example, the prohibition of racial discrimination is well recognized in international law as a norm of jus cogens, meaning a norm of imperative character part of the corpus of international law from which no departure is allowed.¹⁴

Examples of References to International Standards in Quebec Case Law

Since its creation, it is on a regular basis that the Quebec Human Rights Tribunal refers to various International documents in order to define the right to equality and the various prohibited grounds.

Its reasoning for doing so is: either because the preparatory work referred to international standards, or because of the similarity of wording, or, more generally on the assumption that Quebec is not supposed to legislate in a manner which would be contrary to its international engagements.

For instance, in 1999 and 2000, the Human Rights Tribunal has referred to various international documents, either ratified or not by Canada, in the following judgments :

- ♦ *Lorrain*¹⁵ (sexual harassment in the work place): ex. *I.L.O. Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation*;¹⁶

¹⁴ *Id.*

¹⁵ *Commission des droits de la personne et des droits de la jeunesse (Lorrain) c. Cormier*, T.D.P.Q., Sherbrooke, n° 450-53-00001-004, le 12 octobre 2000, j. Rivet.

¹⁶ (1960) 361 U.N.T.S. 31.

- ◆ Réhaume¹⁷ (pay equity): ex. *Universal Declaration of Human Rights*; *I.L.O. Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*; *International Covenant on Economic, Social and Cultural Rights*; *Declaration on the Elimination of All Forms of Discrimination against Women*¹⁸; *I.L.O. Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation*; *Convention on the Elimination of All Forms of Discrimination Against Women*¹⁹;
- ◆ Allen²⁰ (racism / housing): ex. *Universal Declaration of Human Rights*; *International Covenant on Economic, Social and Cultural Rights*; *International Covenant on Civil and Political Rights*; *International Convention on the Elimination of All forms of Racial Discrimination*²¹; *Convention on the Rights of the Child*²²;
- ◆ Landriau²³ (dignity and sex / discrimination in the work place based on physical appearance): ex. *Universal Declaration of Human Rights*; *International Covenant on Economic, Social and Cultural Rights*; *International Covenant on Civil and Political Rights*; *International Convention on the Elimination of All forms of Racial Discrimination*; *Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation*; *Convention on the Elimination of All Forms of Discrimination Against Women*; *Declaration on the Elimination of All Forms of Discrimination Against Women*;
- ◆ Mohammed²⁴ (race and dignity): ex. *International Covenant on Civil and Political Rights*; *International Convention on the Elimination of All forms of Racial Discrimination*;
- ◆ Gagnon²⁵ (race / housing): ex. *Universal Declaration of Human Rights*; *International Covenant on Economic, Social and Cultural Rights*; *International Covenant on Civil and Political Rights*; *International Convention on the Elimination of All forms of Racial Discrimination*; *Convention on the Rights of the Child*;

¹⁷ *Commission des droits de la personne et des droits de la jeunesse c. Université Laval*, [2000] R.J.Q. 2156 (T.D.P.Q.).

¹⁸ G.A. Res. 2263, 23 U.N. GAOR (1967).

¹⁹ Official Records of the General Assembly of the United Nations, Thirty-Fourth Session, Supplement No 46 (A/34/46), p. 193, [1982] C.T.S. 31.

²⁰ *Commission des droits de la personne et des droits de la jeunesse c. Gestion S.I.B. inc.*, J.E. 2000-343 (T.D.P.Q.).

²¹ (1969) 660 U.N.T.S. 195, [1970] C.T.S. 28, 3 I.L.M. 164, 58 A.J.I.L. 1081.

²² Official Records of the General Assembly, Forty-Fourth Session, Doc. A/RES/44/25.

²³ *Commission des droits de la personne et des droits de la jeunesse c. Beaublanc inc.*, [1999] R.J.Q. 1875 (T.D.P.Q.).

²⁴ *Commission des droits de la personne et des droits de la jeunesse (Mohammed) c. Bouffard*, T.D.P.Q., Saint-François, No 450-53-000001-988, 30 avril 1999, j. Rivet.

²⁵ *Commission des droits de la personne et des droits de la jeunesse (Gagnon) c. Quévillon*, T.D.P.Q., Terrebonne, No 700-53-000004-980, 8 avril 1999, j. Rivet.

- ♦ *Bia-Domingo* (origin and social status / housing): ex. *Universal Declaration of Human Rights*; *International Covenant on Economic, Social and Cultural Rights*; *International Covenant on Civil and Political Rights*; *International Convention on the Elimination of All forms of Racial Discrimination*; *Convention on the Rights of the Child*.

The Supreme Court of Canada also referred to international law in the recent decision *Ville de Montréal* rendered on May 3, 2000 in defining the word 'handicap' of section 10 (ex. *Universal Declaration of Human Rights*; *International Covenant on Economic, Social and Cultural Rights*).

Economic and Social Rights²⁶

Although such reference to international law can be welcome, it cannot be said that it had, yet, other significant effect than to support a large and liberal interpretation of the *Charter*. However, international law could have a greater effect in imposing a real positive obligation on the State in matters of Economic and Social rights.

The question of whether the provisions pertaining to economic and social rights are binding and impose positive obligations on the State is particularly relevant in the context of section 45 (acceptable standard of living). Considering the fact that section 45 guarantees the right to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living, the case law still hesitate to consider that such right has legal effects and can be judicially enforced.

As Pierre Bosset underlined:

"The most promising results, perhaps, have been obtained by the combination of an economical or social right and the right to equality guaranteed by section 10. In its very first decision, the Human Rights Tribunal highlighted the existing complex interaction between the right to equality and the right to free public education:

*"[I]f the [C]harter permits the exercise of the right to free public instruction to be affected by various legislative restrictions, and indeed it suffers from certain restrictions (such as the imposition of tuition fees at the college and University levels, for example), it prohibits the limitations that, in the development of this right, produce a discriminatory effect with regard to one of the grounds listed in section 10."*²⁷

²⁶ For a complete analysis, see Pierre BOSSET, "Economic and Social Rights, Poor Cousins of the Québec Charter?", 1996, Research Department, Commission des droits de la personne et des droits de la jeunesse, cat. 2.500-100.

²⁷ *Commission des droits de la personne c. Commission scolaire de St-Jean-sur-Richelieu*, [1991] R.J.Q. 3003, 3037 (T.D.P.). Confirmed by [1994] R.J.Q. 1227 (C.A.) (translation from P. BOSSET, *op. cit.* (note 25), 12).

This link between section 10 and the other rights and freedoms arises directly from the wording of section 10, which does not create an autonomous right to equality. It guarantees the right to full and equal recognition and exercise of the various rights and freedoms which are recognized by the Charter .The «other» right need not be violated, as such, for there to exist an unlawful infringement of the right to equality: an incompatible distinction with the rule of equality, established in the determination of the terms and conditions of this right, is sufficient²⁸. The absence of precedence of a right, such as is the case for the right to “an acceptable standard of living” should not exclude a critical examination of the legislation from the viewpoint of section 10. In this regard:

“[I]f section 40 cannot, when taken in isolation, benefit from the effect of the rule of precedence set out in section 52, it can in a certain manner do so indirectly where the recourse in which it is invoked in a principal capacity also involves the right to equality, which profits from the protection of the precedence clause.”²⁹

In the absence of discrimination, the question of the extent of the positive obligations of the State is asked in more direct terms. To date, only exceptional circumstances have led to the recognition of positive obligations solely on the basis of an economic or social right³⁰.

In Gosselin c. Procureur général du Québec³¹, the superior court had to rule on the validity of a substantial reduction of welfare benefits to persons under thirty years of age. Underlining that section 45 of the Charter does not benefit from precedence over the legislation, the Court stated that:

“Accordingly, section 45 confers no right to claim a sum of money as such. Section 45 should be read as the statement of a policy whose coming into force is verified in the relevant legislation. Section 45 does not authorize the courts to review the sufficiency or adequacy of the social measures which the legislator, in political discretion, has elected to adopt.”³²

*The appeal was rejected by a majority of two judges³³. Dissident, justice Robert would have granted the appeal. Basing his reasoning on international standards, such as the *International Covenant on Economic, Social and Cultural Rights*, he concluded that the right to an acceptable standard of living provided*

²⁸ *Id.*, p. 3036.

²⁹ *Id.*, p. 3037.

³⁰ P. BOSSET, *op. cit.* (note 25), 11-13 (some references have been omitted).

³¹ [1992] R.J.Q. 1647.

³² *Gosselin*, 1667 (translation from P. BOSSET, *op. cit.* (note 24), 14.

³³ [1999] R.J.Q. 1033.

for in section 45 of the *Charter* should be enforced and have legal effect. He underlined the close link between the economic aspect of the right guaranteed in section 45 of the *Charter* and other fundamental human rights, such as the right to dignity and the right to full and equal recognition and exercise of human rights and freedoms.

The case is now before the Supreme Court of Canada and the Quebec Commission was recently granted the permission to intervene.

We can only hope the Supreme Court will share the public statement the Commission made in October 2000, on the occasion of the World March of Women Against Poverty and Violence Against Women:

"The Commission is of the opinion that poverty constitutes a major obstacle against the use and enjoyment of human rights and freedoms, including fundamental rights. Furthermore, the Commission is of the opinion that exclusions caused by such poverty are incompatible with the effective use and enjoyment of the right to equality, as spelled out in the Charter of Human Rights and Freedoms.

Poverty is especially a denial of a person's right to effectively enjoy, in conformity with section 10 of the Charter, all of its rights and freedoms, without any discrimination based on social status... Poverty also ignores one of the basic features of the Quebec Charter: the recognition of economic and social rights. The Quebec Charter is indeed the only document of its kind, in Canada, that does recognize the right to measures of financial assistance and to social measures provides for by law susceptible of ensuring such person an acceptable standard of living (section 45). An acceptable standard of living should mean a standard that does not threaten the enjoyment of other fundamental rights, and especially the right to integrity and the right to equality.

Finally, poverty is incompatible with Quebec's international commitments. When it did accept the ratification, by Canada, of the International Covenant on Economic, Social and Cultural Rights, Quebec did commit itself to proceed, as quickly and as efficiently as possible, in order to guarantee, progressively, the full use of economic and social rights, which includes the obligation to take strong initiatives against poverty."