

Affirmative Action Programs in Québec

Review and Prospects

December 1998

***Protecting Gains and
Extending the Field of Action***

Summary

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Background

The Charter of Human Rights and Freedoms and Canada's other anti-discrimination codes were adopted in a context where society had recognized the existence of certain deep-seated and persistent inequalities. The new legislation was carried forward on a wave of social change – a vigorous feminist movement, emerging recognition of the rights of the handicapped, a new awareness of the iniquities suffered by Aboriginal people, recognition of the discrimination suffered by some groups of immigrants and perpetuated by immigration policies, and so on.

Québec's new Charter was therefore greeted with enthusiasm. Society now had a tool, and could start work to reverse the trends and eradicate the old demons of exclusion and prejudice.

However, it soon became clear that the means provided to apply this tool in the daily fight against discrimination and rights violations could not be used to attack the more profound and persistent problems. Thus, the means in question were not effective for bridging, within a reasonable period, the gap created by forms of discrimination inherent to the dynamic of social relationships, or for countering the cumulative effects of so-called "systemic" discrimination. The time required to place everyone on the same footing meant that the disadvantages produced by discrimination, whether historically or as a result of stereotypes and prejudices, were maintained for an unacceptably long period. Immediate measures of redress were needed, and such measures had to be combined with radical changes in the practices of the actors concerned.

"Some groups, such as women, Aboriginal people, certain racial and ethnic minorities and the handicapped, have historically suffered from widespread discrimination in our societies.

To remedy this situation, it is not enough to prohibit open and directly identifiable discrimination ... to fight discrimination, it is necessary to take into account past discrimination, and then correct its effects.

Almost unanimously, the experts on these issues believe the case-by-case approach (although absolutely necessary), and an approach composed solely of

incentive measures or based on goodwill, are completely insufficient as a means of seriously addressing generalized inequalities that have their roots in historically ----- discriminatory systems¹.”

One method in particular was proposed as a way of achieving this objective – the affirmative action program. Affirmative action programs had first been tested in the United States and then in Canada, and in both cases the results were significant².

Associations and organizations involved in the promotion of human rights and freedoms and the defence of individuals and groups suffering from discrimination had themselves recommended the introduction of such programs. They viewed the provisions of the Charter of Human Rights and Freedoms on affirmative action programs, which came into force in 1985, as a major step forward in this respect.

Indeed, the legislator, in these provisions, recognized that the different forms of discrimination suffered by certain groups, including women, Aboriginal people, the handicapped and visible minorities, were not necessarily isolated acts, but manifestations of more general phenomena caused by complex, intertwined factors that had settled into place over time. To counter the effects of these inequalities, society needed remedies that went beyond the case-by-case approach to restore the underlying general situation.

Hence, what was needed was no longer an approach based on rectification of individual faults, but a systemic approach, focused mainly on the achievement of clear results, providing true equality for the members of groups that had been victims of this type of discrimination.

The features of affirmative action programs

Affirmative action programs take their meaning from this historical context.

The implementation of an affirmative action program means, first and foremost, identifying the cumulative effects of systemic discrimination and its underlying practices. Once this has been done,

1 *L'action positive et la Charte des droits et libertés de la personne, Commission des droits de la personne du Québec, March 1981, p.3. (our translation)*

2 *This has been confirmed in other studies, including that by H.Hammerman, A Decade of New Opportunity – Affirmative Action in the 1970s, The Potomac Institute Inc., 1984; Justice R.S. Abella, Employment Equality – Report of a Royal Commission, Supply and Services Canada, 1984.*

special measures can be drawn up in favour of the members of groups that, as a result of the discrimination in question, have been held back in the fields of employment, education or health, or in any other service ordinarily offered to the public.

The special measures allow preference to be given to the members of these groups, until a fair representation is achieved. Examples include preferential hiring and promotion where the candidates have equal skills, preferential access to training for people with the required background, and so on. The law confirms the non-discriminatory nature of such preferential measures, since they constitute a means of correcting the cumulative effects of a certain form of discrimination (i.e. systemic discrimination). However, these measures are temporary, and must be removed once the objectives have been achieved.

In addition to achieving fair representation, the introduction of an affirmative action program should lead to a review and modification of the practices generating the discriminatory effects in the environments concerned. Such practices may include human resources management in the workplace, student guidance and selection mechanisms in schools, and so on. This “cleaning up” of employment practices guarantees the permanence of the results, since the new practices should restore ongoing equality of opportunity. Subsequently, the impetus generated by the presence of a critical mass of representatives from the formerly excluded groups will ensure that the effects of the program are maintained.

Affirmative action programs may therefore have a significant impact on equal access to the benefits produced by true participation in society. However, they differ from the other measures that democratic societies are able to use to guarantee the integration of all their citizens. The goal of an affirmative action program is to allow a certain group to catch up more quickly, in order to compensate for a cumulative disadvantage. Integration measures, for their part, allow all citizens to participate equally and regularly in social, political and economic life. Their scope is therefore much broader and more continuous. The two types of measures complement one another. Affirmative action programs are temporary measures of redress, aimed at restoring a balance destroyed by discrimination, while integration measures provide ongoing support for the fair participation of all citizens in community development and in its results.

IMPLEMENTATION OF DIFFERENT TYPES OF AFFIRMATIVE ACTION PROGRAMS

Types of programs	How a program of this type is initiated	How a program of this type is implemented
Voluntary	<i>On a voluntary basis, an organization or company wishing to implement this type of program :</i> <i>1. Analyzes its workforce in each employment category, to see whether one or more of the target groups is under-utilized with respect to the availability of competent workers in that group for that type of work.</i> <i>2. Analyzes its management policies and practices to identify elements that may cause one or more of the target groups to be excluded.</i>	<i>If the analysis shows under-utilization and the presence of policies or practices causing one of the groups protected by section 10 of the Charter to be excluded, the organization or company establishes :</i> <i>1. Preferential hiring or promotion objectives to overcome the deficit within a reasonable period.</i> <i>2. A plan to change the policies or practices that produce discriminatory effects on the hiring or promotion of target group members.</i>
Government	<i>Under section 92 of the Charter, the government must require its departments or agencies to carry out the above analyses.</i>	<i>Idem</i>
Contract Compliance	<i>Companies with 100 or more employees that obtain contracts or subsidies worth \$100,000 or more are required to carry out the above analyses.</i>	<i>Idem</i>
Imposed following an investigation	<i>The Commission, following a complaint or on its own initiative, may carry out an investigation concerning :</i> <i>1. The under-utilization of one or more of the groups protected under section 10 in a company or organization.</i> <i>2. The policies and practices that may have generated discriminatory effects for the group or groups in question.</i>	<i>If, following the investigation, the Commission concludes that a group has been excluded from an employment category as a result of discrimination, it may propose the implementation of an affirmative action program, on the terms and conditions described above, within the time it stipulates.</i> <i>When the proposal is not implemented, the Commission may take the matter before a court, to force the company or organization to prepare and implement a program.</i>

Target groups

Due to the specific nature of these programs and the preferential treatment they introduce, it is extremely important that they be targeted to counter the identified effects of discrimination on specific groups.

Voluntary programs

For programs implemented on a voluntary basis, in a given environment, the target groups may be identified by assessing the effects of selection, exclusion or preference related to one of the prohibited grounds of discrimination listed in section 10 of the Charter, in that particular environment. In the workplace, this is done by looking for evidence of under-representation and identifying the management practices that may be responsible for excluding certain groups. However, companies have a certain margin in this respect. In other words, they do not need formal proof of discrimination in order to implement an affirmative action program. Instead, they undertake, with their program, to correct the discriminatory effects they have identified and the practices underlying those effects.

Contract Compliance programs

For programs involving large sections of society, as is the case under Contract Compliance, it was vital to establish priority targets, if only for the sake of reliability and effectiveness. The targets in question were identified on the basis of observed systemic discrimination in society as a whole. This was done by examining existing data and specific studies undertaken on the main groups identified as potential targets. Target groups were thus identified using sociological and statistical data³.

The studies confirmed that women, visible minorities, handicapped people and Aboriginal people were lagging significantly behind the other sectors of society, due to practices of exclusion and preference. It was clear that such practices, by limiting their choices and opportunities, had placed these groups in an unfavourable situation compared with the rest of society.

A lot of data were available on the situation of women, and the results were consistent. This group therefore had a lot of ground to make up, a situation subsequently confirmed by the analyses carried out in companies subject to the Contract Compliance program.

3 Bosset P. and Caron M., « Un nouvel outil de lutte contre la discrimination : les programmes d'accès à l'égalité », *La revue juridique Thémis*, vol. 21, n° 1, 1987, pp. 108-109.

The handicapped were not retained as a target group, because, under the Act to secure the handicapped in the exercise of their rights, companies with 50 or more employees were required to prepare recruitment plans to ensure that this group was fairly represented⁴.

A large amount of data was gathered and examined on a series of groups described by a combination of the terms “minority”, “community”, “ethnic” and “cultural”⁵, and the results were discussed at length. First, the general data revealed a very broad range of situations and some major disparities between the groups. They also revealed different distribution patterns in the immigrant generation and subsequent generations, as well as patterns that differed according to the time of immigration or the length of time spent in the host society.

The research revealed overall employment deficits for members of the visible minorities only⁶. In Québec, this meant the Black and Asian populations⁷.

These elements, taken together, led to a decision to retain visible minorities as a general target for Contract Compliance, but not the broader category of ethnic minorities. This latter category obviously includes visible minorities, but its application may actually have been unfavourable to them. The larger the target, the greater the risk that the groups most affected by exclusion will be “forgotten”.

These general observations by no means imply, that certain groups have not been excluded from some sectors of economic activity due to their ethnic origin. On the contrary, both here and in other high-immigration countries, the “ethnic market” insertion strategy has emerged as a reaction to exclusion from certain sectors of the

4 We will not discuss this measure in detail here. However, we can say that it has not, unfortunately, produced the anticipated results in terms of actual job access by handicapped people, as stipulated in the plans.

5 For a general review of this research, see D. Helly, *Revue des études ethniques au Québec, 1977-1996*, INRS – Centre Culture et Société, November 1997.

6 In the absence of an instrument based on objective visibility criteria – which was impossible to build – the operational definition of this category is based either on self-designation or on a list of origins drawn up for federal statistical purposes and used throughout Canada. The list is composed of people from regions whose populations generally exhibit phenotypical features that differ from those of Caucasians, or who describe themselves as Black.

7 A. Ledoyen, *Montréal au pluriel – Huit communautés ethno-culturelles de la région montréalaise*, Collection Documents de recherche n° 32, Institut québécois de recherche sur la culture, 1992; J Boisjoly, D. Helly and S. Desrosiers, *Segmentation du marché selon l’origine ethnique*, Report submitted to Employment and Immigration Canada, Institut québécois de recherche sur la culture, 1993; see also, D. Helly, op. cit., pp. 38-42.

economy, and especially from certain sectors of the public sphere. The strength and persistence of prejudices and stereotypes has also been observed on many occasions. The discriminatory effects of such situations can be countered by localized programs. The group's heterogeneity and the possible absence of negative prejudices, or sometimes even the existence of positive prejudices in favour of some of its constituents however make it risky to rely on such a broad target category as "ethnic minorities".

**CHOICE OF GROUPS TO BE INCLUDED IN AN AFFIRMATIVE ACTION PROGRAM
BY TYPE OF PROGRAM**

Type of program	Choice of target group	Women	Visible minorities	Ethnic minorities	Aboriginal people	Handicapped people
Voluntary	<i>Left to the discretion of the organization or company; often established following pressure from groups within the organization or company.</i>	<i>At the choice of the organization or company</i>	<i>At the choice of the organization or company</i>	<i>At the choice of the organization or company</i>	<i>At the choice of the organization or company</i>	<i>At the choice of the organization or company</i>
Government	<i>On the initiative of the government : the Commission must, however, be consulted first</i>	<i>Yes</i>	<i>Included under the general heading of "cultural communities"</i>	<i>Included under the general heading of "cultural communities"</i>	<i>Yes</i>	<i>Excluded because covered by the hiring programs required under the Act to secure the handicapped in the exercise of their rights</i>
Contract Compliance	<i>Three groups were selected after a study of the statistics, which revealed a general effect of exclusion throughout Québec</i>	<i>Yes</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>Excluded because covered by the hiring programs required under the Act to secure the handicapped in the exercise of their rights</i>
Imposed following an investigation	<i>Defined following proof of discrimination in a given environment</i>	<i>According to the conclusions of an investigation</i>	<i>According to the conclusions of an investigation</i>	<i>According to the conclusions of an investigation</i>	<i>According to the conclusions of an investigation</i>	<i>According to the conclusions of an investigation</i>

The implementation context

Such was the general framework within which affirmative action programs were designed and their targets identified in Québec.

The introduction of these programs, and the radical reversal of the trends they were designed to attack, was not possible overnight. The mechanism was new, and had to be adapted to the context prevailing in Québec. Specific instruments had to be developed, and relevant data had to be defined in order to make the necessary assessments and set objectives. It was also necessary to clarify both the terms and the approach itself, to help the people who would be required to introduce the programs. In short, it was necessary to design and create tools, provide information and, of course, test the programs, all within a context that was not always open nor cooperative.

The approach selected, although intended to be realistic, sensitive, rigorous and respectful of the majority groups, nevertheless meant that significant changes would have to be made to habits, values and mentalities. It would therefore inevitably disrupt the environments concerned. Not only would policies, procedures and written rules have to be changed, but entire organizational cultures would have to be transformed so that the presence of women, Aboriginal people, members of visible minorities and other groups was considered normal at all levels of the organization.

In short, as had been done elsewhere, it was a question of putting ideas and general principles to task in a complex, ever-changing reality, producing results that were necessarily uneven.

A Review

As the new century dawns, and as we look back on the recent 50th anniversary of the Universal Declaration of Human Rights, the Commission des droits de la personne et des droits de la jeunesse believes the time is right to review the implementation of affirmative action programs in Québec, based on the information at its disposal.

The groups and organizations concerned have all expressed a desire to be informed of the results of the affirmative action experience, which has now lasted more than ten years. Questions have been raised concerning the capacity of such programs to correct situations of discrimination against certain groups within a reasonable period. Concerns have also been expressed concerning

the results of programs implemented as part of the government's Contract Compliance initiative.

First, then, this review is designed to see what has been gained from the experience. In addition, however, it will also be used to define the avenues or approaches most likely to produce more substantial results, in an economic and social context that has undergone far-reaching change.

This review process therefore has the dual objective of situating the framework within which affirmative action programs have been developed in Québec, and presenting the results of the initial implementation period. By no means does the Commission wish to question the value of the programs. The experience it has acquired, as we will see in the review, has proved, on the contrary, that such programs are highly relevant.

The review ends with a number of recommendations aimed at correcting the deficiencies observed. The recommendations are intended for the legislator, the government and major players in the affirmative action field. In light of its review, the Commission also makes certain commitments aimed at improving the effectiveness of its own interventions.

Summary of Main Observations

Voluntary programs

Most of the voluntary affirmative action programs were implemented as part of the Plan of Action for the Introduction of Voluntary Affirmative Action Programs for Women, adopted by the Québec government in 1986.

Under the Plan of Action, 76 organizations agreed to implement programs : 15 private organizations, one union organization, 19 organizations from the education sector, 10 from the health and social services sector, 18 from the higher education and science sector, and 13 from the municipal sector. Pilot project participants received subsidies of up to \$50,000 and had access to an advisory and assistance service coordinated by the Secrétariat à la condition féminine.

When the government reviewed the program in 1990, only 32 of the 76 pilot organizations (42%) had set numerical goals for women's representation, and 23% (30%) had adopted preferential corrective measures. Most of the organizations also appeared to have introduced equal opportunity measures to correct their management practices, but the government review was not clear as to their numbers.

The results in terms of the number of additional women employed by the participant organizations did not appear to be significant.

However, from this early experience – and from the dozens of other voluntary programs for which the Commission des droits de la personne et des droits de la jeunesse has provided assistance and advice – a number of conditions for the success of affirmative action programs can be identified :

- ***The need for a firm commitment by senior management, and for the program to be incorporated in the organization's objectives and management;***
- ***The importance of appointing a management-level employee to be responsible for the program, and of ensuring that this responsibility becomes a permanent feature within the organization;***

- *The importance of a communication and joint action strategy to ensure that managers and employees support the objectives of the program.*

Government programs

Section 92 of the Charter of Human Rights and Freedoms states that “The Government must require its departments and agencies to implement affirmative action programs within such time as it may fix”. However, the Public Service Act limits the meaning of the word “agencies” to those whose members are appointed and remunerated under its provisions.

Second, the government is required to consult the Commission before implementing an affirmative action program. However, it is not subject to the Commission’s power of investigation in respect of affirmative action programs, nor to its power to go before the courts and supervise the application of the programs.

The Commission des droits de la personne et des droits de la jeunesse has been consulted on numerous occasions in relation to public service affirmative action programs for women and members of the “cultural communities”. However, the Commission has been unable to check whether or not its recommendations were implemented, since it does not have a supervisory power over the government.

The only control on the implementation of government programs stems from section 80 of the Public Service Act, which stipulates that the government must report once a year to the National Assembly on the progress made with its affirmative action programs. However, such formal reports have been submitted only twice, once on the subject of women, in 1990, and once on the subject of the “cultural communities”, in 1992.

In addition, the government has not yet considered it necessary to include Aboriginal people in its list of affirmative action target groups. Handicapped people have been the subject of a specific remedial program.

Despite the foregoing, the quantitative data published by the government services provide an overview of the situation of target groups in the public service.

Between 1986 and 1997, the female workforce grew by 18.3% while the number of regular employees decreased by 5.4% By the end of

this period, women occupied 47% of all regular government jobs, compared with just 37.6% at the beginning of the period.

However, more specific data show that female representation in senior and intermediate management positions still falls far below the objectives.

As regards the “cultural communities”, also targeted by an affirmative action program, their progress has been much slower, and non-existent in some cases. Their numbers increased from 1092 to 1102 during the period in question, i.e. a growth of barely 1%. This group accounted for 2% of the total regular workforce in 1996, a figure that remained unchanged in 1997.

The situation is also critical for the other groups about which concerns were expressed, but for which no affirmative action programs were implemented. For example, the number of handicapped people fell by 10%, from 818 in 1992 to 735 in 1996. The number of Aboriginal employees fell by 14.3%, from 265 in 1992 to 227 in 1996. Lastly, the number of English-speaking employees also fell by 11.6%, from 465 to 411.

Outside the public service, one major deficiency still persists. There is no mechanism that makes affirmative action programs compulsory :

- *In public agencies whose employees are not governed by the Public Service Act;*
- *In State-owned corporations;*
- *Or in institutions or parapublic bodies in the municipal, health and social services and education sectors .*

A few such organizations said they had applied affirmative action programs, but most were extremely discreet on this subject, even though, as the recipients of public funds, they should have played a leading role in the affirmative action field.

Questions must be raised about the fact that there is nothing to force these employers to do or disclose anything at all in this area. In contrast, private companies that receive contracts or subsidies from the government are required to implement affirmative action programs and to present periodical reports to the Commission des droits de la personne et des droits de la jeunesse. If they fail to do so, they are liable to penalties.

Moreover, our experience of working with public and parapublic organizations introducing voluntary programs has led us to believe

that, in the end, the programs were not always implemented effectively, or gave way occasionally to doubtful methods.

Affirmative action programs under Contract Compliance requirements : A quantitative review

Companies with 100 employees or more that wish to obtain contracts or subsidies in excess of \$100,000 from the Québec government must, if they obtain such a contract or subsidy, undertake to implement an affirmative action program for women, visible minorities and Aboriginal people, in conformity with the Charter of Human Rights and Freedoms.

The Contract Compliance requirement involves the presentation of reports to the Commission des droits de la personne et des droits de la jeunesse, to ensure that the company has complied with the conditions.

On December 31, 1997, 154 companies were subject to this requirement, and in 101 of these cases the programs had been implemented for at least a year.

Nine of the 101 cases were removed from the sample for methodological reasons. The Commission then went on to analyze the quantitative results achieved by the programs in the 92 remaining companies. These companies worked in 13 sectors : petroleum, electronic products and office equipment, printing and publishing, heavy manufacturing, engineering, accounting, foodstuffs, other manufacturing, paper, insurance, mining, clothing, security and maintenance, office furniture and computing.

Summary of overall results

The main point to emerge from a first general compilation of the quantitative results is that two of the three groups targeted by affirmative action programs under the Contract Compliance requirement have made significant progress during the period examined. The groups in question are women and visible minorities. Both are fragile groups that have managed to reverse the trend that suppressed a large number of jobs in the companies concerned during the period under review (the total workforce actually decreased in nine of the 15 sectors).

Overall, the female workforce in the job categories examined increased by 3.4%, while the overall workforce decreased by 4.9%. The visible minority workforce grew by an impressive 18.9%. The number of Aboriginal employees fell slightly, although not as much

as the workforce as a whole. As a result, the presence of women increased in six of the eight professional categories covered by the programs, that of visible minorities increased in four of the categories, and that of Aboriginal people in five, although the improvement was much less marked for the latter group.

The contexts in which this movement took place varied considerably from one sector to the next, and from one company to the next within individual sectors. We were able to identify at least five types of environments from our data :

- *Generally female environments with small male enclaves (often in managerial or partnership positions);*
- *Mainly female environments where some job categories already have large percentages of women, but where the trend needs to be enhanced;*
- *Environments in which feminization is just beginning;*
- *Mainly masculine environments where women are concentrated in ghettos;*
- *Environments that are almost exclusively masculine.*

Clearly, the challenges to program implementation presented by these different contexts will not be the same. The differences were highlighted by sector-based analysis. Even the general data, however, show that although women have made progress in some job categories, the extent of that progress varies significantly according to the sector. The same applies to visible minorities and Aboriginal people.

Women have made significant progress in managerial positions (progress was recorded in 7 of the 14 sectors with this job category), supervisory positions (7 of the 10 sectors concerned) and professional positions (7 of the 11 sectors concerned). The extent of their progress varies from 2% to 18% in supervisory positions, and from 1% to slightly over 10% in the other cases. Visible minorities have made the most progress in professional and technical positions, and in semi-specialized or non-specialized production and distribution positions.

Women now have very little ground to make up in the professional (2.9%) and technical (4.4%) job categories, slightly more in management positions (9%), and a great deal in the production category (13%). The visible minorities still have a lot of ground to make up in the technical and distribution categories. The rates for Aboriginal people are fairly low, due to their dispersal, but remain constant at around 1%

In short, we can say that, overall, the movement is well underway. Nevertheless, there are still many pockets of resistance, and a large number of obstacles stand in the way of progress. The sector-based analysis provides more details on this point.

Summary of results by sector groups

We were able to extract the following trends from a detailed analysis of the quantitative results, first by sector and then by groups of sectors.

We found that the general gains for women in the business services sectors (especially engineering, computing and accounting) significantly reduced the ground to be made up overall. The smaller gains made by the visible minorities also resulted in an increased representation for this group in the accounting professional and management group, and especially in computing.

The service sector analysis also showed that insurance companies subject to the Contract Compliance Program lagged far behind companies in all other sectors with regard to the employment of women and visible minorities in senior management and partnership positions, despite a strong female presence in their general workforce.

Lastly, the analysis also showed that the security and maintenance service companies, generally speaking, had extended employment access to women, but much ground had still to be recovered. In this group, the number of employees from the visible minorities had decreased, and Aboriginal people were completely absent. A considerable amount of work is therefore still required. Detailed analysis of the companies in the business service sector revealed the very low percentage of Aboriginal people, and the very slow progress made by this group.

Companies from the “light” manufacturing and distribution sectors had also employed more women and, to a lesser extent, more members of the visible minorities, in management, supervisory and professional positions.

Companies from the production and distribution sectors were much further behind at the outset, and their results have not been anywhere near as positive. A great deal of work still remains to be done by all the companies as far as women’s employment is concerned, especially in non-specialist positions. The situation of the visible minorities differs considerably from company to company, ranging from ghetto situations to an almost total absence of representatives in some cases. Overall, a significant effort is required in this sector to correct the situation of this target group. The deficit appears to be less significant for Aboriginal people, but this is due mainly to their low level of availability in the regions where these companies are located.

In the final grouping of so-called “heavy” manufacturing companies, where the most traditionally masculine jobs are concentrated, here too women appear to have made significant gains in managerial, professional and technical positions, despite considerable overall workforce reductions.

However, the task is far from complete. In fact, it has barely begun, for most of the companies, in the production job category. Besides, the visible minorities are poorly represented in this group of sectors mainly due to the isolated geographical locations of many of the companies. The under-representation of this target group is strongest in the technical and professional job categories, for which the pool of potential candidates is much larger. The “isolated location” excuse does not apply to Aboriginal people, who are also poorly represented, especially in the professional and production job categories, in most of the sectors in this group.

Affirmative action programs under to the Contract Compliance requirement : A qualitative review

After examining the reports sent in by employers subject to the Contract Compliance requirement, we were able to extract the following summary conclusions.

First, almost all the companies subject to the Contract Compliance requirement agreed to apply preferential recruitment measures by adopting appointment rates for target group members in the job categories in which these groups were under-represented.

The appointment rate – e.g. 50%, 33% or 25% - signifies the company’s intention to give preference once in every two cases, once in every three cases or once in every four cases, to a target group member who has applied for the promotion or new job and who has the necessary qualifications.

Generally speaking, however, it is difficult for the people responsible for the programs – usually attached to the human resources department – to ensure that such measures are applied effectively, since decisions concerning hiring and promotion often do not fall under their immediate responsibility.

In our view, this problem cannot be solved unless senior management gives its more junior managers precise instructions as to how target group representation should be increased in their respective units.

Moreover, all the companies taking part in the government's Contract Compliance Program had, as stipulated in their agreements, analyzed their human resources management systems in light of the provisions of the Charter of Human Rights and Freedoms. They had subsequently adopted a number of so-called "equal opportunity" measures, designed to eliminate or prevent the risk of discrimination, and to ensure that any increases in target group representation were maintained in the long term.

These measures were concerned, respectively, with job evaluation, remuneration, staffing, organizational integration, performance assessment, training, working conditions and labour relations.

Many examples of these measures are given in the corresponding chapter of the Commission's review.

Overall, our analysis of the reports received by the Commission, combined with the experience of the Commission's advisors, who were in direct contact with dozens of company managers, leads us to make certain observations. First, the implementation of affirmative action programs has been instrumental in raising managers' awareness of the risks of discrimination in human resource management. And second, those managers realise the importance to change management rules and practices so as to provide equality of opportunity.

However, what should be remembered from this experience is that ad-hoc changes to policies, procedures and rules are not, in themselves, sufficient. What is needed is a systemic change in human resources management methods, affecting the people involved (senior managers, managers, union leaders, target group members) and the management sub-systems, which interact constantly with one another.

Systemic interventions

Some files have required large-scale interventions covering several organizations or institutions in a given sector. The files in question were implemented extensively, and developed differently in each case. Their repercussions have already reached, or will reach, much broader targets.

The Commission's review gives successive consideration to :

- *Affirmative action programs in the police forces, which have affected access to both training and employment, highlighting the tangible results obtained by the Montreal Urban Community Police Force;*
- *Employment in the education network, where shared analysis tools have been developed in order to facilitate the work of each component of the network or sector concerned;*
- *An affirmative action program for women in the construction industry, which was remarkably well-designed, but which has come up against a number of major obstacles at the application stage, in particular from the Ministère de l'Éducation;*
- *An emerging project – Aboriginal people and employment – in which a proposed partnership between the Commission des droits de la personne et des droits de la jeunesse and the Assembly of First Nations of Québec may ensure that Aboriginal people derive more benefit from affirmative action programs.*

Affirmative Action Programs in Education

In parallel to employment affirmative action programs, section 86 of the Charter of Human Rights and Freedoms also provides for the existence of similar programs in the education sector, among others. The aim of such programs is to obtain a fairer representation of the members of groups that have been victims of discrimination in academic programs where their numbers are low.

The most elaborate such program is the one implemented in 1995 by three Montreal colleges (Ahuntsic, John Abbott and Maisonneuve). Its aim was to increase the representation of women, members of the ethnic and visible minorities and Aboriginal people among the student body of the police techniques program, while complying with the overall student numbers established by the Ministère de l'Éducation.

This affirmative action program was the result of close cooperation between the Commission des droits de la personne et des droits de la jeunesse, the Montreal Urban Community Police Force and the Sûreté du Québec. It will, in the medium term, allow the police forces, especially those in the Montreal region, to ensure that the groups making up the populations they serve are better represented in their workforce.

The goal is to create a kind of continuum between training and employment for the members of groups often discriminated against, provided they have the aptitudes required for a career in police work. The program therefore completes the systemic approach loop by supplying police force recruitment sources.

In 1992, Laval University's Faculty of Law introduced similar program for Aboriginal people. In this case, places were reserved for Aboriginal people in addition to the usual student numbers.

These initiatives are unfortunately much too limited, and it is clear that, if they were to be reproduced at all levels of the education system, they would do much to help correct the situation of the groups that have been victims of discrimination.

The first affirmative action program to result from an investigation

On May 9, 1996, the Commission des droits de la personne et des droits de la jeunesse (CDPDJ), at its 290th sitting, examined the affirmative action program submitted by the Commission scolaire de l'Industrie (CSI), as stipulated in an out-of-court settlement concluded with 40 of its female teachers, who had made a complaint.

Originally, the teachers had complained about a number of instances of direct and indirect discrimination against women in hiring procedures, the allocation of tasks, student groups and timetables, administrative and disciplinary measures, the maintenance and closure of departments, access to training and material/educational support. They also complained of an unfavourable working climate that made the female staff feel less valued.

After investigation, and following an action brought by the CDPDJ before the Human Rights Tribunal, the CSI finally agreed to pay compensation of \$5,000 to every female teacher, and to prepare and implement an affirmative action program.

These commitments were stipulated in a memorandum of understanding signed on October 31, 1994, by the CSI, the Groupe d'enseignantes de la Polyvalente Thérèse-Martin, the Syndicat de l'enseignement du Lanaudière and the CDPDJ bringing the dispute to an end.

Implementation of the program has not progressed sufficiently for it to be assessed at this time.

CONCLUSION

This first general review of the development and implementation of affirmative action programs in Québec has provided partial answers to two fundamental questions :

- *Have the programs produced the anticipated results? Have they improved the situation of groups that were lagging significantly behind in terms of equal access to the main resources offered by society, especially employment and education, a situation that can be ascribed to discriminatory practices?*
- *What actions should be taken to move even closer to the objective of equality established when the programs were implemented, and to ensure that the process is as effective as possible?*

Initial choices of orientation

Clearly, there are no simple answers to questions of this nature. The decision to carry out a detailed review of the context and methods used to develop and apply the programs was taken precisely in order to give answers that were both realistic and qualified.

This first element emerging from this review has to do with the social dynamics needed to generate a significant impetus in the desired direction for society as a whole.

In this case, expectations were high and the pressure groups numerous. On the other hand, substantial resistance was encountered within organisations expected to make such far-reaching changes, that is changes likely to affect mentalities and organisational cultures as well as practices.

A large number of options were available to begin the operation. At the outset, a pilot project approach financed out of public funds was developed. It was certainly useful in testing a new instrument. However, it resulted in participating companies handing the operation over to consultants rather than incorporating it into their human resources management system. This simply delayed the real commitment to the operation by the companies. Moreover, since participation in the operation was voluntary and carried no obligation to hand in reports, the possibility of analysing results was extremely limited.

In the following phase, this same voluntary aspect of participation also meant that the Commission could not assess the impact of the considerable amount of advice and support given to the companies wishing to introduce programs.

Moreover, postponing the coming into force of the first paragraph of section 87 of the Charter⁸, concerning the approval of affirmative action programs, opened the door to programs falling short of the guidelines contained in the Charter or stipulated in the Regulation.

Thus, in addition to the inevitable trials and errors, the initial implementation phase revealed a number of operational difficulties inherent in any control free environment. This was due to policy decisions and legislative options.

Contract Compliance

The Commission therefore greeted the introduction of the Contract Compliance Program with a degree of relief. Under the Program, companies were required to implement affirmative action programs in accordance with specific criteria and predetermined conditions. The companies were targeted based on the use of public resources in the form of government contracts or subsidies, and according to their size. The program development framework was also precise, and the companies had to report on their progress. Monitoring and evaluation, with penalties for non-compliance, were introduced according to predetermined terms and conditions.

This well framed program has led to the removal from government contractor lists of a non-negligible number of companies that were not prepared to comply with its requirements.

The results

As for the results, our analysis shows that significant progress was achieved. That was possible even in a context where more than half the companies actually reduced their workforces or underwent major restructuring. The representation of women and even of visible minorities progressed considerably, mainly in managerial, supervisory and professional positions for the former, and in professional, entry-level and qualified labourer positions for the latter. These results were achieved despite a large number of pockets of resistance encountered by women, especially in non-traditional employment sectors.

8 *Indeed, this paragraph is still not in force.*

Widespread and significant initiatives were also observed as far as human resource management procedures are concerned. They aimed at preventing the situation from returning to its previous state. Known generally as "equal opportunity" measures, they are expected to lead to changes in the medium term, and sooner in some cases, if market conditions permit.

Our analysis also confirmed what the Commission's affirmative action program advisors were able to observe on a daily basis : a strong commitment and enlightened application of the required measures are the best guarantees of success. Combined with an awareness of the effects of discrimination on labour pools and ultimately on the companies themselves, they lead companies to implement more radical remedial processes, even beyond their own frontiers. The success achieved by some paper mills, whose commitment to hire female graduates and members of the Aboriginal community was officially announced to educational institutions, is an excellent example. However, some other companies continued to uphold their traditional requirements.

Obstacles

The task was obviously not always easy. Companies sometimes needed time to become familiar with the tools. The staff assigned to the operation changed. But perhaps above all, resistance to change is always great. It should be remembered that the modifications required would, in most cases, lead to a change in the organizational culture. In short, the time needed to understand and accept the machinery was necessarily long.

It was therefore clear that the whole operation would be extremely onerous for Commission staff. Beyond the technical difficulties inherent in the implementation of any new program, time and energy would be needed to persuade and, eventually, to exert pressure.

The road ahead

As the results clearly show, the task is far from over. Although significant progress has been made, mainly by women, the discrepancies between their presence in the workforce and their skills on the market have by no means been overcome. The same comment applies to visible minorities. The number of positions held by members of this group in the target companies in no way reflects a fair representation, despite their remarkable progress in terms of overall percentages.

Our sector-by-sector analysis shows that Aboriginal people are still the poor relations in the operation.

The Commission cannot but conclude that this group has been neglected to an unacceptable degree. From the standpoint of elementary social justice, the Commission will therefore multiply its efforts to secure a substantial impetus in its favour. This group has been affected the longest by direct, indirect and systemic discrimination. This situation requires no proof. Our analyses of under-utilization continue to re-confirm it. The Commission, has made it a priority, in the Contract Compliance Program, to promote action to reduce what has become an unacceptable deficit. This will materialize through its contacts with the communities and increased pressures on companies.

More generally, this review has enabled us to locate the most significant shortcomings in program application. The Commission intends to increase its pressure in the sectors identified and on companies that drag their feet.

The Commission intends to continue to analyse the data gathered over the years. This will ensure the development of management practices more conducive to affirmative action in favour of different groups within companies. The Commission aims at measuring the effects of the various changes made to management procedures and practices on target group access to jobs in which they were under-represented. This will enable the Commission to improve its evaluation tool in order to back up its recommendations regarding penalties for offending companies.

Better implementation mechanisms

As part of its mandate to monitor the implementation of the Contract Compliance Program, the Commission has also been able to highlight certain program application failures by the government authorities concerned. For example, a number of companies requested, and were granted, exemptions from the program. Others did not apply the framework regulation, and some continued to receive contracts or subsidies despite the fact that they had been penalized for non-compliance. In view of these somewhat worrying facts, which cast doubt on the government's credibility in managing its own program, it is vital that a mechanism be introduced to clarify and coordinate the responsibilities of each party.

Broader criteria

Similarly, since the amount established as a criterion for the Contract Compliance Program (\$100,000) refers to the value of a

single contract or subsidy, the same company could, in the same year, receive several smaller contracts which, when added together, exceed \$100,000, and yet not be required to submit to the Program.

In addition, companies with fewer than 100 employees, but whose workforce is nevertheless large enough for the effective application of an affirmative action program, can receive contracts worth more than \$100,000 in the same year and still be exempt from the Program.

Lastly, the limited definition of subsidies in the Contract Compliance Program has produced a number of absurd exemptions. For example, some universities are completely exempt, while others are required to implement affirmative action programs only under federal programs.

The criteria and conditions regulating the inclusion of companies receiving large government contracts or subsidies in the Contract Compliance Program should therefore be reviewed in depth. Given the cumbersome administrative requirements involved, we do not feel it would be wise at this stage to extend the Contract Compliance Program to all companies beyond a certain size by means of a sector-based law. However, we feel it is essential that the basis for the application of the current Program be extended considerably. Better coverage, correcting the above deficiencies, would be a first step in the broadening of the Program.

The public sector

The second step could be to target public sector programs. This would have a significant symbolic value. The vigorous implementation of programs in the public sector could in fact convey a clear message with regard to the choice of using affirmative action programs as a tool to overcome the shortcomings generated by past discrimination and its effects, now systemically rooted in labour management processes. The clear expression of such a commitment and its manifestation in solid programs will also give the general public an image of a public sector in which all groups that have been victims of discrimination in the past can occupy their rightful place, and which reflects social diversity.

The Commission therefore expected a great deal from the government's commitment via section 92 of the Charter of Human Rights and Freedoms, due to the exemplary nature of government actions and in view of the size of the workforce involved. The Commission also expected a great deal of the impetus that only the government could give to the affirmative action movement in the broader public sector.

What has emerged from the implementation of these objectives?

The public service program

Our analysis of the results of public service programs was necessarily superficial, due to the lack of data. Indeed, although section 80 of the Public Service Act states that a report on the application of affirmative action programs must be submitted annually to the National Assembly, only two such formal reports have been produced, one on the subject of women, in 1990, and the other on the subject of "cultural communities", in 1992.

Subject to this reservation, our analyses revealed some interesting, although partial, results for programs targeting women. It appears that, where a clear will has been expressed to personnel managers, and where a commitment to achieve results has been clearly demanded of the staff responsible for program implementation, results have been quick and unambiguous.

As for the programs targeting other groups, the results cannot but highlight the weakness of the message and expectations expressed or commitments demanded with respect to these programs. Representation of the "cultural communities" has barely increased at all. This is in total contradiction with the government's message asserting its desire to promote equality between individuals and their participation in community life and the development of society⁹. The provincial public service conveys a monolithic image of its workforce, even though one-third of all jobs are located in the Greater Montreal region, which is largely multiethnic in its composition.

As the rate of employment of candidates from the cultural communities who are estimated to be qualified is fairly high, we can suppose that the deficiencies have their roots in the solicitation of applications from the different communities. Unless, of course, prejudices against skills, experience or qualifications acquired abroad have a negative impact when applications are considered and estimated qualified or not.

The visible minorities are included in the larger target group of "cultural communities", and it is therefore not possible to estimate their numbers in the public service. Given the very low percentage of members of the broader group, however, we can assume that visible minorities are also present only in minute numbers in the government workforce.

9 Act respecting the ministère des Relations avec les citoyens et de l'immigration and amending other legislative provisions, S.Q. 1996, c. 21, s. 11.2.

The situation of handicapped and Aboriginal people is even more deplorable.

In the former case, it is difficult to see how government can require private enterprise to implement hiring plans while not itself setting an example.

Similarly, the requirement that private companies should employ Aboriginal people according to their skills will have absolutely no impact if the government is not able to set an example in its own hiring and promotion practices. The movement has clearly not begun, except in a handful of areas, because the government has not yet decided to make Aboriginal people an official target of its own programs!

Lastly, Anglophones are significantly under-represented in the public service. This situation could result from several factors. In any case, it is high time to reverse the trend of under-representation, for the sake of integration and cohesion in Québec's society as a whole.

It may be that the division of programs by target group is partly responsible for the failure of the weakest or least desired programs. The division of programs has increased the number of people responsible, as well as the size of the apparatus needed to build, implement and monitor the programs. As we saw in the case of Contract Compliance, where a single program applies to all target groups, it is difficult even in such circumstances to obtain the same commitment and the same results for all the groups. Dispersion is bound to be an even greater source of ineffectiveness.

Accordingly, the bodies and departments governed by the Public Service Act should have only one affirmative action program with specific objectives and measures for each target group.

In addition, the exclusion of casual employees from the affirmative action programs, when casual employment is a significant gateway to permanent employment, is another deficiency in the government's programs that should be corrected as soon as possible.

Lastly, in view of the lack of results from programs targeting the "cultural communities", and the exclusion as targets of groups that have nevertheless clearly been discriminated against on a systemic basis, especially Aboriginal people and handicapped people, the government's programs should be subjected to the supervisory mechanism stipulated in sections 98 to 91 of the Charter.

The public sector not covered by section 92

With respect to the portion of the public sector not covered by section 92, i.e. bodies falling outside the scope of the Public Service Act, State-owned corporations, and public institutions or bodies in the municipal affairs, health and social services and education sectors, we must comment on the government's laxity here too, despite the fact that we expected a maximum commitment. The government has not identified the bodies that must implement affirmative action programs, and has not produced guidelines or taken follow-up action. When it comes to basic changes, a laissez-faire policy often betrays a casual attitude.

Some bodies have in fact introduced programs, mostly under pressure from members of groups that have been discriminated against over the years. The targets were therefore often selected because of the relative strength of some groups over others, which naturally tends to reduce the likelihood of serious commitments in favour of the more fragile groups.

Many of the people responsible for such programs have asked the Commission to provide guidelines for their action. Some very interesting initiatives have been undertaken, especially in the education sector, where we have observed excellent levels of cooperation and a willingness to extend programs and share tools.

However, as these programs were developed on a voluntary basis, and as the first paragraph of section 87 of the Charter is still not in force, the programs did not have to be approved by the Commission. This was likely to lead to a choice of objectives not in conformity with the principles of the Charter. In addition, the bodies in question did not have to submit reports for verification by the Commission or as a basis for broader impact studies, as was the case for programs introduced under the Contract Compliance requirement. It is therefore very difficult, in the circumstances, to assess the effects of the programs with any degree of accuracy.

Accordingly, the Commission believes that not only should all these bodies and corporations be required to introduce affirmative action programs, but that they should also be obliged to comply with certain rules concerning the preparation and submission of annual reports. The reports should be available to the Commission for examination. In other words, the programs developed by these bodies and corporations should, like all the others, be subject to sections 87 to 91 of the Charter.

This requirement could be governed by a size criterion. For example, if the criterion of 100 or more employees were selected, the number of institutions having to introduce affirmative action programs would

amount to more than 20% of the total number of enterprises of that size.

Various measures to be considered

Still in the public sector, the inexplicable delays in the introduction of measures to give women access to the training they need to obtain jobs in the construction trades provides a further indication of the weakness of the government's commitment. Yet, that commitment was both formal and public. It should be fulfilled, as quickly as possible.

Lastly, and still with regard to training, the professional orders should be encouraged to review their admission procedures, criteria and the grounds on which they grant the right to practice, to ensure that they are free of any exclusionary effects. Such changes, without being measures of redress, could help institute equal access for new arrivals to different positions in the professions.

Systemic files

The systemic files are clearly those that produce the most significant effects. They require contributions from everyone involved, in order to correct the impacts of discrimination against certain groups. We are referring here to the files taken up by the Commission, or to which the Commission has been asked to contribute. These include the police force, construction industry and CEGEP files. Nor must we neglect the initiatives taken by some companies in their own environments.

The results obtained in this area provide a clear incentive for all players to continue in the same direction. Accordingly, the Commission will give priority to such approaches. Due to the key nature of participation by groups that have been victims of discrimination, the Commission intends to work hard in order to obtain their cooperation in this type of project.

Reorientations to be considered

Before we conclude, the strength of the voices raised against the very basis of affirmative action programs, mainly in the United States but also in Québec, leads us to consider some elements of the arguments advanced. The attacks have focused mainly on claims that the scales have already been balanced by the gains made so far, and hence there is no need for further affirmative action programs. Another argument often put forward is that the preference given to target groups is a source of personal devaluing and social rejection rather than integration.

Concerning the question as to whether affirmative action programs are still needed in Québec, the results of the last thirteen years show, first, that every time workforce and availability analyses are carried out, the target groups are found to be significantly under-utilized. This was true in 1990, and it is still true today. Second, where programs have been developed and their impacts measured, it has been clear that significant results can be obtained if the will to commit is present. However, in most circles progress has been slow, and the objectives have not been met – far from it. It is therefore clear to the Commission that affirmative action programs are still needed.

With respect to the negative effects on target groups and individuals, the concerns are often valid. However, as we observed in the description of program mechanics, the organizations that introduce measures of redress must also change practices that would otherwise generate negative effects for the new recruits, and hence minimise the impact of the program. For example, organizations are required

to inform their staff of the different aspects of the programs, especially the fact that competency requirements will be maintained in the selection process. In addition, it has been observed that the arrival of people belonging to groups hitherto absent from the workforce tends to generate different forms of harassment. The Commission has therefore paid special attention to the introduction of anti-harassment policies in organizations implementing affirmative action programs. Such policies have in fact been developed in the vast majority of cases.

Some people have questioned the need to maintain or extend the current target groups. First, it should be remembered that the targets were selected following long-term analyses of the cumulative and persistent effects of past discrimination. These studies do not need to be repeated for past discrimination, and we have pointed out that the impacts of past discrimination are still clearly observable wherever affirmative action programs are introduced. It may be, however, that new forms of generalized discrimination against new groups have emerged in the last few years. The most recent official data (the 1996 census) should enable us to identify such situations. The Commission undertakes to carry out the necessary analyses.

In the meantime, however, the exclusion of certain groups is common practice in some circles. Even if a particular group is not targeted, a variety of recourses are available. For example, an affirmative action program can be introduced if systemic discrimination against the group can be proved. Groups that feel they are victims of discrimination can complain to the Commission, which can investigate and, eventually, demand that a program be introduced. The Commission can also investigate on its own initiative, and recommend appropriate remedies. Programs can also be developed voluntarily for any of the groups covered by section 10.

The Commission does all it can to encourage such initiatives, and intends, for its part, to enhance the systemic processing of the complaints it receives, so as to increase the impacts of its settlements through comprehensive remedial measures.

RECOMMENDATIONS

In short, the Commission believes that affirmative action programs are still required to correct the situation of members of the groups most frequently discriminated against. The review shows that such programs can achieve this objective when certain conditions are present.

The strengths and weaknesses identified in the review of this first implementation stage suggest that we should promote conditions that will enable affirmative action programs to continue to exist in Québec, and that will increase their numbers and enhance their effectiveness.

It is with this in mind that the Commission des droits de la personne et des droits de la jeunesse makes the following recommendations and commitments for what should constitute a second stage, i.e. the consolidation of affirmative action programs as a good way of fighting discrimination.

The introduction of this broader base of objectives and means could, in turn, open the way for a third stage, that of extending the program implementation requirement to all large organizations.

From the standpoint of consolidation, the Commission would like to make some general recommendations aimed at promoting the development of the basic conditions needed to extend and increase the effectiveness of affirmative action programs in Québec.

PROGRAM DEVELOPMENT AND THE INVOLVEMENT OF ALL PARTNERS

The Commission would first of all like to reiterate :

- 1. That it encourages all initiatives aimed at developing affirmative action programs in environments where habits and practices of different kinds have hindered discrimination-free access by all competent individuals to all the positions available.*

In view of the risks of distortion involved in the development of voluntary affirmative action programs, due to the fact that such programs need not be approved by the Commission, the Commission recommends :

2. *That the first paragraph of section 87 of the Charter of Human Rights and Freedoms, which stipulates that all voluntary programs must be approved by the Commission, be brought into force.*

In addition, due to the key role played by workers' groups both in initiating the procedure and in maximizing the impacts of the measures proposed as part of affirmative action programs :

3. *The Commission undertakes to promote the participation of workers' associations in the implementation of such programs, and in monitoring the application of the measures developed as part of such programs.*

With regard to existing programs in the public and private spheres, the Commission makes the following specific recommendations.

AFFIRMATIVE ACTION PROGRAMS IN THE PUBLIC SECTOR

Government programs

As to the affirmative action programs implemented by government departments and bodies, the overall quantitative results drawn from data published by the Office des ressources humaines shows that the efforts made in respect of women have produced significant impacts, although they fall short of the objectives that could be achieved. The "cultural communities" program has had no impact at all. This supports the theory that significant results can be obtained within a reasonable period where the will exists. Faced with what appears instead to be an unacceptable laxity towards visible and ethnic minorities, the Commission is forced to express its great impatience and reminds the government that urgent action is required.

These observations lead the Commission to conclude that different mechanisms for the implementation and targeting of the programs must be reviewed. Accordingly, it recommends :

4. *That the government prepare a single affirmative action program for the public service, with specific objectives and measures for each target group;*
5. *That the government speed up the implementation of the measures stipulated in its affirmative action program, and that it improve the controls governing the effective application of such measures, in particular by rigorously applying section 53 of the Public Service Act, which allows priority appointments of candidates covered by affirmative action programs, provided they are equally qualified; lastly, that it ensure the accountability of all decision-making levels;*
6. *That the program be subjected to sections 87 to 91 of the Charter of Human Rights and Freedoms, which provide in particular for the Commission to supervise programs, and also give the Commission the power to require reports and carry out investigations.*

In addition, as the government's affirmative action programs have so far been restricted to regular employees, and as casual employment is a significant source of recruitment for regular employment, the Commission recommends :

7. *That the government extend the scope of its affirmative action program to all casual positions in its departments and bodies.*

As regards the different target groups, the Commission makes the following recommendations :

8. *That the government maintain and reinforce the program measures aimed at women.*

Given that the measures concerning the "cultural communities" in the government's affirmative action program have not produced any tangible results, and given the extent of the discrimination suffered by visible minorities, the Commission recommends :

9. *That visible minorities constitute a specific target group in the government's program;*
10. *That the government specifically designate ethnic minorities as a target group in its program, and that it reinforce the*

measures already provided for this group, in order to achieve the anticipated results.

The government has not felt it appropriate to include Aboriginal people in the groups covered by its affirmative action programs, even though this group – which is in fact a target group under the Contract Compliance Program – is to all intents and purposes absent from the government's workforce. The Commission therefore recommends :

- 11. That the government also include Aboriginal people as a target group in its affirmative action programs.*

With respect to handicapped people, section 86 of the Charter provides a general framework for intervention within which systemic discrimination against any group can be taken into account. It also provides orientations for action to be taken in several areas when seeking specific solutions for this group. The Commission therefore recommends :

- 12. That the government, in cooperation with the Office des personnes handicapées du Québec and with the Commission, take the steps required to make affirmative action programs applicable to handicapped people.*

Given the very poor representation of Anglophones in the public service and the need to consider the factors underlying this situation, the Commission recommends :

- 13. That the government recognize the significant under-representation of Anglophones in the public service and take the steps required to correct this situation.*

Lastly, since the government has submitted only two reports since the first programs were introduced in 1987, the Commission recommends :

- 14. That the government ensure that a report on the application of its program, as required under section 80 of the Public Service Act, is tabled annually and examined by the National Assembly.*

State-owned corporations and bodies not governed by the Public Service Act

As we said earlier, there is no mechanism to require affirmative action programs :

In public bodies whose employees are not governed by the Public Service Act;

In state-owned corporations;

Nor in institutions and public bodies in the municipal affairs, health and social services and education sectors.

It is difficult to see why these bodies, which depend on public funding, should be exempt from a requirement that applies to government departments and bodies and to private companies that receive public funds in the form of contracts or subsidies. For this reason, the Commission recommends :

- 15. That the Charter of Human Rights and Freedoms be amended so as to compel public bodies not covered by section 92, to implement affirmative action programs; those public bodies should be identified in a regulation that should be submitted to the Commission before adoption, so that the Commission can make observations to the Minister responsible;*
- 16. That the target groups be the same as those proposed by the Commission for government programs.*

With respect to recommendation no 15, criteria related in particular to public funding, to the payment of surpluses to the Consolidated Revenue Fund, and to size (e.g. 50 or more employees), should be used to identify the bodies that must implement a program.

Such programs should be subject to sections 87 to 91 of the Charter, giving the Commission the power to monitor them and, eventually, to carry out an investigation.

PROGRAMS SUBJECT TO THE CONTRACT COMPLIANCE REQUIREMENT

The 160 or so companies with 100 or more employees that are currently required to implement an affirmative action program after receiving contracts or subsidies worth \$100,000 or more from the government constitute only a percentage of the private companies that receive public funds. In the interest of fairness, and in view of the need to extend the scope of the Contract Compliance requirement to cover more of the companies that receive money from the State budget, the Commission recommends :

- 17. That companies with 100 employees or more which receive one or more government contracts amounting to \$100,000 or more in a two-year period should also be subject to the Contract Compliance Program;*
- 18. That, in view of the restrictive nature of the current definition of subsidies giving rise to the Contract Compliance requirement, the government amend its regulation to include all types of subsidies of \$100,000 or more;*
- 19. That the government consider the possibility of amending its regulation concerning contracts and subsidies so as to subject companies with 50 or more employees to the Contract Compliance requirement of implementing an employment affirmative action program for women, visible minorities and Aboriginal people, if they obtain a contract or subsidy of any kind worth \$100,000 or more;*
- 20. That the government include handicapped people as a target group in its Contract Compliance Program;*
- 21. That the government amend its Framework Regulation respecting the conditions of contracts of government departments and public bodies, in particular :*
 - Section 2, to eliminate the exceptions to the definition of service contracts and the definition of supplier;*
 - Section 31, to subject public bodies whose budget is not voted in whole or in part by the National Assembly to the requirement that service or supply contracts (in accordance with recommendations 16, 18 and 19 above) be awarded only to suppliers that have previously undertaken to implement an affirmative action program in accordance with the Charter of Human Rights and Freedoms;*
- 22. Lastly, to ensure the credibility of the Contract Compliance Program, that the government clarify and coordinate the*

responsibilities of the different levels of the government administration with regard to the management of the program.

In addition, given the experience acquired with companies subject to the Contract Compliance requirement and the analysis of the quantitative and qualitative results contained in this review, and in order to simplify and clarify the conditions for implementation set out in the undertaking made by the companies in question, the Commission recommends :

23. *That the companies covered by the Contract Compliance Program submit an initial report to the Commission on the results of the diagnostic phase, together with their plan of action, within 12 months of the awarding of the contract or subsidy, and that, every year thereafter, they submit an interim report on program implementation until the quantitative and qualitative objectives have been achieved and maintained for a period of two years. Upon a notice by the Commission, the government would then issue a certificate of compliance to the company.*

AFFIRMATIVE ACTION PROGRAMS IN EDUCATION

We have seen, in the review, that affirmative action programs are much easier to apply when the educational institutions cooperate as part of a systemic effort to correct the discriminatory situations experienced by certain groups of individuals. For example, access to the Greater Montreal region's police force by more women and minorities has been facilitated by the existence of an affirmative action program applicable to the police techniques courses offered by three CEGEPS in the Montreal area. Similarly, in Témiscamingue, a significant number of women and Aboriginal people have now enrolled for the vocational studies diploma in paper industry techniques, because they were informed that jobs would be available for them in the region's pulp and paper mills.

On the other hand, we have also pointed out that the affirmative action program for women in the construction industry has been delayed, partly because the Ministère de l'Éducation does not intend to force school boards to reserve a certain number of places for women in programs giving access to the construction trades and professions.

These examples tend to confirm that access by women and minorities to jobs in which these groups are insufficiently represented is not dependent solely on the measures proposed by industry, but also on the efforts made upstream of the labour market, at all levels of the education system. From this standpoint, the Commission recommends :

- 24. That the school boards ensure that affirmative action programs in education are implemented for women, visible minorities and Aboriginal people in secondary-level programs in which the members of these groups are under-represented, compared to their presence in the student population meeting the conditions for admission, especially in the construction sector;*
- 25. That the colleges and universities ensure the implementation of affirmative action programs in education for women, visible minorities and Aboriginal people in programs in which the members of these groups are under-represented, compared to their presence in the student population meeting the conditions for admission.*

Accordingly, to make the existence of affirmative action programs in education possible and to identify the labour pools that are qualified for the corresponding jobs, we recommend :

- 26. That the school boards, colleges and universities ensure the introduction of a self-identification process for target group members in their student bodies.*

THE COMMISSION'S INTERVENTION MECHANISMS

The Commission des droits de la personne et des droits de la jeunesse is well aware that it cannot limit its recommendations to the action required of others. Strengthened by the experience acquired in the first stage of program implementation, it is anxious to develop its own intervention program in line with the objectives pursued, in order to broaden the scope and effectiveness of affirmative action programs.

One of the main lessons we have drawn from our contact with the companies and organizations that have implemented affirmative action programs – a lesson that had already emerged from the government pilot projects – is that the success of a program depends on the will to make the required changes.

This will be present when :

- *The organization's senior management express or reiterate their firm commitment to the achievement of the affirmative action program's objectives;*
- *The program is closely linked to the objectives and management philosophy of the organization, so that the achievement of its results is considered by all managers and, where applicable, by union leaders, to be as important as any other objective;*
- *The people who are more immediately responsible for managing the program are clearly identified as such by the staff, this responsibility is assigned on a regular and continuous basis, and the people concerned are accountable for the results obtained;*
- *Cooperation is established between the affirmative action program leaders and the members of target groups inside and outside the organization, and with union representatives.*

While taking into account the economic situation of the companies subject to the Contract Compliance Program, we believe that many of these companies could have obtained more significant results if they had truly taken their commitment to heart, instead of simply complying passively and literally with a government requirement.

In the first place, given the importance of ensuring that the Contract Compliance Program is as effective as it was initially intended to be :

- 27. The Commission, within its mandate of providing expertise to the government, intends to tighten the mechanisms it uses to assess the performance of the companies subject to the Contract Compliance program, so as to be able to examine the results obtained in more detail, understand the reasons underlying those results, and where applicable, inform the government of its observations and recommendations, including recommendations concerning the imposition of penalties.***

To clarify the factors used to assess the progress made and, at the same time, to help the companies improve the effectiveness of their programs :

- 28. The Commission intends to undertake studies aimed at identifying the conditions of success for affirmative action programs, by correlating the different measures introduced by the companies and the quantitative results obtained.***

To verify the need to maintain the current program targets, or extend them to include other groups established on the basis of

characteristics recognized in section 10 of the Charter of Human Rights and Freedoms :

- 29. *The Commission undertakes to proceed with analyses aimed at updating the evaluation of systemic discrimination suffered by groups protected under section 10 of the Charter of Human Rights and Freedoms, especially in the public service.***

Similarly, and on a regular basis, to evaluate the effectiveness of affirmative action programs introduced under the Contract Compliance Program, and to enable the government and the Commission, where necessary, to make adjustments :

- 30. *The Commission intends to update its review of programs under the Contract Compliance Program every three years.***

Given the promising nature of affirmative action experiments involving several players in some sectors :

- 31. *The Commission undertakes to continue and enhance its support and advisory interventions with companies, groups and organizations, in order to seek cooperative arrangements and to try to solve specific problems using a systemic approach.***

Given the importance of developing cooperative action between companies and educational institutions in order to improve the skills of women and members of minority groups :

- 32. *The Commission undertakes to promote partnerships between the various players, in particular to increase the number of qualified women in the construction sector.***

At the same time, the investigative powers of the Commission des droits de la personne et des droits de la jeunesse can go beyond the scope of complaints filed by individuals, to include broader situations of discrimination. Such situations may be identified by people working in the sectors concerned. A complaint of systemic discrimination may then be filed. The situations may also be identified in general studies of sectors where the Commission has reason to believe systemic discrimination exists. Accordingly :

33. *The Commission undertakes to increase systemic processing of individual complaints in the employment sector, whenever such an approach is appropriate;*
34. *The Commission undertakes to carry out investigations on its own initiative, to the extent permitted by its resources, in order to correct situations of discrimination affecting groups of people in the employment sector.*

In light of the Commission's extensive contact with groups whose members have been the victims of discrimination, and given the pertinence of increasing this type of intervention :

35. *The Commission undertakes to implement an intervention program aimed at providing more systematic information on affirmative action programs to the members of groups that have suffered discrimination, to obtain the comments of those groups and to promote regular contact between the groups and employers with affirmative action programs.*

Lastly :

36. *The Commission des droits de la personne et des droits de la jeunesse believes that the resources at its disposal must be reassessed, to enable it to meet the challenges identified in this review.*