

General Orientations of the Human Rights Tribunal

Charter of Human Rights and Freedoms
(R.S.Q., c. C-12, s. 106, 2nd par.)

PREAMBLE

The purpose of these orientations is to reaffirm the core principles adhered to by the members of the Human Rights Tribunal since its creation and through concrete action and a coherent vision for the future, to update and streamline the manner of addressing new concerns and challenges facing the system in which the Tribunal exercises its judicial and administrative functions.

WHEREAS the *Charter of Human Rights and Freedoms* is the legislation establishing the Human Rights Tribunal;

WHEREAS the Tribunal is a specialized, independent tribunal composed of judges and assessors with notable expertise in human rights and freedoms who are called upon to hear and decide matters regarding discrimination, harassment, exploitation of the elderly or handicapped and affirmative action programs;

WHEREAS the members of the Tribunal are governed by a Code of Ethics, are under an obligation to abide by the principles of institutional autonomy and personal impartiality, and are bound by a duty of restraint;

WHEREAS one of the primary objectives of the drafters of the Charter was to create an instrument reflecting the models derived from international or regional law, notably the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the *European Convention for the Protection of Human Rights and Fundamental Freedoms*;

WHEREAS the Charter enjoys special status of a quasi-constitutional nature, and to achieve its purpose is to receive a broad and liberal interpretation that takes into account the evolution of society and the values embodied in international law;

WHEREAS Canada is a party to numerous international human rights instruments containing provisions similar or identical to those in the Charter and as a consequence, the Canadian judicial system is internationally bound to ensure that the fundamental human rights and freedoms referred to in those provisions are safeguarded within its borders;

WHEREAS the Concluding Observations of the United Nations Human Rights Committee recommends that necessary measures be taken by the governments in Canada to ensure citizens have full access to a tribunal competent to hear cases of discrimination, and in view of the fact that Québec has declared itself bound by the *International Covenant on Civil and Political Rights* [CCPR/C/CAN/CO/5, 20 April 2006; CCPR/C/79/Add.105; 7 April 1999];

WHEREAS accessible and effective remedies must be available in a competent human rights tribunal capable of providing full and relevant redress and of making appropriate orders to put an end to any infringement of rights and freedoms protected by the Charter;

WHEREAS the Tribunal and its members must oversee the efficient management of files and the proper conduct of hearings, ensuring that proceedings are conducted in keeping with the principles of accessibility, timeliness and efficiency;

WHEREAS the Tribunal maintains and develops institutional ties with the legal community of Québec, Canada and internationally.

The President of the Tribunal, with the consensus of the members, as provided by the *Charter of Human Rights and Freedoms*, hereby sets forth the following orientations:

1. INTERPRETATION OF THE CHARTER OF HUMAN RIGHTS AND FREEDOMS

The quasi-constitutional nature of the Charter of Human Rights and Freedoms commands a broad and liberal interpretation of its provisions in order to give full effect to the rights set out in the Charter. More specifically:

- 1.1 The human rights and freedoms as stated in the Charter are to be interpreted dynamically, taking into account the factual context and the evolution of society.
- 1.2 The provisions of the Charter may add or derogate from the provisions of the Civil Code of Québec or any other law. These legislative enactments are to be interpreted in a manner that is consistent with the Charter; any doubt arising in the interpretation of a provision is to be resolved in favour of the Charter.

1.3 In order to ensure complete and effective redress as well as provide appropriate remedies when Charter-protected rights have been infringed or denied, the Tribunal must be flexible and innovative in the crafting of its remedies.

1.4 In accordance with the spirit of the international contemporary human rights movement, the Charter is to be interpreted in light of international instruments, which are relevant and persuasive sources of interpretation.

2. THE PRINCIPLE OF ACCESS TO A COMPETENT TRIBUNAL

The Tribunal ensures that citizens have access to a competent judicial authority. More specifically:

2.1 The Tribunal provides every new member with the training necessary for the performance of duties in his or her specific field of expertise; the member is responsible for keeping that knowledge up to date.

2.2 With a view towards fostering dialogue between the members and assisting them in keeping their knowledge up to date, the Tribunal organizes monthly meetings and plans training sessions related to developments in both domestic and international case law, with particular emphasis on the social aspects associated with discrimination.

2.3 The Tribunal is a partner with other tribunals of an adjudicative or quasi-adjudicative nature which nationally, regionally and internationally share a common desire to safeguard the effectiveness of human rights and freedoms through full, meaningful and effective remedies.

2.4 If the Tribunal concludes that Charter rights have been violated, it exercises its powers to order any appropriate measure having regard to the circumstances, the conclusions set out in the application and the public interest.

2.5 The Tribunal facilitates access to its jurisprudence by ensuring that decisions are circulated and published in Québec, Canadian or international law reports, on various websites posting legal decisions, and in its activity reports. The Tribunal also drafts press releases.

2.6 In order to ensure accessibility to the Tribunal, the Charter is interpreted in a broad and liberal way, in accordance with the intention of the legislator, especially if the legislator has clearly established that the dispute should be heard by the Tribunal.

3. THE PRINCIPLE OF EFFICIENCY OF PROCEEDINGS

The Tribunal relies on modern tools and adopts rules of best practice developed to ensure sound and expeditious case management. More specifically:

- 3.1 The Rules of Procedure and Practice adopted by the Tribunal ensure that the substantive law is rendered effective and is carried out: technical irregularities are treated with flexibility and the Tribunal ensures that the party concerned is able to remedy the situation.
- 3.2 The office of the Tribunal is responsible for efficient management of files; it sees that applications are heard expeditiously without undue delays of the hearing. It develops ways to improve the management of the hearing rolls.
- 3.3 In order to facilitate accessibility, the Tribunal sits in the judicial district of the office in which the application was filed. The Tribunal may, however, decide to hold a hearing in another district if doing so is in the interest of the parties and ensures the most efficient management of the proceedings.
- 3.4 The Tribunal sees to the orderly progress of the proceedings, intervening to ensure proper management and adequate processing of the cases; it takes measures to circumscribe the issue; it ensures that the proceedings and hearing times are proportionate to the nature and complexity of the matter at issue.
- 3.5 When hearing a matter, the Tribunal shows flexibility in dealing with the evidence while respecting the general principles of justice. In specific circumstances, it may rely on the special rules of evidence applicable to civil matters.
- 3.6 Where appropriate, the Tribunal may take measures in order to facilitate reconciliation between the parties.

4. THE PLACE OF THE TRIBUNAL IN QUÉBEC, IN CANADA AND INTERNATIONALLY

While adhering to the principles of institutional autonomy and impartiality and in keeping with the duty of restraint, the Tribunal is instrumental in facilitating the development and elaboration of critical legal thinking in areas which falls under its jurisdiction. More specifically:

- 4.1 The Tribunal takes part, as an institution, in the training and development of students' knowledge at the secondary, collegial and university levels as well as at the École du Barreau.
- 4.2 The members of the Tribunal are actively involved in developing training relevant to the needs of various groups of students. They participate in conferences held for that purpose as well as the training of students articling at the Tribunal.
- 4.3 The Tribunal facilitates participation by its members in activities in the legal community that are incidental to its areas of jurisdiction; members are encouraged to take part in conferences and in extramural training activities.
- 4.4 As part of its contribution to the development and enhancement of the human rights protection system in Québec, the Tribunal in partnership with the legal community organizes symposiums and conferences aimed at achieving these objectives.
- 4.5 In the same manner as other tribunals specializing in human rights, the Tribunal collaborates in the advancement of national and international law. To that end, it establishes and maintains relations with specialized Canadian and international tribunals through the promotion of dialogue and mutual cooperation. The Tribunal ensures its visibility through the recognition and publication of its decisions internationally.

These General Orientations of the Tribunal were set forth on 10 December 2006. They replace those of 22 August 2001.

Michèle Rivet
President of the Human Rights Tribunal