

AN ACT RESPECTING EQUAL ACCESS TO EMPLOYMENT IN PUBLIC BODIES AND AMENDING THE CHARTER OF HUMAN RIGHTS AND FREEDOMS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

OBJECT AND SCOPE

1. This Act establishes a special framework to provide equal access to employment in order to remedy the situation experienced by persons belonging to certain groups discriminated against in employment, namely women, handicapped persons within the meaning of the Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration (chapter E-20.1), aboriginal peoples, persons who are members of visible minorities because of their race or the colour of their skin and persons whose mother tongue is neither French nor English and who belong to a group other than the aboriginal peoples group or the visible minorities group.

2. This Act applies to the following public bodies if they employ 100 or more persons for a continuous period of six months in each of two consecutive years:

(1) bodies the majority of whose members or directors are appointed by the Government or a minister or whose capital stock forms part of the domain of the State, except agencies to which section 92 of the Charter of human rights and freedoms applies;

(2) municipalities, urban communities, metropolitan communities, intermunicipal boards, intermunicipal transit authorities, intermunicipal boards of transport, transit authorities of urban communities and any other municipal body whose board of directors is composed in the majority of elected municipal officers, except the Cree Regional Authority and the Kativik Regional Government;

(3) school boards governed by the Education Act (R.S.Q., chapter I-13.3), the Conseil scolaire de l'île de Montréal, institutions whose instructional program is the subject of an international agreement within the meaning of the Act respecting the Ministère des Relations internationales (R.S.Q., chapter M-25.1.1), general and vocational colleges, institutions accredited for purposes of subsidies under the Act respecting private education (R.S.Q., chapter E-9.1) and university level institutions listed in paragraphs 1 to 11 of section 1 of the Act respecting educational institutions at the university level (R.S.Q., chapter E-14.1);

(4) public institutions governed by the Act respecting health services and social services (R.S.Q., chapter S-4.2), private institutions governed by that Act that operate with sums received from the consolidated revenue fund, regional boards established under that Act, except institutions and the regional board governed by Part IV.1 of that Act, and the Corporation d'hébergement du Québec.

The Sûreté du Québec, with respect to its members, and persons appointed by the Government or a minister, together with the personnel they direct, are considered to be public bodies within the meaning of the first paragraph in the exercise of the functions assigned to them by law or by the Government or the minister.

DIVISION II

ANALYSIS OF WORKFORCE

3. Every public body that is subject to this Act shall conduct an analysis of its workforce to determine how many persons belonging to each of the groups targeted by this Act, hereinafter referred to as target groups, are in its employ in each type of occupation.

Types of occupation shall be determined by the employer and matched with the base groups in the National Occupational Classification established in 1993 by the Minister of Employment and Immigration of Canada.

4. A public body may conduct a separate analysis of the workforce in each of its establishments if warranted by disparities in the number of persons qualified for a type of occupation in the relevant recruitment areas. Likewise, a public body may exclude temporary or part-time personnel from the analysis if warranted by the circumstances.

5. After consultation with the personnel or personnel representatives, the workforce analysis report shall be sent to the Commission des droits de la personne et des droits de la jeunesse and shall indicate the number of members in each target group and the proportion represented by each target group in each type of occupation within the public body's workforce.

The report shall also indicate, for each type of occupation, the required skills and experience as well as the public body's relevant recruitment area.

6. The Commission may impose a time limit for the sending of the workforce analysis report on any public body. If the public body fails to send its workforce analysis report to the Commission within the imposed time limit, the Commission may apply to the Human Rights Tribunal for an order directing the public body to send the report within the time specified by the Tribunal.

7. In order to determine whether a target group is underrepresented in a type of occupation, the Commission shall compare the representation of the group within the public body's workforce with the representation of the group among persons qualified for that type of occupation or capable of becoming qualified for that type of occupation within a reasonable time in the relevant recruitment area.

For that purpose, the Commission may, after consulting with the public body, group types of occupation into occupational groups.

8. The Commission shall notify the public body of the results of its comparison by type of occupation or occupational group.

9. A public body is required to establish an equal access employment program for a type of occupation or occupational group where, in the Commission's opinion, the representation of a target group in the type of occupation or occupational group within the public body's workforce generally does not reflect the representation of the target group among qualified persons in the applicable recruitment area.

Otherwise, a public body must see to it that the representation of the target groups within its workforce is maintained.

DIVISION III

EQUAL ACCESS EMPLOYMENT PROGRAM

10. A public body subject to this Act that is required to establish an equal access employment program shall send the program to the Commission, after consultation with the personnel or personnel representatives, within 12 months after the public body receives notice to that effect.

11. Separate programs may be developed for one or more establishments if warranted by disparities in the number of persons qualified for a type of occupation in the relevant recruitment areas.

Likewise, the public body may exclude temporary or part-time personnel from the program where warranted by the circumstances.

12. The Commission shall, on request, lend its assistance in the development of an equal access employment program.

13. The purpose of an equal access employment program is to increase the representation of each target group concerned in the workforce and to correct practices in employment systems.

An equal access employment program shall comprise the following:

- (1) a review of employment systems and more particularly of recruitment, training and promotion policies and practices;
- (2) numerical goals, by type of occupation or by occupational group, to be achieved with respect to each target group concerned;
- (3) temporary corrective measures with specified goals, by type of occupation or by occupational group, for the hiring or promotion of persons in each target group concerned;
- (4) equal opportunity measures and, if needed, support measures to eliminate discriminatory management practices;
- (5) a timetable for the implementation of measures and the achievement of goals;
- (6) measures to consult and inform the personnel and their representatives; and
- (7) the identity of the person in a position of authority who is responsible for the implementation of the program.

14. An equal access employment program cannot require a public body

- (1) to hire or promote unqualified persons;
- (2) to hire or promote persons without basing the hiring or promotion on merit in cases where a collective agreement or established practices require that hiring or promotion be based on selection according to merit;
- (3) to take actions that would be unduly prejudicial to the interests of the public body or of persons who are not members of a target group concerned;
- (4) to create new positions in its workforce; or
- (5) to exclude seniority as a criterion for hiring, promotion, dismissal, layoff, recall or redeployment.

15. The Commission shall take the following factors into account in assessing the content of an equal access employment program:

- (1) the size of the public body's workforce and the number of employees in a type of occupation or occupational group;
- (2) the availability, within each target group, of qualified persons or persons capable of becoming qualified within a reasonable time in the public body's workforce and in the relevant recruitment area;
- (3) the underrepresentation, both in absolute numbers and expressed as a percentage, of each target group concerned;
- (4) the anticipated growth or reduction of the public body's workforce during the period covered by the program timetable;
- (5) the reasonableness of numerical goals;

(6) the proposed corrective measures, equal opportunity measures and support measures, if any; and

(7) the timetable set for the program.

For the purpose of assessing a program, the Commission may require any document or information from a public body and make the necessary verifications.

16. The Commission may request a public body to modify its equal access employment program if, in the Commission's opinion,

(1) the measures proposed are not likely to rectify the situation for persons in the target groups concerned;

(2) the numerical goals are too low having regard to the availability of qualified persons in each of the target groups concerned; or

(3) the timetable for the implementation of measures or the achievement of numerical goals is unreasonable.

The Commission shall issue a notice with reasons to the public body and indicate the time within which the program must be modified and re-submitted to the Commission.

17. If, in the opinion of the Commission, a public body has failed to develop or implement an equal access employment program or has failed to modify its program in accordance with the Commission's notice, the Commission may make recommendations to the public body.

18. If the public body fails to comply with a recommendation of the Commission, the Commission may apply to the Human Rights Tribunal for an order directing the public body to prepare, modify or implement an equal access employment program within the time specified by the Tribunal.

The program shall be filed with the Tribunal. The Tribunal may make such modifications to the program as it considers appropriate.

19. An equal access employment program may be modified, postponed or cancelled if new facts so warrant, particularly where the juridical structure of a public body is modified, by amalgamation or otherwise.

Any agreement reached between the Commission and a public body to modify, postpone or cancel an equal access employment program must be evidenced in writing.

In case of disagreement between the Commission and a public body, either may apply to the Human Rights Tribunal for a determination as to whether new facts warrant the modification, postponement or cancellation of the program.

20. A public body required to implement an equal access employment program shall make all reasonable efforts to achieve the goals of the program according to the timetable.

The public body shall report every three years to the Commission on the implementation of the program, the measures taken and the goals achieved.

21. Once the goals of an equal access employment program have been achieved, a public body must see to it that equal-access employment is maintained.

DIVISION IV
REGULATIONS AND MISCELLANEOUS PROVISIONS

22. After consulting with the Commission des droits de la personne et des droits de la jeunesse, the Government may make regulations

(1) determining criteria, standards, scales, conditions or procedures relating to the development, implementation or application of equal access employment programs established under this Act and fixing the limits thereof;

(2) determining the contents of the reports to be sent to the Commission; and

(3) prescribing any measure necessary for or incidental to the purposes of equal access employment programs.

23. Every three years, the Commission des droits de la personne et des droits de la jeunesse shall publish a list of the public bodies that are subject to this Act and report on the state of equal access to employment in those public bodies.

24. A member of the Commission, designated by the president, may act alone to make recommendations to a public body or apply to the Human Rights Tribunal.

The Commission may authorize a member of its personnel to exercise all or part of the functions of the Commission under this Act, except applying to the Human Rights Tribunal, and issue a certificate to that effect to the personnel member. The authorized personnel member must, on request, identify himself or herself and produce the certificate signed by the president of the Commission.

25. Training costs with respect to employees of a public body incurred for the development of an equal access employment program are deemed to be eligible expenditures within the meaning of section 5 of the Act to foster the development of manpower training (R.S.Q., chapter D-7.1).

26. The modification of the juridical structure of a public body, by amalgamation or otherwise, shall have no effect upon obligations relative to an equal access employment program ; the program shall be binding on the new public body until such time as an analysis of the workforce shows that the public body is not required to establish an equal access employment program or a new program is developed.

If two or more public bodies are affected by a modification of juridical structure, the equal access employment program developed for the public body with the greatest number of employees shall become the program applicable to the new public body until such time as it is adjusted or terminated in accordance with this Act.

DIVISION V
TRANSITIONAL AND FINAL PROVISIONS

27. Section 57 of the Charter of human rights and freedoms (R.S.Q., chapter C-12) is amended by adding the following paragraph at the end:

“Moreover, the Commission is responsible for the administration of the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms (2000, chapter 45). For such purposes, the Commission shall exercise the functions and powers conferred on it by that Act and this Charter.”

28. Section 86 of the said Charter is amended by adding the following paragraph at the end:

“An equal access employment program is deemed not to discriminate on the basis of race, colour, gender or ethnic origin if it is established in accordance with the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms.”

29. Section 92 of the said Charter is amended by inserting “whose personnel is appointed in accordance with the Public Service Act (chapter F-3.1.1)” after “agencies” in the first line of the first paragraph.

30. Section 93 of the said Charter is amended

(1) by inserting “established under this Charter or an equal access employment program established under the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms” after “program” in the fifth line of the first paragraph;

(2) by adding the following paragraph at the end:

“Moreover, such information or the contents of such document must, on request, be communicated by the Commission to the minister responsible for the administration of Part III of this Charter and the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms in order to allow the minister to assess the carrying out of that Part and that Act.”

31. The said Charter is amended by inserting the following section after section 111:

“**111.1.** The Tribunal is also competent to hear and dispose of any application submitted under section 6, 18 or 19 of the Act respecting equal access to employment in public bodies and amending the Charter of human rights and freedoms regarding an equal access employment program.

Only the Commission or one of its members may initially submit an application to the Tribunal to pursue any of the remedies provided for in those sections, except the remedy provided for in section 19 of that Act in the event of a disagreement relating to new facts that may warrant the modification, postponement or cancellation of an equal access employment program.”

32. Not later than *(insert here the date occurring five years after the date of coming into force of this section)* and every five years thereafter, the Minister shall report to the Government on the carrying out of this Act and the expediency of maintaining it in force or amending it.

The report shall be tabled within the next 30 days in the National Assembly or, where the Assembly is not in session, within 30 days of resumption. The report shall be examined by the competent committee of the National Assembly.

33. For the purposes of section 2, a public body that employed 100 or more persons for a continuous period of six months in each of the two years preceding *(insert here the date of coming into force of section 2)* is subject to this Act as of that date.

33.1 The fact that section 58 of the Act to amend the Act to secure the handicapped in the exercise of their rights and other legislative provisions (2004, chapter 31) adds handicapped persons to this Act as a target group does not change the obligations provided for in this Act with regard to the other groups to which it applies.

A public body to which this Act applies on 17 December 2005 must send its workforce analysis report on handicapped persons to the Commission des droits de la personne et des droits de la jeunesse within one year after that date, or by the date set by the Commission for analyzing its workforce with regard to other target groups, if that date is later.

34. The minister responsible for the administration of Part III of the Charter of human rights and freedoms is responsible for the administration of this Act.

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