



Social condition and access to rights

Poverty and Discrimination: two sides of the same coin

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(Commission des droits de la personne et des droits de la jeunesse)**



1. The Québec Human Rights & Youth Rights Commission

The Québec Human Rights & Youth Rights Commission

- An independent body established by the Québec Charter of Human Rights and Freedoms, operational since 1976
- Mission:
 - ✓ To uphold the principles set out in the Québec Charter of Human Rights and Freedoms;
 - ✓ To ensure the protection of the interests of the children and their rights;
 - ✓ Monitors the application of equal access to employment programs
- Main responsibilities:
 - ✓ Investigations, mediation, legal representation
 - ✓ Research, publications, and conformity of laws with the Charter
 - ✓ Education and cooperation
 - ✓ Advisory service on reasonable accommodation to employers and decision makers



2. The Québec Charter of Human Rights and Freedoms & discrimination based on social condition

The Québec Charter of Human Rights and Freedoms

- Scope of application : public and private rights, in areas of provincial jurisdiction.
- Explicit precedence of articles 1 to 38 over any other law, including new laws (art. 52).
- Law establishing the Commission and the Québec Human Rights Tribunal.
- Substantial influence of international law

3 conditions to the right to equality protected by the Charter

1. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without **distinction, exclusion or preference** ...
2. ... based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, **social condition**, a handicap or the use of any means to palliate a handicap.
3. Discrimination exists where such a distinction, exclusion or preference **has the effect of nullifying or impairing such right.**

Adding "social condition" to the list of prohibited grounds of discrimination

- 1974 : bill 50, *Loi sur les droits et libertés de la personne*.
- 1975 : The bill is studied in a parliamentary committee. The ground "social origin" is replaced by "social condition"

« [...], we want to protect people against discrimination[...], not on the basis of their social origin, but much more because of their social condition. Most discrimination cases refer to the social condition.

In fact, we rarely consider the social origin of people but rather their current social condition. And it is according to this social condition that one tends to discriminate and prevent people from having access to housing or a job. It is in this spirit that I propose this amendment. »

(QUÉBEC, ASSEMBLÉE NATIONALE, *Journal des débats. Commissions parlementaires, Commission permanente de la justice, 3^e sess., 30^e légis., 25 juin 1975, « Étude du projet de loi n° 50 — Charte des droits et libertés de la personne », (M. Morin)*

- June 1975: the National Assembly unanimously adopted the Québec Charter of Rights and Freedoms

The "social condition" ground in Canada

Main anti-discrimination laws in Canada	Jurisdiction	Social condition ground
<i>The Canadian Charter of Rights and Freedoms</i>	Canada	<u>Social condition (analogous ground)</u>
<i>The Canadian Bill of Rights</i> , S.C. 1960, c. 44	Canada	N/A
<i>The Canadian Human Rights Act</i> , L.R.C. (1985), ch. H-6	Canada	N/A
<i>The Saskatchewan Human Rights Code</i> , S.S. 1979, c. S-24.1	Saskatchewan	Receipt of public assistance
<i>Human Rights Act</i> , R.S.P.E.I. 1988, c. H-12	Prince Edward Island	Source of income
<i>Human Rights Act</i> , R.S.N.S. 1989, c. 214	Nova Scotia	Source of income
<i>The Ontario Human Rights Code</i> , L.R.O., 1990, c. H.19	Ontario	Receipt of public assistance (claims about housing)
<i>Human Rights Code</i> , R.S.B.C. 1996, c. 210	British Columbia	N/A
<i>Alberta Human Rights Act</i> , R.S.A. 2000, c. A-25.2	Alberta	Source of income
<i>The NWT Human Rights Act</i> , T.N.O.-O. 2002, c. 18	Northwest Territories	<u>Social condition</u>
<i>The Yukon Human Rights Act.</i> , L.R.Y. 2002, c. 116	Yukon	Source of income
<i>The Nunavut Human Rights Act</i> , L.Nun 2003, c. 12	Nunavut	Lawful source of income
<i>Human Rights Act</i> , S.N.L. 2010, c. H-13.1	Newfoundland and Labrador	Social origin, source of income
<i>Human Rights Act</i> , LRN-B 2011, c. 171	New-Brunswick	<u>Social condition</u>

The "social condition" ground in Canada

■ *The NWT Human Rights Act, 2002, art. 1:*

- "Social condition": the condition of inclusion of the individual, other than on a temporary basis, in a socially identifiable group that suffers from social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or any other similar circumstance

■ *Human Rights Act, LRN-B 2011, art. 2*

- "Social condition": the condition of inclusion of the individual, other than on a temporary basis, in a socially identifiable group that suffers from social or economic disadvantage resulting from his **source of income, occupation or level of education.**



3. Social condition: Elements of definitions

The social condition ground: 1st definition brought by case law

- *C.D.P.Q. c. Centre hospitalier St-Vincent de Paul de Sherbrooke, C.S. (St-François), n° 450-05-000856-78, 7 septembre 1978, j. Tôth:*
 - The complainant had just joined a hospital department, but was discharged following a pre-employment medical exam.
 - While the judge refused to conclude that the social condition ground applies in this case, he referred to the definition proposed by the Commission.
 - Thus, the social condition refers to: "**a rank, a place, a social position, or a class attributed to a person mainly because of his/her birth, level of income, occupation and education, ie, the set of events and circumstances that makes a person or a group hold a certain status or position in society**".

The 'social condition' ground: immutable characteristic VS temporary state

🚩 *Johnson c. Commission des affaires sociales*, [1984] C.A. 61:

- M. Johnson is hired by Mines Noranda Ltd. As he is on probation, he did not participate in the strike vote. Nonetheless, he goes on strike with the unionized employees. He did not receive strike benefits (as on probation).
- He applies for social assistance benefits but his application is rejected. He contests the rejection of his application for benefits under last-resort financial assistance programs.
- The Québec Court of Appeal confirms the first definition of the social condition ground recognized by judge Tôth.
- The Court of Appeal acknowledges that « **the social condition, unlike race and color, can represent a temporary state** ». The Court however refuses to stretch this concept to include being out of work due to a labor dispute.

The 'social condition' ground: the contribution of the Human Rights Tribunal

■ *C.D.P.Q. c. Gauthier*, [1994] R.J.Q. 253 (T.D.P.Q.):

- A landlord refuses to rent to people relying on social assistance.
- The Human Rights Tribunal observes that most discrimination decisions based on the 'social condition' ground were taken before the Supreme Court of Canada had confirmed that the Charter provisions should be given a **large and liberal interpretation in a manner that best ensures that its objects are attained**.
- A more subjective definition is given to the ground: "A more comprehensive understanding of the concept of social condition as a prohibited ground of discrimination also seems to require **a subjective component: it essentially consists in the perceptions generated by these objective elements, these representations being also likely to affect the treatment of persons associated with a particular social group.**
- The Tribunal refers to the "**prejudices and stereotypes** that have historically affected certain vulnerable and disadvantaged groups in a society, and to whom the protection provided for in the human rights legislation is intended ".

The 'social condition' ground: the contribution of the Human Rights Tribunal

■ *C.D.P.Q. c. Gauthier*, [1994] R.J.Q. 253 (T.D.P.Q.):

- The definition of the Tribunal:

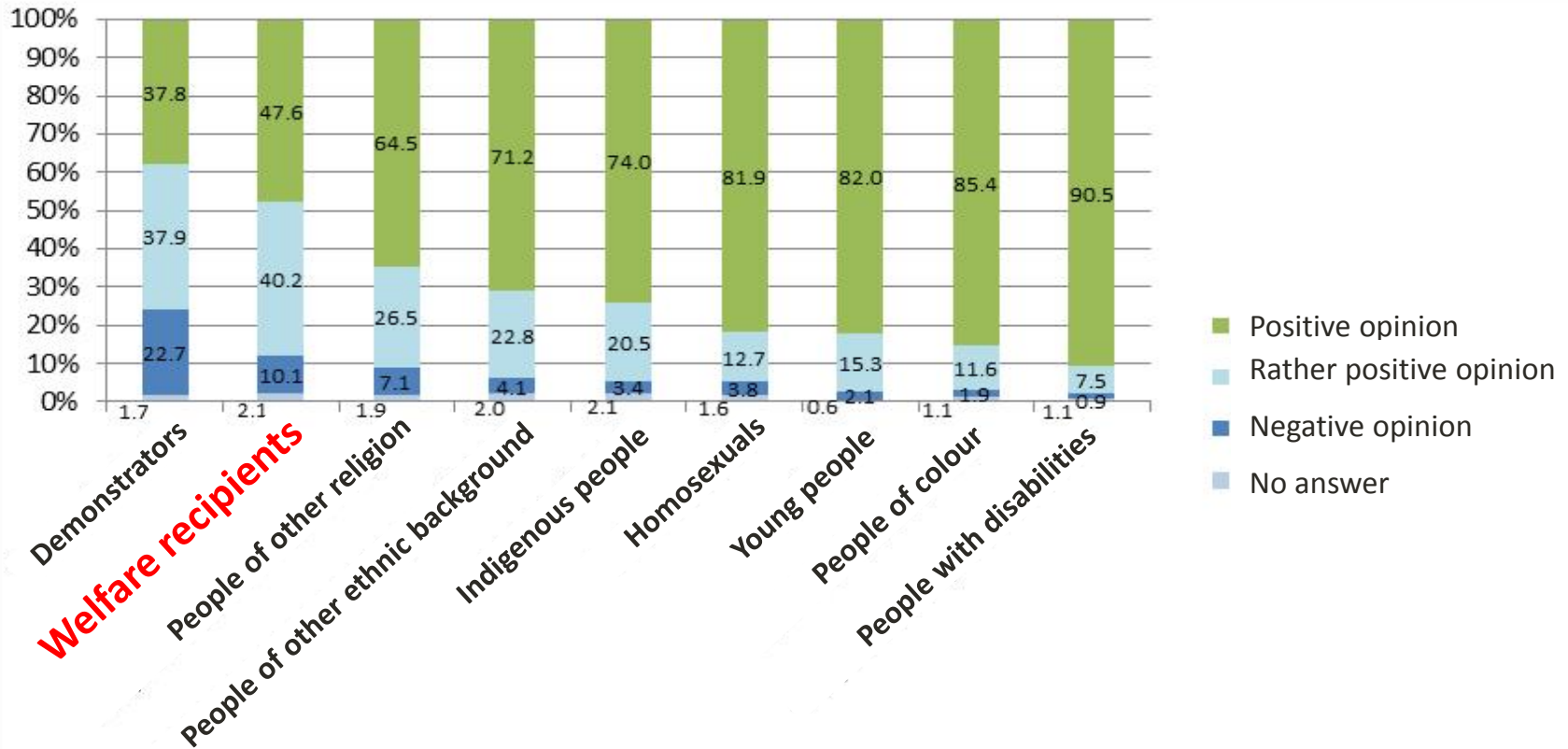
“the social condition can be defined as the situation of a person in a community, notably due to his origins, his education level, his occupation and source of income, and by the perceptions and representations that this community gives to these objective facts”.



4. The effectiveness of rights and access to justice

The social condition ground: 40 years later, much more needs to be done

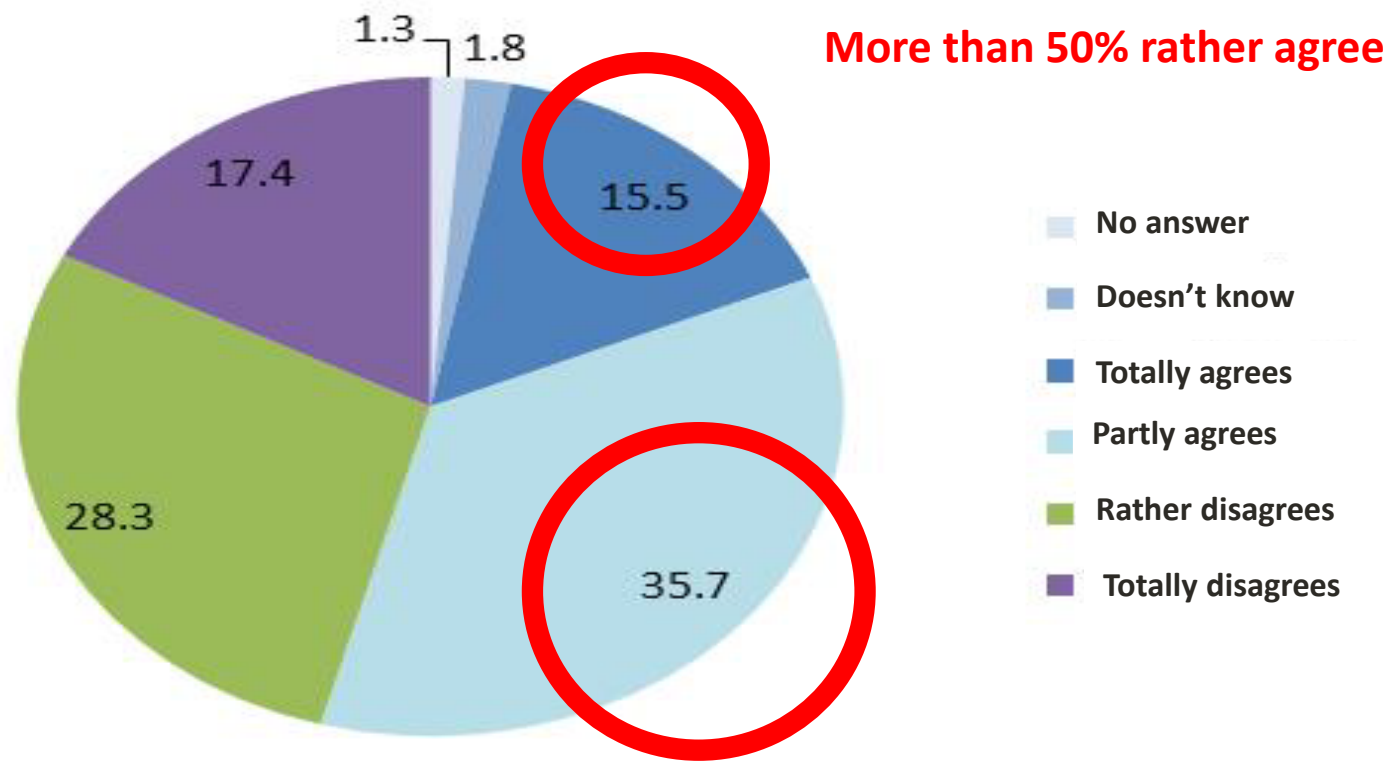
(Q.7) In a 0 to 10 scale, what would be your perception of the following groups:



The social condition ground: 40 years later, a long way to go

Do you totally agree, partly agree, rather disagree, totally disagree with the following statement:

It is normal for a landlord to mistrust a person receiving social assistance.



The legal avenues and the strengthening of the economic, social and cultural rights

- The importance of judicial remedies and the effectiveness of human rights
- Relative improvements, but a strong resistance.
- Necessary strengthening of the economic, social and cultural rights
- The influence of international and comparative law

Legal avenues and strengthening of the economic, social and cultural rights

«Whatever cause there may have been to question the equal status and justiciability of economic, social and cultural rights 60 years ago, one thing is clear: there is no basis for categorical disclaimers today.»

[...]

(Louise ARBOUR, 2005)

"[...] sixty years of disclaiming or belittling the equal status of socio-economic rights as enforceable human rights [...], rings hollow and disingenuous in the light of international and comparative experience. There is nothing to fear from the idea of socio-economic rights as real, enforceable, human rights on equal footing with all other human rights, and no cause for simplistic of categorical distinctions between these rights, and rights described as 'civil and political.' "

(Louise ARBOUR, 2005)

The rights of people in situations of exclusion and vulnerability: a strategic objective 2015-2019



Thank you!

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