

**QUEBEC HUMAN RIGHTS LEGISLATION PROHIBITS DISCRIMINATION BASED ON  
SUBJECTIVE PERCEPTION OF DISABILITY**

*Quebec v. Montreal* 2000 S.C.C. 27

**Facts**

The Supreme Court considered three appeals from the Court of Appeal for Quebec of cases that were initiated under the Quebec *Charter of Human Rights and Freedoms* ("Quebec Charter"). Each case involved a complaint that the Complainant was not hired or was dismissed from his or her employment because of a medical condition.

**Human Rights Tribunal**

In the first two cases, Mercier and Troilo, the Human Rights Tribunal concluded that the Complainants were not discriminated against on the ground of handicap. The Tribunal held that the term "handicap" required functional limitations, and did not include subjective perceptions based upon a physical condition. Accordingly, although the Tribunal recognized that the Complainants were denied employment because of a subjective perception of their handicaps, it found that because their medical anomalies led to no functional limitations, the Complainants had no remedy under the Quebec *Charter*.

In the third case, that of Hamon, the Human Rights Tribunal found that the identification of a handicap could be purely subjective under the Quebec *Charter*. Otherwise, persons with medical anomalies would be deprived of statutory protection where the individual was subjected to discrimination based on another person's perception of his or her ability. Accordingly, the Tribunal found that Mr. Hamon had been discriminated against based upon his handicap.

**Quebec Court of Appeal, [1998] R.J.Q. 688**

The Court of Appeal reversed the Tribunal's decisions in Mercier and Troilo. The Court found that the term "handicap" must be interpreted broadly. The Quebec *Charter* must be consistent with constitutional standards, including those set out in the Canadian *Charter of Rights and Freedoms* (the "Canadian Charter"). The Canadian *Charter* will be used to help interpret provincial human rights codes, despite differences in terminology.

**Supreme Court of Canada**

The Court dismissed the appeals.

The term "handicap" is not defined in the Quebec *Charter*. Its ordinary meaning is not clear from various dictionary definitions. Accordingly, to interpret the term "handicap", the Court referred to the legislation's objective, related legislation, legislative history, and other provisions of the Quebec *Charter*.

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The Supreme Court found that the objectives of the Quebec *Charter* could be inferred from its preamble. The preamble suggests that the objectives are to protect the dignity and equality rights of all human beings and to eliminate discrimination. This, the Court found, is also the purpose of other Canadian human rights legislation. With respect to employment, human rights legislation is designed to eliminate exclusions that are arbitrary and based on preconceived ideas concerning personal characteristics which, when the duty to accommodate is taken into account, do not affect a person's ability to do the job. The Court concluded that the legislative objective is consistent with the conclusion that discriminatory acts could be based on subjective perceptions just as they may be based on the existence of actual functional limitations.

The Court reviewed related legislation, particularly the Canadian *Charter* and other human rights legislation. The Court noted that human rights legislation is to be interpreted in a purposive manner. Accordingly, human rights statutes should be read in a similar manner notwithstanding differences in wording. The Court concluded that interpreting the term "handicap" to exclude subjective perceptions constituted too narrow a reading of the term. The Supreme Court reviewed the history of the Quebec *Charter*. A substantive amendment was made in 1982, and subsequent to that amendment courts consistently recognized that discrimination based on handicap included a subjective component. The legislative history supported a broader interpretation of the term "handicap" than the interpretation placed upon the term by the Tribunal.

Finally, the Supreme Court considered other provisions of the Quebec *Charter*, and concluded that it would be inconsistent with the legislation as a whole to find that it did not cover discrimination based on the subjective perception of disability.

Based on the above analysis, the Court concluded that a handicap might be actual or perceived. The emphasis should be on the effects of the distinction rather than the precise nature of the handicap. The Court concluded that Mercier and Troilo had been discriminated against within the meaning of the Quebec *Charter*. The Mercier and Troilo cases were referred back to the Tribunal to determine whether the employers' actions were justified. The Hamon case was referred back to the Quebec Court of Appeal to be decided in light of the Supreme Court's judgment.