



Association pour la santé environnementale du Québec
Environmental Health Association of Québec

November 21, 2011

Mr. Gaétan Cousineau, President
Québec Human Rights and Children's Rights Commission
360 St. Jacques Street, 2nd floor
Montréal, Québec H2Y 1P5

RE: Notice request for handicap status of environmental sensitivities
According to the Québec Charter of Human Rights

Dear Mr. President,

Approximately 3% of Canadians have been diagnosed with environmental sensitivities, and many more have some degree of sensitivity to traces of chemical products and electromagnetic radiation in our environment. The picture appears to be similar in Québec.

Environmental sensitivity occurs when:

... an individual becomes sensitive to substances or agents in our daily environment at levels well beneath those considered tolerable by others. This condition is painful, chronic and affects several systems in the body. Such people have symptoms like headaches, dizziness, nausea, fatigue, insomnia, lack of concentration, skin lesions, confusion, anxiety and digestive problems, to name only a few.

Among other things, reactions can be triggered by perfumed products (personal products, shampoo, anti-perspirants, creams, cologne, fabric softeners, etc.), cleaning products, detergents, paint, petroleum-based products, cigarette smoke, pesticides, plants, solvents, electromagnetic radiation and mould.¹

The Environmental Health Association of Québec (EHAQ) is a non-profit charitable organization created in 2004. We have 1300 members. EHAQ works at raising public awareness of the problems related to environmental sensitivity and assists people suffering from this condition by offering them personal services as well as information.

We wish to request that your organization issue a notice acknowledging that environmental sensitivity is considered a handicap under the Québec Charter of Rights. Several human rights commissions across Canada have examined this question. We are thinking, in particular, of an important legal notice 'Adaptation measures in cases of environmental sensitivity: the legal point

¹ <http://www.aseq-ehaq-en.ca/general-information.html> (references omitted)

of view² which was issued in 2007 by the Canadian Human Rights Commission further to a scientific report on the subject.³

Moreover, several human rights commissions already intervene in different areas with respect to environmental sensitivity. A report was recently presented by the Ontario Human Rights Commission concerning provisions of the Ontario Building Code,⁴ and since 2000 this commission has been referring to environmental sensitivities as an example of non-apparent handicap in its directives on the accommodation of persons with a handicap.⁵ The Manitoba Human Rights Commission has also produced a document on best construction practises for condominium developers and managers.⁶ In the education field, New Brunswick has shown leadership with its Mackey Report⁷ as well as its directives regarding the accommodation of students with environmental sensitivity.⁸

As far as jurisprudence is concerned, several human rights tribunals and arbitration courts have recognized environmental sensitivity (also known as 'Polytoxicosensibilité' in French or Syndrome of sensitivity to multiple chemical products, or multiple chemical sensitivity syndrome) as a handicap.⁹ In some syndicated workplaces, for example, the Toronto District School Board (Ontario law)¹⁰ and *Cyr vs. the Treasury Board* (Federal law),¹¹ a grievance arbitrator and the labour relations commission both ruled that the employer did not fully fulfill his obligation to provide reasonable accommodation for an employer with environmental sensitivity, as the different human rights laws have provided for.

Essentially, several facts lead us to believe that Québec tribunals would consider environmental sensitivity as a handicap according to the Québec Charter of Rights. That being said, to our knowledge, no decision has yet been rendered to that effect with respect to human rights.

People suffering from environmental sensitivities would no doubt have more support for their requests for accommodation from employers, landlords and service providers if the Commission took a formal stance on the matter. This point is crucial since all studies show that rapid accommodation allows people with this condition to avoid exposing themselves to whatever triggers their symptoms and greatly reduces the impact on their health.

² Cara Wilkie and David Baker, *Accommodation for Environmental Sensitivities: Legal Perspective*, Canadian Human Rights Commission, 2007. Online: <http://www.aseq-ehaq-en.ca/legal-doc.html>

³ Margaret E. Sears, *The Medical Perspective on Environmental Sensitivities*, Canadian Human Rights Commission, 2007. Online: <http://www.aseq-ehaq-en.ca/medical-doc.html>

⁴ Ontario Human Rights Commission, *Policy and Guidelines on the duty to accommodate* (2000). Online: <http://www.ohrc.on.ca/en/policy-and-guidelines-disability-and-duty-accommodate>. Page 7

⁵ See also New-Brunswick Human Rights Commission, *Guideline on Accommodating Physical and Mental Disabilities at Work*. Online : <http://www.gnb.ca/hrc-cdp/e/g/guideline-accommodating-disability-at-work.pdf>

⁶ *Guidelines on condominium housing under the Human Rights Code (Manitoba) for condominium corporations, management companies and condominium unit owners*, Manitoba Human Rights Commission, September 2009

⁷ *Connecting Care and Challenge : Tapping our Human Potential - Inclusive Education : a review of programming and services in New Brunswick*, A Wayne MacKay, AWM Legal Consulting, January 2006.

⁸ New Brunswick Human Rights Commission, *Guidelines on Accommodating Students with a Disability* (2007). Online: <http://www.gnb.ca/hrc-cdp/e/g/guideline-accommodating-students-disability-new-brunswick.pdf>

⁹ See *Hall vs Ontario* (Ministry of Community and Social Services), (1997), 33 C.H. R.R. D/62 (Ont. Ct. (Gen.Div.)), *Harris vs Camosun College*, 2000 BCHRT 51 and *Johnston vs B.c.* (Ministry of Human Resources), 2007 BCHRT 257.

¹⁰ 2011 CanLII 60708.

¹¹ 2011 PSLRB 35.



Your leadership in this matter could not only avoid court procedures for accommodation requests but also help to preserve the health and quality of life of those suffering from this condition.

That is why EHAQ requests that the Commission issue a notice on the subject. Please do not hesitate to contact us should you need further information.

Thank you in advance for your attention to this matter.

Sincerely,

Rohini Peris
President

Michel Gaudet
Vice-President

CC : Me Daniel Carpentier,
Assistant Director of Research
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