



# **Advocacy and Essential Legal Information**

**Know your rights! — Guide on legal information**

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# Important

The information in this guide is of a general nature, and should not be taken as legal advice. If you require information about a specific legal issue, you should **contact a notary, a lawyer or a legal aid clinic**.

## Acknowledgements

**CNIB** wants to thank the volunteers and numerous contributors to this guide on legal information. For additional information about the **Know your rights!** project, please go at [cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights](https://cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights).

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# Introduction

Are you one of the **200,000 Quebecers living with a visual impairment** and are you confronted with inequalities and discrimination based on your disability? You should know that the **Quebec Charter of Human Rights and Freedoms** (Quebec Charter) and the **Canadian Charter of rights and freedoms** protect you from discrimination.

**As a blind person, you have the right:**

- ✓ **To have access to education and employment**
- ✓ **To rent housing**
- ✓ **To access places and transportation**
- ✓ **To access accessible and confidential care and services**

**Without discrimination.**

**CNIB's Know Your Rights** campaign in partnership with the **Chambre des notaires du Québec**, which aims to equip Quebecers who are blind or have partial vision to better defend their rights and to raise awareness among professionals in the Quebec legal system and the general public about rights that are too often violated.

To help you defend your rights, we offer specific and accessible legal information. Among other things, **CNIB** has created [7 legal information guides](#) in areas where rights are most violated (transportation, education, employment, health care, housing, the built environment and government and consumer services). Several issues will be discussed both generally and specifically to shed light on the subject. We will also introduce you to some of the laws and articles included in them that will be useful in defending your rights when they are not respected. These guides are available at [inca.ca/en/knowyourrights](http://inca.ca/en/knowyourrights).

This document provides an overview of the key legal tools and general ones applicable to **standing up for your rights**. This will make it easier to understand the different information guides available to you.

## Jurisprudence

The term **jurisprudence** comes from Latin. It stems from the Latin term **juris**, which means **of law**, and **prudentia**, which means **knowledge**. In order to better understand what is meant by jurisprudence, you can refer to its most common definition, which is the one used by jurists, and that you will find in dictionaries: **“The body of case law on a particular topic”**. However, this very simple definition does not highlight the importance of case law in our system of civil law and common law.

## Understanding the case law

When you delve more deeply into case law, you realize that it constitutes **all of the legal principles stemming from solutions brought down by the courts when they are called to rule on a dispute, interpret a law or create law in cases where the law is silent**. The case law then becomes a reference for jurists. In referring to it, jurists identify the level of the court from which it came, for instance the Superior Court of Quebec, the Court of Appeal of Quebec, or the Supreme Court of Canada. In any given case, the decision issued by the highest court involved is decisive. A decision by the Supreme Court, for instance, overrides any contrary decision by a lower level court in any province.

The case law is **one of the three sources of law** along with the legislation itself and doctrine, which is written by reputed jurists, most of whom are academics. It should be given the same weight as legislation, which itself is often written further to a landmark decision by a court. **Consider this example:** the Supreme Court of Canada’s decision in the Morgentaler case

made access to abortion legal even though, to date, there is no statute in the country in that regard, which means it essentially created law.

## **In what way is case law useful in standing up for your rights?**

Its primary function is to **ensure cohesion and consistency in the decisions made by the different courts**. Obviously, if on any given topic judges went with their own interpretation of the law without regard for how other courts interpreted it, the situation with rights would soon become unpredictable. Consistency and cohesion in the interpretation of the law are key prerequisites for the stability of our society, and are provided by the case law.

Moreover, case law may be subject to something jurists call “**reversal**”, which attests to the fact that judges seek to ensure that the rule of law always keeps pace with changes in society. Once again, the Supreme Court of Canada provides one of the clearest examples. In 1993, the highest court in the land denied Sue Rodriguez, who was afflicted with ALS, the right to assisted suicide as a way to end her suffering. In February 2016, that same court did a turn-around with the Carter case by decriminalizing physician-assisted death for grievously ill consenting adults.

All that aside, referring to the **case law** when it is in our favour is still a **good way to present our case** when it has to be defended before a court because it provides context and clarity on the situation.

## **Reading case law**

The name or title of a case, known as its style, normally contains all of the necessary information for it to be located in a digital database or by legal professionals. Thus, the reference to a case includes the **two parties**

**concerned** (the plaintiff versus (vs) the respondent), the **year of the proceeding reference**, the **reference code**, which is used to find the proceeding, and, in most cases, the **court in question**<sup>1</sup>. The following is an example of a style referring to a case before the Tribunal administratif du travail (T.A.T.) where an indication of a vision-related restriction on an employee's driver's licence **does not release the employer from its duty** to try to accommodate the employee before dismissing him or her: **Gagnon c. Marc Villeneuve Inc., 2019EXP-1159 (T.A.T.)**.

## Locating case law

The judgements of the different courts are easily accessible these days thanks to the electronic tools at our disposal. You start a search by **identifying the court** that heard the case, for instance the Court of Quebec, and then **the names of the parties involved**, and ideally **the year when the judgement was handed down**. The Société québécoise d'information juridique, [SOQUIJ](#), provides online access to all decisions by Quebec courts and by federal courts like the Supreme Court of Canada when there was an appeal. The Canadian Legal Information Institute, [CANLII](#), also enables you to locate decisions handed down anywhere in Canada or [in Quebec only](#).

The [documentation](#) offered by [Know your rights!](#) Also includes examples of **case law** you can consult that is similar to something you are going through. And you can always **refer to a legal professional** for help with **defending your rights** through a search of the **case law**.

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<sup>1</sup> <https://www.umoncton.ca/umcm-bibliotheque-droit/comment-lire-reference>

# Acknowledgements

The **Know your rights!** team would like to thank **Jean Lambert**, notary, for his contribution to this overview of case law.

## General recourses

This section presents **three general recourses** and the possible outcomes, to help you better **stand up for your rights**. If you would like information about a specific situation that could help you **stand up for your rights** in that specific situation, please refer to our [7 specific guides](#).

### 1. Commission des droits de la personne et des droits de la jeunesse

Filing a complaint with the **Commission des droits de la personne et des droits de la jeunesse** (Commission or C.D.L.P.) under section 74 of **Quebec's Charter of human rights and freedoms** (Quebec's Charter) is an option open to anyone who feels they have been discriminated against based on their disability and wants to have their rights upheld. Every person has **the right to equal recognition and exercise of rights and freedoms** (sections 10 and 11 of Quebec's Charter). In addition, the **Commission** has exclusive jurisdiction in investigations of discrimination (Quebec's Charter section 71, paragraph 2, subsection 1), enabling it to hear the complaint based on a distinction or an exclusion based on the victim's disability.

Thus, you can file a complaint with the **Commission**, for instance, in a situation where a disabled student is a victim of **discrimination based on his or her disability**. That is a form of discrimination, and therefore a violation of **Quebec's Charter**.

To that end, you must start by filing a **written** complaint (Quebec's Charter, section 74, paragraph 2) with the **Commission**. Victims must prove that



they were subject to (1) a distinction (2) due to their disability and (3) prejudice.

The Commission will be able to investigate the complaint to ensure its validity.

## **From that point on, there are two possible outcomes:**

### **Outcome 1: The Commission allows the complaint**

If the **Commission** agrees to allow the complaint, it will either propose a negotiated settlement between the parties, arbitration of the matters in dispute or a hearing before a tribunal (**Quebec's Charter** section 78, paragraph 1).

If the **Commission** decides on alternative dispute resolution, as previously mentioned, but the parties reach an impasse or refuse to negotiate (**Quebec's Charter** section 80), the **Commission** may apply to a court to obtain any appropriate measure against the person at fault, or demand in favour of the victim any measure of redress it considers appropriate. The **Commission itself is not a court**.

### **Outcome 2: The Commission does not allow the complaint**

If the **Commission** refuses to allow the complaint, the victim will have to try another recourse. In that case, the **Commission** must justify its refusal in writing, and send it to the victim and the complainant (section 77, paragraph 3 of **Quebec's Charter**). The Commission may refuse a complaint if the victim pursued a remedy other than those provided for in sections 48 and 80 of **Quebec's Charter**, which includes recourse to common-law courts (**Quebec's Charter** section 77, paragraph 1). It may

also refuse to act if the complaint is frivolous or made in bad faith, if the victim does not have a sufficient interest, or if the complaint is made more than two years after the last act or omission (**Quebec's Charter** section 77, paragraph 2).

In the event of a refusal by the **Commission**, victims must turn to the **common-law courts** to defend their rights (**Quebec's Charter** sections 49 and 80).

## 2. Human Rights Tribunal

If, pursuant to sections 80 to 82 of **Quebec's Charter**, the **Commission** find that the complaint is justified, it can apply to the **Human Rights Tribunal** for an appropriate judgement. Only the **Commission** may access that court.

However, section 84 of **Quebec's Charter** provides an exception to this principle. If the **Commission** finds that the complaint is justified but decides not to apply to a court to pursue a remedy for a person's benefit, **victims may substitute themselves for the Commission** and, at their own expense, submit an application to the **Human Rights Tribunal**. Complainants must act within **90 days** after receiving notification of the **Commission's** refusal to pursue a remedy provided for in sections 80 to 82.

Any decision of the **Human Rights Tribunal** may be appealed to the Court of Appeal, with leave (**Charter** section 132).

## 3. Common-law courts

Anyone who believes himself or herself to be a victim of a measure in violation of the **Charter** may assert their rights by contesting a discriminatory measure before a common-law court (**Quebec's Charter** section 49).

# **When your rights are not respected, stand up for them!**

We hope this guide will help you stand up for your rights as they relate to education. We believe that you are in the best position to defend your rights. When your rights are not respected, you have the right to stand up for them and to make sure that others **Know your Rights**.

**CNIB is here for you.** Since its inception in 1918, CNIB has undertaken a variety of advocacy initiatives to **break down barriers** for people who are blind and to **advocate for an inclusive society**.

Please feel free to contact us for referrals and to take advantage of our services.

[DroitsDevant@inca.ca](mailto:DroitsDevant@inca.ca)

**1 800 465-4622**

Visit the campaign website for information on other rights:

**[cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights](http://cnib.ca/en/support-us/advocate/quebec-advocacy/know-your-rights)**

Join the conversation on social media by using the tagline:

**#KnowyourRights**

**Together, enforce the rights of blind people!**