

**PROPOSAL FOR A
MONTRÉAL CHARTER
OF RIGHTS AND RESPONSIBILITIES**

**THE DEVELOPMENT PROCESS
BACKGROUND**

February 2004

City of Montréal

The Proposed Montréal Charter of Rights and Responsibilities

From concept to public hearings

Introduction

On December 10, 2003, the 55th anniversary of the Universal Declaration of Human Rights, the Mayor of Montréal unveiled a proposal for a *Montréal Charter of Rights and Responsibilities*. On that occasion, he also announced that the City of Montréal Executive Committee had given the Montréal Office of Public Consultation (known by its French abbreviation OCPM) the mandate to hold public hearings on the proposed Charter beginning early in 2004, and invited all Montrealers to take part.

What are the origins of the plan to give the City of Montréal a Charter of Rights and Responsibilities?

Discussions to this end were begun at the Montréal Summit. During the Summit, the Task Force on Democracy was assigned to develop a proposed Charter, inspired by the European Charter for the Safeguarding of Human Rights in the City, which would emphasize not only the rights but the responsibilities of Montréal's citizens.

The delegates to the Montréal Summit viewed this project as an instrument that would bring people closer together, recalling values that mobilize citizens.

How was the proposed Charter developed?

The proposed Charter stems from a co-operative effort that brought together City of Montréal representatives and some 15 citizens from various fields, dubbed the *Chantier sur la démocratie*, or Task Force on Democracy, an initiative of the Mayor of Montréal.

Input from experts

Right from the start, the Task Force sought out the advice of recognized experts in the field of human rights in examining the relevance and significance of enacting a Montréal Charter. Each of them responded enthusiastically to the initiative, remarking that cities have an increasingly important role to play in the definition and safeguarding of human rights, and that a municipal Charter would not overlap with the human rights charters already enacted by the governments of Canada and Québec. Viewing it as an innovative and original project, and one upon which few major cities have embarked, they encouraged the City and the Task Force to go forward.

Legal framework

The City of Montréal's Legal Affairs department was brought on board to help define the parameters within which the proposal for a municipal Charter of rights and responsibilities could be put forward.

As the City is empowered to enact bylaws aimed at ensuring good governance and the general welfare of citizens in its territory, it can adopt a declaratory municipal Charter. It can also decree that an ombudsman play a role in implementing such a Charter, for example by entrusting him or her with powers of inquiry, recommendation or mediation. Legal Affairs imposed two restrictions: on the one hand, the Charter must not open the way to judgments or actions that would run counter to legislation or regulations to which the City is bound; and on the other hand, the City must respect the sharing of competencies with its boroughs.

In addition, the City does not have the authority to enact a Charter that is binding in any way, and that would entitle citizens to seek sanction via the courts. Only an act voted by the Government of Québec can give the City the power to pass such a Charter, and furthermore it would lead to a number of legal difficulties; for example regarding the rights and duties of elected officials and civil servants under existing legislation and regulations, which could end up being restricted or modified in light of the way the Charter might be interpreted by the courts.

For the purpose of preventing undesirable application of the Charter or of potential reports and recommendations by the ombudsman, Legal Affairs proposed adding a clause to the Charter stipulating that neither its nor the ombudsman's opinion could be admissible in any proceedings before a court of law.

Drafting the Charter

These observations by Legal Affairs set the tone for the remainder of the Task Force's work, which focused on proposing a Charter that would be distinguished by, among other things, the fact that it designates a neutral, impartial administrative body that will oversee the Charter's enforcement, and with whom citizens may file complaints — the Office of the Ombudsman.

On these bases, the Task Force proceeded to develop a proposal that would, furthermore:

- comply with Québec legislation;
- respect the limits of the City's competencies;
- respect the limits of competencies shared with the other levels of government; and
- respect the financial limitations of the City.

The European Charter for the Safeguarding of Human Rights in the City served as a starting point. However, its extremely wide scope appears to cover a significant number of rights that, in the Montréal context, are already protected by the Canadian and Québec Charters, and its text contains no formal mechanism for remedies to which citizens may be entitled.

The draft Montréal Charter in brief

The proposed Charter recalls the foundations of democratic and human rights, which centre on human dignity. In contrast to those of Canada and Québec, it is not a constitutional or quasi-constitutional document. The municipal Charter would be enacted by Montréal City Council as a municipal bylaw.

The draft Charter strikes a balance between rights and responsibilities. Examples of responsibilities include refraining from encroaching on fellow citizens' full enjoyment of their rights, and promoting civic values that ensure safety in the City and the respect of living surroundings.

The proposal recognizes the major values espoused by the City as an institution and to which, it believes, citizens adhere. These include trust, respect, justice and fairness.

The raison d'être of any such charter is to affirm and safeguard rights. The Montréal Charter's primary aim is to be instrument that serves every citizen, as well as the City itself. It should inspire citizens in their daily lives and in the exercise of their rights and responsibilities. Full enjoyment of the rights stated in the Charter would rest on a shared commitment on the part of the City of Montréal and its citizens.

Individuals who feel their rights as defined by the Charter have been denied could file a complaint with the Office of the Ombudsman, who would have power of inquiry, mediation and recommendation. In the opinion of the experts consulted, such remedy before an administrative body would have the advantage of being readily available to citizens, as well as giving elected representatives the benefit of an informed opinion in cases involving conflicts.

Rights, responsibilities and commitments

The provisions of the draft Charter refer mainly to citizens' responsibilities and the City's commitments vis-à-vis democratic, economic, social and cultural life, the environment and sustainable development, physical security, and quality municipal services.

So as to foster the enjoyment of the rights stated, the document proposes that the City make commitments, formulated in accordance with its powers, some of which aim to protect those citizens who are most vulnerable. They include:

- Providing information to citizens and promoting their participation in the City's affairs;
- Maintaining measures to provide assistance in matters of housing;
- Guaranteeing citizens access to quality drinking water;
- Ensuring the accessibility of premises for the promotion and presentation of art and culture;
- Ensuring the safety of sports equipment and facilities in municipal parks;

- Safeguarding the environment and air quality;
- and so on.

Lastly, given the innovative character of this project, it is difficult to foresee all possible applications of the Charter, and it is only in hindsight that the appropriateness of making adjustments to it can be evaluated. For this reason, the Task Force participants recommended that, within four years of the Charter's enactment, its effectiveness and coverage of rights be assessed through public consultation.

Timetable

December 2003: The Executive Committee decides to give the OCPM the mandate to hold public hearings on the proposed *Montréal Charter of Rights and Responsibilities*.

February–April: Public hearings.

April: Study by the OCPM and drafting of a report on the public hearings;

Following the public hearings, the OCPM analyzes the Draft Charter and the opinions expressed by citizens, and publishes a report along with recommendations.

Early May: Filing of the OCPM's report with the City of Montréal Executive Committee;

The OCPM makes the report public after its filing with the Executive Committee.

August: City's response to the commission report.