the POVERTY and HUMAN RIGHTS PROJECT

Gosselin Court Split

by Shelagh Day

Last week, in Gosselin v. AG Quebec, the Supreme Court of Canada handed down its first decision on the application of the *Charter* to poverty issues. The Court is split, and there is both good news and bad news for those who are concerned about the current punitive attitudes of federal and provincial governments towards poor Canadians.

At issue in Gosselin is a 1984 Quebec social assistance regulation which reduced the welfare rate of 85,000 recipients between the ages of 18 and 30 from the subsistence level of 466 dollars a month to about one-third of that - 170 dollars per month. At the same time that the government chopped the benefits of young people, it provided some training and employment programs, and recipients who participated in these programs could increase their welfare rates, though not necessarily to the regular rate. Older welfare recipients who participated in the same training and employment programs could increase their benefits too, that is, they received more on top of the regular rate.

The Court had two major questions before it: 1) did the regulation contravene the section 15 equality guarantee of the *Charter* by

discriminating against younger welfare recipients and 2) did the regulation contravene the section 7 right to life, liberty and security of the person because it authorized a below subsistence welfare rate?

The bad news is that a majority of the Court, lead by the Chief Justice, Beverly MacLachlin, in a thin and defensive-sounding judgement, ruled that the below subsistence welfare rate did not violate the equality rights of young welfare recipients. The majority took the position that young people are not a group that is especially vulnerable or undervalued, and therefore this specifically targeted cut was not damaging to their human dignity. Also, the majority agreed that the Quebec government's purpose was a positive one: namely to get recipients under 30, who had a high unemployment rate, into jobs and training programs that would give them the "remedial education and skills training they …needed in order to…become self-sufficient." The majority indicated that the factual evidence did not support a finding that the government treated Ms. Gosselin, and others in her age group, as less worthy of concern and respect than older welfare recipients.

This was the judgement, however, of only five judges of nine (MacLachlin, Gonthier, Iaccobucci, Major and Binnie) A strong minority of four (Bastarache, LeBel, Arbour and L'Heureux-Dube) had no difficulty finding evidence that these young welfare recipients were discriminated against contrary to the *Charter*. The existence of the training and employability programs did not, in their view, compensate for the below subsistence welfare rate. The programs had varying eligibility rules, and not all of the young people qualified

for them; there were only 30,000 spaces, though there were 85,000 young people who needed access to them; and the scheme was based on a stereotyped notion that young people would have to be coerced into participating in the programs through deprivation. 88 per cent of the 18 to 30 group did not get access to a subsistence welfare rate through these workfare programs.

Further, the harms experienced by the young people who were trying to live on 170 per month were extreme. They could not meet their basic needs for food, clothing and shelter. They experienced serious psychological and physical stress. They were often homeless and malnourished. Some attempted suicide. The reduced rate also detracted from their chances of actually finding a job or participating in employability programs. The minority found that the cut had a significant impact on the claimants' dignity, and contravened s. 15.

But the Court dealt not only with the issue of discrimination in a welfare scheme, it also tackled, for the first time, the issue of whether a below-subsistence level of welfare violates the s. 7 right to life and to security of the person. Two judges (Arbour and L'Heureux-Dube) found that s. 7 imposes a positive obligation on governments to provide social assistance adequate to meet basic needs, and that the Quebec cut violated s. 7 as well as s. 15. Interestingly, 6 more judges agreed that, in another case, s. 7 could be found to include this positive obligation. In other words, the door is left open on this issue for another case, another day.

In light of the decisions of governments across the country to cut welfare rates, and narrow eligibility rules, we can expect that there will be another case, and another day on which the Court will wrestle once more with the matter of the obligations of governments to fulfill the rights of the poorest Canadians to equality and security.

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