Majority Embraces Stereotype of Poor

by Shelagh Day

The majority decision of the Supreme Court of Canada in last week's welfare rights case, *Gosselin v Quebec*, is a disturbing one. Five judges endorsed a Quebec scheme that consigned thousands of 18 to 30 year old welfare recipients to extreme poverty, and found that it did not harm the human dignity of these poor young people.

Under the Quebec scheme, which operated from 1984 to 1989, the regular rate of welfare was set at $470 per month, but welfare recipients aged 18 to 30 received a reduced rate of $170 per month. At the same time, the Quebec government established training and education programs, and 18 to 30 year old recipients who participated in these programs could increase their welfare rates, though not necessarily to the regular rate.

In the language of the Charter, the claimant, Louise Gosselin, argued that the differential treatment of under 30s violated the prohibition on age discrimination contained in the s. 15(1) equality guarantee and that the utter poverty which resulted violated the s. 7 right to life, liberty and security of the person.

In previous cases, the Court has decided that in order to qualify as discrimination, differential treatment must be harmful to human dignity. In this case, the majority, led by the Chief Justice, Beverly McLachlin, held that the differential treatment of under 30s, far from harming dignity, was a well-intentioned attempt to provide an incentive for them to undertake training and education programs. The majority accepted the Quebec government's statement of its good intentions as determinative, and rejected as insufficient the evidence that the training and education programs were unable to provide a meaningful and ongoing opportunity for all those aged 18 to 30 to participate and to secure the regular rate of welfare.

The four minority judges found that that the programs had eligibility rules that disqualified some, there were only 30,000 spaces for 85,000 young people, and there were times when people in the group had to wait to get into programs. They accepted evidence that over the life of the scheme, only 11 per cent of the young recipients got access to the regular rate. The rest had to try to live on the admittedly below subsistence rate of $170 per month.

The minority also accepted evidence that the harms caused by the below subsistence rate were harsh. 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.

In order to come to its conclusion, the majority side-stepped this crucial evidence, and chose to rely on the rulings of the trial judge, who found that there was insufficient evidence of the flaws in the scheme or the harms that it caused. This reliance by the majority on the trial judge is unconvincing. The Court regularly re-appraises evidence introduced at the trial level, particularly the type of social science evidence relevant to determining the harms of poverty. And the minority had no difficulty finding ample evidence to prove that *Charter* rights were violated.

However, what is centrally disturbing is that five judges sanction a government decision to use extreme poverty as an 'incentive' for education and training. Their reasoning buys directly into the stereotype that under 30s on welfare are lazy, unwilling to work, and must be coerced into productive lives. The Chief Justice expressly repudiates the suggestion that this stereotype animated the scheme. Rather, she argues, the scheme "reflected faith in the usefulness of education and the importance of encouraging young people to develop skills and employability, rather than being consigned to dependence and unemployment."

However, this disavowal is unpersuasive. To avoid giving life to the stereotype, the government of Quebec would have had to show some faith in the willingness of young people to do whatever they could to gain skills and find employment. To consign them to extreme poverty unless they participated in training and employability programs was to endorse the stereotype in effect.

In allowing extreme poverty to be used as an incentive, the majority has sanctioned a particularly high risk form of "tough love". It permits the government to knowingly endanger the physical and psychological health of young people, and to jeopardize their safety on the theory that this will help them in the longer term.

While it must be acknowledged that the Court is only just beginning to explore the human rights implications of poverty, and so is bound to make mistakes, there is a world of difference between honest mistakes and unexamined, or undeclared, prejudices. Low-income Canadians have been the victims of prejudice for too long. They have been treated as irresponsible and unworthy people just because of their poverty. They need Canada's top court to help undo those prejudices, not to sanction them.

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