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The “Made in Québec” Act to Combat Poverty and Social Exclusion: The Complex Relationship between Poverty and Human Rights

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In December 2002, the Québec National Assembly adopted the *Act to Combat Poverty and Social Exclusion (Poverty Act)*.¹ The *Poverty Act* is unique in North America. Alain Noël describes it as a remarkable achievement of collective action that started in 1994 with the election of the Parti Québécois, which remained in power until the act’s adoption but have since been replaced by the Liberal party.² I have no crystal ball and cannot predict the future of the *Poverty Act*. I live in Québec and witness now, as do my fellow citizens, the tip of the “re-engineering of the state” iceberg that is promised by the Liberal government: plans for privatization, an increase in daycare costs, the destruction of labour law protections, and so on. This makes me wonder about the true meaning of fighting poverty in Québec.³ Suffice it to say that one has to keep in mind the current political context when forecasting the “future of the poor” in Québec.

Social analysts rightly hold out the *Poverty Act* as a model of participatory democracy. My interest, though, is in looking at the act in order to reflect on how poverty, as a legal or statutory topic, interplays with human rights in a context where not only trade, but also social regulation, is globalized. In such a context, does fighting poverty necessarily contribute to the promotion and the protection of human rights and, more specifically, of economic and social rights? How could institutions aimed at monitoring poverty in Québec provide such a contribution?

The *Poverty Act* was not born into a statutory and legal vacuum. As an ordinary law, the act is subordinate to the Québec *Charter of Human Rights and Freedoms*, Chapter IV of which protects some economic and social rights.⁴ The act also has to be reconciled with the Québec *Act Respecting Income Support, Employment Assistance and Social Solidarity (Welfare Act)*.⁵ Quite by coincidence, the *Poverty Act* was assented to the same week that the Supreme Court of Canada rendered its decision in *Gosselin v. Quebec (Attorney General)*.⁶ In sum, the adoption of the *Poverty Act* coincided with huge political change in Québec. Editorials describe this change as a liberal or neo-liberal

tornado. What can the introduction of legal commitments to fight against poverty mean in such a context?

Since there is weak quasi-constitutional protection of economic and social rights in the Québec *Charter*, it is important to examine the wording of the *Poverty Act* as well as to track its sources of inspiration. This is what this chapter intends to do. The first part introduces the act itself and its more relevant features. The second part briefly explains why and how civil society has organized itself in order to get this legislation adopted. The third part focuses on the relationship between international strategies to fight extreme poverty and the Québec *Poverty Act*. The final part of the chapter explores the issue of the complex relationship between poverty and human rights in the context of the Québec *Charter* and the act. This exploration has to be seen as the beginning of a discussion that will inevitably occur in Québec. It raises the question of assessing what happens when the reality of poverty becomes a “legal fact” in an era of globalized management of the poor, who are seen more as market risks or dysfunctional units than as human beings claiming respect and dignity. Although it was intended as a political tool in the Québec context, the *Poverty Act* may produce unsuspected legal results that may put at risk economic and social rights as protected by the spirit, if not the letter, of the Québec *Charter*. In other words, I am not convinced that this approach to fighting poverty was designed to promote and protect human rights.

What Is the *Poverty Act*?

Section 1 of the *Poverty Act* states that its object is to *guide* the government as well as Québec society towards a *process* of planning and implementing actions to combat poverty and strive towards a poverty-free Québec. The model of an *ordinary* law as a guide for political action is quite unusual in the realm of poverty law. The *Poverty Act* does not substitute itself for any legislation aimed at guaranteeing social benefits, such as welfare benefits, to citizens, but it proposes a legal definition of poverty. In addition, it purports to engage all stakeholders in an exercise of participatory democracy, by assigning new duties to them in the project of fighting poverty. This part sets out: (1) the act itself; (2) the institutions it creates; and (3) some questions regarding the scope of this initiative from a Québec human rights perspective.

Why a National Strategy to Combat Poverty and What Is It?

The preamble of the *Poverty Act* emphasizes the fact that the Québec *Charter* protects the fundamental right of every individual to dignity. Poverty, the preamble states, is an obstacle to the respect for human dignity. Section 2 of the act offers a definition of poverty: “[t]he condition of a human being

By adopting the *Poverty Act*, the Québec government seized a political opportunity to redesign, statutorily, its international as well as its fundamental obligations towards the poor. What will be the full consequences, in such a context, of the eventual release of poverty indicators for Québec? Will the poverty indicators, once established by and for Québec, in accordance with the satisfaction of a person's or a family's basic or essential needs, determine the "measure" of human dignity for the poor in Québec? What will be the impact of section 15(2) of the *Poverty Act*, which commits the government to the determination of an irreducible minimum level of welfare benefits as a component of the anti-poverty national strategy? What will be the consequences for the growing number of working poor of such commitments? Will they be deemed to have reached the appropriate level of self-sufficiency with respect to the poverty indicators to be adopted at the Québec level? Surprisingly, such questions have never been raised in Québec except by the Commission des droits de la personne et des droits de la jeunesse. Over the last decade, and before the *Gosselin* decision, demands for improvement of Chapter IV of the Québec *Charter* and the effective protection of economic and social rights had not been heard.

The Journey of Economic and Social Rights in Québec: From One Underclass to the Other

In November 2003, the Commission des droits de la personne et des droits de la jeunesse du Québec released a major review of the application of the Québec *Charter* twenty-five years after its adoption.⁷⁷ This report followed both the Supreme Court of Canada's decision in *Gosselin* and the adoption of the *Poverty Act*. The major recommendation of the Québec *Charter* review process was to recognize the true legal nature of economic and social rights and to do so by, among other things, adding to Chapter IV a provision stating that all legislation must be consistent with the essential content of economic and social rights.⁷⁸

The Québec government has expressed no intention to implement the report's recommendations. Yet the *Poverty Act* responds indirectly to this specific recommendation. Section 15 of the act sets an irreducible minimum level of welfare. The minimal content of a social right becomes what is necessary for a poor person who is "capable of work" to exercise freely her personal capabilities as long as, and to the extent that, the priorities of the state (section 16 of the act) and collective wealth (and political will) permit it. Thus, regressive measures that violate social rights become a matter of moral and political choices. Does the *Poverty Act* constitute the "final word" of the government in response to the long-standing request for a definition "in law" of the notion of a decent standard of living? Or is it a self-explanatory answer to the question of what the limits are to the right to an acceptable standard of living? Were the *Poverty Act*, and the institutions it

creates, designed to send a signal to the courts who will now have to take it into account when assessing violations of the human dignity of the poor and of their social rights?

Conclusion

In Québec, some claim that "civil society knows best" about human rights. The link between the *collectif's* proposal and the *Poverty Act* is taken as a vibrant example of this fact. However, if the Québec state had been willing to comply with its obligations under international human rights instruments, it would surely have amended first, and above any other legislative initiative, the Québec *Charter*. It did not do so. Thus, there is tension between the democratic process and the substance of human rights. The democratic right of the poor to participate in the design of policies that affect them should not be permitted to result in a diminution of the substance of their human rights. This is easy to say but not so easy to do in reality. The politics of the anti-poverty agenda can go either way: the liberal path or the social justice one. A social justice anti-poverty agenda is possible only to the extent that the human rights framework is seen as being central and fundamental by all components of a democratic state – the state itself, civil society's institutions, and the courts. In Québec, it is not clear that everyone is pulling in the same direction.

Notes

- 1 *Act to Combat Poverty and Social Exclusion*, R.S.Q. 2002, c. L-7 [*Poverty Act*].
- 2 Alain Noël, "A Law against Poverty: Quebec's New Approach to Combating Poverty and Social Exclusion," background paper, Canadian Policy Research Networks (2002), <http://www.cprn.ca/en/doc.cfm?doc=183> (6 July 2004).
- 3 See La Confédération des Syndicats nationaux, "Des actions de visibilité pour protester contre les lois 25, 30 et 31," communiqué (19 March 2004). <http://www.csn.qc.ca/Communiqués/CommMars04/Comm19-03-04d.html> (6 July 2004).
- 4 *Charter of Human Rights and Freedoms*, R.S.Q. 1975, c. C-12 [Québec *Charter*].
- 5 *Act Respecting Income Support, Employment Assistance and Social Solidarity*, *infra* note 13.
- 6 *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429 [Gosselin].
- 7 See Amartya Sen, *On Ethics and Economics* (London: Blackwell, 1987); Amartya Sen, *Inequality Reexamined* (New York: Russell Sage Foundation, 1992); and Amartya Sen, *Development as Freedom* (New York: Anchor Books, 2000).
- 8 This choice had been made bearing in mind the beginning in 1997 of the UN Decade for the Elimination of Poverty.
- 9 Government of Québec, *The Will to Act, The Strength to Succeed (National Strategy to Combat Poverty and Social Exclusion, Policy Statement)* (Québec, QC.: Government of Quebec, 2002), <http://www.mess.gouv.qc.ca/anglais/strategie/publications.asp> (6 July 2004).
- 10 Section 45 of the Québec *Charter*, *supra* note 4, reads as follows: "Every person in need has a right, for himself and his family, to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living." It has to be remembered that section 52 of the Québec *Charter* stipulates that no provision of any act adopted by the Québec legislature may derogate from sections 1 to 38 of the Québec *Charter*. This principle of primacy excludes Chapter IV (sections 39-48), which protects some economic and social rights.