Legal Perspectives on Bill 78 – Quebec's "Emergency Law" to Quell Student Protests

Massive crowds fill the streets of downtown Montreal every spring and summer. But unlike most years, when people gather for the International Jazz Festival or the Grand Prix, 2012 is a year of student demonstrations. Crowds of up to 100,000 have been disrupting instruction on post-secondary campuses and marching through the city banging on casserole pots. Since February 2012, students and their supporters have been protesting the Quebec government's plans to raise post-secondary tuition.[1]

Bill 78, introduced in response to the student protests, added fuel to the fire.[2] The National Assembly of Quebec passed the bill on May 18, 2012. Known as an "emergency law" – and in force only until July 2013[3] – the law includes a number of temporary measures to regulate demonstrations. These special measures include:

- rules against preventing students from entering an educational institution;[4]
- requirements for organizers of public demonstrations to give police advance notice;[5] and
- penalties for people who offer encouragement to protest.[6]

Several legal experts have commented on Bill 78 and its impact on *Charter* rights.

Does the emergency law infringe freedom of expression and peaceful assembly?

Louis Masson, President of the Quebec Bar Association, expressed concerns over the emergency law's constitutionality. He points out that many clauses in the law clearly limit the right of all citizens to protest peacefully.[7]

Mr. Masson takes particular issue with clause 16. This clause requires the organizers of demonstrations of more than fifty people to give the police eight hours' advance notice. The provision also allows police to relocate or reschedule demonstrations in the interests of "peace, order and public security."[8] This rule would make it difficult to organize spontaneous demonstrations - so it would limit freedom of expression, which is protected by section 2(b) of the *Canadian Charter of Rights and Freedom*. It would also limit freedom of peaceful assembly, protected by section 2(c) of the *Charter.*

What is the impact on freedom of association?

Rémi Bourget, the organizer behind a lawyers' protest against the law, says that the bill

restricts the *Charter* freedom of association by targeting student associations.[9] Student associations help represent student interests. Existing provincial legislation provides a framework for student associations. It allows these associations to benefit from student membership fees and to have a monopoly in student representation. Quebec law also requires post-secondary institutions to provide resources such as space and furniture for student associations.[10]

According to Bourget, Clauses 18 to 21 of Bill 78 allow institutions to stop providing resources to student associations. In effect, disobedient associations will have their funding cut and their operations limited. They would therefore be unable to express, promote and defend the interests of students. He says that these clauses are an incredibly violent attack ("une attaque d'une violence inouïe") against freedom of association, protected by section 2(d) of the *Charter*.

Bourget also says the new law could apply to all Quebec citizens, not just students. Any spontaneous gathering of more than fifty people is forbidden under clauses 16 and 17. He suggests that these clauses can affect a whole variety of gatherings, including labour strikes and sports celebrations.[11]

Has the Quebec government gone too far?

Julius Grey, a constitutional lawyer in Montreal, says that the government has gone overboard with this law.[12] He suggests that present laws in Canada are already adequate to deal with the issues that the Bill is trying to address. Laws pertaining to riots, unlawful assembly, assault and obstruction of police already exist. According to Grey, "there is absolutely no need to get new laws – the present laws are working."[13]

He also points out that clause 9 of the law gives the Minister of Education power to unilaterally modify the law. Grey says that this is "flagrantly unconstitutional" because it allows a minister to legislate in place of the legislature.[14]

Is Bill 78 reasonable?

Matthew Harrington of the University of Montreal suggests that Bill 78 is reasonable.[15] In his view, the new law does not impose extreme restrictions on the rights of expression and assembly. He says the new provisions only give police the right to alter the location or route of a demonstration if it poses a "grave risk to public security." He points out that police have no right to determine the content of a protest, nor the power to ban a protest.

Professor Harrington also thinks that opposition to Bill 78 is based on a misunderstanding of constitutional law. While the *Charter* guarantees certain freedoms, these freedoms are not absolute. Section 1 of the *Charter* permits limits on rights as long as they are "reasonable" and can be "demonstrably justified in a free and democratic society." He says that the balance struck by the bill is reasonable. The new law attempts to balance the rights of protestors against the rights of the public to safety and order. In his view, the clauses requiring protest organizers to notify police are reasonable because demonstrations are

usually planned in advance.

The constitutional challenge

While demonstrations continue in Quebec, there appears to be some reluctance to apply the new law. Louis-Philippe Lampron of Laval University speculates that police are not at ease applying the emergency law due to constitutional concerns and a preferences for using other laws. So far, no one has been charged under the legislation.[16]

Two legal challenges to the constitutionality of the Bill have been filed in the Quebec Superior Court.[17]The first seeks to suspend sections of the new law that limit public protest. The second seeks to declare the law invalid on the grounds that it violates the *Charter*. Some commenters foresee that these cases will be a significant constitutional challenge and may end up before the Supreme Court of Canada.[18]

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[1] Graeme Hamilton, "Montreal tourist season at risk over tuition protests", *National Post* (23 May 2012).

[2] Bill 78, *An Act to enable students to receive instruction from the postsecondary institutions they attend*, 2nd Sess, 39th Leg, Quebec 2012 (assented to 18 May 2012) ; "Montreal protestors march in peaceful defiance", *CBC News* (26 May 2012).

[3] *Bill 78*, cl 36.

[4] *Ibid* at cl 13-15.

[5] *Ibid* at cl 16-17.

[6] *Ibid* at cl 26-30.

[7] Barreau du Québec, Media Release, "Le Barreau du Québec formule de sérieuses inquiétudes" (18 May 2012).

[8] *Bill 78* at cl 16.

[9] "Lawyers take to the street with students for Montreal's 35th consecutive night of protest", *National Post*(28 May 2012); Rémi Bourget, "La loi spéciale pour les nuls", *Faits et Causes* (22 May 2012) .

[10] *An Act Respecting the Accreditation and Financing of Students' Associations*, RSQ c A-3.01, s 26, 28-29.

[11] *Bourget*.

[12] Terence McKenna, "Freedom and Order in Quebec," *CBC The National* (29 May 2012) at 2:05.

[13] *Ibid* at 2:25.

[14] Linda Gyulai, "Bill 78 contravenes Charter, lawyer says", *Montreal Gazette* (23 May 2012) . See also *Bill 78* at cl 9.

[15] Matthew Harrington, "Bill 78 is not an unreasonable law", *Montreal Gazette* (31 May 2012).

[16] Mark Quinlan, "Quebec's new anti-demo law raising rights concerns", *CBC News* (25 May 2012).

[17] "Quebec student protests: legal challenge delayed to Friday", *Montreal Gazette* (30 May 2012).

[18] Sue Montgomery, "Students, unions join forces in bid to get rid of Bill 78", *Montreal Gazette* (26 May 2012). See also *Gyulai*.