

Tremblay v. Daigle

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[1989] 2 S.C.R. 530

FACTS

In January 1989, Jean-Guy Tremblay proposed marriage to Chantal Daigle. In February 1989, the two began to live together. In July 1989, Ms. Daigle was informed by her doctor that she was pregnant.

Shortly after commencing living together, the relationship between the parties deteriorated. Ms. Daigle alleges that Mr. Tremblay became dominant, jealous and physically abusive. Ms. Daigle decided to end the relationship and to terminate her pregnancy.

On July 17, 1989, Mr. Tremblay was granted an injunction restraining Ms. Daigle from proceeding with the abortion. On July 20, 1989, the Court of Appeal dismissed Ms. Daigle's appeal and upheld the injunction. Ms. Daigle immediately appealed to the Supreme Court of Canada. Ms. Daigle proceeded with the abortion before the Supreme Court made its decision.

LOWER COURTS

Quebec Superior Court

In granting the injunction, the Superior Court concluded the following. A foetus is a "human being" under the Quebec *Charter of Human Rights and Freedoms* and therefore enjoys a "right to life" and a "right to assistance" under ss. 1 and 2 respectively. Second, the court found that Mr. Tremblay had the necessary "interest" to request the injunction. Finally, while the injunction would inconvenience Ms. Daigle, the court found that the foetus' rights should prevail in the situation. Ms. Daigle appealed to the Court of Appeal.

Quebec Court of Appeal

The Court of Appeal dismissed Ms. Daigle's appeal and upheld the injunction. Judge LeBel dismissed the appeal with reasoning similar to that of the Quebec Superior Court. Judge Nichols also dismissed the appeal for different reasons. He concluded that neither the Quebec *Charter* nor the *Canadian Charter of Rights and Freedoms* recognized foetal rights. However, foetal rights were recognized by custom and, implicitly, by our laws. Judge LeBel dismissed the appeal as well, again for different reasons. He found that a foetus has a "natural right" to be carried to term and that this right can only be over-ridden for a just reason. He found no just reason in this case. Ms. Daigle appealed to the Supreme Court of Canada.

ISSUES

The Supreme Court considered the following issues:

1. Whether the Quebec *Charter* supports the injunction restraining Ms. Daigle from having an abortion.
 2. Whether the Canadian *Charter* supports the injunction restraining Ms. Daigle from having an abortion.
 3. Whether the father has the right to veto a woman's decisions in respect to an abortion.
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DECISION:

The Supreme Court unanimously allowed Ms. Daigle's appeal. The Court delivered the decision together and concluded the following:

1. The Quebec *Charter* does not support the injunction restraining Ms. Daigle from having an abortion.
 2. The Canadian *Charter* does not support the injunction restraining Ms. Daigle from having an abortion.
 3. A potential father does not have the right to veto a woman's decisions in respect to an abortion.
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DECISION REASONS:

(Dickson, Lamer, Wilson, La Forest, L'Heureux-Dube, Sopinka, Gonthier and McLachlin).

The Issues in this case

While recognizing the relevance of the philosophical, theological and metaphysical issues, the Court viewed this case solely in a legal context. The issue was thus not whether a foetus is a person *per se*, but whether the relevant legislation accorded a foetus legal status and rights for the purpose of granting an injunction restraining Ms. Daigle from having an abortion. For the Court, the broader social, political, moral and economic issues were to be more appropriately left to the legislature.

The Quebec *Charter* and the Injunction

The Court concluded that the Quebec *Charter* did not support the injunction restraining Ms. Daigle from having an abortion. For the Court, a foetus was not included within the term "human being" within the Quebec *Charter*. Therefore, the Quebec *Charter* did not accord a foetus legal status and rights for the purpose of granting the injunction. In drawing this conclusion, the Court recognized the following:

1. The Quebec *Charter* did not display any clear intention on the part of its framers to consider the status of a foetus. If the Quebec *Charter* was

intended to include a foetus, it is unlikely that the legislature would have left its legal status in such an uncertain state.

2. The different usage of the terms "human being" and "persons" in the Quebec *Charter* did not lead to the conclusion that a foetus was included with the term "human being." The more plausible explanation was that the different terms were used to distinguish between physical and moral persons.
3. The Quebec *Civil Code* and Anglo-Canadian law supported the finding that a foetus was not a "human being" within the meaning of the Quebec *Charter*. The *Civil Code's* recognition of the foetus' juridical personality was only a "fiction of the civil law" in order to protect the future interests of the unborn child (provided it is born alive and viable). In Anglo-Canadian law, a foetus must be born alive to enjoy rights.

The Canadian *Charter* and the Injunction

The Court concluded that the Canadian *Charter* did not support the injunction restraining Ms. Daigle from having an abortion. For the Court, the Canadian *Charter* was not applicable to this case. This case was a civil action between two private parties and did not have any state action to trigger the Canadian *Charter*.

The Father's Right to Veto a Woman's Decision Regarding an Abortion

The Court concluded that the father did not have a right to veto a woman's decisions regarding an abortion. For the Court, there was nothing in the Quebec legislation or case law to support the argument that the father did have such a right.

Outcome

The Court concluded that Ms. Daigle's appeal should be allowed. For the Court, neither the Quebec *Charter* nor the Canadian *Charter* supported an injunction restraining Ms. Daigle from having an abortion. Furthermore, the father did not have a right to veto a woman's decision regarding an abortion.