SUPREME COURT OF CANADA

disponible en français

Case in Brief: *Reference re Genetic Non-Discrimination Act*

Judgment of July 10, 2020 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2020 SCC 17

Parliament had the power to make it a crime to force someone to get genetic testing or reveal their test results, the Supreme Court has ruled.

Genetic testing looks at genetic material (like DNA) from a person's body. It can find out personal information, like what diseases a person might have, develop, or pass on to their children.

Parliament passed the *Genetic Non-Discrimination Act* to make rules on genetic testing related to diseases. It made it a crime to force someone to get that testing, or share their results, to sign a contract or buy something. For example, insurance companies couldn't make people get tested to get life insurance coverage. Parliament also made it a crime to collect, use, or share the results of someone's genetic tests without their permission. Anyone breaking the rules could be fined up to $1 million or put in jail for up to five years, or both.

The Government of Quebec didn't think Parliament had the power to make these rules. That's because Canada's Constitution gives different powers to the provinces and the federal government. For example, Parliament (the branch of the federal government responsible for making laws) has the power to make criminal laws. Provincial legislatures (which make laws for each province) can make laws about property and civil rights. This includes laws about buying and selling goods and services. If a provincial legislature or Parliament passes a law that only the other has the power to make, the law will be unconstitutional.

The Government of Quebec asked the Quebec Court of Appeal to decide if the rules were unconstitutional. The Attorney General of Quebec said the rules were unconstitutional because they were really about making rules for insurance and employment contracts and promoting health, not about making criminal law. The Attorney General of Canada agreed.

The Attorneys General of Quebec and Canada both argued that the rules were unconstitutional. To make sure it heard the other side of the argument, the Court of Appeal appointed an "*amicus curiae*" to argue that they were constitutional. "*Amicus curiae*" is a Latin term meaning "friend of the court." It is an independent lawyer a court asks to take part in a case. The *amicus curiae* said the rules were meant to protect the security and dignity of vulnerable people, and to prevent outcomes that would be morally wrong. He said this fell under Parliament's power to make criminal law.

The Court of Appeal agreed with the Attorneys General and said the rules were unconstitutional. It said Parliament didn't have the power to make the rules because they were really about things under provincial power. The Court of Appeal said the rules didn't have anything to do with criminal law.

The Canadian Coalition for Genetic Fairness was an "intervener" when the Court of Appeal heard the case. Interveners are people or groups who get the court's permission to give their point of view. They make arguments in writing. Some are also allowed to make short arguments in person at the hearing. They help judges see different angles and make better decisions. The Coalition said the rules fell under Parliament's power to make criminal law because they protected people's health, privacy, and equality. The Coalition appealed the Court of Appeal's decision to the Supreme Court.

Most of the judges at the Supreme Court said the rules were constitutional. Five judges agreed that Parliament had the power to create the rules. They said the rules were criminal law because they prohibited something and created punishments for breaking the rules, and because the rules were trying to prevent certain kinds of harm. They said this is what criminal law is meant to do. These judges disagreed over what the rules were really about and the kinds of harm they were meant to prevent.

This case came to the Supreme Court as an appeal from a provincial "reference." References are questions that governments ask courts for their opinion on. (In law, an "opinion" isn't just a belief or point of view. It is a formal explanation of the law.) The federal government can ask the Supreme Court for a legal opinion on an issue. Provincial and territorial governments can ask their Courts of Appeal for opinions, and these opinions can be

…cont'd

appealed to the Supreme Court. Appeals in references from Courts of Appeal don't need leave (permission) to be heard by the Supreme Court. This case began as a reference to the Quebec Court of Appeal by the Quebec government.

Breakdown of the decision: ***Reasons by:*** Justice Andromache Karakatsanis said the rules were about combating genetic discrimination and protecting health, and that Parliament had the power to make the rules because this fell under criminal law (Justices Abella and Martin agreed) | ***Concurring:*** Justice Michael Moldaver said the rules were about protecting health by making sure people had control over their genetic information, and that Parliament had the power to make the rules because this fell under criminal law (Justice Côté agreed) | ***Dissenting:*** Justice Nicholas Kasirer said the rules affected only contracts and tried to prevent the misuse of people's genetic tests in order to promote their health, and that since provinces are responsible for making laws about contracts, it was outside of Parliament's power to make these rules (Chief Justice Wagner and Justices Brown and Rowe agreed)

More information (case # 38478): Decision | Case information | Webcast of hearing

Lower court rulings: answer to question on reference (Court of Appeal of Quebec)

Cases in Brief are prepared by communications staff of the Supreme Court of Canada to help the public better understand Court decisions. They do not form part of the Court's reasons for judgment and are not for use in legal proceedings.