

Tremblay Ltee.

Chater Case

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Ally and Spencer

Overview of Case

- Jean-Guy Tremblay (25) and Chantal Daigle (21) began started a sexual relationship in November 1988
- Became engaged January 1989, Daigle was pressured to stop using contraceptives
- By February they were living together and Tremblay became allegedly abusive after Daigle was informed she was pregnant during March. She was 18 weeks when the relationship ended.
- Daigle wished to terminate pregnancy because she didn't feel ready, felt she would suffer psychological damage and she didn't want contact with Tremblay ever again.
- Tremblay asked for an interlocutory injunction of Daigle's abortion from the Quebec Superior Court because he felt that it would cause irreparable harm to himself and the fetus.
- Superior Court and Court of Appeals ruled in favour of Tremblay.
- During Court of Appeals proceedings, Daigle had travelled to the United States to have an abortion at approximately 21 weeks.
- Daigle's counsel argued that case should still proceed because it was precedent setting.
- Daigle appealed to the Supreme Court of Canada after losing in the lower courts.
- Daigle won at the SCC

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Legal Pathway of Lower Courts

- Quebec Superior Court (Tremblay)
- Tremblay won because Trial Judge ruled that the fetus was protected under Sect. 1 of Quebec Charter as a human being. This Tremblay had the necessary elements as the Father to request the injunction, and that Sect. 1 of the Quebec Charter overrode Sect. 7 of the Canadian Charter. This ruling made it illegal for Daigle to perform an abortion.
- Court of Appeals (Daigle)
- Was a 3-2 decision to dismiss the appeal.
- The majority ruled on the grounds of a fetus's right to life, the father's interest and the late stage of the pregnancy.
- The minority argued that the ruling made directly opposite claims from getting abortions, therefore contradicting the decision in the Morgentaler case, and they stated that in neither Charter case a case that a fetus is a human being.

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Supreme Court of Canada Decision

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Daigle was the applicant to the SCC, which acted in the favour of her legal rights to an abortion. They stated that in situations where a woman wants an abortion, legal rights to the fetus and potential father do not exist. The Quebec Charter did not state that a fetus is included in the term "human being" and a fetus is not protected under Sect. 1 of the Quebec Charter. Anglo-Canadian law states that one is not a human being until they are born. They ruled that the potential rights are only subject to a fetus when after it's born, and that a fetus's rights are subject only to laws that are considered in respect to abortions after it's born, since this was a civil case. Sect. 7 of the Canadian Charter was not used in the ruling, as the court's concern is about making unnecessary pronouncements while the constitution. They also stated since there was no legislation within Quebec or Canadian law that states a father had the right to veto a woman's decision for abortion, they could not rule in favour of Tremblay.

Legal Issues

- The legal issues in this case would be the fetus's rights and the Father's right towards keeping the child.
- Questions raised
 - Does a fetus's right to life overrule the mother's decision for an abortion?
 - Does a father's opinion have a say or can overrule the mother's decision for an abortion?
 - What constitutes a human being legally?

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Laws and Charter Provisions

Quebec Charter of Human Rights and Freedoms:
Section 1) Every human being has a right to life, and to personal security, freedom and freedom.
This case used the "human being" argument to carry out the pregnancy. He argued that the fetus was a human being and that it needed to be protected. This position was chosen for ruling in favour of Tremblay in the Quebec Superior Court and the Court of Appeals.

Canadian Charter of Rights and Freedoms:
Section 7) Everyone has the right to life, liberty and security of the person and the right not to be subjected to such treatment as is cruel, inhuman or degrading.
This section was used as Daigle's counsel argued that she had the right to security of the person, although it was later not considered because it was used in the precedent setting case of R v Morgentaler. It was cited in the reasons for the SCC and in favour of Daigle.

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R v Morgentaler [1988]

The case was precedent setting that a woman under Section 7 of the Charter has the right to have a legal and safe abortion, after Dr. Morgentaler was found to have performed illegal abortions to women in his clinic.

Impact and Legal Precedents

This case reinforces the rights of women to have a safe and legal abortion if they choose to do so. It also prevents potential fathers from vetoing their decision and therefore making the rights to abortion moot. It also sets the precedent that fetuses do not have the right to life under both the Quebec and Canadian Charters.

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- Daigle wished to terminate pregnancy because she didn't feel ready, felt she would suffer psychological damage and she didn't want contact with Tremblay ever again.
- Tremblay asked for an interlocutory injunction of Daigle's abortion from the Quebec Superior Court because he felt that it would cause irreparable harm to himself and the fetus.
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Laws and Charter Provisions

Quebec Charter of Human Rights and Freedoms:
Section 1) Every human being has a right to life, and to personal security, freedom and freedom.
This case used the "human being" argument to carry out the pregnancy. He argued that the fetus was a human being and that it was needed by the parents. This position was rejected by ruling in favour of Daigle in the Quebec Superior Court and the Court of Appeals.

Canadian Charter of Rights and Freedoms:
Section 7) Everyone has the right to life, liberty and security of the person and the right not to be subjected to unreasonable search or seizure. It was ruled in the precedent setting case of R v Morgentaler that the fetus is not a human being and therefore not protected by the Charter. This was the basis for the SCC's ruling in favour of Daigle.

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R v Morgentaler [1988]

The case was precedent setting that a woman under Section 7 of the Charter has the right to have a legal and safe abortion, after Dr. Morgentaler was found to have performed illegal abortions to women in his clinic.

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Laws and Charter Provisions

Quebec Charter of Human Rights and Freedoms:

Section 1) Every human being has a right to life, and to personal security, inviolability and freedom.

This was used for Tremblay's argument to carry out the pregnancy. He argued that the fetus was a human being and that it needed to be protected. This section was reason for ruling in favour of Tremblay in the Quebec Superior Court and the Court of Appeals.

Canadian Charter of Rights and Freedoms:

Section 7) Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

This section was used in Daigle's case to argue that she had the right to security of person, although it was taken into consideration, because it was used in the precedent setting case *R v Morgentaler* a year prior, it was ultimately not the reason the SCC ruled in favour of Daigle.

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Legal Pathway of Lower Courts

- Quebec Superior Court (Tremblay):
 - Tremblay won because Trial Judge ruled that the fetus was protected under Sec 1 of Quebec Charter as a human being, that Tremblay had the necessary interests as the Father to request the injunction, and that Sec 1 of the Quebec Charter overruled Sec 7 of the Canadian Charter.
 - This ruling made it illegal for Daigle to perform an abortion.
- Court of Appeals (Daigle):
 - Was a 3-2 decision to dismiss the appeal.
 - The majority ruled on the grounds of the fetus's right to life, the father's interest and the late stage of the pregnancy.
 - The minority argued that the ruling would directly oppose women from getting abortions, therefore contradicting the decision in the Morgentaler case, and they stated that in neither Charter does it state that a fetus is a human being.

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Supreme Court of Canada Decision

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Daigle was the appellant to the SCC, which ruled in her favour of her legal right to an abortion. They stated that in situations where a woman wants an abortion, legal rights to the fetus and potential father do not exist. The Quebec Charter did not state that a fetus is included in the term "human being" and is therefore not protected under Sec 1 of the Quebec Charter. Anglo-Canadian law states that one is not a human being until they are born. They ruled that the paternal rights are only subject to a fetus when after it's birth, and that a fetus's rights should only be taken into consideration to protect its interests after it is born. Since this was a civil case, Sec 7 of the Canadian Charter was not used in the ruling, as the court wanted to avoid making unnecessary pronouncements within the constitution. They also stated since there was no legal basis within Quebec or Canadian Law that states a father had the right to veto a woman's decision for abortion, they could not rule in favour of Tremblay.

Impact and Legal Precedents

This case reinforces the rights of women to have a safe and legal abortion if they choose to do so. It also prevents potential fathers from vetoing their decision and therefore making the rights to abortion moot. It also sets the precedent that fetuses do not have the right to life under both the Quebec and Canadian Charters

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- Tremblay asked for an interlocutory injunction of Daigle's abortion from the Quebec Superior Court because he felt that it would cause irreparable harm to himself and the fetus.
- Superior Court and Court of Appeals ruled in favour of Tremblay.
- During Court of Appeals proceedings, Daigle had travelled to the United States to have an abortion at approximately 21 weeks.
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This case used the "human being" argument to carry out the pregnancy. He argued that the fetus was a human being and that it needed to be protected. This position was rejected by ruling in favour of Daigle in the Quebec Superior Court and the Court of Appeals.

Canadian Charter of Rights and Freedoms:
Section 7) Everyone has the right to life, liberty and security of the person and to be free from state interference with the private life of the individual.
This section was used as Daigle's main argument that she had the right to security of the person, although it was later not considered because it was used in the precedent setting case of R v Morgentaler in our other case. However, the SCC did not use it in favour of Daigle.

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R v Morgentaler [1988]

The case was precedent setting that a woman under Section 7 of the Charter had the right to have a legal and safe abortion, after Dr. Morgentaler was found to have performed illegal procedures to secure it in his clinic.

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