



Case in Brief: **Ontario (Attorney General) v. G**

Judgment of November 20, 2020 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2020 SCC 38

Part of Ontario’s sex-offender registry law discriminates against people with mental disabilities, the Supreme Court has unanimously ruled.

In 2001, G had his first and only mental health episode. He was charged with two counts of sexual assault against his then-wife. In 2002, he was found “not criminally responsible on account of mental disorder.” This meant that he did not know what he was doing or did not know that it was wrong, or both. It also meant he didn’t have any kind of criminal record. The Ontario Review Board decides if someone found not criminally responsible is a risk to public safety. It said G wasn’t a major risk. It gave him an “absolute discharge” in 2003. This meant he didn’t need to be monitored by the Review Board. He was never charged with any other crime again.

Even though he got the absolute discharge from the Review Board, G was placed on Ontario’s sex offender registry. Because of this, he had to report to the police every year. Police could also randomly check up on him. His name couldn’t be deleted from the list, even if he died.

Sexual crimes are very serious. But not everyone who commits a sexual crime has to register in Ontario. Anyone who gets a “discharge” at sentencing doesn’t have to register. This kind of discharge means the person isn’t convicted even if they are found guilty. Anyone who is pardoned is deleted from the registry. Anyone who gets a “record suspension” (where their record is taken out of the criminal record database) doesn’t have to keep reporting. In each of these situations, officials can look at a person’s case on an individual basis to decide what kind of risk they are to the public.

But none of these options were available to people like G who were found not criminally responsible. Those people had no way of getting off the registry. They had to report to police at least once a year no matter what. This was true even if they got an absolute discharge, like G did.

G said this was discriminatory. He said it breached sections 7 and 15(1) of the *Canadian Charter of Rights and Freedoms*, part of Canada’s Constitution. Section 7 protects everyone’s right to life, liberty, and security of person. Section 15(1) says everyone has the right to be treated equally.

The judge who heard the *Charter* application said G’s rights weren’t breached. The Court of Appeal agreed that his section 7 rights weren’t breached. But it said his section 15 rights were.

All the judges at the Supreme Court agreed that G’s section 15 right to be treated equally and without discrimination was breached. They all pointed out many people wrongly think those with mental disabilities are always, and by nature, dangerous.

The majority said Ontario’s sex offender registry law was discriminatory under section 15. This was because it didn’t provide a way for people found not criminally responsible to get off the list or to not have to report anymore. People who were found guilty had ways to do this. This discriminated against people like G based on mental disability. (The majority didn’t need to look at section 7 because it already found a *Charter* breach under section 15.)

When a court finds that a law violates the Constitution, the next question is the proper “remedy,” or how to make it right. The majority set out principles for courts to use when deciding remedies in these kinds of cases. In this case, the majority said that the Court of Appeal was right that the part of Ontario’s law that discriminated against G was invalid. It also said that the Court of Appeal was right to give Ontario a year to fix the problem. When deciding whether to give governments time to fix an unconstitutional law, the majority said courts should look at the whole situation.

The majority also said that the Court of Appeal was right to delete G from the registry. It said the Court of Appeal was right to exempt him from having to keep reporting even though it gave the government time to fix the law. This was because G, like others who bring successful *Charter* cases, help the public by uncovering unconstitutional laws.

Giving governments time to fix unconstitutional laws should be rare. The Supreme Court has not done this since [*Carter v. Canada \(Attorney General\)*](#), over five years ago.

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Breakdown of the decision: *Majority:* Justice Andromache [Karakatsanis](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Martin](#), and [Kasirer](#) agreed) | *Concurring:* Justice Malcolm [Rowe](#) said declarations of invalidity may be suspended where there is danger to the public, a threat to the rule of law, or where the legislature should decide whether to cancel or extend the law | *Dissenting in part:* Justices Suzanne [Côté](#) and Russell [Brown](#) agreed the law was unconstitutional, but said that while suspending declarations of invalidity should be rare, individual exemptions should be even more rare; they wouldn't have exempted G

More information (case # 38585): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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