



Case in Brief: *Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux*

2018 SCC 17 | Judgment of May 10, 2018 | On appeal from the Court of Appeal of Quebec

For the first time, the Supreme Court has found a pay equity law unconstitutional because it was discriminatory.

In a 6-3 decision, Justice Rosalie Silberman Abella, writing for the majority, dismissed an appeal by the Government of Quebec.

To tackle the problem of wage discrimination against women workers, Quebec passed a law in 1996 forcing employers with 10 or more employees to give equal pay for work of equal value. Ten years later, less than half of employers had complied. Less than two-thirds had even started on a plan. In 2009, Quebec changed the law to require employers to review their progress on pay equity every five years through audits. If the audits showed women were not being paid fairly, they could still only get pay equity every five years, with no back pay for unfair wages in between.

Some unions challenged the new law in court. They said that making pay equity available only every five years was discriminatory. The Quebec courts agreed that the law breached women's equality rights under section 15 of the *Canadian Charter of Rights and Freedoms*.

Justice Abella agreed that the law violated women's equality rights. Pay equity is based on the idea that stereotypes about the role of women in society lead to "women's work" being valued and paid less than "men's work." Pay equity laws require employers to identify jobs done mostly by women, and compare their salaries to the salaries for jobs done mostly by men. Where equal pay is not being given for work of equal value, employers have pay their women employees to close the gap. By restricting pay equity to every five years, the law let employers off the hook. The law continued the disadvantage women already suffered in the workforce. This breach of women's equality rights was not constitutionally justified. It continued to punish women financially for their employers' failures. Five judges agreed with Justice Abella.

Justices Suzanne Côté, Russell Brown, and Malcolm Rowe disagreed. They said Quebec's law did not breach women's equality rights. They noted that *Charter* rights are "negative rights," meaning that governments do not have to adopt particular laws—but if they do, those laws must comply with the *Charter*. Quebec decided to adopt a pay equity law, and when it saw that the original scheme was not working, it chose to replace it with one that would better achieve equal pay for women. In practice, the changes benefitted women employees and brought them closer to real pay equity. These judges said that the choice of how to improve Quebec's pay equity laws should be left to Quebecers' elected representatives, not the Court. They also noted that back pay was available for unfair wages in between audits.

This case was decided on the same day as [Centrale des syndicats du Québec v. Québec \(Attorney General\)](#), which upheld other parts of Quebec's pay equity laws.

For more information (case no. 37347):

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

Breakdown of the decision:

- Majority: [Abella](#) J. ([McLachlin](#) C.J. and [Moldaver](#), [Karakatsanis](#), [Wagner](#) and [Gascon](#) JJ. concurring)
- Dissenting: [Côté](#), [Brown](#) and [Rowe](#) JJ.

Lower court rulings (available in French only):

- Court of Appeal of Quebec ([appeal judgment](#))
- Superior Court of Quebec ([trial judgment](#))

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