



Case in Brief: **R. v. C.P.**

Judgment of May 7, 2021 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2021 SCC 19

Denying young offenders an automatic right to appeal to the Supreme Court is constitutional. The Supreme Court upholds a teenager's sexual assault conviction because the teenaged victim was too intoxicated to consent to sexual activity.

Today's judgment stems from a Toronto-area beach party, where a 15-year-old boy sexually assaulted a 14-year-old girl. After being found guilty of sexual assault, the boy known as C.P. because he is a young offender, appealed to the Ontario Court of Appeal. He claimed the verdict was unreasonable based on the evidence. C.P. lost his appeal, but one of the three judges disagreed with their colleagues on a point of law.

Adults convicted of such serious crimes under the *Criminal Code* and who lose their appeals have the automatic right to appeal to Canada's highest court when the judges at the Court of Appeal disagree on a point of law. That is not the case for offenders convicted of such crimes under the *Youth Criminal Justice Act (YCJA)*. In his appeal, C.P. challenged section 37(10) of the *YCJA*. He claimed it violates the rights of young offenders under the *Canadian Charter of Rights and Freedoms* (the *Charter*).

The constitutional argument

In his appeal, C.P. asked the Supreme Court of Canada to overturn the guilty verdict and to decide if section 37(10) of the *YCJA* violated his section 7 and 15 *Charter* rights. Section 7 protects an individual's right to life, liberty and security. Section 15 of the *Charter* protects groups from discrimination, including on the basis of age. The Court agreed to answer both questions.

The verdict was reasonable

A majority of Supreme Court judges agreed with the majority of the Ontario Court of Appeal that the verdict was reasonable. They found that the trial judge provided solid reasons for what she believed happened on the night of the sexual assault. The majority said the trial judge's reasons for finding C.P. guilty were rigorous and thoughtfully explained.

Section 37(10) of the Youth Criminal Justice Act is constitutional

The majority of the judges of the Supreme Court also found that section 37(10) of the *YCJA* is constitutional. Five judges explained that the *YCJA* did not violate C.P.'s section 7 *Charter* rights because the modern youth justice system recognizes the vulnerability of young offenders with greater and more tailored protections in line with their unique circumstances.

Four judges found that section 37(10) did not breach C.P.'s section 15 *Charter* rights. They said that Parliament did not discriminate against young people when it passed the *YCJA*. The judges found the law balances the benefits of review on appeal against the harms inherent in that process, such as the principle that there should be no unnecessary delays in the final outcome of criminal trials.

One judge found that section 37(10) had breached C.P.'s section 15 *Charter* rights. However, he concluded that the violation was reasonable under section 1 of the *Charter*, which says rights can be limited, if reasonable and justified in a free and democratic society. This judge reasoned that in C.P.'s case, the limit was justified because it served the goal of timely justice and young people may still appeal to the Supreme Court with permission.

Breakdown of the decision: *Majority:* On the issue of the reasonableness of the verdict, Justice Rosalie Silberman **Abella** found there was no basis for finding the verdict unreasonable. (Chief Justice **Wagner** and Justices **Moldaver**, **Karakatsanis**, **Brown**, **Rowe**, **Martin** and **Kasirer** agreed) | ***Dissenting:*** On the issue of the reasonableness of the verdict, Justice Suzanne **Côté** found the verdict unreasonable, because the trial judge's conclusion that R.D. was so intoxicated that she could not have consented had been reached illogically and the

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evidence was not capable of supporting that conclusion | [On the issue of the constitutionality of section 37\(10\) of the YCJA](#), Chief Justice [Wagner](#) found there was no breach of either sections 7 or 15 of the *Charter* (Justices [Moldaver](#), [Brown](#) and [Rowe](#) agreed) | Justice Nicholas [Kasirer](#) found that there was no breach of section 7, but a breach of section 15, however, it was saved by section 1 | Justice Rosalie Silberman [Abella](#) found that there was a breach of section 15 (Justices [Karakatsanis](#) and [Martin](#) agreed) | Justice Suzanne [Côté](#) found it unnecessary to make a determination on the constitutionality of section 37(10), because the question had become moot after the Court had granted leave.

More information (case # 38546): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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