



The Supreme Court of Canada rules that excluding refugee claimants from subsidized childcare discriminates against women.

This case deals with access to subsidized childcare for refugee claimants in Quebec. For government programs or benefits to comply with the *Canadian Charter of Rights and Freedoms*, they must not discriminate against particular groups. In this case, the Court was asked to decide whether excluding refugee claimants from subsidized childcare is discriminatory and, if so, whether the government can justify the exclusion.

Ms. Kanyinda entered Quebec with her three young children and made a claim for refugee protection. While waiting for a decision on her refugee claim, she obtained a work permit and tried to get subsidized childcare so that she could work. She was denied because Quebec's *Reduced Contribution Regulation* limits subsidized childcare to certain categories of residents that do not include refugee claimants.

Ms. Kanyinda applied for judicial review of the Regulation. She argued the exclusion of refugee claimants was discriminatory on three grounds: sex, citizenship, and a new analogous ground of immigration status. Sex and citizenship have long been recognized as possible grounds of discrimination, but immigration status has not. The judge concluded that the Regulation did not create a sex-based distinction between women and men refugee claimants. The Court of Appeal allowed Ms. Kanyinda's appeal, concluding that the Regulation did create a distinction based on sex and that it was discriminatory because it perpetuates women's historical disadvantage and underrepresentation in the workforce. The Attorney General of Quebec appealed to the Supreme Court of Canada.

The Supreme Court of Canada allowed the appeal in part.

The Regulation has greater impact on women refugee claimants because access to childcare affects their ability to work.

Writing for a majority, Justice Karakatsanis concluded that the Regulation discriminates based on its effects. Although the rule applies to all refugee claimants in the same way, it affects women refugee claimants more strongly. Women are more likely to have primary childcare responsibilities, and access to affordable childcare is closely tied to their ability to work. As a result, the exclusion reinforces and worsens the disadvantage experienced by women refugee claimants.

Justice Karakatsanis also concluded that the discrimination was not justified under section 1 of the *Charter*. Section 1 allows governments to limit *Charter* rights if the limits can be reasonably justified. While Quebec's goal of limiting subsidized childcare to people with a sufficient connection to the province was important, Justice Karakatsanis found no real link between that goal and excluding refugee claimants. As a result, parents residing in Quebec who are refugee claimants should be eligible for subsidized childcare. While the Court of Appeal limited the access to work permit holders, Justice Karakatsanis concluded that this requirement was not necessary.

Breakdown of the decision: *Majority:* Justice [Karakatsanis](#) allowed the appeal in part (Justices [Martin](#), [Kasirer](#), [Jama](#), [O'Bonsawin](#) and [Moreau](#) agreed) | *Concurring:* Justice [Rowe](#) came to the same conclusion as Justice Karakatsanis but for different reasons | *Concurring:* Chief Justice [Wagner](#) also came to the same conclusion as Justice Karakatsanis but for yet different reasons | *Dissenting:* Justice [Côté](#) would have allowed the appeal

More information: [Decision](#) | [Case information](#)

Lower court rulings: [Application](#) (Superior Court of Quebec – in French only) | [Appeal](#) (Court of Appeal of Quebec – in French only)

Cases in Brief are prepared by 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.