SUPREME COURT OF CANADA

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Case in Brief: *Canada (Public Safety and Emergency Preparedness) v. Chhina*

Judgment of May 10, 2019 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2019 SCC 29

Everyone has a right to the strongest protections to make sure they aren't held in custody against the law, the Supreme Court has ruled.

Mr. Chhina came to Canada in 2006 and got refugee status two years later. In 2012, he was ordered to leave Canada for lying on his refugee application and committing crimes. He was held in custody for a while, but released with conditions while he waited for his travel documents. Mr. Chhina disappeared and was only found by the police a year later. He was then held in maximum security and kept on lockdown for all but 90 minutes a day.

Mr. Chhina said that his treatment was illegal under the *Canadian Charter of Rights and Freedoms*, part of Canada's constitution. He argued that he had been there over a year and no one could tell him how much longer he would be held. He also said the lockdown conditions were not appropriate. He applied for *habeas corpus* (pronounced "HAY-bee-us KOR-pus") in 2016.

Habeas corpus is an old and important legal concept, dating back many centuries. It means "produce the body" in Latin. Taking someone's freedom away should be a last resort, and *habeas corpus* guarantees it won't happen illegally. Section 10(c) of the *Charter* says that "[e]veryone has the right on arrest or detention… to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful." This means a person can ask a court to decide if they are being held illegally. If the authorities can't show enough of a reason, the court will order them to let the person go. *Habeas corpus* is so important that courts have rules to hear these applications quickly and give them priority over other court business.

There are only two exceptions where a person can't use *habeas corpus*. The first is when they try to challenge being found guilty or challenge their punishment. (They can challenge these by appealing the decision to a higher court instead.) The second is when there is another process in place that is as good as, or better than, *habeas corpus*.

The judge decided not to hear Mr. Chhina's application. He said the process under the *Immigration and Refugee Protection Act* was just as good as *habeas corpus*, so it fell under that exception. The Court of Appeal said this wasn't the case. It said the judge should have heard Mr. Chhina's application.

Everyone agreed that the review process under the Act worked in general. The question was whether it worked as well as *habeas corpus* for Mr. Chhina's specific situation.

The majority at the Supreme Court said that it didn't. This was for several reasons. One reason had to do with the kind of review that happened. Decision-makers would review someone's detention every 30 days under the Act, but they usually based their decision on what was decided before. Under *habeas corpus*, a judge would give the situation a fresh and independent look. Another reason had to do with the power to change things. Under the Act, a judge could only look at a specific decision from a decision-maker. Because of the first reason, the judge was limited to a decision that was usually based on a previous decision. Under *habeas corpus*, a judge could look at the whole situation, not just what the decision-maker looked at. A third reason had to do with what each side had to show or prove. Under the Act, a detained person had to show why they should be released. Under *habeas corpus*, it was up to the authorities to show why the person should be held. This put less of a burden on the person to prove their case, so *habeas corpus* was better for them. A fourth reason was time. The process under the Act took weeks, and so by the time it got to a judge it was often too late. *Habeas corpus* could happen quickly, and a judge could order the person released right away if they were being held illegally, which was obviously better for them. The majority said the judge should have heard Mr. Chhina's application.

This case was "moot" by the time it reached the Supreme Court, meaning it didn't matter for practical purposes. This was because Mr. Chhina had already been deported and wasn't detained anymore. The Court decided to hear the case anyway because the issues were so important.

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Breakdown of the decision: ***Majority:*** Justice Andromache Karakatsanis dismissed the appeal (Chief Justice Wagner and Justices Moldaver, Gascon, Côté, and Brown agreed) | ***Dissenting:*** Justice Rosalie Silberman Abella said the Act must be interpreted in a way that guarantees at least as broad and advantageous a review of detention as *habeas corpus*, including the conditions and lawfulness of detention; in her view, therefore, the appeal should be allowed because Mr. Chhina's case fell within the second ("similar process") exception

More information (case # 37770): Decision | Case information | Webcast of hearing

Lower court rulings: decision on application for writ of *habeas corpus* (Alberta Court of Queen's Bench, not available online) | appeal (Court of Appeal of Alberta)