



Case in Brief: **R. v. Hodgson**

Judgment of July 12, 2024 | On appeal from the Court of Appeal for Nunavut
Neutral citation: 2024 SCC 25

The Supreme Court restores a man’s acquittal because the trial judge committed no errors of law which would allow the Crown to appeal

This appeal addresses the circumstances in which the Crown can appeal an acquittal, the accused’s state of mind (or *mens rea*) required for second degree murder, and the elements required for self-defence.

Mr. Hodgson attended a house party and was asked to help with removing another guest who refused to leave despite repeated requests to do so. A physical altercation ensued during which Mr. Hodgson used a chokehold to restrain the guest, who lost consciousness and died. Mr. Hodgson was charged with second degree murder.

The trial judge found that it was proven beyond a reasonable doubt that Mr. Hodgson caused the guest’s death by placing him in a chokehold. However, based on her assessment of the evidence, she acquitted Mr. Hodgson of second degree murder because the Crown failed to establish the requisite subjective *mens rea*. A second degree murder is a murder that is not planned and deliberate. She also found Mr. Hodgson not guilty of manslaughter. Manslaughter refers to a homicide committed as a result of a sudden provocation. The trial judge found that Mr. Hodgson’s defence of self-defence under s. 34 of the *Criminal Code* had an air of reality and that the Crown had failed to establish that the chokehold was not reasonable in all of the circumstances.

The Court of Appeal allowed the Crown’s appeal of the acquittal and directed that a new trial be held on the basis that the trial judge erred in law in her analysis of the *mens rea* for murder and the application of self-defence to manslaughter. Mr. Hodgson appealed the decision to the Supreme Court of Canada.

The Supreme Court has allowed the appeal and restored the acquittal.

The Crown’s right of appeal from an acquittal is limited to questions of law alone.

Writing jointly for the majority, Justices Martin and Moreau noted that the Crown has a limited right of appeal on questions of law alone when it seeks to overturn an acquittal. A question of law is a question of legal interpretation that does not involve an evaluation of the evidence. In this case, the Court of Appeal did not articulate the precise errors of law at the root of its intervention and it is not a case in which the appellate court could reach a purely legal conclusion drawn from the evidence without calling into question the trial judge’s evaluation of the evidence. Furthermore, even if the alleged errors were ones of law, the trial judge did not commit any such errors.

Justices Martin and Moreau said that an inference that a chokehold is an inherently dangerous action is available in some cases. However, it is not an error of law for a trial judge to reach a different conclusion about a particular accused’s *mens rea* based on the evidence. The Justices found there was no error of law in the trial judge’s assessment of the evidence on the *mens rea*.

As for self-defence, Justices Martin and Moreau decided that the trial judge followed the framework set out in the *Criminal Code*. That is to say, the trial judge specifically addressed each of its three elements, correctly stated the applicable statutory principles, applied them to the facts as found, and expressed clear conclusions on each element.

Breakdown of the decision: **Majority.** Justices [Martin](#) and [Moreau](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Kasirer](#), [Jama](#) and [O’Bonsawin](#) agreed) | **Concurring:** Justice [Rowe](#).

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