

Minister of Justice, et al. v. Omar Ahmed Khadr

(FC) (Criminal) (By Leave)

Keywords

Canadian charter - criminal - Criminal Law.

Summary

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Constitutional law - Charter of rights - Right to life, liberty and security of the person - Evidence - Disclosure - Whether the Canadian Charter of Rights and Freedoms requires disclosure of information collected by Canadian officials to assist a Canadian citizen accused in a foreign prosecution.

Omar Ahmed Khadr is a Canadian citizen currently detained by the United States in Guantánamo Bay, Cuba. He was apprehended by the American military in Afghanistan in July 2002. In November 2005, terrorism-related charges were laid against him before a U.S. Military Commission in relation to events which are alleged to have occurred when Mr. Khadr was 15 years and younger. Prior to the charges being laid, Canadian officials interviewed Mr. Khadr in Guantánamo Bay. In *Khadr v. Canada (Attorney General)*, 2004 FC 1394 (von Finckenstein J.), it was found that the Canadian authorities were conducting these interviews independently, for information gathering purposes with a focus on intelligence and law enforcement. Topics discussed with Mr. Khadr included matters which were the subject of the subsequent charges. The Canadian authorities passed on summaries of the information collected to the American authorities. Mr. Khadr obtained redacted copies of some of the documents in the Crown's possession, through access to information requests and through production and disclosure in other Federal Court proceedings. On November 21, 2005, counsel for Mr. Khadr sent a letter to the applicants asking for "copies of all materials in the possession of all departments of the Crown in Right of Canada which might be relevant to the charges raised against Mr. Khadr", including all the content redacted from the documents previously obtained. Having received no response, Mr. Khadr brought an application for judicial review seeking an order in the nature of mandamus to obtain the documents in order to be in a position to

make full answer and defence to the charges in the U.S.

The Federal Court considered *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, and *Purdy v. Canada (Attorney General)* (2003), 230 D.L.R. (4th) 361 (B.C.C.A.), and found that s. 7 of the Charter did not apply to Mr. Khadr's circumstances since there was no sufficient causal connection between the actions of the Canadian officials and the deprivation of the right to life, liberty and security of the person that might ultimately be effected if the documents were not disclosed. On May 10, 2007, the Court of Appeal overturned the decision, found that s. 7 applied in the circumstances and remitted the matter back to the Federal Court to determine which documents would be released. On June 4, 2007, the charges against Mr. Khadr in Guantánamo Bay were dismissed "without prejudice".