

Immigration Officers Must Give Detainees' Right to Counsel

In a decision released July 5, 2007 the Federal Court of Canada confirmed that an individual detained during immigration proceedings is entitled to (1) be fully informed of his/her rights to counsel and (2) the facilitation of that right.

Rodriguez Chevez (the Applicant) was detained by the RCMP on July 8, 2006 for causing a disturbance. The Applicant, a citizen of Costa Rica, entered Canada as a visitor but was only authorized to stay until May 28, 2004. Upon realizing the Applicant had no status in Canada, the RCMP contacted a Canada Border Services Agency (CBSA) Officer, who arrested the Applicant and transferred him to the CBSA detention facility.

Two days later, a delegate of the Minister of Citizenship and Immigration Canada (the Delegate) interviewed the Applicant. When the Applicant requested a lawyer the Delegate informed him that duty counsel was not available but asked if the Applicant wished to contact another lawyer. The Applicant refused as he did not know of any lawyers to contact and could not afford one. The Delegate met with the Applicant again the following day and asked him to sign an Exclusion Order, which would require the Applicant to leave Canada immediately. The Applicant was not informed that duty counsel was available and refused to sign the order without first speaking to a lawyer. The Applicant did not speak to a lawyer until later that day at which time duty counsel informed him that, because the Exclusion Order had already been issued, he could not claim refugee status.

The Applicant brought his case to the Federal Court of Canada for judicial review, claiming that his right to counsel under [s. 10](#) of the Charter was infringed and that the Exclusion Order was invalid.

Justice Tremblay-Lamer held that, although the Applicant was properly informed of his right to counsel, the Delegate did not adequately facilitate access to legal counsel in the circumstances. The Applicant was not provided with a legal aid number, nor was he told that he could wait for duty counsel to become available. Although there is no right to counsel in the immigration context per se, s. 10 of the Charter is engaged upon detention and that Applicant was detained during his interview with the Delegate.

The Federal Court accordingly set aside the Exclusion Order and referred the matter to a new Delegate for re-examination.

Sources

- [Rodriguez Chevez v. Canada \(Citizenship and Immigration\)](#), 2007 FC 709 (CanLII).