Habeas Corpus

Existing since the 13th century, *habeas corpus* is both a free-standing right and, more recently, a right protected under section 10(c) of the *Charter*.[1] *Habeas Corpus* translates to "produce the body".[2] A *habeas corpus* application is used by persons who feel they are being wrongfully detained. Upon application, the individual is brought before a judge who will determine whether the detainment is lawful. Provincial courts must hear these applications quickly.

The right is available to all individuals in Canada, including refugees and immigrants.[3] *Habeas corpus* is most often used when a person is being detained against their will and is suffering a deprivation of liberty. Most applications are brought by prisoners detained in correctional institutions and by immigration, child welfare, and mental health detainees.[4] An example of an unlawful detainment is a prisoner being moved from a minimum-security prison to a maximum-security prison without being told why he or she is being moved. If *habeas corpus* is granted, the individual's detainment will change such that it is no longer considered illegal. This could include moving a prisoner from a maximum-security back to a minimum-security prison or even releasing the prisoner all together.

The Supreme Court of Canada has described *habeas corpus* as a "vehicle for reviewing the justification for a person's imprisonment".[5] A *habeas corpus* application will typically be approved in cases where an individual has proved two things:

1. Their liberty was deprived in some way.[6] Three circumstances typically lead to a deprivation of liberty:
    1. The initial decision to detain an individual;
    2. A change in the conditions of the detention; or
    3. The continuation of the detention[7]
2. There are legitimate grounds to question the legality of the detention[8]

If the applicant successfully proves these two things, it is then up to the authority detaining the individual to prove that this limitation of the individual's freedom is legal.[9]

Habeas corpus is limited only in two ways:

1. It cannot be used by an individual to challenge a finding of guilt or the punishment they received;
2. It cannot be used if there is another process in place that is as good as, or better than, *habeas corpus* such as a review and appeal process provided by statute.[10]

[1] *Canadian Charter of Rights and Freedoms*, s 10(c), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[2] Colleen M Flood & Lorne Sossin, *Administrative Law in Context*, 3rd ed (Toronto: Edmond Montgomery Publications Limited, 2018) at 78.

[3] *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29 .

[4] Flood and Sossin, *supra* note 2 at 78.

[5] *Mission Institution v Khela,* 2014 SCC 24 at para 30 .

[6] *Ibid*.

[7] *Chhina*, *supra* note 3 at para 22.

[8] *Khela, supra* note 5 at para 30.

[9] *Ibid*.

[10] *Chhina*, s*upra* note 3 at para 2.