CANADA / JUDGMENT

R. v. Chan

2020 BCSC 192

COURT
Supreme Court of British Columbia

DECIDED
18 February 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 192 R. v. Chan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Chan, 2020 BCSC 192 Date: 20200218 Docket: 27984 Registry: Vancouver Regina v. Duke Yin Chan and Lawton Louis Ma Before: The Honourable Mr. Justice A. Ross Reasons for Judgment (Voir Dire on Right to Retain and Instruct Counsel) Counsel for the Crown: D. Meneley Counsel for the Accused Duke Chan: S. Wright Counsel for the Accused Lawton Ma: J. Stowe V. de Jong Place and Date of Trial/Hearing: Vancouver, B.C. February 3-7, 2020 Place and Date of Judgment: Vancouver, B.C. February 18, 2020

[1] Mr. Chan and Mr. Ma are charged with eight counts of possession of controlled substances for the purpose of trafficking contrary to s. 5 (2) of the Controlled Drugs and Substances Act, S.C. 1996, c.19. Those charges are set out in Indictment #27984-2.

[2] Mr. Chan and Mr. Ma apply for an order that their rights pursuant to s. 10(b) of the Canadian Charter of Rights and Freedoms [Charter] were breached at the time of their arrest. They say that their rights to retain and instruct counsel without delay were breached.

[3] Crown and the two accused tendered an agreed statement of facts to the following effect: On February 3, 2017, at 11:08 AM, Constable Kine arrested Mr. Chan and immediately advised him that he was being arrested for possession for the purpose of trafficking controlled substances, and he had the right to contact a lawyer. Mr. Chan asked to speak to a lawyer. Mr. Chan first had the opportunity to speak to council that same day at 13:12 PM On February 3, 2017 at 9:45 AM, Constable Cousineau arrested Mr. Ma, informed him of the reason for his arrest and advised that he had the right to speak to a lawyer. Mr. Ma asked to speak to a lawyer. Mr. Ma first had the opportunity to speak to council that same day at 11:28 AM. In February 2017, the arresting police officers implemented the Vancouver Police Department's then procedure for allowing arrested individuals access to counsel. The police took Mr. Chan and Mr. Ma to the jail where they would speak to counsel, in accordance with the practice at the time. After the decision in R. v Flintroy 2019 BCSC 78 the Vancouver Police Department now provides immediate private access to counsel through the use of cell phones.

[4] The two accused rely on the decision in R. v Flintroy, 2019 BCSC 78. In that decision, Justice Williams, on very similar facts, found that the rights of the two accused to retain and instruct counsel were breached because there was a delay of approximately two hours between the arrest and the opportunity to contact counsel. In that case, as here, the operational plan of the Vancouver Police Department was to provide the arrestees with their rights to contact counsel upon their arrival at the city jail. Justice Williams wrote:

[46] To my mind, the plan, both as devised and as implemented, fails to recognize the importance and urgency of the constitutional obligation on police to provide that access without delay. In this case, the specific details of the operation had been planned to a fine degree. Virtually every eventuality had been taken into account. In those circumstances, it is troubling that the obligations under section 10(b) were not given the priority that the and the authorities require.

[5] The Crown takes no position on this application, but notes that, until the decision in Flintroy, the standard practice was to provide access to counsel when the individual arrived at jail. That procedure has now changed, based on this decision.

[6] The Crown also notes that no statements or evidence were obtained from the two accused during the course of their detention prior to having an opportunity to speak to counsel.

[7] I find that the circumstances in this case are indistinguishable from those in Flintroy. In the result, I am satisfied that both Mr. Chan and Mr. Ma have established that there rights under section 10(b) of the Charter were violated.

[8] The effect of these breaches, if any, and the remedy available, will be determined in a subsequent hearing. "A. Ross J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bccourts.ca/jdb-txt/sc/20/01/2020BCSC0192.htm

CASE PAGE https://chat.esheria.ai/case-law/canada/r-v-chan-2020-bcsc-192

Prepared on 28 October 2026 · Esheria