



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

Judgment of October 7, 2020 (written reasons issued June 25, 2021) | On appeal from the Court of Appeal for Ontario

Neutral citation: 2021 SCC 26

The Supreme Court rules that Criminal Code changes to the jury selection process are constitutional.

This ruling has important implications for the jury selection process. The Supreme Court was asked to decide if changes to the *Criminal Code* were constitutional. The changes in question abolished the long-standing practice of allowing the Crown (prosecution) and the accused to exclude a certain number of potential jurors without having to explain why. The rejection of a juror in this way was called a “*peremptory challenge*”. The *Criminal Code* continues to allow “*challenges for cause*”, which allow the exclusion of potential jurors for specific reasons.

The reason that Parliament chose to abolish peremptory challenges was to address discrimination in the jury selection process. When the proposed changes were introduced to Parliament, the Minister of Justice said that peremptory challenges give both the accused and the Crown the ability to exclude jurors without reason, and in practice, “*this can and has led to their use in a discriminatory manner to ensure a jury of a particular composition.*”

The amendments to the law that eliminated peremptory challenges came into effect on September 19, 2019. That was also the day that jury selection began in the first degree murder trial of Mr. Pardeep Singh Chouhan. Before his trial began, Mr. Chouhan raised his objection to the abolition of peremptory challenges, claiming it was unconstitutional, and even if it was constitutional, it should not apply to his trial. He claimed that the abolition of peremptory challenges violated his rights to an independent and impartial jury trial under sections 11(d) and 11(f) of the *Canadian Charter of Rights and Freedoms* (the *Charter*). However, the trial judge decided that the abolition of peremptory challenges was constitutional. Jury selection proceeded without peremptory challenges and Mr. Chouhan was eventually found guilty of first degree murder.

Mr. Chouhan appealed to the Ontario Court of Appeal. It found the amendments to the *Criminal Code* constitutional, but it ruled that some of those changes should not have applied to people who had a jury trial pending when the amendments came into force. The Ontario Court of Appeal overturned Mr. Chouhan’s conviction and ordered a new trial.

The Crown appealed to the Supreme Court of Canada, arguing that peremptory challenges should be abolished for jury selections starting on or after September 19, 2019, and as such, Mr. Chouhan was not entitled to them. Mr. Chouhan also appealed to the Supreme Court, arguing as he did before the Ontario Court of Appeal that the abolition of peremptory challenges was unconstitutional.

The abolition of peremptory challenges is constitutional

The majority of the judges of the Supreme Court said the constitutionality of the jury selection process must be considered as a whole. They reviewed the process as it stands now given the amendments made by Parliament when it introduced the law that led to the abolition of peremptory challenges.

The majority said the jury selection process continues to guarantee the right of each accused to a fair trial before an independent and impartial jury.

They noted that protections begin long before the day on which the accused appears in court to select the jury. They also emphasized that provincial authorities are constantly at work, compiling a representative jury roll of eligible jurors, as part of a process that provides a fair opportunity for a broad cross-section of society to serve as a juror.

As such, the majority of the judges of the Supreme Court concluded that the abolition of peremptory challenges was constitutional.

The amendments abolishing peremptory challenges should apply from September 19, 2019

The majority of the judges determined the amendments should apply to all jury selections starting on or after September 19, 2019. They explained that a procedural amendment that affects how a right is exercised could be applied immediately.

As a result, the Supreme Court restored Mr. Chouhan's conviction.

Breakdown of the decision: *Majority:* Justice Michael J. [Moldaver](#) and Justice Russell [Brown](#) found the amendments to the *Criminal Code* abolishing peremptory challenges in the jury selection process constitutional, and dismissed Mr. Chouhan's cross-appeal. They also found the amendments applicable to jury selection processes commencing on or after September 19, 2019, and allowed the Crown's appeal (Chief Justice [Wagner](#), and Justices [Karakatsanis](#), [Rowe](#), [Martin](#) and [Kasirer](#) agreed) | *Dissenting in part:* Justice Rosalie Silberman [Abella](#) found the amendments constitutional, but said they should not have applied to Mr. Chouhan's trial because she considered that the amendments had affected his substantive rights under the *Charter* and should therefore have applied to future trials rather than pending or ongoing trials. She would have dismissed both the Crown's appeal and Mr. Chouhan's cross-appeal. | *Dissenting:* Justice Suzanne [Côté](#) found that the amendments breach the *Charter* and are unconstitutional. She agreed with Justice Abella that they should not apply to pending or ongoing trials. She would have dismissed the Crown's appeal and allowed Mr. Chouhan's cross-appeal.

More information (case # 39062): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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