

**SUPREME COURT OF CANADA**

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| **Citation:** Bowden Institution *v.* Khadr, 2015 SCC 26, [2015] 2 S.C.R. 325 | **Date:** 20150514  **Docket:** 36081 |

Between:

David Pelham, Warden of the Bowden Institution,

Attorney General of Canada and

Her Majesty The Queen in Right of Alberta

Appellants

and

Omar Ahmed Khadr

Respondent

-and-

Canadian Civil Liberties Association and

**Amnesty International Canada**

Interveners

**Coram:** McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Reasons for Judgment:**  (paras. 1 to 3) | McLachlin C.J. (Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. concurring) |

Bowden Institution *v.* Khadr, 2015 SCC 26, [2015] 2 S.C.R. 325

David Pelham, Warden of the Bowden Institution,

Attorney General of Canada and

Her Majesty The Queen in Right of Alberta Appellants

v.

Omar Ahmed Khadr Respondent

and

Canadian Civil Liberties Association and

Amnesty International Canada Interveners

Indexed as: **Bowden Institution** *v.* **Khadr**

2015 SCC 26

File No.: 36081.

2015: May 14.[[1]](#footnote-1)\*

Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for alberta

*Criminal law — Sentencing — Prisons — Habeas corpus — Canadian citizen detained by United States agreed to eight-year sentence with transfer to Canada after first year — Offender subsequently applied for habeas corpus for placement in provincial correctional facility under International Transfer of Offenders Act — Chambers judge dismissed offender’s application but Court of Appeal allowed it and ordered offender’s transfer from federal to provincial correctional facility for adults — Court of Appeal’s order confirmed — International Transfer of Offenders Act, S.C. 2004, c. 21, s. 20(a)(ii).*

**Statutes and Regulations Cited**

*International Transfer of Offenders Act*, S.C. 2004, c. 21, s. 20(*a*).

APPEAL from a judgment of the Alberta Court of Appeal (Fraser, Watson and Bielby JJ.A.), 2014 ABCA 225, 99 Alta. L.R. (5th) 325, 577 A.R. 62, 613 W.A.C. 62, 313 C.C.C. (3d) 491, [2014] 9 W.W.R. 523, [2014] A.J. No. 711 (QL), 2014 CarswellAlta 1114 (WL Can.), setting aside a decision of Rooke A.C.J., 2013 ABQB 611, 87 Alta. L.R. (5th) 268, 573 A.R. 16, 301 C.C.C. (3d) 467, [2014] 2 W.W.R. 350, [2013] A.J. No. 1109 (QL), 2013 CarswellAlta 1973 (WL Can.). Appeal dismissed.

Sharlene Telles-Langdon and Michael Taylor, for the appellants David Pelham, Warden of the Bowden Institution, and the Attorney General of Canada.

Doreen C. Mueller, for the appellant Her Majesty The Queen in Right of Alberta.

Nathan J. Whitling and Dennis Edney, Q.C., for the respondent.

Jasmine T. Akbarali and Gillian T. Hnatiw, for the intervener the Canadian Civil Liberties Association.

Fannie Lafontaine, François Larocque and David Taylor, for the intervener Amnesty International Canada.

The judgment of the Court was delivered orally by

[1] The Chief Justice — The only issue on this appeal is what correctional facility Mr. Khadr should be placed in. This is a question of statutory interpretation. Simply put, if Mr. Khadr’s eight-year sentence is treated as a single global sentence for all the offences to which he pleaded guilty, the sentence is under the minimum for an adult sentence, with the result that s. 20(*a*)(ii) of the *International Transfer of Offenders Act*, S.C. 2004, c. 21 (“*ITOA*”), applies and his sentence is to be served in a provincial facility.

[2] On the submissions before us, we are of the view that a proper interpretation of the relevant legislation does not permit Mr. Khadr’s eight-year sentence to be treated as five distinct eight-year sentences to be served concurrently. For the purposes of placement, whatever interpretation is taken of the provisions, s. 20(*a*) of the *ITOA* applies in this case, with the result that placement should be in a provincial correctional facility.

[3] Accordingly, we would dismiss the appeal with costs and confirm the order of the Alberta Court of Appeal that Mr. Khadr’s sentence is a youth sentence to be served in a provincial correctional facility for adults.

*Judgment accordingly.*

Solicitor for the appellants David Pelham, Warden of the Bowden Institution, and the Attorney General of Canada: Attorney General of Canada, Winnipeg.

Solicitor for the appellant Her Majesty The Queen in Right of Alberta: Attorney General of Alberta, Edmonton.

Solicitors for the respondent: Beresh Aloneissi O’Neill Hurley O’Keeffe Millsap, Edmonton; Dennis Edney, Edmonton.

Solicitors for the intervener the Canadian Civil Liberties Association: Lerners, Toronto.

Solicitors for the intervener Amnesty International Canada: Fannie Lafontaine, Québec; Power Law, Ottawa.

1. \* A revised judgment was issued on May 28, 2015, amending para. 3. The amendments are included in this judgment. [↑](#footnote-ref-1)