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### ***Immigration and Human Rights***

By Maria Deanna P. Santos

When the Supreme Court of Canada speaks, everybody listens. Or so we hope.

On February 23, 2007, the Supreme Court of Canada (SCC) rendered its decision in the case of *Charkaoui v. Canada* where it questioned the procedure behind the issuance of security certificates and the subsequent detention review proceedings. As expected, this ruling caused political ripples and reignited some of the issues long raised by immigrant and refugee rights advocates in the country.

Among others, the SCC ruled that the closed-door and highly confidential hearings (so confidential even the accused is not apprised of the case against him!) violate Section 7 of the Charter of Rights and Freedoms for failing to provide the most basic elements of the right to a fair hearing namely, the right to know the basis of the accusations and the opportunity to provide a meaningful answer or defence. The SCC also took notice of the differential treatment between permanent residents and foreign nationals in terms of the period allowed for review and the length of detention. While the SCC did not completely strike down the invalidity of the differential treatment, it held that there is a minimum standard of reasonableness that must be observed at all times.

This article is not meant to give a summary of or analyze the merits and legal implications of the Charkaoui decision. Rather, it is meant to illustrate my point that immigration law can only be effectively implemented if human rights principles are faithfully observed. It is very important therefore, that anyone practicing immigration and refugee law or purporting to assist clients in these matters, should have at least the most basic knowledge of human rights principles. For it is only when one operates within a human rights perspective can an immigration lawyer or consultant fully empathize with the prospective immigrants' situation and more effectively advocate for their rights.

What has immigration got to do with human rights?

As the *Charkaoui* decision illustrates - a lot.

First, immigration deals with people, their families, their lives and their future. So in effect, people are risking their all whenever they decide to leave their countries and apply for entry into another. They are facing the risk of rejection, of non-recognition of their foreign credentials, of discrimination in various forms, of being taken advantage of because they are not familiar with the system, etc.. These risks are all encompassed by the most fundamental human rights guaranteed by the mere fact of being human and as enshrined in the Universal Declaration of Human Rights. These include the right to life, liberty and property, the right against non-discrimination, the right to due process and

equality before the law.

Second, it is often overlooked that Canada's immigration system operates within a discretionary framework. That is, the decisions rendered by immigration and visa officers are largely based on discretion although it behooves them to follow the guidelines set by the law and its implementing regulations. All too often however, the officers' exercise of discretion overrides the basic rules of fairness, but those who are at the receiving end of their decision are left with no other recourse or viable remedy. This lack of basic appeal rights is supported by the principle enunciated in the 1992 SCC case of *Canada v. Chiarelli* where the SCC held that non-citizens do not have an unqualified right to enter or remain in the country.

Immigration and refugee law is complex enough as it is. Why 'complicate' it further by intermingling human rights concepts, laws and principles?

On the contrary, the interaction between immigration law and human rights will allow a clearer and more sensible application of relevant laws, rules and regulations. For only by recognizing the roots of our current legal system, and by going back to the most fundamental bases of our human existence, can we truly serve the noble ends of justice.

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