The *Chiarelli Doctrine*: Immigration Exceptionalism and the *Canadian Charter of Rights and Freedoms*

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**Abstract**

Since the 19th century, American courts have relied on the “plenary power doctrine” to hold that federal immigration law is immune from constitutional challenge. Despite no such rule in Canada, this paper argues that a similar doctrine has silently crept into Canadian constitutional law. With its roots in the Supreme Court of Canada’s 1992 decision in Chiarelli, Canadian courts have set out a doctrine of evasion and technicality that has rendered many of the Charter rights of immigrants and refugees to be effectively non-justiciable. Without explanation or justification, laws that detain, uproot, exile, separate families, and return people to persecution have been exempted from normal standards of justice. This paper charts the emergence of what I will call “the Chiarelli doctrine”, critiques its incoherence, and explores why judges have so steadfastly refused to engage with the human rights claims of non-citizens. It concludes with a simple proposal to bring these doctrines of exception to an end.