

## NO RIGHT TO LAWYERS FOR LITIGANTS

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In 1993, the British Columbia legislature enacted the *Social Services Tax Amendment Act (No. 2)*, putting a 7% tax on the provision of legal services in the province. This tax brought to the forefront the age-old debate of whether a person requires legal representation in order to preserve their constitutional right to gain access to the justice process. The Act was challenged in court by Dugald Christie, a lawyer who specialized in representing low-income people; he argued that the majority of his clients could ill afford his assistance prior to the tax and had even less ability to do so after it was imposed. Consequently, he maintained, they were unable to have access to the justice system with the aid of a lawyer.

In court, the effect of the tax on low income people was uncontested by the Attorney General of British Columbia; rather, the question the courts addressed was whether people required legal assistance in order to have access to justice. If a right to legal representation in furtherance of accessing justice was acknowledged, then not only would this tax be unconstitutional but there would be an obligation on the government to ensure that all persons have legal counsel.

Traditionally, courts have been reluctant to make declarations on either side of this question: they have not conclusively determined that Canadians have a constitutional right to legal representation in order to have access to the justice system or vice versa. In a few limited circumstances, such as criminal trials and other instances where the right to life, liberty or security of a person is at stake, the courts have acknowledged that people have a right to legal representation. Courts have always placed a caveat on these rulings that they were specific rulings based on unique facts.

The Act was declared unconstitutional by the British Columbia Court of Appeal in 2005. However, in May 2007, the Supreme Court of Canada ruled that the imposition of a tax on legal fees was not unconstitutional and that Canadians do not have “a constitutional entitlement to legal services in relation to proceedings in courts and tribunals dealing with rights and obligations.”

The constitutional significance of the ruling in *Christie* is immense. Although one does have an explicit constitutional right to access justice, it does not necessarily equate to a right to have legal advice in the process. The imposition of tax on legal services is merely a government’s policy

decision that the provinces are at liberty to make, even though it may make legal representation costlier for some litigants.

The fact that accessing the justice system is expensive, as well as inconvenient, is a concern for the courts and legislature. Recent changes have been made to court proceedings in order to create a more lay-friendly court system. The amount that people may now claim through small claims courts has been increased from \$10,000 to \$25,000 and a self-help guide for lay litigants is published by the court. Rules 66 and 68 of the *British Columbia Rules of Court* allow for fast track litigation in B.C. Supreme Court for matters that can be heard in two days or less and for expedited litigation of claims under \$100,000.

In general, anyone can appear before any Canadian court without the assistance of a lawyer; there is no rule precluding an unrepresented person from commencing or running an action in the courts at any level. The courts, of course, are not denying that lawyers are an integral part of the justice system; what they are saying is that legal representation is not required in order to preserve a Canadian's constitutional right to seek justice through the courts.