

Access to Justice Interventions

BACKGROUND

- The CBA has intervened in several appeals to further the cause of access to justice.

AG BC v. Christie, [2007] 1 S.C.R. 873; Trial Lawyers Association of BC v. AG BC, [2014] 3 S.C.R. 31

- Dugald Christie, a lawyer serving poor people, challenged BC's *Social Service Tax Amendment Act (No. 2)*, 1993, imposing a 7% tax on legal fees. He argued that the tax violated access to justice within the Rule of Law as a standalone constitutional principle.
- BCSC accepted Christie's evidence on the effect of the tax but found no constitutional violation. BCCA reversed lower court, saying access to justice includes the "opportunity to obtain legal services from qualified professionals that are related to the determination and interpretation of legal rights and obligations by courts of law or other independent tribunals." The law was held unconstitutional to the extent that it "purports to tax legal services related to the determination of rights and obligations by courts of law or independent administrative tribunals."
- The case was appealed to the Supreme Court of Canada. Tragically, Dugald Christie was killed in an August 2006 accident, before the appeal was heard in March 2007.
- The CBA intervened at the SCC, arguing that:
 - The Rule of Law includes access to counsel;
 - The Rule of Law should be interpreted in light of the constitutional guarantee of the right to equality; and
 - In the rare circumstance where legislation fully conflicts with a fundamental constitutional principle, that legislation must be found to be of no force or effect.
- J.J. Camp, Q.C. and Melina Buckley represented the CBA on a *pro bono* basis.
- The SCC held that the tax was constitutional. The BCCA decision rested on the erroneous finding of a "general constitutional right to counsel in proceedings before courts and tribunals dealing with rights and obligations" within the Rule of Law. While "specific and varied" circumstances may support a constitutional imperative that counsel be appointed, the Rule of Law could not support a generalized obligation.
- Whether the Rule of Law could be used to advance a more specific claim relating to access to legal counsel (and how specific that claim would have to be), and whether the Rule of Law may be used to invalidate legislation are still open questions.
- A BC case, *Trial Lawyers Association of British Columbia v. Attorney General of British Columbia* (formerly *Villardell v Dunham*), dealt with court fees in relation to access to justice. CBA-BC intervened in the BC courts and at the Supreme Court of Canada. Sharon Matthews, QC and Melina Buckley acted as *pro bono* counsel. In October 2014, the SCC declared court fees unconstitutional as a barrier to justice, not only for poor people but for those living on modest or middle incomes.

Little Sisters v. Canada – Customs and Revenue, [2007] 1 S.C.R. 38

- Little Sisters Book and Art Emporium is a small corporation that operates a lesbian and gay bookstore in Vancouver. After years of Customs seizures at the US/Canada border of books headed for the bookstore, Little Sisters became engaged in a protracted legal battle against Customs (see *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] 2 S.C.R. 1120, 2000 SCC 69). The SCC ultimately held that Customs' practices infringed ss.2(b) and 15 of the Charter.

- The litigation threatened the economic survival of Little Sisters. After the SCC decision, when another four books were seized by Customs on the basis that they were obscene, Little Sisters launched a broader challenge to the legality of Customs' practices and sought advance costs for the action.
- The CBA intervened at the SCC, interested in broader concerns about meaningful access to justice. Advance costs would allow non-profit or small for-profit organizations to pursue legal claims against government. In February 2007, the CBA was represented on a *pro bono* basis by its Legal Aid Test Case counsel, J.J. Camp, Q.C. and Melina Buckley.
- The SCC dismissed the appeal as not meeting the high threshold required for an order of advance costs, and saying this case lacked the necessary compelling public interest.

New Brunswick (Minister of Health and Community Services) v G (J), [1999] 3 S.C.R. 46

- J.G.'s application for paid counsel to oppose an application by the NB Minister of Health and Community Services for the temporary custody of her children was denied because a legal aid certificate could only be issued for permanent guardianship applications. While J.G.'s children were eventually returned to her, the NB Court of Appeal dismissed her appeal.
- The CBA intervened at the Supreme Court of Canada. Then President Barry Gorlick, Q.C. appeared. The CBA's interest was the scope of liberty and security interests protected by section 7 of the Charter in the context of the right to legal counsel.
- The Supreme Court of Canada confirmed that section 7 of the *Charter* gives every parent the right to a fair hearing when the state seeks to take custody of children, and that access to counsel through legal aid can be a key element of that right. The province's policy of fiscal restraint was not saved by section 1 of the Charter.

Single Mothers' Alliance of BC Society, et al v British Columbia and Legal Services Society

- *Single Mothers' Alliance of BC Society et al v British Columbia and Legal Services Society* is a family law test case about the adequacy of legal aid. The CBA filed for leave to intervene at first instance and was granted leave in January 2022. Tim Dickson, Aria Laskin and Kaelan Unrau at JFK Law in Vancouver acted as pro bono counsel.
- In February 2024, the plaintiff Centre for Family Equity (formerly known as the Single Mothers' Alliance), reached a settlement with the Province of British Columbia and Legal Aid British Columbia. The decision will render available additional legal aid services for lone parents navigating family violence.

Government of Saskatchewan as represented by the Minister of Education v. UR Pride Centre for Sexuality and Gender Diversity.

- Saskatchewan passed a policy requiring parental consent for students under 16 to use preferred names/pronouns at school. When courts granted an injunction, the government invoked the notwithstanding clause to override Charter rights. The key legal question heading to the Supreme Court: Can courts still rule on whether legislation violates Charter rights when governments pre-emptively use the notwithstanding clause, or does invoking s. 33 completely remove court jurisdiction? The proposed CBA intervention would argue that s. 33 must be interpreted in light of democratic rights, including the right to informed voting and protection of minority voices.

NEXT STEPS

- The CBA will continue to monitor intervention opportunities to further the cause of access to justice.