SCC to determine if tax on legal services is unconstitutional

In British Columbia, the Social Service Tax Amendment Act (Act) places a 7% tax on legal services. The late Dugald Christie was a Vancouver lawyer who primarily represented low income persons. In 1997, the government forced Christie to pay the legal services tax on amounts he had not received from his clients. The province collected $3,668 in March followed by $5,349 in December. After the second seizure, Christie was unable to pay his law society fees and stopped working as a lawyer. This left some of his clients without any legal assistance. Christie earned less than $30,000 per year and could not afford to pay his client's social services tax or pay for the cost of calculating, reporting, and collecting the tax.

Though Christie resumed working as a lawyer in 2000, he did not pay the tax because neither he nor his clients could afford the additional cost. Christie challenged the constitutionality of the Act in court. He argued that the additional tax on legal services denies low income persons access to justice. The BC Court of Appeal (BCCA) agreed. The Supreme Court of Canada (SCC) heard the government's appeal on March 21, but has not yet released a decision.

The BCCA found that "access to justice" is a fundamental right protected by the constitution, even though it is not one of the rights explicitly listed in the Charter. They determined that access to justice is an element of the rule of law, a principle found in the preamble of the Constitution Act, 1982. The rule of law represents a number of concepts: that law and order are necessary for our society; that the law is supreme over both government and individuals; and that our society is maintained by the creation and maintenance of laws.

The BCCA explained that access to justice is a necessary component of the constitution. The constitution protects fundamental rights and provides remedies if these rights are violated. It would be inconceivable to have a constitution that protects fundamental rights and establishes a justice system to protect these rights if individuals had no access to the justice system. A barrier to justice, such as a tax on legal services, can therefore be found unconstitutional and struck down. It will be interesting to see if the SCC agrees.

Sources

- Christie v. British Columbia, 2005 BCCA 631 (B.C. Court of Appeal)
- Christie v. British Columbia, 2006 BCCA 59 (Supplementary Reasons)
- Christie v. AG of B.C. et al, 2005 BCSC 122 (Supreme Court of B.C.)
- "Case to scrap tax on legal fees heads to top court" CBC News (21 March 2007)

- “Landmark Decision Declares BC Tax on Legal Fees Unconstitutional” CBA (9 February 2005)
- “PST on legal fees creates an unlevel playing field (2004 – Revised 2006)” BC Chamber of Commerce
- Janice Tibbetts, “Deceased lawyer's legal battle reaches top court” Canada.com (21 March 2007)

Further Reading

- Frits Verhoeven, “Dugald Christie’s Mission” CBA - B.C. (October 2006)
- “Social Services Tax Update” CBA – B.C. (25 January 2006)
- “B.C. legal crusader killed in cycling accident” CBC News (01 August 2006)
- Mark Bourrie, “Christie fought for legal access for the poor” Law Times (14 August 2006)