

Single Mother Not Entitled to State Funded Counsel

In a decision dated July 5, 2007, the Supreme Court of Canada declined to hear an appeal in the case of Deborah J. Hawkes v. P.E.I. Human Rights Commission and Attorney General of P.E.I., thereby affirming the P.E.I. Court of Appeal's decision to deny the applicant (Deborah J. Hawkes) state funded counsel.

The applicant, a single mother with custody of two children, applied to the provincial court for state funded counsel. The applicant wished to challenge a decision of the P.E.I. Human Rights Commission regarding the amount of social assistance she had been receiving, and argued that her rights under [ss. 7](#) and [15](#) of the Charter would be infringed if the province did not fund her case.

Both the provincial and appellate court dismissed the application. The Court of Appeal held that nothing in the materials before the court suggested an infringement of the applicant's s. 15 (equality) or s. 7 Charter rights.

New Brunswick (Minister of Health and Community Services) v. G.(J.) is the leading case on whether s. 7 includes a right to state funded counsel. In this case, a single mother successfully argued her security of the person was violated by a custody hearing in which the province attempted to gain custody of her child. The Supreme Court of Canada found that such a violation was in accordance with the principles of fundamental justice only if the mother was provided with state funded counsel. The Court also provided the following list of criteria for courts to consider in assessing whether a constitutional right to state funded counsel exists in a particular case:

1. The seriousness of the interests at stake in the court proceedings;
2. The complexity of the proceedings;
3. The capacities of the applicant. [i]

The more serious and complex the proceedings, and the less capable the applicant, the more likely state-funded counsel will be required to ensure the applicant's Charter rights are not violated. In denying Deborah Hawkes' application, the P.E.I. Court of Appeal pointed out that:

The appellant is a well-educated, articulate and frequent litigator. This is not a situation where the state has initiated proceedings... she is the one seeking a judicial review in a matter that does not appear particularly complex and should not be lengthy or require the production of evidence. Furthermore, there is no evidence that she made any serious efforts to obtain legal assistance. [ii]

The Supreme Court's decision not to hear Deborah Hawkes' case is noteworthy given its

recent decision in *British Columbia (A.G.) v. Christie*, in which the court held that there is no general constitutional right to counsel.

Sources:

- [Deborah J. Hawkes v. P.E.I. Human Rights Commission and Attorney General of P.E.I.](#), 2007 PESCAD 1(CanLII).
- [New Brunswick \(Minister of Health and Community Services\) v. G.\(J.\)](#), [1999] 3 S.C.R. 46 (CanLII)

Further Reading

- Daina Young, "[SCC Rejects General Constitutional Right to Counsel](#)", Centre for Constitutional Studies.

[i] *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46 (CanLII) at para. 75.

[ii] *Deborah J. Hawkes v. P.E.I. Human Rights Commission and Attorney General of P.E.I.*, 2007 PESCAD 1 (CanLII) at para. 5.