

Youths' Right to Counsel

On June 28, 2007, the Ontario Court of Appeal ruled on how much information a police officer must give a young person regarding their right to counsel and to the presence of a third party prior to police interrogation. Section 146(2)(b)(iv) of the Youth Criminal Justice Act (YCJA) requires that any statement given to the police must be in the presence of a consulted third party, unless the young person desires otherwise. [Section 10\(b\)](#) of the Charter of Rights and Freedoms protects the more general right to counsel and to be informed of that right by the arresting police officer.

[R. v. S.S.](#) [1], a police officer charged a youth for robbery after an intensive, hour-long interrogation without a lawyer or adult relative present. At issue in the appeal was whether the investigating officer had satisfied s. 146(2)(b)(iv) of the YCJA by informing the youth of his right to have a third party present. In other words, whether “telling the young person about [their] right to have a third party present is equivalent to explaining to the young person...that any statement given to the police is required to be made in the presence of a consulted third party, unless the young person desires otherwise” [2]. In addition to telling the youth that they have a right to counsel, the police have to tell them they have a right to have a responsible adult or parent present at interrogations too.

The Court of Appeal restored the decision of the lower courts and dropped the charges against the youth. The Court held that the police officer’s failure to inform the youth of s. 146(2)(b)(iv) constituted a breach of the YCJA since it denied the youth “important information that would have enabled him to decide whether to consult a third party” [3].

There were three other reasons for the Court’s decision. First, s. 146(2)(b)(iv) acts as an “enhanced procedural protection” to young persons who would otherwise feel compelled to make a statement to a police officer because they are an intimidating authority figure. Second, the provision ensures young people make an informed decision about their right to counsel since the YCJA does not require that parents be notified prior to the police interviewing their child. It also alerts a young person to the significance of any statements they make to police. Third, provisions under the YCJA must be interpreted broadly in order to protect “young persons [who] generally have a lesser understanding of their legal rights than do adults and [who] are less likely to assert and exercise fully those rights when confronted with an authority figure” [4].

[1] 2007 ONCA 481 (CanLII).

[2] Ibid. at para. 3.

[3] Ibid. at para.32.

[4] Ibid. at para. 29.