

The Right to an Agent In Court: Conflicting Views

Are Canadians obliged to use lawyers to represent them when they appear in court? Can they use persons other than lawyers (agents)? The answer in Alberta is confused. The Criminal Code reads:

Limitation on the use of agents:

802.1 Despite subsections 800(2) and 802(2), a defendant may not appear or examine or cross-examine witnesses by agent if he or she is liable, on summary conviction, to imprisonment for a term of more than six months, unless the defendant is a corporation or the agent is authorized to do so under a program approved by the lieutenant governor in council of the province.

Criminal Code of Canada 2002, c. 13, s. 79.

Whether s.802.1 applies to defendants who are charged with multiple summary offenses that individually could not result in more than a 6 month term of imprisonment, but cumulatively could result in longer than 6 months in prison, has left two Provincial Court Judges in Alberta at odds with one another. *R. v. Spiry*, a 2005 decision of the Alberta Provincial Court, held that s. 802.1 precludes a defendant from being represented by an agent where the cumulative effect of multiple summary charges could result in more than 6 months in prison. In 2008, the issue came back before the Alberta Provincial Court. The defendant, Jacqueline May, was charged (summarily) with operating a vehicle while impaired and failing to supply a breath sample. If convicted on both, May could have been liable for a term of imprisonment exceeding 6 months. She brought an application to be permitted to be represented by an agent for these charges.

Despite the 2005 *Spiry* decision, the judge in this case decided that s.802.1 does not preclude a defendant from being represented by an agent in the multiple summary charges situation. The difference between the two judges lies in differing interpretations of the purpose behind s. 802.1. The judge in *Spiry* gave importance to the potential consequence of being in jail for greater than six months. Since the consequence is relatively severe, a defendant would be precluded from using an agent as a representative. The judge in this case, on the other hand, suggests that it is the complexity of the issue that ought to be the deciding feature that precludes use of an agent. Multiple summary offences that individually could not amount to a prison term of more than 6 months does not involve an increase in complexity such that ought to preclude the right of a defendant to use an agent.

Sources:

R. v. May, 2008 ABPC 59.

R. v. Spiry, 2005 ABPC 309.