

CANADA / JUDGMENT

Lawrence v. British Columbia (Attorney General)

2003 BCCA 379

COURT

British Columbia Court of Appeal

DECIDED

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2003BCCA0379 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Lawrence v. A.G.(B.C.), 2003 BCCA 379 Date: 20030605 Docket: CA030754 Between: Rae Lawrence Appellant (Plaintiff) And The Attorney General of British Columbia Respondent (Respondent) Before: The Honourable Madam Justice Ryan (In Chambers) Oral Reasons for Judgment R.A. Kasting Counsel for the Appellant T. Mason Counsel for the Respondent Place and Date: Vancouver, British Columbia June 4, 2003

- [1] RYAN, J.A.: The applicant is a 53 year old woman who suffers from rheumatoid arthritis and is unable to work. She receives disability social assistance payments. While the applicant has a grade 12 education she has no experience with the legal system. Her health and experience prevent her from pursuing a lawsuit without legal assistance.
- [2] Two proceedings have been commenced on the applicant's behalf. The first proceeding asked the court for declaration that the title to property in a home be transferred back to the applicant's name. The applicant says that she lacked the legal capacity to consent to the transfer of the property to the person named in the petition. The second proceeding is a claim for damages against a notary and the person in whose name the house now stands.
- [3] The Attorney General is named as a nominal defendant in the second proceeding pursuant to the provisions of the Land Title Act, which requires that the Attorney General be added to an action in order to claim against the provincial government's assurance fund.
- [4] The applicant brought an application on December 17, 2002, for a declaration that the applicant is entitled to legal counsel for the conduct of the actions to be paid for by the Attorney General of British Columbia. The applicant relies on several sections of the Charter.
- [5] The chambers judge refused the application holding that he had no authority to order that the Attorney General fund the applicant's legal actions. The chambers judge held that he could not make the order without statutory authority or an appropriation authorizing the expenditure. The applicant applies for leave to appeal.

- [6] Counsel for the applicant says that the issue on appeal is whether s. 24 of the Charter authorizes a justice of the Supreme Court to make a declaration that a litigant is entitled to legal counsel to be paid for by the Attorney General of British Columbia. The applicant's position, that without legal counsel, she is deprived of her right under s. 7 of the Charter to life, liberty and the security of the person. She says that this application raises the issue of access to justice to those without the ability to properly fend for themselves in a courtroom.
- [7] If she cannot proceed with this lawsuit she is exposed to eviction from her home. She says that the case of *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1993] 3 SCR 46 recognizes the type of order she seeks can be made in the right circumstances.
- [8] Counsel for the Attorney General says that the applicant is proceeding on the erroneous assumption that the Charter applies to civil disputes between private litigants. Counsel submits that the *New Brunswick v. G.(J.)* case is limited to circumstances where a government action triggers a hearing. In that case funding was provided to a litigant where the state action of removing a child from the custody of a parent infringed on the security interests of both the child and its parent. In the case at bar, the deprivation alleged, is the loss of title to the property.
- [9] Finally, counsel for the Attorney General submits that even if the applicant reframes the issue to one of access to justice that this Court in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2001] B.C.J. No. 2279 (C.A.) (Q.L.) has held that the right of access to justice does not include a right to state funded legal fees or to counsel provided by the State if a litigant cannot afford to pay for a lawyer. In that case, Madam Justice Newbury said this:
- [27] However, it is a large step -- in my view, too large -- from the Court's reasoning in *B.C.G.E.U.* to the proposition that because a court of law has ordered proceedings to be remitted to the trial list, the Bands have been denied access to justice, thereby giving rise to a "right" to funding by the Province. I am not persuaded there is such a right. Unfortunately, many persons in our society find themselves unable to pay the high costs of litigation, which include provincial filing fees and taxes (unsuccessfully challenged in *John Carten Personal Law Corp. v. British Columbia (Attorney General)* (1997) 40 B.C.L.R. (3d) 181). In the latter case, Lambert J.A. said this for the majority: There are many reasons why the cost of legal services, or a lack of funds, may restrict, hamper, or even prevent a person from exercising rights of access to the courts or rights of access to other legal services. What would be required in order to find this Act [Social Services Tax Act] wholly unconstitutional, or even unconstitutional in its application in a particular case, would be proof that people, or a class of people, in general, or some person in particular, who would have been able to exercise the legal rights in question if this tax were not in effect, were or was prevented by this tax from exercising those rights. It would not be sufficient to found an argument that the Act was unconstitutional in concept or in application merely to show that the tax operated as an impediment or a discouragement to the exercise of a protected right. What would be required would be proof that the right was denied, or its exercise was prevented, by the existence or operation of this tax. In other words, that a right which would have been

exercised but for this tax could not be exercised because of this tax. [para. 13] The majority held that even though Mr. Carten, a lawyer, had deposed that he had several clients whose access to the courts was "restricted or interfered with" as a result of the imposition of social services tax on legal services, he had presented an insufficient basis of "constitutional facts" to support his argument that the tax was invalid. No case has gone so far, however, as to find that one's right to "access to justice" includes a right to state-funded legal fees or to counsel provided by the state if one cannot afford to pay for one's own lawyer.

- [28] Of course there are legal aid programs in every province of Canada which soften the effect of this reality to some extent. In some circumstances as well -- e.g., where a person is charged with a serious criminal offence and his liberty is at risk -- there is statutory recourse such as that provided by s. 684 of the Criminal Code. But I am not aware of any authority for the proposition that the principle of access to justice means more than a duty on the government to make courts of law and judges available to all persons or that it includes an obligation to fund a private litigant who is unable to pay for legal representation in a civil suit -- even one that may be *sui generis*. If the meaning of access to justice is to be extended that far, it is in my view for government to do.
- [10] In my view, the Attorney General for British Columbia has made points which simply cannot be overcome by the applicant. In my view, the applicant has not been able to establish that she has an arguable case.
- [11] I would dismiss the application for leave to appeal. "The Honourable Madam Justice Ryan"

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