

State Funded Counsel

On December 4, 2003 Gilles Caron was charged with failing to make a left turn in safety, contrary to s. 34(2) of Alberta's Use of Highway and Rules of the Road Regulation. Mr. Caron challenged the constitutionality of the regulation, making a complex legal argument touching upon division of powers, language rights, and the protection of minorities.

Mr. Caron made an application for state funded counsel and the expenses of his expert witnesses, claiming that the issues at trial were so complex that he could not reasonably be expected to represent himself. A provincial court judge agreed, and granted the application. The judge's decision was based on previous cases, including a 1998 Alberta Court of Appeal case, *R. v. Rain*, which states that in some circumstances the right to a fair trial guaranteed in s.11(d) of the Charter requires that the state provide funded counsel to an accused person.

The provincial court's order was appealed and on April 19, 2007 an Alberta Court of Queen's Bench Justice concluded that Mr. Caron's case was not a proper one for a grant of state funded counsel. Justice Marceau ruled that state funded counsel is not a right in every case and that, according to *Rain*, in order to qualify for state funded counsel an individual must be facing a serious and complex charge. Although Mr. Caron's constitutional challenge was complex, the charges he faced were not serious enough to warrant state funded counsel. Mr. Caron faced a fine of \$100 if he was found guilty. The potential for imprisonment arose only upon non-payment. Justice Marceau stated that, "... raising a complex constitutional argument which, I agree, can only be fairly argued by counsel does not change the seriousness of the offence". [i]

Mr. Caron's case is particularly relevant in light of the federal government's elimination of funding for the Court Challenges Program in September 2006. The program provided funding and support for cases involving the protection of minority, language, and women's rights, amongst others. The federal government's decision has been criticized by some groups; for example, the Canadian Bar Association which claims that the elimination of funding for the program endangers the rights of all Canadians.

Sources:

- "CBA Decries Cuts to Court Challenges Program and Law Commission of Canada" CBA (26 September 2006)
- [R. v. Caron, 2007 ABQB 262 \(CanLII\)](#)

Further Reading

- [R. v. Rain, 1998 ABCA 315 \(CanLII\), \[1988\] A.J. No. 1059.](#)
- Use of Highway and Rules of the Road Regulation, Alta. Reg. 304/2002.

[1] R. v. Caron, 2007 ABQB 262 (CanLII) at para. 11.