

# Public Access - B.C. Court Hearing Fees Declared Unconstitutional

*This article was written by a law student for the general public.*

## Introduction

British Columbians used to pay court hearing fees based on how long their trial took. B.C. was the only province with such considerable fees.[\[1\]](#) On October 2, 2014, the Supreme Court of Canada declared those fees unconstitutional because they could prevent people from accessing courts. The decision in *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)* could improve access to justice.

## Facts

B.C.'s court hearing fees depended on the length of the trial, but could go up to \$800 a day. There was an exemption, but it was narrow and applied to "impoverished" people.[\[2\]](#) Ms. V set a trial date, and had to promise to pay the court hearing fee. It ended up costing her \$3,600. The judge knew that the fee might be unconstitutional. As such, he asked for submissions to determine if it was.[\[3\]](#)

## Case History

The trial judge decided the fee was unconstitutional because it blocked access to the courts, which violated section 96 of the *Constitution Act 1867*.[\[4\]](#) The B.C. Court of Appeal agreed that it was unconstitutional. However, it said court hearing fees could be saved by including the words "or in need" to widen the exemption, so that a judge could grant an exemption to people who were in need, but not impoverished. Both parties appealed to the Supreme Court.[\[5\]](#)

## Issue

Are B.C.'s court hearing fees unconstitutional?[\[6\]](#)

## Brief Answer

Yes, B.C.'s court hearing fees are unconstitutional because they interfere with the courts' intended purpose of solving citizens' legal disputes; that purpose is protected by section 96 of the *Constitution Act 1867*. The Supreme Court declared the fees invalid, and said it is up to the provincial government to make them constitutional.[\[7\]](#)

## Analysis

The Supreme Court noted that our Constitution gives provinces the power to administer justice in their territory.[\[8\]](#) As such, provinces can charge fees to use the courts.[\[9\]](#)

However, [section 96 of the Constitution Act 1867](#) creates provincial superior courts and protects their jurisdiction.<sup>[10]</sup> Neither the provinces nor Parliament can make laws that intrude on these courts' jurisdiction.<sup>[11]</sup>

B.C.'s court hearing fees meant that some people could not use the courts because of the expense. The Court said that B.C. could not prevent people from using these superior courts, because that would interfere with the courts' intended purpose of resolving legal disputes. The Court used both written and unwritten principles in the Canadian Constitution to come to its decision. First, since section 96 constitutionally protects superior courts and their jurisdiction, provincial court hearing fees that obstruct the courts' function are unconstitutional.<sup>[12]</sup> Additionally, the [rule of law](#), an unwritten constitutional principle that says no one is above the law, supports the idea of section 96 protecting access to courts.<sup>[13]</sup>

The Court noted, however, that court hearing fees themselves are not unconstitutional.<sup>[14]</sup> But when they stop people from bringing valid claims because they would have to suffer undue hardship, court hearing fees can become unconstitutional.<sup>[15]</sup> The Court decided that was the case here. The fees could bar people from bringing claims, contrary to section 96 of the *Constitution Act 1867*.<sup>[16]</sup>

## Significance

Access to justice is a major problem in Canadian society, and this case could help. <sup>[17]</sup> Cost could deter people from using courts to resolve their disputes and accessing justice. Hopefully, this decision will allow more people to have their day in court. It should also be remembered that court hearing fees in principle are not unconstitutional. There may be good reasons for fees, like preventing trivial law suits, recouping costs, and keeping trials efficient.<sup>[18]</sup> But court hearing fees cannot deny people access to bringing valid claims to court. As well, this case is a good reminder that our Constitution includes more than just the written parts - there are unwritten elements, too. In this case, the rule of law principle helped the judges interpret section 96 of the *Constitution Act 1867*.

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[1] David Dias, "[SCC strikes down B.C.'s court hearing fees](#)" Legal Feeds, Canadian Lawyer Mag (2 October 2014).

[2] [Trial Lawyers Association of British Columbia v British Columbia \(Attorney General\)](#) 2014 SCC 59 at paras 9-13. Hearings that are 1-3 days have no fees: hearings that 4-10 days are \$500 days: hearings that are 10+ are \$800 a day.

[3] *Ibid* at paras 3-7.

[4] [Vilardell v Dunham](#) 2012 BCSC 748 at para 425.

[5] *Supra* note 2 at para 8.

[6] *Ibid* at para 14.

[7] *Ibid* at paras 64-69.

[8] [Constitution Act, 1867](#) (UK), 30 & 31 Vict, c 3, s 92(14), reprinted in RSC 1985, App II, No 5.

[9] *Supra* note 2 at para 18.

[10] *Ibid* at para 28.

[11] *Ibid* at para 29-30.

[12] *Ibid* at paras 32-37.

[13] *Ibid* at paras 38-43.

[14] *Ibid* at para 23.

[15] *Ibid* at paras 45-48.

[16] *Ibid* at paras 49-64.

[17] Jennifer Graham, "[Access to justice in Canada 'abysmal': CBA Report](#)" Toronto Star (18 August 2013).

[18] *Supra* note 2 at para 21.