

The Yellow Brick Road? Establishing a Constitutional Right to State-Funded Counsel for Matters of Civil Law in Canada

Andrea Wong

Abstract: Canadians do not have a constitutional right to state-funded counsel for matters of civil law, unlike for matters of criminal law. This article examines the reasons for this and, more importantly, the significant barriers for establishing a general constitutional right to state-funded counsel for civil cases. Analysis in this article shows that the most significant barriers for establishing such a general constitutional right have been, and will likely continue to be, the courts' interpretation of the Constitution from the perspective of the Charter framers and their reluctance to impose a positive constitutional obligation on government that would dictate the allocation of public funds.

As many observers have noted, "access to justice is the essential foundation for our legal system to function" (McLachlin 2007: 4). Today's high legal costs, however, are impairing access to justice for many Canadians, with a routine three-day civil trial in Ontario costing about \$60,000 (Tyler 2007). In an effort to remedy the inadequacy of civil legal aid across Canada, the Canadian Bar Association (CBA) in 2005 launched a test case in British Columbia, *The Canadian Bar Association v. HMTQ et al*, 2006, to establish a constitutional right to civil legal aid. Although the case was dismissed by both the Supreme Court of British Columbia and the British Columbia Court of Appeal in 2007 on the basis that the CBA lacked public interest standing to launch such an action, support for the principles raised in the legal case remains.

Presently, policy makers in Canada do not have a clear constitutional obligation to ensure that Canadians can access the justice system to enforce their legal rights. Some argue that without legal aid, segments of the population are denied access to justice, as they are unable to take advantage of the protections and guarantees offered by the legal system as they could with legal counsel. However, like Dorothy and her friends who faithfully travelled the Yellow Brick Road in search of the Wizard of Oz whom they believed would give them what they desired, advocates for the right to state-funded counsel for civil law matters are taking a road paved with obstacles. Although their journey towards greater access to justice has yet to end, in turning to the courts to grant the constitutional right to state-funded counsel for civil cases, advocates are coming face to face with their most significant barrier, the courts themselves. The courts' interpretation of the Constitution from which arguments for state-funded counsel stem, and unwillingness to impose a positive constitutional obligation on government to allocate funds for civil cases, are the greatest obstacles for establishing a constitutional right to state-funded counsel for civil cases and will likely remain so.

An analysis of court cases and reports on legal aid in recent years reveals legal, political, financial and practical barriers for expanding the right to state-funded counsel in civil cases. First, the argument to expand the right to state-funded counsel to more types of civil proceedings based on the Charter Section 7 right to "security of the person" is restricted by the requirement

for state involvement in the proceeding and the courts' narrow interpretation of what type of state interference would constitute "violation" of the "security of the person" (Schmolka 2002: 9E; Bala 2002: 68E). Second, it is difficult to produce empirical evidence to support the argument for state-funded counsel that claims that legal aid plans infringe women's right to equality under Section 15 of the Charter (McCallum 2002: 146E; New Brunswick Advisory Council on the Status of Women 2007: 20). Third, the argument to expand the right based on the claim that the absence of state-funded counsel discriminates against the poor, and thereby violates Section 15 of the Charter, is severely challenged by jurisprudence that does not recognize poverty as an analogous ground (Arvay 2002: 48E; McCallum 2002: 144E). Finally, the argument to expand the right to state-funded counsel based on the rule of law is limited by the courts' refusal to override the written Constitution by an unwritten constitutional principle (Mathen 2008: 201). Analysis in this article will demonstrate that the most significant barriers for establishing a general constitutional right to state-funded counsel for civil cases in Canada have been, and will likely continue to be, the courts' interpretation of the Constitution from the perspective of the Charter framers, and the courts' reluctance to impose a positive constitutional obligation on government that would dictate the allocation of public funds.

The Constitutional Principles

To understand the arguments for and against establishing a constitutional right to state-funded counsel, it is important to begin with an overview of the relevant constitutional principles. The arguments around the right to state-funded counsel are grounded primarily in the following five sections of the Canadian Charter of Rights and Freedoms¹:

- Section 7: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.
- Section 11 (d): Any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.
- Section 15: (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- Section 24 (1): Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
- Section 32 (1): This Charter applies (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

According to Section 32 (1), the Charter applies only to situations between individuals and the government and not to situations between individuals with each other (Saul 2006).

In addition, the principle of the “rule of law” is relevant to arguments surrounding expanding the right to state-funded counsel. The rule of law principle, contained in the preamble to the *Constitution Act*, 1982, is an unwritten constitutional principle that has been subject to different interpretations; however, “the rule of law” is recognized by the courts as guaranteeing the supremacy of law, thereby protecting individuals from “arbitrary state action.”²

Expanding the Right to State-Funded Legal Counsel

Identifying the main actors in this issue provides insight into the legal reasoning and outcomes. The main actors include the three government branches (executive, legislative, judicial); legal aid agencies; interest groups for lawyers, the poor and women; and individuals from primarily middle-income and poor families. The cited cases are heard at the provinces’ courts of appeal and supreme courts, and at the Supreme Court of Canada. *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, 1999, was the first case to recognize a right to state-funded counsel in a civil case. It is significant to the arguments around expanding the right to state-funded counsel to more types of civil cases because it was decided by the Supreme Court. The fact that there were nine interveners in *G.(J.)*, including the attorney general of three provinces and large associations representing the interests of lawyers, the poor and women (including the Canadian Bar Association, the Charter Committee on Poverty Issues, and the Women’s Legal Education and Action Fund), might have had an impact on the Court’s decision in favour of the appellant. As evident in the cited cases, the courts have hesitated to establish a general constitutional right to state-funded counsel that would interfere with the roles of the legislatures and executive branch in making laws and allocating public funds. For example, in *P.D. v. British Columbia*, 2010, the Supreme Court of British Columbia stated the following:

[T]he court has no ability to expressly compel the expenditure of public funds to rectify a Charter violation I see nothing in the enactments of 1982 which ... gave the courts the power to create or confer ... a power in the Crown ... to expend public funds I do not overlook s. 24(1) I cannot accept that the framers of the Charter intended that the courts should have the power ... to subvert parliamentary control of the public purse (*P.D.* para. 96).

Also, as seen in *Gosselin v. Québec (Attorney General)*, 2002, *Christie v. British Columbia*, 2005, and *Boulter v. Nova Scotia Power Incorporation*, 2009, all of which challenged government regulations (the *Social Aid Regulation*, the *Social Service Tax Amendment Act*, and the *Public Utilities Act*, respectively), the courts found no violation of Charter rights. The legitimacy of judges in striking down laws passed by democratically elected legislatures on the ground that they violate the Constitution is enhanced if judges can show that their reading of the Constitution is based not on their own personal views but on the intentions of the “founding fathers” (Russell et al. 2008: 18). This, along with the courts’ reluctance to interfere with the allocation of public funds, helps to explain the courts’ literal approach to constitutional interpretation on the issue of the right to state-funded counsel.

Examining the legal reasoning in the landmark cases from which a limited right to state-funded counsel emerged is critical to understanding the limitations to the arguments for expanding the right. *R. v. Rowbotham*, 1988, is the first case to recognize a right to state-funded counsel in the criminal law context. In this case, the Ontario Court of Appeal found that the accused, who had been denied legal aid, did not have sufficient funds to pay counsel for a trial that was expected to last twelve months (Schmolka 2002a: 6). The court did not recognize a general constitutional right to state-funded counsel, stating “those who framed the Charter did not expressly constitutionalize the right of an indigent accused to be provided with counsel, because they considered that, generally speaking, the provincial legal aid systems were adequate to provide counsel” (*Rowbotham* 61). However, the court unanimously ruled that “in cases not falling within provincial legal aid plans,” Sections 7 and 11(d) of the Charter require funded counsel to be provided if the accused wishes, but cannot afford, counsel and where counsel is essential to a fair trial (*Ibid*).

It was not until *G.(J.)* that a right to state-funded counsel in civil cases was recognized. In *G.(J.)*, the province’s community services department asked the court to extend a temporary Crown wardship of three children for another six months (cited in Schmolka 2002a: 6). The mother, despite being at the lowest income level, was not eligible for legal aid to hire counsel to represent her in the custody proceeding because the province’s legal aid plan only covered cases for the permanent removal of a child. The Supreme Court of Canada was unanimous in finding that the mother should have been provided with state-funded counsel based on the Section 7 right to “security of the person”; the Court stated that “without the benefit of counsel, the appellant would not have been able to participate effectively at the hearing, creating an unacceptable risk of error in determining the children’s best interests and thereby threatening to violate both the appellant’s and her children’s Section 7 right to security of the person” (*G.(J.)*, para. 81). In determining the remedy for the Charter violation, the Supreme Court was careful not to interpret the Charter in a way that would deviate from the intentions of the framers, who rejected a clause to provide counsel, or in a way that would impose a positive obligation on government’s allocation of limited resources:

[T]he framers of the Charter consciously chose not to constitutionalize a right to state-funded counsel under s. 10 [T]he following clause ... was considered and rejected: (d) if without sufficient means to pay for counsel and if the interests of justice so require, to be provided with counsel In light of the language of s. 10 ... and ... that the framers of the Charter decided not to incorporate into s. 10 even a relatively limited substantive right to legal assistance ... it would be a very big step for this Court to interpret the Charter in a manner which imposes a positive *constitutional* obligation on governments. The fact that such an obligation would almost certainly interfere with governments’ allocation of limited resources by requiring them to expend public funds on the provision of a service ... weighs against this interpretation (emphasis added) (*G.(J.)*, para. 106).

In reference to the rejected clause, Justice L’Heureux-Dube, in *R. v. Prosper*, 1994, said that the “living tree” approach to constitutional interpretation “has its limits” and “has never been used to ... add a provision which was specifically rejected” (11). However, five years later, in *G.(J.)*, Chief Justice Lamer, writing for the majority, recognized that “the omission of a positive right to

state-funded counsel in Section 10 ... does not preclude an interpretation of Section 7 that imposes a positive constitutional obligation on governments to provide counsel in those cases when it is necessary to ensure a fair hearing” (para. 107). The Court acknowledged that it should “refrain from intruding into the legislative sphere beyond what is necessary in fashioning remedies for Charter violations” (para. 102). It found that “the least intrusive remedy would be to leave the legal aid policy intact, and have the trial judge order state-funded counsel on a case-by-case basis” (Ibid). Therefore, the Supreme Court was careful to ground the right to state-funded counsel in the particulars of the case, stating that “the government is not under an obligation to provide legal aid to every parent who cannot afford a lawyer. Rather, the obligation only arises in circumstances where the representation of the parent is essential to ensure a fair hearing where the parent’s life, liberty, or security is at stake” (para. 100). Thus, although there is no general constitutional right to state-funded counsel in civil cases, if a parent in a custody application has exhausted all possible avenues for obtaining state-funded legal assistance, depending on the seriousness of the interests at stake, the complexity of the proceedings and the parent’s capabilities, the court may order state-funded counsel based on Sections 7 and 24 (1) of the Charter (Ibid.).

The case G.(J.) forms the basis upon which arguments are made to expand the right to state-funded counsel to other types of civil proceedings based on the Section 7 right to “security of the person.” Joseph Arvay argues that a claimant should succeed in obtaining state-funded counsel in civil cases if the individual can establish 1) their Section 7 rights are in jeopardy, 2) legal representation is required for the hearing to be fair, and 3) government action is the reason for a hearing (2002: 37). Arvay bases his three-part G.(J.) test on the conclusion in G.(J.) that “when government action triggers a hearing in which the interests protected by s. 7 ... are engaged, it is under an obligation to do whatever is required to ensure that the hearing be fair” (Ibid). With respect to part two of the test, Arvay argues that in most cases counsel is necessary to achieve a fair hearing because the ability to test evidence through skilled cross-examination is an essential aspect of a fair hearing and a skill that the ordinary citizen does not possess (38). However, the third part of the test poses great difficulty in expanding the right to state-funded counsel.

The Charter applies to situations between individuals and the state, and therefore Section 7 interests can only be protected in proceedings involving the state. The courts have repeatedly refused to order state-funded counsel to ensure a fair trial in private disputes. For example, in *P.D. v. British Columbia*, 2010, the plaintiff claimed that the province’s failure to provide state-funded counsel or a legal aid regime that ensures “meaningful and effective access to justice by women in family law proceedings” infringed the Section 7 right to security of the person (para. 3). Citing G.(J.), the Supreme Court of British Columbia dismissed the claim because it was a private dispute not involving the state:

[T]here is no readily apparent state action involved in this matter In G.(J.) the Court took significant pains to emphasize that it was the involvement of the state, in seeking to take custody of a child, that both grounded the remedy and affected the seriousness of the issues raised. Furthermore, there are a significant number of decisions, from numerous courts, which confirm that a private dispute cannot support a s. 7 claim (*P.D.*, para 146).

However, even with state involvement, the argument to expand the right to state-funded counsel is restricted by the courts' narrow interpretation of what state action can be viewed as a violation of "security of the person." The Supreme Court of Canada established in *Blencoe v. British Columbia (Human Rights Commission)*, 2000, that security of the person is restricted to psychological stress that state-imposed and series:

Where the psychological integrity of a person is at issue, security of the person is restricted to "serious state-imposed psychological stress"... that would rise to the level of infringing s. 7. G.(J.) ... "serious state-imposed psychological stress" delineate two requirements First, the psychological harm must be *state imposed* Second, the psychological prejudice must be *serious* *Not every state action which interferes with the parent-child relationship will restrict a parent's right to security of the person* (emphasis added) (*Blencoe*, para. 57).

In short, the courts will not likely find state involvement to violate the security of the person where "the state is not directly interfering with the psychological integrity of the parent [in the role of] parent" (*Blencoe*, para. 81). For example, a parent may suffer significant stress and anxiety as a result of his or her child being sentenced to jail or killed by a police officer, but, in these situations, "the state is making no pronouncement as to the parent's fitness or parental status, nor is it usurping the parental role or prying into the intimacies of the relationship" (*Ibid*). Accordingly, no constitutional rights of the parent are engaged.

Joseph Arvay and Nicholas Bala both suggest that income assistance proceedings, custody and access disputes between parents, adoption proceedings, and paternity proceedings might jeopardize the Section 7 right to "security of the person" of the child and parent and might, thereby, be areas to which the right to state-funded counsel could be extended. It is arguable that the right to state-funded counsel could be extended to adoption and paternity proceedings. As suggested by Bala, the parent's fitness or parental status comes into question during such cases, and the court's order for an adoption or change in the status of the relationship between the child and father involves the state (2002: 69—75). However, Arvay's suggestion that the right to state-funded counsel could be extended to income assistance proceedings is based on the Supreme Court's decisions that did not form part of the decision (*obiter dicta*) and cases dating far back to 1985 and 1989 (2002: 37—38). As noted in the more recent 2009 Boulter case, in *Gosselin v. Quebec (Attorney General)*, the Supreme Court dismissed the claim that welfare restrictions violated the Section 7 "security of the person" provision (7).

The argument to expand the right to state-funded counsel has also been based on the claim that legal aid plans discriminate on the ground of sex, since criminal cases usually get more legal aid funding than civil cases and more men than women face criminal charges (McCallum 2002: 145). That women are more likely to require civil legal aid and that there is a need to protect women's equality rights were suggested in G.(J.):

[T]his case raises issues of gender equality because women, and especially single mothers, are disproportionately and particularly affected by child protection proceedings. In considering the s. 7 issues, it is thus important to ensure that the analysis takes into account the principles and purposes of the equality guarantee in ... ensuring

that the law responds to the needs of those disadvantaged individuals and groups whose protection is at the heart of s. 15 (*G.(J.)*, para. 113).

Although legal aid programs do not explicitly deny coverage to women, according to Margaret McCallum, they may be held to violate women's equality if there is sufficient empirical evidence that they significantly disadvantage women as compared to men (2002: 145—46). However, it is extremely difficult to evaluate the impact of legal aid cutbacks or lack of services on Canadian women, as there are no data to explain the rejection of legal aid applications, the specific reason for the rejection, how many of the rejected applications were made by women, or the impact of being rejected (New Brunswick Advisory Council on the Status of Women 2007: 20).

P.D. v. British Columbia highlights that in addition to the difficulty of producing evidence to argue for enhanced legal aid for women, the court is also reluctant to interpret the Charter in such a way that would interfere with the allocation of legal aid funds: "The difficulties with arguing in favour of an enhanced [legal aid], both under s. 15(1) and in terms of a s. 1 analysis, are apparent. I was referred to no authority which directly supported such relief. Cases such as *Winnipeg (Child and Family Services) v. A.(J.)*, 2003 ... highlight some of the difficulties associated with seeking to deviate from legal aid funding levels" (para. 153). In this case, the appellant claimed that her right to security was impaired because she was prevented from having a fair hearing, as her counsel of choice refused legal aid's rate. The claimant sought a remedy under Section 24 (1) to have the court appoint her counsel of choice for her application for permanent guardianship at a rate of \$150 per hour compared to the legal aid rate of \$48 per hour. The court concluded that the right to state-funded counsel did not mean the right to counsel of choice and that there was "inadequate evidentiary foundation" for the Charter claim that "the appellant was unable to obtain competent counsel or that Legal Aid policies in the appointment of counsel affected her case and impaired her right to a fair trial" (*Winnipeg [Child and Family Services]*, para. 3 and 56).

The argument to expand the right to state-funded counsel has also been made on the claim that not providing state-funded counsel discriminates against the poor under Section 15 of the Charter. The success of this claim lies in recognizing poverty as an analogous ground. In *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, 1999, the Supreme Court of Canada held that an analogous ground is one based on a personal characteristic that is immutable or changeable only at unacceptable costs to personal identity (cited in Arvay 2002: 48). Based on *Corbiere*, Arvay argues that poverty is an analogous ground because it is a characteristic beyond the individual's own present capacity to change:

[P]overty is generally not something that an individual can change of his or her own accord. There is ample research to support the proposition that it is the Canadian social and economic system that keeps many individuals in a state of poverty, not a lack of personal initiative on the part of the individuals. It could be argued that by "immutable" and "constructively immutable," the Supreme Court of Canada must have meant that the characteristic is beyond the individual's *own present capacity* to change, and that poverty is such a characteristic (49, emphasis in the original).

However, in *Boulter v. Nova Scotia Power Incorporation*, the Nova Scotia Court of Appeal reasoned that poverty is not an analogous ground under Corbiere's formulation, because financial circumstances may change, and both the poor and the government have demonstrated a legitimate interest in changing the economic status of the poor:

[P]overty is not a personal characteristic, under Corbiere, that is (1) "actually immutable" or (2) "constructively immutable" in that either the government "has no legitimate interest in expecting us to change" or it "is changeable only at unacceptable cost to personal identity" [F]inancial circumstances may change, and individuals may enter and leave poverty Economic status is not an indelible trait like race, national or ethnic origin As to the second test, the government has a legitimate interest, not just to promote affirmative action that would ameliorate the circumstances attending an immutable characteristic, but to eradicate that mutable characteristic of poverty itself. That objective is shared by those living in poverty. Ms. Boulter's factum says, "Ms. Boulter is desperately trying to escape from poverty via her educational qualifications from the Community College" (*Boulter*, para. 42).

As the Nova Scotia Court of Appeal suggested in the *Boulter* case, the courts' refusal to recognize poverty as an analogous ground can also be attributed to the understanding that decisions around public expenditures are the responsibility of the legislatures, and it is not in the courts' role to engage in the politics of allocating public funds:

Pure wealth redistribution, that is legally directed but unconnected to *Charter* criteria, in my view occupies what *Hogg* describes as "the daily fare of politics, and is best [done] not by judges but by elected and accountable legislative bodies" I emphasize at this point that I am *not* denying poverty as an analogous ground *because* it is "political." Political issues are constitutionally reviewable Rather, the claimants' poverty claim does not on its merits satisfy *Corbiere's* legal criteria for analogous grounds under s. 15(1), and therefore the issue moves to the legislative arena (emphasis in the original) (*Boulter*, para. 43).

To quote Justice Sharpe of the Ontario Court of Appeal, in *Dunmore v. Ontario*, "There are many forms of injustice in our society, particularly those resulting from uneven distribution of wealth, that cannot be remedied by the courts through interpretation of the Charter and that must be remedied through the legislative process" (para. 50).

Arguments to expand the right to state-funded counsel have also been made upon the principle of the "rule of law." Arvay argues that the rule of law includes a constitutional right to court access, citing *B.C.G.E.U. v. British Columbia (A.G.)*, 1988, in which the Supreme Court of Canada stated that "the right to access to the courts is under the rule of law one of the foundational pillars protecting the rights and freedoms of our citizens" (para. 26). Arvay argues that access to the courts includes access to counsel, citing Chief Justice McEachern of the British Columbia Supreme Court, who once said that "access to courts of justice must be effective access, which in practical terms means access to counsel" (cited in Arvay 2002: 42). The courts, however, do not recognize the rule of law as providing for the right to counsel. In *Christie v. British Columbia*, 2005, Christie, who provided legal services to low-income individuals who were ineligible for legal aid, claimed that the Social Service Tax Amendment Act (No. 2) (1993)

was contrary to the rule of law because the legislation, by burdening access to legal counsel, undermined citizens' access to the courts and interfered with citizens' effective use of the courts, even if it did not prevent formal access (cited in Mathen 2008: 200—201). The success of the case depended on the court's receptiveness to arguments concerning unwritten constitutional principles (191—204). In *Christie v. British Columbia*, 2005, the British Columbia Court of Appeal found that the unwritten constitutional principle of the rule of law was not intended by the constitutional framers to undermine written constitutional rights:

If the rule of law constitutionally required that all legislation provide for a fair trial, s. 11(d) and its relatively limited scope would be largely irrelevant because everyone would have the unwritten, but constitutional, right to a "fair hearing" [T]he appellants' conception of the unwritten constitutional principle of the rule of law would render many of our written constitutional rights redundant and, in doing so, undermine the delimitation of those rights chosen by our constitutional framers (emphasis in the original) (*Christie*, para. 65).

Citing the above, the Supreme Court of Canada in *British Columbia (Attorney General) v. Christie*, 2007, concluded that the rule of law does not provide a general right to counsel: "[A] review of the constitutional text, the jurisprudence and the history of the concept does not support the respondent's contention that there is a broad general right to legal counsel as an aspect of, or precondition to, the rule of law" (para. 23). As noted in *P.D. v. British Columbia*, 2010, the Supreme Court's decision in *Christie* "ruled out any 'broad-based systemic claim to greater legal services based on unwritten principles' such as the rule of law [It] is not to be regarded as an invitation to supplant the Constitution's written terms" (para. 151).

Conclusion

Establishing a constitutional right to state-funded counsel for civil law matters has been likened to the journey along the Yellow Brick Road. Advocates for state-funded counsel continue to travel this path to improve access to justice. However, Canadian courts have been firm in their position that Sections 7 and 15 of the Charter and the rule of law do not create a general constitutional right to state-funded counsel for civil cases, and they have grounded these interpretations in the intentions of the Constitution's "founding fathers" and the framers of the Charter. It is unlikely that this situation will change, for the jurisprudence is consistent. Indeed, expanding the right to state-funded counsel would create a positive constitutional obligation on the government to spend more on civil legal aid, something the government may not be apt to do. As Justice Rosenberg of the Ontario Court of Appeal once said, "a dollar spent on legal aid is a dollar not available for cancer treatment, education programming or desperately needed infrastructure," and it is the government's role, not the court's, to allocate where that dollar will go (cited in Rosenberg 2009: Part III, Section 2). However, the problems that state-funded counsel could alleviate still remain and are likely to grow. Those that are at the lowest income levels in society and women, for instance, may possibly require legal services for family law matters, yet remain affected by the lack of funding for civil legal aid. Although there is no general constitutional right to civil legal aid, there are other paths to improve access to justice beyond legal aid and a right to state-funded counsel. While beyond the scope of this article, suffice it to note that those working to improve access to justice must continue to explore

different avenues and work towards alternatives to ensure that the most vulnerable populations in society can also secure the rights and freedoms guaranteed in the Charter.

Notes

1 Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, available at <http://laws.justice.gc.ca/en/charter>.

2 See a more elaborate definition of “rule of law” at the web site of the Centre for Constitutional Studies, University of Alberta, at <http://www.law.ualberta.ca/centres/ccs/keywords/?id=53>.

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