

\$8M award for wrongfully convicted man highlights Charter rights



A British Columbia court's ruling to award a man \$8 million after he was wrongfully convicted of sexual assault charges and spent 27 years behind bars highlights how all individuals — even those who are self-represented — are entitled to a fair trial and access to justice, says Toronto civil litigator [Sarah O'Connor](#).

"The fact that this was a criminal matter where this man's freedom was at stake heightens the award," she tells [AdvocateDaily.com](#).

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments after the B.C. Supreme Court, in a 130-page ruling, criticized the Crown's decision to withhold key evidence that Ivan Henry was entitled to receive. The court also said the Crown demonstrated a "shocking disregard" for his Charter rights, reports the [Canadian Press](#).

"Crown counsel's wrongful non-disclosure seriously infringed Mr. Henry's right to a fair trial," Chief Justice Christopher Hinkson wrote in his decision.

"If Mr. Henry had received the disclosure to which he was entitled, the likely result would have been his acquittal at his 1983 trial ... and certainly the avoidance of his sentencing as dangerous offender."

The Crown failed to disclose a series of police notes, reports, lab information, interviews, witness statements and Vancouver police property and exhibits before or during Henry's trial; the Crown also didn't disclose to him that a police detective believed one of the victims had been assaulted by a different person, says the article.

Henry, 69, was acquitted in 2010 of 10 sexual assault convictions and sued the City of Vancouver, the province and the federal government. Settlements for undisclosed amounts were reached last year with the municipality and the federal government.

This week's court decision orders the provincial government to pay Henry \$530,000 for lost earnings, \$56,700 in special damages and \$7.5 million for "vindication and deterrence" in connection with Henry's Charter rights being violated, says the article.

O'Connor says even though the amount is large within the Canadian context, it isn't as large as he would have received if the case was litigated in the United State.

"The bulk of the \$8 million is punitive for recognizing that his rights were violated," she says.

She notes that Henry's lawyer argued that he deserved roughly \$43 million in compensation.

O'Connor says the award of \$8 million does send a message, however, specifically to the Crown about the importance of disclosing evidence.

"It's definitely one of the highest awards I've seen — \$8 million for Charter breaches and deterrence is a step in the right direction for damages," she says.

"It looks like the tide is shifting."

O'Connor notes that Henry took his case to the Supreme Court of Canada in order to use the Charter to pursue his lawsuit. Read [AdvocateDaily.com](#)

She points to comments made by Crown lawyer John Hunter, who argued Henry's decision to represent himself meant he wouldn't have known what to do with the additional evidence even if it had been provided to him, despite his repeated requests, says the article.

Hinkson rejected Hunter's argument.

"The fact that Mr. Henry was self-represented at trial heightened rather than diminished the responsibility of the Crown to provide him with the disclosure he had a right to receive in order to make full answer and defence," Hinkson said.

O'Connor says the judge got it right.

"Everyone deserves a fair trial and access to justice even if they can't afford a lawyer," she says. "And with more individuals representing themselves, lawyers have a duty as officers of the court."