

CITATION: Schaeffer v. Woods, 2011 ONCA 116

DATE: 20110209

DOCKET: M39198, M39199, M39648, M39250 (C52414)

COURT OF APPEAL FOR ONTARIO

Sharpe, Blair and Rouleau JJ.A.

BETWEEN

Ruth Schaeffer, Evelyn Minty and Diane Pinder

Appellants (Moving Parties)

and

Police Constable Chris Woods, Acting Sergeant Mark Pullbrook,
Police Constable Graham Seguin, Julian Fantino, Commissioner
of the Ontario Provincial Police, Ian Scott, Director of the Special
Investigations Unit and Her Majesty the Queen in Right of Ontario
(Ministry of Community Safety and Correctional Services)

Defendant (Respondent)

Julian Falconer and Sunil Mathai, for the appellants

Ian Roland and Michael Ferick for Police Constable Chris Woods, Acting Sergeant Mark Pullbrook, Police Constable Graham Seguin

Christopher Diana, for Commissioner of the Ontario Provincial Police, Julian Fantino

Marlys Edwardh and Jessica Orkin, for the Director of the Special Investigation Unit, Ian Scott

Richard Macklin, for the Proposed Intervener Urban Alliance on Race Relations

Heard & released orally: February 4, 2011

Motion to quash or strike part of the Notice of Appeal; cross-motion for directions;
motion to intervene.

ENDORSEMENT

[1] The respondents represented by Mr. Roland move to strike or quash para. 2 of the Notice of Appeal requesting this court to grant the declaration sought in the Superior Court and ground 11 that the application judge erred by determining justiciability and standing without full argument on the merits of the application. The respondents submit that this court has no jurisdiction to grant the relief sought in para. 2 and that as the appellants did not appeal the application judge's refusal to defer her reserved ruling on justiciability and standing until after she heard oral argument on the merits, ground 11 should be struck.

[2] We are not persuaded that we should decide whether this court lacks jurisdiction to grant the relief sought in para. 2 of the Notice of Appeal and, taking into account all the circumstances of this case, it is our view that the issue of whether there is jurisdiction and whether it is appropriate to make the declaration sought in para. 2 should be deferred to the panel hearing this appeal. It follows that the parties must be prepared to address all issues, including the relief sought in ground 2, before the panel that hears this appeal.

[3] The motion to strike ground 11 is dismissed. This is not an appeal from the application judge's ruling, but rather, this ground raises a substantive ground of appeal relating to the justiciability and standing argument.

[4] The cross-motion to have this appeal case-managed is granted. All other claims for relief, including the proposed intervention by Urban Alliance on Race Relations are to be dealt with by the judge case managing this appeal. The time for perfection of the appeal is extended until the case-management judge has dealt with the motion to file an extended factum.

[5] The appellants are entitled to costs of the abandoned motion for security for costs and of the motion to quash the grounds of appeal fixed at \$10,000 inclusive of disbursements and applicable taxes.

“Robert J. Sharpe J.A.”

“R.A. Blair J.A.”

“Paul Rouleau J.A.”