

# COURT OF APPEAL FOR ONTARIO

CITATION: Teskey v. Canada (Attorney General), 2014 ONCA 612

DATE: 20140826

DOCKET: C57588

Blair, Pepall and Hourigan JJ.A.

BETWEEN

Bryan Teskey

Applicant (Appellant)

and

Attorney General of Canada

Respondent (Respondent in Appeal)

Bryan Teskey, in person

J. Sanderson Graham and David Aaron, for the respondent

Heard and released orally: August 22, 2014

On appeal from the order of Regional Chief Judge C.T. Hackland of the Superior Court of Justice, dated August 9, 2013.

## ENDORSEMENT

[1] Mr. Teskey is a Roman Catholic. He objects to Canada's participation in the development of a Commonwealth consensus assenting to changes proposed by the Government of the United Kingdom in the royal succession rules.

[2] The consensus was forged at a meeting of the First Ministers of 16 Commonwealth countries that recognize the Queen as their head of state in

Perth, Australia in 2011 (the Perth Agreement). The United Kingdom Government introduced a Bill to effect the changes and Canada formally provided its assent in the form of legislation that has been passed but not yet proclaimed in force.

[3] The changes to the succession rules abolish the system of male preference primogeniture and remove the provision that anyone who marries a Roman Catholic is ineligible to succeed to the monarchy. However, they do not go far enough, in Mr. Teskey's view, because they continue to preclude any person who is a Roman Catholic from succeeding to the throne. This prohibition is discriminatory and contravenes his rights and the rights of other Canadian Roman Catholics, under s. 15 of the *Canadian Charter of Rights and Freedoms*, he submits.

[4] Mr. Teskey therefore commenced an application seeking various declaratory relief, including:

- a) that *The Canada Act*, 1982, prevents Canada from consenting to the application in Canada of legislation passed by the Parliament of the United Kingdom;
- b) that changes to the succession to the Crown of Canada require substantive Canadian legislation;

c) that the Government of Canada lacked the legal capacity of consent to the Perth Agreement;

d) that all legislative provisions or rules which prohibit Catholics from ascending to the Crown of Canada are of no force and effect; and

e) that the United Kingdom's *Succession to the Crown Bill* violates s. 15 of the *Charter*.

[5] On August 9, 2013, Regional Senior Justice Hackland dismissed the application: 2013 ONSC 5046. He did so on two grounds: (1) that the application did not raise a justiciable issue; and (2) that the appellant did not have standing to bring the application. He relied heavily on the decision of Rouleau J. (as he then was) in *O'Donohue v. Canada*, [2003] O.J. No. 2764 (Ont. S.C.), which was affirmed by this Court: [2005] O.J. No. 965. In *O'Donohue*, the same succession rule was challenged on the basis that it was discriminatory and therefore violated s. 15. The application there was dismissed on the same two bases, namely, justiciability and standing.

[6] We agree with Hackland R.S.J. that Mr. Teskey's application does not raise justiciable issues and that Mr. Teskey lacked standing to bring the application. The rules of succession are a part of the fabric of the constitution of Canada and incorporated into it and therefore cannot be trumped or amended by the *Charter*, and Mr. Teskey does not have any personal interest in the issue

raised (other than being a member of the Roman Catholic faith) and does not meet the test for public interest standing.

[7] In spite of Mr. Teskey's submissions, we are not persuaded that the Crown was deemed to have admitted that he had standing because of a failure to respond to a Notice to Admit.

[8] The appeal is therefore dismissed for the reasons articulated by Hackland R.S.J., buttressed as they are by the decision of the Superior Court and this Court in *O'Donohue*. While leave to appeal costs is granted, the appeal as to costs is also dismissed. Costs of the appeal to the respondent fixed in the amount of \$10,000 all inclusive.

"R.A. Blair J.A."  
"S.E. Pepall J.A."  
"C.W. Hourigan J.A."