COURT OF APPEAL FOR ONTARIO

CITATION: Canada (Attorney General) v. M.C., 2023 ONCA 124
DATE: 20230223
DOCKET: M54033 (COA-22-CV 0431)

Sossin J.A. (Case Management Judge)

BETWEEN

His Majesty the King (Attorney General of Canada)

Applicant (Appellant)

and

M.C., C.H., D.J., B.M., and R.S.

Respondents (Respondents)

John Provart, James Schneider, and James Stuckey, for the appellant

M.C., C.H., D.J., B.M. and R.S., acting in person

J.P., for the proposed intervener

Heard: in writing

REASONS FOR DECISION

OVERVIEW

[1] By way of background, the appeal relates to the jurisdiction of the Ontario Court of Justice (OCJ) to hear a reference case under the *Firearms Act*, S.C. 1995, c. 39. In May 2020, the Governor in Council made an order changing the classification of certain firearms from “restricted” to “prohibited”. Those who had licenses to possess the newly-prohibited firearms received letters notifying

them that their licenses were no longer valid. The underlying question is whether the Order and notification letter effectively revoked the licenses of individuals who had previously valid licenses. If a license is revoked, there is a right under s. 74(1) of the *Firearms Act* to bring a reference to a provincial court judge. The applicants (respondents on appeal) in this matter launched references in the OCJ challenging the purported "revocation" of their licenses. Canada (the appellant on appeal) takes the position that the change in classification was not a "revocation", and so there is no jurisdiction for the OCJ to hear a reference. The applications judge in the decision under appeal agreed with the respondents and found that the OCJ had jurisdiction to conduct a s. 74 hearing and to make disclosure orders for any information considered relevant: *R. v. M.C. et. al.*, 2022 ONSC 6299.

[2] In this motion, J.P., a person also in receipt of the notice, but who has brought a separate s. 74 application before the OCJ, seeks to intervene in this appeal. J.P.'s s. 74 application remains pending in the OCJ in Ottawa (file number 20-30250). That application has been adjourned pending the outcome of this appeal.

[3] In his motion to intervene, J.P. argues that, having brought a similar initial s. 74 application, "but having had a very different procedural journey through the lower courts," he could bring an additional perspective to the issues as they relate to the scope of the OCJ jurisdiction on a s. 74 reference as well as the right of disclosure in a s. 74 reference hearing.

[4] Canada opposes J.P.'s motion to be added as a party, in part, on the basis that J.P. is one of a multitude of firearms owners, including the respondents, who have sought to use OCJ applications under s. 74 of the *Firearms Act,* whose perspective on the appeal would likely not be distinct from the respondents. Alternatively, Canada argues that, if granted intervention, J.P. would expand the scope of the litigation as J.P. has a demonstrated history of expanding issues and "widening the scope of controversy" in his own firearms-related litigation, wherein he unsuccessfully pursued pre-trial motions for various orders of the court.

[5] In a reply, J.P. elaborates that, if granted intervention as an added party, J.P. seeks to make submissions and argument relating to procedural fairness, and specifically in the context of a s. 74 reference hearing, "the legitimate expectations of individuals who receive notices from the Registrar and seek judicial review of those decisions." Additionally, J.P. argues that he can provide submissions on the disparate procedural treatment of similarly constituted s. 74 applications in the courts below, with the goal of ensuring that this court provides "clear guidance on the requirements of procedural fairness in the underlying applications."

ANALYSIS

[6] On a motion to intervene as an added party under r. 13.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the proposed party must show that they have an interest in the subject matter of the proceeding, may be adversely affected

by a judgment in the proceeding, or that there is a common issue of law or fact with one of the parties, and that they will not unduly delay the proceeding or prejudice the rights of the parties.

[7] The test on this motion is discretionary, and relevant considerations include the nature of the case, the issues which arise, and the likelihood that the applicant will make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

[8] I turn to address these considerations in the context of this proposed intervention.

1) Nature of the interest

[9] The rules do not require a party seeking to intervene to have a direct interest in the very issue to be decided. For example, in *Butty v. Butty* (2009), 98 O.R. (3d) 713 (C.A.), at paras. 8-10, LaForme J.A. granted a lawyer leave to intervene as a party in an appeal from a trial judge's decision that was highly critical of the lawyer's conduct during the trial because the lawyer had an interest in the subject matter of the appeal, and likely had no other practical remedy. That said, intervention is more likely to be granted where the appeal directly bears on the proposed party's legal interests, and not simply a potential or parallel legal proceeding: *McIntyre Estate v. Ontario (Attorney General)*, 2001 CanLII 7972 (Ont. C.A.), at paras. 19-21.

[10] At first glance, the proposed intervener appears to meet the threshold set out in r. 13.01. J.P. may well be adversely affected by a judgment in the proceeding given the potential impact of this decision on his dispute with Canada. This court's eventual decision on whether the OCJ has jurisdiction in this matter will impact his own s. 74 application. There is certainly a common issue of law or fact with the other responding parties on this appeal.

[11] However, J.P.'s interest in this proceeding is shared by many others who have brought s. 74 applications in relation to the notices sent by Canada. Many, if not all, of them will have their interests similarly affected by the outcome of this appeal. This kind of impact can be distinguished from the fact-specific way in which litigation may have a direct impact on a third party's substantive rights. For example, in *Buccilli v. Pillitteri*, 2014 ONCA 337, this court allowed intervention under r. 13.01 where the outcome of a dispute over a family business would have direct impact on a third-party family member who was not part of the action.

[12] The concern in this case is not whether J.P. has an interest in this appeal, as all s. 74 applicants with applications currently before provincial courts will have an interest in this appeal; rather, the issue on this motion is whether J.P. brings any additional perspective to this appeal that merits intervention as a party.

2) Exercise of discretion

[13] The test for intervention is ultimately fact-specific and discretionary. This court has held that on both rr. 13.01 and 13.02 motions, it is relevant to consider the nature of the case, the issues which arise, and the likelihood that the applicant will make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties: *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.), at para. 10. In *Jones v. Tsige* (2011), 106 O.R. (3d) 721 (C.A.), at para. 29, in considering applications to intervene under r. 13.02, Watt J.A. stated that, “In the end, a proposed intervenor must have more to offer than mere repetition of the position advanced by a party. The ‘me too’ intervention provides no assistance.”

[14] In *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 839, 148 O.R. (3d) 433, Trotter J.A. dismissed a motion to intervene by an individual whose own case, which was before the Divisional Court, raised a similar issue to that before the Court of Appeal. Trotter J.A. reasoned that granting the individual party status would effectively bypass the Divisional Court for the sake of convenience, stating, in part, at para. 17:

> Moreover, there is nothing unique about multiple cases with the same or similar issues traveling through the system at the same time, but at different levels of court. This, in itself, does not beget inconsistent judgments. To the extent that the issues in the *Tomec* and *Soares* cases are the same, the Divisional Court would be bound by the

> legal determinations made by this court, thereby avoiding inconsistent findings. Moreover, as counsel for Economical submits, there are many, many cases "in the system" that involve the same or similar issues as the one raised in Ms. Tomec's appeal. Each will have to move through the established appeal/judicial review process in due course. [Emphasis added.]

[15] Similar considerations apply in this case. While this court's decision in this appeal will no doubt impact J.P.'s s. 74 application, I cannot conclude J.P. is in a meaningfully different position than the respondents, or the other (over 50) individuals in Ontario alone who have brought s. 74 applications at the OCJ. As in *Tomec*, each of these applications will have to move through the appropriate appeal or judicial review routes in due course. To the extent J.P. has had a different experience than others who are similarly situated, granting intervention on that basis would expand the record in this appeal, and present other potential, evidentiary problems.

[16] For these reasons, J.P.'s motion for intervention as a party is dismissed.

[17] I should add, however, that nothing prevents J.P. from communicating with the self-represented respondents to ensure they are alive to the knowledge J.P. has gained from his own litigation or the issues J.P. believes ought to be raised on the appeal.

[18] I would make no order as to costs of this motion.

"L. Sossin J.A."