

COURT OF APPEAL FOR ONTARIO

DATE: 20140331
DOCKET: M43540, M43549, M43525,
M43545, M43551, M43534,
M43547 (C57714)

Feldman J.A. (In Chambers)

BETWEEN

Jennifer Tanudjaja, Janice Arsenault, Ansar Mahmood, Brian Dubourdieu, Centre
for Equality Rights in Accommodation

Applicants (Appellants)

and

The Attorney General of Canada and The Attorney General of Ontario

Respondents (Respondents)

Peter Rosenthal and Tracy Heffernan, for the appellants

Gail Sinclair and Michael H. Morris, for The Attorney General of Canada

Janet E. Minor and Shannon Chace, for The Attorney General of Ontario

Cheryl Milne, for the Asper Centre for Constitutional Rights

Molly Reynolds and Ryan Lax, for Amnesty International Canada and the
International Network for Economic, Social and Cultural Rights

Martha Jackman and Benjamin Ries, for the Charter Committee on Poverty
Issues, Pivot Legal Society and Justice for Girls

Marie Chen, for the Income Security Advocacy Centre, the ODSP Action
Coalition and the Steering Committee on Social Assistance

Renée Lang, for ARCH Disability Law Centre, The Dream Team, Canadian
HIV/AIDS Legal Network and HIV/AIDS Legal Clinic Ontario

Margaret Flynn, for the Ontario Human Rights Commission

Mary Eberts and Avvy Go, for Colour of Poverty/Colour of Change Network

Vasuda Sinha, Rahoo Agarwal and Lauren Posloski, for the Women's Legal Education and Action Fund Inc.

Heard: March 28, 2014

ENDORSEMENT

[1] These are motions brought under rule 13.02 of the *Rules of Civil Procedure* by eight organizations or coalitions of organizations for leave to intervene in the appeal of this matter, which was a judgment made on two Rule 21 motions. The judgment below struck out the claims contained in the Amended Notice of Application as disclosing no reasonable cause of action: *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410. Three of the proposed interveners were granted leave to intervene on the motions below, and the appellants and respondents consent to their intervention on the appeal (on terms). The appellants consent to the intervention of the other five proposed interveners, while the two respondents oppose their intervention.

[2] The appeal is scheduled to be heard on May 26 and 27, 2014. The appellants filed their factum on November 7, 2013 and the respondents filed their factums on January 20, 2014 (Attorney General of Canada) and February 3, 2014 (Attorney General of Ontario).

[3] I was designated by Hoy A.C.J.O. to hear and determine these motions to intervene.

[4] The application that is the subject of the appeal is brought by four individuals and an organization devoted to human rights and equality rights in housing. The application seeks a number of declarations against both levels of government, stating that they have failed to adequately address the problems of homelessness and inadequate housing, contrary to ss. 7 and 15 of the *Canadian Charter of Rights and Freedoms*. The application also seeks as a remedy an order that the two levels of government “must implement effective national and provincial strategies to reduce and eliminate homelessness and inadequate housing...”

[5] The respondents brought motions under Rule 21 of the *Rules of Civil Procedure* to strike out the claims in the application as disclosing no reasonable cause of action. The motion judge granted the motions and struck out the claims. The issue on the appeal is whether the motion judge erred in striking out the claims. It is not an appeal of the merits of the application. The motion judge considered only the pleadings as contained in the Amended Notice of Application; he did not read or consider the affidavits on which the application was based.

[6] On a motion to intervene in a *Charter* case, the onus on the moving party is more relaxed than in private law cases. The moving party usually must show that it meets at least one of the following three criteria: a) that it has a real, substantial and identifiable interest in the subject matter of the proceedings, b) that it has an important perspective distinct from the immediate parties, or c) that it is a well-recognized group with a special expertise and a broadly identifiable membership base. The proposed intervener must also show that it will make a useful contribution that outweighs any prejudice to the parties. See: *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada Ltd.* (1990), 74 O.R. (2d) 164 (C.A.), at p. 167; *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, 98 O.R. (3d) 792, at para. 2.

[7] The eight proposed interveners are the following:

1. a coalition of the Charter Committee on Poverty, Pivot Legal Society and Justice for Girls (the Charter Committee Coalition);
2. a coalition of Amnesty International Canada and the International Network for Economic, Social and Cultural Rights (the Amnesty Coalition);
3. the David Asper Centre for Constitutional Rights (the Asper Centre);
4. a coalition of ARCH Disability Law Centre, the Dream Team, Canadian HIV/AIDS Legal Network and HIV & AIDS Legal Clinic Ontario (the ARCH Coalition);

5. a coalition of the Income Security Advocacy Centre, the ODSP Action Coalition and the Steering Committee on Social Assistance (the Income Security Coalition);
6. the Colour of Poverty/Colour of Change Network (COPC);
7. the Ontario Human Rights Commission (OHRC); and
8. the Women's Legal Education and Action Fund Inc. (LEAF).

[8] Each proposed intervener filed a factum on this intervention motion and each made oral submissions as well, addressing the contribution they intend to make and how their submissions will differ in some respect from those of the appellants and from those of the other proposed interveners. As stated above, the appellants consent to all of the intervention motions. The respondents consent to the first three listed above, but oppose the intervention of the remaining five. They submit that the interveners will not add anything new to the submissions of the appellants or the submissions of the three proposed interveners to which they consent (the Charter Committee Coalition, the Amnesty Coalition and the Asper Centre).

[9] In my view, each of the interveners meets the test for the purposes of this appeal. I am satisfied that it would assist this court to have before it the different perspectives offered by these organizations. Although the appeal is not on the full merits of the *Charter* claims, because the court will consider the scope of

relief that may or may not be available under the *Charter*, taking the factual allegations in the amended application as true, the decision may discuss the extent of *Charter* rights regarding housing and homelessness in Canada. Each of the proposed organizations and their constituencies have a significant interest in what the court may say in the course of that discussion, as well as in the outcome of the appeal.

[10] The interveners are comprised of long-standing and respected organizations with valuable expertise in the areas of human rights, equality rights, constitutional law and poverty law as well as homelessness. I am satisfied that each intervener will make a useful contribution to the appeal by framing the argument from the perspective of their constituencies, and by including submissions on the potential effects on those constituencies of the different orders that the court may make.

[11] Counsel for the Attorney General of Canada expressed concern about certain international documents that the appellants and some of the interveners seek to bring to the attention of the court. The Attorney General of Canada asserts that some or all of these documents are evidence and are not properly before the court and that it will be prejudiced by having to respond to them at this stage of the proceedings. The affected interveners have assured the court that they will not refer to any document that has not already been referenced by the appellants in their factum, or discussed by the Supreme Court of Canada or this

court in other cases. It will be up to the panel hearing this appeal to decide whether it will consider any of these documents on the appeal.

Result

[12] Each of the applicants for intervener status is granted that status for the purpose of the appeal. Each may file a factum of a maximum length of 15 pages in prescribed Court of Appeal form. Each will also have 10 minutes to address the court. The appeal will now be scheduled to continue on the morning of May 28. The respondents may each file a factum responding to the interveners, if necessary, to a total maximum of 30 pages. The interveners' factums are to be filed by April 15, 2014 and the responding factums by May 2, 2014. As discussed during the hearing, the interveners may not raise arguments that seek to amend or modify the claims asserted by the appellants in their Amended Notice of Application.

K. Fedina J.A.