Court File No. 525/91

ONTARIO COURT OF JUSTICE
(GENERAL DIVISION)
DIVISIONAL COURT

STEELE J.

IN THE MATTER OF the Order P-237 of the Information and Privacy Commissioner, dated August 6, 1991
AND IN THE MATTER OF Freedom of Information and Protection Act, 1987, as amended
AND IN THE MATTER OF the Judicial Review Procedure Act, R.S.O. 1980, c. 224, as amended

B E T W E E N:	)	
	)	
JOHN DOE, JAMES DOE, JACK DOE AND GEORGE DOE	)	W. Ian C. Binnie, Q.C., for the Applicant, The Canadian Civil Liberties Association
	)	
Applicants	)	
	)	
- and -	)	Stephen T. Goudge, Q.C. and Richard Stephenson, for the Respondents, John Doe, James Doe, Jack Doe and George Doe
INFORMATION AND PRIVACY COMMISSIONER, SOLICITOR GENERAL OF ONTARIO, and THEODORE MATLOW	)	S.N. Manji, for the Information and Privacy Commissioner
	)	
Respondents	)	
	)	HEARD: November 9, 1991

STEELE J.:

This is a motion by The Canadian Civil Liberties Association ("CCLA") for leave to intervene as an added party or, in the alternative, to intervene as a friend of the court in this proceeding. The CCLA is a well recognized organization with an active interest in open government and the control of state power, including police power. It alleges that it has an interest in the subject matter of the proceeding and may be adversely affected by a judgment in the proceeding, and that it will not unduly delay or prejudice the determination of the rights of the parties. In addition, it states

that Theodore Matlow ("Matlow") has consented to it representing his interests in the application for judicial review.

The applicants, John Doe, James Doe, Jack Doe and George Doe ("the Does") oppose the motion. Counsel for the Information and Privacy Commissioner ("the Commissioner") advised the court that it would defend its order and oppose the application for judicial review, but that it may not feel free to argue all issues of law that Matlow could argue, because of possible involvement in future decisions. No one appeared for the Solicitor General of Ontario or for Matlow. Whether or not the Solicitor General will take a position on the judicial review, is not known at this time.

From the material filed, it is not entirely clear whether or not Matlow will appear on the judicial review. His affidavit states that he supports the Commissioner's order and is prepared to instruct counsel. He does not say whether those counsel are his own or those of CCLA. He states that because he is a justice of the Ontario Court of Justice (General Division), and therefore entitled to sit on the Divisional Court, to which the application for judicial review is being made, he considers it undesirable for him to litigate the matter personally, and that he would prefer the CCLA to make the representations that he would have made as the requestor to the Commission. He states that he has no unique personal interest in the outcome of the proceeding. With respect, I cannot agree with this latter submission. In my opinion, he wants the CCLA to stand in his exact position to present the case that he could make himself, and I believe that he has a strong personal interest.

The background to the judicial review application is as follows:

(1) In a criminal case over which Matlow presided, he made a finding that certain police officers of the Metropolitan Toronto Police Department had acted improperly and that some of them had lied in giving their evidence before him in court.

(2) This finding was given wide news media coverage.

(3) As a result, the Ontario Provincial Police ("OPP") conducted an investigation and it was reported in the news media that the inquiry had found no evidence of wrong doing on the part of the police officers in question.

(4) Matlow requested access to the OPP report under the Freedom of Information and Protection of Privacy Act, 1987, S.O. c. 25 ("the Act").

(5) The Commissioner, relying on s. 23 of the Act, issued an order that most of the OPP investigation report be released on the ground that the public interest outweighed the interest of privacy of the Does.

(6) On September 24, 1991, Matlow was served with a notice of application for judicial review of the Commissioner's decision in the names of the Does, who are stated to be the four police officers affected by the order.

(7) Matlow objects to being brought before the court by anonymous applicants and supports the Commissioner's order.

In my opinion, the court should treat a judge involved in his personal capacity in the same manner as any other litigant. Matlow, or any other party, once having started a procedure in motion, must either proceed or withdraw totally. He cannot ask another person to be allowed to argue his case. The judicial review in question is not a constitutional or charter matter, but the Commissioner has found it to be a public interest matter. Greater latitude is often given in public interest cases than in private cases. Notwithstanding this finding of the Commissioner, Matlow is the person with the greatest interest in the decision. He may personally learn of some matters that were not before him in evidence and will be able to compare his reasons with the reasons of the OPP report.

In my opinion, the matters to be considered on whether a person should be granted the right to intervene on a public interest basis, are: (1) the nature of the case; (2) the issues which arise; and

(3) the likelihood of the applicant being able to make a useful contribution to the resolution of the matter without causing injustice to the immediate parties.

Rule 13.01 sets out three separate grounds upon which a person may apply to intervene. In my opinion, the CCLA has no greater interest in the subject matter of the proceeding than any member of the general public. To be an interested party the person must have an actual interest in the lis between the parties. (See Re Schofield and Ministry of Commercial and Consumer Relations, 28 O.R. (2d) 764 at 769.) The CCLA has no such interest.

Another ground is that the person may be adversely affected by a judgment in the proceeding. The CCLA will not be affected in a greater way than any member of the general public. Another ground is that the CCLA must show that there exists between it and one or more of the parties a question of law or fact in common with one or more of the questions in issue in the proceeding. The CCLA has not asserted that it is involved in any other proceeding. It merely asserts a general public interest and the possibility that there may be some general effect upon it. This is not sufficient. I therefore refuse to permit the CCLA to be added as an intervenor party.

Rule 13.02 gives a wide discretion to the court to permit a person to intervene as a friend of the court to render assistance to the court by way of argument. I adopt the following headnote in Re Clarke et al. and A.G. of Canada, 81 D.L.R. (3d) 33, as being the proper principle to be applied:

> Interventions amici curiae should be restricted to those cases in which the Court is clearly in need of assistance because there is a failure to present the issues (as, for example, where one side of the argument has not been presented to the Court). Where the intervention would only serve to widen the lis between the parties or introduce a new cause of action, the intervention should not be allowed.

In my opinion, Matlow is the proper party to the application. He is capable of appearing and his mere reluctance to do so is not grounds for granting status to the CCLA. I am not satisfied that the CCLA can assist the court in any way different from the position of Matlow. In my opinion, it is Matlow who should appear and not the CCLA. He commenced the process and he has a personal

interest in the result. He should be prepared to carry the process through if he believes that the matter is important to him.

Matlow has not stated that he will not appear on the application for judicial review, and unless and until he withdraws, there is no additional perspective that the CCLA can bring to the court. The motion is premature and is dismissed, without prejudice to any new application being brought by CCLA if the circumstances should change.

No submissions were made to the court with respect to costs, and the parties may speak to me about them if they so desire. If I do not hear from the parties in writing on or before December 31, 1991, I would direct that there should be no costs.

Released: December 23, 1991 STEELE J.

* * * * *

SUPPLEMENTARY REASONS

STEELE J.:

I have received written submissions concerning costs from the parties, other than the Commissioner. The respondents were successful and costs normally follow the event. The Canadian Civil Liberties Association ("CCLA") submits that it was acting in the public interest and no costs should be awarded. While this may be true in part, it was also applying because Matlow had consented to it representing his interests. The CCLA was therefore not acting entirely in the public interest, and there is no reason why costs should not be awarded against it. An order will issue that the CCLA shall pay to the respondents forthwith a sum of $1,250 plus GST.

Released: January 13, 1992 STEELE J.