SUPREME COURT OF YUKON

Citation: *Wright v Yukon (Director of Public Safety and Investigations)*, 2021 YKSC 55

Date: 20211022
S.C. No. 20-A0113
Registry: Whitehorse

BETWEEN:

CELIA ERIN BUNBURY BAINBRIDGE WRIGHT

PETITIONER

AND

GOVERNMENT OF YUKON
(DIRECTOR OF PUBLIC SAFETY AND INVESTIGATIONS)

RESPONDENT

Before Chief Justice S.M. Duncan

Counsel for the petitioner	Vincent Larochelle
Counsel for the respondent	Kelly McGill and Amy Porteous
Counsel for the proposed intervenor	Shaunagh Stikeman

REASONS FOR DECISION
Application to Intervene

Introduction

[1] This is an application to intervene on certain terms by the Canadian Civil Liberties Association (the "CCLA") in the above-noted petition. This application was argued at the same time as the respondent Yukon government's application to dismiss for lack of standing of the petitioner. I found that the petitioner did have standing (see

2021 YKSC 54) and dismissed the Yukon government's application. As a result, I am now considering whether the CCLA can intervene.

[2] The main issue is whether the CCLA has a unique and different perspective that will assist the Court in the resolution of the issues in this constitutional challenge of a section in the *Safer Communities and Neighbourhood Act,* SY 2006, c. 7 ("*SCAN Act*").

Background

[3] The background is set out in more detail in 2021 YKSC 54, paragraphs 17 to 27. To summarize, the petitioner, Ms. Wright, after receiving a notice of termination of tenancy in December 2020 from the Director of Public Safety and Investigations under the *SCAN Act*, seeks a declaration of invalidity of s. 3(2) of the *SCAN Act* based on its infringement of her rights under s. 7 of the *Charter of Rights and Freedoms*, *Part 1 of the Constitution Act, 1982* (the "*Charter*"). Ms. Wright was given five days' notice by the Director and her landlord to vacate her residence, along with her spouse, their eight children, and all their belongings. The Director advised in the notice that his investigation gave rise to a reasonable inference that the property rented by the petitioner was being:

> … [H]abitually used for illegal activity and that this activity is adversely affecting the neighbourhood and the safety and security of one or more persons. The evidence establishes that the following specified use of the property has occurred:
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> > For the possession, production, use, consumption, sale, transfer, or exchange of, or traffic in, a controlled substance, as defined in the *Controlled Drugs and Substance Act* (Canada), in contravention of that Act.

[4] The eviction date was extended to January 30, 2021, and before that time, Ms. Wright and her landlord entered into an arrangement and she and her family moved. The Director's notice was rescinded.

[5] Ms. Wright argues in her petition that s. 3 of the *SCAN Act* operates in a way that deprives her of her right to liberty and security of the person, and is not in accordance with the principles of fundamental justice. Further, s. 3 of *SCAN Act* lacks procedural fairness so is not in accordance with the procedural principles of fundamental justice under s. 7.

Law of Intervenor Status

[6] This Court in *Frost v Blake*, 2021 YKSC 29 ("*Frost*") at paras. 17-20, set out the test for granting intervenor status as follows:

(a) the Court will grant leave to intervene where the decision in the litigation will have a direct impact on the applicant; or

(b) the Court will grant leave to intervene where the applicant shows they are particularly well-placed to assist the court by providing a special perspective on an issue of public importance.

[7] In this case, the CCLA bases its application to intervene on the second ground.

[8] Factors to consider in determining an application to intervene include:

(a) Does the proposed intervenor have a broad representative base?

(b) Does the case legitimately engage the proposed intervenor's interests in the public law issue raised?

(c) Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?

(d) Does the proposed intervenor seek to expand the scope of the proceedings by raising issues not raised by the parties? (*Frost*, para. 19, adopting *Snaw-Naw-As First Nation v Canada (Attorney General)*, 2021 BCCA 89, ("*Snaw-Naw-As*")).

Application of the Factors to the CCLA in this case

[9] There is no dispute that the first two factors are met by the CCLA in the circumstances of this case. Further, it appears from the CCLA application materials that the issues they seek to raise do not extend the scope beyond those raised by the parties. The main factor for this Court to consider is whether the CCLA will offer a different and unique perspective that will assist the Court. I will briefly review the other three factors and focus on the disputed one.

Broad representative base

[10] It is not contested that the CCLA has a national base of several thousand supporters who have a variety of occupations and interests.

Engagement of the CCLA's interests in the public law issue raised

[11] The CCLA was formed in 1964 with the objective of promoting respect for and observance of fundamental human rights and civil liberties. The CCLA's major objectives include the promotion and legal protection of individual freedom and dignity against unreasonable invasion by public authority.

[12] The issue raised by the petition is the scope of protection provided by s. 7 of the *Charter* in the context of individuals subject to s. 3 of the *SCAN Act*. This issue engages the interests of the CCLA in arguing for and defending the rights of individuals where they may be affected by actions of the state. The CCLA has participated in over 240

court cases, 31 of them at the trial court level, and many of which involved argument on s. 7 of the *Charter*.

[13] I agree that the public interest issues raised in this case engage the CCLA's interests.

Unique and different perspective and expansion of proceedings

[14] The proposed arguments of the CCLA are summarized as:

(a) situating the termination of a tenancy by a government official on receipt of a complaint under the *SCAN Act* within the range of liberty interests protected by s. 7, as set out in the s. 7 jurisprudence; and

(b) the operation of the *SCAN Act* disproportionately affects persons suffering from systemic social disadvantage; that is, marginalized and/or racialized groups who are often most in need of *Charter* protection.

[15] The CCLA states that its expertise with s. 7 jurisprudence as well as its proposed focus on the systemic impacts of the SCAN legislation will assist the Court. Its submissions will be distinct from those of Ms. Wright, who will be arguing from the context of the impact of the impugned legislation on her and those like her. The CCLA will assist the Court by making linkages with other legislation across the country, and by providing a broader and deeper analysis of the s. 7 liberty interests, beyond the individual concerns in this case.

[16] The Yukon government argues that the CCLA will not be providing a distinct perspective. Ms. Wright has argued that she is a public interest litigant in part because she is a member of a First Nation and therefore has a cultural identification with Indigenous people, who are over-represented in the criminal justice system. The Yukon

government says the CCLA's intention to advance the perspective of systemically disadvantaged groups, including Indigenous people, means there will be redundancy and repetition of Ms. Wright's submissions. The Yukon government also argues the CCLA and Ms. Wright are both seeking an expanded definition of liberty interests protected by s. 7 of the *Charter*. Once again, the similar position of each on this issue will lead to repetition, which is not in the interests of the Court or the public.

[17] I am mindful of the limitations on granting public interest intervenor status summarized in *Snaw-Naw-As* at para. 21, quoting from *Equustek Solutions Inc v Google Inc*, 2014 BCCA 448 at para. 8:

> [21] …
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> > Where the intervention is on the basis of public interest, the Court is not concerned with fairness to the intervenor, but rather with the comprehensiveness of the resources available to it on the appeal. Its concern will be with the advisability of obtaining submissions that go beyond those that the parties can effectively make. In allowing persons to intervene on this second basis, the Court is attempting to ensure that important points of view are not overlooked. Intervenors on this basis must demonstrate that it is in the Court's interest (or, more broadly, in the public interest), rather than their own, for them to be heard. [Emphasis added].
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> [22] While an intervenor's submission may support one party's position, the intervenor's role is not to support the position of a party. Rather, its role is to make principled submissions on pertinent points of law: see *Araya v. Nevsun Resources Ltd.*, 2017 BCCA 402 at para. 12 (Chambers). Repetition is to be avoided and the appeal must remain focussed on the issues raised by the parties: *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, 2012 BCCA 330 at para. 32 (Chambers); *British Columbia Civil Liberties Association* at para. 14.

[18] Here, while counsel for the CCLA argued that the CCLA is neutral and will not be supporting either party, it is clear from the CCLA objectives as they describe them as well as their summary of proposed submissions that their intervention will be supportive of the legal position of Ms. Wright. Counsel for Ms. Wright conceded that possibility when he argued that even if an intervenor supported one party, intervention is not precluded. The test is whether the intervenor's participation will be helpful to the Court.

[19] While I share the concerns of the Yukon government that there is a risk of repetitive submissions by the CCLA if they intervene, I am of the view these concerns can be managed by imposing restrictions as well as by relying on the extensive experience of the CCLA as an intervenor and their evident appreciation of their role.

[20] The CCLA has persuaded me that their national base and involvement with challenging a variety of legislation under s. 7 at all levels of court, as well as their experience with arguing on behalf of affected individuals in Canadian society from a diversity of backgrounds, will assist me in deciding the issues raised by Ms. Wright. The CCLA perspective gained from their participation in litigating s. 7 in different contexts may add to the Court's understanding of the scope and limitations of s. 7. While Ms. Wright has been granted public interest standing, the unusual situation of her former private interest standing combined with her membership in a First Nation will necessarily focus her submissions in these areas. The CCLA will be able to make submissions about the broader systemic impact of infringements of s. 7 rights, including the principles of fundamental justice, thereby increasing the perspectives for the Court to consider.

[21] It does not appear from the proposed submissions of the CCLA that they intend to expand the scope of the proceedings. Yukon government does not argue this point: indeed, it would contradict their position that CCLA submissions will be repetitive of Ms. Wright's submissions. The CCLA proposed submissions appear to be within the issues raised by Ms. Wright.

Conclusion

[22] The CCLA is granted leave to intervene. The style of cause shall be amended accordingly.

[23] The CCLA shall not file any evidence in this proceeding.

[24] The Yukon government has not yet provided its response to the petition. No evidence on the merits has been filed. The litigation is at an early stage. There will be a brief case management conference after the Yukon government's response and the evidence of both parties is filed, to determine the limitations on the length of the CCLA's written submissions and whether oral submissions will be permitted.

[25] The CCLA shall avoid duplication of any of the arguments advanced by the petitioner or the Yukon government.

[26] The CCLA shall not be entitled to or liable for costs and shall have no right of appeal of the Court's decision on the merits in this matter.

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DUNCAN C.J.