

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
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HIS MAJESTY THE KING)	Y. Khan & A. Newman, for the Crown
)	
– and –)	
)	
J. P.)	Appellant, Self-Represented
)	
Appellant)	
)	
)	
)	
)	HEARD: February 13, and 26, 2024

REASONS FOR DECISION

PARFETT J.

[1] This matter is a request for summary dismissal of an appeal from the decision of the Ontario Court of Justice (OCJ) dismissing the Appellant’s application pursuant to s. 74 of the *Firearms Act*.¹

Preliminary matter

[2] On consent of both parties, there is agreement that the Appellant will be identified only by his initials.

¹ S.C. 1995, c. 39.

Background

[3] The Appellant (Respondent on this motion) brought an application pursuant to s. 74 of the *Firearms Act* for a review of the Firearms Registrar's alleged decision to revoke his Firearms Registration Certificate.

[4] On May 1, 2020, the Federal Government amended the regulations under the *Firearms Act*, reclassifying certain firearms from restricted to prohibited. A notice was sent out by the Registrar informing all owners of the relevant firearms that their firearms were now prohibited.

[5] A series of applications for review were brought by gun owners across the province of Ontario, including the one that is the subject of this appeal.

[6] The Attorney-General of Canada (AGC) disputed the jurisdiction of the OCJ to hear these applications.

Procedural History

[7] In the present case, an application for summary dismissal due to lack of jurisdiction was heard on May 9, 2021, in the OCJ. At that time, the judge declined to dismiss the application noting that,

The onus is on the applicants to establish both that this Court has jurisdiction and that, if the Registrar did make a decision to revoke their certificates, which this Court can review under s. 74 that that decision was not justified.²

[8] Pre-trial motions were heard by the Ontario Court of Justice on July 26, 2022. The Appellant was seeking disclosure and the AGC was again disputing the OCJ's jurisdiction to hear the application.

[9] The hearing judge identified the issues before her as follows:

² *J.P. v. AGC*, unreported decision re Ottawa file 20-30250 released May 9, 2021 at para. 20 (OCJ).

1. Did the Registrar revoke the firearm registration issued to the Applicant, thereby triggering the right of the Applicant to apply for a reference pursuant to s. 74 of the *Firearms Act*?
2. If the answer is yes, did the Registrar properly exercise its discretion? In this case, no individualized assessment was done, therefore, this would require an analysis of the effect of the amendments re-classifying firearms from the status of ‘restricted’ to ‘prohibited’ firearm.³

[10] Having defined the issues in the above manner, the hearing judge did not grant the Appellant’s disclosure request, excluded two of his affidavits and excised portions of his own affidavit.

[11] In December 2022, the Appellant asked the court to adjourn the hearing dates pending the release of the Ontario Court of Appeal decision in *AGC v. M.C.*⁴ as it was anticipated that the court would deal with the issue of jurisdiction. That request was granted.⁵

[12] On June 30, 2023, the AGC brought a further motion for summary dismissal. The Ontario Court of Appeal decision in *AGC v. M.C* had just been released dealing with the jurisdictional issue.⁶ The Appellant argued that his situation was factually distinguishable from the situation in the *M.C.* case and therefore, it did not apply.

[13] The hearing judge dismissed the Appellant’s application stating the following:

I think the Court of Appeal is indicating to the trial judge faced with the issue of jurisdiction that we do not have jurisdiction.... The Court of Appeal does not reiterate or confirm Justice Doody’s decision that this issue is one of [mixed] fact and law. At para. 22, the Court is clear:

The Respondents’ registration certificates became invalid by operation of law. It was not as a result of any function performed by the Registrar.

³ *J.P. v. AGC*, unreported decision re Ottawa file 20-30250 released July 27, 2022 at para. 24 (OCJ).

⁴ *His Majesty the King (Attorney General of Canada) v MC et al*, 2023 ONCA 448.

⁵ Transcript of ruling of Dorval, J released December 14, 2022 at pp. 4.

⁶ 2023 ONCA 448.

No matter what evidence...was before the Court of Appeal, the Court of Appeal arrives at a conclusion that this was not a function performed by the Registrar. And further quotes, “it was a statutory change that impacted an entire class of individuals, owners of certain types of firearms”. I continue quoting:

Such a decision is not caught by Section 74 of the *Firearms Act*. Consequently, in these circumstances there is nothing to confirm, cancel, review or consider under s. 74 of the *Firearms Act*.... In other words, there is no jurisdiction.

(...)

A change in the law nullified the respondents’ registration certificates. The Registrar was merely the messenger. The reference judge had no jurisdiction to conduct a hearing under s. 74 of the *Firearms Act*, nor to make any other orders, including the disclosure order.

So in my view, I have no jurisdiction and that is the end of the matter.⁷

[14] The Appellant now appeals from that decision and requests that the matter be remitted to the OCJ for a hearing. The AGC has brought this motion for summary dismissal arguing that the Ontario Court of Appeal has ruled on the issue of jurisdiction and consequently, the Appellant’s appeal has no chance of success.

Analysis

[15] The test on an application for summary dismissal in a criminal matter is set out in *R. v. Haevischer*.⁸ It states,

[A]n application in a criminal proceeding, including for stay of proceedings for abuse of process, should only be summarily dismissed if the application is ‘manifestly frivolous’. This threshold best preserves fair trials, protects the accused’s right to full answer and defence, and ensures efficient court proceedings.⁹

⁷ Transcript of ruling of Dorval, J released June 30, 2023 at pp. 8-10, citing *AGC v. M.C. et al*, 2023 ONCA 448 at paras. 22 & 24.

⁸ 2023 SCC 11.

⁹ At para. 3.

[16] In the context of a civil proceeding, the Supreme Court of Canada has held that a summary dismissal is appropriate if “‘it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action’ or, alternatively phrased, if the claim has no reasonable prospect of success.”¹⁰

[17] The parties in this present hearing do not agree whether this matter is criminal or civil in nature. The AGC argued that it was a civil matter, relying on the decision in *Crukley, et al, v. Attorney-General of Canada (Registrar of Firearms)*¹¹. The Appellant maintained the same position as the Appellants in the *Crukley* matter did – that the *Firearms Act* is enacted as criminal law and therefore, that this appeal was fundamentally criminal in nature.

[18] In the *Haevischer* decision, the Supreme Court notes that the purpose behind summary dismissals and/or summary judgments in civil matters is essentially the same for summary dismissal of criminal matters, that is to say, to promote efficiency and to weed out unmeritorious claims.¹² However, this decision also cautions, that in criminal matters where an accused’s right to full answer and defence is at issue, care must be taken not to prematurely dismiss a claim, particularly where that claim is novel or close to the line.¹³

[19] I did not rule on the issue of whether this matter was civil or criminal in nature because it was not required in this case. Whether the civil standard relating to summary dismissal or the more restrictive criminal standard is used, the result would be the same.

[20] The Appellant argued, much as he had in the OCJ, that his case is different from those dealt with in the *M.C.* case and therefore, that case has no application to his situation.

¹⁰ At para. 48.

¹¹ Unreported decision re Brockville files 22-0153, 22-0155, 22-0152, 22-0154 released November 21, 2022 (OCJ)

¹² *Haevischer* at paras. 48-49.

¹³ At para. 55.

[21] He argued more specifically that the letter he received was different from the ones in the *M.C.* case in that it was written to him, and the firearms listed in that letter were different from those listed in the letters cited in the *M.C.* case.

[22] He stated he was not taking the position that the Registrar's letter was a revocation. Instead, he agrees that the letter was informational only.

[23] Finally, he argued that Justice Doody in his decision had indicated that the OCJ did have jurisdiction to hear the matter and that, consequently, Justice Dorval should not have summarily dismissed the case without a hearing on the merits. Furthermore, he stated that it was procedurally unfair not to hear the matter on a full evidentiary record.

[24] I disagree with the Appellant on all points.

[25] The Appellant's case is virtually identical to the situation in the *M.C.* case. The letter sent out by the Registrar to owners of affected firearms was a form letter. The fact that the name on the letter or the listed firearms differed from owner to owner does not change my conclusion that the substance of the letter was identical.

[26] The fact the Appellant concedes that his letter was not a revocation and was purely informational serves to reinforce the extent to which this case and the *M.C.* case are fundamentally, the same.

[27] As noted earlier in this decision, Justice Doody did not rule that the OCJ had jurisdiction to hear the s. 74 *Firearms Act* application. Instead, he ruled that jurisdiction was a live issue in the case and would have to be decided before the applicants could proceed to the substance of the application.

[28] Finally, there is no procedural unfairness engaged in this matter by not having a more substantial evidentiary record. No amount of further evidence is going to change the reality of the situation. As noted in the *M.C.* decision, the letter sent to firearms owners was not a revocation and consequently, the OCJ does not have jurisdiction to hear the matter.

[29] This appeal has no chance of success. A further hearing in the OCJ has no chance of success. The process of summary dismissal was created for precisely this type of case – one that has no possibility of success regardless of how much time and effort is spent on the matter.

[30] This appeal is dismissed.

Released: March 27, 2024

Parfett J.

CITATION: R. v. J.P., 2024 ONSC 1822
COURT FILE NO.: CR-20-30250 – AP
DATE: 2024/03/27

ONTARIO

SUPERIOR COURT OF JUSTICE

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– and –

J. P.

Appellant

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