Neutral Citation Number: [2006] IEHC 392

THE HIGH COURT

[2006 No. 4427 P]

BETWEEN

CHRIS FITZPATRICK AND JOHN RYAN

PLAINTIFFS

AND
F.K. AND THE ATTORNEY GENERAL

DEFENDANT

Judgment of Mr. Justice Clarke delivered the 7th December, 2006.

1. Introduction

1.1 The substantive proceedings in this case arise out of very difficult circumstances which arose at the Coombe Womens Hospital in September last. The plaintiffs ("the Hospital") are respectively the Master and the Secretary Manager of the Hospital and sue in that capacity. The first named defendant ("Ms. K.") was, at that time, a patient of the hospital who, it would appear, suffered a massive haemorrhage shortly after delivering a child. Ms. K. is a Jehovah's Witness and as such, it would appear, declined to accept a transfusion. In those difficult circumstances the hospital applied to this court seeking an order which would permit the hospital to administer to Ms. K. "all appropriate medical treatment and other ancillary procedures including blood transfusion and clotting agents". The hospital also sought to be authorised to take all appropriate steps including restraint of Ms. K. to enable it to administer the relevant treatment. It would appear that the circumstances surrounding the application were such that there was a real risk that Ms. K. would die if treatment was not administered in very early course. In those circumstances this court (Abbott J.) considered an *ex parte* application made on behalf of the hospital and made the order sought.

1.2 The proceedings continue and raise very important questions concerning, on the one hand, the entitlement of Ms. K., in accordance with her religious beliefs, to refuse treatment which is inconsistent with those beliefs and, on the other hand, the obligations of the hospital, this court, and the State, to safeguard Ms. K's right to life together with similar rights asserted in relation to her child and family. It is in the context of those issues arising in the proceedings that the Watch Tower Bible and Tract Society of Ireland ("the Society") has sought to be joined in these proceedings. The Society is the legal body that represents Jevovah's Witnesses in Ireland. In its initial application the Society sought to be joined either as a co-defendant or as a notice party. In the course of argument the possibility that it might be appropriate to join the Society as an *amicus curiae* also arose. This judgment is directed towards those issues.

2. Procedural History

2.1 As indicated above, the original application brought on behalf of the Society sought the joinder of the Society as either a co-defendant or a notice party. At the hearing of the motion that application was resisted on behalf of the hospital. Counsel for the Attorney General adopted a neutral position. The matter was left to stand for a small number of days to enable certain factual matters to be clarified. When the matter resumed, the question as to whether it might be appropriate, in the alternative, that the Society be joined as an *amicus curiae* was also debated. I then reserved judgment. While I was in the course of considering the issues, the Supreme Court delivered its judgment in *Doherty v. South Dublin County Council* (Unreported, Supreme Court, 31st October, 2006 Fennelly, Macken JJ.). In the light of that judgment I listed the matter for further submission and, in so doing, invited counsel for the Attorney General to take instructions as to whether the Attorney wished, despite his general neutral position, to offer any submissions in relation to the question of whether it would be appropriate to join the Society as an *amicus curiae*. At the subsequent hearing both the hospital and the Attorney General submitted that it would not be appropriate to join the Society in that capacity. In so doing the Attorney General maintained his neutral position in respect of the other aspects of the joinder application.

2.2 This judgment is, therefore, directed to the question of whether it is appropriate, in all the circumstances, to join the Society in any of the capacities to which I have referred. I propose dealing first with the question of whether it is appropriate to join the Society as a party to the proceedings either as a co-defendant or as a notice party.

3. The Society as a Party?

3.1 The factual basis put forward by the Society for suggesting that it should be joined as a party is to be found principally in an affidavit of Arthur Matthews who is a member of the branch committee of the Society. He draws attention to the fact that there are more than 5,000 Jehovah's Witnesses in Ireland and, for the reasons which he sets out in his affidavit, the interpretation placed by Jehovah's Witnesses on certain aspects of the new testament leads them to the view that there is a prohibition on the taking of blood into their bodies which includes a prohibition on the acceptance of the transfusion of blood and other related blood products. In those circumstances, it is said, these proceedings have the potential to affect all Jehovah's Witnesses, raising, as they do, the balance between freedom of religion and conscience on the one hand and the State's obligations to protect life family and like rights on the other hand.

3.2 In legal argument counsel for the Society made the point that the declaratory relief sought in these proceedings is, he contends, wide and has the potential to far transcend the facts of Ms. K's case. In those circumstances it is contended that the Society has a legitimate interest in the outcome of the proceedings which it is entitled to protect by being joined as a party. The substantive declaratory reliefs which are sought are as follows:-

> 1. An order (including, if necessary, an interim and interlocutory order) authorising the Plaintiffs in their capacity as representatives of the Coombe Women's Hospital (and such medical consultants, doctors, midwives, nurses and other medical employees of the Hospital as they shall authorise) to administer to the First Named Defendant (including, where necessary, such reasonable restraints as may be appropriate or necessary) all medically appropriate treatment (including the administration and supply of blood and clotting agents by transfusion and otherwise) as they consider necessary to safeguard her life, health and general welfare.
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> 2. A declaration that the Hospital was and is entitled to apply to this Honourable Court for the aforesaid order or orders by virtue of the provisions of Article 40.3.1, Article 40.3.2, Article 41 and Article 42.5 of the Constitution of Ireland.
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> 3. A declaration that this Honourable Court was and is entitled and/or obliged to grant the aforesaid relief by virtue of the provisions of Article 40.3.1, Article 40.3.2, Article 41 and Article 42.5 of the Constitution of Ireland.
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> 4. A declaration that the First Named Defendant's constitutional right to freedom of conscience and the free practice of religion under Article 44.2.1 of the Constitution does not extend to enabling her to decline appropriate medical treatment

of the kind described at paragraph 1.

5. In the alternative, a declaration that the First Defendant's rights under Article 44.2.1 of the Constitution must yield to the State's obligations under Article 40.3.1, Article 40.3.2, Article 41 and Article 42.5.

3.3 That the Society has an interest, in the colloquial sense of the word, in the proceedings, cannot be doubted. The proceedings raise an issue which is likely to be of significant relevance to all members of the Society. However that, of itself, does not seem to me to be sufficient. There are very many issues which arise in the courts which have the capability to be of interest, in the colloquial sense, to those of differing religious beliefs and to those whose ethical or moral viewpoint may not be founded upon religion. The courts have, particularly over the last number of decades, had to deal with a great number of difficult ethical and moral issues. Many persons would have had an "interest" in that colloquial sense in the outcome of those proceedings. Even viewed more narrowly many would have had the potential to be effected indirectly in some personal way by the decisions which the court was required to make on the issues concerned. That fact does not, in my view, of itself, entitle such persons to be joined in proceedings.

3.4 It is important, in analysing the circumstances in which it is appropriate join parties, to distinguish between what counsel for the hospital described as "precedental interest" in the outcome of proceedings on the one hand and what might, properly, be called a "direct interest" on the other hand. There may be many persons who may have a "precedental interest" in the outcome of a particular set of proceedings. Such interest can arise in a whole range of areas of the law. For example a person may have been charged with a criminal offence. Legal issues might arise in respect of the proper interpretation of statute or common law relative to that offence. Indeed questions as to the constitutionality of the offence might arise or analogous questions concerning the appropriate construction of a statue having regard to constitutionally guaranteed rights may require to be determined. However such issues may well be due to be determined in another case which is at an advanced stage of completion. It has never been suggested, nor could it, in my view, be suggested, that all of the persons whose own criminal trial might be affected one way or the other by the outcome of the first proceedings to come to completion, are entitled to be heard in those first proceedings. No legal system could operate if every person who might have a similar point to make could, no matter what stage proceedings involving them were at, intervene in more advanced proceedings simply on the basis that the decision in those proceedings might have a precedental value which could adversely affect their interests in some subsequent litigation. The mere fact, therefore, that the decision in one case may have value as a precedent which can affect subsequent cases cannot, in my view, justify joining parties who might be affected by that precedent in the case in which the precedent may well be set. The sort of "interest" that a party must have in order for it to be proper to join that party must be a more direct interest.

3.5 In ordinary litigation it is difficult to see how it can be said that a party can be properly regarded as being required to be a *defendant* in proceedings unless some relief is claimed as against that party or where the relief claimed, if granted, would *directly* interfere with that party's interests. Therefore persons may be entitled to be involved as a party in proceedings in which, for example, identifiable assets might be sold by order of the court where such party claims an interest in the relevant asset and where the court order, if made would, as a necessary consequence, affect that party's interests. The review by Finnegan P. in *O'Brien v. PIAB* [2005] 3 I.R. 328, of the circumstances in which it is possible for a party to intervene because of having such an interest is of relevance in that context. In each of the cases mentioned the party seeking to intervene must establish a *direct* interest in the very subject matter of the litigation.

3.6 In similar vein the courts have consistently held that a plaintiff is not obliged to join as a co-defendant a person whom it does not wish to sue, even where it may be possible, or even likely, that in the course of reaching conclusions against the person sued, the court may have to make findings of fact which could, on one view, affect the reputation of the person concerned. *Inter partes* litigation is about obtaining orders which affect the rights and obligations of the person suing and the person sued. The fact that there may be collateral consequences for others has not persuaded the courts that it is appropriate to join those others. See for example *Barlow v. Fanning* [2002] 2 I.R. 593.

3.7 A somewhat different approach has, on occasion, been taken in relation to public law litigation. See for example, *BUPA v. The Minister for Health* [2005] IESC 80 and *Spin Communications v. Independent Radio and Television Commission* (Unreported, Supreme Court, 14 April, 2000, Keane C.J). The rationale for such a different approach, as is apparent from the judgment in BUPA, is that in the field of public law remedies there may well be persons who are not, strictly speaking, appropriately named as respondents but who may, nonetheless, have a direct interest in the matter at issue. For example a person who seeks to have quashed a conviction by a District Judge in a criminal matter will name the District Judge as respondent for it is the order of the District Judge that he seeks to quash. However it hardly needs to be said that the relevant prosecuting authority, at whose instigation the criminal process was commenced, is also entitled to be heard most normally as a notice party. In many other cases where a public authority makes a decision in a process which can, loosely, be described as either adversarial or approximating thereto, the court will normally require that the other party to the process will be given an opportunity to be heard. The more directly that the process is analogous to an adversarial one, the more likely it will be that the court will feel that it is necessary that the "other side" to a decision sought to be quashed or otherwise interfered with will be joined at least as a notice party.

3.8 However that wider discretion (which is, indeed, reflected in the Rules of the Superior Courts in relation to judicial review-Order 84 Rules 22(2) and (6) require service on person "directly affected") does not, it seems to me, stem from any difference in principle between public law litigation and private litigation. Rather it stems from the fact that a wider range of persons may well have a direct interest in the result of public law litigation.

3.9 Therefore it seems to me that in each of the cases where the courts have taken the view that is appropriate to join additional parties against the wishes of the plaintiff or applicant, those parties must be able to establish a direct interest in the actual subject matter of the case rather than an interest which derives from the fact that the result of the case may have value as a precedent which could, in turn, affect other similar litigation.

3.10 It does not seem to me that this case has any direct effect on the Society. There can be no doubt that the members of the Society could, potentially, be affected by the result of this case in the sense that if this court (or, on appeal, the Supreme Court) lays down any general principles for the approach to the balancing of the competing rights in this case, those general principles could influence future decisions involving members of the Society. However that seems to me to be a "precedental interest" rather than a direct interest.

3.11 One further issue urged on behalf of the Society concerns the fact that the declaratory relief sought appears to be couched in relatively wide terms and, it is said, therefore raises issues which go beyond the facts of this individual case. Whatever may, or may not, be the appropriate construction of the claim for declaratory relief made by the hospital, it seems to me that there are strong grounds for believing that this court would consider itself constrained in the conclusions which it could reach (and therefore the declarations which it could give) by the facts of this case. It will, of course, be a matter for the judge trying the case to decide

these issues. Therefore anything which I say in relation to them should not be taken as a finding in the proceedings. However it seems to me that there is a strong argument for the proposition that the constitutional doctrine of standing works in both directions. That doctrine, as developed since *Cahill v. Sutton* [1980] IR 269, makes clear, in the words of Henchy J., that a person will not normally be permitted "to make another man's case". It is, of course, normally the case that, in the ordinary way, constitutional proceedings are brought by individuals or groups of individuals against the State or its agencies asserting that, in some respect, either administrative action taken or, indeed legislation, has been in breach of constitutionally guaranteed entitlements. In those circumstances standing rules require that in order to be able to bring such an action the person concerned will, normally, have to show that they are directly affected by the measures sought to be challenged.

3.12 Where, however, as here, the proceedings are brought as against a private individual, it is arguable that those bringing the proceedings will be likewise constrained to only seek relief which arises out of the circumstances of the case involving that individual. There may well, therefore, be grounds for believing that this court would be unlikely to grant any declaratory relief which went beyond the issues which directly arise on the facts of this case. Just as a person may lack standing to make another person's case, so also, it may well be that a person cannot construct a case against one person and thereby obtain declaratory orders that would only arise in another person's case.

3.13 In saying that I should make it clear that even if such a principle finds favour with the court of trial that would, in no way, prevent the court from expressing its views on whatever general principles might be applicable and as would be necessary to determine, on the facts of this case, the issues which arise. That is no more than the ordinary process of judicial interpretation of the law and precedent which applies in the common law world. Where necessary the court may be required to consider issues of general principle which have not, as yet, been the subject of judicial determination, in order that it can apply those principles to the facts of an individual case. Those general principles may well have precedent value in other cases. It will, however, always be open to a party to any subsequent litigation to attempt to persuade the court that distinguishing features apply or that the general principles should be refined in the light of experience so as to give rise to a different result in a subsequent case.

3.14 It may well, however, be that in terms of the formal orders which might be made, the court would feel itself constrained to dealing with the facts of this case. The fact that the reasoning by which the court might come to a conclusion that it should make those specific orders derived in part from general principles, might lead the court to express those general principles and lead in turn to the principles so expressed having precedental value in future similar litigation. The effect on any such future litigation would, however, only be indirect.

3.15 I am not, therefore, satisfied that it is clear that any direct effect of the type which I have identified would apply to the Society in these proceedings and I am not, therefore, satisfied that the Society has the type of direct interest which would justify it being joined as a party.

3.16 Indeed it was the very fact that the submission which, it appeared, the Society wished to make appeared to be more in the nature of general observations on the issues raised that lead to a debate concerning whether it might be more appropriate in the circumstances to consider whether it might be appropriate to allow the Society to be joined as an *amicus curiae*. I now turn to that issue.

4. The Society as *Amicus Curiae*

4.1 That there is a general jurisdiction in the court to join a person or body as an *amicus curiae* is clear from *H.I. v. Minister for Justice Equality and Law Reform* [2003] I.R. 197 where the application of the United Nations High Commissioner for Refugees to be joined as an *amicus curiae* in proceedings involving asylum and refugee issues was acceded to.

4.2 In similar vein the President of this court joined the Law Society as an amicus in *O'Brien v. PIAB* [2005] 3 I.R. 328 and the Equality Authority was joined in *Doherty*.

4.3 The principal issue which was the subject of debate in the Supreme Court appeal against joindure in *Doherty* concerned a question as to whether the Equality Authority, being a creature of statute, had power to become an amicus curiae in general court proceedings. While in a minority on that issue the comments of Macken J. as to the principles to be applied, in general terms, in considering whether it is appropriate to join a party as an *amicus curiae* are, in my view, of considerable relevance to this case.

4.4 That the discretion to join a party as *amicus curiae* is a general one to be applied by the court in the light of all the circumstances of the case cannot be doubted since the decision of the Supreme Court in *H.I.* However the development of the principles by reference to which that discretion should be exercised remains at an early stage.

4.5 For the reasons identified by Macken J. in the course of her judgment in *Doherty* it seems clear that amongst the important factors to be taken into account are:-

> (a) whether the proposed *amicus curiae* might be reasonably said to be partisan or, on the other hand, to be largely neutral and in a position to bring to bear expertise in respect of an area which might not otherwise be available to the court; and
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> (b) the stage which had been reached in the proceedings with particular reference to a distinction between trial courts and appellate courts.

4.6 In addition it seems to me that a factor of particular importance should be the extent to which it may be reasonable to assume that the addition of the party concerned as an *amicus curiae* might be said to bring to bear on the legal debate before the courts on an issue of significant public importance, a perspective which might not otherwise be placed before the court. In similar vein it seems to me appropriate for the court to consider whether there is a risk that an issue of significant public importance might be debated in circumstances where there may not be an equality of arms.

4.7 The first of the two criteria identified by Macken J. in *Doherty* concerns the distinction between a partisan and a neutral *amicus curiae*. As is noted in her judgment, the courts in other common law jurisdictions, which have developed principles in respect of the criteria to be applied in allowing parties to be joined as *amicus curiae*, have, to an extent, moved away from the principle that such parties should be entirely neutral and have permitted, in certain circumstances, parties to be appointed who could be expected to adopt a partisan role in the proceedings. However that is not to say that the role likely to be played is not, nonetheless, an important factor to be taken into account. It was pointed out by counsel for the hospital and, in particular, counsel for the Attorney General, that the bodies who have been appointed in this jurisdiction have been public bodies charged either under statute or otherwise with a public role. The role of the Equality Authority speaks for itself. Similarly the United Nations High Commissioner for Refugees is charged

with international public obligations under the United Nations Treaties. The reason why Finnegan P. was persuaded to join the Law Society in *O'Brien* stemmed from the public role of the Law Society under its legislation as regulator of the solicitors profession.

4.8 I am not persuaded that the joining of *amicus curiae* is confined to such bodies. However it seems to me that the fact that the body seeking to be joined is charged in either domestic or international law with a public role in the area which is the subject of the litigation concerned is a factor of some significance to be taken into account.

4.9 In the context of this application the Society does not suggest that it would not adopt a partisan position. It should be acknowledged that in so doing the Society would not be acting out of a narrow sectional interest but would be seeking to protect what it sees as the entitlements of the adherents to its religious outlook. It should not, in those circumstances, be classified as being in anyway meddlesome in proceedings which were none of its business. On the other hand its position could not be said to be as strong as that of a party which was either entirely neutral or one whose intervention, though partisan, was on foot of a perceived domestic or international public law obligation.

4.10 The second criteria identified by Macken J. concerns the stage that the proceedings are at as of the time when the application to join is made. It seems clear from the authorities cited (and indeed from *H.I.* itself) that an *amicus curiae* will more readily be joined at the stage of a final appellate court. The reasons for this are obvious. Proceedings at trial are likely to involve significant issues concerning the facts of the individual case. Even where a case may be said to be a "test case" where it may be likely that general principles will be defined, nonetheless the jurisprudence of the courts in this jurisdiction make it clear that issues of constitutional importance are only likely to be decided when it is necessary on the facts to decide them. The extent to which it may become necessary to decide issues of principle in any particular case will depends on the facts of that case. Questions of the standing of a claimant or, indeed, the possibility of the application of a "reverse standing" test as identified above (see para. 3.12) will inevitably focus on the facts of an individual case.

4.11 It is obvious, therefore, that an *amicus* should not be permitted to involve itself in the specific facts of an individual case. It is only after those facts have been determined that the extent to which issues of general importance may remain for decision will be clear. That is far more likely to be the case at the appellate rather than the trial level. It is not clear at this stage as to the extent to which there may be a dispute as to the facts of this case which might be material to any of the considerations of the court. It is certainly true to say that there appears to be a complaint made on behalf of Ms. K., and supported by the Society, as to the precise way in which the issues in her case were dealt with by the hospital on the day in question. It certainly could not be said that this case is a "pure test case" in which it is highly unlikely that any issues concerning the facts of the individual case would be relevant. While I am not persuaded that there is an absolute bar to parties being joined as amicus curiae at trial level, I believe that the circumstances in which it would be appropriate so to do should, ordinarily, be confined to cases where there is no significant likelihood that the facts of an individual case are likely to be controversial or to have a significant effect on determining what issues of general importance may require to be determined.

4.12 Finally it is necessary to turn to the criteria which I have identified above as to whether the joindure sought is likely to bring to bear on a case involving an issue of significant public importance, a perspective or resources that might not otherwise be available. This case clearly has the potential to deal with issues of significant public importance. It is not apparent to me, however, that, at this stage, it can be said that joining the Society would confer any advantage of the type referred to. There does not seem to be any basis for suggesting that the arguments which might be put forward on behalf of Ms. K. would differ, to any meaningful extent, to those which might be put forward on behalf of the Society. No evidence has been put forward which suggests that Ms. K. would not have adequate resources available to her to articulate whatever arguments might reasonably be put. Indeed she already has available to her a distinguished legal team. It was suggested that the same legal team might well represent the Society. While touching on this latter point I should note that a suggestion was made in the course of the hearing that, if the fact that Ms. K. was to be represented by the same legal team as that of the Society gave rise to a difficulty, alternative arrangements could be made. I did not understand the objection taken by the hospital to be to the fact that the same legal team would represent both. My understanding of the argument put forward on behalf of the hospital was that the fact that the same legal team could readily represent both implied that nothing would be added to the case by joining the Society. It seems to me that that point is well made.

5. Conclusion

5.1 I have therefore come to the view that the majority of the criteria properly applied to a consideration of whether to join a party as *amicus curiae* point against joining the Society at this stage in these proceedings. The Society would adopt a partisan approach which is unlikely to differ, to any significant extent, from that likely to be adopted by Ms. K. There would be risk, certainly at the trial stage, associated with the Society being involved in proceedings which involve the facts of the individual case. This arises, not least, from the fact that representatives of the Society appear to have had a role in the events leading to the application to the court. Finally it does not appear, at this stage, that the presentation of Ms. K's case will lack in resources or that it is likely that the Society would bring to bear a prospective on the proceedings that would not otherwise be present.

5.2 However I should make it clear that the view which I have taken does not necessarily mean that it may not be appropriate, at some future stage, for the Society to become involved. I say this for a number of reasons.

5.3 Firstly it is clear that, as in all cases involving important constitutional rights, the Attorney General will be entitled to make submission to the court. It is not clear, at this time, what position the Attorney will adopt. The range of positions which will be argued before the court is not, therefore, at this stage fully clear.

5.4 Secondly it is not clear as to the extent of the declaratory relief which the court may consider properly arises on the facts of this case. If it became clear that wide ranging declaratory relief were contemplated, then a more cogent argument for joining the Society might well arise.

5.5 Thirdly there is nothing, at present, to indicate that Ms. K. would not be in a position to fully articulate, through counsel, the case in favour of conferring decisive weight on the right to freedom of religion and conscience in this case. That situation might change.

5.6 It may, therefore, be the case that at some future stage during the course of this litigation the factors which have led me to take the view that it is not appropriate to join the Society as an *amicus curiae* at this stage may change to a sufficient extent as to lead to a different conclusion. I would therefore propose giving the Society liberty to renew their application to this court (including to the trial judge if appropriate). Clearly if it were to be desired to seek to join the Society as an *amicus curiae* at any appeal to the Supreme Court then it would be appropriate that any such application be made to that court.

5.7 Finally I should mention the position of two further members of the Jehovah's Witness faith who are, it would seem, patients at

the hospital and who are expected to deliver a baby in relatively early course. Those persons have, of course, a more direct interest in these proceedings. While it is true to state (and it is indeed to be hoped) that the fraught circumstances which gave rise to the application in this case will not occur in their cases, such a situation cannot be ruled out. Strictly speaking, and in the ordinary way, the courts have been disinclined to confer standing on parties in circumstances where there is only a possibility that they may be affected by the issues which they wish to litigate. However it seems to me that there is, necessarily, need to consider exceptions to that rule. One such exception, it seems to me, may well arise in circumstances where it is likely that, if the eventuality that is feared occurs, events will happen in very urgent circumstances which would afford the court no reasonable opportunity to deal with the matter other than on a very temporary or interim basis and where the result of the decision of the court on such interim application would, in substance, determine the issue at least insofar as that person was concerned. This seems to me to be such a case. If, unfortunately, something similar to that which occurred in the case of Ms. K. were to happen to one or other of the other two patients, then the same urgent circumstances would arise necessitating an immediate and inevitably hurried court hearing and decision. If the court decision were, in all the circumstances, to make an order similar to that made by Abbott J. in this case, then so far as the practicalities of the case are concerned that would be an end of the matter. In those circumstances it seems to me that it is appropriate for the courts to adopt a looser test in respect of standing.

5.8 Given the position of the hospital and the interim decision of this court it is clear that issues of significant importance have arisen. There is at least a possibility that similar issues might arise in the case of either of the two patients concerned in circumstances where there would not be an opportunity for a considered court hearing. In those special circumstances it seems to me that either of those patients have, if they wish to assert it, standing to litigate the issues which arise in these proceedings. If, therefore, Ms. K. wishes to put in a counterclaim in these proceedings seeking alternative declarations, it would seem to me to be appropriate to join either or both of the individual patients as co-plaintiffs to any such counterclaim. I would be of the view that in the unusual and difficult circumstances which I have identified, they would have standing to maintain such a claim notwithstanding the fact that there is only a possibility that the unfortunate circumstances that led to the issues arising in the case of Ms. K. might also arise in their case.