FEDERAL COURT OF APPEAL

BETWEEN:

STACEY SHINER IN HER PERSONAL CAPACITY, AND AS GUARDIAN OF JOSEY K. WILLIER

Appellant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

Proposed Intervener

BOOK OF AUTHORITIES OF THE PROPOSED INTERVENER FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

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Cases

1. *Canada (Attorney General) v. Canadian Wheat Board*, 2012 FCA 114 (CanLII).

2. *Canada (Attorney General) v. Pictou Landing First Nation*, 2014 FCA 21 (CanLII).

3. *Globalive Wireless Management Corp. v. Public Mobile Inc.*, 2011 FCA 119 (CanLII).

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4. *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. Section 15.

5. *Federal Court Rules*, SOR/98-106, s 109, Rule 109.

Federal Court of Appeal | Cour d'appel fédérale

Date: 20120416

Docket: A-470-11
A-471-11

Citation: 2012 FCA 114

Present: **MAINVILLE J.A.**

A-470-11

BETWEEN:

ATTORNEY GENERAL OF CANADA,
THE MINISTER OF AGRICULTURE AND
AGRI-FOOD IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD

Appellants

and

FRIENDS OF THE CANADIAN WHEAT BOARD,
HAROLD BELL, DANIEL GAUTHIER, KEN ESHPETER,
TERRY BOEHM, LYLE SIMONSON, LYNN JACOBSON,
ROBERT HORNE, WILF HARDER, LAURENCE NICHOLSON,
LARRY BOHDANOVICH, KEITH RYAN, ANDY BAKER,
NORBERT VAN DEYNZE, WILLIAM ACHESON,
LUC LABOSSIERE, WILLIAM NICHOLSON, RENE SAQUET, and
THE CANADIAN WHEAT BOARD

Respondents

A-471-11

BETWEEN:

MINISTER OF AGRICULTURE AND AGRI-FOOD
IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD

Appellant

and

**THE CANADIAN WHEAT BOARD,
ALLEN OBERG, ROD FLAMAN, CAM GOFF,
KYLE KORNEYCHUK, JOHN SANDBORN,
BILL TOEWS, STEWART WELLS and BILL WOODS**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Montreal, Quebec, on April 16, 2012.

REASONS FOR ORDER BY: MAINVILLE J.A.

Federal Court of Appeal | Cour d'appel fédérale

Date: 20120416

Docket: A-470-11
A-471-11

Citation: 2012 FCA 114

Present: **MAINVILLE J.A.**

A-470-11

BETWEEN:

ATTORNEY GENERAL OF CANADA,
THE MINISTER OF AGRICULTURE AND
AGRI-FOOD IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD

Appellants

and

FRIENDS OF THE CANADIAN WHEAT BOARD,
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NORBERT VAN DEYNZE, WILLIAM ACHESON,
LUC LABOSSIERE, WILLIAM NICHOLSON, RENE SAQUET, and
THE CANADIAN WHEAT BOARD

Respondents

A-471-11

BETWEEN:

MINISTER OF AGRICULTURE AND AGRI-FOOD
IN HIS CAPACITY AS MINISTER RESPONSIBLE
FOR THE CANADIAN WHEAT BOARD

Appellant

and

**THE CANADIAN WHEAT BOARD,
ALLEN OBERG, ROD FLAMAN, CAM GOFF,
KYLE KORNEYCHUK, JOHN SANDBORN,
BILL TOEWS, STEWART WELLS and BILL WOODS**

Respondents

REASONS FOR ORDER

MAINVILLE J.A.

[1] I have before me a motion by the Council of Canadians, ETC Group (Action Group on Erosion, Technology and Concentration), the Public Service Alliance of Canada, and Food Secure Canada (the "moving parties") seeking the Court's leave to intervene in this consolidated appeal. The appellants oppose the motion.

[2] This consolidated appeal concerns the orders of Campbell J. of the Federal Court declaring that the Minister of Agriculture and Agri-Food breached his statutory duties under section 47.1 of the *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24 by failing to consult with the Canadian Wheat Board and to conduct a vote of wheat and barley producers as to whether they agree with the elimination of the Canadian Wheat Board's exclusive statutory marketing mandate resulting from Bill C-18, now the *Marketing Freedom for Grain Farmers Act,* S.C. 2012, c. 25.

[3] The moving parties actively participated as interveners in the Federal Court proceedings before Campbell J. pursuant to an order of the Federal Court dated November 21, 2011. In that order, Prothonotary Lafrenière found that the moving parties had a genuine interest in the effect of

Bill C-18. He also found that none of the other parties to the Federal Court proceedings intended to address two issues of interest to the interveners, namely (a) how section 47.1 of the *Canadian Wheat Board Act* is to be interpreted in a manner that accords with the North American Free Trade Agreement ("NAFTA"), and (b) the need to, and effect of, interpreting that section in a manner that is consistent with fundamental constitutional values such as the rule of law and the *Canadian Charter of Rights and Freedoms.*

[4] No party appealed the order of Prothonotary Lafrenière allowing the intervention.

[5] Campbell J. relied on the submissions of the moving parties in his reasons cited as 2011 FC 1432, particularly at paragraphs 23, 24, 27 and 28. He extensively and approvingly quoted from the moving parties' submissions concerning the impact of the rule of law on the interpretation of section 47.1 of the *Canadian Wheat Board Act* (at para. 27 of his reasons), and gave weight to their argument that this section is important to Canada's international trade obligations under NAFTA (at para. 28 of his reasons).

[6] The appellants submit that the moving parties ought not to be granted leave to intervene in this Court simply because they were permitted to intervene in the Federal Court. They add that the moving parties should be required to demonstrate anew in this Court why they satisfy the test for intervention.

[7] The moving parties do not assert that they should have been made parties to this appeal as of right. They do however submit that the decision of Prothonotary Lafrenière authorizing their intervention before the Federal Court and the reliance placed on their submissions by Campbell J. are both relevant factors to consider in deciding whether to grant leave to intervene in this appeal.

[8] The factors that are to be considered in deciding to grant leave to intervene have been discussed in numerous decisions and need not be repeated here. Reference may notably be made to the decisions of this Court in *Canadian Airlines International Ltd. v. Canada (Human Rights Commission)*, [2010] 1 F.C.R. 226 at paras. 8-9, *Canadian Pacific Railway Company v. Boutique Jacob Inc.*, 2006 FCA 426 at paras. 19 to 21; and *Canadian Taxpayers Federation v. Benoit*, 2001 FCA 71 at para. 18.

[9] These factors have already been analysed by Prothonotary Lafrenière, and his findings have not been appealed. Where leave to intervene has already been granted in the Federal Court, barring a fundamental error in the decision granting leave, some material change in the issues on appeal, or important new facts bearing on the intervention, I do not see why this Court should not rely on the findings of the Federal Court with respect to the intervention or exercise its discretion to grant leave differently from the Federal Court. I rely for this proposition on the considered opinion of my colleague Stratas J. A. in *Global Wireless Management Corp. v. Public Mobile Inc.*, 2011 FCA 119.

[10] In this case, I see no fundamental error in the decision of Prothonotary Lafrenière, the issues in this appeal appear to be similar to those raised before the Federal Court, and no important new

facts bearing on the intervention have been identified. In such circumstances, leave to intervene in this Court shall be granted.

[11] Both the moving parties and the appellants have proposed terms to the order granting leave to intervene, and, pursuant to subsections 53(1) and 109(3) of the *Federal Court Rules*, the following conditions will apply to the intervention:

a. The interveners' written and oral submissions shall be limited to the following two issues: (i) whether, and if so how, section 47.1 of the *Canadian Wheat Board Act* is to be interpreted in a manner that accords with the North American Free Trade Agreement, and (i) whether, and if so how, that section is to be interpreted in a manner that is consistent with fundamental constitutional values such as the rule of law and the *Canadian Charter of Rights and Freedoms*.
b. The interveners shall not duplicate any issues or arguments contained in the memorandum of fact and law filed by the respondents.
c. The interveners shall not add to the factual record in any way.
d. The appellants shall serve the interveners with a copy of the appeal book within 3 business days of the order.
e. The appellants and respondents shall serve the interveners with a copy of their respective memorandum of fact and law at the same time they serve any other party.
f. The interveners shall serve on the appellants and the respondents and file a memorandum of fact and law of a maximum length of 10 pages within 3 business days of service of the respondents' memorandum of fact and law.

g. The appellants may serve and file, within 10 days of the service of the interveners' memorandum of fact and law, a supplementary memorandum of fact and law of a maximum length of 10 pages to respond to the arguments raised by the interveners.

h. Unless otherwise directed by the panel hearing the merits of the appeal, the interveners shall be permitted to make oral submissions of no more than 15 minutes in length.

i. No costs shall be awarded either to or against the interveners in respect of this motion and in respect of the consolidated appeal.

j. The style of cause shall be amended to reflect that the moving parties are now interveners.

"Robert M. Mainville"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-470-11
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA ET AL. v. FRIENDS OF THE CANADIAN WHEAT BOARD ET AL.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	MAINVILLE J.A.
DATED:	April 16, 2012

WRITTEN REPRESENTATIONS BY:

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Anders Bruun	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Brunn, Anders Winnipeg, Manitoba	FOR THE RESPONDENT

Federal Court of Appeal | Cour d'appel fédérale

Date: 20140129

Docket: A-158-13

Citation: 2014 FCA 21

Present: **STRATAS J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

PICTOU LANDING BAND COUNCIL AND MAURINA BEADLE

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on January 29, 2014.

REASONS FOR ORDER BY: STRATAS J.A.

Federal Court of Appeal Cour d'appel fédérale

Date: 20140129

Docket: A-158-13

Citation: 2014 FCA 21

Present: STRATAS J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

PICTOU LANDING BAND COUNCIL AND MAURINA BEADLE

Respondents

REASONS FOR ORDER

STRATAS J.A.

[1] Two motions to intervene in this appeal have been brought: one by the First Nations Child and Family Caring Society and another by Amnesty International.

[2] The appellant Attorney General opposes the motions, arguing that the moving parties have not satisfied the test for intervention under Rule 109 of the *Federal Courts Rules*, SOR/98-106. The respondents consent to the motions.

[3] Rule 109 provides as follows:

109. (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.	**109**. (1) La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.
(2) Notice of a motion under subsection (1) shall	(2) L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir :
(*a*) set out the full name and address of the proposed intervener and of any solicitor acting for the proposed intervener; and	*a*) précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;
(*b*) describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.	*b*) explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.
(3) In granting a motion under subsection (1), the Court shall give directions regarding	(3) La Cour assortit l'autorisation d'intervenir de directives concernant :
(*a*) the service of documents; and	*a*) la signification de documents;
(*b*) the role of the intervener, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervener.	*b*) le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.

[4] Below, I describe the nature of this appeal and the moving parties' proposed interventions in this appeal. At the outset, however, I wish to address the test for intervention to be applied in these motions.

[5] The Attorney General submits, as do the moving parties, that in deciding the motions for intervention I should have regard to *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 74 at paragraph 12 (T.D.), aff'd [1990] 1 F.C. 90 (C.A.), an oft-applied authority: see, *e.g.*, *CCH Canadian Ltd. v. Law Society of Upper Canada* (2000), 189 D.L.R. (4th) 125 (F.C.A.). *Rothmans, Benson & Hedges* instructs me that on these motions a list of six factors should guide my discretion. All of the factors need not be present in order to grant the motions.

[6] In my view, this common law list of factors, developed over two decades ago in *Rothmans, Benson & Hedges*, requires modification in light of today's litigation environment: *R. v. Salituro*, [1991] 3 S.C.R. 654. For the reasons developed below, a number of the *Rothmans, Benson & Hedges* factors seem divorced from the real issues at stake in intervention motions that are brought today. *Rothmans, Benson & Hedges* also leaves out other considerations that, over time, have assumed greater prominence in the Federal Courts' decisions on practice and procedure. Indeed, a case can be made that the *Rothmans, Benson & Hedges* factors, when devised, failed to recognize the then-existing understandings of the value of certain interventions: Philip L. Bryden, "Public Intervention in the Courts" (1987) 66 Can. Bar Rev. 490; John Koch, "Making Room: New Directions in Third Party Intervention" (1990) 48 U. T. Fac. L. Rev. 151. Now is the time to tweak the *Rothmans, Benson & Hedges* list of factors.

[7] In these reasons, I could purport to apply the *Rothmans, Benson & Hedges* factors, ascribing little or no weight to individual factors that make no sense to me, and ascribing more weight to

others. That would be intellectually dishonest. I prefer to deal directly and openly with the *Rothmans, Benson & Hedges* factors themselves.

[8] In doing this, I observe that I am a single motions judge and my reasons do not bind my colleagues on this Court. It will be for them to assess the merit of these reasons.

[9] The *Rothmans, Benson & Hedges* factors, and my observations concerning each, are as follows:

- *Is the proposed intervener directly affected by the outcome?* "Directly affected" is a requirement for full party status in an application for judicial review – *i.e.*, standing as an applicant or a respondent in an application for judicial review: *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2013 FCA 236. All other jurisdictions in Canada set the requirements for intervener status at a lower but still meaningful level. In my view, a proposed intervener need only have a genuine interest in the precise issue(s) upon which the case is likely to turn. This is sufficient to give the Court an assurance that the proposed intervener will apply sufficient skills and resources to make a meaningful contribution to the proceeding.

- *Does there exist a justiciable issue and a veritable public interest?* Whether there is a justiciable issue is irrelevant to whether intervention should be granted. Rather, it is relevant to whether the application for judicial review should survive in the first place. If there is no justiciable issue in the application for judicial review, the issue is

not whether a party should be permitted to intervene but whether the application should be struck because there is no viable administrative law cause of action: *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250.

- *Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?* This is irrelevant. If an intervener can help and improve the Court's consideration of the issues in a judicial review or an appeal therefrom, why would the Court turn the intervener aside just because the intervener can go elsewhere? If the concern underlying this factor is that the intervener is raising a new question that could be raised elsewhere, generally interveners – and others – are not allowed to raise new questions on judicial review: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paragraphs 22-29.

- *Is the position of the proposed intervener adequately defended by one of the parties to the case?* This is relevant and important. It raises the key question under Rule 109(2), namely whether the intervener will bring further, different and valuable insights and perspectives to the Court that will assist it in determining the matter. Among other things, this can acquaint the Court with the implications of approaches it might take in its reasons.

- *Are the interests of justice better served by the intervention of the proposed third party?* Again, this is relevant and important. Sometimes the issues before the Court

assume such a public and important dimension that the Court needs to be exposed to perspectives beyond the particular parties who happen to be before the Court. Sometimes that broader exposure is necessary to appear to be doing – and to do – justice in the case.

- *Can the Court hear and decide the case on its merits without the proposed intervener?* Almost always, the Court can hear and decide a case without the proposed intervener. The more salient question is whether the intervener will bring further, different and valuable insights and perspectives that will assist the Court in determining the matter.

[10] To this, I would add two other considerations, not mentioned in the list of factors in *Rothmans, Benson & Hedges*:

- *Is the proposed intervention inconsistent with the imperatives in Rule 3, namely securing "the just, most expeditious and least expensive determination of every proceeding on its merits"?* For example, some motions to intervene will be too late and will disrupt the orderly progress of a matter. Others, even if not too late, by their nature may unduly complicate or protract the proceedings. Considerations such as these should now pervade the interpretation and application of procedural rules: *Hryniak v. Mauldin*, 2014 SCC 7.

- *Have the specific procedural requirements of Rules 109(2) and 359-369 been met?* Rule 109(2) requires the moving party to list its name, address and solicitor, describe how it intends to participate in the proceeding, and explain how its participation "will assist the determination of a factual or legal issue related to the proceeding." Further, in a motion such as this, brought under Rules 359-369, moving parties should file detailed and well-particularized supporting affidavits to satisfy the Court that intervention is warranted. Compliance with the Rules is mandatory and must form part of the test on intervention motions.

[11] To summarize, in my view, the following considerations should guide whether intervener status should be granted:

I. Has the proposed intervener complied with the specific procedural requirements in Rule 109(2)? Is the evidence offered in support detailed and well-particularized? If the answer to either of these questions is no, the Court cannot adequately assess the remaining considerations and so it must deny intervener status. If the answer to both of these questions is yes, the Court can adequately assess the remaining considerations and assess whether, on balance, intervener status should be granted.

II. Does the proposed intervener have a genuine interest in the matter before the Court such that the Court can be assured that the proposed intervener has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court?

III. In participating in this appeal in the way it proposes, will the proposed intervener advance different and valuable insights and perspectives that will actually further the Court's determination of the matter?

IV. Is it in the interests of justice that intervention be permitted? For example, has the matter assumed such a public, important and complex dimension that the Court needs to be exposed to perspectives beyond those offered by the particular parties before the Court? Has the proposed intervener been involved in earlier proceedings in the matter?

V. Is the proposed intervention inconsistent with the imperatives in Rule 3, namely securing "the just, most expeditious and least expensive determination of every proceeding on its merits"? Are there terms that should be attached to the intervention that would advance the imperatives in Rule 3?

[12] In my view, these considerations faithfully implement some of the more central concerns that the *Rothmans, Benson & Hedges* factors were meant to address, while dealing with the challenges that regularly present themselves today in litigation, particularly public law litigation, in the Federal Courts.

[13] I shall now apply these considerations to the motions before me.

– I –

[14] The moving parties have complied with the specific procedural requirements in Rule 109(2). This is not a case where the party seeking to intervene has failed to describe with sufficient particularity the nature of its participation and how its participation will assist the Court: for an example where a party failed this requirement, see *Forest Ethics Advocacy Association, supra* at paragraphs 34-39. The evidence offered is particular and detailed, not vague and general. The evidence satisfactorily addresses the considerations relevant to the Court's exercise of discretion.

– II –

[15] The moving parties have persuaded me that they have a genuine interest in the matter before the Court. In this regard, the moving parties' activities and previous interventions in legal and policy matters have persuaded me that they have considerable knowledge, skills and resources relevant to the questions before the Court and will deploy them to assist the Court.

– III –

[16] Both moving parties assert that they bring different and valuable insights and perspectives to the Court that will further the Court's determination of the appeal.

[17] To evaluate this assertion, it is first necessary to examine the nature of this appeal. Since this Court's hearing on the merits of the appeal will soon take place, I shall offer only a very brief, top-level summary.

[18] This appeal arises from the Federal Court's decision to quash Aboriginal Affairs and Northern Development Canada's refusal to grant a funding request made by the respondent Band Council: *Pictou Landing Band Council v. Canada (Attorney General)*, 2013 FC 342. The Band Council requested funding to cover the expenses for services rendered to Jeremy Meawasige and his mother, the respondent Maurina Beadle.

[19] Jeremy is a 17-year-old disabled teenager. His condition requires assistance and care 24 hours a day. His mother served as his sole caregiver. But in May 2010 she suffered a stroke. After that, she could not care for Jeremy without assistance. To this end, the Band provided funding for Jeremy's care.

[20] Later, the Band requested that Canada cover Jeremy's expenses. Its request was based upon *Jordan's Principle*, a resolution passed by the House of Commons. In this resolution, Canada announced that it would provide funding for First Nations children in certain circumstances. Exactly what circumstances is very much an issue in this case.

[21] Aboriginal Affairs and Northern Development Canada considered this funding principle, applied it to the facts of this case, and rejected the Band Council's request for funding. The

respondents successfully quashed this rejection in the Federal Court. The appellant has appealed to this Court.

[22] The memoranda of fact and law of the appellant and the respondents have been filed. The parties raise a number of issues. But the two key issues are whether the Federal Court selected the correct standard of review and, if so, whether the Federal Court applied that standard of review correctly.

[23] The moving parties both intend to situate the funding principle against the backdrop of section 15 Charter jurisprudence, international instruments, wider human rights understandings and jurisprudence, and other contextual matters. Although the appellant and the respondents do touch on some of this context, in my view the Court will be assisted by further exploration of it.

[24] This further exploration of contextual matters may inform the Court's determination whether the standard of review is correctness or reasonableness. It will be for the Court to decide whether, in law, that is so and, if so, how it bears upon the selection of the standard of review.

[25] The further exploration of contextual matters may also assist the Court in its task of assessing the funding principle and whether Aboriginal Affairs was correct in finding it inapplicable or was reasonable in finding it inapplicable.

[26] If reasonableness is the standard of review, the contextual matters may have a bearing upon the range of acceptable and defensible options available to Aboriginal Affairs. The range of

acceptable and defensible options takes its colour from the context, widening or narrowing depending on the nature of the question and other circumstances: see *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 at paragraphs 37-41 and see also *Mills v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 436 at paragraph 22, *Canada (Attorney General) v. Abraham*, 2012 FCA 266 at paragraphs 37-50, and *Canada (Attorney General) v. Canadian Human Rights Commission*, 2013 FCA 75 at paragraphs 13-14. In what precise circumstances the range broadens or narrows is unclear – at this time it cannot be ruled out that the contextual matters the interveners propose to raise have a bearing on this.

[27] In making these observations, I am not offering conclusions on the relevance of the contextual matters to the issues in the appeal. In the end, the panel determining this appeal may find the contextual matters irrelevant to the appeal. At present, it is enough to say that the proposed interveners' submissions on the contextual matters they propose to raise – informed by their different and valuable insights and perspectives – will actually further the Court's determination of the appeal one way or the other.

– IV –

[28] Having reviewed some of the jurisprudence offered by the moving parties, in my view the issues in this appeal – the responsibility for the welfare of aboriginal children and the proper interpretation and scope of the relevant funding principle – have assumed a sufficient dimension of public interest, importance and complexity such that intervention should be permitted. In the

circumstances of this case, it is in the interests of justice that the Court should expose itself to perspectives beyond those advanced by the existing parties before the Court.

[29] These observations should not be taken in any way to be prejudging the merits of the matter before the Court.

– V –

[30] The proposed interventions are not inconsistent with the imperatives in Rule 3. Indeed, as explained above, by assisting the Court in determining the issues before it, the interventions may well further the "just…determination of [this] proceeding on its merits."

[31] The matters the moving parties intend to raise do not duplicate the matters already raised in the parties' memoranda of fact and law.

[32] Although the motions to intervene were brought well after the filing of the notice of appeal in this Court, the interventions will, at best, delay the hearing of the appeal by only the three weeks required to file memoranda of fact and law. Further, in these circumstances, and bearing in mind the fact that the issues the interveners will address are closely related to those already in issue, the existing parties will not suffer any significant prejudice. Consistent with the imperatives of Rule 3, I shall impose strict terms on the moving parties' intervention.

[33] In summary, I conclude that the relevant considerations, taken together, suggest that the moving parties' motions to intervene should be granted.

[34] Therefore, for the foregoing reasons, I shall grant the motions to intervene. By February 20, 2014, the interveners shall file their memoranda of fact and law on the contextual matters described in these reasons (at paragraph 23, above) as they relate to the two main issues before the Court (see paragraph 22, above). The interveners' memoranda shall not duplicate the submissions of the appellant and the respondents in their memoranda. The interveners' memoranda shall comply with Rules 65-68 and 70, and shall be no more than ten pages in length (exclusive of the front cover, any table of contents, the list of authorities in Part V of the memorandum, appendices A and B, and the back cover). The interveners shall not add to the evidentiary record before the Court. Each intervener may address the Court for no more than fifteen minutes at the hearing of the appeal. The interveners are not permitted to seek costs, nor shall they be liable for costs absent any abuse of process on their part. There shall be no costs of this motion.

"David Stratas"

J.A.

Federal Court of Appeal | Cour d'appel fédérale

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-158-13

STYLE OF CAUSE: ATTORNEY GENERAL OF CANADA v. PICTOU LANDING BAND COUNCIL AND MAURINA BEADLE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: JANUARY 29, 2014

WRITTEN REPRESENTATIONS BY:

Jonathan D.N. Tarlton Melissa Chan	FOR THE APPELLANT
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SOLICITORS OF RECORD:

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Stockwoods LLP Toronto, Ontario	FOR THE PROPOSED INTERVENER, AMNESTY INTERNATIONAL
Hensel Barristers Toronto, Ontario	FOR THE PROPOSED INTERVENER, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY

Federal Court of Appeal | Cour d'appel fédérale

Date: 20110328

Docket: A-78-11

Citation: 2011 FCA 119

Present: **STRATAS J.A.**

BETWEEN:

GLOBALIVE WIRELESS MANAGEMENT CORP.

Appellant

and

PUBLIC MOBILE INC., ATTORNEY GENERAL OF CANADA, AND TELUS COMMUNICATIONS COMPANY

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 28, 2011.

REASONS FOR ORDER BY: STRATAS J.A.

Federal Court of Appeal | Cour d'appel fédérale

Date: 20110328

Docket: A-78-11

Citation: 2011 FCA 119

Present: **STRATAS J.A.**

BETWEEN:

GLOBALIVE WIRELESS MANAGEMENT CORP.

Appellant

and

PUBLIC MOBILE INC., ATTORNEY GENERAL OF CANADA, AND TELUS COMMUNICATIONS COMPANY

Respondents

REASONS FOR ORDER

STRATAS J.A.

[1] The moving parties, Alliance of Canadian Cinema, Television and Radio Artists, Communications, Energy and Paperworkers Union of Canada, and Friends of Canadian Broadcasting (the "moving parties"), move under rule 109 for leave to intervene in this appeal.

[2] The Attorney General of Canada, supported by Globalive Wireless Management Corp., opposes the motion. TELUS Communications Company consents to the motion, provided that no change will be made to the deadline for filing the respondents' memoranda of fact and law.

[3] The issue in this appeal is whether the Governor in Council, in its decision (P.C. 2009-2008 dated December 10, 2009), acted within its statutory mandate under the *Telecommunications Act*, S.C. 1993, c. 38. The Federal Court found (at 2011 FC 130) that the Governor in Council acted outside of its statutory mandate. It quashed the Governor in Council's decision.

[4] In the Federal Court, the moving parties were permitted to intervene: see the order of Prothonotary Tabib and the order of Prothonotary Aronovitch, dated April 13, 2010 and June 8, 2010, respectively. The moving parties' intervention was restricted to the issue whether the Governor in Council, in applying subsection 16(3) of the *Telecommunications Act*, failed to consider, failed to give effect, or acted inconsistently with the non-commercial objectives of the Act set out in the opening words of section 7 and subsections 7(a), (h) and (i). The thrust of the moving parties' submission in the Federal Court was that the Governor in Council improperly accorded paramount importance to increasing competition in the telecommunications sector to the prejudice of the Act's non-commercial objectives.

[5] I grant the motion for leave to intervene in the appeal in this Court for the following reasons:

a. In my view, absent fundamental error in the decision in the Federal Court to grant the moving parties leave to intervene, some material change in the issues on appeal, or important new facts bearing on the issue, this Court has no reason to exercise its discretion differently from the Federal Court. No one has submitted that there is fundamental error, material change or important new facts.

b. It is evident from the reasons of the Federal Court that the moving parties' submissions were relevant to the issues and useful to the Court in its determination.

c. It is not necessary for the moving parties to establish that they meet all of the relevant factors in *Rothmans Benson and Hedges Inc. v. Canada*, [1990] 1 F.C. 84 (T.D.), affirmed [1990] 1 F.C. 90 (C.A.), including whether the moving parties will be directly affected by the outcome: *Boutique Jacob Inc. v. Paintainer Ltd.*, 2006 FCA 426 at paragraph 21, 357 N.R. 384. I am satisfied that the moving parties in this public law case possess a genuine interest – namely, a demonstrated commitment to the strict interpretation of the foreign ownership restrictions in the *Telecommunications Act*. This interest is beyond a mere "jurisprudential" interest, such as a concern that this Court's decision will have repercussions for other areas of law: see, *e.g.*, *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, a 2000 decision of this Court, belatedly reported at

> [2010] 1 F.C.R. 226. Further, the moving parties will be able to assist the Court in a useful way in this public law case, bringing to bear a distinct perspective and expertise concerning the issues on which they seek to intervene: *Rothmans Benson and Hedges Inc.* (F.C.A.), *supra* at page 92. It is in the interests of justice that the moving parties be permitted to intervene in this public law case.

[6] This Court, acting under rules 53(1) and 109(3), will attach terms to the order granting the moving parties leave to intervene.

[7] The moving parties' written and oral submissions shall be limited to the subject-matters set out in paragraph 4, above. Those submissions shall not duplicate the submissions of the other parties and shall not add to the factual record in any way.

[8] This appeal has been expedited and a schedule has been set. That schedule shall not be disrupted.

[9] The moving parties support the result reached by the Federal Court. Accordingly, the deadline for their memorandum of fact and law should be set around the time set for the memoranda of fact and law of the parties who also are supporting the result reached by the Federal Court, namely TELUS Communications Company and Public Mobile Inc. So that the moving parties can be sure that their submissions do not duplicate those of any of the other parties, the deadline for their memorandum of fact and law should be just after TELUS Communications Company and Public

Mobile Inc. have filed their memoranda of fact and law (May 2, 2011). Therefore, the deadline for the service and filing of the moving parties' memorandum shall be May 5, 2011.

[10] The moving parties' memorandum shall be limited to 12 pages in length. The moving parties shall be permitted to make oral submissions at the hearing of the appeal for a total of no more than 20 minutes. No costs will be awarded for or against any of the interveners.

[11] The style of cause shall be amended to reflect the fact that the moving parties are now interveners.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-78-11
STYLE OF CAUSE:	Globalive Wireless Management Corp. v. Public Mobile Inc., Attorney General of Canada, and Telus Communications Company

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	Stratas J.A.
DATED:	March 28, 2011

WRITTEN REPRESENTATIONS BY:

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Malcolm M. Mercer	FOR GLOBALIVE WIRELESS MANAGEMENT CORP.
Robert MacKinnon Alexander Gay	FOR THE ATTORNEY GENERAL OF CANADA
Stephen Schmidt	FOR THE RESPONDENT, TELUS COMMUNICATIONS COMPANY

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***Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. Section 15.**

EQUALITY RIGHTS

Marginal note:Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Marginal note:Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

DROITS A L'EGALITE

Note marginale :Égalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

Note marginale :Programmes de promotion sociale

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

***Federal Court Rules*, SOR/98-106, s 109, Rule 109(1)**

109 (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.

(2) Notice of a motion under subsection (1) shall

(a) set out the full name and address of the proposed intervener and of any solicitor acting for the proposed intervener; and

(b) describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

(3) In granting a motion under subsection (1), the Court shall give directions regarding

(a) the service of documents; and

(b) the role of the intervener, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervener.

109 (1) La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.

(2) L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir :

a) précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;

b) explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.

(3) La Cour assortit l'autorisation d'intervenir de directives concernant :

a) la signification de documents;

b) le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.