

Federal Court



Cour fédérale

Date: 20211105

Docket: T-2166-18

Citation: 2021 FC 1189

Ottawa, Ontario, November 5, 2021

PRESENT: The Honourable Mr. Justice Phelan

CLASS PROCEEDING

BETWEEN:

**SHANNON VARLEY AND
SANDRA LUKOWICH**

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

and

**MÉTIS NATIONAL COUNCIL and
MANITOBA METIS FEDERATION INC**

Proposed Interveners

ORDER AND REASONS

[1] This is a motion by the Métis National Council and the Manitoba Metis Federation Inc. [the Proposed Interveners] for intervener status in this class action.

[2] Prior to hearing the motion, the Plaintiffs and the Proposed Interveners reached a settlement of this intervention motion. The Defendant took no position on the Proposed Interveners' motion.

[3] The settlement sought an order as follows:

1. The Métis National Council and the Manitoba Metis Federation Inc. are granted leave to file evidence, file written argument and make oral arguments at any settlement approval motion that might occur in this proceeding.
2. This motion by the Métis National Council and the Manitoba Metis Federation Inc. is otherwise dismissed, without prejudice to the rights of the Métis National Council and the Manitoba Metis Federation Inc. to bring a new motion in the future seeking to intervene in other steps in this proceeding.

[4] There is no settlement approval motion pending. The proposed order is tentative, speculative and contingent on some anticipated settlement between the Plaintiffs and the Defendant.

[5] The central issue in a motion to intervene is whether the proposed intervention will assist the Court in determining a factual or legal issue raised by the proceeding (Rule 109(2)(b)).

[6] While the Proposed Interveners have been recognized by Canada as speaking on behalf of their members, the Proposed Interveners cannot tell the Court what they intend to say, what

evidence they intend to lead or to show in any concrete sense how their intervention will assist the Court.

[7] Further, absent a settlement approval motion, and a proper intervention motion, which addresses the above, the Court cannot exercise its responsibility to issue directions for the conduct of the intervention as provided in Rule 109(3).

[8] The Court must conclude that in all the circumstances, the motion, on the terms proposed, does not meet the requirements of Rule 109(2)(b) nor is this a case, at this time, for the Court to exercise its discretion to grant intervener status without prejudice to file a further and better intervener application.

ORDER in T-2166-18

FOR THESE REASONS, THIS COURT ORDERS that the motion as proposed is dismissed without costs without prejudice to the right to file another application for intervener status.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2166-18

STYLE OF CAUSE: SHANNON VARLEY AND SANDRA LUKOWICH v
THE ATTORNEY GENERAL OF CANADA AND
MÉTIS NATIONAL COUNCIL and MANITOBA
METIS FEDERATION INC

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 24, 2021

ORDER AND REASONS: PHELAN J.

DATED: NOVEMBER 5, 2021

APPEARANCES:

Jamie Shilton FOR THE PLAINTIFFS
Andrew Lokan

Travis Henderson FOR THE DEFENDANT
Stephanie Dion

Paul-Erik Veel FOR THE PROPOSED INTERVENERS
Katie Glowach

SOLICITORS OF RECORD:

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FOR THE PROPOSED INTERVENERS