Date: 20080910

Docket: A-149-08

Citation: 2008 FCA 257

Present: **RYER J.A.**

BETWEEN:

AMNESTY INTERNATIONAL CANADA and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

Appellants

and

CHIEF OF THE DEFENCE STAFF FOR THE CANADIAN FORCES,
MINISTER OF NATIONAL DEFENCE, and
ATTORNEY GENERAL OF CANADA

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 10, 2008.

REASONS FOR ORDER BY: RYER J.A.

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REASONS FOR ORDER

[1] This is an application by the University of Toronto, Faculty of Law – International Human Rights Clinic (the "Applicant") for an order, pursuant to Rule 109(1) of the *Federal Courts Rules* for leave to intervene in the appeal by Amnesty International Canada and British Columbia Civil Liberties Association of a decision of Mactavish J. of the Federal Court (Order, dated March 12, 2008, Court file T-324-07).

[2] The essential question is whether the Applicant can demonstrate that its participation in the appeal will assist in the determination of a factual or legal issue related to the outcome of the appeal. In making its decision, the Court considers a number of factors, including:

1) Is the proposed intervener directly affected by the outcome?
2) Does there exist a justiciable issue and a veritable public interest?
3) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
4) Is the position of the proposed intervener adequately defended by on of the parties to the case?
5) Are the interests of justice better served by the intervention of the proposed third party?
6. Can the Court hear and decide the cause on its merits without the proposed intervener?

(See *DBC Marine Safety Systems Ltd. v. Canada (Commissioner of Patents)*, 2008 FCA 148, [2008] F.C.J. No. 852 (QL) at paragraph 12.)

[3] I accept that the Applicant has expertise in the area of international human rights law and that it may be in a position to make useful submissions in the appeal that may be different from those that will be made by the appellants. However, in my view, the Applicant fails to demonstrate that it has a sufficient interest in the outcome of the appeal to justify its intervention.

[4] The Applicant is described as a “specialized law practice of the University of Toronto, Faculty of Law” that “operates in the tradition of the Downtown Legal Services”. In that capacity, it “engages in a select number of cases” (see paragraphs 15 and 16 of the affidavit of Renu Mandhane).

[5] In my view, the Applicant has described itself, in effect, as a law firm. However, it is significant that the Applicant does no purport to intervene in this appeal on behalf of any organization, society or entity that could be said to be its client.

[6] This demonstrates that the Applicant is not directly affected by the outcome of the appeal any more than any other law practice that specializes in the area of international human rights law or any individual who is interested in that area of law. In my view, the Applicant's circumstances are analogous to those of the putative intervener, Mr. Kenneth M. Narvey, in *R. v. Finta*, [1993] 1 S.C.R. 1183. In that case, McLachlin J., as she then was, granted intervener status to the three public interest groups that demonstrated a sufficient interest in the appeal but denied Mr. Narvey's application. At paragraphs 6 and 7 of that decision, she stated:

> 6 The three public interest groups have all established an interest in the outcome of this appeal. The Canadian Jewish Congress, League for Human Rights of B'Nai Brith Canada and InterAmicus have an interest in ensuring that the interpretation of the Criminal Code provisions on appeal is consistent with the preservation of issues within its mandate. Through either the people they represent or the mandate which they seek to uphold, these applicants have a direct stake in Canada's fulfilling its international legal obligations under customary and conventional international law. While the Court is often reluctant to grant intervener status to public interest groups in criminal appeals, exceptions can be made under its broad discretion where important public law issues are considered, as in this appeal. All three parties demonstrated in their submissions to the Court that they satisfy the interest requirement under Rule 18.
>
> 7 The same cannot be said of Mr. Narvey. <u>There is no question that Mr. Narvey is a qualified expert in the subject matter before this Court.</u> <u>But his interest in the outcome of the litigation cannot be established merely by his status as researcher and advocate on public law issues. He must establish a direct stake in the outcome of the appeal.</u> Mr. Narvey does not argue that his status as a Jewish Canadian or occasional association with Jewish organizations forms any basis for his application. He is not currently engaged in litigation which is implicated by the outcome in this case, nor does he purport to represent an interest which is directly affected by the appeal. In short, Mr. Narvey's interest in this appeal is not in the manner of having a stake in the result, but solely of having a serious preoccupation with

> the subject matter. This type of interest is not the kind referred to in Rule 18(3)(a) of the Rules of the Supreme Court of Canada. Thus, Mr. Narvey does not meet the first test under Rule 18. I would deny leave to the application of Mr. Narvey. [Emphasis added.]

[7] An interest in the outcome of litigation has also been said to be insufficient to justify intervention where that interest is "jurisprudential in nature" as that phrase was used by Noël J.A. in *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, [2000] F.C.J. No. 220. The "jurisprudential" interest of the Applicant in the appeal is illustrated by the contents of paragraph 25 of the affidavit of Renu Mandhane, which states:

> 25. The IHRC has a particular and pressing interest in this Appeal because of the IHRC's interest in ensuring that the Canadian government complies with its obligation under international human rights law and that *Charter* jurisprudence develops in a manner that maximizes respect for international human rights. The IHRC has a particular and pressing interest in ensuring that government authorities do not lose sight of their obligations in respect of such rights once they step outside of their borders, but rather that international human rights are truly given international scope.

[8] In conclusion, I analogize the interest of the Applicant in the appeal to that of the interest of a boutique income tax law firm, specializing in international income tax cases, in a tax appeal dealing with an international income tax issue that is being argued by a different law firm. Clearly, the income tax boutique will be interested in the outcome of the appeal as that outcome may affect its chosen area of international income tax law. Moreover, because of its specialized experience in that area of law, no doubt the income tax boutique would be able to bring useful and potentially unique submissions to the hearing of the appeal. However, in my view, the interest of the income tax boutique law firm is insufficient to warrant its intervention in the appeal.

[9] For the foregoing reasons, the application for leave to intervene will be dismissed.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-149-08
STYLE OF CAUSE:	Amnesty International Canada et al. Appellants and Chief of the Defence Staff for the Canadian Forces et al. Respondents

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	RYER J.A.
DATED:	September 10, 2008

WRITTEN REPRESENTATIONS BY:

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