

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210914

Docket: A-182-21

Citation: 2021 FCA 179

Present: WEBB J.A.

BETWEEN:

KOBE MOHR

Appellant

and

**NATIONAL HOCKEY LEAGUE, AMERICAN HOCKEY LEAGUE INC.,
ECHL INC., CANADIAN HOCKEY LEAGUE, QUEBEC MAJOR JUNIOR
HOCKEY LEAGUE INC., ONTARIO HOCKEY LEAGUE,
WESTERN CANADA HOCKEY LEAGUE, HOCKEY CANADA**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 14, 2021.

REASONS FOR ORDER BY:

WEBB J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210914

Docket: A-182-21

Citation: 2021 FCA 179

Present: WEBB J.A.

BETWEEN:

KOBE MOHR

Appellant

and

**NATIONAL HOCKEY LEAGUE, AMERICAN HOCKEY LEAGUE INC.,
ECHL INC., CANADIAN HOCKEY LEAGUE, QUEBEC MAJOR
JUNIOR HOCKEY LEAGUE INC., ONTARIO HOCKEY LEAGUE,
WESTERN CANADA HOCKEY LEAGUE, HOCKEY CANADA**

Respondents

REASONS FOR ORDER

WEBB J.A.

[1] The appellant brought a motion for substituted service of the notice of appeal in this matter. The appellant had filed a statement of claim in the Federal Court against the various hockey leagues identified as the respondents. He had also brought a motion in the Federal Court

to amend his statement of claim and add the approximately 150 teams that are part of the various hockey leagues (the Proposed Defendants).

[2] The Chief Justice of the Federal Court, by the Order dated May 27, 2021 (Federal Court File No. T-1080-20) allowed the respondents' motion to strike the statement of claim without leave to amend and dismissed the appellant's motion to amend the statement of claim which included adding the Proposed Defendants as parties to the action.

[3] The appellant has filed an appeal from this Order. This motion is seeking an order for substituted service of the notice of appeal on the Proposed Defendants, not on the basis that they are parties to the appeal, but on the basis that they are persons who are "directly affected by the appeal".

[4] Rule 339 of the *Federal Courts Rules*, SOR/98-106, stipulates the persons on whom a notice of appeal is to be served:

339(1) Unless the Court directs otherwise or an Act of Parliament authorizing the appeal provides otherwise, within 10 days after the issuance of a notice of appeal, the appellant shall serve it on

- (a) all respondents;
- (b) in the case of an appeal of an order of a tribunal,
 - (i) the Attorney General of Canada, and

339(1) Sauf disposition contraire de la loi fédérale qui autorise l'appel ou sauf directives contraires de la Cour, l'appelant signifie l'avis d'appel aux personnes suivantes dans les 10 jours suivant sa délivrance :

- a) les intimés;
- b) dans le cas de l'appel d'une ordonnance d'un office fédéral :
 - (i) le procureur général du Canada,

(ii) the tribunal or its chief executive officer;

(ii) l'office fédéral ou son premier dirigeant;

(c) any person who is not a party and who participated in the first instance; and

c) toute personne qui n'est pas une partie mais qui a participé à la première instance;

(d) any other person directly affected by the appeal.

d) toute autre personne directement touchée par l'appel.

[emphasis added]

[Non souligné dans l'original.]

[5] The appellant focuses on paragraph (d) and argues that he is required to serve the notice of appeal on “any other person directly affected by the appeal”, which, in his view includes the Proposed Defendants. This motion seeks an order for substituted service on the Proposed Defendants. However, this motion is predicated on a finding that the appellant is obligated to serve the notice of appeal on the Proposed Defendants. If there is no obligation to serve the notice of appeal on the Proposed Defendants, then it is a moot point whether substituted service is appropriate.

[6] The opening words of Rule 339 give discretion to the Court to direct otherwise and, therefore, even if the Proposed Defendants are persons who are directly affected by the appeal, this Court can provide that there is no obligation to serve the notice of appeal on them.

[7] In this case, even if the Proposed Defendants are persons who are directly affected by the appeal, it is appropriate for the Court to exercise its discretion to direct that there is no obligation to serve the notice of appeal on them.

[8] Rule 3 provides the general principles for the interpretation and application of the Rules:

3 These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

3 Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

[9] To provide that the notice of appeal must be served on approximately 150 Proposed Defendants in a matter where the Proposed Defendants are not parties to the appeal, would not, in my view, be an interpretation and application of the rules that would secure the just, most expeditious and least expensive determination of this particular appeal on its merits.

[10] It must be remembered that unless the appellant is successful in overturning the decision to strike the statement of claim, there is no statement of claim. Therefore, there is no cause of action absent a successful appeal. As a result, the determination of the appeal of the Order dismissing the appellant's motion to allow the appellant to add the Proposed Defendants is contingent on the statement of claim being reinstated. If the appellant is not successful in reinstating the statement of claim, then the appeal related to the addition of the Proposed Defendants is moot.

[11] Under the Rules, only persons who are parties to the appeal or who are granted intervener status are permitted to participate in the appeal by filing a memorandum of fact and law and making submissions at the hearing of the appeal. Simply serving the approximately 150 Proposed Defendants would not give them the status of being a party to the appeal nor would it grant them intervener status.

[12] There is also nothing to indicate in the materials that were submitted by the parties that when the appellant brought the motion before the Federal Court to add the Proposed Defendants to the action, they were provided with notice of that motion.

[13] As a result, this is an appropriate case to provide that there is no obligation to serve the notice of appeal on the Proposed Defendants. The motion for substituted service is dismissed, with costs payable in any event of the cause.

“Wyman W. Webb”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-182-21

STYLE OF CAUSE: KOBE MOHR v. NATIONAL HOCKEY LEAGUE et al.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: WEBB J.A.

DATED: SEPTEMBER 14, 2021

WRITTEN REPRESENTATIONS BY:

Edward J. Babin
Brendan Monahan

FOR THE APPELLANT

Eric C. Lefebvre
Christopher A. Guerreiro
Francesca Taddeo
Erika Woolgar

FOR THE RESPONDENTS,
CANADIAN HOCKEY LEAGUE,
QUEBEC MAJOR JUNIOR
HOCKEY LEAGUE INC.,
ONTARIO HOCKEY LEAGUE,
WESTERN CANADA HOCKEY
LEAGUE

SOLICITORS OF RECORD:

Babin Bessner Spry LLP
Toronto, Ontario

FOR THE APPELLANT

Norton Rose Fulbright Canada LLP
Montréal, Quebec

FOR THE RESPONDENTS,
CANADIAN HOCKEY LEAGUE,
QUEBEC MAJOR JUNIOR
HOCKEY LEAGUE INC.,
ONTARIO HOCKEY LEAGUE,
WESTERN CANADA HOCKEY
LEAGUE