

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230823

Docket: A-52-23

Citation: 2023 FCA 179

[ENGLISH TRANSLATION]

PRESENT: GLEASON J.A.

BETWEEN:

MUNICIPALITY OF CHELSEA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Motion dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on August 23, 2023.

REASONS FOR ORDER BY:

GLEASON J.A.

Federal Court of Appeal



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REASONS FOR ORDER

GLEASON J.A.

[1] The Union des municipalités du Québec (UMQ) is seeking leave to intervene in this appeal, the purpose of which is to set aside the Federal Court's judgment in *Chelsea (Municipality) v. Canada (Attorney General)*, 2023 FC 103 (*per* Justice Pamel). In that judgment, the Federal Court dismissed the Municipality of Chelsea's application for judicial review of a decision of the National Capital Commission (NCC). That decision determined the

amount of payments in lieu of taxes payable to the municipality for federal properties located in Gatineau Park.

[2] The UMQ is a corporation created in 1919 whose mission is to politically represent nearly 400 municipalities in Quebec. According to paragraph 2 of its notice of motion, the UMQ would like to intervene in this appeal to [TRANSLATION] “clarify for the Court the issues raised in this appeal for all Quebec municipalities that receive payments from the federal Crown under the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (the PLTA)”.

[3] In its motion, the UMQ provided only scant details related to the arguments that the UMQ would like to make if its motion is granted.

[4] The Court grants leave to intervene relatively rarely. Indeed, the test for granting leave is more restrictive before this Court than before the Supreme Court of Canada, for example.

[5] The *Federal Courts Rules*, SOR/98-106 allow the Court to grant leave to intervene pursuant to rule 109, which provides as follows:

Leave to intervene

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

Contents of notice of motion

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

Autorisation d’intervenir

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

Avis de requête

(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

(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.

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.

Directions

(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.

Directives de la Cour

(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.

[6] This Court has recently and repeatedly set out the factors applicable to granting leave to intervene pursuant to rule 109 of the *Federal Courts Rules*. For example, full panels of the Court have reviewed this test in *Métis National Council and Manitoba Métis Federation Inc. v. Varley*, 2022 FCA 110, 2022 CAF 110, 2022 CarswellNat 1943 (WL Can); *Gordillo v. Canada (Attorney General)*, 2022 FCA 23; *Whapmagoostui First Nation v. McLean*, 2019 FCA 187, 306 A.C.W.S. (3d) 500; and *Sport Maska Inc. v. Bauer Hockey Corp.*, 2016 FCA 44, [2016] 4 F.C.R. 3; furthermore, single judges have reviewed this test in *Le-Vel Brands, L.L.C. v. Canada (Attorney General)*, 2023 FCA 66; *Smith v. Canada (Attorney General)*, 2022 FCA 146 [Smith]; *Alliance for Equality of Blind Canadians v. Canada (Attorney General)*, 2022 FCA 131, 2022

CarswellNat 2708 (WL Can); *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67, 2022 CarswellNat 1052 (WL Can); *Canada (Environment and Climate Change) v. Ermineskin Cree Nation*, 2022 FCA 36, 2022 CAF 36, 2022 A.C.W.S. 286; *Air Passenger Rights v. Canada (Attorney General)*, 2021 FCA 201, 2021 CarswellNat 4867 (WL Can); *Canada (Citizenship and Immigration) v. Camayo*, 2021 FCA 20, 338 A.C.W.S. (3d) 85; *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 13, 329 A.C.W.S. (3d) 518 [*Canadian Council for Refugees*]; *Gordillo v. Canada (Attorney General)*, 2020 FCA 198, 329 A.C.W.S. (3d) 233; and *Canada (Attorney General) v. Kattenburg*, 2020 FCA 164, [2020] F.C.J. No. 965.

[7] As I noted in paragraph 10 of *Smith*, all the cases cited above take as their point of departure the decision of this Court in *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 90, 1989 CanLII 9432 (FCA) [*Rothmans*]. *Rothmans* set out a number of factors relevant to determining a motion for leave to intervene, namely: (1) whether the proposed intervener is directly affected; (2) whether there is a justiciable issue and veritable public interest; (3) whether there is an apparent lack of other reasonable or efficient means to submit the question to the Court; (4) whether the position of the intervener is adequately defended by one of the parties; (5) whether the interests of justice are better served by granting leave to intervene; and (6) whether the Court can decide the case without the proposed intervention (at p. 92).

[8] The case law cited above establishes that the factors applicable to granting leave to intervene must be applied with flexibility and that the factors will not all be relevant in each case. Some cases cast doubt on whether certain factors remain relevant.

[9] In its recent jurisprudence, the Court tends to focus on three factors, namely, the usefulness of the intervention in relation to the issues on which the Court will be called upon to rule, the applicant's interest in the case, and the interests of justice. Justice Stratas helpfully laid out the applicable principles in paragraph 6 of *Canadian Council for Refugees* as follows:

. . . the current test for intervention under Rule 109 is as follows:

I. The proposed intervener will make different and useful submissions, insights and perspectives that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues. To determine usefulness, four questions need to be asked:

(a) What issues have the parties raised?

(b) What does the proposed intervener intend to submit concerning those issues?

(c) Are the proposed intervener's submissions doomed to fail?

(d) Will the proposed intervener's arguable submissions assist the determination of the actual, real issues in the proceeding?

II. The proposed intervener must 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. It is in the interests of justice that intervention be permitted.

[10] In this case, the above factors weigh in favour of dismissing the application for leave to intervene.

[11] As for the usefulness of the intervention sought, the UMQ has not demonstrated how its proposed submissions would differ from the appellant's, nor how its point of view on the issues in this case would be helpful to the Court.

[12] In this appeal, the Court will be called upon to review the reasonableness of the NCC's decision, which raises several issues that apply only in this case, issues with respect to which the UMQ has nothing to contribute.

[13] The most controversial issue will perhaps concern the interpretation of subsection 16(3) of the *National Capital Act*, R.S.C. 1985, c. N-4, which is an issue on which the UMQ is not seeking to intervene.

[14] Indeed, the UMQ is seeking to intervene only on the issue of the reasonableness of the NCC's decision to deviate from an opinion issued by the Payments in Lieu of Taxes Dispute Advisory Panel (the Panel). However, the parties acknowledge that such an opinion is not binding on the federal board, in this case the NCC. Consequently, the assessment of the reasonableness of the decision to deviate from the Panel's report is very much related to the factual background before the NCC and is intrinsically linked to the nature of Gatineau Park and the zoning regulations that were adopted by the town of Chelsea. This further limits the impact of the judgment in this appeal for other Quebec municipalities.

[15] Furthermore, in its memorandum, the UMQ provided very few details on the submissions that it would like to make. UMQ's proposed arguments are not different from the appellant's arguments in its notice of appeal.

[16] This leads me to find that the UMQ has not demonstrated that it will provide any other submissions and perspectives that will help the Court rule on the legal issues raised by the parties in this appeal.

[17] As for the UMQ's interest in the issues in this matter, given the nature of the issues raised in this case, I am not convinced that the UMQ has a genuine interest in this appeal, notably because the appeal does not raise concrete issues for towns other than the town of Chelsea.

[18] This leads me to conclude that the interests of justice do not require granting the leave sought.

[19] This motion will consequently be dismissed without costs, given the respondent's decision not to claim them.

"Mary J.L. Gleason"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-52-23

STYLE OF CAUSE: MUNICIPALITY OF CHELSEA v.
ATTORNEY GENERAL OF
CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: GLEASON J.A.

DATED: AUGUST 23, 2023

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