Federal Court of Appeal | Cour d'appel fédérale

Date: 20250923

Dockets: A-233-25 (lead file)
A-235-25

Citation: 2025 FCA 170

Present: LEBLANC J.A.

Docket: A-233-25 (lead file)

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Appellant

and

HIS MAJESTY THE KING

Respondent

Docket: A-235-25

AND BETWEEN:

PARKDALE COMMUNITY LEGAL SERVICES

Appellant

and

HIS MAJESTY THE KING

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 23, 2025.

REASONS FOR ORDER BY: LEBLANC J.A.

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REASONS FOR ORDER

LEBLANC J.A.

[1] The Canadian Association of Black Lawyers and the Black Legal Action Center (the proposed interveners) are both seeking leave to intervene in these two consolidated appeals pursuant to Rule 109 of the *Federal Courts Rules*, SOR/98-106 (the Rules).

[2] These are appeals of a decision of the Federal Court, dated May 22, 2025, dismissing the appellants' consolidated challenge, on motions for summary judgments, to the constitutional validity of paragraph 53(2)(e) and subsection 53(3) of the *Canadian Human Rights Act*, RSC 1985, c. H-6 (the Act). These provisions impose limits on monetary or special damages the Canadian Human Rights Tribunal may award for pain and suffering and for reckless and wilful discriminatory practices.

[3] The appellants claim that these provisions violate section 15 of the *Canadian Charter of Rights and Freedoms* and are not saved by section 1. The Federal Court found these provisions did not violate section 15. Having so concluded, it did not perform a section 1 analysis. In these appeals, the appellants contend that the Federal Court committed a number of errors, by, *inter alia*:

a) adopting an approach to the section 15 analysis and to the interpretation of the impugned provisions that is neither purposive nor contextual and is contrary to the jurisprudence;

b) adopting a comparator analysis that is contrary to the jurisprudence;

c) concluding that the impugned provisions do not impose a burden or deny a benefit in a manner that perpetuates, reinforces or exacerbates disadvantage;

d) by misinterpreting and misapplying the rules of evidence; and

e) by imposing an evidentiary burden on the appellants that is contrary to the jurisprudence (the Federal Court determined that the appellants had failed to meet their burden under the second step of the section 15 analysis by asserting that the monetary caps established by the impugned provisions of the Act operate in the same manner for each protected group and by failing, as a result, to disaggregate their data by protected groups).

[4] The proposed interveners assert they have a genuine interest in these consolidated appeals which is rooted in their commitment to addressing issues of discrimination. They contend that the nature of this case requires the Court to consider perspectives beyond those offered by the parties and that they are uniquely positioned “to provide the Court with a community-informed perspective that would otherwise be absent from the proceeding.”

[5] The appellants do not object to the participation of the proposed interveners in these appeals. However, the respondent does. While it recognizes that the proposed interveners are experienced interveners with an interest in the outcome of these appeals, the respondent submits that the proposed interventions should be dismissed because the proposed interveners have failed

to establish that their interventions would assist the Court in determining the issues raised in these appeals.

[6] The test for intervention under Rule 109 focusses on three elements: (i) the usefulness of the intervener's participation to what the Court is called upon to decide; (ii) a genuine interest on the part of the intervener; and (iii) a consideration of the interests of justice (*Le-Vel Brands, LLC v. Canada (Attorney General)*, 2023 FCA 66 at para. 7 (*Le-Vel Brands*); see also *Chelsea (Municipality) v. Canada (Attorney General)*, 2023 FCA 179 (*Chelsea*); Canada (Citizenship and Immigration) v. Canadian Council for Refugees, 2021 FCA 13 (Council for Refugees*); Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67 (*Right to Life*); *Gordillo v. Canada (Attorney General)*, 2022 FCA 23; *Métis National Council and Manitoba Metis Federation Inc. v. Varley*, 2022 FCA 110; *Whapmagoostui First Nation v. McLean*, 2019 FCA 187; *Sport Maska Inc. v. Bauer Hockey Corp*., 2016 FCA 44; *Macciacchera (Smoothstreams.tv) v. Bell Media Inc.*, 2023 FCA 180; *Smith v. Canada (Attorney General)*, 2022 FCA 146; *Alliance for Equality of Blind Canadians v. Canada (Attorney General)*, 2022 FCA 131).

[7] It is worth reminding at this stage that the test for intervention is more restrictive in this Court than in other courts, including the Supreme Court of Canada, resulting in intervener status being granted in this Court "relatively rarely" (*Chelsea* at para. 4; see also *Talukder v. Canada (Public Safety and Emergency Preparedness)*, 2025 FCA 132 at paras. 5-7). It is worth reminding as well that even where a proposed intervener has a keen interest in the development of the law, as many other organizations might have, because it might be affected by the Court's

decision in a proceeding, that type of interest, without more, is insufficient to satisfy the test for intervention (*Right to Life* at para. 24).

[8] Of the three elements of the test for intervention, failure to demonstrate usefulness – an element explicitly required to be satisfied under Rule 109 – is the most frequent reason why intervention motions fail (*Le-Vel Brands* at para. 13). In fact, when that occurs, the Court, irrespective of the two other elements, "is legally bound to dismiss the motion for leave to intervene" (*Le-Vel Brands* at paras. 13–16)

[9] Usefulness is established when the Court is satisfied that the proposed intervention will further the Court's determination of the legal issues raised by the parties to the proceeding by providing different and useful submissions, insights and perspectives. This determination will usually be made by looking at: (i) the issues raised by the parties: (ii) what the proposed intervener intends to submit on these issues; (iii) whether these intended submissions are doomed to fail; and (iv) whether the proposed intervener's arguable submissions will assist the determination of the actual, real issues in the proceeding. A proposed intervention will therefore not be permitted if the intent is to address issues not raised by the parties. In other words, interveners must take the parties' issues – and the court record – as they find them (*Le-Vel Brands at para. 19;* Council for Refugees *at para. 6;* Right to Life *at para. 14).*

[10] Here, despite being quality organizations and having done their best to show why they should be permitted to go ahead with their intervention, I agree with the respondent that many of the submissions the proposed interveners intend to make on these appeals either add new issues

to it or largely repeat the appellants' arguments, resulting in the usefulness criterion not being met.

[11] The proposed interveners intend to focus their submissions on the notion of intersectional discrimination, that is, discrimination against individuals who are members of multiple protected groups, such as race, disability and gender. In particular, they intend to argue that courts should be wary of creating evidentiary barriers that place an unsurmountable burden on these individuals when they are making a discrimination claim. In the proposed interveners' view, circumstantial evidence and case law – as opposed to statistical evidence – should be sufficient for such complainants to establish the disproportionate and discriminatory effect of legislation.

[12] In my view, there are two problems with the proposed intervention.

[13] First, as the respondent correctly points out, the appellants defined the claimant group in their proceedings before the Federal Court as all individuals having made successful complaints under the Act, irrespective of their protected group or groups. Therefore, I am not satisfied that the proposed interveners' perspective on one particular group would be useful to the Court for the resolution of the issues raised on these appeals as the appellants' claim under section 15 was not framed in this manner. Put differently, intersectional discrimination was not at issue in the Court below and is not at issue in these appeals.

[14] As is well settled, if a proposed intervener wants to advance its own issues, it must bring its own case as a party with all that entails, including legal expense and potential costs liability (*Right to Life* at para. 14).

[15] I note that organizations such as the South Asian Bar of Toronto, the Don Valley Community Legal Services, an organization mandated with providing legal services to low-income individuals, marginalized and racialized communities, Egale Canada, a non-profit organization advancing equality and justice for 2SLGBTQI1 people across Canada, and DisAbled Women's Network of Canada, a feminist, disability-led, pan-Canadian, non-partisan and not-for-profit human rights organization, sought, but were denied, intervener status in the Federal Court.

[16] In three separate, unreported, decisions rendered on March 12, 2024, the Federal Court noted that the question of how the limits on damages under the Act reinforce, perpetuate, and exacerbate pre-existing vulnerabilities of the members of these protected groups was not raised as an issue in the parties' pleadings and concluded that the intended submissions of these organizations would not prove useful for the determination of the issues raised by the parties.

[17] I substantially agree with this rejection, for the reasons the Federal Court gave, and I see no reason why these would not apply to the proposed interveners' motion in these appeals.

[18] The same can be said of the submissions the proposed interveners intend to make on statistical evidence as the Federal Court acknowledged that this type of evidence was not

required to establish a section 15 violation. As appears from paragraphs 89 and 170 of the impugned decision, the statistical evidence in this case was tendered – and relied upon "heavily" – by the appellants, to argue that monetary caps set out in the Act caused a disproportionate impact on the claimant group and denied complainants equal benefit of the law under section 15. Again, the proposed interveners' submissions on this issue would not assist the determination of the actual, real issues as raised by the parties in the Court below and in these appeals.

[19] Second, as regards the proposed submissions on the evidentiary burden individuals making discrimination claims have to meet, as indicated above, this is an issue raised by the appellants in these appeals. However, I am not satisfied that the proposed interveners have met their onus of establishing that their arguments will provide the Court with different insights and perspectives than those of the appellants.

[20] For all these reasons, an Order dismissing the proposed interveners' motion, without costs, will be issued simultaneously to this set of reasons.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-233-25 (LEAD FILE)
STYLE OF CAUSE:	PUBLIC SERVICE ALLIANCE OF CANADA v. HIS MAJESTY THE KING
AND DOCKET:	A-235-25
STYLE OF CAUSE:	PARKDALE COMMUNITY LEGAL SERVICES v. HIS MAJESTY THE KING

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	LEBLANC J.A.
DATED:	SEPTEMBER 23, 2025

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