

PRACTICE

PARTIES

Intervention

Motion by Canadian Judicial Council (CJC) seeking leave to intervene pursuant to *Federal Courts Rules*, SOR/98-106, r. 109, in applicant's amended application for judicial review asking to set aside CJC report to Minister of Justice recommending applicant's removal from office — CJC seeking to submit [TRANSLATION] "comments", "explanations" — Planning to file affidavit by CJC's executive director containing [TRANSLATION] "evidence" on topics related to CJC's processes, functioning — Applicant objecting to motion to intervene, filing substantive record with supporting authorities — Applicant arguing motion disguised attempt by CJC to present new evidence to compensate for deficiencies in its decisions subject of judicial review — To validate motion, CJC relying in particular on *Rothmans, Benson and Hedges Inc v. Canada (Attorney General)*, [1990] 1 FC 74, listing six non-exhaustive factors to consider — Whether motion for leave to intervene well-founded — Criteria set out in *Ontario (Energy Board) v Ontario Power Generation Inc*, [2015] 3 SCR 147 applied herein — Role of CJC to conduct investigations in response to complaint about judge's conduct, to decide whether to recommend that judge be removed from office — CJC's participation upon judicial review having to be circumscribed so as not to undermine its impartiality — As formulated, motion for leave to intervene, if granted, giving impression CJC acting as party to dispute — Role as investigator, decision maker with regard to report, decisions taken requiring that CJC's impartiality be preserved — Inappropriate for decision maker to play such important role as role sought by motion for leave to intervene — Not permitted to add to decision under review in context of application for judicial review — Tools available to ensure each party can fully assume its role, for Court to be able to make informed decision — Granting leave to intervene not in interests of justice, except for three topics: mission, functioning of CJC; procedure followed in inquiry under *Judges Act*, s. 63; application of *By-laws and Handbook of Practice and Procedure of CJC Inquiry Committees*, with certain conditions — Conditions for intervention respecting rights of all parties — Motion granted in part.

GIROUARD V. CANADA (ATTORNEY GENERAL) (T-409-18, 2019 FC 434, Noël J., reasons for order dated April 9, 2019, 33 pp.)