Federal Courts Reports
Recueil des décisions des Cours fédérales

PRACTICE

PARTIES

Intervention

Application for leave to intervene in appeal from Federal Court decision (2019 FC 950) dismissing judicial review application of refusal of Public Sector Integrity Commissioner to investigate allegations that officials in Canadian Embassy in Mexico City failed to follow Government of Canada policies applicable to protection of human rights advocates, failed to report act of corruption in timely manner — Commissioner found that these were not "wrongdoings" under *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, ss. 33(1), 8(d),(e) — In 2007, Canadian mining company, Blackfire Exploration Ltd., opened barite mine in Chiapas, Mexico — Mine met with local opposition, demonstrations in front of Canadian Embassy in Mexico City, blockade of transportation route to mine — In 2009, leader of opposition movement, Mr. Abarca, arrested, held without charges for eight days — Appellants asserting that in 2009, shortly following complaint to police by Mr. Abarca that two employees of Blackfire had made death threats to him, Mr. Abarca murdered — At issue before Commissioner was whether Embassy's actions, inactions in assisting Blackfire navigate political, social opposition to mine, in liaising between Blackfire, local, state, national governments in respect of regulatory requirements, conformed to Government of Canada policies in relation to adherence to customary international law, Canada's stated policy to advance, protect human rights — Appellants arguing that these actions or inactions contributed to danger faced by Mr. Abarca — Second allegation concerned whether Embassy reported act of corruption in timely manner — Respondent consenting to leave to intervene motion of intervener Canadian Lawyers for International Human Rights, International Justice and Human Rights Clinic (CLIHR/IJHRC), Amnesty International; opposing motion by Canadian Centre for Free Expression at Ryerson University (CFE), arguing it has not satisfied test for intervention under *Federal Courts Rules*, SOR/98- 106, r. 109 — Whether motions should be granted — Party cannot "consent" to motion for leave to intervene: it can support, oppose or it can take no position — Parties can only "consent" to procedural matters such as delay in completing procedural step that would work to its advantage — Question whether intervention should be allowed is substantive; consent of party irrelevant – Court must be satisfied that intervention is in overall best interests of justice — If respondent of view that motions ought to be granted, he should say so, explain in summary way why that is so — In motion under r. 109(2)(b), party to explain how it wishes to participate in proceeding, how that participation will assist determination of factual or legal issue related to proceeding; Court then assessing, weighing these submissions against specific factors articulated in *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 74 (T.D.), affirmed [1990] 1 F.C. 90 (C.A.), 103 N.R. 391 — Such factors include whether proposed intervener directly affected by outcome; existence of justiciable issue, veritable public interest — Not all factors need be present; some may weigh more heavily than others — Criteria not prescriptive — Over-arching test whether Court will be better served in its consideration of issues with which it has to grapple by intervener's presence — Turning to *Rothmans* factors, none of parties here "directly affected" in that they have same level of "direct interest" entity or person with full party status would typically have — However, that is not barrier — In asserting genuine interest, there must be link between issue to be decided, mandate, objectives of party seeking to intervene — Source of genuine interest must be identified; should be clear from submissions what animates intervention — In asserting genuine interest, intervener must demonstrate more than "jurisprudential" motivation — Here, proposed interveners have, through

supporting affidavits, established historical record of engagement in different facets of legal issues before Court — Critical question whether intervener will bring further, different, valuable perspectives to Court that will assist in determining matter – Assistance can take many forms — In this case, interveners' submissions drawing on their understanding of international law (customary, treaty), its role in interpretation of domestic legislation — Focus of CFE is different—its interest is in substance, scope of Act — Proposed intervener's motion will be dismissed if their submissions substantially duplicate those already made by parties or not sufficiently distinct; however, not case here — Court addressing particular facts, circumstances of case in respect of which intervention sought — In present instance, no specific facts weighing against either Amnesty International, CLIHR/IJHRC or CFE — Court satisfied that proposed interveners demonstrated that they have genuine interest in matter before Court, that proposed submissions not duplicated by either party, that it would be in interests of justice to grant them intervener status — Also, not case where interventions seek to engage Court in merits of policy talk despite that interventions arising in context of broader policy question of Canada's role in relation to advancement of human rights abroad — All focussing on proper interpretation of statute; arguments not bringing geo-political considerations to table — Motions granted.

GORDILLO V. CANADA (ATTORNEY GENERAL) (A-290-19, 2020 FCA 198, Rennie, J.A., reasons for order dated November 16, 2020, 12 pp.)