

FEDERAL COURT OF APPEAL

BETWEEN:

THE PRIME MINISTER OF CANADA, THE MINISTER OF
FOREIGN AFFAIRS, THE DIRECTOR OF THE CANADIAN
SECURITY INTELLIGENCE SERVICE, AND THE
COMMISSIONER OF THE ROYAL CANADIAN MOUNTED
POLICE,

Appellants,

- and -

OMAR AHMED KHADR,

Respondent.

MOTION RECORD

Thompson Dorfman Sweatman LLP
Barristers & Solicitors
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(Matter No. 0094207 SRP)
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NOTICE OF MOTION

**(Proposed Intervener: Amnesty International
Canadian Section, English Branch)**

TAKE NOTICE THAT the proposed intervener, Amnesty International
(Canadian Section, English Branch) ("AI"), will make a motion to the Court in writing
under Rule 369 of the Federal Courts Rules.

THE MOTION IS FOR:

- (a) an Order granting leave for AI to intervene in the hearing of this Appeal
pursuant to Rule 109 of the Federal Court Rules;

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- (b) an Order granting leave to file a Memorandum of Fact and Law up to 20 pages in length;
- (c) an Order granting leave to make oral argument at the hearing of this Appeal up to 15 minutes in length, time permitting;
- (d) an Order that AI will not seek costs from any party;
- (e) an Order that AI be served only with the Memoranda of Fact and Law filed by the parties to this Appeal, including any other interveners;
- (f) an Order that AI will not itself seek appeal of any judgment, but will be allowed to participate in any appeal and be served with such appeal material;
- (g) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Proposed Intervener is Amnesty International (Canadian Section, English Branch), 312 Laurier Avenue East, Ottawa, ON K1N 1H9;
- (b) The Solicitor acting for AI is Thompson Dorfman Sweatman LLP, 2200 - 201 Portage Avenue, Winnipeg MB R3B 3L3 (per Sacha R. Paul)

with assistance from Assistant Professor Vanessa Gruben, University of Ottawa, Faculty of Law and Michael Bossin, Community Legal Services (Ottawa-Centre).

- (c) Federal Court Rule 109;
- (d) If leave to intervene is granted, AI will make a submission in relation to s. 7 of the Charter of Rights and Freedoms, which will be useful and different from the submissions of the parties and which will not be raised if AI is not granted leave to intervene;
- (e) AI shall invite this Honourable Court to conclude:
 - (i) Mr. Omar Ahmed Khadr's ("Omar") section 7 right to "life, liberty, and security of the person" is negatively impacted by the Crown when the Crown knows or ought to know that Omar, as a Canadian citizen, is being subjected to conduct by other countries that is in violation of international law;
 - (ii) The "principles of fundamental justice" implicated in this case are the rules of natural justice, which includes, without limitation:
 - A. the right to have the Crown consider and make a decision on Omar's request for repatriation on the basis of applicable international law and the evidence;

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- B. the right to challenge the decision of the Crown on a substantive basis, including its consideration of applicable international law, to be assessed on a reasonableness standard;
- (f) AI is directly affected by the outcome of this case because AI has a long history of:
 - (i) advocating and promoting international human rights issues, including issues associated with the human rights of detained or incarcerated people, such as the one at bar;
 - (ii) advocating and raising awareness of the treatment of Omar by Canada and other states since his detention at Guantanamo Bay in or about 2002;
 - (g) The rights of Canadian citizens detained abroad to have the Crown consider requests for repatriation consistent with the rules of natural justice, where protected international human rights are implicated, is an issue of pressing public importance and an issue of interest beyond the facts of this particular case;
 - (h) such further and other grounds as counsel may advise and this Honourable Court may permit.

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THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the affidavit of Alex Neve sworn May 27, 2009, and
- (b) such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

May 28, 2009


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AFFIDAVIT OF ALEX NEVE

I, **Alex Neve**, of the City of Ottawa, in the Province of Ontario, make
oath and state as follows:

1. I am the Secretary General of Amnesty International ("AI") (Canadian
Section, English Branch) and as such have knowledge of the matters hereinafter
deposed to.

2. I was hired as Secretary General of AI's Canadian section ("AI
Canada") in January 2000. Prior to assuming this position I had been an active
member of AI for 15 years, during which time I was employed by AI Canada and by

AI's International Secretariat in London, England for 3 years. My activities with AI have included numerous research missions to monitor and report on human rights abuses, the preparation of international and national reports on issues of concern to AI, and participation in AI national and international meetings.

3. In addition to my experience with AI, I hold a Master of Laws degree in International Human Rights Law, with distinction, from the University of Essex in the United Kingdom.

4. As Secretary General for AI Canada, I am responsible for overseeing implementation of AI's mission in Canada. This includes supervising staff and ensuring that there is a national network of volunteers to carry out AI's work in Canada. My responsibilities also include ensuring that AI's expertise is available to decision-making bodies and the general public, communicating and cooperating with others who are interested in working to advance international human rights issues, and educating the public on human rights.

5. AI Canada has a strong record as a credible, trustworthy and objective organization that possesses unique expertise on international human rights law. AI Canada has commented extensively on security and international human rights, including before numerous courts, various international bodies and numerous legislatures. AI Canada has a strong interest in this appeal as it will certainly impact its ongoing ability to strike the appropriate balance between security and human rights.

Amnesty International: The Organization

6. AI is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights.
7. AI is impartial and independent of any government, political persuasion or religious creed. AI is financed by subscriptions and donations from its worldwide membership, and receives no government funding.
8. The organizational structure of AI Canada includes a board of 12 directors elected across the country, specific country and issue coordinators in each region and province, and a membership of approximately 60,000.
9. There are currently close to 2 million members of AI in over 162 countries. There are more than 7,500 AI groups, including local groups, youth or student groups and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories the work of these groups is coordinated by national sections like AI Canada.

Amnesty International: The Vision

10. AI's vision is of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* ("UDHR") and other international human rights standards.

11. In pursuit of this vision, AI's mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic.

12. In 1977, AI was awarded the Nobel Peace Prize for our work in promoting international human rights.

Promoting and Advancing International Human Rights

13. AI seeks to advance and promote international human rights at both the international and national level. As part of its work to achieve this end, AI monitors and reports on human rights abuses, participates in international committee hearings, intervenes in domestic judicial proceedings, and prepares briefs for and participates in national legislative processes and hearings. AI also prepares international and national reports for the purpose of educating the public on international human rights.

Monitoring and documenting human rights abuses

14. AI's investigative work is carried out by human rights researchers who receive, cross-check and corroborate information from many sources, including prisoners and their families, lawyers, journalists, refugees, diplomats, religious groups and humanitarian and other human rights organizations. Researchers also obtain information through newspapers, web-sites and other media outlets. As well, AI sends about 130 fact-finding missions to some 70 countries each year to directly assess what is happening on the ground. AI's research is recognized around the world as accurate, unbiased, and credible, which is why AI reports are widely consulted by governments, intergovernmental organizations, journalists and scholars.

15. Based on its research, AI publishes reports, briefing papers, newsletters and campaigning materials. Amongst its publications is the annual *Amnesty International Report* on human rights conditions in countries around the world.

16. These official reports by AI are often relied on as evidence by immigration review boards and in Canadian courts. For example, in *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503, Justice Tremblay-Lamer found "the [Minister's] delegate's blanket rejection of information from agencies with worldwide reputations for credibility, such as AI and [Human Rights Watch] ... puzzling, especially given the institutional reliance of Canadian courts and tribunals on these very sources." Indeed, as Justice Tremblay-Lamer pointed out, "the Minister of Citizenship and Immigration frequently relies on information from

these organizations in creating country condition reports, which in turn are used by Immigration and Refugee tribunals, in recognition of their general reputation for credibility". Similarly, in *Thang v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 457, the Federal Court allowed a judicial review of a Pre-Removal Risk Assessment ("PRRA") on the basis that the PRRA officer failed to consider a detailed analysis of the applicant's personal circumstances prepared by AI, whom the Court referred to as a "credible source". The Federal Court has also emphasized the important evidentiary role of AI reports in *Shabbir v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 480, and *Ertuk v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1118. Finally, in *Suresh v. Canada (Minister of Citizenship and Immigration, et al)*, [2002] 1 S.C.R. 3, the Supreme Court of Canada relied on an AI report concerning Sri Lanka's torture of members of the Liberation Tigers of Tamil Eelam.

Participation in Judicial Proceedings

17. AI has participated as an intervener and made submissions in numerous judicial proceedings both in Canada and elsewhere.

18. AI Canada has intervened on the issue of international human rights in several cases before the Supreme Court of Canada, including:

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- (a) *Charkaoui v. Canada (Minister of Citizenship and Immigration) No. 2*, [2008], 2 S.C.R. 326 (AI was granted leave to intervene with respect to whether the systematic destruction of interview notes and other information by the Canadian Security Intelligence Service in the context of security certificate proceedings violates international norms and the constitutional principles of procedural fairness);
- (b) *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 (AI presented submissions on the constitutionality of the procedural protections in *IRPA*'s security certificate regime and on the arbitrary detention of foreign nationals under that regime);
- (c) *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269 (AI argued that the right to the protection of mental integrity and to compensation for its violation has risen to the level of a peremptory norm of international law, which prevails over the doctrine of sovereign immunity);
- (d) *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 (AI presented submissions to the Court regarding the nature and scope of the international prohibitions against torture, and the mechanisms designed to prevent and prohibit its use, which the Court referred to);

- (e) *United States v. Burns*, [2001] 1 S.C.R. 283 (AI provided information to the Court on the significant international movement towards the abolition of capital punishment);
- (f) *Reference Re Ng Extradition (Can.)*, [1991] 2 S.C.R. 858 (AI provided information regarding the international movement towards the abolition of capital punishment); and
- (g) *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779 (AI provided information regarding the international movement towards the abolition of capital punishment).

19. AI Canada has intervened before the Ontario Court of Appeal in *Bouzari v. Islamic Republic of Iran* (Court File C38295, June 30, 2004), a case involving the right of a torture victim to sue for compensation from the offending government and in *Ahani v. Her Majesty the Queen, The Attorney General of Canada and the Minister of Citizenship and Immigration* (Court file C37565, February 8, 2002), where AI made submissions on Canada's international obligations in response to the UN Human Rights Committee's request that Canada not deport the appellant pending consideration of his complaint to the Committee.

20. AI Canada was also an applicant in two matters before the Federal Court concerning fundamental human rights issues. In *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v.*

Canada, 2008 FCA 229, the applicants asserted that Canada's "safe third country" agreement with the United States was invalid and unlawful because the United States fails to comply with its obligations under the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. In *Amnesty International Canada and British Columbia Civil Liberties Association v. Chief of the Defence Staff for the Canadian Forces, Minister of National Defence and Attorney General of Canada*, 2008 FCA 401, the applicants asserted that Canada is in breach of its obligations under the *Convention Against Torture* by transferring Afghan detainees into the custody of Afghan officials where they are at serious risk of torture or cruel, inhuman or degrading treatment.

21. AI Canada was also granted intervener status in the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar ("Arar Inquiry"), where it made submissions on the subject of security and human rights. AI Canada tendered three extensive briefs on the subject of security and human rights to the Commissioner:

- (a) *Securing a Commitment to Human Rights in Canada's Security Laws and Practices: Opening Submissions of Amnesty International Canada to the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar* (hereinafter "the Arar Inquiry"), June 14, 2004;

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- (b) *A Human Rights Approach to National Security Confidentiality (Submission to the Arar Inquiry)*, May 28, 2004; and
- (c) *Restoring his Rights, Addressing the Wrongs: Amnesty International's Closing Submissions to the Arar Inquiry*, September 10, 2005.

AI Canada also made frequent oral submissions to the Arar Inquiry as well as meeting on numerous occasions with the Commissioner and/or Commission counsel. As an intervener, AI Canada commented extensively on the treatment of information classified as confidential on the grounds of national security.

22. Further, AI Canada was granted intervener status in the Internal Inquiry into the Actions of Canadian officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin ("Iacobucci Inquiry") where it made oral and written submissions on the substantive issues before the Commissioner on the source of applicable standards under international law; the prohibition against torture; providing or exchanging information and travel plans with foreign officials; the inadequacy of diplomatic assurances with respect to the use of torture; the prohibition against the use of information obtained through torture; communication, the provision of information, and assistance in questioning detained Canadians; requirement of consular officials to ensure that basic human rights are protected; and the presumption of innocence of Canadians detained abroad, among other things.

23. AI has also made submissions on international human rights in judicial proceedings in other countries. AI was recently *amicus curiae* before the Supreme Court of the United States in *Boumediene v. Bush*; *Al Odah v. United States*, 128 S. Ct. 2229 where AI argued that the Military Commission Act of 2006 is an unconstitutional suspension of *habeas corpus* under United States law and in violation of the United States' international obligations.

24. In 2006, the British House of Lords granted AI intervener status in *Al-Skeini and others v. the Secretary of State*, [2007] UKHL 26, an appeal concerning the applicability of the European Convention on Human Rights and the UK's *Human Rights Act 1998* to the actions of British armed forces in Iraq. Other proceedings where AI has intervened include:

- (a) *A and others v. Secretary of State for the Home Department (No. 2)*, [2005] UKHL 71, (regarding the admissibility of evidence obtained through torture);
- (b) *A and others v. Secretary of State for the Home Department*, [2005] 2 A.C. 68 (regarding indefinite detention of suspected terrorists under the *Anti-Terrorism, Crime and Security Act 2001*);
- (c) *R. v. Bow Street Metropolitan Stipendiary Magistrate, Ex parte Pinochet Ugarte (No. 3)*, [2000] 1 A.C. 147 (U.K.H.L.) (regarding state immunity for international crimes); and

- (d) *Chahal v. United Kingdom*, (1997) 23 E.H.R.R. 413 (E.Ct.H.R.) (regarding the absolute prohibition against returning an individual to face a risk of torture).

Participating in Legislative Proceedings

25. AI Canada has also sought to advance international human rights directly through the legislative process. AI Canada has submitted written and oral arguments to government officials, legislators and House and Senate committees on numerous human rights issues, including the treatment of Mr. Omar Khadr ("Omar"). AI Canada's submissions include:

- (a) Oral submissions before the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development regarding the repatriation of Omar Khadr, May 2008;
- (b) *Amnesty International: Brief on Bill C-31* (Immigration and Refugee Protection Act), March 2001;
- (c) Security through Human Rights: Amnesty International Canada's Submission to the Special Senate Committee on the Anti-Terrorism Act and House of Commons Sub-Committee on Public Safety and National Security as part of the Review of Canada's Anti-Terrorism Act, May 16, 2005;

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- (d) Oral submissions before the Senate and House of Commons' *Anti-Terrorism Act* Review Committees (May and September 2005);
- (e) Oral submissions before the House Committee on Citizenship and Immigration regarding security certificates (November 2006);
- (f) Oral submissions before the House Defence Committee regarding the transfer by Canadian troops of Afghan detainees in Afghanistan (December 2006); and
- (g) Oral submissions before the House Committee on Human Rights regarding Bill C-3, the proposed amendment to the security certificate regime (December 2007).

26. AI has also sought to effect change through the legislative processes in other countries around the world. For example, in the UK and Australia AI filed the following briefs:

- (a) Amnesty International's Briefing to the Human Rights Committee; 25 June 2008;
- (b) Amnesty International's Briefing for the House of Lords' Second Reading of the Terrorism Bill; November 17, 2005;

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- (c) Amnesty International's Briefing for the House of Common's second reading of the Terrorism Bill, October 25, 2005;
- (d) Amnesty International's Briefing on the draft Terrorism Bill 2005, January 10, 2005;
- (e) Amnesty International's Briefing for the Committee Against Torture, November 2004;
- (f) Amnesty International's Memorandum to the UK Government on Part 4 of the Anti-terrorism, Crime and Security Act 2001, September 4, 2002;
- (g) Amnesty International's Submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD regarding the Inquiry into the Operation, Effectiveness and Implications of Division 3 of Part III of the *Australian Security, Intelligence Organisation Act 1979*, March 2005; and
- (h) Amnesty International's Submission to the Senate Legal and Constitutional Legislation Committee regarding the Anti-Terrorism Bill (No. 2) 2005; November 11, 2005 (Australia).

Participation with International Organizations

27. AI has formal relations with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe, the Organization of American States, the Organization of African Unity, and the Inter-Parliamentary Union.

28. AI Canada recently made the following submissions to various international organizations regarding security and human rights:

- (a) *Human Rights for All: No Exceptions* (Amnesty International's Submissions to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of the examination of the 17th and 18th Periodic Reports submitted by Canada), February 2007;
- (b) Amnesty International's Updated Briefing to United Nations Human Rights Committee with respect to the United States, July 2006;
- (c) Amnesty International's Supplementary Briefing to United Nations Committee Against Torture with respect to the United States, May 2006;
- (d) *Protection Gap: Strengthening Canada's Compliance with its International Human Rights Obligations* (Amnesty International Canada's Submissions to the United Nations Human Rights Committee

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on the occasion of the consideration of the Fifth Periodic Report of Canada), 2005;

- (e) *Redoubling the Fight Against Torture: Amnesty International Canada's Brief to the UN Committee against Torture with respect to the Committee's Consideration of the Fourth Periodic Report for Canada*, October 8, 2004; and
- (f) *It's Time* (Amnesty International's Briefing to the United Nations Committee against Torture with respect to the Third Report of Canada), November 2000.

29. These international bodies recognize and trust AI's experience, objectivity and value AI's unique perspective. As Jean-Pierre Hocke, former United Nations High Commissioner for Refugees, noted "It's a worn cliché, but if Amnesty did not exist, it would have to be invented. It is simply unique."

Expertise on Security and Human Rights

1.

30. In its first preambular paragraph, the *UDHR* recognized that the "inherent dignity and... the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." The drafters of

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the *UDHR* understood that “freedom, justice and peace” depend entirely on there being full respect for basic human rights. Freedom, justice and peace are the very values at stake in the current global debate about security. Security is about freedom, about justice, and certainly about peace. It is a disregard for human rights that leads to insecurity, and threatens freedom, justice and peace.

31. In adopting the *UDHR*, governments undertook the dual responsibility of ensuring the security of their citizens while at the same time, protecting individual rights. Unfortunately, despite the careful crafting of treaties, declarations and resolutions that recognize this dual obligation, AI’s research has shown that governments around the world have consistently used “security” as an excuse for violating the full range of universally protected human rights. In the name of “security”, governments have conducted mass arrests of ethnic or religious minorities, tortured political opponents, and launched military action that has resulted in huge numbers of civilian deaths.

32. Throughout more than four decades of investigating, documenting and reporting human rights violations around the world, and long before events following September 11, 2001 brought the issue of human rights violations committed in the name of security to the forefront of global debate, AI has highlighted this concern in countries on every continent.

33. Following the September 11 attacks in the United States, and in the aftermath of later terrorist attacks in Spain, Russia, Indonesia, the UK and elsewhere,

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AI has worked tirelessly around the world to protect human rights in the face of tremendous pressure to suspend them. AI has repeatedly underscored the central role that human rights must play in all laws, policies and practices governments adopt to counter terrorism and enhance security. We have emphasized that the debate about human rights versus security is a false debate.

34. AI has actively participated in this debate in a number of countries and as a result has first-hand knowledge of the various ways different countries have attempted to balance human rights in security legislation.

35. Since September 11, 2001, AI Canada has played a prominent role in promoting a human rights framework for the Canadian government's response to security-related issues. AI representatives are regularly asked to comment on human rights issues that arise in Canada's counter-terrorism practices. We do so in media interviews, meetings with government officials, and public presentations. AI is perceived as an important and reliable source of analysis in Canada in this area.

36. As a result of our longstanding and ongoing work on the issue of human rights and security, AI has developed a unique expertise on how international human rights standards impact on security-related matters.

Amnesty International's Interest/Involvement with Omar Khadr

37. AI Canada has had an active and long-standing interest in Omar's case.

AI Canada became involved with Omar's case when it first learned of his detention by the US military in Afghanistan in 2002. At that time, Omar was 15 years old.

38. On numerous occasions since 2002 and continuing to date, AI Canada has made submissions to the Canadian government with respect to Omar's case. The submissions of AI Canada centered on the mistreatment of Omar in Guantánamo Bay and the violation of his basic human rights. .

Amnesty International as a proposed intervener

39. This appeal raises legal issues regarding the rights of Canadian citizens abroad to have the Crown consider requests for repatriation consistent with the rules of natural justice, where protected international human rights are implicated. The legal submissions on s. 7 of the Charter of Rights and Freedoms are fully developed in AI's written brief, which form part of the Motion Record.

40. From my review and the review done by my legal counsel, I am advised by one of my legal counsel, Mr Sacha Paul, that the submissions of AI Canada on s. 7 are different from the argument of the parties contained in their briefs filed in the Federal Court.

AI's Interest in this Appeal

41. AI Canada has a legitimate interest in the issues raised by this appeal.

The interaction between the right to security and other human rights has been a centre-piece of AI's work in recent years, and a central aspect of our work for more than 40 years.

42. AI has demonstrated its interest in the subject of these proceedings through its longstanding work to ensure that human rights are not violated in the name of security, and its representations on the subject of security and human rights to international human rights bodies, the Canadian government, other governments, to the Arar Inquiry, the Iacobucci Inquiry and through the media, to the Canadian public.

43. The Court's determinations regarding the issues in this appeal will have a significant impact on AI's work, within Canada and internationally, to ensure that governments find the proper balance between security and other fundamental human rights.

AI's Unique Perspective

44. I believe that AI brings a unique perspective and approach to the issues raised in this appeal. I am aware of the position taken by the Appellant as well as other organizations seeking intervener status, and to my knowledge none of the other parties or interveners propose to address the issues from the perspective of a non-

governmental international human rights organization with our experience, expertise and history regarding human rights and security.

45. AI is uniquely positioned as an international non-governmental organization to bring a truly international perspective to this appeal. AI has extensive knowledge of the international norms that are relevant in this appeal, most notably the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") and the United Nations Convention on the Rights of the Child ("CRC").

46. If granted leave to intervene, AI Canada will be mindful of submissions made by parties and other interveners in this appeal and will seek to avoid duplication of argument and materials before the Court.

47. I make this affidavit in support of AI Canada's application to intervene and for no other or improper purpose.

SWORN BEFORE ME at the City of)
Ottawa in the Province of)
Ontario this 27th day of)
May, 2009)


ALEX NEVE


A Commissioner for Taking Affidavits

MICHAEL BOSSIN
Barrister & Solicitor

FEDERAL COURT OF APPEAL

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Appellants,

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OMAR AHMED KHADR,

Respondent.

WRITTEN REPRESENTATIONS

I. STATEMENT OF FACTS

1. Amnesty International (Canadian Section, English Branch) ("AI") asks this Honourable Court to grant it leave to intervene in the within appeal pursuant to Federal Court Rule 109.

2. This appeal is from the decision of O'Reilly J. in *Khadr v. Canada (Prime Minister)*, 2009 FC 405 (the "Decision"). The Federal Court held that Mr Omar Khadr's s. 7 Charter rights were violated because:

- (a) Canada decided not to seek the repatriation of Mr. Khadr ("Omar") (see Decision para 36-37);

- (b) Omar's right to "life, liberty and security of the person" protected under s. 7 was violated because of Canada's involvement in a process that violated Canada's international obligations (see Decision at para 50-52);
- (c) The "principle of fundamental justice" protected by s. 7 was the duty to protect a person in Omar's circumstances (see Decision at para 71-75);
- (d) Accordingly, pursuant to s. 24(1) of the Charter, the Federal Court ordered that Canada must present a request to the United States for Omar's repatriation (Decision at para 91).

Decision, Appeal Book at Tab B

3. Canada has appealed the Decision. By order of Chief Justice Richard, dated May 13, 2009, this appeal will be heard on June 23, 2009 for one day in Ottawa.

Notice of Appeal, filed May 7, 2009, Appeal Book at Tab A

II. POINTS IN ISSUE

4. Should this Honourable Court grant leave to AI to intervene in the within Appeal, pursuant to Federal Court Rule 109?

III. STATEMENT OF SUBMISSIONS

5. Pursuant to Federal Court Rule 109, this Honourable Court may grant leave to AI to intervene in this appeal. In *Benoit v. Canada*, 2001 FCA 71, Sexton J.A. summarized the principles that may be considered on a motion for intervention at para 15:

This Court, in *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.* set out the factors which might be considered on a motion to intervene. They are:

- 1) Is the proposed intervener directly affected by the outcome?
- 2) Does there exist a justiciable issue and a veritable public interest?
- 3) Is there an apparent lack of any other reasonable or efficient means to submit the question of the Court?
- 4) Is the position of the proposed intervener adequately defended by one of the parties to the case?
- 5) Are the interests of justice better served by the intervention of the proposed third party?
- 6) Can the Court hear and decide the cause on its merits without the proposed intervener?

***Benoit v. Canada*, 2001 FCA 71 [Tab A]**

See also: *Federal Court Rules*, SOR/98-106, Rule 109 [Tab B]

6. The six factors identified do not all need to be satisfied before leave to intervene is granted. Sexton J.A went on to hold at para 17, "The Supreme Court of Canada in *R. v. Finta* (1993), 150 N.R. 370 said one criteria for allowing intervention

is if the intervener has submissions which will be useful and different from those of the other parties.”

Benoit at para 17 [Tab A]

A) The Nature of AI’s Proposed Legal Argument

7. In light of the timeframe established by Chief Justice Richard regarding the hearing of this appeal, the submissions of AI are based on the Notice of Appeal, the Decision, and the submissions of the parties in the Federal Court. At this point, no party has filed their arguments in this appeal.

8. AI supports the Decision and the Respondent. AI offers an alternative and supplemental argument based on s. 7 of the Charter of Rights and Freedoms, which is useful and different from the s. 7 analysis found in the Decision and the position of the parties.

9. Section 7 of the Charter provides, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

Decision, Appeal Book p. 40 at Tab B

10. On the issue of what constitutes the violation of Omar’s “right to life, liberty and security of the person,” AI accepts and adopts the Decision, which held that Canada’s involvement in Omar’s treatment, including interrogation at

Guantanamo Bay, was the basis for triggering the s. 7 right to life, liberty and security of the person. However, AI makes a supplemental submission on this point.

Decision, Appeal Book para 53 at Tab B

11. AI will contend that Omar's right to "life, liberty, and security of the person" is engaged when a Canadian citizen detained abroad requests repatriation and Canada knows or ought to know that the citizen is being subjected to treatment by another state that violates international law. Canada need not participate in the mistreatment to trigger s 7.

12. It shall be contended that cases such as *R v. Hape*, 2007 SCC 26, which address the application of the Charter outside of Canada, are unique to situations of search and seizure or police investigation. Where a request for repatriation is at issue, the law arising from *Hape* is inapplicable. The conduct that triggers s. 7 will be Canada's consideration of the repatriation request, which occurs in Canada, though it deals with the mistreatment of Canadian citizens abroad.

Decision, Appeal Book para 30 at Tab B

13. In essence, the Crown prerogative over foreign affairs, which includes considering requests for repatriation, is a "matter within its authority" pursuant to s. 32 of the Charter. If the Crown chooses to do nothing when faced with a request for repatriation, it becomes complicit in the actions of other states in violating international law; thereby engaging the person's right to "life, liberty, or security of the person."

14. On the issue of what is the “principle of fundamental justice” in this case, AI adopts the Decision and the conclusion that there is a duty to protect. AI’s submission, however, is distinct from this conclusion. It shall be contended that the concept of “fundamental justice” includes the rules of natural justice, which are commonly seen in administrative law. The rules of natural justice, as a constitutionally protected principle of fundamental justice, require the Crown, amongst other things, to:

- (a) Consider a request by a Canadian citizen for repatriation fairly;
- (b) Consider the request in accordance with applicable international law;
- (c) Decide the request on the basis of the available evidence, supplied by the applicant or obtained by the Crown, and on applicable international law;
- (d) Provide adequate reasons for accepting or rejecting the request for repatriation, which reasons will consider applicable international law;

15. In addition, it shall be submitted that the rules of natural justice, as a constitutionally protected principle of fundamental justice, will allow a citizen the right to have the decision of the Crown reviewed by the Court on a substantive basis, adjudged on the principle of reasonableness. The review would allow a judicial assessment of the Crown’s action on the basis of the Crown’s assessment of the evidence and the law, including international law.

16. As seen in the Decision, the Federal Court seemingly accepted that, as a matter of common law, the review of the Crown's decision (i.e. Crown prerogative on foreign affairs) can only be done on the basis of "irrationality" or if contrary to a "legitimate expectation." It shall be submitted that s. 7 and the constitutionally protected rules of natural justice requires a more meaningful and probing review.

Decision, Appeal Book para 42 at Tab B

17. The usefulness of this argument is highlighted when one considers the Federal Court's decision on what constitutes the "decision." AI agrees that a decision has been rendered in this case. However, in the alternative, if Canada's contention is correct and there is no "decision," the argument raised by AI would ask the question: "why is there no decision?" It will be submitted that the lack of reasons and a decision, if any, constitutes a breach of s. 7 and the constitutionally protected rules of natural justice.

Decision, Appeal Book para 36-7 at Tab B

18. It is submitted that the argument advocated by AI is useful and distinct from that considered by the trial judge and advocated by the parties. If AI is not granted leave to intervene, this argument will not be raised. This prospect justifies granting leave to intervene.

Benoit at para 16 [Tab A]

19. In addition, AI's argument raises a justiciable public interest. The argument advanced relates to the protections, if any, Canadian citizens can expect

from their own government when they are detained abroad and treated by other states in a manner that violates international law. Further, it also raises issues of what process a citizen can expect from his/her own government when detained abroad.

Benoit at para 15-16 [Tab A]

B) The Interest of AI in this Appeal

20. AI is directly affected by the outcome of this appeal.

Benoit at para 15-16 [Tab A]

21. The Canadian component of AI has approximately 60,000 members. It is part of the global AI movement, which has close to 2 million members in over 162 countries. AI was awarded the Nobel Peace Prize in 1977.

Motion Record, Affidavit of Alex Neve sworn May 27, 2009 (“Neve Affidavit”)

at paras 8, 9, & 12

22. AI’s mission is to conduct research and take action to prevent and end grave abuses of all human rights- civil, political, social, cultural and economic. To this end, AI monitors and reports on human rights abuses, participates in international committee hearings, intervenes in domestic judicial proceedings, and prepares briefs for and participates in national legislative processes and hearings. AI also prepares international and national reports for the purpose of educating the public on international human rights.

Neve Affidavit at para 11 & 13

23. The work of AI in the area of international law and basic human rights is extensive. Two aspects are highlighted:

- (a) Past Interventions: AI has intervened in seven Supreme Court of Canada cases and twice in the Ontario Court of Appeal. Like the case at bar, AI's past interventions fall within its expertise in international law and human rights.
- (b) Monitoring and Documenting Human Rights Abuses: AI's role expands well beyond the courtroom. It conducts "on the ground" research in countries to monitor and report on human rights abuses. AI's research has been accepted by the Federal Court as credible and reliable. AI's reports are routinely considered by Courts because of AI's reputation for credible research.

Neve Affidavit at para 14-29

24. As such, AI is directly affected by cases that raise issues of international law, such as the case at bar. However, AI also has a long standing interest in Omar's case in particular. AI has made many submissions to the Canadian government on Omar's case since his detention in 2002. This request for leave to intervene on the issue of the right, if any, to repatriation is a natural extension of AI's work on Omar's case.

Neve Affidavit at para 37-38

25. In sum, AI asks that this Honourable Court grant AI leave to intervene in this appeal. The argument proposed will be useful and different from the arguments

at issue. The argument however will remain within the issues raised in the appeal, namely s. 7 of the Charter. The rights, if any, of Canadian citizens detained abroad is a matter of pressing public interest and is a justiciable issue. It is submitted that the interests of justice are served if AI is allowed to bring its substantial expertise in international law to this appeal.

C) The Role of AI in the Appeal

26. AI is mindful of the tight time lines established by this Honourable Court for the hearing of this appeal. AI will work within the time frames if granted leave to intervene. It will provide the parties and any other interveners with its brief on June 10, 2009. If this Honourable Court cannot consider the within motion before June 10, AI will provide a copy of its brief on June 10 to the parties. If this Honourable Court grants leave to intervene, AI will then file the brief with this Honourable Court. If this Honourable Court does not grant leave to intervene, the parties may disregard the brief and no brief will be filed with this Honourable Court.

27. AI seeks to make oral submissions on the date scheduled (June 23). However, in light of the fact that one day is set, AI is willing to make oral submissions only if time permits and, in any event, for no longer than 15 minutes.

28. AI does not require that the parties provide to it the Appeal book, only that it be served with the memorandum of fact and law of the parties and any other interveners which arise after this Honourable Court grants leave to intervene.

IV. ORDER SOUGHT

29. The applicant seeks the following orders:

- (a) an Order granting leave for AI to intervene in the hearing of this Appeal pursuant to Rule 109 of the Federal Court Rules;
- (b) an Order granting leave to file a Memorandum of Fact and Law up to 20 pages in length;
- (c) an Order granting leave to make oral argument at the hearing of this Appeal up to 15 minutes in length, time permitting;
- (d) an Order that AI will not seek costs from any party;
- (e) an Order that AI be served only with the Memoranda of Fact and Law filed by the parties to this Appeal, including any other interveners;
- (f) an Order that AI will not itself seek appeal of any judgment, but will be allowed to participate in any appeal and be served with such appeal material.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of May, 2009.

THOMPSON DORFMAN SWEATMAN LLP

Per: 

SACHA R. PAUL

Counsel for the Proposed
Intervener

Amnesty International (Canadian
Section, English Branch)

Per: _____

A handwritten signature in dark ink, appearing to read 'Vanessa Gruben', is written over the signature line and extends slightly into the name field.

VANESSA GRUBEN

Assistant Professor

University of Ottawa, Faculty of Law

Per: _____

A handwritten signature in dark ink, appearing to read 'Michael Bossin', is written over the signature line and extends slightly into the name field.

MICHAEL BOSSIN

Community Legal Services

(Ottawa-Centre)

V. LIST OF AUTHORITIES

- A. *Benoit v. Canada*, 2001 FCA 71
- B. *Federal Court Rules*, SOR/98-106, Rule 109

2001 FCA 71, 2001 D.T.C. 5242, [2001] 2 C.T.C. 245, 2001 G.T.C. 3522, 272 N.R.
169, 201 F.T.R. 137 (note), 2003 D.T.C. 5261, 2003 G.T.C. 1600

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2001 CarswellNat 655

Benoit v. Canada
CANADIAN TAXPAYERS FEDERATION (Appellant) and CHARLES JOHN GORDON BENOIT, JOAN
ELIZABETH BENOIT, GORDON JAMES ALFRED BENOIT, ATHABASKA TRIBAL CORPORATION, and
THE NORTHWEST TERRITORIES TREATY 8 TRIBAL COUNCIL, and HER MAJESTY THE QUEEN IN
RIGHT OF CANADA and THE ATTORNEY GENERAL OF ALBERTA (Respondents)

Federal Court of Appeal
Strayer, Linden and Sexton JJ.A.
Heard: March 15, 2001
Judgment: March 15, 2001
Written reasons: March 16, 2001
Oral reasons: March 15, 2001
Docket: A-464-00

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Proceedings: reversing [2000] 3 C.T.C. 271 (Fed. T.D.)

Counsel: *Norman Mullins*, for Appellant

Elizabeth Johnson, for Respondent, Benoit et al.

Everett Bunnell, for Respondent, Attorney General of Alberta

Subject: Income Tax (Federal); Civil Practice and Procedure; Public

Income tax --- Administration and enforcement -- Practice and procedure on appeals -- Miscellaneous issues

Aboriginal plaintiffs brought action for declaration that they were exempt from taxation as result of treaty -- Association, which was non-aligned political lobby group dedicated to tax reform, brought motion for leave to intervene -- Motion was dismissed on basis that no evidence existed to suggest defendant Crown was constrained from raising any appropriate issues in its defence of action -- Association appealed -- Appeal allowed -- Motions judge failed to consider whether, without association's intervention, issue of whether all Canadians should be treated equally in taxation matters would be addressed -- Association established that its members would be affected by outcome of litigation, that litigation raised justiciable public interest issue and that interests of justice would be served by permitting intervention -- Where case raises important public interest issues, and intervenor wishes to raise related public interest question which existing parties have not raised, it is appropriate to permit intervention -- Federal Court Rules, SOR/98-106, R. 109.

Practice --- Parties -- Intervenors

Aboriginal plaintiffs brought action for declaration that they were exempt from taxation as result of treaty -- As-

2001 FCA 71, 2001 D.T.C. 5242, [2001] 2 C.T.C. 245, 2001 G.T.C. 3522, 272 N.R. 169, 201 F.T.R. 137 (note), 2003 D.T.C. 5261, 2003 G.T.C. 1600

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Cases considered by *Sexton J.A.*:

C.U.P.E. v. Canadian Airlines International Ltd., 2000 CarswellNat 282 (Fed. C.A.) -- applied

R. v. Finta, 150 N.R. 370, 61 O.A.C. 321, [1993] 1 S.C.R. 1138 (S.C.C.) -- applied

Reza v. Canada, 24 Imm. L.R. (2d) 117, 21 C.R.R. (2d) 236, 116 D.L.R. (4th) 61, (sub nom. *Reza v. Canada (Minister of Employment & Immigration)*) 72 O.A.C. 348, 22 Admin. L.R. (2d) 79, [1994] 2 S.C.R. 394, (sub nom. *Reza v. Canada (Minister of Employment & Immigration)*) 167 N.R. 282, 18 O.R. (3d) 640 (note), 1994 CarswellOnt 675, 1994 CarswellOnt 1158 (S.C.C.) -- applied

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally -- referred to

Canadian Multiculturalism Act, R.S.C. 1985, c. 24 (4th Supp.)

Generally -- referred to

Citizenship Act, R.S.C. 1985, c. C-29

Generally -- referred to

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted R.S.C. 1985, App. II, No. 5

Generally -- referred to

Indian Act, R.S.C. 1985, c. I-5

s. 2(1) "Indian" -- referred to

Rules considered:

Federal Court Rules, 1998, SOR/98-106

R. 109 -- considered

2001 FCA 71, 2001 D.T.C. 5242, [2001] 2 C.T.C. 245, 2001 G.T.C. 3522, 272 N.R. 169, 201 F.T.R. 137 (note), 2003 D.T.C. 5261, 2003 G.T.C. 1600

Treaties considered:

Charter of the United Nations, 1945

Generally -- referred to

International Covenant on Civil and Political Rights, 1966, G.A. Res. 2200(XXI), [1976] C.T.S. 47; 999 U.N.T.S. 171; 61 A.J.I.L. 870; 1977 Cmnd. 6702

Generally -- referred to

International Convention on the Elimination of all Forms of Racial Discrimination, 1966

Generally -- referred to

Treaty No. 8, 1899

Generally -- referred to

United Nations Declaration on the Elimination of all Forms of Racial Discrimination

Generally -- referred to

United Nations General Assembly, 1948, Universal Declaration of Human Rights, G.A. Res. 217(III)A; Doc. U.N. A/810; 3 U.N. GAOR at 71; 43 A.J.I.L. Supp. 127

Generally -- referred to

APPEAL by proposed intervenor from judgment reported at [2000] 3 C.T.C. 271, 2000 D.T.C. 6453 (Fed. T.D.), dismissing motion for leave to intervene.

Sexton J.A. (orally):

1 In this action, the Plaintiffs, who are Indians as defined in the *Indian Act*, claim that by virtue of a treaty (Treaty #8), Her Majesty the Queen in right of Canada ("The Queen") cannot impose tax of any kind upon them. The Queen in her defence, denies that the treaty prevents her from imposing tax upon the Plaintiffs and says alternatively if there ever was an exemption from taxation it was extinguished. The Queen, further says that "a limitation of the Plaintiffs' alleged exemption is justified by the valid legislative objective of providing public funding to finance the many and diverse needs of people in Canada, who include the Plaintiffs, and by public objectives including economic fairness and regional fairness".

2 The Appellant was incorporated federally in 1991 as a vehicle for people throughout Canada concerned about all types of taxation in the Country. It has offices in Ottawa, B.C., Alberta, Saskatchewan and Manitoba and has approximately 40,000 paying supporters in Canada. The Appellant is not affiliated with any political party and does not accept government grants or financial concessions.

3 The Applicant, has a fundamental objective in its public activities and in this action, to seek to uphold the principle that all Canadian taxpayers should be treated equally in taxation matters before and under the law with the right to the equal protection and equal benefit of the law without discrimination based on race, national or

2001 FCA 71, 2001 D.T.C. 5242, [2001] 2 C.T.C. 245, 2001 G.T.C. 3522, 272 N.R. 169, 201 F.T.R. 137 (note), 2003 D.T.C. 5261, 2003 G.T.C. 1600

ethnic origin, colour or religion.

4 The Appellant and its members are concerned that if the Federal Court upholds the Plaintiffs' claim that, as Indians they are exempt from imposition of any tax on them by Canada and the Province of Alberta, the effect of a judgment affirming such claim would be to amend by necessary implication every federal and Alberta statute dealing with taxes or tax-like charges so as to exempt on racial grounds a particular class of people and impose, on racial grounds, such taxes and charges on the remaining classes of people.

5 The Appellant wishes to intervene in this action so as to raise this issue because The Queen has not raised it. The Appellant says that its membership will be affected by the outcome in this case, and that there therefore, it has a genuine public interest. It says that this issue will not be raised unless the Appellant is allowed to intervene and that there is an important public issue involved.

6 Before the Motions Judge, the Appellant sought to be added as a defendant or alternatively to be allowed to intervene. The Motions Judge dismissed the Appellant's motion in its entirety. He said that in order for the Appellant to be added as an Defendant, it must be shown that a cause of action exists between the Plaintiffs and the Appellant over which this Court has jurisdiction. He found that no such cause of action exists.

7 With respect to the request to intervene pursuant to Rule 109, he found that the Appellant had failed to show that The Queen was constrained in her defence of the present action. The Appellant had argued before him that the Queen is bound by many constitutional, statutory and other legal responsibilities and fiduciary obligations to Indians and must necessarily be constrained from making submissions or arguments perceived to be against the interests of the Plaintiffs. The Appellant further argued that it was not so constrained.

8 The Respondents Athabaska Tribal Corporation and the Northwest Territories Treaty 8 Tribal Council were earlier in the proceeding granted leave to intervene and were subsequently added as plaintiffs in the action. On the return of the Appellant's Motion, before the Motions Judge Her Majesty the Queen and the Attorney General of Alberta did not oppose the Appellant's application to intervene nor have they taken any position on this appeal.

9 The Appellant has appealed only the decision of the Motions Judge relating to its motion for leave to intervene.

10 The *Federal Court Rules* provide for intervention in Rule 109:

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

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

(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 in the determination of a factual or legal issue related to the proceeding.

(3) In granting a motion under subsection (1), the Court shall give directions regarding

(a) the service of documents;

2001 FCA 71, 2001 D.T.C. 5242, [2001] 2 C.T.C. 245, 2001 G.T.C. 3522, 272 N.R. 169, 201 F.T.R. 137 (note), 2003 D.T.C. 5261, 2003 G.T.C. 1600

(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.

11 On this appeal, the Appellant argues that the issue of equality before and under the law sought to be raised by the Appellant is not encompassed within the Queen's Amended Defence and is of such constitutional and statutory importance that it ought to be dealt with by the Court in this action and that the failure of the Crown to raise the issue warrants an order granting the Appellant leave to intervene.

12 In support of its position the Appellant wishes to rely on the *Constitution Act, 1867*, the Charter of the United Nations to which Canada is a party, the Universal Declaration of Human Rights to which Canada is a party, the United Nations Declaration on the Elimination of all Forms of Racial Discrimination which Canada has joined in, the International Convention on the Elimination of All forms of Racial Discrimination 1965 which Canada has joined in, the International Covenant on Civil and Political Rights - December 1966 which Canada became a party to, the *Citizenship Act*, the Charter and the *Canadian Multicultural Act*.

13 The Order of the Motions Judge is discretionary and the test for review of this exercise of discretion is whether the judge in first instance has given sufficient weight to all relevant considerations.[FN1]

14 The only reason given by the Motions Judge for refusing the Appellants request to intervene was that he found no evidence to support the Appellant's assertion that the Queen was constrained in her defence and therefore he concluded that the Appellant's participation would not assist in the determination of a factual or legal issue in the action.

15 This Court, in *C.U.P.E. v. Canadian Airlines International Ltd.* [FN2] set out the factors which might be considered on a motion to intervene. They are:

- 1) Is the proposed intervener directly affected by the outcome?
- 2) Does there exist a justiciable issue and a veritable public interest?
- 3) Is there an apparent lack of any other reasonable or efficient means to submit the question of the Court?
- 4) Is the position of the proposed intervener adequately defended by one of the parties to the case?
- 5) Are the interests of justice better served by the intervention of the proposed third party?
- 6) Can the Court hear and decide the cause on its merits without the proposed intervener?

16 The Motions Judge in his Reasons did not refer to any of these factors nor did he apparently consider that without the intervention of the Appellant, the issue of whether all Canadians should be treated equally in taxation matters would be addressed. We therefore believe he erred in not giving weight to all relevant considerations. The Appellant has established:

- 1) that its members will be affected by the outcome of the litigation;
- 2) there is a justiciable public interest issue raised;
- 3) if the Appellant is not allowed to intervene, this issue will not be raised;

2001 FCA 71, 2001 D.T.C. 5242, [2001] 2 C.T.C. 245, 2001 G.T.C. 3522, 272 N.R. 169, 201 F.T.R. 137 (note), 2003 D.T.C. 5261, 2003 G.T.C. 1600

4) the interests of justice would be better served by permitting the Appellant to intervene.

17 The Supreme Court of Canada in *R. v. Finta* (1993), 150 N.R. 370 (S.C.C.) said one criteria for allowing intervention is if the intervenor has submissions which will be useful and different from those of the other parties. That would seem to be the case here.

18 We are of the view that if in a case where important public interest issues are raised, an intervenor wishes to raise a related public interest question which naturally arises out of the existing lis between the parties, and which none of the other parties has raised, it is appropriate to permit the intervention.

19 We would therefore allow the appeal, set aside the Order of the Motions Judge, and grant the Appellant leave to intervene in the action on the following basis:

- 1) The Appellant shall be served with all materials of the other parties.
- 2) The Appellant will not itself lead evidence but will rely on the evidence adduced by the parties and on the documents referred to in these reasons as well as any other documents of which the Court may take judicial notice.
- 3) The Appellant will be allowed to be present at trial and to make such written and oral argument as the Trial Judge permits.
- 4) The Appellant will not seek costs.
- 5) The Appellant will not itself seek to appeal any judgment, but will be allowed to participate in any

Appeal allowed.

FN1. See *Reza v. Canada*, [1994] S.C.J. No. 49 (S.C.C.) at paragraph 20

FN2. [2000] F.C.J. No. 220 (Fed. C.A.), Court File A-346-99

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Federal Courts Rules, SOR/98-106

Source: CanLII (<http://www.canlii.org/en/ca/laws/regu/sor-98-106/latest/sor-98-106.html>)

Intervention

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

(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.

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.

Interventions

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) 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.

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.

Question d'importance générale