

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150128

Docket: A-218-14

Ottawa, Ontario, January 28, 2015

Present: STRATAS J.A.

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

**ORDER**

**WHEREAS** this Court, by order dated December 10, 2014, granted the Privacy Commissioner of Canada leave to intervene in this application, on terms;

**AND WHEREAS** the applicant advised the Court that he had not filed a reply in response to the Privacy Commissioner's motion for leave to intervene, and requested an opportunity to do so;

**AND WHEREAS**, by direction dated January 8, 2015, this Court explained that it had taken the applicant's submission in a related motion to be his submissions on the Privacy Commissioner's motion for leave to intervene; but, nevertheless, it allowed the applicant to file a responding record and the Privacy Commissioner to file a reply on the motion;

**AND WHEREAS** the applicant and the Privacy Commissioner have now done so;

**AND WHEREAS** the respondent has advised the Court that it does not oppose the Privacy Commissioner's motion for leave to intervene;

**AND WHEREAS** the Court has carefully considered all of the material on the motion, including the material filed in response to its direction dated January 8, 2015;

**AND WHEREAS** the Court has carefully considered the matter in light of the applicant's responding record and has concluded that its December 10, 2014 Order should be confirmed for all of the reasons set out in its reasons for order dated December 10, 2014 and the further reasons offered below;

**AND WHEREAS** this Court now wishes to address certain other submissions made by the applicant that he has not previously advanced;

**AND WHEREAS** the applicant requests that a three-person panel of this Court be constituted to determine this motion because of the conflicting tests in two cases concerning when an intervention should be granted: *Canada (Attorney General) v. Pictou Landing First Nation*, 2014 FCA 21 and *Canadian Airlines International Ltd. v. Canada (Human Rights Commission)*, [2010] 1 F.C.R. 226;

**AND WHEREAS** the predominant factors common to both tests are whether the submissions of the proposed intervener will be helpful to the Court in deciding the matter and whether, overall, the interests of justice favour granting leave to intervene;

**AND WHEREAS** these factors strongly lie in favour of granting leave to intervene, for the reasons set out in this Court's reasons in support of its Order dated December 10, 2014 (2014 FCA 292);

**AND WHEREAS**, as can be seen from the foregoing, there is no practical need in this present matter to set a full panel to determine whether *Pictou, supra* or *Canadian Airlines, supra*, properly state the criteria for intervention;

**AND WHEREAS** the applicant submits that the Privacy Commissioner does not have the statutory jurisdiction to intervene in a matter such as this, but this Court disagrees, noting that the Privacy Commissioner, as a legal entity, is able to move under the *Federal Courts Rules* to intervene like any other legal entity, and there is no statutory prohibition against the Privacy Commissioner doing so;

**AND WHEREAS**, further to that point, the Supreme Court of Canada in *H.J. Heinz of Canada v. Canada (Attorney General)*, [2006] 1 S.C.R. 441 at paragraphs 34 and 36 has held that the Privacy Commissioner's roles and responsibilities include "promoting the values of access and privacy nationally and internationally," including reviewing legislation, and its role in protecting privacy rights is a "central role";

**AND WHEREAS** this Court disagrees with the applicant's submission that the Privacy Commissioner's submissions will not be of assistance to this Court; indeed, to the contrary, the

Privacy Commissioner's submissions on the proper interpretation of the provisions of the *Privacy Act* relied upon by both the applicant and the respondent will be of assistance to this Court in determining this application;

**AND WHEREAS** this Court expects that the Privacy Commissioner's role will not be to support the respondent's position on the statutory interpretation issues in a partisan way but rather to assist the Court in offering informed and dispassionate submissions on all of the relevant provisions of the *Privacy Act* in issue in this application;

**AND WHEREAS**, contrary to the applicant's submission, Rule 109 does not draw a distinction between "friend of the Court" interveners and other types of interveners;

**AND WHEREAS** the applicant has requested costs occasioned by the Privacy Commissioner's intervention;

**AND WHEREAS** an order for costs is not warranted, given that the granting of leave to the Privacy Commissioner is predicated on the complexity of the statutory interpretation issues raised by the applicant in the first place;

**AND WHEREAS**, in order to allow for an expeditious scheduling of this appeal, this Court will have to attenuate the times for the filing of further submissions; accordingly, small variations of this Court's Order of December 10, 2014 are necessary and appropriate;

**THIS COURT ORDERS** that the Order of December 10, 2014 is confirmed, except that in paragraphs 1(b) and 1(c) “twenty days” shall read “fifteen days,” and the time in paragraph 1(b) shall run from the date of this Order.

“David Stratas”

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J.A.