CV-20-00649404-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

NELL TOUSSAINT

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

FACTUM OF THE DEFENDANT

[MOTIONS TO INTERVENE]

PART I – STATEMENT OF FACTS

A. OVERVIEW

1. The issue of whether the Amended Statement of Claim (hereinafter "the Claim") raises a reasonable cause of action does not raise any ground-breaking new constitutional or other legal questions. The Court does not need to hear submissions from four interveners, representing ten different organizations, to decide the issue raised. The Plaintiff's claim is not even a matter of first impression. Canadian courts, having considered Canada's international treaties and obligations, dismissed the Plaintiff's claim for *Charter* relief ten years ago. In doing so, they answered the question of the scope of the government's *Charter* obligations on the facts of this case. It is also settled law that the views of a United Nations Committee do not give rise to a cause of action in damages in Canada.[1]

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[1] *Ahani v Canada (MCI)* (2002), 58 O.R. (3d) 107 (C.A.) at paras. 32 and 35, leave to appeal to SCC dismissed [2002] S.C.C.A. No. 62; *Mugesera v Kenney*, 2012 QCCS 116 at para. 37; *Dumont c. Québec (PG)*, 2009 QCCS 3213 at para. 127; *Dumont v. Canada*, CCPR/C/98/D/1467/2006, UN

2. The proposed interventions do not serve the principles that govern the granting of interventions for the following reasons:

(a) While the action raises constitutional issues, the legal issue in the motion to strike is narrow – whether the Claim discloses a reasonable cause of action;

(b) Most of the proposed submissions duplicate arguments that the Plaintiff will necessarily make in response to the motion to strike;

(c) The rest of the proposed submissions fall outside the scope of the legal issue before the Court in the motion to strike;

(d) The expertise of the proposed interveners is largely evidence-based, and there will be no evidence filed on the motion to strike. Any legal perspective put forward by the interveners duplicates the Plaintiff's Applicants' legal perspective;

(e) The proposed interventions are prejudicial to the Respondents. The proposed interveners improperly advocate for a specific outcome on the motion to strike. They also add an additional layer of complexity to motions that already involve multiple parties.

B. FACTS

3. For the purposes of this motion, the Defendant relies on the facts as set out in the Statement of Claim, subject to certain exceptions. The Defendant does not accept as facts the allegations in the Statement of Claim, which consist of argument, conclusions stated without material facts, or abusive or superfluous allegations.[2]

PART II – POINTS IN ISSUE

4. Will the proposed interveners make a useful contribution to the resolution of the motion?

5. Will the participation of the proposed interveners cause an injustice to any of the parties to the motion?

Human Rights Committee (HRC), 21 May 2010; *Dumont c. Québec (Procureur général)*, 2012 QCCA 2039 at paras. 107-118

[2] See Factum of the Defendant – Motion to Strike Statement of Claim, filed, at paras. 3-30

PART III - SUBMISSIONS

A. TEST FOR AN INTERVENTION AS A FRIEND OF THE COURT

6. Rule 13.02 provides that:

> 13.02 *Any person may, with leave of a judge or at the invitation of the presiding master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument*.[3]

7. The proposed interveners bear the onus of proving that the requirements for intervention have been met.[4]

8. In a *Charter* case, a proposed intervener will usually meet at least one of the following three requirements: that it has a real and substantial identifiable interest in the subject matter of the proceedings; that it has an important perspective distinct from the immediate parties; and/or that it is a well recognized group with a special expertise and a broadly identifiable membership base.[5]

9. However, the proposed interveners must also prove that they will serve the three overarching principles of interventions. The Court must consider:

(i) the nature of the case;

(ii) the issues which arise and the likelihood that a moving party can make a useful contribution to the resolution; and

(iii) whether there may be injustice to either party.[6]

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[3] *Rules of Civil Procedure*, RSO 1990, Reg 194, R 13.02
[4] *Dorsey, Newton, and Salah v Attorney General of Canada*, 2021 ONSC 2464; *M v H* (1994), 20 OR (3d) 70 (Gen Div) ("*M v H*") at para. 48
[5] *Bedford et al. v. Canada (Attorney General),* 98 OR (3d) 792 (CA) at para. 2 ("*Bedford*")
[6] *Foxgate Developments Inc v Jane Doe*, 2021 ONCA 745 at para 6; *Bedford* at para 2; *Peel (Regional Municipality) v Great Atlantic and Pacific Co of Canada* (1990), 74 OR (2d) 164 (CA) at

10. In exercising its discretion under Rule 13.02, the Court must be convinced that there is a genuine need for the intervention and that the participation of the proposed intervener will be of benefit to the Court.[7]

11. None of the proposed interventions serve the overarching principles of interventions. The proposed interventions would be detrimental to these principles. On this basis, the motions to intervene should be dismissed.

B. EXCEPTIONAL NATURE OF INTERVENTIONS IN MOTION TO STRIKE

12. Interventions in motion to strike are warranted only in exceptional circumstances.[8] They are rarely sought, and rarely granted. On a motion to strike, it is harder for proposed interveners to establish that their intervention will serve the overarching principles governing interventions and make a useful contribution on the narrow legal test before the Court.

13. In the following situations, the Court has found exceptional circumstances, and granted motions to intervene on a motion to strike:

a) Where the sole applicant was self-represented, and it was therefore clearer that the proposed intervener, the Canadian Civil Liberties Association, could be of assistance to the court;[9]

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para 10, ("*Peel*"); *Halpern v Toronto (City Clerk)* (2000), 51 OR (3d) 742 (Div Ct) at para 17, [2000] OJ No 4514 ("*Halpern*")

[7] *John Doe v Ontario (Information and Privacy Commissioner)* (1991), 53 OAC 236 (Div Ct) at p 4, para. 9, 87 DLR (4th) 348 ("*John Doe*") applying *Re Clark et al and A.G. Canada* (1977), 17 OR (2d) 593 (HCJ) at p 598 ("*Re Clark*")

[8] *Tanudjaja v Canada (AG)*, 2013 ONSC 1878 at para. 15; see also *Vail v. Prince Edward Island (Workers' Compensation Board)*, 2011 PECA 17 ("*Vail*") at para. 3; *Choc v Hudbay Minerals Inc,* 2013 ONSC 998; *Reitano v Ouimet,* 2010 ONSC 3561; *Finlayson v. GMAC Leaseco Limited* (2007), 84 OR (3d) 680; *Trempe v. Reybroek* (2002), 57 O.R. (3d) 786 (ON SC)

[9] *Landau v Attorney General* (2012), CV-11-442790, Reasons for Endorsement, per Justice Ashton

b) Where the proposed intervener, a union, had a singular legal expertise that would otherwise not be before the court – the terms of a collective agreement that had to be interpreted for the court to determine if they were engaged in the private dispute between the parties;[10]

c) On a broad based challenge to Ontario and Canada's policies relating to housing and homelessness, alleging that inadequate housing violated ss. 7 and 15 and seeking mandatory orders that such strategies be developed and implemented in consultation with affected groups.[11]

14. No exceptional circumstances have been established here. This is not a case of first instance, or a broad challenge to an entire set of government policies. The Plaintiff is represented by able counsel, who has advanced the same issues (including the interpretation of Canada's international obligations), on the same facts, up to the level of an application for leave to the Supreme Court of Canada.

C. THE PROPOSED INTERVENTIONS FAIL TO MEET THE TEST

1) The Interventions would not benefit the Court on the Narrow Issue of Law on the Motion to strike

15. While the action raises questions of constitutional law, the motion to strike does not. The motion to strike raises narrow legal issues regarding the viability of the causes of actions raised in the Claim. The Court does not require and would not benefit from the four proposed interveners acting as friends of the Court in the motion to strike.

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[10] *Reitano v. Ouimet and Bray,* 2010 ONSC 3561 at paras 7 and 8; see also *Choc. v. Hudbay Minerals Inc*., 2013 ONSC 998, per Justice C. Brown, para. 12

[11] *Tanudjaja v. Canada (AG)*, 2014 ONCA 852, at para. 9

16. A pleading will be struck under Rule 21.01(1)(b) if it is plain and obvious that it discloses no reasonable cause of action recognized at law, assuming the facts that are plead are true.[12] The Court makes a legal determination with an inherently narrow scope.

17. Given the restricted parameters of Rule 21.01(1)(b) motions, the Court will not benefit from the assistance of the proposed interveners at this stage of the proceeding.

2) The Proposed Interveners Repeat the Issues Put Forward by the Plaintiff

18. The proposed submissions either repeat issues put forward by the Plaintiff, make arguments that the Plaintiff will necessarily address on the motion, or are irrelevant to the question of law raised on the motion. The expertise of the interveners is also either irrelevant to the motions or it duplicates the legal expertise of the Plaintiff.

19. A contribution is only useful if it will likely add to "the resolution of the case as it is put legally by the parties."[13]

20. There is no risk that an issue or argument will not be presented to the Court if the motions to intervene are dismissed. Counsel for the Plaintiff in this matter can ably address all necessary arguments on the motion.

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[12] *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17 ("*Imperial Tobacco*")
[13] *Foxgate Developments Inc v Jane Doe*, 2021 ONCA 745 at paras 45-46; *Stadium Corp of Ontario Ltd v Toronto* (1992), 10 O.R. (3d) 203 (Div Ct) at para. 13, (reversed on other grounds *Stadium Corp of Ontario v Toronto (City)*, 12 OR (3d) 646, [1993] OJ No 738 (CA) (QL)("*Stadium Corp*")

21. A proposed intervener must offer more than a mere repetition of the position advanced by a party.[14] As the Ontario Court of Appeal noted in *Jones v Tsige*,[15] "Me too" interventions provide no assistance to the Court.

22. The Plaintiff's action is premised on the argument that the views of the UNHRC give rise to a cause of action in damages, based on *Charter* breaches, despite the fact that Canadian courts have found no *Charter* breach on identical facts. The Defendant argues that no such cause of action exists and that there is settled, binding law in this area. In particular, the Defendant argues that the law has been "settled" on the facts of this case, and based on the same international obligations currently cited by the Plaintiff. The Plaintiffs will be required to show that the *Charter* may impose such obligations on the governments and that the law is not settled in this area.

23. The CCPI coalition and others propose to address these same issues.[16] The interveners' submissions on these points are entirely redundant.

24. It is also a central premise of the Plaintiff's claim that Canada's international human rights obligations inform the scope of sections 7 and 15 of the *Charter*. The interveners propose to argue that the *Charter* should be interpreted in light of Canada's international law obligations.[17] These proposed submissions repeat the argument put forward by the Plaintiff.

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[14] *Huang v Fraser Hillary's Limited*, 2018 ONCA 277 at paras 12-14
[15] *Jones v Tsige* (2011), 106 OR (3d) 721 at para. 29, [2011] OJ No 4276 (QL)
[16] CCPI Coalition Factum at paras 4(i), (ii), 49
[17] Amnesty Coalition Factum at paras. 34-41, pp 9-10, paras. 34(a), (b), (c), (d), (e), (j), (m), (q); ARCH Coalition Factum, pp 13-14, para. 32

25. The Plaintiff seeks a declaration that Canada's decision not to comply with a UN Committee's views, in itself, gives rise to a Charter remedy. The CCPI Coalition[18] and the Amnesty Coalition[19] simply repeat and elaborate on the argument put forward by the Plaintiff.

26. The Statement of Claim alleges Canada's decision not to implement the UN Committee's Views is unreasonable based on an administrative law standard of review. The CCPI Coalition[20] simply repeats and elaborate on the argument put forward by the Plaintiff.

27. Where the proposed interveners merely repeat the arguments raised by the Plaintiff, or raise arguments that the Plaintiff will necessarily address, The motions to intervene are "me too" interventions which provide no assistance to the Court.

3) Proposed Submissions Fall Outside the Scope of a Rule 21.01(1)(b) Motion

28. The interveners' proposed submissions that are not duplicative of the arguments to be made by the Plaintiff are irrelevant to the legal issue before the Court in the motion to strike.

29. The interveners intend to argue that the claims plead in the action ought to be adjudicated with a full evidentiary record.[21] The issue before the Court

[18] CCPI Coalition Factum at paras. 54-65
[19] Amnesty Coalition Factum at paras. 5, 42-47
[20] CCPI Coalition Factum at paras. 66-69; 54-65
[21] CCLA Factum at para. 21(a)(i)

on the motion to strike is whether the Claim, as drafted, discloses a reasonable cause of action. That narrow issue does not require a full evidentiary record.

30. A general argument that certain Charter issues should not be dismissed on a preliminary motion is not a proper ground of intervention:

> *[The proposed interveners] do not address the actual section 15 claim raised in this case, as they admit at paragraph 11 of their reply.* ***They propose to submit that courts of first instance must always decide section 15 matters when they are raised before them. This goes beyond the respondents' submission that the Federal Court had a discretion to decide the section 15 issue but should have exercised it. Thus, it is new****. Also their interest in this issue is solely jurisprudential and thus, on some authorities, is insufficient to justify intervention.*[22] *(emphasis added)*

31. Several interveners also highlight the purportedly negative impact on certain groups if the motion to strike is successful.[23] These submissions are irrelevant to the question before the Court on the motion to strike.

32. The motion to strike is solely concerned with whether the Plaintiff's claim discloses a reasonable cause of action. An inquiry into the impact of a motion to strike on other groups of individuals falls outside the scope of the legal test on a Rule 21.01(1)(b) motion, and will not assist the Court in deciding the motion.

33. Where the intervention would only serve to introduce new issues or causes of action, the intervention should not be allowed.[24]

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[22] *Canada (MCI) v Canadian Council for Refugees*, 2021 FCA 13 at para 39, citing *Amnesty International Canada v Canada (Canadian Forces)*, 2008 FCA 257 at paras. 6-7; *C.U.P.E. v Canadian Airlines International Ltd.*, 2000 FCA 233 (Westlaw), 2000 CanLII 14938 (FCA) at paras. 11-12

[23] See, e.g., CCLA Factum, paras 16, 21(ii)(iv); CCPI Coalition Factum at para 6; 40; COP/COC Coalition Factum at para. 19

[24] *John Doe,* 87 DLR (4th) 348 at para. 9

34. Several proposed interveners improperly seek to argue that they should be granted leave to intervene because a decision in this case will create an adverse precedent. That submission is improper. It discloses only a jurisprudential interest in the outcome of the case. This is not a basis for intervention:[25]

> *The second reason, in my opinion, that the discretion to add parties has been exercised cautiously has to do with the very basis upon which the common law is built. It is built upon an incremental system of developing the law. An issue is determined between parties and then, subsequently, an individual who has a case with the same issue pending asks the court hearing his or her matter to decide whether or not the precedent set is applicable.* ***If the courts had previously interpreted or were to interpret Rule 13 as giving intervention rights to individuals who might be affected, adversely or otherwise, solely by the legal precedent which the first case creates, then, as Ms. Eberts so aptly put it, there would be no principled way of excluding the second or the 500th case. The common law system would implode upon itself.***[26] (emphasis added).

35. A successful motion to strike a pleading in one case does not necessarily raise a precedential bar to future claims based on different pleadings. Each pleading is to be assessed on its own terms as to whether it discloses a reasonable cause of action.

4) <u>The Expertise of the Proposed Interveners is largely evidence-based</u>

36. The expertise of the proposed interveners does not assist the Court for two reasons. First, the expertise of the proposed interveners acquired from their experience in serving their constituencies is an expertise that is largely evidence-

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[25] *Schofield v Ontario (Minister of Consumer and Commercial Relations),* 28 O.R. (2d) 764 (C.A.) at pp. 767, 769, 772, 774; *Amnesty International Canada v Canada (Canadian Forces),* 2008 FCA 257 at paras. 7-9; *R. v. Eurocopter Canada Ltd* (2004), 71 O.R. (3d) 27 (S.C.J.) at paras 28, 44-45; *Canada v. Bolton,* [1976] 1 F.C. 252 (C.A.) (Westlaw) at para.4

[26] *M. v. H.,* 20 OR (3d) 70 (Gen Div) at para. 33

based and, as such, has no application in the motion to strike. Second, any legal expertise of the proposed interveners in terms of the Plaintiff's cause of action is duplicative of the legal expertise of the Plaintiff.

37. Both Rules 13.02 and 21.01(1)(b) preclude the proposed interveners from introducing evidence at the motion to strike. Yet, several of the proposed interveners point to their work in serving certain constituencies and/or their public advocacy experience as the source of their expertise.

38. The knowledge acquired from such experience constitutes evidence and can only be introduced by way of affidavit. Any perspective premised on this knowledge is impermissible on a motion to strike.

39. In *Tanudjaja*,[27] the court denied motions to intervene from several proposed interveners, where the intervener's perspectives depended on evidence relating to their respective constituencies:

> *"[18] Each of these three prospective interveners purports to represent a part of our society that is said to be affected by the policies of our governments that impact on the availability of adequate and affordable housing. Counsel for these prospective interveners submitted that each of them would bring a special perspective to the hearing. These perspectives flow from the challenges confronted by the individuals they represent in finding appropriate housing.* ***The problem with this is that, while these perspectives may provide context to the application, it is difficult to see how they can add to a motion to strike it as failing to demonstrate a cause of action. This is because, for the purposes of a Rule 21 motion, the facts relied on in a Statement of Claim or, in this case, the Amended Notice of Application, are to be treated as if they have been proved. No evidence from any of these three prospective interveners regarding what one counsel referred to as the "social context" could be produced for the motion.*** *It may be that this is information that could be of assistance on the application if and*

[27] *Tanudjaja v Canada (AG)*, 2013 ONSC 1878 at paras 18-19

> *when it is heard. The considerations pertinent to the motion are narrower than those that would be relevant on the application.*

40. While it is acknowledged that a number of the proposed interveners have significant experience as interveners in *Charter* cases, this is not a reason that their interventions should be granted in the circumstances of this proceeding.[28]

41. The proposed legal perspectives of the interveners must be considered in light of the narrow factual foundation and legal claim pled by the Plaintiff. The Plaintiff takes issue with a decision to deny her coverage for health care when she was without status in Canada between 2009 and 2013. The policy under which the decision was made has since been repealed. The Plaintiff now has status in Canada, and has been covered by OHIP for almost ten years.

42. Contrary to the submission of the proposed interveners, the decision on the motion to strike will not affect anyone but the Plaintiff and the Defendant.

43. Nothing about the decision in the motion to strike will preclude other Plaintiffs or Applicants, who are currently alleging some deprivation of rights from some current legislation or policy from making claims under the *Charter*, interpreted in light of Canada's international obligations. There are, no doubt, cases arising out of current facts, in which the proposed interveners participation would be warranted.

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[28] *Halpern*, para. 8

5) Proposed Interventions are Prejudicial to the Defendant

44. The proposed interventions are prejudicial to the Defendant.

45. The moving parties are not neutral in the result of the motions. An intervener is not prevented from making submissions that assist a party. However, it is to remain neutral in the result. In an oft-cited article, Justice John Major, then of the Supreme Court of Canada, wrote about the importance of neutrality in terms of the result of a case:

> *The value of an intervener's brief is in direct proportion to its objectivity. Those interventions that argue the merits of the appeal and align their argument to support one party or the other with respect to the specific outcome of the appeal are, on this basis, of no value**. That approach is simply piling on, and incompatible with a proper intervention**. The anticipation of the court is that the intervener remains neutral in the result, but introduces points different from the parties and helpful to the court.*[29] (Bolding added.)

46. The proposed interventions here are not neutral in terms of the result but are engaged in "simply piling on."[30]

47. The proposed interventions would also add complexity to the motion to strike. The proposed interveners propose to serve 80 pages of submissions on the motion. They also propose to add an hour and twenty minutes of oral argument. Interventions always add costs and complexity to proceedings and so should only

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[29] Major J., "Interveners and the Supreme Court of Canada", *The National,* 8:3 (May 1999) p 27.
[30] *Jones v Tsige* (2011), 106 OR (3d) 721 (CA) at para 29, [2011] OJ No 4276 (QL); *Oakwell Engineering Ltd. v. Enernorth Industries Inc*, [2006] OJ No 1942 (CA) (Westlaw) at paras. 11-12; *Stadium Corp. of Ontario Ltd. v. Toronto (City)* (1992), 10 O.R. (3d) 203 (Div Ct), at paras. 8, 10, 14-15 (rev'd on other grounds at CA)

be entertained if there are compelling reasons.[31] No such compelling reasons exist at this stage of the proceeding.

D. SPECIFIC RESPONSE TO PROPOSED INTERVENERS

6) CCPI, et al.

48. The CCPI argues that it is important for the Court to consider statements in cases like *Chaouilli,*[32] *Gosselin*[33] and *Tanudjaja*[34] that the scope of positive government obligations under s. 7 of the Charter is not settled.

49. These cases did leave open the general possibility that, based on different facts, a court might have a different answer to the question: "What is the scope of positive obligations under s. 7of the *Charter*?"

50. We know what a Canadian court's answer to the question is on the facts of this case.[35]

51. Hearing the submissions of the CCPI coalition on other possible scenarios involving other possible effects on other groups will not assist the Court on this motion.

52. The CCPI Coalition cite their participation as interveners in the *Tanudjaja* motion to strike in support of their intervention on this motion. The circumstances in *Tanudjaja* are distinguishable. Tanudjaja was a case of first

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[31] *M. v. H.*, 20 OR (3d) 70 (Gen Div) at para. 55
[32] *Chaoulli v Québec (AG)*, 2005 SCC 35
[33] *Gosselin v Québec (AG)*, [2002] 4 SCR 429
[34] *Tanudjaja v Canada (AG)*, 2014 ONCA 852
[35] *Toussaint v. Canada (AG)*, 2010 FC 810, appeal dismissed 2011 FCA 213, leave to appeal dismissed 2012 CanLII 17813 (SCC)

instance. Multiple applicants, including the Centre for Equal Rights in Accommodation, chosen to represent a broad spectrum of affected persons, were seeking unprecedented relief related to housing and poverty issues. The Application did not challenge any particular legislative provision. The Application was a sweeping challenge to all federal and provincial policy related to housing.[36]

53. This motion, by contrast, concerns a single person whose *Charter* claims have already been adjudicated; a person who is no longer affected by the policy in question; and a policy which is no longer in effect.

7) CCLA

54. The CCLA proposes to make submissions on how the doctrine of estoppel should be applied in rights-based cases.[37] The Court routinely applies the doctrine of estoppel, in rights-based cases and in other cases. The Court is well equipped to decide how to apply this doctrine in the Plaintiff's case, with the assistance of the parties' legal submissions.[38]

55. The CCLA relies on the fact that it was granted intervener status in the Federal Court of Appeal in 2011 when the Plaintiff first sought to challenge the IFHP policy.[39] At that time, the Plaintiff's argument was arguably a case of first instance. The Court of Appeal, having heard from the parties and the CCLA, dismissed the Plaintiff's appeal. The Court of Appeal clarified what the law is on

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[36] *Tanudjaja v Canada (AG)*, 2013 ONSC 1878 at paras. 2-3
[37] CCLA Factum at para. 21(b)
[38] See, e.g., *Foster v West,* 2021 ONCA 263 (Westlaw) at para. 13, where the Ontario Court of Appeal held that counsel for a party can articulate what is meant by "best interests of the child" without the need for an intervener
[39] CCLA Factum at para 9

the facts of the Plaintiffs case. The Supreme Court of Canada dismissed the Plaintiff's application for leave to appeal. The intervention of the CCLA is not required to assist the Court in deciding the issues that are currently raised by the motion to strike.

8) The Colour of Poverty/Colour of Change Network, The Black Legal Action Centre, the South Asian Legal Clinic of Ontario and The Southeast Asian Legal Clinic

56. The Colour of Poverty Coalition bases its motion on the expertise of its members "in the areas of constitutional and human rights law as they affect members of racialized communities."[40]

57. The Plaintiff's action does not allege discrimination based on race. The Plaintiff takes issue with distinctions drawn between "regular" and "irregular" migrants. The action does not allege that any decision or policy in issue creates, directly or indirectly, a disproportionate impact on any racialized group.

58. The particular expertise of the Coalition will not add to the resolution of the case as it has been framed by the Plaintiff.[41]

9) Amnesty International Canada and ESCR-Net – International Network for Economic, Social and Cultural Rights

59. The members of the Amnesty Coalition cite their participation as interveners in the *Tanudjaja* case in support of this motion.[42] For the reasons set

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[40] COP/COC Coalition Factum at para. 25

[41] *Stadium Corp of Ontario Ltd v Toronto* (1992), 10 O.R. (3d) 203 (Div Ct), [1992] OJ No 1574 (QL) at para. 13, ("*Stadium Corp*")

[42] Amnesty Coalition Factum at para. 23

out above with respect to the CCPI Coalition, the Defendant submits that this does not assist the proposed interveners on this motion.

E. CONCLUSION: THE MOTIONS FOR LEAVE TO INTERVENE ON THE MOTION TO STRIKE SHOULD BE DISMISSED

60. The proposed interveners ask for intervener status on the basis of concerns about the public interest in allowing the case to go forward. Effective use of scarce judicial resources is an equally important aspect of the public interest. Referring to the *Imperial Tobacco* test on a motion to strike, Osborn J. recently explained the significance of the public interest served by such a motion in *Seascape 2000 Ltd v Canada (Attorney General)*:

> *It is significant that the Supreme Court of Canada took the opportunity to restate the test and to expand on the purpose of the Court's not permitting certain claims to proceed.*
>
> […]
>
> *The use of the phrase "reasonable prospect" suggests something other than an absolute; some degree of assessment is required and this assessment is to be informed by the objective of improving access to justice by facilitating fair effective and focused 'real issue' litigation. In other words, there are wider interests at stake than just those of the immediate parties.*[43]

61. The Court should be wary of allowing these motion to strike to be complicated by the proposed interventions. None of the exceptional circumstances in which interventions under Rule 13.02 in Rule 21 motions have been granted in the past are present in this case.

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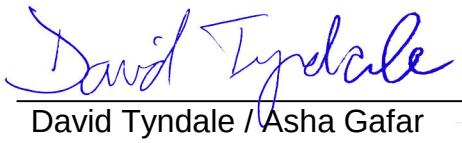
[43] *Seascape 2000 Inc.,* 2012 CanLII 78018 (NL SC) *at* paras. 19, 23

62. While the Defendant acknowledges the considerable expertise and experience of the interveners, and their valuable contributions in other contexts, the interveners have not shown that they will make a useful contribution to the disposition of the motion to strike. Their motions should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto, December 28, 2021.



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CV-20-00649404-0000

NELL TOUSSAINT	AND	ATTORNEY GENERAL OF CANADA
Plaintiff		Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

FACTUM OF THE DEFENDANT

[MOTIONS TO INTERVENE]

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