COURT OF APPEAL FOR ONTARIO
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REGISTRAR / GREFFIER
COUR D'APPEL DE LONTARIO

Court File No.: M54988 (COA-24-CV-0185)

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

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BOOK OF AUTHORITIES OF THE PROPOSED INTERVENER, MOHAWK COUNCIL OF KAHNAWÀ:KE
(Motion for Leave to Intervene)

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TAB 1

Bedford v. Canada (Attorney General), 2009 ONCA 669 (CanLII)

Date: 2009-09-22

File number: C50823

Other citations: 98 OR (3d) 792 — 181 ACWS (3d) 45 — 255 OAC 21 — [2009] OJ No 3881 (QL)

Citation: Bedford v. Canada (Attorney General), 2009 ONCA 669 (CanLII), <https://canlii.ca/t/25qjq>, retrieved on 2024-03-27

Bedford et al. v. Attorney General of Canada; Attorney General of Ontario, Intervenor
[Indexed as: Bedford v. Canada (Attorney General)]

98 O.R. (3d) 792

Court of Appeal for Ontario,

Goudge, Cronk and Epstein JJ.A.

September 22, 2009

Civil procedure -- Parties -- Intervenors -- Moving parties seeking leave to intervene in application attacking constitutionality of certain prostitution provisions of Criminal Code -- Moving parties intending to argue that constitutionality of challenged laws can be supported by moral values of Canadian society -- Motion judge erring in dismissing motion -- Moving parties having interest in subject matter of application and important perspective different from that of parties -- Moving parties seeking only to make legal argument so their participation would not unduly lengthen proceedings.

The appellants were organizations active in promoting traditional conceptions of family, society and morality. They sought leave to intervene as a friend of the [page793] court in an application for a declaration that some of the prostitution provisions of the Criminal Code, R.S.C. 1985, c. C-46 are unconstitutional. Their motion was dismissed. They appealed.

Held, the appeal should be allowed.

The appellants had a real substantial and identifiable interest in the subject matter of the application and an important perspective different from that of the parties. The motion judge erred in concluding that their proposed argument was not clearly described. Their position was that the constitutionality of the challenged laws can be supported by the moral values of Canadian society. The issue of morality

would be put in play by the applicants. As the appellants did not seek to file any affidavit material, and sought only to make legal argument, their participation would not unduly lengthen the hearing. They might be able to make a useful contribution to the application without causing injustice to the immediate parties.

APPEAL from the order of Matlow J., 2009 CanLII 33518 (ON SC), [2009] O.J. No. 2739 (S.C.J.) dismissing a motion for leave to intervene as a friend of court in an application attacking the constitutionality of certain provisions of the Criminal Code.

Cases referred to GEA Group AG v. Ventra Group Co. (2009), 96 O.R. (3d) 481, [2009] O.J. No. 3457, 2009 ONCA 619; Ontario (Attorney General) v. Dieleman (1993), 1993 CanLII 5478 (ON SC), 16 O.R. (3d) 32, [1993] O.J. No. 2587, 108 D.L.R. (4th) 458, 43 A.C.W.S. (3d) 527 (Gen. Div.); Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada (1990), 1990 CanLII 6886 (ON CA), 74 O.R. (2d) 164, [1990] O.J. No. 1378, 46 Admin. L.R. 1, 45 C.P.C. (2d) 1, 2 C.R.R. (2d) 327, 22 A.C.W.S. (3d) 292 (C.A.) Statutes referred to Canadian Charter of Rights and Freedoms Criminal Code, R.S.C. 1985, c. C-46 Rules and regulation referred to Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 13.02

Derek J. Bell, Ranjan K. Agarwal and Alexie S. Landry, for appellants Christian Legal Fellowship, REAL Women of Canada and Catholic Civil Rights League.

Ron Marzel, for respondents Terri Jean Bedford, Amy Lebovitch and Valerie Scott.

Roy Lee and Michael H. Morris, for respondent Attorney General of Canada.

Christine Bartlett-Hughes, for respondent Attorney General of Ontario.

[1] BY THE COURT: -- Pursuant to rule 13.02 [of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194], the appellants unsuccessfully sought leave to intervene as a friend of the court in the application brought by the respondents Terri Jean Bedford, [page794] Amy Lebovitch and Valerie Scott. That application seeks a declaration that certain sections of the Criminal Code, R.S.C. 1985, c. C-46 criminalizing activities related to prostitution violate the Canadian Charter of Rights and Freedoms.

[2] The relevant jurisprudence provides considerable guidance to a court hearing such a motion. Where the intervention is in a Charter case, usually at least one of three criteria is met by the intervenor: it has a real substantial and identifiable interest in the subject matter of the proceedings; it has an important perspective distinct from the immediate parties; or it is a well-recognized group with a special expertise and a broadly identifiable membership base: see Ontario (Attorney General) v. Dieleman (1993), 1993 CanLII 5478 (ON SC), 16 O.R. (3d) 32, [1993] O.J. No. 2587 (Gen. Div.). Most importantly, the

overarching principle is that laid down by Dubin C.J.O. in Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada (1990), 1990 CanLII 6886 (ON CA), 74 O.R. (2d) 164, [1990] O.J. No. 1378 (C.A.), at p. 167 O.R.:

> Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

[3] Finally, while rule 13.02 accords considerable deference to the court hearing the motion, that discretion is not immune from appellate scrutiny: see GEA Group AG v. Ventra Group Co. (2009), 96 O.R. (3d) 481, [2009] O.J. No. 3457, 2009 ONCA 619. That discretion cannot be exercised for reasons that clearly misapprehend the record before the court.

[4] In this case, the record leaves no doubt that the appellants meet several of the Dieleman criteria. They have a real substantial and identifiable interest in the subject matter of the application and, as acknowledged by the Attorney General of Canada, an important perspective different from the parties. The respondents do not oppose the motion on this basis.

[5] The respondents' argument at first instance was that the appellants did not show that they would be in a position to make a useful contribution to the resolution of any issue that needed to be determined. In the end, the motion judge essentially agreed with this submission. However, he did so for reasons that, in our view, are clearly erroneous.

[6] The motion judge concluded that the appellants' proposed argument was not described clearly, making it impossible to apply the test for intervention. We disagree. The record below and counsel's submissions clearly described the appellants' [page795] position, namely, that the constitutionality of the challenged laws can be supported by the moral values of Canadian society. Indeed, before us, counsel for the respondents not only understood that this was their position, but argued vigorously that it was irrelevant.

[7] The motion judge also determined that, in any event, he could not reasonably determine whether any issues of morality would properly arise in the argument of the application. That too misunderstands the material before him. The respondents were clear both below and in this court that in the application they will argue that morality cannot serve to support the constitutionality of the impugned legislation. In other words, the respondents will be putting that issue in play. The Attorney General of Canada indicated it would not be relying on Canadian moral values as a cornerstone of its defence of the legislation but made clear that there was considerable affidavit evidence in the record relating to such an argument. Whether the appellants' position ultimately prevails or not, it will provide a counterpoint to the respondents' argument that will not otherwise be made and may be useful to the court.

[8] In addition, the motion judge's view that the appellants have not shown any special knowledge entitling them to advance their arguments overlooks that the appellants do not seek to file any affidavit material. They seek only to make legal argument, not to supply the court with specialized knowledge, something that also provides a complete answer to the concern that their participation could disrupt the hearing. Also, the time limited argument means that their participation would not unduly lengthen the hearing.

[9] In summary, the basis for the motion judge's decision is clearly flawed and his conclusion therefore cannot stand. Rather, as we have indicated, given the issues at stake and the position the appellants propose to take, we conclude that the appellants may be able to make a useful contribution to the application without causing injustice to the immediate parties.

[10] We would allow the appeal and grant the motion as asked, with the addition set out in para. 19 of the factum of the Attorney General of Canada.

[11] No costs here or below.

Appeal allowed.

TAB 2

Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (C.A.), 1990 CanLII 6886 (ON CA)

Date: 1990-08-03

Other citations: 74 OR (2d) 164 — 22 ACWS (3d) 292 — 2 CRR (2d) 327 — 45 CPC (2d) 1 — 46 Admin LR 1 — [1990] CarswellOnt 393 — [1990] OJ No 1378 (QL)

Citation: **Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd. (C.A.), 1990 CanLII 6886 (ON CA), <https://canlii.ca/t/g16lj>, retrieved on 2024-03-27**

Regional Municipality of Peel and Attorney General of Ontario
v. Great Atlantic & Pacific Co. of Canada Ltd.,
Loblaws Supermarkets Ltd., Steinberg Inc.
(c.o.b. Miracle Food Mart) and Oshawa Group Ltd.
Indexed as: Peel (Regional Municipality) v. Great Atlantic &
Pacific Co. of Canada Ltd.
(C.A.)

74 O.R. (2d) 164

[1990] O.J. No. 1378

Action No. 455/90

ONTARIO

Court of Appeal

Dubin C.J.O., in Chambers

August 3, 1990.

Civil procedure -- Parties -- Intervention -- Applicant seeking to be added as party or as friend of court in appeal of judgment that held statute unconstitutional and contrary to Canadian Charter of Rights and Freedoms -- Considerations -- Rules of Civil Procedure, O. Reg. 560/84, rules 13.01, 13.02.

The applicant was a non-profit corporation whose objects included preserving Sunday as a day of rest, monitoring all legislation bearing on Sunday labour or business and pressing for new legislation or amendment of existing law to minimize activity on Sunday. While, historically, members of the applicant

were drawn from religious groups, the majority of its members now were representatives of trade unions, small retail businesses and trade associations. The applicant applied for leave to intervene as an added party or as a friend of the court in pending appeals of a judgment that held the Retail Business Holidays Act, as amended in February 1989, unconstitutional and in contravention of the Canadian Charter of Rights and Freedoms.

Held, subject to certain conditions, leave should be granted to the applicant to intervene as a friend of the court.

In determining whether an application for intervention should be granted the matters to be considered were the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties. In constitutional cases, including cases under the Charter, there has been a relaxation of the rules governing applications for leave to intervene and an increase in the desirability of permitting intervention because the judgments in these cases have a great impact on others who are not immediate parties. In this case, although the applicant's argument may overlap with the argument of the Attorney General in support of the legislation the applicant represented a very large number of individuals who had a direct interest in the outcome, had special knowledge and expertise of the subject- matter and was in a position to place the issues in a slightly different perspective from that of the Attorney General. Since the Retail Business Holidays Act does not affect the applicant corporation as such or its employees, it was not appropriate to grant leave as an added party under rule 13.01 of the Rules of Civil Procedure. Subject to certain conditions, it was appropriate to grant leave to intervene under rule 13.02 as a friend of the court for the purpose of rendering assistance to the court by way of argument.

APPLICATION for leave to intervene as added party or friend of the court.

Statutes referred to Canada Business Corporations Act, R.S.C. 1985, c. C-44 Canadian Charter of Rights and Freedoms Retail Business Holidays Act, R.S.O. 1980, c. 453 Rules and regulations referred to Rules of Civil Procedure, O. Reg. 560/84, rules 13.01 [am. O. Reg. 221/86, s. 1], 13.02, 13.03(2) [am. O. Reg. 221/86, s. 1]

David A. McKee, for People for Sunday Association of Canada, applicant for leave to intervene.

Elizabeth C. Goldberg and Hart Schwartz, for Attorney General of Ontario.

Robert S. Russell and Freya J. Kristjanson, for Loblaws Supermarkets Ltd.

Julian N. Falconer, for Great Atlantic & Pacific Co. of Canada Ltd.

John B. Laskin and Kent E. Thomson, for Oshawa Group Ltd.

Robert J. Arcand and Sharon M. Addison, for Steinberg Inc.
(c.o.b. Miracle Food Mart).

Angus T. McKinnon, for Hudson's Bay Co.

DUBIN C.J.O.:-- This is an application by the People for Sunday Association of Canada for leave to intervene as an added party or as a friend of the court in the appeals now pending from the judgment [in the High Court of Justice on June 22, 1990] of Mr. Justice Southey [reported 1990 CanLII 6850 (ON SC), 73 O.R. (2d) 289, 90 C.L.L.C. Paragraph14,023], who held that the Retail Business Holidays Act, R.S.O. 1980, c. 453 (the Act), as amended in February 1989, is in contravention of the Canadian Charter of Rights and Freedoms and is thereby unconstitutional.

This is the first time that the constitutionality of the Retail Business Holidays Act, as amended, has come before this court, although it has twice before considered the constitutionality of its predecessor.

The applicant is a non-profit organization incorporated under the Canada Business Corporations Act, R.S.C. 1985, c. C-44. The current objects of the corporation include:

(a) To affirm Sunday as a unique weekly opportunity, for as many people as possible, to enjoy spiritual, physical, moral and cultural renewal;

(b) To cultivate the conviction of Canadian people that the preservation of Sunday as the national, weekly day of rest is necessary for the well-being of the individual, the family and the community;

(c) To monitor carefully the drafting and enactment of all legislation bearing on Sunday labour or business and to press for new legislation or amendment of existing law where deemed necessary to minimize activity on Sunday;

(d) To encourage active enforcement of laws protecting the special status of Sunday.

Historically, the membership of the Association was drawn from religious groups. While certain of such groups are still members of the Association, the majority of its members are representatives of trade unions, small retail businesses and trade associations. Included in its membership is a trade union, the majority of whose members work in the retail food sector. The membership also includes retail associations which represent small retail businesses, often owned and operated by single families.

Over the years the Association has taken an active role on issues arising under the present statute, as well as its predecessor, and, in particular, has addressed the role that municipalities play in the present Act, a core factor in the reasons for judgment of Mr. Justice Southey.

In constitutional cases, including cases under the Canadian Charter of Rights and Freedoms, which is the case here, the judgment has a great impact on others who are not immediate parties to the proceedings and, for that reason, there has been a relaxation of the rules heretofore governing the disposition of applications for leave to intervene and has increased the desirability of permitting some such interventions.

The Attorney General for Ontario supports this application for intervention, but it is opposed by all the other respondents. The principal submission made by those who submit that leave to intervene should not be granted is that the interests of those whom the applicant represents are now fully protected by the position being taken on the appeals by the Attorney General for Ontario and, indeed, much of the evidence relied upon by the Attorney General in the proceedings before Mr. Justice Southey was drawn from sources that the applicant represents.

However, in my opinion, that is not a sufficient reason in this case to deny leave to intervene. The role of counsel for the Attorney General for Ontario is to support the constitutionality of the province's legislation. Although the argument may overlap, the applicant represents a very large number of individuals who have a direct interest in the outcome, has a special knowledge and expertise of the subject- matter and is in a position to place the issues in a slightly different perspective than that of the Attorney General.

It was also submitted that the applicant had considered seeking the right to intervene in the proceedings before Mr. Justice Southey and declined to do so and, therefore, should not be permitted to intervene now. However, I do not think that the failure to apply for intervention before Mr. Justice Southey should foreclose the applicant's opportunity for seeking intervention at this stage.

Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.

The relevant provisions of our rules of practice relating to intervention [Rules of Civil Procedure, O. Reg. 560/84, rules 13.01 [am. O. Reg. 221/86, s. 1], 13.02, 13.03(2) [am. O. Reg. 221/86, s. 1]] are as follows:

13.01(1) Where a person who is not a party to a proceeding claims,

(a) an interest in the subject matter of the proceeding;

(b) that he or she may be adversely affected by a judgment in the proceeding; or

(c) that there exists between him or her and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding,

the person may move for leave to intervene as an added party.

> (2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just.

> 13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or 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.

> . . . . .

> 13.03(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice of Ontario or the Associate Chief Justice of Ontario.

It is apparent that the Retail Business Holidays Act does not affect the applicant corporation as such or its employees, and I do not think that leave to intervene as an added party pursuant to rule 13.01 would be appropriate.

However, in my opinion, it is appropriate to grant leave to intervene under rule 13.02, as a friend of the court, for the purpose of rendering assistance to the court by way of argument.

In the result, I would grant leave to the applicant to intervene on such a basis subject to the following conditions:

(1) that the applicant takes the record as it is and will not be permitted to adduce further evidence;

(2) that it will not seek costs on the appeals, but that costs may be awarded against it;

(3) that it file its factums within seven days of having been served with the factums of the Attorney General for Ontario;

(4) that the costs of this application will be costs in the appeal.

Order accordingly.

TAB 3

Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 29 (CanLII)

Date:	2019-01-18
File number:	C65807 (M49919; M49949; M49957; M49968; M49963; M49965; M49955; M49966; M49970; M49974); M49971; M49950; M49961; M49972
Citation:	**Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 29 (CanLII), <https://canlii.ca/t/j8pmt>, retrieved on 2024-03-27**

COURT OF APPEAL FOR ONTARIO

CITATION: Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 29

DATE: 20190118

DOCKET: C65807 (M49919, M49949, M49950, M49955, M49957, M49961, M49963, M49965, M49966, M49968, M49970, M49971, M49972 & M49974)

MacPherson J.A. (Motion Judge)

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 1014/2018 respecting the constitutionality of the *Greenhouse Gas Pollution Pricing Act*, Part 5 of the *Budget Implementation Act, No. 1*, SC 2018, c. 12

Gareth Morley, for the moving party Attorney General of British Columbia

Amir Attaran and Matt Hulse, for the moving party Athabasca Chipewyan First Nation

Stewart Elgie, for the moving party Canada’s Ecofiscal Commission

Joseph Castrilli, for the moving party Canadian Environmental Law Association, Environmental Defence, and Sisters of Providence of St. Vincent de Paul

Jennifer L. King and Michael Finley, for the moving party Canadian Public Health Association

R. Bruce E. Hallsor, for the moving party Canadian Taxpayers Federation

Marc Bishai, for the moving party Centre québécois du droit de l’environnement and Équiterre

Nathan Hume, for the moving party Intergenerational Climate Coalition

Lisa DeMarco and Jonathan McGillivray, for the moving party International Emissions Trading Association

Cynthia Westaway and Nathalie Chalifour, for the moving party United Chiefs and Councils of Mnidoo Mnising

Ryan Martin, for the moving party United Conservative Association

Greg Vezina, acting in person

Sharlene Telles-Langdon, Brooke Sittler, Mary Matthews and Ned Djordjevic, for the Attorney General of Canada

Josh Hunter and Thomas Lipton, for the Attorney General of Ontario

Heard: January 15, 2019

A. Overview

[1] By order-in-council, the Lieutenant Governor in Council referred a reference to this court concerning the constitutionality of the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186. On August 30, 2018, I issued an order providing a timeline for hearing the reference and setting out the procedures for parties wishing to intervene in the matter. On January 15, 2019, I heard motions from various parties seeking leave to intervene and/or file a record. These reasons address those motions and other procedural matters.

B. The Interventions

[2] Pursuant to my order of August 30, 2018, any Attorney General could intervene as of right in this reference by serving notice of his or her intention to intervene on the Attorney General of Ontario and the Attorney General of Canada and filing the notice with this court. Three Attorneys General have served and filed notices: (1) the Attorney General of New Brunswick; (2) the Attorney General of British Columbia; and (3) the Attorney General of Saskatchewan. I grant them leave to intervene.

[3] Beyond the Attorneys General, any party seeking leave to intervene could do so by serving a motion for leave to intervene on the Attorney General of Ontario and the Attorney General of Canada and filing it with the court. Thirteen parties have done so. Many of these parties have already been granted leave to intervene in a parallel reference challenging the constitutionality of the *Greenhouse Gas Pollution Pricing Act* in the Court of Appeal for Saskatchewan (Docket: CACV3239). In the reference in Saskatchewan, the court granted leave to all parties seeking to intervene, notwithstanding some opposition.

[4] In this case, the Attorney General of Ontario and the Attorney General of Canada consent to or do not oppose the motions for leave to intervene of six of the thirteen parties seeking leave. These six parties are:

1) Assembly of First Nations;

2) Canadian Environmental Law Association, Environmental Defence, and Sisters of Providence of St. Vincent de Paul;

3) Canadian Taxpayers Federation;

4) David Suzuki Foundation;

5) United Chiefs and Councils of Mnidoo Mnising; and

6) United Conservative Association.

[5] I agree that these six parties should be granted leave to intervene and order accordingly.

[6] The Attorney General of Canada also consents to the motions for leave to intervene of six of the seven other parties seeking leave. The Attorney General of Ontario opposes these motions. These six parties are:

1) Athabasca Chipewyan First Nation;

2) Canada's Ecofiscal Commission;

3) Canadian Public Health Association;

4) Centre québécois du droit de l'environnement and Équiterre;

5) Intergenerational Climate Coalition; and

6) International Emissions Trading Association.

[7] I grant leave to intervene to these six parties. In my view, they have satisfied the test for intervener status.

[8] In determining motions for leave to intervene, the court will generally consider "the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties": *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada* (1990), 1990 CanLII 6886 (ON CA), 74 O.R. (2d) 164 (in Chambers), at p. 167; see also *Bedford v. Canada (Attorney General)*, 2009 ONCA 669, 98 O.R. (3d) 792, at para. 2. In constitutional cases, the rules governing motions for leave to intervene are relaxed: *Peel*, at p. 167. Nevertheless, an applicant seeking to intervene in constitutional litigation must usually meet at least one of the following criteria: (1) the applicant has a real, substantial and identifiable interest in the subject matter of the proceedings; (2) the applicant has an important perspective distinct from the immediate parties; or (3) the applicant is a well-recognized group with a special expertise and a broadly identifiable membership base: *Bedford*, at para. 2; see also *P.S. v. Ontario*, 2014 ONCA 160, 317 O.A.C. 219 (in Chambers), at para. 6.

[9] Applying the applicable principles in this case, I grant leave to intervene to Athabasca Chipewyan First Nation, Canada's Ecofiscal Commission, Canadian Public Health Association, Centre québécois du droit de l'environnement and Équiterre, Intergenerational Climate Coalition, and International Emissions Trading Association. This reference raises important issues about the constitutionality of legislation. These proposed interveners have each established that they have a real interest in the proceeding and will make useful submissions distinct from the Attorney General of Ontario and the Attorney General of Canada without causing them prejudice. As a result, I grant them leave to intervene.

[10] I decline, however, to grant leave to the one remaining party seeking leave to intervene, Mr. Greg Vezina. Both the Attorney General of Ontario and the Attorney General of Canada oppose his intervention in this matter.

[11] According to his affidavit evidence, Mr. Vezina is the founder and chairman of two energy technology companies with interests relating to clean fuel standards and the use of ammonia as an alternative fuel. Mr. Vezina's submissions reflect a keen interest in scientific and policy issues relating to greenhouse gas emissions. In my view, however, they do not assist the court in determining the legal issue of whether the *Greenhouse Gas Pollution and Pricing Act* is constitutional. I therefore dismiss his motion for leave to intervene.

C. Factums

[12] My order of August 30, 2018 set out the length of intervener and reply factums. Having heard submissions from the parties on that issue, I would vary the order as follows:

- The Attorney General of New Brunswick, Attorney General of British Columbia, and Attorney General of Saskatchewan may each file a factum not to exceed 25 pages;
- The other interveners may each file a factum not to exceed 15 pages; and
- The Attorney General of Ontario may file a reply factum not to exceed 30 pages.

D. Oral Argument

[13] Pursuant to my order of August 30, 2018, the reference will be heard from April 15 to April 18, 2019. I have canvassed the parties' and interveners' submissions and order that the time be divided as follows:

- Attorney General of Ontario: 4.5 hours (including reply);
- Attorney General of Canada: 4 hours (including reply);
- Attorney General of New Brunswick, Attorney General of British Columbia, and Attorney General of Saskatchewan: 30 minutes each; and

- Other interveners: 10 minutes each.

[14] The schedule for submissions will be as follows:

- April 15, 2019: Submissions of the Attorney General of Ontario;
- April 16, 2019: Submissions of the Attorney General of Canada;
- April 17, 2019: Submissions of the intervening Attorneys General and other interveners; and
- April 18, 2019: Reply submissions of the Attorney General of Canada and the Attorney General of Ontario.

E. Records

[15] The Attorney General of British Columbia, Athabasca Chipewyan First Nation, Canada's Ecofiscal Commission, Canadian Public Health Association, Intergenerational Climate Coalition, International Emissions Trading Association, and United Chiefs and Councils of Mnidoo Mnising further seek leave to file a record.[1][1] The Attorney General of Canada consents to these seven parties being granted leave to file a record, while the Attorney General of Ontario opposes. In the parallel reference in Saskatchewan, the Court of Appeal for Saskatchewan granted leave to the interveners seeking to supplement the record.

[16] I have reviewed the proposed records of these seven interveners in this case and grant them leave to file their records. I am cognizant of the court's common practice to require interveners in an appeal to accept the existing record and not to seek to supplement it: see *R. v. Kokopenace*, 2011 ONCA 498 (in Chambers), at para. 4; *Jones v. Tsige* (2011), 2011 CanLII 99894 (ON CA), 106 O.R. (3d) 721 (C.A., in Chambers), at para. 26. In my view, however, the usual prohibition on supplementing the record in an appeal should be relaxed when this court is sitting as a court of first instance in a constitutional reference.

[17] Constitutional challenges should not be determined in a factual vacuum: *MacKay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357, at p. 361; *Danson v. Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 S.C.R. 1086, at p. 1099. In a constitutional reference, an intervener may be permitted to file material subject to reserve by the court as to its relevancy and weight: *Re: Anti-Inflation Act*, 1976 CanLII 16 (SCC), [1976] 2 S.C.R. 373, at p. 387; see also *Reference re Education Act of Ontario and Minority Language Education Rights* (1984), 1984 CanLII 1832 (ON CA), 47 O.R. (2d) 1 (C.A.), at p. 10. As Dickson J. observed in *Re Residential Tenancies Act*, 1981 CanLII 24 (SCC), [1981] 1 S.C.R. 714, at p. 723:

A constitutional reference is not a barren exercise in statutory interpretation. What is involved is an attempt to determine and give effect to the broad objectives and purpose of the Constitution, viewed as a "living tree", in the expressive words of Lord Sankey in *Edwards and Others v. Attorney-General for*

1. Mr. Vezina also sought leave to file a record. Given my decision not to grant him intervener status, this motion is now moot.

Canada and Others. Material relevant to the issues before the court, and not inherently unreliable or offending against public policy should be admissible, subject to the proviso that such extrinsic materials are not available for the purpose of aiding in statutory construction. [Footnote and citations omitted.]

[18] In this case, I am satisfied that the proposed records of these seven interveners may assist the court in determining the constitutional validity of the *Greenhouse Gas Pollution Pricing Act* and should therefore be admitted.

F. Conclusion

[19] For the reasons above, with the exception of the motion of Mr. Vezina, the motions to intervene and file records are granted. “J.C. MacPherson J.A.”

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 210/2024 respecting permitting international play in an online provincial lottery scheme

Court File No.: COA-24-CV-0185

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

BOOK OF AUTHORITIES OF THE PROPOSED INTERVENER, MOHAWK COUNCIL OF KAHNAWÀ:KE (MOTION FOR LEAVE TO INTERVENE)

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