COURT OF APPEAL FOR YUKON TERRITORY

Citation: *La Commission Scolaire Francophone du Yukon No. 23 c. Procureure Générale du Territoire du Yukon* 2012 YKCA 1

Date: 20120208
Docket: YU684

Between:

La Commission Scolaire Francophone du Yukon No. 23

Respondent
(Plaintiff)

And

Procureure Générale du Territoire du Yukon

Appellant
(Defendant)

Before: The Honourable Chief Justice Finch
The Honourable Madam Justice Bennett
The Honourable Madam Justice MacKenzie

On review from the Supreme Court of Yukon, 23 December 2011,
(*Commission Scolaire Francophone du Yukon c. Procureure Générale du Yukon*, 2011 YKSC 11, Whitehorse No. YU684)

Counsel for the Appellant:	Maxime Faille François Baril
Written Submissions of the Proposed Intervenors:	16 January 2012
Written Submissions of the Procureure Générale du Territoire du Yukon:	23 January 2012
Counsel for the Proposed Intervenors - La Fédération National des Conseils Scolaires Francophones:	Mark Power Mathieu Stanton
Counsel for the Proposed Intervenors - La Commission Nationale des Parents Francophones:	Simon Ruel Nicholas Malone

Counsel for the Proposed Intervenors - Le Conseil Scolaire Francophone de la Columbie-Britannique:	Robert Grant Christian Paquette Jean-Pierre Hachey
Place and Date of Judgment:	Vancouver, British Columbia 8 February 2012

Written Reasons of the Court

Reasons for Judgment of the Court:

[1] The three applicants, La Commission Nationale des Parents Francophones ("CNPF"), La Fédération National des Conseils Scolaires Francophones ("FNCSF"), and Le Conseil Scolaire Francophone de la Columbie-Britannique ("CSFC-B"), apply to review and vary the order of Mr. Justice Groberman refusing their applications for intervenor status in the appeal pending from the judgment of the Yukon Supreme Court pronounced 26 July 2011. Justice Groberman's reasons for refusing intervenor status were pronounced on 23 December 2011 and may be found at 2011 YKCA 11.

[2] The Government of Yukon's appeal to the Yukon Court of Appeal is set to be heard in the week of 5 March 2012. On 28 October 2011, Groberman J.A. heard several applications brought by the Government of Yukon, and that was followed by a pre-hearing conference during which the parties agreed to a schedule for the filing and exchange of appeal materials. The date for the filing of the appellant's factum was 9 December 2011.

[3] On 18 November 2011, the proposed intervenors filed their applications, and a date for hearing those applications was set for 9 December 2011.

[4] On 22 November 2011, the Government of Yukon filed an amended notice of appeal, and by agreement of the parties, a revised filing schedule was set, according to which the Government of Yukon's factum was to be filed on 22 December 2011.

[5] As a result of the revised filing schedule, the applications for intervenor status were heard before the appellant's factum was filed.

[6] Rule 36(2) of the Yukon Court of Appeal Rules provides:

> A party seeking leave under subrule (1) to intervene in an appeal must, within 14 days after the filing of the appellant's factum ...

[7] On this application for review, the applicants say the hearing of their applications by the Chambers judge before the filing of appellant's factum violated the sequence contemplated by the Rule, exceeded the discretion of a Chambers judge under Rule 1, and caused prejudice to the applicants because it denied them the opportunity to evaluate the distinct character and utility of their proposed interventions against the appellant's factum.

[8] As to the substance of the Chambers judge's decision, the applicants say he erred in applying the principles governing intervenor applications. The applicants all say that their interests will be directly affected by the decision on appeal, and further that the issues raised between the parties are matters of public interest on which they can bring a unique perspective and make a useful contribution.

[9] The applicants point out that the appeal raises issues under s. 23 of the *Charter*, concerning those who have rights under that section who reside outside the Yukon Territory, and the obligations of other provinces and territories to satisfy those rights.

[10] We see no principled basis on which the Court could vary the order refusing the applicants intervenor status. As to the asserted non-compliance with Rule 36, it is to be noted that Mr. Justice Groberman fixed the parties' filing schedule, with their agreement, in his capacity as a judge presiding over a pre-hearing conference.

[11] Rule 29(3) provides:

> 29 (1) La Cour ou un juge peut, de son propre chef ou sur demande écrite présentée au registraire par l'une des parties ou sur demande du registraire, exiger la tenue d'une conférence préparatoire.
>
> (2) Dans ce cas, les parties ou leurs avocats doivent se présenter devant un juge à la date, à l'heure et à l'endroit indiqués pour discuter des questions suivantes:
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> ...
>
> c) toute autre question qui permettrait d'accélérer l'appel.

> (3) Le juge qui préside une conférence préparatoire peut rendre une ordonnance ou donner une directive sur les questions visées aux alinéas (2) a), b) et c).

[12] The applications for intervenor status were accommodated within the schedule fixed between the parties. None of the intervenors took the position that their applications must be heard after the appellant's factum was filed. They effectively consented to the schedule that had previously been proposed. If there was an objection to be made on this account, it should have been made at the time the intervenor applications were heard. The argument is not one that can be raised for the first time on an application for review.

[13] Moreover, we can see no prejudice to any applicant resulting from the way, or the timing, in which the applications were heard. The Government of Yukon's notice of appeal filed 25 August 2011, and its amended notice of appeal filed 22 November 2011, raised all of the issues addressed in its factum of 22 December 2011. The applicants were well able to anticipate the arguments to be advanced by the Government of Yukon. Any non-compliance with Rule 36, if such there be, was of no real consequence to the applications.

[14] With respect to the substance of the decision, the judge correctly articulated the tests to be applied, namely whether the applicant had a direct interest in the outcome of the appeal, or whether they could offer different perspectives and make useful contributions on matters of public interest. He applied these tests to each of the three applicants. It does not appear that he overlooked or misapprehended any important evidence touching on these tests, or that he made any error of law or principle.

[15] The decision of a judge on intervenor applications is discretionary. It is to be accorded a high level of deference. No reason has been shown to interfere with the decision to refuse the applicants intervenor status.

[16] The applications for review and variance are dismissed.

The Honourable Chief Justice Finch

The Honourable Madam Justice Bennett

The Honourable Madam Justice MacKenzie