

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20090605

Docket: A-208-09

Citation: 2009 FCA 191

Present: RICHARD C.J.

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

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 5, 2009.

REASONS FOR ORDER BY:

RICHARD C.J.

Federal Court
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REASONS FOR ORDER

RICHARD C.J.

[1] This is a motion by the proposed intervener, Amnesty International (Canadian Section, English Branch) (AI) in writing under Rule 369 of the *Federal Courts Rules* for:

1. an order granting leave for AI to intervene in the hearing of this appeal pursuant to Rule 109 of the *Federal Courts Rules*;
2. an order granting leave to file a memorandum of fact and law up to 20 pages in length;
3. an order granting leave to make oral argument at the hearing of this appeal up to 15 minutes in length, time permitting;

4. an order that AI will not seek costs from any party;
5. 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;
6. 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;
7. such further and other relief as counsel may advise and this Honourable Court may permit.

[2] The appeal arises from the Judgment of the Federal Court dated April 23, 2009 (*Omar Ahmed Khadr v. The Prime Minister of Canada, et al.*, 2009 FC 405).

[3] The appeal is proceeding on an expedited basis and the parties have agreed to stay enforcement of the Judgment pending resolution of this appeal. The appeal has been set down for hearing on June 23, 2009.

[4] AI states that its mission is to advance and promote international human rights at both the international and national level.

[5] It is accepted that the proposed intervener has expertise on the issue of human rights.

[6] In its supporting material, the proposed intervener states that it supports the Judgment under appeal and the Respondent. However, the proposed intervener seeks to make supplemental argument.

[7] The appellants submit that AI's motion for leave to intervene should be dismissed.

[8] The appellants assert that AI's interest relates solely to the repercussions the Judgment will have in future litigation involving human rights and that it has no pecuniary or proprietary interest in the outcome of the appeal.

[9] The appellants also assert that AI is not directly affected by the case and has only a general interest in the development of case law.

[10] The appellants further assert that AI has not established that the respondent is unwilling or unable to present argument, case law or authorities representing its views to the Court, or that its position will not be adequately defended by the respondent if the intervention is not granted.

[11] In arriving at my decision to dismiss the motion to intervene brought by the proposed intervener, I have considered the factors relevant to an application for intervention in *Canadian Union of Public Employees v. Canada Airlines International Ltd.*, [2000] F.C.J. No. 220 (QL), paragraph 8 (C.A.) and in particular whether:

- the position of the proposed intervener is adequately defended by one of the parties to the case;
- the interests of justice are better served by the intervention of the proposed third party;
- the Court can hear and decide the cause on its merits without the proposed intervener.

[12] As I noted in an earlier decision (2009 FCA 186) denying a motion by the British Columbia Civil Liberties Association for leave to intervene in the same appeal, at its highest, AI's interest is jurisprudential in nature. It is well-established that this kind of interest alone cannot justify an application to intervene.

[13] Accordingly, the motion to intervene will be dismissed.

"J. Richard"
Chief Justice

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-208-09

STYLE OF CAUSE:

THE PRIME MINISTER OF
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COMMISSIONER OF THE ROYAL
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MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

RICHARD C.J.

DATED:

June 5, 2009

WRITTEN REPRESENTATIONS BY:

Doreen Mueller

FOR THE APPELLANTS

Sacha R. Paul

FOR THE PROPOSED
INTERVENER (AMNESTY
INTERNATIONAL (CANADIAN
SECTION, ENGLISH BRANCH)

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FOR THE PROPOSED
INTERVENER (AMNESTY
INTERNATIONAL (CANADIAN
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