

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110328

Docket: A-78-11

Citation: 2011 FCA 119

Present: STRATAS J.A.

BETWEEN:

GLOBALIVE WIRELESS MANAGEMENT CORP.

Appellant

and

**PUBLIC MOBILE INC., ATTORNEY GENERAL OF CANADA,
AND TELUS COMMUNICATIONS COMPANY**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 28, 2011.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court
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REASONS FOR ORDER

STRATAS J.A.

[1] The moving parties, Alliance of Canadian Cinema, Television and Radio Artists, Communications, Energy and Paperworkers Union of Canada, and Friends of Canadian Broadcasting (the “moving parties”), move under rule 109 for leave to intervene in this appeal.

[2] The Attorney General of Canada, supported by Globalive Wireless Management Corp., opposes the motion. TELUS Communications Company consents to the motion, provided that no change will be made to the deadline for filing the respondents' memoranda of fact and law.

[3] The issue in this appeal is whether the Governor in Council, in its decision (P.C. 2009-2008 dated December 10, 2009), acted within its statutory mandate under the *Telecommunications Act*, S.C. 1993, c. 38. The Federal Court found (at 2011 FC 130) that the Governor in Council acted outside of its statutory mandate. It quashed the Governor in Council's decision.

[4] In the Federal Court, the moving parties were permitted to intervene: see the order of Prothonotary Tabib and the order of Prothonotary Aronovitch, dated April 13, 2010 and June 8, 2010, respectively. The moving parties' intervention was restricted to the issue whether the Governor in Council, in applying subsection 16(3) of the *Telecommunications Act*, failed to consider, failed to give effect, or acted inconsistently with the non-commercial objectives of the Act set out in the opening words of section 7 and subsections 7(a), (h) and (i). The thrust of the moving parties' submission in the Federal Court was that the Governor in Council improperly accorded paramount importance to increasing competition in the telecommunications sector to the prejudice of the Act's non-commercial objectives.

[5] I grant the motion for leave to intervene in the appeal in this Court for the following reasons:

- a. In my view, absent fundamental error in the decision in the Federal Court to grant the moving parties leave to intervene, some material change in the issues on appeal, or important new facts bearing on the issue, this Court has no reason to exercise its discretion differently from the Federal Court. No one has submitted that there is fundamental error, material change or important new facts.
- b. It is evident from the reasons of the Federal Court that the moving parties' submissions were relevant to the issues and useful to the Court in its determination.
- c. It is not necessary for the moving parties to establish that they meet all of the relevant factors in *Rothmans Benson and Hedges Inc. v. Canada*, [1990] 1 F.C. 84 (T.D.), affirmed [1990] 1 F.C. 90 (C.A.), including whether the moving parties will be directly affected by the outcome: *Boutique Jacob Inc. v. Paintainer Ltd.*, 2006 FCA 426 at paragraph 21, 357 N.R. 384. I am satisfied that the moving parties in this public law case possess a genuine interest – namely, a demonstrated commitment to the strict interpretation of the foreign ownership restrictions in the *Telecommunications Act*. This interest is beyond a mere “jurisprudential” interest, such as a concern that this Court’s decision will have repercussions for other areas of law: see, e.g., *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines International Ltd.*, a 2000 decision of this Court, belatedly reported at

[2010] 1 F.C.R. 226. Further, the moving parties will be able to assist the Court in a useful way in this public law case, bringing to bear a distinct perspective and expertise concerning the issues on which they seek to intervene: *Rothmans Benson and Hedges Inc.* (F.C.A.), *supra* at page 92. It is in the interests of justice that the moving parties be permitted to intervene in this public law case.

[6] This Court, acting under rules 53(1) and 109(3), will attach terms to the order granting the moving parties leave to intervene.

[7] The moving parties' written and oral submissions shall be limited to the subject-matters set out in paragraph 4, above. Those submissions shall not duplicate the submissions of the other parties and shall not add to the factual record in any way.

[8] This appeal has been expedited and a schedule has been set. That schedule shall not be disrupted.

[9] The moving parties support the result reached by the Federal Court. Accordingly, the deadline for their memorandum of fact and law should be set around the time set for the memoranda of fact and law of the parties who also are supporting the result reached by the Federal Court, namely TELUS Communications Company and Public Mobile Inc. So that the moving parties can be sure that their submissions do not duplicate those of any of the other parties, the deadline for their memorandum of fact and law should be just after TELUS Communications Company and Public

Mobile Inc. have filed their memoranda of fact and law (May 2, 2011). Therefore, the deadline for the service and filing of the moving parties' memorandum shall be May 5, 2011.

[10] The moving parties' memorandum shall be limited to 12 pages in length. The moving parties shall be permitted to make oral submissions at the hearing of the appeal for a total of no more than 20 minutes. No costs will be awarded for or against any of the interveners.

[11] The style of cause shall be amended to reflect the fact that the moving parties are now interveners.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-78-11

STYLE OF CAUSE:

Globalive Wireless Management
Corp. v. Public Mobile Inc., Attorney
General of Canada, and Telus
Communications Company

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

Stratas J.A.

DATED:

March 28, 2011

WRITTEN REPRESENTATIONS BY:

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FOR THE PROPOSED
INTERVENERS

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