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Our File No.: 71552-0086/71576-0358

September 8, 2021

Filed on CAMS

Court of Appeal of Alberta
Registrar's Office
26th Floor, 450 – 1st Street SW
Calgary, AB T2P 5H1

Distributed to Duty Judge

Attention: Case Management Officer

Dear Madam:

Re: Alvarez & Marsal Canada Inc. in its capacity as the court-appointed receiver and manager of Manitok Energy Inc. (A) v. Prentice Creek Contracting Ltd. (R) et. al.
Appeal No. 2101-0085AC

Please find attached copies of the following cases that we intend to rely on in support of the application by the Counties of Stettler and Woodlands tomorrow, September 9, 2021:

1. *Alberta Union of Provincial Employees v Alberta*, 2019 ABQB 553 (paras 12-16);
2. *North Bank Potato Farms Ltd v The Canadian Food Inspection Agency*, 2019 ABCA 88 (paras;
3. *Hamm v Canada (Attorney General)*, 2019 ABCA 389 (paras 16-18).

Yours truly,

BROWNLEE LLP
PER:

GREGORY G. PLESTER
/gr
Encls.
Cc: Borden Ladner Gervais LLP, Attention: Robyn Gurofsky, Jessica Cameron, Counsel for OWA (via email)
Norton Rose Fulbright Canada LLP, Attention: Howard Gorman Q.C., D. Aaron Stephenson, Meghan L. Parker, Counsel for the Receiver (via email)
Altalaw LLP, Attention: Glyn Walters, Counsel for Prentice Creek Contracting Ltd. (via email)
Hamilton Baldwin Law, Attention: Garrett SE Hamilton, Counsel for Riverside Fuels Ltd. (via email)
Alberta Energy Regulator, Attention: Maria Lavelle (via email)
Borden Ladner Gervais LLP, Attn: Jessica L. Cameron, Counsel for the Orphan Well Association (via email)

TAB 1

Court of Queen's Bench of Alberta

Citation: Alberta Union of Provincial Employees v Alberta, 2019 ABQB 553

Date: 20190722
Docket: 1903 13095
Registry: Edmonton

Between:

Alberta Union of Provincial Employees,
Guy Smith, Susan Slade, and Karen Weiers

Plaintiffs (Respondents)

- and -

Her Majesty the Queen in Right of Alberta

Defendant (Respondent)

- and -

United Nurses of Alberta

Applicant

Reasons for Decision on Intervenor Application
of the
Honourable Mr. Justice Eric F. Macklin

I. Introduction

[1] On July 19, 2019, I granted an application by the United Nurses of Alberta to intervene in an interim injunction application to be heard on July 29, 2019. These are the reasons:

[2] The Alberta Union of Provincial Employees (AUPE) has brought an action against Her Majesty the Queen in Right of Alberta (HMQ) seeking a declaration that the *Public Sector Wage Arbitration Deferral Act*, RSA 2019, c T-41.7 (Bill 9) breaches the AUPE's freedom of association as protected by s. 2(d) of the *Canadian Charter of Rights and Freedoms*. On July 29,

2019, I am hearing an application by AUPE for an Interim Injunction staying the implementation or operation of Bill 9 (Stay Application) until its constitutional challenge can be determined on its merits.

[3] The United Nurses of Alberta (UNA) applies for intervenor status in the Stay Application on the grounds that it will be specially affected by my decision due to its potential impact on UNA's parallel constitutional challenge of Bill 9. Further, UNA states it has special expertise or insight to bring to bear on the issues. If granted intervenor status, UNA intends to support the position of AUPE.

[4] HMQ opposes the application by the UNA to intervene on the ground that it has not met the requirements necessary for the granting of intervenor status.

II. Background

[5] On June 28, 2019, Bill 9 received Royal Assent. It purports to override certain provisions of Collective Agreements in which AUPE and UNA are parties. Specifically, it is argued that Bill 9 overrides the Wage Reopener Provision in the Collective Agreements.

[6] On June 24, 2019, AUPE and three of its members filed a Statement of Claim seeking to have Bill 9 declared to be of no force and effect as it breaches the s. 2(d) C*harter* rights of AUPE and its members in the affected units, including Guy Smith, Susan Slade and Karen Weiers. AUPE further argues that the violation is not demonstrably justified under s. 1 of the *Charter.*

[7] On July 3, 2019, UNA and 11 of its members filed a Statement of Claim in a separate action also asserting that Bill 9 breaches its right to freedom of association as protected by s. 2(d) of the *Charter*. It too argues that this violation is not demonstrably justified under s. 1 of the *Charter*.

III. The Applicable Test

[8] Rule 2.10 of the *Alberta Rules of Court* provides that a court may grant status to a person to intervene in an action subject to any terms and conditions and with the rights and privileges specified by the Court.

[9] The Court of Appeal set out the test for granting intervenor status in ***Papaschase Indian Band v Canada (Attorney General)***, 2005 ABCA 320. The Court held that an intervention:

> ...may be allowed where the proposed intervenor is specially affected by the decision facing the Court or the proposed intervenor has some special expertise or insight to bring to bear on the issues facing the Court (para 2).

[10] ***Papaschase*** considered the granting of intervenor status at the Court of Appeal level. When considering an application for intervenor status at the trial level, the considerations for the Court are expanded. They include the following:

1. Will the proposed intervenors be specially or directly affected by the decision of the Court?
2. Will the proposed intervenors bring special expertise or insights to bear on the issues facing the Court?
3. Are the proposed intervenors' interests at risk of not being fully protected or fully argued by one of the parties?

4. Will the intervenors' presence provide the Court with fresh information or a fresh perspective on a constitutional or public issue?
5. Will the granting of a right to intervene unduly prejudice a party?

(***Suncor Energy Inc. v Unifor (Local 707A),*** 2014 ABQB 555 at para 8, and cases cited there.)

[11] The factors set out in ***Papaschase*** are disjunctive. An applicant need satisfy only one of them before the Court will consider whether and how to exercise its discretion in granting intervenor status. The factors set out in ***Suncor Energy*** are also disjunctive as an applicant need not satisfy all of them. However, the Court must consider and weigh those factors that are present and balance their collective weight against the need to ensure that the process remains manageable with the issues properly defined. The Court must ensure that the presence of intervenors does not result in a needless expansion of the lawsuit, overly complicate the case, delay the proceedings or prejudice any party (***Telus Communications Inc. v Telecommunications Workers Union***, 2006 ABCA 297 at para 4). Granting intervenor status is discretionary and should be exercised sparingly (***Gauchier v Alberta (Registrar, Metis Settlements Land Registry)***, 2014 ABCA 272 at para 6). However, the Court should generally exercise greater leniency in granting intervenor status in cases involving constitutional issues or which have a constitutional dimension to them (***Papaschase*** at para 6).

IV. Analysis

1. Will UNA be specially affected by the Stay Application decision?

[12] Both AUPE and UNA challenge the constitutional validity of Bill 9 on the basis that it affects their right to freedom of association as protected in s. 2(d) of the *Charter*.

[13] UNA argues that the constitutional issues in the AUPE action overlap significantly with the issues raised by UNA in its action. In considering the Stay Application, this Court must consider whether there is a serious issue to be tried. If this Court finds that there is no serious issue to be tried, the UNA action will be detrimentally impacted.

[14] HMQ argues that any special or direct effect of Bill 9 on UNA can be adequately addressed in the action commenced by UNA. That is, even if a serious issue is found not to exist in the AUPE action, the UNA action will still allow UNA to attempt to distinguish that finding.

[15] UNA may be directly impacted by my decision on the Stay Application by AUPE. A finding that there is no serious issue to be tried would adversely affect UNA and force it to attempt to distinguish that finding in its concurrent action against HMQ. Allowing it to participate as an intervenor at this stage may obviate the necessity of forcing UNA to distinguish an adverse finding but also importantly, may ultimately limit or reduce the number of issues to be determined in the concurrent action, thereby also reducing or minimizing required court time and resources.

[16] UNA has established that it may be specially affected by the Stay Application decision.

2. Does UNA have special expertise or insight?

[17] UNA submits that it has expertise and insight derived from its long history of representing nurses who exercise their collective bargaining rights and their freedom of association in a public sector union. UNA further points to its appearance before the Supreme Court of Canada in the case of ***Saskatchewan Federation of Labour v Saskatchewan***, 2015 SCC 4 on the issue of the scope of freedom of association as protected by the *Charter*.

[18] UNA has stated that if granted leave to intervene, it will support AUPE's position but will not repeat its arguments.

[19] HMQ argues that UNA's intervention would do little more than duplicate AUPE's submissions. HMQ argues that both AUPE and UNA are public sector labour unions; they are both challenging the effect of Bill 9 on the public sector interest arbitrations; and they both rely on s. 2(d) of the *Charter*.

[20] UNA states that it will limit its submissions to the issue of whether there is a serious issue to be tried. Counsel for UNA indicated that the special expertise or insight it will bring to bear relates specifically to its perspective on the application of the duty to consult requirement which forms part of the s. 2(d) *Charter* right to freedom of association. UNA states that its position, while similar to that of AUPE, does take a broader view of the scope and intent of the duty to consult as an aspect of the freedom of association right protected in 2(d) of the *Charter*.

[21] At this stage, I am prepared to accept that UNA does have a special expertise or insight that it can bring to bear on the question of whether there is a serious issue to be tried.

3. Are UNA's interests at risk of not being fully protected or fully argued?

[22] While AUPE is fully invested in its application for an interim injunction, UNA argues that this does not mean that AUPE is fully invested in UNA's interests.

[23] The interim injunction application cannot provide a result that will somehow impact on AUPE in a different manner from the way in which it will impact on UNA.

[24] While UNA argues that AUPE will not be taking the same approach as UNA with respect to the duty to consult as an aspect of freedom of association, I have already considered that factor in determining that UNA has a special expertise or insight that it will bring to bear.

[25] This is a neutral factor.

4. Would UNA provide a fresh perspective on a constitutional or public issue?

[26] There would again appear to be some overlap when considering the concept of "a fresh perspective" as distinct from "special expertise or insight." The distinction in these factors is that the fresh perspective must relate to "a constitutional or public issue." In this case, UNA's submissions will relate to a constitutional issue – the sole issue it wishes to address.

[27] UNA has been determined to have a special expertise or insight relating to a constitutional issue. As such, it also has a fresh perspective on the constitutional issue. That is, it has a perspective different from that of AUPE.

5. Would permitting UNA to intervene unduly prejudice a party?

[28] The Stay Application has proceeded under tight timelines. It is to be heard on July 29, 2019. HMQ expresses concern that allowing UNA to intervene would necessarily expand the materials and submissions to which HMQ must respond on short notice.

[29] In my view, this particular concern may be addressed by imposing tight restrictions on UNA.

6. Other considerations

[30] Unlike intervenor applications before the Court of Appeal or the Supreme Court of Canada, neither this Court nor the parties have the benefit of a record to consider in determining whether and how an intervenor should be allowed to participate as an intervenor.

[31] In general, the presence of those factors outlined above must still be balanced with the need for this Court to ensure that the presence of UNA as an intervenor will not result in a needless expansion of the lawsuit, overly complicate it, delay the proceedings, or prejudice any party. In the circumstances of this case, I am satisfied that adequate restrictions can be placed on UNA's participation to ensure that the Interim Injunction application will proceed on July 29 and will not result in a needless expansion of the application or overly complicate the case. Further, and given UNA's assurance during oral submissions that it will not raise any novel positions that would require a delay to allow HMQ to provide a fulsome response, I am also satisfied that the proceedings will not be delayed. Imposing stringent conditions on UNA's participation will also ensure that HMQ will not be prejudiced.

[32] While I recognize that there is a substantial volume of cases from the Supreme Court of Canada and Courts of Appeal relating to s. 2(d) of the *Charter*, many of the cases that come before the Courts are nuanced in ways that may affect their precedential value. Accordingly, and while the granting of intervenor status remains discretionary and should be exercised sparingly, the Court should continue exercising greater leniency in granting intervenor status in cases involving constitutional issues or which have a constitutional dimension to them. I am doing so.

V. Conclusion

[33] The United Nurses of Alberta is granted intervenor status in the Interim Injunction application by the Alberta Union of Provincial Employees et al against Her Majesty the Queen in Right of Alberta, to be heard on July 29, 2019.

[34] UNA's participation as an intervenor is subject to the following terms and conditions:

1. UNA's submissions will be limited to the question of whether there is a serious issue to be tried.
2. Written submissions by UNA shall be limited to no more than five (5) pages to be filed and served no later than July 22, 2019 at 4:30 pm.
3. Oral submissions by UNA shall be limited to 10 minutes.

4. UNA will neither be entitled to costs from any other party nor obliged to pay costs to any other party.

Heard on the 19th day of July, 2019.
Dated at Edmonton, Alberta this 22nd day of July, 2019.

Eric F. Macklin
J.C.Q.B.A.

Appearances:

Gordon Nekolaichuk
for the Applicant

David Kamal
for Her Majesty the Queen

TAB 2

In the Court of Appeal of Alberta

Citation: North Bank Potato Farms Ltd v The Canadian Food Inspection Agency, 2019 ABCA 88

Date: 20190308
Docket: 1803-0202-AC
Registry: Edmonton

Between:

North Bank Potato Farms Ltd
and Haarsma Farms Ltd

Respondents
(Appellants)

- and -

The Canadian Food Inspection Agency,
Her Majesty the Queen In Right of Alberta
as Represented by the Attorney General of Canada

Respondents
(Respondents)

- and -

Flying E Ranche Ltd

Applicant

- and -

ABC Laboratory

Not a party to Appeal

Reasons for Decision of
The Honourable Mr. Justice Frans Slatter

Application for Permission to Intervene

Reasons for Decision of
The Honourable Mr. Justice Frans Slatter

[1] The applicant has applied under R. 14.58 for permission to intervene in this appeal from the decision reported as ***North Bank Potato Farms Ltd. v The Canadian Food Inspection Agency***, 2018 ABQB 505, 75 Alta LR (6th) 152. The essential issue in the appeal is the meaning of "compensation" under s. 9 of the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50:

> 9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

The chambers judge held that payments received by the appellants under the Alberta Seed Potato Assistance Program amount to "compensation" under s. 9, barring the appellants' claim for damages.

[2] The applicant is not a potato farmer, but it claims that it is in an analogous position. The applicant is now the representative plaintiff in an Ontario class action arising from the discovery of Bovine Spongiform Encephalopathy (BSE, or "mad cow disease") in an Alberta cow: see ***Sauer v Canada (AG)*** (2009), 246 OAC 256 (Div Ct) and ***Sauer v Canada (AG)***, 2007 ONCA 454, 225 OAC 143. It argues that similar issues will arise in that litigation, and that no appellate court has provided guidance on the proper interpretation of s. 9.

[3] The test for intervention is whether the proposed intervenor is specially affected by the decision, or the proposed intervenor has some special expertise or insight to bring to bear on the issues: ***Papaschase Indian Band v Canada (AG)***, 2005 ABCA 320 at para. 2, 380 AR 301.

[4] There is some overlap between the claims, but as pointed out in the applicant's affidavit there are some material differences as well. The BSE class action also concerns payments under the *Farm Income Protection Act*, SC 1991, c. 22. However, the applicant acknowledges that "the wide variety of *ad hoc* programs established under FIPA following the BSE crisis are different in scope and affect than the two programs at issue in this appeal". It also advises that in the Ontario class action, the Attorney General "has produced over 6,700 documents related solely to the intent, development, and operation of FIPA programs relating to BSE". An intervenor is not generally permitted to expand the record or the issues in the appeal: R. 14.58(3).

[5] While the applicant does have a general interest in the issues, the respondent argues that interest is purely jurisprudential, which is not sufficient to support intervention: ***Papaschase Indian Band*** at para. 8; ***Styles v Alberta Investment Management Corp***., 2016 ABCA 218 at

para. 28, 44 Alta LR (6th) 205. The respondent argues that the applicant's only interest is that it is involved in the Ontario BSE litigation.

[6] As noted, s. 9 has not previously been considered by an appeal court in this context, and it is of some general interest. In addition to this appeal and the BSE litigation, counsel advises that there is other litigation involving other agricultural products that raise the same issue. It is therefore important that the panel that hears this appeal receive comprehensive arguments on the issues. While there is some overlap, the applicant appears to be able to provide helpful input on the similarities and differences between the *Farm Income Protection Act*, the *Plant Protection Act*, SC 1990, c. 22 and the *Health of Animals Act*, SC 1990, c. 22. That should be the focus of its intervention.

[7] A complication is that this appeal has been set down for oral argument on April 3, 2019. Applications to intervene must be made in a timely way, in order to avoid disrupting the flow of the appeal. The applicant should have given the other parties timely notice of its intentions. Fortunately, in this case the appeal is not urgent, and the issues are of sufficient importance to justify intervention. The oral argument will, however, have to be adjourned.

[8] Permission to intervene is granted on the following conditions:

(a) The applicant may file and serve a factum substantially in the form of the draft factum previously provided, no later than March 12, 2019. (Normally, this intervenor would not be allowed a 30 page factum, but in light of time constraints the use of the draft factum is acceptable.)

(b) The respondent may file a concise reply to the applicant's factum, no later than April 30, 2019.

(c) The oral argument is adjourned until June 6, 2019. All counsel must confirm their availability for this date with the Edmonton Case Management Officer, within 10 days of the release of these reasons. If this date is inconvenient, the appeal will have to be heard in the fall.

(d) The appeal is to remain focused on the payments under the Alberta Seed Potato Assistance Program. This is not to become an appeal about compensation for BSE.

(e) The applicant is not entitled to introduce any fresh evidence, or raise new issues. Without ruling on the issue, the applicant may not rely on any of its Authorities that amount to fresh evidence (e.g. possibly Tabs 45, 47, 49, 50). For clarity, the affidavit of Larry Sears is not a part of the Appeal Record.

(f) The applicant will be allowed 15 minutes of oral argument.

Application heard on March 6, 2019

Reasons filed at Edmonton, Alberta
this 8th day of March, 2019

Slatter J.A.

Appearances:

K.L. Hurlburt, Q.C. (watching brief only)
For North Bank Potato Farms Ltd., Haarsma Farms Ltd.

M.J. Miller
for The Canadian Food Inspection Agency, Her Majesty the Queen in Right of Alberta

D.C. Boswell
for Flying E Ranche Ltd.

TAB 3

In the Court of Appeal of Alberta

Citation: Hamm v Canada (Attorney General), 2019 ABCA 389

Date: 20191017
Docket: 1903-0113-AC
Registry: Edmonton

Between:

Matthew Christopher Hamm, Shawn Curtis Keepness and Taylor James Tobin

Appellants

- and -

The Attorney General of Canada

Respondent

- and -

The Alberta Prison Justice Society

Applicant

Reasons for Decision of
The Honourable Madam Justice Dawn Pentelechuk

Application for Permission to Intervene

Reasons for Decision of
The Honourable Madam Justice Dawn Pentelechuk

[1] The Alberta Prison Justice Society (the Society) seeks leave to intervene in this appeal.

Background Information

[2] In August 2016, the appellants all brought successful *habeas corpus* applications before a Court of Queen's Bench judge, resulting in their release from administrative segregation back into the general population at the Edmonton Remand Centre: ***Hamm v Attorney General of Canada (Edmonton Institution)***, 2016 ABQB 440. The appellants then brought a civil action against the respondent, the Attorney General of Canada (Canada), seeking damages for false imprisonment and breach of their rights under the *Canadian Charter of Rights and Freedoms*.

[3] After Canada filed its defence, the appellants applied for summary judgment, arguing that issue estoppel applied given the order for *habeas corpus*. Both the master and the chambers judge disagreed, dismissing the appellants' application. In reasons reported at 2019 ABQB 247, the chambers judge held that the issues in a *habeas corpus* application differ from the issues arising in a civil claim for damages and that for policy reasons, issue estoppel should not apply to *habeas corpus*. The appellants appeal this decision.

The Test for Permission to Intervene

[4] A single appeal judge is able to grant permission to intervene per Rules 14.37(2)(e) and 14.58 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[5] In deciding an intervenor application, the Court must consider whether the intervenor has a particular interest in the outcome, or whether the intervenor will provide some special expertise, perspective, or information that will help resolve the appeal: ***Papaschase Indian Band (Descendants of) v Canada (Attorney General)***, 2005 ABCA 320 at para 2.

[6] Other relevant considerations include:

1. Is the presence of the intervenor necessary for the court to properly decide the matter?

2. Might the intervenor's interest in the proceedings not be fully protected by the parties?

3. Will the intervention unduly delay the proceedings?

4. Will there possibly be prejudice to the parties if intervention is granted?

5. Will intervention widen the dispute between the parties?

6. Will the intervention transform the court into a political arena?

UAlberta Pro-Life v Governors of the University of Alberta, 2018 ABCA 350 at para 10 [***UAlberta Pro-Life***].

The Parties' Positions

[7] The Alberta Prison Justice Society is a not-for-profit society formed to advance the legal rights and interests of incarcerated individuals in Alberta and to empower members of the legal profession to conduct applications for appropriate remedies for breaches of prisoners' rights. Its members include lawyers, articling students, and law students. Many of the member lawyers have extensive experience in prison justice litigation, including *habeas corpus* applications.

[8] The Society proposes to offer useful and unique submissions on the legal and policy issues raised in this appeal and advises it will not advocate for a specific result, raise any new grounds of appeal, nor introduce fresh evidence. The Society proposes to make two overarching submissions:

1. the threshold factors identified by the chambers judge in finding that issue estoppel was unavailable in this context are not determinative of whether issue estoppel applies; and

2. whether issue estoppel ought to be applied in particular circumstances is a matter of judicial policy which should be directed to ensuring that justice is done between the parties.

The appellants support the Society's application.

[9] Canada opposes the application on grounds that the Society would effectively be acting as "second counsel" for the appellants, relying on ***R v Ndhlovu***, 2019 ABCA 132 and ***Reference re: Greenhouse Gas Pollution Pricing Act***, 2019 ABCA 349. As the appellants' counsel is a member of the Society, Canada argues the Society's participation would not bring a new perspective. Canada also submits that any arguments of the Society can be made by the parties instead.

Has the Society Met the Test?

[10] There are no significant concerns about unduly delaying the proceedings, or prejudice, or any concern that the Society would transform this Court into a political arena. Any concerns about timeliness, or widening of the issues or *lis* between the parties can be addressed through conditions. Thus, "the crux of the matter is whether the [Society] can offer a special expertise ... that may be of assistance to the Court in its deliberations": ***UAlberta Pro-Life*** at para 15. Further, whether the Society has a particular interest in the outcome of the appeal is a relevant factor.

Should the Society be permitted to intervene on Issue 1: Threshold Factors in Issue Estoppel?

[11] The Society argues the application of issue estoppel in this context is novel and proposes to bring to this Court's attention analogous circumstances in summary proceedings which have grounded issue estoppel in subsequent actions.

[12] The Society therefore proposes to look outside the doctrine of *habeas corpus* to other areas of law in which issue estoppel has been applied. I am not convinced that the Society has any special expertise in the area of issue estoppel and how it applies in other settings. Nor has the Society outlined a unique perspective on this question. Both parties to this action are capable of pointing this Court to the application of issue estoppel in analogous circumstances.

[13] I deny the application to intervene on this issue.

Should the Society be permitted to intervene on Issue 2: Policy Concerns?

[14] As noted already, the relevant factors in deciding whether to grant intervenor status on this second issue are whether the Society has a particular interest in the outcome of the appeal and whether the Society can offer special expertise to this Court.

[15] Although the Society will not be directly affected by the outcome in the appeal *per se*, I find that the Society has the requisite interest in the appeal because the decision could have a significant effect on the Society's ability to achieve its mandate.

[16] In ***Jonsson v Lymer***, 2019 ABCA 113, the National Self-Represented Litigant Project (NSRLP) sought leave to intervene in an appeal dealing with court access restrictions for vexatious litigants. The NSRLP's mandate includes "enhancing the responsiveness of the Canadian justice systems to [self-represented litigants]" and it exists to further the interests of these vulnerable litigants: at para 21. Greckol JA found the decision in the appeal could have a significant effect on the NSRLP's achievement of its mandate and it was therefore specially affected by the appeal.

[17] Canada argues ***Jonsson*** is distinguishable as the Society's mandate is merely *engaged* on this appeal; its *ability to achieve* its mandate is not affected. Additionally, Canada submits that a jurisprudential interest is not a sufficient interest to ground an intervenor application.

[18] I find the Society is in an analogous position to that of the NSRLP. Its core mandate is "to advance the legal rights and interests of incarcerated individuals in Alberta". The decision in this appeal may have a substantial effect on prisoners' rights litigation in this province and therefore affects the ability of the Society to achieve its mandate. This is not a purely jurisprudential interest. The Society is specially affected by the subject matter of the appeal.

[19] The next consideration is whether the Society will provide special expertise.

[20] The Society submits this appeal engages broad and important policy considerations in relation to *habeas corpus* and, more generally, civil actions involving incarcerated individuals.

[21] The chambers judge devoted a significant part of his analysis to policy considerations, and for good reason. Both tests relevant to this matter, the issue estoppel test outlined in ***Danyluk v Ainsworth Technologies Inc***, 2001 SCC 44 at para 33, and the summary judgment test from ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49, engage policy considerations. Both parties' facta discuss these policy considerations. The issues as framed by the parties on this appeal, and by the chambers decision, squarely bring policy considerations into play.

[22] The comments of Wakeling JA in ***Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)***, 2014 ABCA 340 at para 14, are apt: "The Court benefits from the participation of an organization whose members have special expertise in the subject matter of an appeal. This is particularly so if the issue is an unsettled question of law the answer to which may have unanticipated consequences."

[23] *Habeas corpus* is an essential remedy in Canadian law; it is a prisoner's strongest tool for ensuring their liberty is not unlawfully deprived: ***Mission Institution v Khela***, 2014 SCC 24 at para 29 [***Khela***]. Both *habeas corpus* and the constitutionality of long-term administrative segregation are the subject of recent jurisprudence. This is an evolving area of law with far-reaching policy implications.

[24] The present appeal raises a novel issue: does issue estoppel apply in a civil damages suit flowing from a successful *habeas corpus* application? This is not simply an appeal, as Canada suggests, on a matter of civil procedure and the *Rules of Court*.

[25] While the chambers judge articulated several policy reasons militating against the application of issue estoppel in successful *habeas corpus* applications, the Society intends to present additional policy considerations that may inform the outcome of this appeal.

[26] It is recognized that prisoners are vulnerable to the power of the state and it is often difficult for them to advance issues given their inherent marginalization: see e.g. ***Khela*** at para 44. The Society is uniquely poised to speak to these questions of policy. Notwithstanding that intervenor applications should generally be granted sparingly, I conclude that the applicant has met the test in this instance as it will provide the Court with fresh information or a fresh perspective on an important issue.

[27] I grant the Society's application to intervene on the issue of whether, as a matter of judicial policy, issue estoppel should apply in the *habeas corpus* prison rights context. The Society is specially affected by the appeal and has expertise and a unique perspective on policy considerations at issue in this appeal.

Conclusion

[28] The Alberta Prison Justice Society, represented by Messrs. Beddoes and Oliphant, is granted permission to intervene, with the following parameters applied:

a. The Society may file a factum of no more than 15 pages;

b. The Society may make oral submissions to a maximum of 20 minutes, subject to the appeal panel's determination of its own needs; and

c. Canada may file a factum in reply to the Society's factum of no more than eight pages.

[29] All parties and the intervenor are directed to contact the Case Management Officer for the setting of deadlines.

Application heard on October 10, 2019

Reasons filed at Edmonton, Alberta
this day of October, 2019

Pentelechuk J.A.

Appearances:

A. Nanda
for the Appellants

J.R. Elford/A.C. Martin-Leblanc
for the Respondent

A. Beddoes/B. Oliphant
for the Applicant