

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160602

Docket: A-469-15

Citation: 2016 FCA 167

**CORAM: DAWSON J.A.
WEBB J.A.
RENNIE J.A.**

BETWEEN:

INCOME SECURITY ADVOCACY CENTRE

Applicant

and

**PHILIP METTE AND ATTORNEY GENERAL
OF CANADA**

Respondents

Heard at Toronto, Ontario, on June 2, 2016.
Judgment delivered from the Bench at Toronto, Ontario, on June 2, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 2, 2016).

DAWSON J.A.

[1] The Income Security Advocacy Centre applied for leave to intervene in an appeal brought by Philip Mette before the Appeal Division of the Social Security Tribunal. The Advocacy Centre is a legal clinic with a mandate to conduct systemic litigation to improve access to and adequacy of income security programs. The Appeal Division dismissed the

Advocacy Centre's application for leave to intervene for reasons rendered on September 18, 2015 in Appeal No: AD-14-427. This is an application for judicial review of that decision.

[2] On this application the Advocacy Centre acknowledges that the Appeal Division has now rendered a final decision on Mr. Mette's appeal. This renders the present application moot because there is no longer an appeal to intervene in. Notwithstanding, the Advocacy Centre asks that we exercise our discretion to hear the application.

[3] Notwithstanding the able submissions of counsel for the applicant, we are all of the view that this is not an appropriate case in which to exercise our discretion to hear the application. We reach this conclusion for the following three reasons.

[4] First, this decision is not binding on other panels of the Appeal Division or on panels of the General Division of the Social Security Tribunal. As the decision at issue lacks precedential value, judicial resources would not be well spent in hearing the application.

[5] Second, in the decision under review the Appeal Division failed to engage and grapple with the real issues: does it have the implicit power to allow public interest intervenor status flowing from its power to conduct hearings and to decide questions of law and fact (*Canada (Director of Investigations) v. Nfld. Telephone*, [1987] 2 S.C.R. 466 at page 480, 80 N.R. 321) and, if so, how it should adapt its procedural rules to permit public interest interventions. The Appeal Division as an administrative decision-maker has expertise in determining what procedures are appropriate in the circumstances. This Court would benefit from reasons from the

Appeal Division that engage these issues. Without such reasons this Court cannot be properly respectful of procedural choices made by the Appeal Division.

[6] Finally, the Advocacy Centre seeks a declaration that the Social Security Tribunal has the jurisdiction to permit public interest interventions. However, a declaration may only be granted if it will have practical utility, that is, if it will settle a “live controversy” between the parties (*Daniels v. Canada (Indian Affairs and Northern Development*, 2016 SCC 12, [2016] 1 S.C.R. 99, at paragraph 11, citing *Solosky v. The Queen*, [1980] 1 S.C.R. 821 and *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342). No such live controversy exists in the present case as the appeal the Advocacy Centre sought to intervene in has been concluded.

[7] For these reasons the application for judicial review will be dismissed without costs.

“Eleanor R. Dawson”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-469-15

STYLE OF CAUSE: INCOME SECURITY
ADVOCACY CENTRE v. PHILIP
METTE AND ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JUNE 2, 2016

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
WEBB J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

APPEARANCES:

Jackie Esmonde
Marie Chen
Hasan Junaid
No appearance

FOR THE APPLICANT

FOR THE RESPONDENT
(Attorney General of Canada)

FOR THE RESPONDENT
(Philip Mette)

SOLICITORS OF RECORD:

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FOR THE RESPONDENT
(Philip Mette)