

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190513

Docket: A-396-18

Citation: 2019 FCA 120

Present: STRATAS J.A.

BETWEEN:

ATLAS TUBE CANADA ULC

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

and

CHARTERED PROFESSIONAL ACCOUNTANTS OF CANADA

Intervener

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 13, 2019.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

STRATAS J.A.

[1] The Chartered Professional Accountants of Canada moves for an order for leave to intervene in this appeal. The Accountants' motion is on consent.

The test for intervention

[2] The parties' consent does not tie the Court's hands. The Court must still evaluate whether the Accountants' proposed intervention into this appeal is supported by the criteria in Rule 109 of the *Federal Courts Rules*, SOR/98-106 and the associated jurisprudence: see, e.g., *Sport Maska Inc. v. Bauer Hockey Corp.*, 2016 FCA 44, [2016] 4 F.C.R. 3; *Canada (Attorney General) v. Pictou Landing First Nation*, 2014 FCA 21, [2015] 2 F.C.R. 253.

Our approach

[3] This appeal concerns the interpretation and application of section 231.7 and related sections of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). I will discuss our approach to intervention in appeals raising these types of issues.

[4] As a court of law and equity and as a superior court (see section 4 of the *Federal Courts Act*), our job is to interpret the authentic meaning of Parliament's laws and other legal doctrine and apply these faithfully and dispassionately to the facts of the case: *Williams v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252 at paras. 41-52; *Canada v. Cheema*, 2018 FCA 45 at paras. 73-86; *Hillier v. Canada (Attorney General)*, 2019 FCA 44 at paras. 18 and 24-27.

[5] We do not make legislation, nor do we amend legislation passed by our elected representatives: *Williams* at para. 50; *Hillier* at para. 26. We do not insert into legislation our

own policies and values: *Williams* at para. 48; *Cheema* at paras. 79-80; *Hillier* at paras. 31-33. Like all judges at all levels of the judiciary, we must not do these things; if we do, we disobey the longstanding, fundamental arrangements of our democracy: *Williams* at para. 49, *Ishaq* at para. 26; *Hillier* at para. 33.

[6] Thus, when it comes time to consider whether parties should be allowed to intervene in a case involving the interpretation and application of legislation, we look to see whether the parties can help us in these legal tasks—in the words of Rule 109, whether their participation “will assist the determination of...legal issue[s] related to the proceeding.”

[7] So in a case involving the interpretation and application of legislation, among other things, we frequently welcome those who are well-placed to offer insights into the legislation’s genuine purpose, *i.e.*, the purpose evident from the text of the legislation, its context or other legitimate sources: *Hillier* at paras. 25-26 and 33.

[8] It follows that we abhor policy advocacy of the sort practised by some Parliament Hill lobbyists and some interveners—submissions with unproven, contentious facts improperly smuggled amongst the rhetoric, pushing what they want the legislation to mean rather than what it authentically means.

[9] It also follows that we have no interest in made-up legislative purposes or purposes alien to the legislation. This is so even if we happen to like the purposes. See *Hillier* at paras. 25-26

and 36; and for a recent endorsement of the sort of approach in *Hillier*, see *TELUS Communications Inc. v. Wellman*, 2019 SCC 19 (majority reasons only).

[10] There is another aspect to the interpretation and application of legislation on which good interveners can play a useful role. Our Court commented on this in *Williams* (at para. 52):

A frequently used tool in the interpretive process is to assess the likely effects or results of rival interpretations to see which accords most harmoniously with text, context and purpose. This is appropriate. The judge is assessing effects or results not to identify an outcome that accords with personal policies or political preferences. Rather the judge is assessing them against the standard, accepted markers of text, context and purpose in order to discern the authentic meaning of the legislation. For example, if the effect of one interpretation offends the legislative purpose but the effect of another interpretation does not, the latter may be preferable to the former.

[11] This paves the way for another important role for some interveners: they may be well-placed to help us assess the likely effects or results of rival interpretations of a legislative provision because of their experience analyzing and working with it. Some of that experience may be in the field, on the ground, and practical in nature.

[12] Finally, in granting interventions, we strive not to cause a marked numerical imbalance in favour of one side in the debate before the Court. Fairness is paramount. And so is the appearance of fairness. After the Court decides the motions for leave to intervene, the appeal should not look like a court-authorized gang-up against one side: see, *e.g.*, the comments in *Gitxaala Nation v. Canada*, 2015 FCA 73 at paras. 22-24 and *Zaric v. Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 36 at para. 12.

This case

[13] In this appeal, the appellant seeks to set aside the Federal Court's issuance of a compliance order under section 231.7 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The order requires the appellant to produce to the Canada Revenue Agency a draft due diligence report. The Canada Revenue Agency had asked for production of the report during a tax audit of the appellant.

[14] The Accountants wish to intervene to offer a perspective not before the Court: its members, who are bound by professional and ethical obligations, must perform certain functions with their clients, must document their work, and are potentially subject to production requests from the Canada Revenue Agency under other sections of the *Income Tax Act*. If admitted into this appeal, the Accountants will be the only intervener.

[15] Although the Accountants' motion to intervene is late—the appellant has already filed its memorandum of fact and law—the criteria for intervention are largely met.

[16] The Accountants have a useful and helpful role to play in this appeal, particularly concerning the Court's understanding of the authentic meaning of section 231.7 of the *Income Tax Act* and related sections, and how they should be applied to the facts of the appeal.

[17] As is well known, the proper methodology for interpreting statutory provisions requires that their text, context and purpose be analyzed: see *Williams, Cheema, Hillier* and the Supreme

Court authorities cited therein. I am satisfied that the in-the-field, on-the-ground, practical experience of the Accountants will likely assist the Court when it follows this methodology to interpret and apply section 231.7 and related provisions of the *Income Tax Act*. Indeed, the Accountants are likely to have much to say that is useful on issues of legislative purpose, as discussed in paragraph 7, above. In particular, their practical experience is likely to be of direct relevance to the examination of effects that shed light on the legislative purpose, as discussed in paragraphs 10-11, above, and ultimately the authentic meaning of the legislation.

[18] Therefore, it is appropriate that the Accountants be given leave to intervene on these issues. Submissions of a general, freestanding policy nature unrelated to the genuine purpose of the legislative provisions are not permitted. Rather, the Accountants are to work within the proper methodology for legislative interpretation, and assist the Court in its task of ascertaining the authentic meaning of these provisions and applying them to this case.

Proposed disposition

[19] The motion will be granted. The order will amend the style of cause to reflect the presence of the Accountants as interveners. Their intervention will be subject to the restrictions mentioned in these reasons and the conditions this Court usually attaches to interventions. The order will also deal with certain minor matters of timing and procedure.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-396-18

STYLE OF CAUSE: ATLAS TUBE CANADA ULC v.
MINISTER OF NATIONAL
REVENUE AND CHARTERED
PROFESSIONAL
ACCOUNTANTS OF CANADA

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: MAY 13, 2019

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