

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180418

Docket: 17-A-32

Citation: 2018 FCA 80

Present: WEBB J.A.

BETWEEN:

AIR CANADA

Applicant

and

**JEREMY COOPERSTOCK and
CANADIAN TRANSPORTATION AGENCY**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on April 18, 2018.

REASONS FOR ORDER BY:

WEBB J.A.

Federal Court of Appeal



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REASONS FOR ORDER

WEBB J.A.

[1] Dr. Gábor Lukács has brought a motion for leave to intervene in Air Canada's motion for an order for leave to appeal from a decision of the Canadian Transportation Agency.

[2] Rule 109 of the *Federal Courts Rules*, SOR/98-106 (Rules) provides that:

109(1) The Court may, on motion, grant leave to any person to intervene in a proceeding.

(emphasis added)

109(1) La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.

(soulignement ajouté)

[3] The term “proceeding” is not defined in the Rules. However, Rule 61 provides that:

61(1) Subject to subsection (4), a proceeding referred to in rule 169 shall be brought as an action.

(2) Subject to subsection (4), a proceeding referred to in rule 300 shall be brought as an application.

(3) A proceeding referred to in rule 335 shall be brought as an appeal.

(4) Where by or under an Act of Parliament a person is given the option of bringing a proceeding referred to in rule 169 or 300 as either an action or an application, the person may commence the proceeding as an action or as an application.

61(1) Sous réserve du paragraphe (4), l’instance visée à la règle 169 est introduite par voie d’action.

(2) Sous réserve du paragraphe (4), l’instance visée à la règle 300 est introduite par voie de demande.

(3) L’instance visée à la règle 335 est introduite par voie d’appel.

(4) Lorsque l’instance visée aux règles 169 ou 300 est engagée sous le régime d’une loi fédérale ou d’un texte d’application de celle-ci qui en permet l’introduction par voie d’action ou de demande, le demandeur peut l’introduire de l’une ou l’autre de ces façons.

[4] As well, the definitions of “action”, “appeal” and “application” in section 2 of the Rules each provide that these are proceedings but the definition of “motion” is that a motion is “a request to the Court under, or to enforce, these Rules”. As a result of Rule 61 and these definitions, a motion would not be a proceeding. In *Gholipour v. Canada (Attorney General)*, 2017 FCA 99, at para. 8, this Court confirmed that a motion is not a proceeding.

[5] Therefore, proceedings, for the purposes of the Rules, are actions, applications for judicial review, or appeals. A motion for an order for leave to appeal is not a proceeding. Rather, the proceeding will only commence once a notice of appeal is filed, if leave to file the notice of

appeal is granted. As a result, there is no right to intervene under Rule 109 in Air Canada's motion for an order for leave to appeal from a decision of the Canadian Transportation Agency.

[6] Dr. Gábor Lukács' motion for leave to intervene in Air Canada's motion for an order for leave to appeal from a decision of the Canadian Transportation Agency is dismissed without costs.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

17-A-32

STYLE OF CAUSE:

AIR CANADA v.
JEREMY COOPERSTOCK and
CANADIAN TRANSPORTATION
AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

WEBB J.A.

DATED:

APRIL 18, 2018

WRITTEN REPRESENTATIONS BY:

Patrick Girard
Rémi Leprévost

FOR THE APPLICANT
AIR CANADA

Allan Matte

FOR THE RESPONDENT
CANADIAN TRANSPORTATION
AGENCY

Dr. Gábor Lukács

PROPOSED INTERVENER

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