Federal Court  Cour fédérale

Date: 20190418

Docket: T-1620-17

Toronto, Ontario, April 18, 2019

PRESENT: Case Management Judge Kevin R. Aalto

BETWEEN:

DR. DAVID KATTENBURG

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER

UPON motion by The League for Human Rights of B'nai Brith Canada (B'nai Brith Canada), for an Order allowing B'nai Brith Canada to intervene in this appeal;

AND UPON reading the motion record of B'nai Brith Canada, the responding motion record of the Applicant, the reply of B'nai Brith Canada and the further memorandum of B'nai Brith Canada; and upon reading correspondence dated March 29, 2019 from the Respondent; and upon considering the matter;

This application concerns country-of-origin labelling as it relates to certain wine products produced on the West Bank which have been labelled as "Product of Israel". The decision by the Canadian Food Inspection Agency (CFIA) that the wines could be labelled as "Product of Israel". The application engages issues regarding food labelling, the Canada/Israel Free Trade Agreement (CIFTA), the *Canada Food and Drug Act,* and the *Canadian Consumer Packaging and Labelling Act*.

The Applicant opposes granting intervener status to B'nai Brith Canada. The position of the Respondent, as set out in the correspondence of March 29, 2019, states that if B'nai Brith Canada is granted intervener status that it be limited to four discrete issues which are set out in the further memorandum of B'nai Brith Canada. Given that the hearing is imminent these brief reasons dismissing the motion of B'nai Brith Canada must suffice.

B'nai Brith Canada is an internationally recognized human rights organization dealing with human rights and issues relating to Israel. B'nai Brith Canada has filed an affidavit in support of this motion, the affidavit of Ran Ukashi, the director, Midwest Region of B'nai Brith Canada. In that affidavit B'nai Brith Canada is described as a charitable, membership-based service organization, active in Canada since 1875 which carries out a mandate to expose and combat racism and bigotry and to preserve and enhance human rights. Nobody questions the valuable contributions B'nai Brith Canada has made to Canadian society generally in standing up for human rights. Such valuable contributions have been made, *inter alia*, by way of B'nai Brith Canada being an intervenor in many leading human rights cases in the Supreme Court of Canada. Some of those cases are outlined in Mr. Ukashi's affidavit.

What is singularly missing from the Notice of Motion, the affidavit of Mr. Ukashi and the written representations is any evidence supporting B'nai Brith Canada's expertise regarding CIFTA, the *Canada Food and Drug Act*, or the *Canadian Consumer Packaging and Labelling Act*. Indeed, on cross-examination, Mr. Ukashi conceded that he was not aware of any facts to support B'nai Brith Canada's expertise in country-of-origin labelling. Further, the memorandum of the proposed intervener simply makes bald statements that B'nai Brith Canada is genuinely interested in the issues and has a specialized expertise and knowledge in respect of country-of-origin labelling for products coming from the West Bank in particular. No evidence of such expertise is before the Court. Indeed in the Notice of Motion there is scant evidence of what contribution B'nai Brith Canada can bring to this application if intervener status is granted. As was noted in *Chinatown & Area Business Association v. Canada (Attorney General) et al* (Court File Number T-1764-17, order dated July 24, 2018, wherein the Court made the following observations:

> The test to grant intervention status in this Court is well known. It is governed by Rule 109 of the *Federal Courts Rules*. Rule 109(b) sets out the basis upon which the Court should determine whether to allow an intervener to participate in the case. That subsection requires that a proposed intervener "describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding". This provision has developed jurisprudence which sets out the tests to be applied to comply with this Rule. For example, in the first case to consider this Rule in depth, *Rothmans, Benson and Hedges Inc v Canada (Attorney General)*, [1990] 1 FC 74 (TD), the Court articulated the following criteria:
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> 1. Is the proposed intervener directly affected by the outcome?
>
> 2. Does there exist a justiciable issue and a veritable public interest?

3. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?

4. Is the position of the proposed intervener adequately defended by one or more parties in the case?

5. Are the interests of justice better served by the intervention of the proposed third party?

6. Can the Court hear and decide the cause on its merits without the proposed intervener?

None of these points are addressed in the Motion Record of B'nai Brith Canada. Nor did B'nai Brith Canada address Rule 109 (the *Federal Courts Rules* which grants the Court the discretion to permit leave to intervene). To that end, B'nai Brith Canada sought to bootstrap its position by filing a reply to the position of the Applicant and a further memorandum. In large part, these additional submissions arose because the Applicant, in its written representations based on answers given on the cross-examination of Mr. Ukashi, argued that B'nai Brith Canada "worked privately to persuade the Canadian government to pressure 'the CFIA into reversing itself'" on the issue of whether or not Product of Israel should be allowed on the wine labels. The implication of the argument of the Applicant is that B'nai Brith Canada either directly or indirectly through its association with international B'nai Brith is tainted by not acting in a transparent way.

As noted, B'nai Brith Canada in its written representations did not deal directly with the tests for granting leave to be an intervener. As noted by the Honourable Mr. Justice David Stratas in *Prophet River First Nation v Attorney General* 2016 FCA 120, at paragraph 6 thereof the Court should consider "whether the intervener will bring further, different and valuable

insights and perspectives to the Court that will assist it in determining the matter. Among other things, this can acquaint the Court with the implications of approaches it might take".

Having reviewed and considered the submissions of B'nai Brith Canada and the arguments of the Applicant, I am not persuaded that B'nai Brith Canada has met the test to be granted intervener status. Simply stating that B'nai Brith Canada "would propose to focus on matters relevant to Israel, the West Bank and international law" is insufficient. Further, the reliance on the principle of "*audi alteram partem*" does not elevate the position of B'nai Brith Canada to one in which it should be granted intervener status.

THIS COURT ORDERS that this motion be dismissed without costs.

"Kevin R. Aalto"
Case Management Judge