

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 on behalf of the proposed intervener, Independent Jewish Voices of Canada, made pursuant to Rules 109 and 369 of the *Federal Courts Rules*, for an order permitting Independent Jewish Voices of Canada (IJVC) to intervene in the matter before the Court;

AND UPON reading the motion record of the proposed intervener, Independent Jewish Voices of Canada (IJVC), the responding motion record of the Applicant, and a letter dated March 29, 2019 from counsel for 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*.

On this motion, the Applicant takes no position on IJVC being granted intervener status. Given that the hearing is imminent these brief reasons allowing IJVC to intervene must suffice. The Respondent, however, opposes intervener status insofar as IJVC would argue section 2(b) of the *Charter* which guarantees freedom of expression. The Respondent argues this is a new issue and an evidentiary foundation in support of it is not before the Court. The Respondent is content however to have IJVC intervene on the issue of “how international law should inform the interpretation of the domestic law raised in this matter”.

In support of this motion, IJVC has filed the affidavit of Corey Balsam, the National Coordinator of IJVC. No cross-examination was conducted on this affidavit. As appears from the Balsam affidavit, IJVC “is a national grassroots organization grounded in Jewish tradition that advocates for just peace in Israel-Palestine and social justice at home.” The affidavit goes on to describe of the work of IJVC as seeking “a just peace in Israel-Palestine based on principles of equality and human rights. Its mission is to create a public presence for the voices of Canadian Jews in support of justice in Israel/Palestine and at home. Its mission is intricately grounded in the right of free expression, in particular to voice principled criticisms of Israeli state policy and to promote justice and equality for Palestinians and Israelis alike.”

The Balsam affidavit also demonstrates familiarity with the labelling of products produced in the Occupied Palestinian Territories. In particular IJVC, if granted leave to intervene, would address the following issue: “whether freedom of expression under section 2 of the Charter is engaged by the decision to dismiss this application and, if so, whether, it- like the Geneva Conventions Act and international law binding Canada, which the Applicant is addressing also operates to inform the interpretation of domestic laws relating to labelling products imported into Canada, as well as the interpretation given to Article 1.4.1(b) of the Canada-Israel Free Trade Agreement”. This is an issue not directly addressed by the Applicant or the Respondent. It is an issue that may provide an additional perspective for the Court on the hearing of this application. As noted by the Honourable Mr. David Stratas in *Prophet River First Nation v Attorney General*, 2016 FCA 120 at paragraph 6 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”.

While the written representations of IJVC did not address all of the tests for intervention, the Court is satisfied that the issue which they will address should be before the Court notwithstanding the opposition of the Respondent to arguments concerning section 2 of the *Charter*.

Intervener status will be granted to IJVC. However, the Respondent will be free to argue at the hearing that any arguments relating to section 2 of the *Charter* should not be before the Court and the hearings judge will be in the best position to determine whether the submissions of IJVC will be of assistance to the Court in this matter.

THIS COURT ORDERS that:

1. The Independent Jewish Voices of Canada is granted intervener status on this application.
2. It will confine its legal submissions to the issue identified above.
3. Its Memorandum of Fact and Law shall be no more than ten (10) pages.
4. It will not include in its Book of Authorities or Memorandum of Fact and Law material which would constitute new evidence.
5. Subject to the discretion of the Court it may make oral submissions before the Court.
6. It will not seek costs.

“Kevin R. Aalto”

Case Management Judge