

Mr. Pawn Ltd. v. Winnipeg (City)

Mr. Pawn Ltd., Applicant, v. The City of Winnipeg, Respondent

3746331 Trading Post Co. Ltd. and Pasha's Trading Post Co. Ltd., Applicants, v.
The City of Winnipeg, Respondent

Manitoba Court of Queen's Bench

Steel J.

Judgment: November 13, 1998

Docket: Winnipeg Centre CI 97-01-04222, CI 98-01-06131

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Counsel: *Sidney Green, Q.C.*, for the Applicants.

Julie Frederickson, for the Respondent.

John O. Krowina, for the Intervenor, Community Interest Resource Alliance Inc.

Subject: Civil Practice and Procedure; Public

Municipal law --- Actions involving municipal corporations — Practice and procedure — Actions — Parties — Adding and substituting

Pawn shops and city involved in application challenging respondent city's authority to pass certain by-laws in relation to pawn shops — Community interest organization, concerned about criminal activity associated with pawn shops and effect on community property values, brought motion for leave to intervene as added party — Access of public interest groups to court must be balanced against need to conserve scarce judicial resources and ensure efficient processing of cases — Intervenor required to make fresh and useful contribution to proceedings — Organization had special interest in subject-matter of proceeding based on unique concerns with inner-city issues and addition as intervenor would not cause undue delay, but organization unable to show how its position differed from city's in any material respect — Motion dismissed.

Municipal law --- Attacks on by-laws generally — Practice and procedure — Miscellaneous issues

Pawn shops and city involved in application challenging respondent city's authority to pass licensing and conditional use by-laws in relation to pawn shops — Community interest organization, concerned about criminal activity associated with pawn shops and effect on community property values, brought motion for leave to intervene as added party — Access of public interest groups to court

must be balanced against need to conserve scarce judicial resources and ensure efficient processing of cases — Intervenor required to make fresh and useful contribution to proceedings — Organization had special interest in subject-matter of proceeding based on unique concerns with inner-city issues and its addition as intervenor would not cause undue delay, but organization was unable to show how its position differed from city's in any material respect — Challenges to municipal by-laws may be special category with respect to motions to intervene in that absent special circumstances, court should exercise discretion by not allowing intervention into such proceedings — Motion dismissed.

Cases considered by *Steel J.*:

~~*Borowski v. Canada (Minister of Justice)*, [1981] 2 S.C.R. 575, [1982] 1 W.W.R. 97, 24 C.R. (3d) 352, 24 C.P.C. 62, 12 Sask. R. 420, 39 N.R. 331, 64 C.C.C. (2d) 97, 130 D.L.R. (3d) 588 (S.C.C.) — referred to~~

~~*Coalition of Manitoba Motorcycle Groups Inc. v. Manitoba (Public Utilities Board)* (1994), 92 Man. R. (2d) 191, 61 W.A.C. 191 (Man. C.A.) — applied~~

~~*Gould Outdoor Advertising v. London (City)* (1997), 38 M.P.L.R. (2d) 81, 32 O.R. (3d) 355, 7 C.P.C. (4th) 103 (Ont. Gen. Div.) — referred to~~

~~*Kirkfield Park & Arthur Oliver Residents Assn. Inc. v. Winnipeg (City)* (1995), 101 Man. R. (2d) 246 (Man. Master) — considered~~

~~*Klachefsky v. Brown* (1987), [1988] 1 W.W.R. 755, 11 R.F.L. (3d) 249 (Man. C.A.) — considered~~

~~*Merry v. Manitoba*, [1989] 4 W.W.R. 476, 62 Man. R. (2d) 155 (Man. C.A.) — considered~~

~~*Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada* (1990), 74 O.R. (2d) 164, 2 C.R.R. (2d) 327, 45 C.P.C. (2d) 1, 46 Admin. L.R. 1 (Ont. C.A.) — considered~~

~~*Stadium Corp. of Ontario v. Toronto (City)* (1992), 11 M.P.L.R. (2d) 68, 10 O.R. (3d) 203 (Ont. Div. Ct.) — referred to~~

~~*Stuart v. Assiniboine Park-Fort Garry Community Committee of Winnipeg (City)*, 8 M.P.L.R. (2d) 329, 76 Man. R. (2d) 276, 10 W.A.C. 276, 4 Admin. L.R. (2d) 3 (Man. C.A.) — considered~~

~~*Woodhaven Homeowners' Assn. v. Winnipeg (City)* (1996), 36 M.P.L.R. (2d) 150, 114 Man. R. (2d) 245, 6 C.P.C. (4th) 379 (Man. Q.B.) — considered~~

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11
Generally — referred to

s. 1 — referred to

Rules considered:

Court of Queen's Bench Rules, Man. Reg. 26/45
R. 51(2) — referred to

Queen's Bench Rules, Man. Reg. 553/88
R. 13 — referred to

R. 13.01 — pursuant to

R. 13.01(1) — considered

R. 13.01(1)(a) — considered

R. 13.01(1)(b) — considered

R. 13.01(2) — considered

R. 13.02 — referred to

Rules of Civil Procedure, R.R.O. 1990, Reg. 194
R. 13.01 — referred to

MOTION by community organization for leave to intervene on application by pawn shops challenging city's authority to make certain by-laws relating to pawn shops.

Steel J.:

1.0 Introduction

1 This is a motion by Community Interest Resource Alliance Incorporated (CIRA) for leave to intervene as an added party pursuant to Queen's Bench Rule 13.01.

2 The applicants to the main matter object to having the intervenor added as a party on the basis that CIRA has no interest in the subject matter of the proceedings.

3 The City of Winnipeg takes no position on the motion.

4 The applications will challenge the statutory authority of the City of Winnipeg to pass licensing and conditional use zoning by-laws generally and in particular, the procedure with respect to the applications for licensing and zoning in relation to these particular pawnshops.

2.0 Facts

5 The applicant, 3746331 Manitoba Inc., was incorporated to purchase the assets and goodwill of the company operated by the applicant Pasha's Trading Post Co. Ltd. The purchase was subject to the purchaser, 3746331 Manitoba Inc., obtaining a pawnshop license. The application for such a license was refused.

6 The applicant, Mr. Pawn Limited, applied to the City of Winnipeg Board of Adjustment for a conditional use under the zoning by-law to permit the establishment of a second-hand store and pawnshop in conjunction with an existing art, electronic equipment and jewelry store. The City refused its application.

7 The applicants have filed an application arguing that the designation of pawnshops as a discretionary and conditional use in the City of Winnipeg zoning by-laws and licensing by-laws is discriminatory against pawnbrokers, is a restraint against competition and trade and is *ultra vires* of the City of Winnipeg. In short, they challenge the entire scheme of licensing of pawnshops and second-hand stores. They request a declaration that the City of Winnipeg zoning by-laws and licensing by-laws are *ultra vires* of the City of Winnipeg insofar as they designate the establishment of second-hand stores and pawnshops to be zoned as a conditional use and licensed only with the consent of the council of the City of Winnipeg and its committees.

8 The applications will be heard together and evidence will be filed by way of affidavit. Counsel indicated they do not expect any *viva voce* evidence to be tendered.

9 CIRA is a non-profit corporation whose purpose, as stated in its articles of incorporation, involves:

Research and other activities relating to issues of community interest and impact on property values (e.g., zoning and licensing concerns) and safety. In organizing and presenting the research on uses such as arcades, massage parlours, pawnshops, etc., our goal is to promote safety, health and property values in Winnipeg.

10 For example, directors of this corporation have appeared at hearings before the Community Committee, the Committee on Planning and Community Services for the appeal hearing, and the Community Committee hearing on behalf of the City Center Residents Advisory Group.

11 They are concerned that if the City of Winnipeg pawnshop by-law is struck down, the result would be the wholesale proliferation of pawnshops in the affected communities. Their particular concern regarding pawnshops is summarized in the affidavit of Reverend Harry Lehotsky, a director of CIRA, who states:

Our concerns regarding pawn shops may be summarized as follows:

-the City's right to continue to regulate them through licensing and zoning in order to protect neighbourhoods;

-reaffirming the importance of good character verification requirements in licensing of pawn shops in view of the potential for criminal involvement with pawn shops.

-negative impacts on residential and business property values, commercial activity, general quality of life, and image of businesses and residential areas surrounding pawn shops.

-the excessive, disproportionate concentration of pawn shops in Winnipeg's inner city, including the West End and core areas.

3.0 Arguments of Parties

12 Counsel did not identify a specific argument or issue that would be advanced by the intervenor over and above the proposed argument by the City of Winnipeg. The intervenor indicated that at the present time it was not familiar with all the arguments that might be presented on behalf of the City, nor had it decided upon the extent of its own arguments. Rather, the intervenor contended that it would be placing emphasis on different points of law or different cases than might be put forward by the City of Winnipeg. This argument may be summarized by referring to Reverend Lehotsky's affidavit where he states:

We believe that the neighbourhood affected by this Application has unique and special concerns that may not necessarily be expressed by the City of Winnipeg, as the latter can be expected to take a position and frame its arguments on behalf of the whole city and all its constituents. For example, we believe that the pawnshop licensing by-law can and should be interpreted in a manner that affords greater scope for public participation in decision-making, enables the City of Winnipeg to consider the density of pawnshops in a particular area in determining whether granting such licence (sic) is injurious to the public interest, and takes greater account of Plan Winnipeg, the City's main planning document.

13 Second, counsel for the intervenor submitted that the case law does not require the intervenor to put forward a unique or different issue before they can be added as a party.

14 Counsel for the City confirmed that they intended to vigorously defend the validity of the City of Winnipeg zoning and licensing by-laws. Counsel for the applicants contended that CIRA was simply going to argue the validity of the by-law in the same manner and in the same fashion as the City of Winnipeg.

4.0 The Law

15 Queen's Bench Rule 13 provides two ways for a person who has not been named in a pleading, or an application, to become involved in the proceeding. Rule 13.01 sets out the principles governing interventions as added parties while Rule 13.02 is concerned with interventions as friends of the court. (See Appendix 1)

16 These two forms of intervention are different both as to the nature of the applicants' interest in the proceeding and the extent of participation by the successful intervenor. As counsel for the intervenor confirmed that its motion was solely on the grounds of Rule 13.01, my decision will be limited to a consideration of that portion of the rule.

4.1 Rule 13.01

17 A person may apply to intervene as an added party in one of three circumstances: where that person claims an interest in the subject matter of the proceeding; or where he or she may be adversely affected by a judgment in the proceeding; or where there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with a question in issue in the proceeding.

18 The rule in its present form^[FN1] was considered for the first time in the case of *Merry v. Manitoba*, [1989] 4 W.W.R. 476 (Man. C.A.). Dr. Merry had brought an originating motion to challenge the compulsory payment of dues to the Manitoba Medical Association as being contrary to the *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, R.S.C. 1985, Appendix II, No. 44. Another doctor, Dr. Hollenberg, simply failed to pay the fees and was sued by the Association. The defence set out in his statement of defence was very similar to the *Charter* challenge brought by Dr. Merry. The Merry motion reached the Manitoba Court of Appeal before the Hollenberg action was even at trial. Dr. Hollenberg sought to intervene as an added party on the appeal pursuant to Rule 13.01.

19 In refusing the application, Monnin, CJM held that lawyers for the two doctors would put forward very similar arguments and that Merry's counsel was eminently capable of arguing any *Charter* issues. The court quoted with approval from the decision of Huband, JA in *Klachefsky v. Brown* (1987), [1988] 1 W.W.R. 755 (Man. C.A.), to the effect that:

...there is no trend in this province to permit interventions where there are already able counsel ... before the appellate tribunal. (p. 758)

20 ~~*Klachefsky* and *Merry*~~ were both cases of initial intervention motions at the appellate level. ~~*Klachefsky*~~ was an application by the intervenor to become an *amicus curiae* and not to be joined as a party. Moreover, the ~~*Klachefsky*~~ case was decided prior to the enactment of the present rule.

21 The ~~*Merry*~~ decision seems to have been based primarily on the court's exercise of its discretion under Rule 13.01(2) since the court stated:

...An intervention adds immeasurably to the costs of the proceedings and may very well add to the length of the litigation.... (p. 478)

22 The precise language of Rule 13.01(1) was not discussed and it is not clear which clause of the rule was under consideration. This becomes particularly

relevant in the case at hand since the applicants base their opposition to intervention, not so much on the potential for increased cost and delay, but rather on the submission that the proposed intervenor has no interest in the subject matter of the proceeding. Moreover, the proposed intervenor is quite specific in their argument, relying only on Rule 13.01(1)(a) as the basis of their motion.

23 What, then, is the nature of the interest in the subject matter that must be present to justify status as an added party?

24 The test was set fairly high in the case of *Kirkfield Park & Arthur Oliver Residents Assn. Inc. v. Winnipeg (City)* (1995), 101 Man. R. (2d) 246 (Man. Master) (per Master Ring). The applicants argued, in opposition to the intervention motion, that in order to be successful the intervenor's future liability must be at issue and the subject matter could not be of just incidental interest to the proposed intervenors. Master Ring held that the application fell within both Rule 13.01(1)(a) and (b) since the areas of relief requested:

...go beyond the matters relating to the existing resolution or bylaw. They speak of future resolutions or bylaws dealing with the rezoning of the subject lands. In that respect, they are not ancillary or incidental, but are substantial and materially and fundamentally affect the future viability of the applicants in that area of the city. (p. 249)

In that case, the proposed intervenors were purchasers of the land for which rezoning was being requested.

25 Intervention was also allowed in the case of the *Coalition of Manitoba Motorcycle Groups Inc. v. Manitoba (Public Utilities Board)* (1994), 92 Man. R. (2d) 191 (Man. C.A.) (per Kroft, JA). Of particular interest is the fact that the Court of Appeal interpreted the concept of "interest" as used in Rule 13.01(1)(a) in a broad sense.

26 The main action in that case was a motion by the Coalition of Manitoba Motorcycle Groups for leave to appeal certain orders of the Manitoba Public Utilities Board (PUB) with respect to the setting of motorcycle insurance rates. The Consumers Association of Canada (Manitoba) Inc. and the Manitoba Society of Seniors Inc. applied to be added as parties. Justice Kroft held that there was a "broad public interest in the outcome of this appeal".

27 The concept that the "interest" referred to in the rule cannot simply encompass legal or commercial interest is confirmed by a close reading of Rule 13.01 (1)(a) and 13.01(1)(b). If only legal interests were recognized, the two sub-clauses would not have different meanings and would collapse into each other. The rules of statutory interpretation require that, if possible, the phrase "an interest in the subject matter of the proceeding" should be given a different meaning than the sub-clause; "that the person may be adversely affected by a judgment in the proceeding."

...it seems clear that the drafters made a conscious attempt to permit interventions in situations where the applicant's only interest was in the

subject-matter and notwithstanding that the outcome or judgment might not have any direct legal effect on that person. (K. Busby, *Interventions Under the New Manitoba Rules: Merry v. Manitoba and Law Society of Manitoba v. Lawrie* (1990), 11 Advocates' Quarterly 372 at p. 375)

4.2 Exercise of Discretion

28 Even if the proposed intervenor falls within one of the three sub-clauses in Rule 13.01(1), the motion may still be refused in the exercise of the court's discretion. Intervention status cannot be claimed as a right. (See *Coalition of Manitoba Motorcycle Groups Inc.*, *supra*, p. 192.)

29 Rule 13.01(2) requires the court to consider whether the intervention will "unduly delay or prejudice" the determination of the rights of the parties to the proceeding. Any intervention will delay or expand proceedings to some extent given the addition of a party. The key is whether the delay or prejudice is "undue".

30 It has been suggested that the determination of what is undue will vary according to the circumstances of each case and according to the nature of the interest of the proposed intervenor. For example, the parties should be required to accept more delay or other prejudice where the person establishes that their legal rights may be adversely affected by a decision than where the applicants' interest is merely a common question of law. (See Busby, *supra*, p. 376.)

31 Also, pursuant to Rule 13.01(2), the court has the express power to make "such orders as to pleadings and discovery as are just." Presumably, the court could allow the intervention but contain the delay and prejudice by limiting the added party with respect to pleadings and discovery.

32 Finally, the court must be concerned with its ability to ensure the orderly and efficient processing of cases before it. While this consideration is not an express aspect of Rule 13, it is part of the court's inherent jurisdiction to control its process. Regard must be had to the important institutional concerns of the court: that disputes be processed efficiently and the judicial process not be abused.

33 This factor has been expressed by the courts in terms of its concern that the proposed intervenor add something fresh to the proceeding and not simply duplicate arguments. In the *Merry* case, the Court of Appeal indicated that the parties were already raising the same arguments as those proposed by the intervenor. In the *Coalition of Manitoba Motorcycle Groups Inc.*, the contribution of the proposed intervenor was clearly identified:

On the second issue it was only counsel for CAC/MSOS who was willing or able to confirm to the court that the attack against the conduct of PUB would be resisted....

...It appeared to me that CAC/MSOS was legitimately able to say that it was likely to be in a better position than any of the respondent parties to

represent the other side of the appellant's argument on an issue which is of some significance and which this court may be obliged to decide. (per Kroft, JA at p. 192) (See also **Manitoba Association of Optometrists v. 3437613 Manitoba Ltd.**, [1988] M.J. No. 152, Man. C.A., per Kroft, JA at para. 16 and para. 17.)

34 Some guidance on this point may also be derived from reference to cases decided pursuant to Rule 13.01 of the Ontario Rules of Civil Procedure which is similar to the Manitoba Rule. The Ontario Court of Appeal has held that motions to intervene require consideration not only of the proposed intervenor's interest in the issue between the parties but also the likelihood they can make a useful addition or contribution to the resolution of the case. (~~Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada (1990), 74 O.R. (2d) 164 (Ont. C.A.), followed in Stadium Corp. of Ontario v. Toronto (City) (1992), 10 O.R. (3d) 203 (Ont. Div. Ct.) and Gould Outdoor Advertising v. London (City) (1997), 38 M.P.L.R. (2d) 81 (Ont. Gen. Div.).~~)

35 Depending on the circumstances, it may not be necessary for the proposed intervenor to put forward a substantially different issue. In *Charter* cases, for example, different nuances in argument may be important to be heard, not because they affect the outcome of the case but because they may affect the reasons for decisions and therefore the precedential authority of the case. Where policy issues are being decided within a *Charter of Rights* framework, presentations that provide different perspectives and assist in identifying consequences and ramifications can be especially helpful to the courts.

...Judicial decisions do not only resolve disputes but also provide legal norms that guide future conduct. Their precedential effect, therefore, transcends the discrete dispute before the court and touches the interests of many people who are not connected to the lawsuit. While there are self-imposed limitations on judicial law-making, it remains true that judges make law and, in doing so, determine important social, economic and political issues.... (Busby, *supra*, pp. 385, 386)

36 Yet, no purpose is served by having intervenors duplicate the arguments of the parties. At a minimum, the applicants must be able to show how their submissions will be useful and different from those of the other parties in some way.

5.0 Decision

37 Based on the above analysis, I find that the phrase "interest in the subject matter of the proceeding" found in Rule 13.01(a) can refer to an interest broader than merely a legal or commercial interest. It can encompass a public interest in the proceeding in certain circumstances. However, for intervention pursuant to Rule 13.01(1), the intervenor must have an interest in the subject matter that is over and above that of the general public.

38 An appropriate analogy in these circumstances might be the law that has developed with respect to standing. There are three criteria that a plaintiff

has to satisfy before being granted public interest status, summarized by Hogg in *Constitutional Law in Canada*, Vol. 2 at p. 56.2(e) (from *Borowski v. Canada (Minister of Justice)*, [1981] 2 S.C.R. 575 (S.C.C.)) as follows:

...(1) that the action raises a serious legal question, (2) that the plaintiff has a genuine interest in the resolution of the question, and (3) that there is no other reasonable and effective manner in which the question may be brought to court. (Cited approvingly in ***Kennett v. The Attorney General of Manitoba***, unreported, decision of Manitoba Court of Appeal, July 8, 1998, per Scott, CJM, p. 8.) See also ***Canadian Council of Churches v. Canada***, [1992] 1 S.C.R. 236.

39 In this case, the intervenor is a community based organization that, because of its unique concerns with inner-City issues would have an interest in the subject matter of the proceeding that exists over and above that of the ordinary citizen of the City of Winnipeg.

40 Counsel for CIRA has indicated that if they are added as a party they do not intend to file any pleadings or require any discovery. Moreover, the nature of the evidence would be presented by way of written brief and oral argument. Counsel for the applicants acknowledged that while, inevitably there would be some additional cost to his client in facing an added party (the motion on the intervention was an obvious example of that), he could not argue that there would be significant added expense. Counsel for CIRA also indicated that he would be ready to proceed at any time the matter was set down by the applicants and the City of Winnipeg. Therefore, there would be no added delay.

41 However, the crucial point is what, if anything, the intervenor would add to these proceedings. On this point there are two different interests that must be balanced.

42 On the one hand, I agree that if an intervenor can contribute to the argument, that may be sufficient to justify their being added as a party. This is particularly so in cases where *Charter* issues are raised and a section 1 analysis will be necessary.

43 On the other hand, the court has to be vitally concerned with its ability to ensure the orderly and efficient processing of cases before it. There is a need to balance the access of public interest groups to the courts against the need to conserve scarce judicial resources. It is not expeditious and no purpose is served by having intervenors repeat the arguments of the parties.

44 CIRA made two points with respect to their ability to add to the arguments being presented by the other parties.

45 It argued that in the main application the City of Winnipeg is in essence the regulator and must appear to be neutral. Consequently, it falls to CIRA to pick up the cudgel and represent the residents and certain concerned businesses and other organizations in the community affected by the applicants' operations.

46 I disagree. The City of Winnipeg is not in the same position as the PUB found itself in the ~~*Coalition of Manitoba Motorcycle Groups Inc.*~~ case. As pointed out by its counsel, the City of Winnipeg intends to vigorously defend the validity of its actions and its zoning and licensing by-laws. Neutrality is certainly not contemplated.

47 Moreover, challenges to municipal by-laws may be a special category with respect to motions pursuant to Rule 13.01. In the case of ~~*Woodhaven Homeowners' Assn. v. Winnipeg (City)*~~ (1996), 36 M.P.L.R. (2d) 150 (Man. Q.B.), Justice Schulman held that, absent special circumstances, the court should exercise its discretion by not allowing intervention into proceedings challenging municipal by-laws. This is so even if a party wishing to intervene brings itself within one of the three qualifiers set out in Rule 13.01(1). Justice Schulman held that he was bound by the Manitoba Court of Appeal decision in ~~*Stuart v. Assiniboine Park-Fort Garry Community Committee of Winnipeg (City)*~~ (1992), 76 Man. R. (2d) 276 (Man. Q.B.).

48 In the *Stuart* case, the applicants sought to quash a zoning variance application approved by the respondent, the Assiniboine Park- Fort Garry Community Committee of the City of Winnipeg. The applicants sought to quash the zoning variance on the grounds of lack of notice, not by the City, but by the respondent vendors of the land in question. Obviously, the decision did not involve the application of Rule 13.01(1) since the matter had proceeded through the courts with the vendors joined as respondents since the initiation of the action.

49 In allowing the appeal based on the ground that the City had properly given notice, Justice Twaddle criticized the addition of a private party to a challenge of the validity of a zoning variance where the municipal authority was prepared to defend the variance.

The usual practice in cases of this kind is for the municipal authority alone to be named as the respondent: see, e.g., ~~*Wiswell et al v. Metropolitan Corporation of Greater Winnipeg*~~, [1965] S.C.R. 512. (*Stuart, supra*, at p. 279, per Twaddle, JA) (See also ~~*Winnipeg Anti-Sniff Coalition Incorporated v. R. et al.*~~ (1981), 18 M.P.L.R. 128 (Man. C.A.) where in proceedings challenging the validity of a municipal by-law, Huband, JA denied the right to intervene to those who sought to support the passage of the impugned by-law since the municipality was already adequately prepared to defend the by-law's validity.)

50 The underlying rationale in the *Stuart* case seems designed to avoid deflecting the focus of the case from the real issues and to avoid exposing the proper parties and the municipality proceedings to undue cost and complexity (~~*Woodhaven Homeowners' Assn.*~~, *supra*).

51 Second, CIRA argues that while their arguments might be broadly similar to that of the City of Winnipeg, there may be different nuances both in emphasis and selection of cases. Yet, they are unable to identify any of these arguments. In short, the intervenor has not adduced any evidence to demonstrate how the

position that it proposes to advance differs in any material respect from that advanced by the City of Winnipeg.

6.0 Conclusion

52 The intervenor has an interest in the subject matter of the proceeding and its addition as an added party will not unduly delay and prejudice the other parties. However, the court has an obligation to control and manage its process. The proliferation of parties to a lawsuit should not be encouraged unless they add to the proceeding in an identifiable way.

53 In this situation where the intervenor is unable to clearly delineate for the court how its submissions will be useful and different from those of the other parties, the motion for intervention should be denied.

7.0 Costs

54 Counsel for the intervenor argued that given the nature of the motion, costs should not be assessed against his client. Counsel for the City of Winnipeg and the applicants have not had an opportunity to address the issue of costs. Should counsel be unable to agree, they may apply for time to address this issue.

Motion dismissed.

Appendix I

Leave to Intervene as Added Party

Motion for leave

13.01(1) Where a person who is not a party to a proceeding claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with a question in issue in the proceeding;

the person may move for leave to intervene as an added party.

Order

13.01(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order for pleadings and discovery as is just.

Leave to Intervene as Friend of the Court

13.02 Any person may, with leave of the court or at the invitation of the court and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

~~EN1.~~ Rule 13 was introduced on March 1, 1989 and is very different than its predecessor, Rule 51(2) which stated: "The court may, at any stage of the proceedings, order that the name of a plaintiff or defendant improperly joined be struck out and that any person who should have been joined, or whose presence was necessary in order to enable the court effectually and completely to adjudicate on the questions involved in the action, be added; or, where an action has through a *bona fide* mistake been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court may order any person to be substituted or added as a plaintiff."

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