

**Greyhound** Canada Transportation Corp. v. Motor Transport Board

**Greyhound** Canada Transportation Corp. and **Greyhound** Canada Transportation Corp. o/a Grey Goose (Applicants / Applicants) and The Motor Transport Board (Respondent)

Manitoba Court of Appeal [In Chambers]

Hamilton J.A.

Heard: October 5, **2006**

Judgment: November 23, **2006**

Docket: AI 06-30-06450

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Counsel: R.D. Gripp, M.D. Richards for Applicants

B.T. Jones for Respondent

J.D. Barnsley for Applicant for Intervener Status Burntwood Regional Health Authority Inc.

Subject: Contracts; Public; Civil Practice and Procedure; Torts

Transportation --- Carriers — Statutory regulation — Provincial licences — Miscellaneous

Appellant was large commercial bus transport company — Appellant brought 20 applications before transportation board for various schedule and route changes to its public service operations — 39 public hearings were held before board regarding appellant's applications — Health authority was one of many organizations and members of public which made submissions during hearings — Authority was concerned about impact of changes on its own ability to deliver health services — Board approved of all but four of appellant's applications — Appellant filed motion seeking leave to appeal board's decision regarding unsuccessful applications — Authority brought application to be joined as party or to be granted intervener status in leave proceedings — Application dismissed — At no time did board identify authority as party to proceedings during hearings or in its reasons — Authority did not have direct interest arising from legal or proprietary interest in subject matter of case, nor would it be bound by decision or result — Authority participated in hearings by choice, not by necessity — Authority could not be granted intervener status, in alternative — Authority had not demonstrated that its submissions would be useful or different from arguments of board at leave hearing — Bus service issues which authority was concerned about were not relevant to question of whether leave to appeal could be granted.

Civil practice and procedure --- Parties — Intervenors — As party

Appellant was large commercial bus transport company — Appellant brought 20 applications before transportation board for various schedule and route changes to its public service operations — 39 public hearings were held before board regarding appellant's applications — Health authority was one of many organizations and members of public which made submissions during hearings — Authority was concerned about impact of changes on its own ability to deliver health services — Board approved of all but four of appellant's applications — Appellant filed motion seeking leave to appeal board's decision regarding unsuccessful applications — Authority brought application to be joined as party or to be granted intervener status in leave proceedings — Application dismissed — At no time did board identify authority as party to proceedings during hearings or in its reasons — Authority did not have direct interest arising from legal or proprietary interest in subject matter of case, nor would it be bound by decision or result — Authority participated in hearings by choice, not by necessity — Authority could not be granted intervener status, in alternative — Authority had not demonstrated that its submissions would be useful or different from arguments of board at leave hearing — Bus service issues which authority was concerned about were not relevant to question of whether leave to appeal could be granted.

#### **Cases considered by *Hamilton J.A.*:**

~~*CTV Television Inc. v. R.* (2005), 21 C.P.C. (6th) 126, 201 Man. R. (2d) 38, 366 W.A.C. 38, 2005 MBCA 120, 2005 CarswellMan 363, (sub nom. *R. v. Hogg*) 201 C.C.C. (3d) 501 (Man. C.A. [In Chambers]) — followed~~

~~*Save The Eaton's Building Coalition v. Winnipeg (City)* (2001), 2001 CarswellMan 574, 2001 MBCA 186, 13 C.P.C. (5th) 263, 206 D.L.R. (4th) 541, 24 M.P.L.R. (3d) 165, 160 Man. R. (2d) 236, 262 W.A.C. 236, [2002] 3 W.W.R. 419 (Man. C.A.) — referred to~~

#### **Statutes considered:**

*Court of Appeal Act*, R.S.M. 1987, c. C240  
Generally — referred to

*Highway Traffic Act*, S.M. 1985-86, c. 3  
Generally — referred to

s. 283 — referred to

#### **Rules considered:**

*Court of Appeal Rules*, Man. Reg. 555/88  
Generally — referred to

R. 46.1 — considered

R. 46.1(1) — considered

R. 46.1(3) — considered

*Queen's Bench Rules*, Man. Reg. 553/88

Generally — referred to

R. 5.03 — considered

R. 5.03(1) — considered

R. 5.03(3) — considered

R. 13.01 — considered

R. 13.01(1) — considered

R. 13.01(1)(a) — considered

R. 13.01(2) — considered

APPLICATION by authority to be joined as party or to be granted intervener status in leave proceedings.

**Hamilton J.A.:**

1 **Greyhound** Canada Transportation Corp. (**Greyhound**) filed a motion seeking leave to appeal a decision of the Motor Transport Board (the Board). The Burntwood Regional Health Authority Inc. (RHA) moves to be joined as a party, or alternatively, to be granted leave to intervene. For the reasons that follow, I am of the view that the RHA has not established that it should be named a party. Nor am I persuaded that it should be granted intervener status in the leave proceedings.

2 After 39 public hearings throughout the Province, the Board approved all but four of **Greyhound's** 20 applications for schedule and route changes to its public service vehicle bus operating authority under *The Highway Traffic Act*, C.C.S.M., c. H60 (the *Act*). **Greyhound** seeks leave to appeal the four applications denied by the Board.

3 The RHA was one of many organizations and members of the public that made submissions at the hearings. The RHA opposed the proposed reduction of **Greyhound's** services because of the importance of the routes to the RHA's ability to deliver its health services.

4 After the hearing, the RHA received notice of the Board's decision, of **Greyhound's** application for review (to which the RHA filed a written response with the Board), and of **Greyhound's** motion for leave to appeal.

5 **Greyhound** opposed the RHA being granted status as a party or as an intervener. The Board did not oppose the RHA being granted intervener status in the leave proceedings.

6 Neither *The Court of Appeal Act, C.C.S.M., c. C240*, nor the Court of Appeal Rules, addresses the power of this court to add parties to a proceeding. Court of Appeal Rule 46.1 allows for a person interested in an appeal to bring a motion for leave to intervene. There is no similar rule for persons interested in a leave to appeal motion. Counsel, correctly in my view, argued the RHA's motion by way of analogy to a motion for leave to intervene in an appeal and looked to Queen's Bench Rules 5.03 and 13.01, in addition to Court of Appeal Rule 46.1, for the appropriate considerations. See *CTV Television Inc. v. R.*, ~~2005 MBCA 120~~, 201 Man. R. (2d) 38 (Man. C.A. [In Chambers]), a chambers decision of Twaddle J.A.

7 The relevant provisions for this decision are Queen's Bench Rule 5.03(1) and (3), Queen's Bench Rule 13.01(1) and (2), and Court of Appeal Rule 46.1(1) and (3):

#### ~~Queen's Bench Rules~~

#### **General rule**

**5.03(1)** Every person whose presence as a party is by law necessary to enable the court to adjudicate effectively and completely on the issues in a proceeding shall be joined as a party to the proceeding.

#### **Power of court to add parties**

**5.03(3)** The court may order that any person who ought to have been joined as a party or whose presence as a party is necessary to enable the court to adjudicate effectively and completely on the issues in the proceedings shall be added as a 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.

#### Court of Appeal Rules

### Intervention

**46.1(1)** Any person who is interested in an appeal, may, by motion, apply to a judge for leave to intervene upon such terms and conditions as the judge may determine.

**46.1(3)** A motion for intervention shall briefly

- (a) describe the intervener and the intervener's interest in the appeal;
- (b) identify the position to be taken by the intervener on the appeal; and
- (c) set out the submissions to be advanced by the intervener, their relevancy to the appeal and the reasons for believing that the submissions will be useful to the court and different from those of the other parties.

8 In *CTV*, Twaddle J.A. explained the difference between Queen's Bench Rule 5.03 and Queen's Bench Rule 13.01. He stated: "Rule 5.03 addresses the necessity of adding certain parties while Rule 13.01 addresses the discretionary addition of optional parties" (at para. 11).

9 He explained the purpose of Queen's Bench Rule 5.03 and 13.01 (at paras. 13-14):

... Queen's Bench Rule 5.03 is not directed towards those persons who have some kind of identifiable interest or common question; rather it is directed at those who are an integral part of the lis ... .

It is Queen's Bench Rule 13 that governs the applications of those who want to intercede but cannot claim the direct connection required by Queen's Bench Rule 5.03, or whose presence is not absolutely necessary to decide the matter. Under Queen's Bench Rule 13.01, the court may in its discretion add a party to a lawsuit where the proposed party demonstrates an interest in the subject matter of the proceeding, the risk of adverse affect or a common question of law or fact.

10 The Board has created detailed rules of procedure. Counsel for the RHA, and for **Greyhound**, referred me to many of these rules for their respective arguments as to what status the Board afforded to the RHA. As expected, the RHA argued that the Board treated it as a party and **Greyhound** argued that the

RHA was simply a member of the public entitled to make submissions at the public hearings and was given notice throughout the proceedings as a courtesy.

11 The Board did not identify the RHA as a party in its reasons for decision. This is understandable because the RHA was not an "integral part of the lis" (at para. 13) which were the applications by **Greyhound** to the Board for changes to its operating authority. In other words, the RHA does not have a direct interest arising from a legal or proprietary interest in the subject matter of the case, nor will it be bound by the decision or the result. See *Save The Eaton's Building Coalition v. Winnipeg (City)*, 2001 MBCA 186, 160 Man. R. (2d) 236 (Man. C.A.). The RHA, by its own choice, and not as a responding party, participated at the public hearings. In these circumstances, there is no necessity, as contemplated by Queen's Bench Rule 5.03, to name the RHA as a party.

12 But should the RHA be permitted to intervene in the leave proceedings? While the RHA has demonstrated its "interest in the subject matter" of **Greyhound's** applications (see Queen's Bench Rule 13.01(1)(a)) and there is no evidence that the RHA's participation would unduly delay or prejudice the determination of whether leave should be granted (see Queen's Bench Rule 13.01(2)), the RHA's motion to intervene fails under Court of Appeal Rule 46.1(3). I so conclude because the RHA has not demonstrated that it will bring to the leave to appeal hearing arguments that are useful or different from those that will be made by the Board.

13 Leave to appeal will only be granted if **Greyhound** can satisfy a judge of this court, sitting in chambers, that there is a question of law or jurisdiction that is of sufficient importance to engage the attention of the court. See s. 283 of the *Act*. According to its motions brief filed in support of its leave application, **Greyhound** seeks leave to appeal on the following grounds:

1. the Board erred in law and exceeded its jurisdiction when, in making its decision on the applications, it considered the transportation of freight, contrary to the express provisions of the *Act*;
2. the Board erred in law by incorrectly interpreting and applying the test of sufficiency and convenience of service and public convenience set out in the *Act*; and
3. the Board erred in law by:
  - a) failing to consider the evidence brought on behalf of **Greyhound** in relation to the applications at all; and
  - b) failing to deliver adequate reasons for decision in relation to the applications.

14 I am told by counsel, and the material filed to date indicates, that a number of provisions in the *Act* will be under scrutiny, particularly in connection with the first proposed ground of appeal. Counsel for the Board is ready to address whether any of **Greyhound's** grounds of appeal raise a question of law or

jurisdiction that deserves attention by the Court of Appeal.

15 The RHA says that it will bring to the leave proceeding the voice of the public, noting that the Board was called upon to address public convenience issues when considering **Greyhound's** applications. In her supporting affidavit, the RHA's Chief Financial Officer, Eileen Bray, stated that "[a]ny change to the [Board's decision] to permit a reduction of service ... will have a serious detrimental effect on [RHA's] ability to deliver health services and the cost and efficacy of that delivery." She also stated that the RHA "brings an important user's perspective to these proceedings." But the leave proceedings are not a rehearing and this perspective, in and of itself, is not relevant to the issue of whether leave to appeal should be granted to **Greyhound**. While this evidence demonstrates the RHA's interest in the subject matter, the RHA has not demonstrated that its submissions will be useful or different from the arguments of the Board as to why leave to appeal should be denied.

16 Therefore, for the reasons set out above, the motion of the RHA to be named a party to, or to be granted intervener status in, **Greyhound's** motion for leave to appeal the decision of the Board is denied. **Greyhound** will have its costs.

17 One final point. This ruling does not mean that the RHA is precluded from bringing a new motion to intervene in the appeal, if leave to appeal is granted to **Greyhound**. To the contrary, at that point, one or more questions of law or jurisdiction will have been determined, and the RHA may then be in a better position to demonstrate why it should be granted leave to intervene in the appeal.

*Application dismissed.*

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