

FEDERAL COURT OF CANADA

B E T W E E N:

ATTORNEY GENERAL OF CANADA

Applicant

– and –

**AMNESTY INTERNATIONAL CANADA and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Respondents

WRITTEN SUBMISSIONS

(Motion for Leave to Intervene by the Military Police Complaints Commission)

INTRODUCTION

1. This is a motion by the Military Police Complaints Commission (the “Commission”) seeking leave to intervene pursuant to Rule 109 of the *Federal Courts Rules* in this motion for a stay of proceedings made by the Attorney General of Canada.
2. In its motion, the Attorney General seeks an order staying the Commission’s hearings into complaints filed by the Respondents. The hearings are scheduled to proceed on May 25, 2009.
3. The Commission has already ruled on the issue of whether the Commission’s hearings should be stayed pending disposition of the Attorney General’s judicial review applications, in a decision dated March 26, 2009. The Attorney General requested that

the Commission stay its proceedings. The Commission posed a legal question under its Rules as to whether the Commission should stay its proceedings, gave notice to the parties, and sought submissions from the parties, including the Attorney General. The Attorney General did not make submissions on the stay question, instead taking the position that the Commission lacked jurisdiction to decide whether to stay its own proceedings. The Chairperson declined to stay the Commission's hearings pending determination of the judicial review applications. The Attorney General has not sought to judicially review the March 26, 2009 decision of the Chairperson of the Commission.

4. The Commission takes no position on the merits of this stay motion. The Commission's proposed submissions would address one issue: whether this Court should exercise its discretion to dismiss the stay motion on the basis of the interrelated doctrines of issue estoppel, collateral attack and abuse of process.

5. Notwithstanding the fact that the Commission has already ruled on the stay of proceedings question, the Attorney General seeks to relitigate the issue before this Court. If the Attorney General wishes to challenge the Commission's stay decision, the appropriate recourse would be to bring an application for judicial review of the Commission's decision.

6. The Commission has a direct and significant interest in the outcome of the stay motion. The Commission has an overriding interest in preserving the integrity of its adjudicative processes. If the Attorney General's stay motion is allowed to proceed, it would permit parties to disregard an administrative tribunal's processes and to circumvent established administrative law recourses by seeking to relitigate administrative decisions before the courts. This creates duplicative litigation, the risk of potentially inconsistent results, undue costs and inconclusive proceedings, undermining the principle of finality and the authority of tribunal processes.

7. The Commission's proposed submissions will be distinct, would not otherwise be put before the Court, and will be of assistance to the Court in determining the issues

before it. None of the parties has the same institutional interest as the MPCC in maintaining the integrity of its adjudicative processes.

PART I - FACTS

8. By Notice of Motion dated March 27, 2009, the Attorney General brought a motion directly to the Federal Court to stay the Commission's Afghanistan Public Interest Hearings.

(a) The Military Police Complaints Commission – Statute, Regulation and Rules

9. The legislative mandate of the Military Police Complaints Commission is found in Part IV of the *National Defence Act*. The Commission was established as a quasi-judicial, independent civilian agency to examine complaints arising from either the conduct of military police members in the exercise of policing duties or functions or from interference in or obstruction of their police investigations.

National Defence Act, R.S.C. 1985, c. N-5, Part IV

10. Part IV of the *National Defence Act* confers on the Complaints Commission the power to make rules of procedure. In its relevant part, s. 250.15 states as follows:

250.15 The Chairperson may make rules respecting

(a) the manner of dealing with matters and business before the Complaints Commission, including the conduct of investigations and hearings by the Complaints Commission

National Defence Act, R.S.C. 1985, c. N-5, s. 250.15(a).

11. The Complaints Commission's *Rules of Procedure for Hearings Before the Military Police Complaints Commission* were made pursuant to this statutory provision. These Rules have been enacted as Regulation SOR/2002-241 under the *National Defence Act*. The Commission has also enacted the *Afghanistan Public Interest Hearings Rules*.

Rules of Procedure for Hearings Before the Military Police Complaints Commission, SOR/2002-241.

Afghanistan Public Interest Hearings Rules, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit Y.

12. Rule 7 provides that the Complaints Commission has the power to stay its own proceedings. It states as follows:

At any time during a proceeding, the Complaints Commission may determine any question with respect to jurisdiction or practice and procedure. The Complaints Commission may stay the proceeding in whole or in part until after the question is determined.

Rules of Procedure for Hearings Before the Military Police Complaints Commission, SOR/2002-241.

Afghanistan Public Interest Hearings Rules, Rule S7, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit Y.

(b) The Federal Court Applications and the Commission Hearings

13. On February 21, 2007, the Respondents Amnesty International Canada and the British Columbia Civil Liberties Union (collectively, “Amnesty/BCCLA”) submitted a complaint to the Commission making certain allegations that members of the Canadian Forces military police transferred detainees to a risk of torture by Afghan authorities. The Commission initiated a public interest investigation, and in March, 2008 the Commission determined that it would hold a public interest hearing into the complaint. In April, 2008, the Attorney General of Canada commenced Federal Court Application T-581-08 seeking to prohibit the Commission from proceeding with the hearing on the grounds that the Commission lacks jurisdiction.

Military Police Complaints Commission Jurisdiction Decision dated September 30, 2008, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit A.

14. On June 12, 2008, Amnesty/BCCLA submitted a further complaint to the Commission, updating and expanding the scope of the first detainee complaint, and raising a new complaint that the military police failed to investigate “crimes or potential crimes committed by senior officers” who may have been aware that former CF detainees were likely tortured by Afghan authorities. By decision dated September 30, 2008 the Commission determined that it had jurisdiction to proceed with the second detainee complaint. The Attorney General commenced a second judicial review application in Court File No. T-1685-08, dated October 30, 2008, seeking to set aside the Commission’s decision on the grounds that the Commission lacked jurisdiction.

Military Police Complaints Commission Jurisdiction Decision dated September 30, 2008, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit Y.

15. On January 16, 2009 the Commission issued a Notice of Hearing directing that the hearings into the two complaints would commence on February 17, 2009.

Notice of Hearing, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit B.

(c) **The Commission’s Stay Question**

16. On January 29, 2009, counsel for the Attorney General wrote to counsel for the Commission and advised that the Attorney General would be applying to the Federal Court to stay the Afghanistan Public Interest Hearings until the final disposition of its judicial review applications. Counsel for the Attorney General stated:

Unless you advise me before February 5, 2009 that the Commission is prepared to stay the public hearings on its own initiative on the same terms as those requested from the Federal Court, I am instructed to bring the motion before the Court.

Letter from A. Prefontaine to F. Kristjanson dated January 29, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit C.

17. On February 3, 2009, the Commission issued an order adjourning the hearings. The Order stated that given the Attorney General's request that the Commission stay its proceedings, the Commission would consider the question pursuant to Rule 7 of the Rules, and would receive and consider submissions on whether to stay the hearings pending determination of the Attorney General's applications for judicial review by the Federal Court.

Order for Adjournment dated February 3, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit D.

18. On February 3, 2009 the Commission's counsel wrote to counsel for the Attorney General, the subjects and the complainants to inform them that pursuant to Rule 7 of the Commission's Rules, the Commission would determine the following question:

Should the Afghanistan Public Interest Hearings be stayed by this Commission pending disposition by the Federal Court of the issues raised by the Government of Canada in the two judicial review applications brought by the Attorney General of Canada in Federal Court File Nos. T-581-08 and T-1685-08?

Rule 7 Stay Decision, March 26, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit M, at para. 4.

Letter from F. Kristjanson to A. Prefontaine et.al., Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit D.

19. The Commission's counsel invited counsel for the Attorney General, counsel for the subjects, and the complainants to make representations, submissions and to provide evidence on this question and specifically advised the parties as follows:

In order to assist your consideration of the question, Commission counsel has identified a number of issues which you may wish to address:

1. What is the legal test to be applied to the decision by the Commission whether it should stay its proceedings pending the hearing and disposition of the judicial review applications?

2. In particular, is the three-part test set out by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311 the test to be applied to a decision to stay the Afghanistan Public Interest Hearings?

3. If so,
 - (a) Is there a serious question to be tried?

 - (b) Will there be irreparable harm if the stay is not granted, and if so, what is the nature of the harm? Is there evidence of actual harm that will occur if the stay is not granted? If so, what is this evidence? and,

 - (c) Does the balance of convenience weigh in favour of the granting of a stay of proceedings? What factors should be considered in the balance of convenience in this case?

4. If you do not accept that the test in *RJR MacDonald Inc. v. Canada (Attorney-General)* applies to the determination to be made, then what alternative legal test do you propose and why?

Letter from F. Kristjanson to A. Prefontaine et. al. dated February 3, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit D.

20. The Attorney General did not make submissions on the stay question. It took the position that the Commission did not have the power to stay its own proceedings, and instead requested that the Commission adjourn its proceedings pending the disposition of the judicial review applications. The Attorney General did not submit any evidence in support of its submissions.

Letter from A. Prefontaine to F. Kristjanson dated February 10, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit E.

21. The respondents to this motion, Amnesty/BCCLA, made no submissions on the stay question, and instead submitted that the Commission should decline to adjourn the hearings.

Letter from P. Champ to F. Kristjanson dated February 19, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit H.

22. By letter dated March 3, 2009, the Commission's counsel wrote to the parties requesting additional submissions on the relevance of a number of cases to the Rule 7 Stay Question and the adjournment request. Counsel for the Attorney General made additional submissions. None of the participants adduced any evidence on the Rule 7 Stay question.

Letter from F. Kristjanson to A. Prefontaine et. al. dated March 3, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit J.

23. After considering the submissions, the Chairperson of the Commission issued a 35 page decision dated March 26, 2009. The Chairperson declined to stay or to adjourn the hearings pending the outcome of the Attorney General's judicial review applications.

Commission Stay Decision, March 26, 2009, Affidavit of Raymonde Cleroux sworn April 7, 2009, Exhibit M.

24. The Attorney General has not sought to judicially review the Commission's decision to not stay its proceedings.

Affidavit of Raymonde Cleroux sworn April 7, 2009, para. 15.

PART II – THE ISSUE

25. The sole issue in this motion is whether this Court should exercise its discretion under Rule 109 of the *Federal Court Rules* and grant the Commission leave to intervene in this stay motion.

PART III – THE LEGAL SUBMISSIONS

(a) Test Under Rule 109

26. The Court may, on motion, grant leave to any person to intervene in a proceeding. Rule 109 requires that a prospective intervener will assist the Court in the determination of the issues. The assistance must not merely be a reiteration of the position taken by a party, but rather must provide a different perspective. The prospective intervener must present a relevant and useful point of view which the initial parties cannot or will not present.

Ferroequus Railway Co. v. Canadian National Railway Co.,
[2003] F.C.J. No.1621 at para. 13 (C.A.)

Rule 109, *Federal Courts Rules*, SOR/98-106

27. The Federal Court of Appeal has identified the following factors as those which ought to be considered in deciding whether a motion to intervene should be allowed:

- (i) Is the proposed intervener directly affected by the outcome?
- (ii) Does there exist a justiciable issue and a veritable public interest?
- (iii) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
- (iv) Is the position of the proposed intervener adequately defended by one of the parties to the case?
- (v) Are the interests of justice better served by the intervention of the proposed third party?
- (vi) Can the Court hear and decide the issue on its merits without the proposed intervener?

Canadian Pacific Railway Co. v. Boutique Jacob Inc., 2006 FCA 426 (CanLii), at para. 19, affirming *Canadian Union of Public Employees (Airline Division) v. Canadian Airlines Internal Ltd*, 2000 F.C.J. No. 220 (C.A.) at para. 8

Chrétien v. Canada (Attorney General), [2005] F.C.J. No. 684 at para. 20 (Proth)

28. Not all the factors listed above need be met by a proposed intervener. The Court has the inherent authority to allow an intervention on terms and conditions which it deems appropriate in the circumstances.

Canadian Pacific Railway Co. v. Boutique Jacob Inc., 2006 FCA 426 (CanLii), at para. 21

29. The central issue to be determined by the Court upon a motion for leave to intervene by a tribunal remains how the intervention will assist in the determination of a factual or legal issue related to the proceedings. This overriding consideration requires, in every case, that the proposed intervener demonstrate that its intervention will assist in the determination of the issue, which cannot be achieved without demonstrating that the proposed intervention will add to the debate an element which is absent from what the parties before the Court will bring.

Canada (Attorney General) v. Sasvari, [2004] F.C.J. No. 2006 (Proth.) at paras. 10 and 11

30. Courts have underscored that the proper scope of an administrative tribunal's intervention ought to be more limited to guard against the appearance of partiality.

Chrétien v. Canada (Attorney General), *supra* at para. 21

(b) Commission's Proposed Intervention

31. The Commission recognizes the importance of maintaining impartiality and the appearance of impartiality. Therefore, if granted leave to intervene, the Commission would take no position on the merits of the Attorney General's stay application.

32. The Commission's intervention on this motion would focus solely on one issue: whether this Court should exercise its discretion to dismiss the Attorney General's motion on the basis of the interrelated doctrines of issue estoppel, collateral attack and abuse of process. As noted above, the Commission has already ruled on the stay issue raised by the Attorney General. The Attorney General seeks to relitigate the stay issue before this Court. If the Attorney General wishes to challenge the Commission's stay decision, the appropriate recourse would be to bring an application for judicial review of the Commission's decision.

33. If allowed to proceed, the Attorney General's stay motion would undermine the integrity of the Commission's adjudicative processes. It would also contravene fundamental rule of law principles which provide that an administrative decision is final, subject only to a right of appeal or the right to seek judicial review under the *Federal Courts Act*. If the Attorney General's motion proceeds, it will set a troubling precedent. It would permit parties to disregard an administrative tribunal's processes and to circumvent established administrative law recourses by seeking to relitigate matters before the courts.

34. It is well established that judicial and administrative decisions should be conclusive of the issues decided, unless or until reversed on appeal, or set aside by judicial review. This principle avoids duplicative litigation, potentially inconsistent results, undue costs and inconclusive proceedings.

35. The three interrelated common law doctrines of issue estoppel, collateral attack and abuse of process are aimed at ensuring the finality of proceedings and preventing the relitigation of issues previously decided in another proceeding. The proposed intervention raises issues which are critical to the rule of law and the appropriate relationship between the courts and administrative tribunals.

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, [2003] 3 S.C.R. 77 at para. 22

36. The Supreme Court of Canada has cautioned that: “Courts, while exercising their constitutional functions of judicial review, must be sensitive not only to the need to uphold the rule of law, but also to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislature.” Parliament has given the Commission the power to determine questions of law, and the power to stay its proceedings. The Commission established a question of law and requested submissions from the parties on an area within its jurisdiction – whether to stay its proceedings pending determination of the Attorney General’s judicial review applications. The parties chose not to make submissions. This Honourable Court should not countenance this disregard for the Commission’s administrative and adjudicative processes. The integrity of the Commission’s processes is central to the exercise of its mandate.

Dunsmuir v. New Brunswick, 2008 SCC 9, at para. 27

(c) **Issue Estoppel**

37. Issue estoppel is a doctrine of public policy that is designed to advance the interests of justice. Like other doctrines such as the rule against collateral attack, the adequate alternative remedy doctrine in the judicial review context and the rule against abuse of process, issue estoppel seeks “to balance fairness to the parties with the protection of the administrative decision-making process whose integrity would be

undermined by too readily permitting collateral attack or relitigation of issues once decided”.

Danyluk v. Ainsworth Technologies Inc., supra., at para. 21

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, supra at para. 23

38. Although initially developed in the context of prior court proceedings, issue estoppel has been extended, with necessary modifications, to quasi-judicial proceedings where decisions of a judicial nature are made.

Danyluk v. Ainsworth Technologies Inc., ibid. at para. 21

39. In order to assess the judicial nature of a decision, the Supreme Court has set out three elements: (1) the nature of the administrative authority issuing the decision, (2) whether the decision was required to be made in a judicial manner, and (3) whether the decision was made in a judicial manner.

Danyluk v. Ainsworth Technologies Inc., ibid. at para. 35

40. Applying these three elements, it is clear that the Commission’s stay decision was a decision of a judicial nature. In *Danyluk*, the Supreme Court determined that administrative decisions may be judicial decisions for the purposes of issue estoppel so long as three elements are met: (1) Is the administrative authority an institution that is capable of receiving and exercising adjudicative authority, (2) As a matter of law, is the particular decision one that was required to be made in a judicial manner? and (3) as a mixed question of law and fact, was the decision made in a judicial manner? In *Danyluk*, the Supreme Court accepted that the decision of an Employment Standards Act officer was “judicial” for the purposes of the issue estoppel analysis.

Danyluk, supra, at para. 35

41. The proceedings of the Commission on the Rule 7 stay question meet these requirements. The Commission established a question of law in accordance with its Rules. The Commission sought submissions from the parties. It rendered extensive reasons in which it applied the established jurisprudence relating to stays of proceedings.

42. Once it is established that the decision is one of a judicial nature, the preconditions to the operation of issue estoppel are:

- 1) that the same question has been decided;
- 2) that the judicial decision which is said to create the estoppel was final; and
- 3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

Danyluk v. Ainsworth Technologies Inc., supra, at para. 25

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, supra at para. 23

43. All three preconditions are met in this case.

44. The Attorney General's stay motion raises the very issue decided by the Commission in its March 26, 2009 stay decision. Therefore the first precondition has been met.

45. The second precondition is also met as the Commission's decision was both a judicial decision and a final decision for the purpose of the issue estoppel analysis. As the Supreme Court determined in *Danyluk*, the fact that there exists a recourse to challenge a tribunal's decision does not affect the finality of the decision. Thus, the fact that the Attorney General had the option of seeking judicial review of the Commission's stay decision does not affect its finality for the analysis of the second precondition. As in *Danyluk*, a party's failure to avail themselves of a recourse to challenge a tribunal's

decision is relevant to the court's exercise of discretion in deciding whether or not to dismiss a matter on the basis of issue estoppel.

Danyluk v. Ainsworth Technologies Inc., supra, at para. 58

46. Finally, the third precondition of the issue estoppel analysis is also met as the parties to this motion were the very same parties to the Commission's stay decision.

47. Even if all three preconditions are met, the Court has a discretion as to whether this motion should be dismissed on the basis of issue estoppel. The objective of the discretion is "to ensure that the operation of issue estoppel promotes the orderly administration of justice but not at the cost of a real injustice in the particular case."

Danyluk v. Ainsworth Technologies Inc., supra,. at para. 67

48. The list of factors relevant to the exercise of the Court's discretion are open and may include the following: (1) the wording of the statute from which the power to issue the administrative order derives, (2) the purpose of the legislation, (3) the availability of an appeal, (4) the safeguards available to the parties in the administrative procedure, (5) the expertise of the administrative decision-maker, (6) the circumstances giving rise to the prior administrative proceedings, and (7) any potential injustice.

Danyluk v. Ainsworth Technologies Inc., supra,. at paras. 68-81

49. The primary relevant factors for the Court's exercise of discretion are the legislative context of the Commission's decision as well as the availability of a more appropriate recourse to challenge the Commission's stay decision.

50. As the Supreme Court held in the *Danyluk* case, an applicant's failure to take advantage of a recourse to challenge the initial decision must be counted against it.

51. In this case, the Attorney General's failure to avail itself of administrative law remedies to challenge the Commission's stay decision weigh in favour of dismissing the Attorney General's motion for a stay.

(d) Collateral Attack

52. The rule against collateral attack holds that "a judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it."

Danyluk v. Ainsworth Technologies Inc., ibid. at para. 20

53. As the Supreme Court determined in *Danyluk*, although this principle was initially developed in the context of court proceedings, it has been extended to administrative tribunal decisions of a judicial nature.

Danyluk v. Ainsworth Technologies Inc., ibid. at para. 21

54. The Attorney General's stay motion to this Court represents a collateral attack on the Commission's stay decision. Rather than pursuing the recourse provided by the law for the express purpose of challenging the decision – a judicial review of the decision – the Attorney General has instead brought a collateral attack of the decision.

(e) Abuse of Process

55. As the majority of the Supreme Court held in *Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79*, the doctrine of abuse of process is closely related to the doctrine of issue estoppel:

Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are

not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, supra at para. 37

56. The majority of the Supreme Court went on to state:

In all of its applications, the primary focus of the doctrine of abuse of process is the integrity of the adjudicative functions of courts. Whether it serves to disentitle the Crown from proceeding because of undue delays (see *Blencoe, supra*), or whether it prevents a civil party from using the courts for an improper purpose (see *Hunter, supra*, and *Demeter, supra*), the focus is less on the interest of parties and more on the integrity of judicial decision making as a branch of the administration of justice.

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, supra at para. 43

57. The Court held that the integrity of adjudicative processes which the doctrine of abuse of process protects extends to tribunals, affirming that the adjudicative process includes the various courts and tribunals to which individuals must resort to settle legal disputes.

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, supra, at para. 44

58. The majority of the Court stressed that the doctrine of abuse of process is aimed at maintaining the integrity of the adjudicative process:

Three preliminary observations are useful in that respect. First, there can be no assumption that relitigation will yield a more accurate result than the original proceeding. Second, if the same result is reached in the subsequent proceeding, the relitigation will prove to have been a waste of judicial resources as well as an unnecessary expense for the parties and possibly an additional hardship for some witnesses. Finally, if the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will

undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality.

Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79, supra at para. 51

59. The Federal Court has held that it has inherent or implied jurisdiction to prevent the misuse of its procedure in a way that would be an abuse of process, manifestly unfair for a party to the litigation or would in some other way bring the administration of justice into disrepute.

Schilling v. Canada (Minister of National Revenue - M.N.R.), [2004] F.C.J. No. 2082 at para. 28 (C.A.)

Sauve v. Canada, [2002] F.C.J. No. 1001 at para. 10 (T.D.)

60. Like issue estoppel, the application of the doctrine of abuse of process is discretionary and the court will apply many of the same factors in determining whether to exercise its discretion to dismiss a claim on the basis of abuse of process.

61. For the same reasons that the Attorney General's stay motion should be dismissed on the basis of the doctrine of issue estoppel, it should be dismissed as an abuse of process. The Attorney General's motion seeks to relitigate an issue that has already been finally determined. Rather than seek to avail itself of administrative law remedies to challenge the decision, the Attorney General seeks to relitigate the stay issue *ab initio*. In so doing, the Attorney General's motion undermines not only the integrity of the Commission's processes but the integrity of the administration of justice as a whole.

(f) Commission's Direct and Significant Interest in the Outcome of the Motion

62. The Commission has a direct and significant interest in the outcome of this stay motion. Specifically, the Commission has an overriding interest and duty to preserve the integrity of its adjudicative processes.

63. As noted above, if the Attorney General's stay motion is allowed to proceed, it would permit parties to disregard an administrative tribunal's processes and to circumvent established administrative law recourses by seeking to relitigate matters before the courts.

(g) Commission's Perspective Not Presented by Other Parties

64. The Commission is uniquely positioned to make the above-noted submissions aimed at preserving the integrity of its processes. None of the parties has the same institutional interest as the Commission in maintaining the integrity of its proceedings. Further, none of the parties cooperated with the processes of the Commission in its Rule 7 Stay Question.

65. If the Commission does not make submissions on this issue, the Court will be left without the benefit of this unique perspective and without an institutional analysis of the implications of permitting the Attorney General to proceed in the way it has by bringing this stay motion.

(h) No Prejudice to Other Parties

66. The Commission's intervention would not cause prejudice to the other parties. The Commission's intervention is focussed solely on one issue. In addition, the Commission is prepared to proceed with oral submissions on the hearing date scheduled by the Attorney General.

(i) Interests of Justice Best Served by the Intervention of the Commission

67. It is submitted that the foregoing reasons demonstrate that the interests of justice would be best served by the Commission's intervention as the issue that the Commission proposes to raise is integral to the rule of law, the administration of justice, and the proper role of the courts in relation to administrative tribunals.

PART IV – ORDER SOUGHT

68. It is requested that this Court grant the Commission leave to intervene in this motion on the following terms:

- (a) that the Commission may make oral submissions at the hearing on the question of whether the Court should exercise its discretion to dismiss the Attorney General's stay motion on the basis of the interrelated doctrines of issue estoppel, collateral attack and abuse of process; and
- (b) that the Commission may serve and file the Affidavit of Raymonde Cleroux on the motion, and serve and file a memorandum of fact and law, solely for the purposes of addressing the issue set out in para. (a);
- (c) that the style of cause be amended to include the Commission as intervener; and
- (d) that the Commission neither seek nor be liable for costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Toronto, this 7th day of April, 2009.

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