S.C.C. Court File No. 37441

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

CHIEF STEVE COURTOREILLE ON BEHALF OF HIMSELF
AND THE MEMBERS OF THE MIKISEW CREE FIRST NATION

Appellants

- and -

THE GOVERNOR GENERAL IN COUNCIL, MINISTER OF ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT, MINISTER OF FINANCE, MINISTER OF THE ENVIRONMENT, MINISTER OF FISHERIES AND OCEANS, MINISTER OF TRANSPORT, AND MINISTER OF NATURAL RESOURCES

Respondents

FACTUM OF THE MOVING PARTY/PROPOSED INTERVENER, ADVOCATES FOR THE RULE OF LAW

(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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PART I—OVERVIEW

1. Introduction

1. This is a motion by Advocates for the Rule of Law ("**ARL**") for leave to intervene on the question of whether a duty to consult can arise in the law-making process and, if so, what is the potential scope of the duty.

2. In answering this question, this Court will be required to consider the scope of Parliamentary sovereignty, the separation of powers, the duty to consult, and the Honour of the Crown and how to resolve conflicts between constitutional provisions and/or principles. If granted leave, ARL will make two interrelated submissions:

(a) No provision or unwritten principle of the *Constitution Act* can be used to abrogate or diminish another provision or unwritten principle of the *Constitution Act;* and

(b) In assessing whether recognizing the duty to consult at any point during the law-making process would abrogate or diminish another provision or unwritten principle of the *Constitution Act* such as Parliamentary sovereignty or the separation of powers, the Court must consider the duty to consult holistically including the low threshold to trigger the duty, the requirement for consultation to be meaningful and potential accommodation obligations, and the remedies that can arise from a breach of the duty to consult.

3. These submissions are different from those being advanced by the parties, who are largely focused on whether the federal law-making process can be compartmentalized into executive and legislative phases for the purposes of the duty to consult and the proper scope of Parliamentary sovereignty and the separation of powers. ARL is instead focused on the broader approach to resolving conflicts between constitutional provisions and principles and the substantive effects and implications of recognizing a duty to consult at any stage in the federal, provincial, or territorial law-making process in Canada. ARL brings a unique perspective from the parties as it is concerned with the broader implications that this appeal may have on the rule of law in terms of how conflicts

between constitutional provisions and/or principles are resolved, the respective roles of courts and legislatures, and the need to ensure orderly and timely law-making processes throughout Canada

4. ARL therefore requests that it be granted leave to intervene in the appeal, with permission to present 5 minutes of oral argument and file a 10 page factum.

Statement of Facts

5. In 2012, a former federal Minister of Finance introduced two omnibus bills in Parliament, Bill C-38 and Bill C-48, which contained, among other things, changes to a number of Canada's environmental laws (the "**Omnibus Bills**"). These two Bills received Royal Assent on June 29, 2012 and December 14, 2012, respectively.[1]

6. The Appellants, Chief Steve Courtoreille and the Mikisew Cree First Nation ("**Mikisew Cree**"), commenced an Application for judicial review arguing that the legislative changes could impact their treaty rights to hunt, trap, and fish throughout their Treaty 8 territory and, as a result, the Crown should have consulted the Mikisew Cree during the development of the legislation and upon introduction in Parliament.[2]

7. On December 19, 2014, the Federal Court allowed the application in part and issued a declaration that the Crown had a duty to consult the Mikisew Cree but only after the Omnibus Bills were introduced in Parliament.[3] The Federal Court of Appeal allowed the appeal finding that legislative action was immune from judicial review and that importing the duty to consult into any part of the legislative process would offend the separation of powers and Parliamentary privilege.[4] On May 18, 2017, this Court granted leave to appeal.

PART II—STATEMENT OF QUESTIONS IN ISSUE

8. The issue in this motion is whether ARL satisfies the two-part test to obtain an intervention order under Rule 59, i.e.:

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[1] Reasons for Judgment of Justice Hughes issued December 19, 2014 ("**Federal Court Reasons**"), FCA RR, Vol. 1, ¶3-4.
[2] Reasons for Judgment of Justices Montigny, Webb, and Pelletier, December 7, 2016 ("**FCA Reasons**"), AR, Tab 3, ¶6
[3] Federal Court Reasons, FCA RR, Vol. 1, ¶101-104 & 110.
[4] FCA Reasons, AR, Tab 3, ¶3.

(a) an interest in the appeal; and

(b) submissions which will be useful and different from those of the other parties.[5]

PART III—STATEMENT OF ARGUMENT

1. ARL Has an Interest in the Appeal

9. This Court takes a broad approach in deciding whether to allow a person to intervene.[6] The governing principle is that "***any interest is sufficient***", subject always to the discretion of the Court.[7]

10. ARL has a clear interest in this appeal based on its mandate,[8] which is to promote the rule of law in Canada and abroad. This mandate is premised on a number of core principles, which includes the supremacy of the Constitution and that it can only be amended pursuant to its amending formula, the separation of powers, and Parliamentary sovereignty. It also includes the need for orderly and timely law making processes.[9]

11. If this Court were to find a duty to consult in the law-making process, it would deleteriously impact the rule of law by allowing judicial intervention in the legislative process which would undermine the separation of powers and Parliamentary sovereignty. It would also negatively impact the rule of law by undermining the ability of legislatures to pass laws in a timely and efficient manner. This is the case particularly for legislation of general application considering the "low threshold" for triggering the duty to consult[10] and the significant number of Aboriginal groups across the country with varying interests, which includes over 630 *Indian Act* bands,[11] 53 Inuit communities in 4 regions,[12] and five

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[5] *Reference re Workers' Compensation Act 1983 (Nfld.)*, [1989] 2 S.C.R. 335 (Chambers) at 339; *R. v. Finta*, [1993] 1 S.C.R. 1138 (Chambers) at 1142; Rule 59 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156.
[6] *Norcan Ltd. v. Lebrock*, [1969] S.C.R. 665 at 666-667; *Reference re Workers' Compensation Act 1983 (Nfld.)*, [1989] 2 S.C.R. 335 (Chambers) at 339; *R. v. Finta*, [I993] 1 S.C.R. 1138 (Chambers) at 1142.
[7] *Reference re Workers' Compensation Act 1983 (Nfld.)*, [1989] 2 S.C.R. 335 (Chambers) at 339, *emphasis added*.
[8] *R. v. Finta*, [1993] 1 S.C.R. 1138 (Chambers) at 1142 ("***Through either the people they represent or the mandate which they seek to uphold, these applicants have a direct stake***").
[9] Affidavit of Justin Anisman sworn September 7, 2017 ("Anisman Affidavit"), ¶2-3 & 8, Motion Record, Tab 2.
[10] *Mikisew Cree First Nation v. Canada*, [2005] 3 S.C.R. 38, ¶43 ("*Mikisew Cree 2005*")
[11] Indigenous and Northern Affairs Canada, *First Nations*, December 22, 2016, online: https://www.aadnc-aandc.gc.ca/eng/1100100013791/1100100013795. The over 630 *Indian Act* bands comprise over 50 original Nations, which were divided up by the federal government for a variety of reasons. The Appellants submit at para. 95 that consultation rights for First Nations are generally vested in the councils for the over 630 *Indian Act* bands.

provincial Métis organizations and numerous local councils.[13] This would also be problematic in a number of provinces that have a significant number of First Nations, such as B.C. (with 198 *Indian Act* bands)[14] and Ontario (with 126 *Indian Act* bands).[15]

12. Further, ARL's interest is that of a public interest organization rather than a private litigant. As this Court emphasized in *Canadian Council of Churches*:

> … ***Public interest organizations are, as they should be, frequently granted intervener status.*** The views and submissions of interveners on issues of public importance frequently provide great assistance to the courts. …[16]

2. ARL Will Make Useful Submissions from a Different Perspective

13. The second branch of the intervention test is straightforward. It requires the ARL to present useful arguments from a different perspective on an issue in the appeal.[17]

14. For the reasons that follow, these submissions will provide the Court with a distinctive and useful contribution in this appeal.

15. In their factum, the Mikisew Cree assert that recognizing a duty to consult in the law-making process would not offend the separation of powers and the principles of Parliamentary privilege and Parliamentary sovereignty if the duty arose prior to Cabinet giving final approval to introduce the bill into Parliament. In essence, the Mikisew Cree argue that up until a bill is introduced into Parliament the involved Ministers and the officials supporting them are acting in an executive capacity relating to the proposed legislation rather than in a legislative capacity and thus are not immune from judicial review.

16. ARL wishes to make two submissions in response to this.

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[12] Indigenous and Northern Affairs Canada, *Inuit*, August 3, 2017, online: https://www.aadnc-aandc.gc.ca/eng/1100100014187/1100100014191.
[13] Metis National Council, *Governments*, online: http://www.metisnation.ca/index.php/who-are-the-metis/governments
[14] Indigenous and Northern Affairs Canada, *About British Columbia First Nations*, September 10, 2015, online: https://www.aadnc-aandc.gc.ca/eng/1100100021009/1314809450456
[15] Indigenous and Northern Affairs Canada, *Ontario Region*, June 21, 2017, online: https://www.aadnc-aandc.gc.ca/eng/1100100020284/1100100020288
[16] *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236 at 256, *emphasis added*.
[17] *Norberg v. Wynrib*, [1992] 2 S.C.R. 224 (Chambers) at 225; *R. v. Morgentaler*, [1993] 1 S.C.R. 462 (Chambers) at 463.

17. **First,** although the duty to consult is grounded in the Honour of the Crown and relates to s. 35 rights,[18] no provision or unwritten principle of the *Constitution Act* can be in principle be used to abrogate or diminish another provision or unwritten principle of the *Constitution Act*. This Court has repeatedly rejected the notion that a *Charter* right may interfere with other parts of the Constitution.[19] As stated in *Doucet-Boudreau*:

> …As a basic rule, ***no part of the Constitution can abrogate or diminish another part of the Constitution***… For example, a court ***could not compel a provincial government to do something pursuant to s. 24(1) [of the Chart] which would exceed the jurisdiction of the province under s. 92 of the Constitution Act, 1867***.[20]

18. Similarly, in *Vaid,* this Court extended the application of this doctrine to unwritten principles of the Constitution and affirmed that parliamentary privilege is immunized from review under s. 2(b) of the *Charter*:

> … In *New Brunswick Broadcasting* itself, it was held that press freedom guaranteed by ***s. 2(b) of the Charter did not prevail over parliamentary privilege***, which was held to be as much part of our fundamental constitutional arrangements as the Charter itself. ***One part of the Constitution cannot abrogate another part of the Constitution***….[21]

19. The contrary position would undermine the architecture of the Constitution which this Court recognized in the *Secession Reference*:

> ***Our Constitution has an internal architecture, or… a "basic constitutional structure". The individual elements of the Constitution are linked to the others, and must be interpreted by reference to the structure of the Constitution as a whole***….[C]ertain underlying principles infuse our Constitution and breathe life into it....
>
> Although these underlying principles are not explicitly made part of the Constitution by any written provision, other than in some respects by the oblique reference in the preamble to the *Constitution Act, 1867,* it would be impossible to conceive of our constitutional structure without them. ***The principles dictate major elements of the architecture of the Constitution itself and are as such its lifeblood***.[22]

20. As this Court held in *Trial Lawyers Association,* the interpretation of a constitutional provision:

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[18] *Haida Nation v. British Columbia,* [2004] 3 S.C.R. 511, ¶16 ("*Haida*")
[19] *Reference Re Bill 30, an Act to amend the Education Act (Ontario),* [1987] 1 S.C.R. 1148 at 1197-1199; *R. v. S.(S.),* [1990] 2 S.C.R. 254 at 288; *Adler v. Ontario,* [1996] 3 S.C.R. 609, ¶35, 38-39, 47, and 49.
[20] *Doucet-Boudreau v. Nova Scotia (Minister of Education),* [2003] 3 S.C.R. 3, ¶42, *emphasis added.*
[21] *Canada (House of Commons) v. Vaid,* [2005] 1 S.C.R. 667, ¶30, *emphasis added.*
[22] *Reference re Secession of Quebec,* [1998] 2 S.C.R. 217, ¶50-51 and 70, *emphasis added*.

> …***must be consistent not only with other express terms of the Constitution, but with the requirements that "flow by necessary implication from those terms"***… As this Court has recently stated, "The Constitution must be interpreted with a view to discerning the structure of government that it seeks to implement. ***The assumptions that underlie the text and the manner in which the constitutional provisions are intended to interact with one another must inform our interpretation***, understanding, and application of the text"….[23]

21. In considering whether the particular application of one constitutional provision or principle would abrogate or diminish another constitutional provision or principle, the Court should consider the impact on the purpose and scope of the potentially affected constitutional provision(s) or principle(s) at issue. Similar to the paramountcy test in constitutional law which has also been applied to determining a conflict between two laws enacted by the same legislature, the Court should consider operational conflicts and incompatibility of purpose in determining whether one constitutional principle would abrogate or diminish another. As stated by this Court in *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168,*

> ….For the purposes of the doctrine of paramountcy, this Court has recognized two types of conflict. ***Operational conflict arises when there is an impossibility of compliance with both provisions. The other type of conflict is incompatibility of purpose. In the latter type, there is no impossibility of dual compliance with the letter of both laws; rather, the conflict arises because applying one provision would frustrate the purpose intended by Parliament in another….***[24]

22. In this case, the Court must consider whether recognizing a duty to consult and allowing related judicial supervision and intervention at any point in the law-making process would frustrate the purpose of two other recognized unwritten constitutional principles: Parliamentary sovereignty (Parliament's unfettered freedom to formulate, table, amend and pass legislation without court intervention)[25] and the separation of powers (the separation and proper roles of the executive, legislative, and judicial branches of government).[26]

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[23] *Trial Lawyers Association of British Columbia v. British Columbia (A.G.),* [2014] 3 S.C.R. 31, ¶26, *underlining in original, bolding and italics added.*

[24] *Reference re Broadcasting Regulatory Policy, CRTC 2010-167 and Broadcasting Order CRTC 210-168,* [2012] 3 S.C.R. 489, ¶44 (see also ¶42-43 & 45), *emphasis added*.

[25] *Reference Re Canada Assistance Plan,* [1991] 2 S.C.R. 525, ¶61-65, *Canada (Auditor Gen.) v. Canada (Min. of Energy, Mines & Resources),* [1989] S.C.J. No. 80, ¶para. 47 & 51; and *Campbell v. British Columbia (Attorney General,* [1999] B.C.J. No. 233 (BC SC)

[26] *Ontario v. Criminal Lawyers' Association of Ontario,* [2013] S.C.J. No. 43, ¶27-31; *Doucet-Boudreau v. Nova Scotia (Minister of Education,* [2003] 3 S.C.R. 3, ¶33-4.

23. **Second**, in assessing whether recognizing the duty to consult in the law-making process would abrogate or diminish Parliamentary sovereignty and the separation of powers, the Court should consider the duty to consult and the related implications holistically and not draw arbitrary lines in the law-making process. ARL will submit that a holistic consideration of the implications of recognizing a duty to consult at any point in the law-making process should consider, among other things:

(a) **The Low Threshold for Triggering the Duty to Consult:** the duty to consult is easily triggered and all that is required is the *potential* for a Crown decision to impact an asserted or established Aboriginal or treaty right.[27] If the Appellants' position is accepted, it could be triggered by legislation of general application in many different areas.

(b) **Consultation on Legislation of General Application Would be a Significant Undertaking:** "even at the lower end of the spectrum, the duty to consult can require significant conduct by the Crown",[28] particularly in a situation where there are hundreds of Aboriginal groups that need to be consulted across Canada. Efforts and resources required for deep consultation are even more significant, given that this can require an oral hearing, formal participation in the decision-making process, and the provision of written reasons.[29]

(c) **Consultation Must be Meaningful**: the duty to consult is not just about providing a process to exchange information or "blow off steam"; the process must be meaningful and responsiveness is a key requirement. The Crown must act in good faith at all times and with the intention of substantially addressing the concerns raised.[30]

(d) **Consultation Can Require Accommodation:** while the duty to consult does not dictate a particular substantive outcome, it cannot exclude the possibility of accommodation at the outset and good faith consultation may

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[27] *Mikisew Cree 2005*, ¶43.
[28] *Long Plain First Nation v. Canada*, [2015] F.C.J. No. 961, ¶103.
[29] *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511, ¶44 ("*Haida*"); *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40, ¶47.
[30] *Haida*, ¶42; *Taku River Tlingit First Nation v. British Columbia*, [2004] 3 S.C.R. 550, ¶25; *Mikisew Cree*, ¶54; *Chartrand v. British Columbia*, [2015] BCCA 345, ¶77.

give rise to a duty to accommodate,[31] which in the context of legislation could include substantive changes the scope and content of provisions and delaying the introduction of legislation into Parliament;

(e) **Remedies if the Duty to Consult is Breached:** if a duty to consult were recognized in the law-making process as requested by the Appellants and the duty was not met, these permissible remedies could impact the ability of Ministers of the Crown to introduce legislation into Parliament. The remedies available in the event of a breach of the duty to consult vary and range from "injunctive relief against the threatening activity altogether, to damages, to an order to carry out the consultation prior to proceeding further with the proposed government conduct."[32]

24. A holistic consideration of these various facets of the duty to consult demonstrates why the law-making process cannot be compartmentalized into executive and legislative phases as the Appellants suggest. Indeed, even if a duty were recognized at the early stages of the law-making process, the substantive requirements that could arise or remedies ordered in the event of a breach would have ripple effects throughout the entire law making process. This would abrogate or significantly diminish the current scope of Parliamentary sovereignty and the separation of powers which are fundamental components of the Canadian constitutional framework. This is exactly what this Court explained in *Reference Re Canada Assistance Plan (B.C.)* when it held that "[a] restraint on the Executive in the introduction of legislation is a fetter on the sovereignty of Parliament itself".[33]

25. Moreover, recognizing a duty to consult that had to be discharged *before* legislation was introduced and passed by Parliament (either in the original or an amended form), would artificially ignore the remainder of the law-making process, including the notification and public consultation opportunities typically afforded through the Parliamentary process before the final version of the bill is passed. It could also arguably be extended to constrain the government's ability to accept amendments to legislation in

[31] *Mikisew Cree*, ¶54; *Gitxaala Nation v. Canada*, [2016] 4 FCR 418, 2016 FCA 187 at para. 233.
[32] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, [2010] 2 SCR 650 at para. 37.
[33] *Reference re Canada Assistance Plan (Canada)*, [1991] 2 S.C.R. 525 at para. 65.

the Parliamentary process without engaging in further consultation with all affected Aboriginal groups across the country.

26. A similar conflict in the law-making process has been considered in the administrative law context, where the right to procedural fairness had to be reconciled with the constitutional principle of Parliamentary sovereignty. While the duty to consult is not the same as the common law duty of fairness,[34] such an analysis is instructive in determining the scope of Parliamentary sovereignty and how in some cases there cannot be a balancing of two conflicting principles but only a bright-line test. In administrative law, the Courts determined that the right to procedural fairness was limited to the Crown's administrative function, and did not extend to the Crown's legislative function: "[t]he rules governing procedural fairness do not apply to a body exercising purely legislative functions".[35]

27. This very principle was recently affirmed by the Supreme Court of Canada:

> Had Mr. Green challenged the Law Society's decision to suspend him instead of simply challenging the impugned rules, this Court could have examined the specific procedure that the Law Society followed in making its decision. If the Law Society's decision was made in a manner that was not procedurally fair, the decision would then have been quashed. ***But the duty of fairness is engaged only if the Law Society makes a decision that affects the "rights, privileges or interests of an individual" by, for example, imposing a suspension, not when it acts in a legislative capacity to make rules of general application in the public interest***.[36]

28. In the administrative context, the distinction between the Crown's administrative and legislative function is not drawn based on a difference in how the functions affect individuals' rights. Instead, the distinction is drawn because the principles of Parliamentary sovereignty and the separation of powers demand it. As explained in *Reference re Resolution to Amend the Constitution:*

> It is unnecessary here to embark on any historical review of the "court" aspect of Parliament and the immunity of its procedures from judicial review. ***Courts come into the picture when legislation is enacted and not before (unless references are made to them for their opinion on a bill or a proposed enactment). It would be incompatible with the self-regulating — "inherent" is an apt word — authority of Houses of Parliament to deny their capacity to pass any kind of resolution***.

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[34] *Tsuu T'ina Nation v. Alberta (Minister of Environment)*, 2010 ABCA 137 at para. 36.
[35] *Reference re Canada Assistance Plan (Canada)*, [1991] 2 S.C.R. 525 at para. 68
[36] *Green v. Law Society of Manitoba*, 2017 SCC 20.

29. The principles of Parliamentary sovereignty, the separation of powers and the architecture of the Constitution require a similar disposition in the context of the Crown's duty to consult and its lack of applicability to the law-making process. While there are numerous policy reasons to encourage governments to consult Aboriginal peoples before introducing legislation that could adversely affect their asserted or established rights, it does not justify imposing a legal duty to do so and, in so doing, allowing judicial intervention in the law-making process or creating a different standard than legislation that could infringe *Charter* rights which would remain immune from judicial review in the law-making process.

30. If this Court were to recognize a duty to consult in the law-making process, ARL will submit that it would require a new/modified duty to consult framework that is specific to the law-making process in order preserve Parliamentary sovereignty and the separation of powers. This would need to address, among other things the type of legislation that could trigger the duty, the timing and substance of the duty, and the timing and scope of judicial review and remedies available in the event of a breach.

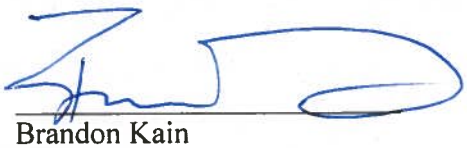
PART IV—SUBMISSIONS CONCERNING COSTS

31. ARL requests that no costs be awarded either for or against it.

PART V—ORDER SOUGHT

32. ARL requests that it be granted leave to intervene in this appeal, with permission to present 5 minutes of oral argument and file a 10 page factum.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of September, 2017.



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PART 11

Particular Motions

Motion for Intervention

55 Any person interested in an application for leave to appeal, an appeal or a reference may make a motion for intervention to a judge.

56 A motion for intervention shall be made

(a) in the case of an application for leave to appeal, within 30 days after the filing of the application for leave to appeal;

(b) in the case of an appeal, within four weeks after the filing of the appellant's factum; and

(c) in the case of a reference, within four weeks after the filing of the Governor in Council's factum.

SOR/2006-203, s. 29; SOR/2013-175, s. 37(E).

57 (1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.

(2) A motion for intervention shall

(a) identify the position the person interested in the proceeding intends to take with respect to the questions on which they propose to intervene; and

(b) set out the submissions to be advanced by the person interested in the proceeding with respect to the questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

SOR/2013-175, s. 38.

58 At the end of the applicable time referred to in Rule 51, the Registrar shall submit to a judge all motions for intervention that have been made within the time required by Rule 56.

SOR/2006-203, s. 30.

59 (1) In an order granting an intervention, the judge may

(a) make provisions as to additional disbursements incurred by the appellant or respondent as a result of the intervention; and

PARTIE 11

Requêtes spéciales

Requête en intervention

55 Toute personne ayant un intérêt dans une demande d'autorisation d'appel, un appel ou un renvoi peut, par requête à un juge, demander l'autorisation d'intervenir.

56 La requête en intervention est présentée dans les délais suivants :

a) dans le cas de la demande d'autorisation d'appel, dans les trente jours suivant son dépôt;

b) dans le cas d'un appel, dans les quatre semaines suivant le dépôt du mémoire de l'appelant;

c) dans le cas d'un renvoi, dans les quatre semaines suivant le dépôt du mémoire du gouverneur en conseil.

DORS/2006-203, art. 29; DORS/2013-175, art. 37(A).

57 (1) L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.

(2) La requête expose ce qui suit :

a) la position que cette personne compte prendre relativement aux questions visées par son intervention;

b) ses arguments relativement aux questions visées par son intervention, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.

DORS/2013-175, art. 38.

58 À l'expiration du délai applicable selon la règle 51, le registraire présente au juge toutes les requêtes en intervention présentées dans les délais prévus à la règle 56.

DORS/2006-203, art. 30.

59 (1) Dans l'ordonnance octroyant l'autorisation d'intervenir, le juge peut :

a) prévoir comment seront supportés les dépens supplémentaires de l'appelant ou de l'intimé résultant de l'intervention;

(b) impose any terms and conditions and grant any rights and privileges that the judge may determine, including whether the intervener is entitled to adduce further evidence or otherwise to supplement the record.

(2) In an order granting an intervention or after the time for serving and filing all of the memoranda of argument on an application for leave to appeal or the facta on an appeal or reference has expired, a judge may authorize the intervener to present oral argument at the hearing of the application for leave to appeal, if any, the appeal or the reference, and determine the time to be allotted for oral argument.

(3) An intervener is not permitted to raise new issues unless otherwise ordered by a judge.

SOR/2006-203, s. 31; SOR/2016-271, s. 34.

60 [Repealed, SOR/2016-271, s. 35]

61 [Repealed, SOR/2016-271, s. 35]

Motion to Stay

[SOR/2011-74, s. 30(F)]

62 Any party against whom a judgment has been given, or an order made, by the Court or any other court, may make a motion to the Court for a stay of execution or other relief against such judgment or order, and the Court may give such relief on the terms that may be appropriate.

Motion to Quash

63 (1) Within 30 days after the filing of a proceeding referred to in section 44 of the Act, a respondent may make a motion to the Court to quash the proceeding.

(2) Upon service of the motion to quash, the proceeding shall be stayed until the motion has been disposed of unless the Court or a judge otherwise orders.

(3) If the proceeding is quashed, the party bringing the proceeding may, in the discretion of the Court, be ordered to pay the whole or any part of the costs of the proceeding.

Assignment of Counsel by the Court to Act on Behalf of Accused

63.1 (1) For the purposes of section 694.1 of the *Criminal Code*, the accused who is the appellant, applicant or

b) imposer des conditions et octroyer les droits et privilèges qu'il détermine, notamment le droit d'apporter d'autres éléments de preuve ou de compléter autrement le dossier.

(2) Dans l'ordonnance octroyant l'autorisation d'intervenir ou après l'expiration du délai de signification et de dépôt des mémoires de demande d'autorisation d'appel, d'appel ou de renvoi, le juge peut, à sa discrétion, autoriser l'intervenant à présenter une plaidoirie orale à l'audition de la demande d'autorisation d'appel, de l'appel ou du renvoi, selon le cas, et déterminer le temps alloué pour la plaidoirie orale.

(3) Sauf ordonnance contraire d'un juge, l'intervenant n'est pas autorisé à soulever de nouvelles questions.

DORS/2006-203, art. 31; DORS/2016-271, art. 34.

60 [Abrogé, DORS/2016-271, art. 35]

61 [Abrogé, DORS/2016-271, art. 35]

Requête en sursis d'exécution

[DORS/2011-74, art. 30(F)]

62 La partie contre laquelle la Cour ou un autre tribunal a rendu un jugement ou une ordonnance peut demander à la Cour un sursis à l'exécution de ce jugement ou de cette ordonnance ou un autre redressement, et la Cour peut accéder à cette demande aux conditions qu'elle estime indiquées.

Requête en cassation

63 (1) L'intimé peut présenter à la Cour, dans les trente jours suivant l'engagement d'une procédure visée à l'article 44 de la Loi, une requête pour casser la procédure.

(2) Sauf ordonnance contraire de la Cour ou d'un juge, la signification de la requête en cassation emporte suspension de la procédure jusqu'à ce qu'il soit statué sur la requête.

(3) Si elle fait droit à la requête, la Cour peut, à sa discrétion, ordonner à la partie instituant la procédure de payer tout ou partie des dépens de la procédure.

Désignation par la Cour d'un procureur pour agir au nom d'un accusé

63.1 (1) Pour l'application de l'article 694.1 du *Code criminel*, l'accusé, qui est appelant, demandeur ou intimé