

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

WILLIAM HULET

Applicant
(Responding Party)

and

THE CORPORATION OF THE CITY OF GUELPH

Respondent

Proceeding commenced pursuant to section 273(1) of the
Municipal Act, 2001, S.O. 2001, Chapter 25

RESPONDING PARTY'S FACTUM
(Motion by 6&7 Developments Limited returnable March 21, 2006)

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PART I – OVERVIEW

1. The applicant, William Hulet (“Hulet”), has brought an application seeking a declaration quashing Zoning By-law 1995-14864 of the City of Guelph, as amended, which rezones lands located at the northwest corner of Woodlawn Road (Highway #7) and Woolwich Street (Highway #6) from "UR" (Urban Reserve) Zone and other zonings to a site specific zoning, to permit a large-scale retail commercial development (the “Amended Zoning By-law”).

2. Hulet alleges the Amended By-law will permit development that will interfere directly with the religious beliefs and practices of a wide variety of faith traditions that use, primarily, the Ignatius Jesuit Centre (“IJC”), a world-renowned spiritual retreat centre, that for almost a century has welcomed people of all faiths, including Aboriginals, Anglicans, Baptists, Buddhists, Catholics, Daoists, Jesuits, Lutherans and Uniteds, Yogics and Zens. The application is based solely on section 2(a) of the Charter of Rights and Freedoms (the “Charter”).

3. The subject lands are owned by 6&7 Developments Limited (“6&7”). 6&7 holds property and economic rights in these lands. As a corporation, it has no religious knowledge or beliefs. It seeks to be added in order to protect its “commercial development rights”. However, under the Charter, economic and property rights were intentional excluded. Economic and property rights were intentionally granted no protection. As a result, it is clear that 6&7 has no ability to seek standing to defend its private property and economic interests in a Charter case.

4. Furthermore, 6&7 makes application under Rule 13.01 to intervene as an added party. Intervention under this Rule requires more than simply demonstrating that the applicant “has an interest in the subject matter of the proceeding” or “may be adversely affected by a judgment”. In *Peel v. Great Atlantic & Pacific Co. of Canada Ltd* (1990), 74 O.R. (2d) 164 (C.A.), Dubin C.J.O. indicated that significantly more is required:

Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered *are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution* to the resolution of the appeal without causing injustice to the immediate parties. (p. 167) [emphasis added]

5. This requirement has been further clarified in subsequent decisions:

Regardless of whether the proposed intervention is under rule 13.01 or rule 13.02, the court's focus should be on determining whether the contribution that might be made by the intervenors is sufficient to counterbalance the disruption caused by the increase in the magnitude, timing, complexity and costs of the original action. ... (p. 77)

The onus is on the proposed intervenors to demonstrate that the court's ability to determine the issue, in this case the constitutional question, would be enhanced by the intervention. ... (p. 79)

It is clear that the intervenors contribution must go beyond the repetition of another party's arguments. ... (p. 79)

What they have done is promise not to overlap or duplicate any of the arguments or materials of the original parties. However, the onus is on them to persuade the court of the significance of what they would be doing rather than the significance of what they would not be doing. The moving party presented the court with no information as to what contribution they can make to the legal argument in this proceeding, over and above that which will be made by the parties. ... (p. 80)

M. v. H. (1994), 20 O.R. (3d) 70 (Gen. Div.), case cited with approval in *Sudbury (City) v. Union Gas Limited*, [2001] O.J. No. 80 (C.A.) per Osborne A.C.J.O.

6. Together, the decisions in *Peel* and *M. v H.* have been cited in 68 subsequent decisions, and in many of the leading cases on Charter intervention. With respect, the moving party here has clearly failed to meet these requirements. First, despite repeated requests, the moving party has failed to indicate what, if any contribution it can make, specifically stating "it's not necessary for 6&7 to demonstrate that it would add anything to the mix." Second, it has acknowledged that throughout all proceedings to date, 6&7 and the City have submitted joint facts, joint authorities and made joint submissions at every level. There is nothing in 6&7's position or interests that is unknown to the City and that cannot be advanced by the City. At the same time, 6&7 admits that the City, in fact, has the broader concerns regarding the implications of this case. The OMB and courts have both confirmed that the by-law in this case applies to the use, and not the user of lands. To then allow the user of these lands to intervene, where it has failed, and in fact refused to indicate in any clear way that it will offer more than can be offered by the City, would directly contravene the well established requirements for intervention in constitutional cases.

PART II – THE FACTS

The Application

7. On February 9, 2006, the applicant brought an application before this Honorable Court seeking a declaration quashing Zoning By-law 1995-14864 of the City of Guelph, as amended, rezoning lands located at the northwest corner of Woodlawn Road (Highway #7) and Woolwich Street (Highway #6) from "UR" (Urban Reserve) Zone and other zonings to a site specific zoning to permit a phased, retail commercial development (the "Amended Zoning By-law").

Application Record, Vol. 1, Tab 1, p. 1

8. The Amended Zoning By-law came into effect on January 20, 2006. The Amended Zoning By-law permits large scale commercial development the on subject lands (the "Proposed Site"). More specifically, approximately 155,000 sq. ft. of commercial development has now been approved for the Proposed Site. Located in close proximity to the Proposed Site, are:

- a. the Ignatius Jesuit Centre, a 600 acre religious centre and spiritual retreat complex;
- b. the Marymount Catholic Cemetery, the only Catholic cemetery in the City of Guelph; and
- c. the Woodlawn Cemetery, the only public cemetery in the City of Guelph

Application Record, Vol. 1, Tab 1, pp. 3-4

9. The users of these lands are members of many different world religious and spiritual traditions. The application alleges that the Amended Zoning By-law permits significant interference with religious and spiritual beliefs and with religious and spiritual practices. Therefore, the application alleges that the Amended Zoning By-law violates section 2(a) of the Canadian Charter of Rights and Freedoms.

Application Record, Vol. 1, Tab 1, pp.3-5

The Motion to Intervene as an Added Party

10. The Amended Zoning By-law is a by-law of the City of Guelph. Consequently, the Corporation of the City of Guelph (the “City”) is a necessary party and was named as the respondent to the application. On February 15, 2006, counsel for the moving party 6&7 Developments Limited (“6&7”) wrote to counsel for the applicant, seeking leave to intervene in the application, as an added party, pursuant Rule 13.01 of the Rules of Civil Procedure.

Affidavit of Allan Scully, Exhibit E, Motion Record, Tab 2E, pp. 77-78

11. 6&7 is the owner of the lands in question, and intends to develop a Wal-mart store at this location, together with other commercial retail uses. There are currently between 265 and 280 Wal-mart locations in Canada. Every year, between 10 and 30 new Wal-mart locations are under development.

Cross-examination of Allan Scully, March 14, 2006, pp. 2-3, q. 6-8

12. Subsequently, on March 3, 2006, 6&7 served its notice of motion together with the affidavit of Allan Scully, a representative of the moving party. The motion requests that the court grant leave to intervene as an added party in the application.

Notice of Motion and Affidavit of Allan Scully, Motion Record, Tab 1, p. 1 and Tab 2, pp. 5-12

13. In his affidavit, the witness discusses the planning process related to the proposed Guelph location, commencing in 1995 and lasting 11 years, including nine public meetings, more than 17 prehearing conferences and numerous preliminary motions before the Ontario Municipal Board (the “OMB”). He also discusses the OMB hearing that commenced on August 3, 2004.

Affidavit of Allan Scully, Motion Record, Tab 2, paras. 5-17, pp. 6-8

14. However, in cross-examination he acknowledged that the issue of freedom of religion and section 2 of the Charter was not raised until almost the end of the OMB hearing process.

Cross-examination of Allan Scully, March 14, 2006, p. 5, q. 22-23

15. Once identified, the issue was considered by the OMB. On the evidence and information before it at the time, the OMB found that no one's freedom of religion was infringed. Leave from this decision was sought and granted to the Divisional Court, that ultimately declined to overturn the decision of the OMB. Leave to appeal to the Ontario Court of Appeal was sought but was refused.

Affidavit of Allan Scully, Motion Record, Tab 2, paras. 14-22, pp. 8-9

16. However, as acknowledged by 6&7's witness; "6&7 and the City were parties to all of the above-described Court proceedings. Their counsel made complementary oral submissions to the Divisional Court on the leave motion and on the Divisional Court appeal, and joint facta and books of authorities were provided to the Court on behalf of 6&7 and the City on both occasions. The leave motion to the Court of Appeal proceeded by way of written submissions alone, and 6&7 again cooperated with the City to submit a joint factum and book of authorities."

Affidavit of Allan Scully, Motion Record, Tab 2, para. 22, p. 9

17. In addition, the record before the OMB and courts was limited. Indeed, the application before this Honourable Court includes affidavits from 29 different individuals, including but not limited to persons whose spiritual and faith traditions include Aboriginal, Anglican, Baptist, Buddhist, Catholic, Daoist, Jesuit, Lutheran and United, Yogic and Zen, as well as persons who are physically and mentally challenged in different ways. 28 of these 29 individuals were not called to give evidence before the OMB or referenced in the OMB's decision. Hence, their evidence and perspectives were also never canvassed or considered by the courts.

Application Record, Vol. 1, Tab 1, pp. 4-7

Affidavit of Allan Scully, Exhibit B, Motion Record, Tab 2B, pp.35-37

Additional Acknowledgements and Admissions by 6&7

18. In relation to the application now before this Court, the witness for 6&7 acknowledged that 6&7 enjoys “commercial development rights” at its location in Guelph, and claims an interest in and prejudice should these development approvals be lost.

Affidavit of Allan Scully, Motion Record, Tab 2, para. 24, p.106

19. He also candidly acknowledged that has not seen, and, therefore, has not reviewed any of the statements or evidence filed in this application. At the same time, 6&7 has also confirmed that it is seeking full rights without any limitations on its intervention. It also confirms that it is not prepared to waive any costs.

Cross-examination of Allan Scully, March 14, 2006, p. 6, q. 26

20. When asked what 6&7 would add to this application that the City cannot address, 6&7 declined to provide any answer, with legal counsel indicating that in the view of 6&7 it is unnecessary to try to answer the question.

Cross-examination of Allan Scully, March 14, 2006, p. 12, q. 44

21. When asked if there is anything that in the view of 6&7 the City cannot address on this application, counsel responded that “it’s not necessary for 6&7 to demonstrate that it would add anything to the mix.” Counsel then speculated that it is possible that 6&7 may add something, particularly if the City ends up not being present at the hearing, or that they may add something in terms of perspective. However, no specifics whatsoever were provided. Indeed, counsel for 6&7 expressly acknowledged that the City would be the party to have “broader concerns about the implications of this attack on the City’s by-laws ...”

Cross-examination of Allan Scully, March 14, 2006, p. 13, q. 45

22. Counsel also indicated that 6&7 would have “evidence” regarding the issue of physical impacts that may emanate from the facility that the City may not have the same ability to advance. Finally, counsel also indicated that to the extent that there is any overlap between the

positions of City and 6&7, that 6&7 is committed to streamlining the process and insuring that there is no duplication of submissions, written or oral.

Cross-examination of Allan Scully, March 14, 2006, p. 14, q. 45

23. 6&7 has also confirmed that it is seeking full rights without any limitations on its intervention. It also confirms that it is not prepared to waive any costs.

Cross-examination of Allan Scully, March 14, 2006, p. 15, l. 2-7 and p. 16, l. 18-20

24. In relation to its concerns regarding the possibility of the City withdrawing from the hearing, 6&7 now indicates that the sole source of its information regarding a possible motion to withdraw was a single newspaper story; that 6&7 has no direct knowledge of the process other than the article; that the potential motion has now been withdrawn; that 6&7 is not aware of any current intention to bring or not bring such a motion; and that 6&7 has no knowledge regarding the rules of Guelph Council regarding these types of matters.

Cross-examination of Allan Scully, March 14, 2006, p. 17-18, q. 47

PART III – THE LAW

Property and Economic Interests - No Right to Intervene in Charter Cases

1. It is a fundamental principle of Charter interpretation that the Charter does not protect property rights or economic interests:

The omission of property from the s. 7 was a striking and deliberate departure from the constitutional texts that provided the models for s. 7. The due process clauses in the fifth and fourteenth amendments of the Constitution of the United States protect “life, liberty or property”. And the due process clause in s. 1(a) of the Canadian Bill of Rights protects “life, liberty, security of the person and enjoyment of property” ... the omission of property rights from s. 7 greatly reduces its scope. ...

The Supreme Court of Canada has held that s. 7 does not apply to corporations, because “liberty” does not include corporate activity. Nor does “liberty” include the right to do business, for example, by selling goods on a Sunday.

It also requires ... that those terms be interpreted as excluding economic liberty and economic security; otherwise, property, having been shut out of the front door, would enter by the back. ...

P.W. Hogg, *Constitutional Law of Canada* (Carswell: Toronto: [loose leaf edition]), Responding Party’s Authorities, Tab 1, pages 44-10 and 44-15.

25. The moving party here is a corporation. It carries on economic activity in the form of owning land i.e. property, and seeking to operate a purely economic endeavor, namely a retail shopping centre. None of these activities, including shopping, are recognized or protected under the Charter.

26. However, 6&7 now seeks to intervene as an added party in a Charter case, in order to protect its private, “commercial development rights”. It is respectfully submitted that economic rights, property rights and commercial interests clearly have no status and no place in Charter litigation. To permit a corporation to intervene in these circumstances, to advance or defend what are clearly economic interests, is to permit what has been expressly excluded by the Supreme Court of Canada through the front door to enter directly by the back. Consequently, the motion to intervene by 6&7 should be dismissed.

The By-law in Issue Applies to the “Use” and not the “User”

27. A second fundamental finding, directly in this case, has been that the Amended Zoning By-law applies to the *use* of the subject lands, and not the *user*. More specifically, as noted by the Divisional Court, “the planning instruments only regulate uses (that is, the junior department store) and not users (that is, Wal-Mart).”

Endorsement of the Divisional Court dated August 12, 2005, Affidavit of Allan Scully, Exhibit c, Motion Record, Tab 2C, p. 70, para. 12.

28. Here, the moving party now is in fact the user of the land. However, given the holdings of the Divisional Court on this issue, the impugned by-law is not directed at 6&7 or any other specific user. It is directed at all users, who may include 6&7 or who may include many other different entities in the future. The Amended Zoning By-law is in fact a by-law of the City of Guelph, that will continue to apply whether 6&7 is, or is not an owner or user of these lands.

29. The City has certainly supported and promoted 6&7 interests in these lands as part of its function. However, in addition to respecting 6&7, the City is also in the best position to recognize and respect the needs of other future users of these lands. As a result, given that the by-law has been expressly held to apply to the land “use” and not to apply to the “user”, it now appears highly irregular to suggest that the “user” 6&7 be granted intervener status in this case.

6&7 Has Not Satisfied Numerous Requirements for Rule 13 Intervention

30. In addition to overcoming the foregoing fundamental issues, on a Rule 13 intervention application, the Ontario Court of Appeal has established specific tests that must also be met before an intervention, either as an added party or as a friend of the court can succeed:

Although much has been written as to the proper matters to be considered in determining whether an application for intervention should be granted, in the end, in my opinion, the matters to be considered *are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution* to the resolution of the appeal without causing injustice to the immediate parties. [emphasis added]

Peel v. Great Atlantic & Pacific Co. of Canada Ltd (1990), 74 O.R. (2d) 164 (C.A.), per Dubin C.J.O., Responding Party’s Authorities, Tab 2, page 167.

31. Particularly where arguments may overlap, in addition to having a direct interest in the outcome, the moving party should be able to demonstrate “a special knowledge and expertise in the subject-matter” of the application. Here, as noted above, corporate entities have no religious freedoms, rights or beliefs. *Prima facie* then, the moving party has no ability to demonstrate any special knowledge or expertise in the area of religious rights and freedoms, nor has it attempted to. As a result, 6&7 directly fails to meet one of the most basic standards for intervention.

32. In addition, as noted in the *Peel* decision, “the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties”. The dicta in *Peel* of Chief Justice Dubin has been cited in 56 subsequent decisions, including recent decisions rendered by the current Chief Justice of the Court of Appeal.

Quickcite Citations - *Peel v. Great Atlantic & Pacific Co. of Canada Ltd* (1990), 74 O.R. (2d) 164 (C.A.) per Dubin C.J.O., Responding Party’s Authorities, Tab 3. p. 1.

Canada Post Corp. v. Key Mail Canada Inc., [2005] O.J. No. 1299 (C.A.) per McMurtry C.J.O., Responding Party’s Authorities, Tab 4, p. 3, para. 7.

33. These requirements have been further refined and commented on in subsequent cases, including the decision in *M. v H.*:

Regardless of whether the proposed intervention is under rule 13.01 or rule 13.02, the court’s focus should be on determining whether the contribution that might be made by the intervenors is sufficient to counterbalance the disruption caused by the increase in the magnitude, timing, complexity and costs of the original action. ... (p. 77)

The onus is on the proposed intervenors to demonstrate that the court’s ability to determine the issue, in this case the constitutional question, would be enhanced by the intervention. ... (p. 79)

It is clear that the intervenors contribution must go beyond the repetition of another party's arguments. ... (p. 79)

What they have done is promise not to overlap or duplicate any of the arguments or materials of the original parties. However, the onus is on them to persuade the court of the significance of what they would be doing rather than the significance of what they would not be doing. The moving party presented the court with no information as to what contribution they can make to the legal argument in this proceeding, over and above that which will be made by the parties. ... (p. 80)

an intervention adds to the costs and complexity of the litigation, regardless of agreements to restrict submissions. It always constitutes an inconvenience that ought not to be imposed on the parties except under compelling circumstances, which do not exist in this case (p. 80)

M. v. H. (1994), 20 O.R. (3d) 70 (Gen. Div.), Responding Party’s Authorities, Tab 5, pp. 77, 79 and 80.

34. *M. v H.* has been referred to with approval by the Ontario Court of Appeal. It too has been followed numerous times in major Charter cases including *Halpern v. Toronto* (same sex marriages) and in cases such as *Bloorview Childrens Hospital Foundation v. Bloorview MacMillan Centre*, specifically cited here as good authority by the moving party 6&7.

Quickcite Citations - *M. v. H.* (1994), 20 O.R. (3d) 70 (Gen. Div.), Responding Party's Authorities, Tab 6, p. 1.

Sudbury (City) v. Union Gas Limited, [2001] O.J. No. 80 (C.A.) per Osborne A.C.J.O., Responding Party's Authorities, Tab 7, p. 4, para. 12.

Bloorview Childrens Hospital Foundation v. Bloorview MacMillan Centre, [2001] O.J. no. 1700 (S.C.J., Moving Party's Authorities, Tab 2, p. 6, para. 23.

35. As clearly indicated in both *Peel* and *M. v H.*, it is a fundamental requirement that the moving party wishing to intervene demonstrate “the likelihood that (it) will make a useful contribution”, and that “the court’s ability to determine the issue, in this case the constitutional question, would be enhanced by the intervention.” As already noted, as a private corporation with no religious rights or beliefs, it is difficult if not impossible to see how this test could be met in this case.

36. As also indicated, the onus is clearly on the moving party to provide evidence as to how it will contribute in some way, that the primary parties to hearing cannot. However as also noted above, despite being asked directly if there is anything the City cannot address on this application, counsel indicated that “it’s not necessary for 6&7 to demonstrate that it would add anything to the mix.” With respect, 6&7 has clearly failed to meet the required standard. In light of previous holdings that added party interventions “ought not to be imposed on the parties except under compelling circumstances”, the vague assertions by 6&7, that are speculative and not support by any evidence, also do not meet the test.

37. At its highest, 6&7 suggests that “its particular perspective on, and history of involvement” with the development may assist the Court (6&7 Factum, p. 9, para. 33). However, it provides no evidence of how its contribution will differ in any material way from that of the City’s. Indeed, as also noted, 6&7 candidly admits that throughout every phase of the planning process relevant to this application, the City and 6&7 have worked jointly and in

complete cooperation. Again, the City is equally and completely aware of the history of this case, having had the same legal counsel representing it throughout. There is nothing to indicate or support the proposition that the City is not capable of fully advancing the case.

38. Instead, what 6&7 does offer is numerous assurances it will not duplicate work product or submissions. However, as also indicated in the applicable case law “(w)hat they have done is promise not to overlap or duplicate any of the arguments or materials of the original parties. However, the onus is on them to persuade the court of the significance of what they would be doing rather than the significance of what they would not be doing.” This has not occurred.

39. At the same time, there are already indications that disruptions may occur. For example, the affidavit evidence provided in support of the 6&7 motion contains extensive references to a lengthy and complex OMB process. However, as admitted by the moving party’s witness on cross-examination, the issue of freedom of religion was never specifically identified or addressed until the entire OMB process was almost fully completed. Therefore, the issue now before this Court was never even considered or addressed by City Council or by staff for the City, at any of the public meetings, prehearing conferences, preliminary motions or throughout almost all of the OMB hearing process.

40. This lengthy “history” that 6&7 now seeks to introduce, appears likely to occupy significant time in this proceeding, but add very little in the way of relevant information. Perhaps more importantly, there is no indication of why the City cannot address the same issues, given that it fully and completely participated in exactly the same process. Even if the opposing parties agree to not duplicate their efforts, as also held in the applicable case law, “an intervention adds to the costs and complexity of the litigation, regardless of agreements to restrict submissions.” This clearly causes prejudice to the applicant.

41. The participation of a second party also has the very practical consequence of effectively doubling the potential costs consequences and costs exposure to the applicant in this case. While the City is preparing materials and making submissions, if granted intervention as an added party, 6&7 will no doubt be reviewing these same materials, preparing additional materials, attending cross-examinations and hearings etc. Once again, 6&7 has already expressly

indicated that it is not prepared to waive any of its costs. Whether 6&7 is actively or passively participating, there will now be two, full sets of costs the applicant will have to face. This is a clear prejudice to the applicant, that should only be imposed if there is a clear indication of the role and value that 6&7 will bring to these proceedings, which there is not.

42. The moving party does suggest that its input would be important if the City were to withdraw from this application. However, as set out in paragraph 24, *infra*, 6&7 now indicates that the sole source of its information regarding a possible motion to withdraw from this case was a single newspaper story; that 6&7 has no direct knowledge of the process other than the article; that the potential motion has now been withdrawn; that 6&7 is not aware of any current intention to bring or not bring such a motion; and that 6&7 has no knowledge regarding the rules of Guelph Council regarding these types of matters.

43. The Court needs the ability to properly assess the true probability of such an event occurring. It is surprising that on an issue directly involving the City of Guelph, which is already a party to this application, that the City has filed no evidence regarding this issue. Given that the City is clearly in the best position to advise the Court if there was any real prospect of the City withdrawing, but has not done so, the applicant submits that there appears to be no basis in fact or reality to make a finding, that after supporting the 6&7 project at the OMB, at the Divisional Court, at the Court of Appeal and now before this Honourable Court, the City will suddenly withdraw. As the parties to this motion are aware, civil cases are adjudicated on the balance of probability, and it is respectfully submitted that far stronger evidence than what has been presented by 6&7, and by the City, would be required to make such a finding here.

44. Finally, counsel for 6&7 did indicate that it may have “evidence” regarding the issue of physical impacts that may emanate from the facility that the City may not have the same ability to advance. However, it is necessary to draw a clear distinction between the ability to give evidence, and the rights and privileges that come with complete and full party status. In this case, as with many others, 6&7 may have information that may be relevant to this matter. However, this does not mean that the interests of the court and the other parties are properly served by allowing it intervene as an added party, with the right to call evidence, cross-examine,

make submissions, bring appeals etc. If all individuals or entities with important and relevant information were permitted to intervene as added parties in this case, it would immediately become unmanageable. There is a very clear way for 6&7 to continue to participate in this case and provide to the Court anything that it views as relevant and significant to these proceedings. This is through the City. This is the conclusion reached by the Ontario Court of Appeal in other cases. In *R. v. Finta*, Associate Chief Justice Morden held:

Although the moving party has a profound interest in the effective and fair prosecution of proceedings such as this one, I am not persuaded, on the submissions made to me, that the assistance which the moving party could give to the court as an intervener would be different from that which will be given by the Attorney General of Canada. In other words, it is not made out in what way the moving party's different perspective manifests itself in different submissions. The Attorney General, of course, has an interest in defending the challenged legislation on every basis that is relevant and possible and has a corresponding duty to assist the court. ...

It would appear that, if this is so, the relevant evidentiary or factual considerations to which he referred relating to the need for the legislation are ones which the Attorney General would place before the court. If this necessarily involved the assistance of the moving party, there is every reason to believe that it would be forthcoming,

Regina v. Finta, [1990] O.J. No. 2282 (C.A.), Responding Party's Authorities, Tab 8, p. 4-5.

45. There is little doubt that 6&7 will claim a profound, economic interest in the outcome of these proceedings. Its input and evidence will no doubt be forthcoming and available to the City should it wish. However, it has not demonstrated how, if at all, its role would be materially different from that of the City so as to justify its participation as an added party intervener in this case. Fundamentally this is a Charter case, where economic and property rights are not protected or ensured, and where a corporation such as 6&7 offers no expertise or special knowledge. Given that 6&7 has been unable, and indeed unwilling to indicate how the City is not fully informed and fully capable of conducting this action, the applicant respectfully submits that the significant onus on 6&7 to allow it to intervene has not been met in this case.

PART IV – ORDER SOUGHT

46. The applicant respectfully requests that this Honourable Court dismiss the moving party's motion and respectfully requests his costs.

All of which is respectfully submitted this 17th day of March 2005.

Eric K. Gillespie
Of counsel for the applicant/responding party

SCHEDULE A

AUTHORITIES

Case Law

1. *Canada Post Corp. v. Key Mail Canada Inc.*, [2005] O.J. No. 1299 (C.A.)
2. *M. v. H.* (1994), 20 O.R. (3d) 70 (Gen. Div.)
3. *Peel v. Great Atlantic & Pacific Co. of Canada Ltd* (1990), 74 O.R. (2d) 164 (C.A.)
4. *Regina v. Finta*, [1990] O.J. No. 2282 (C.A.)
5. *Sudbury (City) v. Union Gas Limited*, [2001] O.J. No. 80 (C.A.)

Treatises

6. P.W. Hogg, *Constitutional Law of Canada* (Carswell: Toronto: [loose leaf edition])(excerpts)

SCHEDULE B

STATUTES AND REGULATIONS

Rules of Civil Procedure

INTERVENTION RULE 13

LEAVE TO INTERVENE AS ADDED PARTY

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person 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 one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(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 as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, 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. R.R.O. 1990, Reg. 194, r. 13.02.