

CANADA / JUDGMENT

Canada (Dir. of Investigation) v. N.B. Telephone

[1987] 2 SCR 485

COURT

Supreme Court of Canada

DECIDED

19 November 1987

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Canada (Dir. of Investigation) v. N.B. Telephone Collection Supreme Court Judgments Date
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[1987] 2 SCR 485 Case number 18890 Judges Beetz, Jean; McIntyre, William Rogers; Lamer, Antonio; Wilson, Bertha; Le Dain, Gerald Eric On appeal from New Brunswick Subjects Administrative law Notes SCC Case Information: 18890 Decision Content Canada (Dir. of Investigation) v. N.B. Telephone, [1987] 2 S.C.R. 485 New Brunswick Telephone Company, Limited Appellant (Respondent) v. Lawson A. W. Hunter Respondent (Applicant) and Board of Commissioners of Public Utilities for the Province of New Brunswick (Respondent) indexed as: canada (director of investigation and research under the combines investigation act) v. new brunswick telephone co. File No.: 18890. 1986: May 29; 1987: November 19. Present: Beetz, McIntyre, Lamer, Wilson and Le Dain JJ. on appeal from the court of appeal for new brunswick Administrative law -- Intervention in proceedings before administrative tribunal -- Whether public officer whose office is created by statute requires statutory authority to intervene before administrative tribunal with permission of tribunal -- Authority of tribunal to permit intervention -- Combines Investigation Act, R.S.C. 1970, c. C-23. The New Brunswick Court of Appeal allowed an appeal from the judgment of the Court of Queen's Bench which dismissed an application for judicial review of the decision of the Board of Commissioners of Public Utilities for New Brunswick refusing the Director of Investigation and Research permission to intervene in the application of the New Brunswick Telephone Co. for confirmation of its interpretation of its general tariff on the ground that the Director lacked statutory authority or capacity to intervene. This appeal raised the following questions: (a) whether a public officer whose office has been created by statute requires statutory authority, express or implied, to intervene in his official capacity in proceedings before an administrative tribunal, with the permission of the tribunal, to make representations and adduce evidence with respect to the public policy for which he is responsible; (b) if so, whether an administrative tribunal may validly permit such intervention despite the lack of such authority; and (c) if not, whether the Director of Investigation and Research under

the Combines Investigation Act, R.S.C. 1970, c. C-23, had statutory authority to intervene in proceedings before a provincial regulatory tribunal, with the permission of the tribunal, to make representations and adduce evidence with respect to the competition implications of an application by a provincial public utility for confirmation of its interpretation of its general tariff. Held: The appeal should be allowed. The Board did not err in refusing the Director permission to intervene for the reasons given in *Canada (Director of Investigation and Research under the Combines Investigation Act) v. Newfoundland Telephone Co.*, [1987] 2 S.C.R. 466. Cases Cited Followed: *Canada (Director of Investigation and Research under the Combines Investigation Act) v. Newfoundland Telephone Co.*, [1987] 2 S.C.R. 466. Statutes and Regulations Cited Combines Investigation Act, R.S.C. 1970, c. C-23. APPEAL from a judgment of the New Brunswick Court of Appeal (1984), 53 N.B.R. (2d) 343, 8 D.L.R. (4th) 454, 138 A.P.R. 343, allowing an appeal from a judgment of the New Brunswick Court of Queen's Bench (1984), 52 N.B.R. (2d) 173, 137 A.P.R. 173, dismissing an application for judicial review of a decision of the Board of Commissioners of Public Utilities for New Brunswick refusing the Director permission to intervene. Appeal allowed. M. Robert Jette, for the appellant. W. J. Miller and Bruce Russell, for the respondent Lawson A. W. Hunter. The judgment of the Court was delivered by

1. Le Dain J.--This appeal raises the following questions: (a) whether a public officer whose office has been created by statute requires statutory authority, express or implied, to intervene in his official capacity in proceedings before an administrative tribunal, with the permission of the tribunal, to make representations and adduce evidence with respect to the public policy for which he is responsible; (b) if so, whether an administrative tribunal may validly permit such intervention despite the lack of such authority; and (c) if not, whether the Director of Investigation and Research under the Combines Investigation Act, R.S.C. 1970, c. C-23, as amended by S.C. 1974-75-76, c. 76, had statutory authority to intervene in proceedings before a provincial regulatory tribunal, with the permission of the tribunal, to make representations and adduce evidence with respect to the competition implications of an application by a provincial public utility for confirmation of its view that it was not required by its general tariff to impose standard service charges on the transfer of customers from one service to another pursuant to the company's acquisition of the assets of certain businesses.
2. The appeal is by leave of this Court from the judgment of the New Brunswick Court of Appeal on April 6, 1984 (reported as *Re Hunter and Board of Public Utilities of New Brunswick* (1984), 8 D.L.R. (4th) 454), allowing an appeal from the judgment of the Court of Queen's Bench on November 18, 1983, which dismissed an application for judicial review of the decision of the Board of Commissioners of Public Utilities for New Brunswick on March 2, 1983 refusing the Director permission to intervene in the application of the New Brunswick Telephone Company, Limited for confirmation of its interpretation of its general tariff, as indicated above, on the ground that the Director lacked statutory authority or capacity to intervene.

3. This appeal was heard at the same time as the appeal in Canada (Director of Investigation and Research under the Combines Investigation Act) v. Newfoundland Telephone Co. ("the Newfoundland Telephone Co. appeal"), [1987] 2 S.C.R. 466, in which judgment on the same issues has been rendered today. For the reasons given in the Newfoundland Telephone Co. appeal, in which reference is made to the decision of the Board of Commissioners of Public Utilities for New Brunswick, the judgment of the Court of Queen's Bench and the judgment of the Court of Appeal, I conclude that the Board did not err in refusing the Director permission to intervene. I would accordingly allow the appeal, set aside the judgment of the Court of Appeal, and restore the judgment of the Court of Queen's Bench and the decision of the Board of Commissioners of Public Utilities, with costs to the appellant against the Director in this Court and in the Court of Appeal. Appeal allowed with costs. Solicitors for the appellant: Clark, Drummie & Company, Saint John. Solicitor for the respondent Lawson A. W. Hunter: The Attorney General of Canada, Ottawa. Solicitor for the Board of Commissioners of Public Utilities for the Province of New Brunswick: The Department of Justice, Fredericton.

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