

CANADA / JUDGMENT

R. v. Morgentaler

[1993] 1 SCR 462**COURT**

Supreme Court of Canada

DECIDED

2 February 1993

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R. v. Morgentaler Collection Supreme Court Judgments Date 1993-02-02 Report

[1993] 1 SCR 462 Case number 22578 Judges Sopinka, John On appeal from Nova Scotia Subjects Action Notes SCC Case Information: 22578 Decision Content R. v. Morgentaler, [1993] 1 S.C.R. 462 Her Majesty The Queen Appellant v. Henry Morgentaler Respondent and Canadian Abortion Rights Action League (CARAL) Intervener Indexed as: R. v. Morgentaler File No.: 22578. 1993: February 2. Present: Sopinka J. MOTION for an order prohibiting intervener from arguing new issues Practice -- Intervention -- New issues -- Supreme Court of Canada -- Motion to prohibit intervener from presenting argument on federal peace, order and good government power -- Intervener not entitled to widen or add to points in issue -- Motion granted. Cases Cited Referred to: Reference Re Workers' Compensation Act, 1983 (Nfld.), [1989] 2 S.C.R. 335. Statutes and Regulations Cited Medical Services Act, S.N.S. 1989, c. 9. MOTION on behalf of appellant to prohibit an intervener from arguing new issues in an appeal. Motion granted. Marian Tyson and Louise Walsh Poirier, for the motion. Mary Eberts and Ian Godfrey, for the intervener Canadian Abortion Rights Action League (CARAL). Anne Derreck, for the respondent. //Sopinka J.// The following is the judgment delivered by Sopinka J. -- The motion brought by the appellant Attorney General of Nova Scotia to prohibit the intervener (respondent on the motion) Canadian Abortion Rights Action League (CARAL) from presenting argument on the federal peace, order and good government power (POGG) is granted. The purpose of an intervention is to present the court with submissions which are useful and different from the perspective of a non-party who has a special interest or particular expertise in the subject matter of the appeal. See Reference Re Workers' Compensation Act, 1983 (Nfld.), [1989] 2 S.C.R. 335. An intervener is not entitled, however, to widen or add to the points in issue. Although it was brought to my attention that Dr. Morgentaler (the respondent in the appeal) raised the peace, order and good government issue in the Nova Scotia Provincial Court, the issue was not considered in the Provincial Court's decision nor did it arise in the Court of Appeal. Counsel for Dr. Morgentaler conceded at the hearing of this motion that the issue was not raised in the Court of Appeal or in this Court. It is not contested that the evidence in the case was culled for incorporation into the case on appeal on the basis that the federal criminal law power was the basis on which it was

alleged that the impugned legislation is ultra vires. The basis on which CARAL applied to intervene and on which its application was granted was that it would argue that the Medical Services Act, S.N.S. 1989, c. 9, and regulations made thereunder are in the nature of criminal law and therefore ultra vires the province. This is made very clear in the affidavit of Jane Holmes, sworn on June 11, 1992, filed in support of CARAL's application for leave to intervene. The constitutional questions framed by the Chief Justice in this case are restricted to the federal criminal law power and there is nothing in the constitutional questions that would give notice that POGG would be in issue. It can be assumed that the various Attorneys General based their decisions to intervene or not to intervene on the constitutional questions as framed. It is possible that their decisions would have been different had the POGG been put in issue in the constitutional questions. In any event, to introduce the issue without amending the constitutional questions would contravene this Court's rules with respect to constitutional questions, the main purpose of which is to give notice to Attorneys General as to the constitutional issue which the Court is asked to decide. CARAL alleges that the challenged arguments are responsive to arguments raised by the appellant. The appellant argues (at paragraphs 77-78 of its factum in the appeal) that the impugned legislation is intra vires the province pursuant to the province's jurisdiction over health as a purely local and private matter. CARAL responds to this argument by saying that abortion as a health issue is not purely local and private but has a national dimension bringing it within POGG. The respondent, however, addresses this issue. He also disputes that the matter relates to a purely local and private matter and says that it is of national proportions. He has not, however, invoked POGG and does not attack the legislation on this basis. An intervener cannot introduce a new issue on the ground that it is a response to an argument made by the appellant if the respondent has chosen not to raise the issue. There will be no costs on the motion. Judgment accordingly. Solicitor for the appellant: The Attorney General of Nova Scotia, Halifax. Solicitors for the intervener Canadian Abortion Rights Action League: Tory Tory DesLauriers & Binnington, Toronto. Solicitors for the respondent: Buchan, Derrick & Ring, Halifax.

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