Court File No. 37769

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

B E T W E E N:

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– and –

HER MAJESTY THE QUEEN

RESPONDENT

-and-

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FACTUM OF THE INTERVENER
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TABLE OF CONTENTS

PART I. OVERVIEW AND STATEMENT OF FACTS 1

PART II. ISSUES 1

PART III. ARGUMENT 1

A. CRIMINAL APPEALS MUST BE CONDUCTED IN ACCORDANCE WITH THE *CHARTER* 1

B. THE DOUBLE JEOPARDY PRINCIPLE IN SS. 7 AND 11(*H*) OF THE *CHARTER* APPLIES TO CRIMINAL APPEALS 2

C. THE PARTICIPATION OF THIRD PARTY INTERVENERS HAS THE POTENTIAL TO COMPROMISE THE FAIRNESS OF CRIMINAL APPEALS 4

(i) General principles respecting interventions in criminal appeals 4

(ii) The prohibition against multiple prosecutors is a principle of fundamental justice 7

PART IV. COSTS 10

PART V. ORDER SOUGHT 10

PART VI. TABLE OF AUTORITIES 11

PART I. OVERVIEW AND STATEMENT OF FACTS

1. The concern addressed by the Criminal Trial Lawyers' Association of Alberta ("CTLA") in this Factum is the fair conduct of criminal appeals. This concern is engaged by the Appellant's first ground of appeal.

2. In brief overview, the CTLA submits that since criminal appeals engage the individual's liberty interests, they are subject to s. 7 of the *Charter*, and must be conducted in accordance with the principles of fundamental justice. Criminal appellate courts must adopt procedures which are consistent with such principles as the prohibition against double jeopardy, the prohibition against multiple prosecutors, and the open court principle. The CTLA submits that the Appellant's first ground of appeal ought to be approached on the basis of these principles.

PART II. ISSUES

3. The issues in this appeal are those stated by the parties.

PART III. ARGUMENT

A. CRIMINAL APPEALS MUST BE CONDUCTED IN ACCORDANCE WITH THE *CHARTER*

4. In his first ground of appeal, the Appellant argues that the ABCA erred by adopting certain procedures which compromised the fairness of the appeal. In support of this position, the Appellant relies upon such cases as *Wexler v The King*[1] and *R. v. Mian*[2]. These authorities are grounded in common law principles of fairness and natural justice, and do not consider or determine the applicability of the *Charter*.

5. Of course, appeals are creatures of statute,[3] and the *Charter* does not create any express appeal mechanism.[4] The existence of a *Charter* right of reviewability respecting criminal convictions which result in imprisonment remains an open question.[5]

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[1] *Wexler v The King*, [1939] S.C.R. 350.
[2] *R. v. Mian*, 2014 SCC 54.
[3] *Kourtessis and Hellenic Import-Export Co. Ltd. v. Minister of National Revenue*, [1993] 2 S.C.R. 53 at pp. 69-70.
[4] *R. v. Meltzer*, [1989] 1 S.C.R. 1764 at pp. 1773-1774.
[5] *R. v. Farinacci* (1993), 86 C.C.C. (3d) 32 (Ont.C.A.) at paras. 21-30.

6. But whether or not there exists any constitutional right of reviewability, any criminal appeal involving indictable offences engages the subject's liberty interests, and must be conducted in a *Charter*-compliant manner.

7. The applicability of the *Charter* to matters of criminal appellate procedure does not appear to have been previously addressed by this Court. However, those courts which have considered this issue have concluded that s. 7 of the *Charter* does apply to the conduct of criminal appeals. In *R. v. P.C.*[6], Weiler J.A. noted that the liberty interests protected by s. 7 of the *Charter* are engaged by criminal appeals, and wrote: "The *Charter*'s silence respecting the right to an appeal therefore does not mean that the underlying value of fair treatment of an accused enshrined in the *Charter* does not apply to appeals." Similarly, in *Khadr v. Bowden Institution*[7], Ross J. quoted *P.C.* and concluded: "In other words, while there is no right to an appeal, if there is an appeal mechanism present then it should operate in a *Charter*-compliant manner."

8. The holdings in *P.C.* and *Khadr* are consistent with the decisions of this Court recognizing the applicability of s. 7 to other proceedings which engage liberty interests, such as proceedings respecting parole,[8] extradition,[9] security certificates,[10] early release,[11] and solitary confinement.[12] The reasoning in these cases applies *a fortiori* to criminal appeals.

9. In conclusion, the CTLA submits that it is both necessary and appropriate for this Court to examine the issues raised in the Appellant's first ground of appeal through the lens of s. 7 of the *Charter*. Since a Crown appeal from acquittal engages liberty interests, criminal appellate courts must adopt procedures consistent with the principles of fundamental justice.

B. THE DOUBLE JEOPARDY PRINCIPLE IN SS. 7 AND 11(*H*) OF THE *CHARTER* APPLIES TO CRIMINAL APPEALS

10. The first component of the Appellant's first ground of appeal pertains to the ABCA's decision to permit the Crown to raise theories and arguments said to be contrary to those raised by the Crown at trial. In support of those arguments, the Appellant relies upon the rule in *Wexler*,

[6] *R. v. P.C.*, 2014 ONCA 577.
[7] *Khadr v. Bowden Institution*, 2015 ABQB 261.
[8] *R. v. Gamble*, [1988] 2 S.C.R. 595 at p. 645, para. 71.
[9] *United States of America v. Ferras; United States of America v. Latty*, 2006 SCC 33 at p. 101, para. 49.
[10] *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at pp. 368-370, paras. 12-18.
[11] *Cunningham v. Canada*, [1993] 2 S.C.R. 143 at pp. 148-151.
[12] *R. v. Shubley*, [1990] 1 S.C.R. 3 at pp. 23-24.

which is based in the common law principle of double jeopardy. The CTLA submits that this rule now carries constitutional force.

11. Sub-section 11(*h*) of the *Charter* applies to criminal appeals. In *R. v. Potvin*, Sopinka J., writing for the majority, held that "as a general rule", s. 11's introductory words "[a]ny person charged with an offence" do not include a person who is a party to an appeal. However, Sopinka J. also wrote that "[a] particular subsection [of s. 11] may apply to appeal proceedings as an exception to the general rule if its purpose and language support this conclusion." The sub-sections of s. 11 specifically found by Sopinka J. not to apply to appeals were ss. 11(*a*), (*b*), (*c*), (*e*), (*f*) and (*i*). McLachlin J. (as she then was, dissenting), noted that although "it is true that many of the rights enumerated in s. 11 are restricted to the early stages of the criminal process,… others, such as s. 11(h) and 11(g), clearly apply after a verdict."[13]

12. The CTLA submits that, as noted by McLachlin J. in her dissent in *Potvin*, s. 11(*h*) is one of the provisions of s. 11 constituting an exception to the general rule established in that case. As such, it applies to the conduct of criminal appeals, and the rule in *Wexler* now carries constitutional force. This conclusion is consistent with the authorities which have scrutinized the constitutionality of Crown appeals in light of s. 11(*h*)'s prohibition against double jeopardy, notably *Corp. professionnelle des médecins du Québec v. Thibault*, where this Court held that *de novo* Crown appeals are contrary s. 11(*h*).[14]

13. Further, and in any event, the double jeopardy principle undoubtedly constitutes a principle of fundamental justice for the purposes of s. 7 of the *Charter*. As Friedland writes in his seminal treatise *Double Jeopardy*: "The history of the rule against double jeopardy is the history of criminal procedure. No other procedural doctrine is more fundamental or all-pervasive."[15] And in *Cullen v. The King*, Rand J. held that the "cardinal principle" against double jeopardy lies "[a]t the foundation of criminal law".[16]

14. In light of the above, the CTLA submits that the Appellant's first ground of appeal ought to be examined in light of both ss. 7 and 11(*h*) of the *Charter*.

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[13] *R. v. Potvin*, [1993] 2 S.C.R. 880 at pp. 889 (McLachlin J.), 908-909 (Sopinka J.).
[14] *Corp. professionnelle des médecins du Québec v. Thibault*, [1988] 1 S.C.R. 1033 at p. 1047.
[15] M. Friedland, *Double Jeopardy* (Oxford: Clarendon Press, 1969), at p. 3 **[Tab 4]**.
[16] *Cullen v. The King*, [1949] S.C.R. 658 at p. 668.

C. The participation of third party interveners has the potential to compromise the fairness of criminal appeals

15. At paragraphs 38-50 of the Appellant's Factum, it is argued that the ABCA permitted the Joint Interveners to raise new grounds of appeal and to effectively operate as a "second prosecutor". The CTLA is concerned that the participation of private parties in criminal appeals may, in some cases, compromise the fairness of the proceedings, and submits that the Appellant's arguments ought to be approached in light of s. 7 of the *Charter*, as well as the well-established rules and principles governing interventions in criminal appeals.

16. As at least one law blogger has noted,[17] Berger J.A.'s interlocutory decision granting the Joint Interveners permission to intervene in the ABCA[18] reflects a significant departure from the pre-existing authorities. Although that decision is not directly at issue in the present appeal, the CTLA submits that, with respect, Berger J.A.'s analysis is out of step with the pre-existing authorities, and ought not to be adopted by this Court in determining the Appellant's arguments.

(i) General principles respecting interventions in criminal appeals

17. The jurisprudence of this Court has always reflected a reluctance to permit interventions in criminal appeals. Indeed, the Court's first decision on point held that the intervention rule did not apply at all in criminal cases.[19] Following amendments to that rule, in *R. v. Osolin*, Sopinka J. noted that "[t]he discretion to allow interventions in criminal appeals has been exercised sparingly by this Court" since "the public interest in a criminal appeal is represented by the Attorney General of the province from which the appeal originates." Consequently, "very special circumstances" must be shown in order to permit an intervention by a second Attorney General in respect of non-constitutional issues in a criminal appeal.[20]

18. The CTLA acknowledges that the reluctance expressed in *Osolin* is not indicative of the evolving practice of this Court in the years since its pronouncement. As one author puts it, "this rhetorical caution [in *Osolin*] is difficult to square with the actual practice of the court, in which

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[17] J. Magonet, "Should the Dispute Remain Between the Accused and the Crown? Third-Party Intervention in Criminal Proceedings", ABlawg.ca (June 8, 2016).
[18] *R. v. Barton*, 2016 ABCA 68.
[19] *R. v. Ogg-Moss*, [1984] 2 S.C.R. 171.
[20] *R. v. Osolin*, [1993] 2 S.C.R. 313 at pp. 314-315.

intervention in criminal cases is relatively common."[21] But even as interventions before this Court have become ubiquitous, comparatively few interveners participate in criminal appeals,[22] and expressions of concern respecting this practice, such as the following, have continued:

> "Should there be as many?" Judge Iacobucci asked in an interview. "I feel we ought to look at this. Some people have raised the point -- particularly in criminal cases -- that you have one person representing the accused and a battery of intervenors supporting the Crown, or vice versa. So they say you get this kind of imbalance. I think we have to look at that."[23]

19. In any event, the CTLA submits that the frequency of interventions in appeals before this Court, while of course important, is of little significance to the conduct of criminal appeals before provincial appellate courts, which do not generally raise transcendent issues of public importance. In the CTLA's experience, the great majority of the criminal appeals before provincial courts of appeal involve the application of settled law to the unique facts of a case. The participation of interveners in such appeals is generally unnecessary and inappropriate.

20. Prior to the interlocutory ruling of Berger J.A. in the present case, both Canada's provincial appellate courts,[24] including the ABCA,[25] and Canada's summary conviction appeal courts,[26] had frequently and uniformly held that the authority to permit intervention in criminal matters is to be exercised sparingly. In one of many such cases, Watson J.A. denied the CTLA's application to intervene in an important criminal sentencing case, writing as follows:

> Intervention by a third party in a criminal case is generally shunned by the courts for a variety of policy and prudential reasons. Without discussing all those reasons, it can be said that all

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[21] S. Hannett, "Third party intervention: in the public interest?", P.L. 2003, Spr, 128-150 at fn. 102, 103 **[Tab 5]**

[22] B. Alarie and A. Green, 'Interventions at the Supreme Court of Canada: Accuracy, Affiliation, and Acceptance' (2010) 48 Osgoode Hall L.J. 381, at p. 398.

[23] K. Makin, "Intervenors: how many are too many?" (10 March 2000) *The Globe and Mail* Toronto A2.

[24] *R. v. Finta* (1990), 1 O.R. (3d) 183 (Ont.C.A.) at p. 186; *R. v. O'Connor* (1993) 82 C.C.C. (3d) 495 (B.C.C.A.) at para. 23; *R. v. Seaboyer* (1986), 50 C.R. (3d) 395 (Ont.C.A.) at p. 398 **[Tab 1]**; *R. v. Duncan* (1995), 102 C.C.C. (3d) 362 (B.C.C.A.) at para. 34; *R. v. Mayers*, 2011 BCCA 268 at paras. 5-8; *R. v. Ahenakew*, 2007 SKCA 54 at para. 11; *R. v. Ross* (1992), 76 C.C.C. (3d) 536 (N.S.C.A.); *R. v. Murdock*, (1996), 148 N.S.R. (2d) 183 (C.A.) at para. 8; *R. v. Regan* (1999), 172 D.L.R. (4th) 555 (N.S.C.A.) at paras. 42-45; *R. v. Wood* (2006), 296 N.B.R. (2d) 139 (C.A.) at para. 6.

[25] *R. v. A.(S.C.)*, 2013 ABCA 80 at para 17; *R. v. J.L.A.*, 2009 ABCA 324 at para. 2; *R. v. Vallentgoed*, 2016 ABCA 19 at para. 6; *R. v. Neve* (1996), 184 A.R. 359 (C.A.) at paras. 16-19.

[26] *R. v. Hirsekorn*, 2011 ABQB 156 at para. 21; *R. v. Kapp*, 2004 BCSC 1143 at paras. 21, 29, 34-37; *R. v. Alfred*, [1994] 3 C.N.L.R. 88 (B.C.S.C.).

> necessary voices with proper standing will necessarily be heard through the traditional binary process. There is a risk that the hearing of other voices can distort an appeal. That risk of distortion is of acute concern where the intervention might be directly or indirectly adverse to the defendant in the case. Where the defendant already faces the voice of the state, the courts must necessarily be concerned about introduction of any other voice that could hurt the defendant.[27]

21. Substantially the same principles have been adopted by the Courts of other jurisdictions. In *R. v. Secretary of State for the Home Department and the Lord Chief Justice of England and Wales Ex p. Bulger*, Rose L.J. wrote:

> It follows that in criminal cases there is no need for a third party to seek to intervene to uphold the rule of law. Nor, in my judgement, would such intervention generally be desirable. If the family of a victim could challenge the sentencing process, why not the family of the defendant? Should the Official Solicitor be permitted to represent the interests of children adversely affected by the imprisonment of their mother? Should organisations representing victims of offenders be permitted to intervene? In my judgement, the answer in all these cases is that the Crown and the defendant are the only proper parties to criminal proceedings. A proper discharge if judicial functions in relation to sentencing requires that the judge take into account (as the Lord Chief Justice said he did in this case) the impact of the offence and the sentence on the public generally, on the individuals, including the victim and the victim's family and the defendant and the defendant's family. The nature of that impact is properly channelled through prosecution and defence.[28]

22. In *Muruatetu v Republic*, the Supreme Court of Kenya held that the threshold of admission of an *amicus* or interested party in criminal proceedings is different from that applicable to civil proceedings. "This is because the nature of criminal proceedings demands that the interests of the accused person or prisoner, as the case may be, be given due regard by the Court". As a result, "the Court will admit such additional parties only if it is satisfied that their participation will not prejudice an accused person or prisoner; occasion unnecessary delay; introduce issues foreign to the proceedings; or protract the issues for determination". Further:

> We also note that criminal matters occupy a different platform from that of civil proceedings. Criminal proceedings directly touch on the personal fundamental rights and freedom of an individual, particularly the right to *liberty.* Consequently, just as the standard of proof is elevated in criminal matters (beyond reasonable doubt), so should the threshold for admission of interested parties be in criminal matters as compared to civil matters, where proof is on the balance of probability. Just as Mr. Ngatia urges, the Court has to guard against third parties (such as interested parties and *amici curiae*) proliferating the issues brought by the petitioners. In criminal proceedings, the accused should ordinarily be informed before hand of the case

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[27] *R. v. J.L.A.*, 2009 ABCA 324 at para. 2.

[28] *R. v. Secretary of State for the Home Department and the Lord Chief Justice of England and Wales Ex p. Bulger* [2001] 3 All E.R. 449 (Q.B.) at para. 21 **[Tab 2]**.

against him/her. Therefore, the Court should always guard against admitting third parties who may end up clogging the case of the petitioners in criminal matters.[29]

23. Similarly, the Constitutional Court of South Africa has held that "in criminal matters a court should be astute not to allow the submissions of an amicus to stack the odds against an accused person".[30]

24. In his interlocutory ruling in the present case, Berger J.A. expressly considered and rejected the approach reflected in the vast body of case authority cited above.[31]

25. The CTLA acknowledges the experience and expertise of the Joint Interveners, and does not submit that the ABCA erred in permitting their intervention. But the CTLA submits that a criminal appeal may be rendered unfair as a result of an appellate court's initial decision to permit intervention. Contrary to the analysis of Berger J.A., that threshold decision should be informed by the general rule that intervention in criminal appeals will rarely be granted. If intervention is granted, a criminal appellate court must then take care to ensure that the intervention does not compromise the fairness of the appeal contrary to s. 7 of the *Charter*.

(ii) The prohibition against multiple prosecutors is a principle of fundamental justice

26. The CTLA submits that it is a principle of fundamental justice that a person accused of a criminal offence cannot be forced to face a second prosecutor. This principle exists to ensure a level playing field and an equality of arms. As a result, an intervener may not raise new grounds of appeal, may not introduce new evidence, may not make factual arguments, and may not present arguments as to how the existing grounds of appeal ought to be be resolved. An appellate court which allows itself to be influenced by submissions straying beyond these boundaries risks a violation of the accused's s. 7 rights.

27. In Canada, private parties are not entrusted with the authority to prosecute criminal offences. Instead, the power to control and supervise criminal prosecutions falls within the

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[29] *Muruatetu v Republic*, [2016] Supreme Court Pet 16 of 2016 at para. 44. See also: Christopher Kerkering and Christopher Mbazira (eds.), "Friend of The Court & The 2010 Constitution: The Kenyan Experience and Comparative State Practice on *Amicus Curiae*" (2017, many publishers) at pp. 56-58, 79, 88.

[30] *Institute for Security Studies In Re S v. Basson* (CCT30/03B) [2005] ZACC 4; 2006 (6) SA 195 (CC) (9 September 2005) at para. 14.

[31] *R. v. Barton*, 2016 ABCA 68 at para. 10.

exclusive purview of the Attorneys General.[32] It is a constitutional principle that the Attorneys General must act independently of political concerns when exercising their delegated sovereign authority to conduct prosecutions. Consequently, "[t]he quasi-judicial function of the Attorney General cannot be subjected to interference from parties who are not as competent to consider the various factors involved in making a decision to prosecute."[33]

28. Given the unique role of the Attorneys General, it has been recognized that the power to frame the issues in criminal appeals cannot be hijacked by private parties. If the Attorney General has chosen not to raise a particular ground of appeal, it cannot be raised. A leading case on this subject is *Re Regina and Morgentaler, Smoling and Scott* (1985), where Howland C.J.O. wrote:

> In my opinion it is a very serious matter in criminal proceedings where the liberty of the subject is at stake to require an accused to defend himself on an issue which has not been raised by the Crown as a ground of appeal, and which the Crown does not consider is a ground of appeal that should be raised. In a criminal proceeding, the Crown represents the public interest and it alone is given the right to appeal from an acquittal. To permit a third party to intervene to raise an additional ground of appeal would enlarge the scope of a Crown appeal from an acquittal beyond that contemplated by Parliament. Quite apart from the question of fairness, I can see great dangers if a third party were permitted to intervene in a criminal trial. If one third party could do it then why not others. I know of no case in which such a right has previously been granted. It is very different from granting a third party a right to intervene to throw light on a pending issue between the Crown and the accused because of special expertise of knowledge possessed by the third party.[34]

29. Given fairness concerns, the rule that interveners must take the *lis* as they find it even applies to civil appeals. As Seaton J.A. held in *Canada (Attorney General) v. Aluminum Co. of Canada Ltd*. (1987), 35 D.L.R. (4th) 495 (B.C.C.A.): "Intervenors should not be permitted to take the litigation away from those directly affected by it. Parties to litigation should be allowed to define the issues and seek resolution of matters they determine appropriate to place in issue."[35] This rule applies even if the new issue is raised response to an argument made by the appellant.[36]

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[32] Although private prosecutions remain available, they are subject to the Attorney General's supervision and control: *R. v. McHale*, 2010 ONCA 361 at paras. 31-49.

[33] *Krieger v. Law Society of Alberta*, 2002 SCC 65 at paras. 3, 23-32.

[34] *Re Regina and Morgentaler, Smoling and Scott* (1985), 19 C.C.C. (3d) 573 (Ont. C.A.) at p. 576 **[Tab 3]**.

[35] *Canada (Attorney General) v. Aluminum Co. of Canada Ltd*. (1987), 35 D.L.R. (4th) 495 (B.C.C.A.) at p. 507.

[36] *R. v. Morgentaler*, [1993] 1 S.C.R. 462 at paras. 2, 4.

30. Permitting an intervener to raise new and distinct grounds of appeal amounts to the introduction of a second prosecutor, and compromises the fairness of a criminal appeal. As Morden A.C.J.O. wrote in *R. v. Finta* (1990):

> [B]oth fairness and the appearance of fairness in the criminal law process are of paramount concern. Under s. 7(3.75) of the Criminal Code the prosecutor is the Attorney General of Canada or counsel acting on his behalf. A criminal proceeding in which the accused person is obliged to respond to submissions of more than one prosecutor lacks the appearance of fairness. In my view, this consideration is a sufficient reason for not granting leave to intervene on the issues relating to defence counsel's address and the trial judge's instructions to the jury…[37]

31. To take a specific example, victims of crime and their families are not generally permitted to intervene into criminal proceedings, except with respect to carefully circumscribed issues, such as the production of their personal records. While victims of crime do, of course, have a very real interest in the outcome of criminal proceedings, that interest must generally be channeled through the Attorney General.[38]

32. The basic principle that a criminal appeal must remain a *lis* between the accused and the Crown has achieved a universal level of consensus,[39] and ought now to be recognized as fundamental to the conduct of a criminal appeal. By operation of this principle, an intervener may not present arguments which are, in substance, additional grounds of appeal.

33. For the same reasons, an intervener in a criminal appeal is prohibited from presenting argument as to how the parties' grounds of appeal ought to be resolved.[40] This rule does not prevent an intervener from referring to the particular facts of the case. But an intervener may not argue that contested factual matters ought to be resolved in a certain manner, and may not present arguments as to how the law ought to be applied to the facts as found.

34. Of course, the CTLA does not suggest that an intervener in a criminal appeal must simply parrot the arguments already raised by the parties. Indeed, the very purpose of an intervention is to present the court with submissions which are useful and different from the perspective of a non-

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[37] *R. v. Finta* (1990), 1 O.R. (3d) 183 (Ont.C.A.) at p. 186 [Emphasis added].
[38] *R. v. Bernardo* (1995), 38 C.R. (4th) 229 (S.C.J.) at paras. 29-32; *R. v. O'Connor* (1993) 82 C.C.C. (3d) 495 (B.C.C.A.).
[39] See e.g. *R. v. Duncan* (1995), 102 C.C.C. (3d) 362 (B.C.C.A.) at para. 34; *R. v. Mayers*, 2011 BCCA 268 at paras. 7-8; *R. v. J.L.A.*, 2009 ABCA 324 at para. 2; *R. v. Vallentgoed*, 2016 ABCA 19 at para. 6; *R. v. Wood* (2006), 296 N.B.R. (2d) 139 (C.A.) at para. 6.
[40] *R. v. Neve* (1996), 184 A.R. 359 (C.A.) at p. 131.

party who has a special interest or particular expertise in the subject matter of the appeal.[41] But this purpose may be achieved without raising new grounds of appeal or presenting arguments respecting issues of fact, including mixed fact and law.

35. Based upon the applicable authorities, the CTLA submits that, in criminal appeals, interveners are not permitted to present arguments: (1) that are, in substance, new grounds of appeal; (2) respecting contested matters of fact or mixed fact and law; (3) that require a consideration of new evidence for their resolution; (4) as to how the grounds of appeal should ultimately be determined; or (5) that are unfavourable to the accused and inconsistent with those raised by the Crown. Where a criminal appellate court permits an intervener to stray beyond these parameters, a breach of s. 7 may result.

36. In summary, it is difficult enough for an individual accused to defend him or herself against the awesome power of the government. The introduction of a second prosecutor, including at the appellate level, inevitably compromises both the appearance of fairness, and the actual fairness of the prosecution. The CTLA offers no submissions as to whether or not the fairness of the appeal before the ABCA was compromised in this case. However, the CTLA submits that the arguments presented at paragraphs 38-50 of the Appellant's Factum ought to be assessed through the lens of s. 7 of the *Charter*, and the well-established principles applicable to third party interventions in criminal appeals.

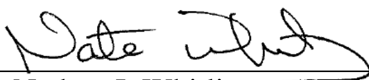
IV. COSTS

37. The CTLA does not seek costs, and asks that no costs be awarded against it.

V. ORDER SOUGHT

38. The CTLA takes no position as to the appropriate Order to be granted in this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of September, 2018.



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Counsel for the CTLA (Intervener)

[41] *Canada v. Khadr*, 2008 SCC 29 at para. 18; *R. v. Morgentaler*, [1993] 1 S.C.R. 462 at para. 4.

VI. TABLE OF AUTORITIES

Tab	Description	Paragraphs in Factum
	Case Authorities	
	Canada (Attorney General) v. Aluminum Co. of Canada Ltd. (1987), 35 D.L.R. (4th) 495 (B.C.C.A.).	29
	Canada v. Khadr, 2008 SCC 29.	34
	Charkaoui v. Canada (Citizenship and Immigration), 2007 SCC 9.	8
	Corp. professionnelle des médecins du Québec v. Thibault, [1988] 1 S.C.R. 1033.	12
	Cullen v. The King, [1949] S.C.R. 658.	13
	Cunningham v. Canada, [1993] 2 S.C.R. 143.	8
	Krieger v. Law Society of Alberta, 2002 SCC 65.	27
	Institute for Security Studies In Re S v Basson (CCT30/03B) [2005] ZACC 4; 2006 (6) SA 195 (CC) (9 September 2005).	23
	Khadr v. Bowden Institution, 2015 ABQB 261.	7, 8
	Kourtessis and Hellenic Import-Export Co. Ltd. v. Minister of National Revenue, [1993] 2 S.C.R. 53.	5
	Muruatetu v Republic, [2016] Supreme Court Pet 16 of 2016.	22
	R. v. J.L.A., 2009 ABCA 324.	20, 24, 32
	R. v. A.(S.C.), 2013 ABCA 80.	20
	R. v. Ahenakew, 2007 SKCA 54.	20
	R. v. Alfred, [1994] 3 C.N.L.R. 88 (B.C.S.C.).	20
	R. v. Barton, 2016 ABCA 68.	16, 24, 25
	R. v. Bernardo (1995), 38 C.R. (4th) 229 (S.C.J.).	31
	R. v. Duncan (1995), 102 C.C.C. (3d) 362 (B.C.C.A.).	20, 32
	R. v. Farinacci (1993), 86 C.C.C. (3d) 32 (Ont.C.A.).	5
	R. v. Finta (1990), 1 O.R. (3d) 183 (Ont.C.A.).	20, 30
	R. v. Gamble, [1988] 2 S.C.R. 595.	8
	R. v. Hirsekorn, 2011 ABQB 156.	20
	R. v. Kapp, 2004 BCSC 1143.	20
	R. v. Mayers, 2011 BCCA 268.	20, 32
	R. v. McHale, 2010 ONCA 361.	27
	R. v. Meltzer, [1989] 1 S.C.R. 1764.	5
	R. v. Mian, 2014 SCC 54.	1
	R. v. Morgentaler, [1993] 1 S.C.R. 462.	29, 34
	R. v. Murdock, (1996), 148 N.S.R. (2d) 183 (C.A.).	20
	R. v. Neve (1996), 184 A.R. 359 (C.A.).	20
	R. v. O'Connor (1993) 82 C.C.C. (3d) 495 (B.C.C.A.).	20, 31
	R. v. Ogg-Moss, [1984] 2 S.C.R. 171.	17
	R. v. Osolin, [1993] 2 S.C.R. 313.	17, 18
	R. v. P.C., 2014 ONCA 577.	7, 8

	R. v. Potvin, [1993] 2 S.C.R. 880.	11, 12
	R. v. Regan (1999), 172 D.L.R. (4th) 555 (N.S.C.A.).	20
	R. v. Ross (1992), 76 C.C.C. (3d) 536 (N.S.C.A.).	20
[1]	*R. v. Seaboyer* (1986), 50 C.R. (3d) 395 (Ont.C.A.).	20
[2]	*R. v. Secretary of State for the Home Department and the Lord Chief Justice of England and Wales Ex p. Bulger* [2001] 3 All E.R. 449 (Q.B.).	21
	R. v. Shubley, [1990] 1 S.C.R. 3.	8
	R. v. Vallentgoed, 2016 ABCA 19.	20, 32
	R. v. Wood (2006), 296 NBR (2d) 139 (C.A.).	20, 32
[3]	*Re Regina and Morgentaler, Smoling and Scott* (1985), 19 C.C.C. (3d) 573 (Ont. C.A.).	28
	United States of America v. Ferras; United States of America v. Latty, 2006 SCC 33.	8
	Wexler v The King, [1939] S.C.R. 350.	1, 10, 12
	Secondary Authorities	
	B. Alarie and A. Green, 'Interventions at the Supreme Court of Canada: Accuracy, Affiliation, and Acceptance' (2010) 48 Osgoode Hall L.J. 381.	18
[4]	M. Friedland, *Double Jeopardy* (Oxford: Clarendon Press, 1969).	13
[5]	S. Hannett, "Third party intervention: in the public interest?", P.L. 2003, Spr, 128-150.	18
	Christopher Kerkering and Christopher Mbazira (eds.), "Friend of The Court & The 2010 Constitution: The Kenyan Experience and Comparative State Practice on *Amicus Curiae*" (2017, many publishers).	22
	J. Magonet, "Should the Dispute Remain Between the Accused and the Crown? Third-Party Intervention in Criminal Proceedings", ABlawg.ca (June 8, 2016).	16
	K. Makin, "Intervenors: how many are too many?" (10 March 2000) *The Globe and Mail* Toronto A2.	18