court, in making these comments. Regardless, I find them of assistance in giving focus to the issue of intervention. Rowe J. stated:

> [103] 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" (*R. v. Morgentaler*, [1993] 1 S.C.R. 462, at p. 463; see also *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579, at para. 52; *Rules of the Supreme Court of Canada*, SOR/2002-156, r. 57(2)(b)). Interveners provide additional perspectives on the legal issues raised by the parties and on the broader implications of the Court's decision. Depending on the context, interveners might highlight relevant jurisprudence, present insightful arguments, or clarify the potential analytical paths to resolving the issues placed before the Court. Interveners may also enhance accuracy by representing diverse cross-sections of the Canadian public and furnishing an analysis informed by their particular experience or specialized expertise. Since the cases heard by this Court are frequently matters of public importance, such experience and expertise can "assist the court in deciding complex issues that have effects transcending the interests of the particular parties before it" (*Barton*, at para. 52). Through their submissions, interveners inform the Court of the direct and indirect consequences of the dispute on various stakeholders and on other areas of law. In this way, interveners can often make important contributions. In order to do so, however, interveners must operate within recognized limits. The *Rules of the Supreme Court of Canada* clearly state these limits, and this Court has issued practice directions, more than once, to remind potential interveners of the boundaries they must respect (see *Notice of November 2021* [*Notice to the Profession: November 2021 – Interventions*, November 15, 2021 (online)]; *Notice to the Profession: March 2017 — Allotting Time for Oral Argument*, March 2, 2017 (online)).
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> [104] These constraints reflect a sound understanding of interveners' place within the litigation and of the role of this Court. While the Court is often tasked with deciding issues that have implications extending beyond the parties, it remains an adjudicative body. The polycentric nature of a legal issue does not turn the Court into a legislative committee or a Royal Commission (*J.H. v. Alberta (Minister of Justice and Solicitor General)*, 2019 ABCA 420, 54 C.P.C. (8th) 346, at paras. 25-27). The Court's process also remains firmly grounded in the adversarial system: the parties control their case and decide which issues to raise. This does not change when the parties argue before the Supreme Court. Indeed, the importance of this principle only

increases: as an apex court, this Court's role is to adjudicate disputes with the benefit of trial-level findings of fact and appellate-level reasons on the issues fully argued by the parties.

[105] Such considerations help explain the specific limits placed on interventions. First, interveners are not parties. The purpose of an intervention is not to support a party — by which I mean the appellant(s) and respondent(s) — but to put forward the intervener's own view of a legal issue already before the Court. Despite the involvement of interveners, the appeal remains a dispute between the parties (*Notice of November 2021*, at point 2). Consequently, interveners should not take a position on the outcome of the appeal (*Rules of the Supreme Court of Canada*, r. 42(3); *Notice of November 2021*, at point 3).

[106] Secondly, interveners must not raise new issues or "widen or add to the points in issue" (*Morgentaler*, at p. 463; *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445, at p. 487; *Rules of the Supreme Court of Canada*, r. 59(3); *Notice of November 2021*, at point 4). Interveners may, however, present their own legal arguments on the existing issues and make submissions on how those issues affect the interests of those whom they represent (see, e.g., *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388, at para. 40; *Canada (Justice) v. Khadr*, 2008 SCC 29, [2008] 2 S.C.R. 143, at para. 18; *Barton*, at para. 52).

[107] Interveners must be careful to distinguish between developing a permissible legal argument and adding prohibited new issues; the two are conceptually distinct. A fresh perspective or legal argument on an existing issue is not the same as the introduction of a new issue, outside the scope of the appeal or, even further, in contradiction to the parties' submissions regarding the scope of the appeal. The former may assist the Court's deliberation, while the latter detracts from it. While in rare cases it may be difficult to distinguish between the two, this appeal is not such a case. By asking this Court to overturn *Hape* [*R v Hape*, 2007 SCC 26, [2007] 2 SCR 292], certain interveners, upon whom Justices Karakatsanis and Martin rely, have introduced what is clearly a new issue.

[108] Finally, interveners must not adduce further evidence or otherwise supplement the record without leave (*Rules of the Supreme Court of Canada*, r. 59(1)(b)). They may, of course, use their submissions to explain the impact of the appeal on the group(s) they represent; this represents an appropriate exercise of their role. But they must take the case and the record as they find it, or seek leave to tender new material, such as supplementary legislative facts or contested studies (see, e.g., D. L. Watt et al., *Supreme Court of Canada Practice*

> *2022* (2022), at pp. 369-70, referring to *R.J.R. MacDonald Inc. v. Canada (Attorney General), Bulletin of Proceedings*, June 10, 1994, at p. 990, and *Anderson v. Amoco Canada Oil and Gas, Bulletin of Proceedings*, March 19, 2004, p. 453). This Court, as always, retains a discretion to take any steps it sees fit where an intervener presents new evidence without leave or otherwise makes improper submissions (see *Notice of November 2021*, at point 6).

[33] Returning then to the considerations highlighted by Brown J., I am able to conclude that it appears all of the proposed intervenors have an interest in the outcome of this litigation. In the case of the GDA, Parents for Choice in Education, and the John Howard Society, that interest is personal to both their particular organization and their role in matters regarding young people, parents, and gender issues. The remaining proposed intervenors, CCLA and LEAF, bring a broader experience and expertise to the proceedings through their involvement generally in equality litigation or equality research or education. The latter two organizations have an interest in the outcome of this litigation through their work in assisting with the interpretation and development of the issues presented through the *Charter*.

[34] I do not consider that having a particular direct interest in the matters in issue in the litigation is a necessary prerequisite to being considered in the intervenor debate. Indeed, particularly with *Charter* issues, it is expected there will be members of society who have a particular interest in the litigation through their beliefs. That is to be expected in a pluralistic society that values different approaches to various issues. But it is not a requirement to gain intervenor status. The parties will be advancing their own interests in the litigation. Thus, while interest in the litigation is a factor to be considered, it is not an essential threshold to cross and interest in the outcome is sufficient to be considered in this regard.

[35] In this vein, while GDA, Parents for Choice in Education, and the John Howard Society, have established that they have a particular personal interest or

perspective on the issues in this litigation, I am unable to conclude that any of these three bring any new perspective or special expertise to the constitutional issues raised directly in this litigation. It appears they may be supportive of one side or the other, but that support does not automatically translate into advancing something new before the court.

[36] The CCLA and LEAF, on the other hand, based on the material provided, do bring both a new perspective and special expertise. That new perspective is advanced through their national scope and their apparent intense and extensive involvement in issues and litigation involving the *Charter* and, specifically, regarding those aspects of the *Charter* that are before the court. The expertise that they have generated should assist the court in arriving at an appropriate determination of the matters in issue.

[37] I am mindful in this regard that any potential intervenor is not granted status simply to echo the positions being advanced by the parties. However, the parties are in agreement that the constitutional issues raised here are new and complex. They will therefore, necessarily, bring with them additional considerations to those that may have been litigated previously. Because of the new issues raised, it may well be that different perspective gained from actual experience will be of assistance to the Court in determining its way through these matters.

[38] In this regard, I am mindful of and refer to the comments of Rowe J. in *McGregor*. The purpose of granting intervenor status to an entity is not to enable that entity to provide further support to one side or the other in the litigation. While that supportive role may take place outside the litigation, it is the parties who conduct the litigation and advance the issues as they determine. Additional support is not required within the action and intervention should not be granted if that is all that the proposed intervenor seeks to bring to the litigation.