IN THE COURT OF APPEAL OF MANITOBA

B E T W E E N :

	E. MacKinnon,
	D. Aman *and*
	K. Twa
INTERLAKE RESERVES TRIBAL COUNCIL INC., KINONJEOSHTEGON FIRST NATION, DAUPHIN RIVER FIRST NATION, LAKE MANITOBA FIRST NATION and LITTLE SASKATCHEWAN FIRST NATION	*for the Appellant (via teleconference)*
	M. Conroy *and*
	M. Sutherland
	for the Respondents (via teleconference)
(Plaintiffs) Respondents	
	S. Wuttke *and*
- and -	***J. McGregor***
	for the proposed Intervener Assembly of First Nations (via teleconference)
THE GOVERNMENT OF MANITOBA, as represented by the MINISTER OF CONSERVATION AND CLIMATE, as represented by the DIRECTOR OF CONSERVATION AND CLIMATE, as represented by the DEPARTMENT OF INFRASTRUCTURE and as represented by the LIEUTENANT GOVERNOR IN COUNCIL	
	S. C. Scarcello *and*
	J. Tallman
	for the proposed Intervener Manitoba Metis Federation (via teleconference)
	Chambers motions heard:
(Defendant) Appellant	***December 4, 2020***
	Decision pronounced:
	December 23, 2020

COVID-19 NOTICE: As a result of the COVID-19 pandemic and pursuant to r 37.2 of the MB, *Court of Appeal Rules*, MR 555/88R, this motion was heard remotely by teleconference.

MAINELLA JA

Introduction

[1] The defendant has appealed an order granting interlocutory injunctive relief preventing it from, subject to certain exceptions, carrying out further work on an all-season road and from taking any further action on a proposed flood control management system in the Interlake region of Manitoba ("the injunction order" and the "the project").

[2] The Manitoba Metis Federation (the MMF) and the Assembly of First Nations (the AFN) move, pursuant to r 46.1 of the MB, *Court of Appeal Rules*, MR 555/88R (the relevant portions of which are set out in the appendix to these reasons), for leave to intervene in the appeal. The MMF also requests an extension of time to file its supporting affidavit and memorandum of submissions on the intervention motion (see r 42). The plaintiffs consent to the motions; the defendant is opposed.

[3] For the following reasons, the MMF's motion to extend time is granted and the motions to intervene by the MMF and the AFN are dismissed.

The MMF's Motion to Extend Time

[4] The MMF filed its motion to intervene within 30 days after the defendant filed its notice of appeal (see r 46.1(2)). The difficulty is that the motion was not perfected in a timely way due to the inadvertent error of counsel not filing the supporting affidavit and memorandum of submissions not later than four days before the initial hearing date (see r 43.1(2)).

[5] The criteria for an extension of time are not in dispute (see *Penner v Montcalm (Rural Municipality)*, 2020 MBCA 97 at paras 10-11). This is not a case where the "sin" of counsel should be visited on his client. The MMF had a continuous intention to intervene. The delay is brief; it is attributable entirely to the innocent error of counsel—not the MMF—and the motion is now perfected. The MMF has arguable grounds to intervene. Finally, the delay does not create prejudice to any party. In my view, the justice of the case requires that the extension of time be granted.

Background to the Appeal

[6] Key to the project are the construction on undisturbed Crown land of two permanent outlet channels (each about 23 kilometres in length) to direct flood waters: one connecting Lake Manitoba to Lake St. Martin and the other connecting Lake St. Martin to Lake Winnipeg. The project would replace a smaller emergency flood control system in the form of an outlet channel on Lake St. Martin constructed in 2011 (the emergency channel).

[7] The project requires Indigenous consultation which began informally with the various plaintiffs in 2011 and formally in 2015. The project is also subject to federal and provincial environmental assessment; both processes are ongoing.

[8] On January 11, 2019, a permit, with conditions, was granted pursuant to section 7 of *The Crown Lands Act*, CCSM c C340, to clear a 25-metre-wide right of way in relation to the Lake St. Martin outlet channel (the permit). The defendant says the permit was needed to gather environmental and geotechnical data for the purposes of Indigenous consultation and the

environmental reviews. The plaintiffs say the permit was obtained without adequate notice. Eight kilometres of land at a width of 12 metres was cleared.

[9] The emergency channel has a 19.5-kilometre winter road, built in 2011, to facilitate its construction, maintenance and operation (the road).

[10] On October 28, 2019, a licence, with conditions, was issued pursuant to section 11(1) of *The Environment Act*, CCSM c E125, approving the upgrading of the road for all-season access (the licence). The defendant says the road improvements are necessary for the emergency channel and, if the project is approved, would be used in relation to the new outlet channel between Lake St. Martin and Lake Winnipeg. The road upgrades have been completed in part.

[11] The plaintiffs allege that the development of the land done pursuant to the permit and the licence is an infringement on the exercise of their Indigenous and treaty rights. The defendant denies that is the case.

[12] The plaintiffs unsuccessfully appealed the granting of the licence to the Minister of Conservation and Climate pursuant to *The Environment Act*. As part of that statutory appeal process, the Lieutenant Governor in Council issued an order in council (the OIC) approving the ministerial decision to dismiss the appeal.

[13] On April 27, 2020, the plaintiffs commenced an action seeking judicial review of the permit, the licence and the OIC, as well as certain declarations, including that the provincial Crown had not met its duty to consult the plaintiffs.

[14] The plaintiffs moved for interlocutory injunctive relief. The defendant filed a motion to strike the plaintiffs' claim, with the principal submission being that the judicial review of the permit, the licence and the OIC should have proceeded by way of an application, as opposed to an action.

[15] On August 20, 2020, the motion judge granted the injunction order with exceptions allowing for steps to advance the project through environmental assessment or for a flooding emergency. He also dismissed the defendant's motion to strike.

[16] The defendant requested an expedited appeal because completing the upgrades to the road can only be done when the ground is frozen. The defendant says that reliable road access is important to the emergency channel for the 2021 spring flooding season. The appeal is perfected and set for hearing on February 19, 2021.

The Law—Leave to Intervene

[17] Rule 46.1 provides a single judge of this Court with the discretion to grant leave to a non-party to intervene, as an added party or as a friend of the Court, and to impose conditions. The exercise of this discretion should avoid a narrow interpretation of the rule; rather, a flexible approach should be taken (see *R v Rémillard*, 2006 MBCA 2 at para 3; and *R v Creekside Hideaway Motel Ltd; R v Jenkinson*, 2007 MBCA 19 at para 18).

[18] An intervener should have either a direct interest in the outcome of the appeal or, in matters where the significance of the dispute transcends the immediate parties and has broader implications, a special expertise or unique perspective relating to the subject matter. Irrespective of the proposed

intervener's interest, expertise or perspective, leave to intervene may only be granted if the Court will be provided with submissions which are useful and different than those of the other parties (see *R v Morgentaler*, [1993] 1 SCR 462 at 463; and *Creekside* at para 16).

[19] The text of r 46.1 highlights a number of considerations for the Court, including:

a) the nature of the case;

b) the issues that arise in the case;

c) the directness of the proposed intervener's interest and whether it could otherwise be protected;

d) the characteristics, expertise and perspective of the proposed intervener;

e) whether the proposed intervener's submissions would expand the appeal;

f) the likelihood of the proposed intervener's submissions being useful and different; and

g) whether intervention would unduly delay proceedings or otherwise prejudice any of the parties.

(See *Creekside* (at paras 16-19); *Manitoba Métis Federation Inc v Canada (Attorney General) et al*, 2008 MBCA 131 at para 10 (*Manitoba Métis #1*); *Manitoba Métis Federation Inc v Canada (Attorney General) et al*, 2009 MBCA 17 at para 20 (*Manitoba Métis #2*); *R v Mabior (CL)*, 2009 MBCA 93

at paras 5-7; and *Winnipeg Condominium Corporation 479 v 520 Portage Avenue Ltd et al*, 2019 MBCA 83 at para 22.)

Analysis

[20] The nature of the case and the issues that arise are common to both intervention motions.

[21] Two features as to the nature of this case are of significance. To begin, the nature of the case is not a purely private matter. The appeal raises a matter of public interest because it arises from a dispute over whether a large flood mitigation development has respected Indigenous and treaty rights. That said, the injunction order is interlocutory, not permanent. Interlocutory injunctions are best understood as a "balancing [of] the relative risks of granting or withholding the remedy before full adjudication of the legal rights at issue" (Hon Mr. Justice Robert J Sharpe, *Injunctions and Specific Performance* (Toronto: Thomson Reuters, 2019) (loose-leaf updated 2019, release 28), ch 2 at para 2.60). While the motion judge commented that, at its "core", the plaintiffs' claim "relates to the duty to consult", all he decided was that, until the claim is adjudicated on its merits, the relative risks of harm to the parties favour granting interlocutory relief that restrains the defendant (see Sharpe at para 2.630). The dispute as to whether the defendant has failed to meet its duty to consult is a long way away from being adjudicated on its merits.

[22] The issues that arise in this appeal relate to the tripartite test for a prohibitive interlocutory injunction set out in *RJR — MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 332-33. The relevant aspects of the defendant's appeal address how the motion judge dealt with the

factors of irreparable harm and the balance of convenience. In dispute is whether he erred by failing to find there was a meaningful risk of future irreparable harm to the plaintiffs from the road upgrade or otherwise; failing to consider the proper analysis as to the allegation that the defendant was trying to circumvent the environmental reviews; failing to analyse the balance of convenience; and seriously misapprehending the evidence and making findings without evidence.

[23] I will deal first with the specifics of the AFN's motion.

[24] The AFN is a national representative organisation with offices in Ottawa, Ontario representing 634 First Nation communities and their members located across Canada. Among other things, the AFN advocates and promotes the enhancement of the unique nation-to-nation relationship between the Crown and First Nations to ensure the full respect and implementation of First Nations' collective rights.

[25] The AFN has no direct interest in the outcome of the appeal. Instead, it relies on its special expertise, which is undisputed, in Indigenous and treaty issues, including the Crown's fiduciary obligations, as well as the honour of the Crown to justify intervention. The AFN says it can also provide a national perspective on the potential impacts of this appeal upon Indigenous and treaty rights of First Nations in Manitoba.

[26] The position taken by the AFN on the appeal is that the injunction order should remain because it says that the circumstances here are unfortunately an all-too-common example of the Crown not adhering to its constitutional and fiduciary duties to First Nations in land development.

[27] The AFN proposes to advance three submissions if granted intervention status: (1) the Court must consider the First Nations' perspective on land development; (2) the actions taken by the defendant relating to the permit, the licence and the OIC violated the honour of the Crown, its duty to consult, the terms and spirit of *The Path to Reconciliation Act*, CCSM c R30.5, and procedural fairness, and have caused, and continue to cause, irreparable harm to the plaintiffs' Indigenous and treaty rights; and (3) reconciliation between the Crown and First Nations requires that all constitutional and statutory provisions affecting the rights, jurisdiction and powers of First Nations must be informed by international human rights standards—in particular, the *United Nations Declaration on the Rights of Indigenous Peoples*, 13 September 2007 (entered into force 2 October 2007), online (pdf): *United Nations* <undocs.org/en/A/RES/61/295&Lang=E> (date accessed 18 December 2020) (the *UNDRIP*).

[28] The AFN's submissions (asking the Court to consider the First Nations' perspective on land development and the harm facing the plaintiffs) duplicate the submissions of the plaintiffs. In their factum, the plaintiffs set out in detail why they say the actions taken pursuant to the permit and licence have permanently impacted the exercise of treaty rights: for example, the passing of traditional knowledge about the land from one generation to another with regard to hunting. The plaintiffs make the written submissions that, "It is critical to consider the nature of the harm from the Indigenous perspective" and "The works authorized by the Permit and Licence have caused and will continue to cause irreparable harm to the [plaintiffs'] exercise of Treaty and Aboriginal rights."

[29] I have not been persuaded that the AFN would provide submissions useful and different from those of the plaintiffs as to the importance of considering the First Nations' perspective on land development and irreparable harm; a "me too" argument, even from an experienced, expert and well-respected organisation such as the AFN, is an insufficient basis on which to grant intervention (*Creekside* at para 21; see also *Jones v Tsige*, 2011 CarswellOnt 13217 at para 38 (CA) (in chambers)).

[30] The AFN's submissions about the defendant violating its constitutional and statutory obligations and the need to interpret those obligations in light of the *UNDRIP* are not helpful to the issues that arise in the appeal and would unnecessarily expand and complicate it (see r 46.1(5)(b); *Manitoba Métis #1* at paras 16, 18; and *Manitoba Métis #2* at para 20).

[31] The difficulty with the AFN's submissions about the defendant violating its legal obligations and the benefit to the Court of the AFN's perspective on those legal obligations is that the motion judge did not find the defendant in any breach of a constitutional or statutory obligation. According to the notice of appeal and the parties' factums, this appeal is about how the motion judge balanced the relative risks before a full adjudication of the parties' rights occurs.

[32] While it is perfectly acceptable, if the circumstances permit, for a motion judge deciding whether to grant an interlocutory injunction to weigh a plaintiff's chance of success in assessing the relevant risks of harm and the balance of convenience (see *Lambair Ltd v Aero Trades Ltd* (1978), 87 DLR (3d) 500 at 508 (Man CA), leave to appeal to SCC refused, 1978WL166377;

and *Pereira v Smith*, 1993 CarswellMan 137 at para 15 (CA)), the motion judge here appears to have limited his analysis to the "low" threshold discussed in *RJR — MacDonald Inc* of the plaintiffs' claim not being vexatious or frivolous (at p 337). He stated that "the court finds the plaintiffs raised serious questions to be tried in all aspects of the . . . Statement of Claim given the low bar that is required in order to make that assessment." He avoided any assessment of the chance of success of the plaintiffs' claim in his discussion of irreparable harm and balance of convenience. He simply found that the evidence before him "favours" the plaintiffs in terms of irreparable harm and the balance of convenience.

[33] I am also not persuaded that it would be advantageous for the Court to hear extensive submissions from the AFN regarding the concept of the honour of the Crown, such as the duty to consult. This Court is well aware of the law and none of the relevant principles are in dispute given the nature of the case and the issues that arise.

[34] The AFN's concerns about procedural fairness during the plaintiffs' statutory appeal under *The Environment Act* is a matter that is relevant to the merits of the judicial review, not the appeal of the injunction order. Moreover, the plaintiffs are quite capable of making that sort of straightforward administrative law submission if it were to become, for some reason, germane on the appeal.

[35] The AFN conceded in oral argument that its *UNDRIP* submission is novel. The *UNDRIP* submission is a new issue being raised for the first time on appeal. However, I would not have a concern merely on that basis; the larger problem is the submission raises the complex issue of reception of

public international law into Canadian domestic law. Three reception issues flow from the submissions of the AFN.

[36] The first is the doctrine of adoption, the question being whether aspects of the *UNDRIP* are already part of Canadian common law because the aspect(s) reflect(s) customary international law and there is no conflicting domestic legislation (see *R v Hape*, 2007 SCC 26 at paras 35-39; and *Nevsun Resources Ltd v Araya*, 2020 SCC 5 at paras 86-95).

[37] The second is the interpretive effects of the *UNDRIP* in relation to domestic law. International human rights law can be an interpretative aid for Canadian courts both as a contextual tool and for providing support or confirmation for the result of a purposeful interpretation of the Constitution (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 70; and *Quebec (Attorney General) v 9147-0732 Québec inc*, 2020 SCC 32 at paras 22-47).

[38] The third is the question regarding implementing the *UNDRIP* and the division of powers under the *Constitution Act, 1867*. While the *UNDRIP* is not a treaty, the discussion in *A-G Can v A-G Ont et al*, [1937] 1 DLR 673 (PC), as to how an international instrument is implemented into Canadian domestic law is important. Legislative implementation of international law is subject to the division of powers (see pp 679, 681-82; and *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 66).

[39] The AFN noted that, at present, Parliament has not passed legislation to implement the *UNDRIP*. In Manitoba, *The Path to Reconciliation Act* discusses the *UNDRIP* but that statute has been described as being only "aspirational" (*Manitoba Metis Federation Inc v The*

Government of Manitoba et al, 2018 MBQB 131 at para 82). The statutory language differs significantly from British Columbia's *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44.

[40] In my view, a definitive meaning of the *UNDRIP* to the issues raised by the AFN in relation to land development and Indigenous and treaty rights is better left for future litigation in a trial court with appropriate evidence and full argument on the complex issue of the reception of the *UNDRIP* into Canadian domestic law (see *Manitoba Métis #1* at para 15).

[41] I am satisfied that the AFN's intervention in the appeal—particularly the *UNDRIP* submission—could not occur without causing injustice to the defendant. In that regard, I note several points. There are gaps in the evidentiary record necessary for a proper consideration of many of the AFN's legal submissions. While the evidence that was before the motion judge was extensive, the consultation record was not complete and important aspects of it have not been tested by cross-examination. The motion judge made few findings of fact, none of which determine finally any of the parties' rights. The appeal is set for hearing and further delay of the appeal will have consequences to the road being upgraded if the defendant is successful. The defendant has requested the right of response to any intervener. An adjournment of the hearing date would likely follow if the AFN was granted leave to intervene.

[42] The words of this Court in *Manitoba Métis #1* are apposite here: "Interventions are valuable when they provide a unique perspective on the issues already before the court, not when they change the issues before the court" (at para 20).

[43] In conclusion, I would dismiss the AFN's intervention motion.

[44] In terms of the MMF, it identifies itself as the democratic and self-governing representative body of the Manitoba Métis community. Consultations between the MMF and the defendant about the project and Métis harvesting rights began informally in 2014 and formally in 2016. After the injunction order was granted, the MMF commenced its own separate litigation seeking judicial review in relation to the permit, the licence and the project. Like the plaintiffs, it also seeks a declaration that the provincial Crown had not met its duty to consult. To date, the MMF has not sought its own interlocutory injunctive relief.

[45] The MMF says that it has a "substantial interest" in this appeal, both from a legal and a practical perspective. It asserts that the injunction order has impacted the "level and nature" of its consultations with the defendant; the result of this appeal will "have a real and substantial impact on the level and nature of consultations"; and, finally, its claim against the defendant is similar to the plaintiffs' and the result of the appeal will impact the MMF's litigation.

[46] I am not persuaded that the MMF has a direct interest in the outcome of the appeal. A direct interest in the outcome of an appeal is when the proposed intervener's legal rights will be affected or additional legal obligations would be imposed by the appeal to the prejudice of the proposed intervener (see *Friedmann v MacGarvie*, 2012 BCCA 109 at para 15; and *Winnipeg Condominium Corporation 479* at para 22).

[47] A proposed intervener cannot rely on "broad and general" submissions (*Canadian Centre for Bio-Ethical Reform v Grande Prairie*

(City), 2017 ABCA 280 at para 16). The language used in the MMF's notice of motion is the outcome of the appeal "may impact" its claim. The MMF's supporting affidavit is equally vague as to its direct interest in the outcome of the appeal. In its memorandum of submissions, the MMF uses inconsistent language. It says that the outcome of the appeal "may adversely impact" it; later, it says the decision rendered "will affect" it, and then goes on to say it "can be adversely impacted" if not granted intervener status. The pendulum then swings back to the results of the appeal "will have significant impacts" beyond the immediate parties, and then later that this Court's decision "could" impact its decision to seek an injunction.

[48] Leaving aside the fact that the MMF, like the AFN, appears to be approaching this appeal as if it involved a permanent injunction, as opposed to an interlocutory injunction, its concerns as to the precedential effect of the appeal on its litigation is unconvincing; precedent is an insufficient basis to establish a direct interest in the outcome of an appeal for the purposes of intervention (see *Manitoba Métis #1* at para 14; and *Friedmann* at para 15).

[49] The better argument for the MMF is it has a special expertise or a unique perspective relating to the public nature of the dispute that has given rise to the litigation between the plaintiffs and the defendant. This case is a classic example of the polycentric nature of Indigenous law. One large undertaking can impact multiple Indigenous communities and can raise a host of issues. I agree with the MMF that, in such situations, there is a strong public interest concern that must be weighed carefully in deciding whether to grant intervention.

[50] The position taken by the MMF on the appeal is that the injunction order should remain. It proposes to advance submissions: (1) that provide an Indigenous perspective different than that of the plaintiffs; and (2) relating to the honour of the Crown and the duty to consult both generally and how these principles should be weighed in reference to the balance of convenience.

[51] In my view, the MMF's submissions are not useful and different from the immediate parties and would unnecessarily expand the appeal (see rule 46.1(5)(b); *Manitoba Métis #1* at paras 16, 18; and *Manitoba Métis #2* at para 20).

[52] The Indigenous perspective that the MMF wishes to provide to the Court relates to its 2012 harvesting agreement with the defendant and how the defendant has consulted the MMF in relation to the permit, the licence and the project generally. While these concerns are legitimate ones to the MMF, that discussion is not relevant or informative to what this Court must decide in this appeal.

[53] As previously mentioned, while extensive, the record before the motion judge was not the complete consultation record regarding Indigenous consultations either with the plaintiffs or the MMF. The motion judge was not asked to consider the issue of consultations with the MMF and he made no such findings. The situation here is similar to that in *Manitoba Métis #1*, where a group of different Indigenous communities attempted to join the MMF's appeal and litigate their own dispute with the Crown. The better forum for the MMF to advance arguments about the defendant failing in its duty to consult in light of the 2012 harvesting agreement is its own litigation.

[54] For the reasons previously mentioned in relation to the AFN's intervention motion, I am also not satisfied that the submissions of the MMF regarding the honour of the Crown and the duty to consult generally would be useful and different. As previously noted, the nature of this case is an interlocutory injunction. There are no final findings under appeal as to the rights of the parties. Again, as was said in relation to the AFN's intervention motion, this appeal is about how the motion judge balanced the relative risks before a full adjudication of the parties' rights is adjudicated. The submissions of the MMF go well beyond that and challenge whether the defendant has met its duty to consult.

[55] I would also note that the MMF's submissions as to the relevance of the honour of the Crown to the balance-of-convenience analysis replicate those of the plaintiffs. In their factum, the plaintiffs say that the motion judge's analysis on the balance of convenience was correct because "[t]here was a meaningful risk of irreparable harm on Constitutionally protected Aboriginal and Treaty rights"; the injunction order provides for "meaningful Crown consultation and accommodation to take place"; and "[the defendant] is not the exclusive representative of the public interest. There is a public interest in duty to consult, the honour of the Crown, and reconciliation."

[56] I am satisfied, for the same reasons previously mentioned in relation to the AFN's intervention motion, that intervention by the MMF could not occur without causing injustice to the defendant—particularly in the delay of its appeal.

[57] In conclusion, I would dismiss the MMF's intervention motion.

[58] I have one final observation in relation to both motions. The situation here is far removed from *Creekside* where the nature of that case was the appeal of a judgment after trial on a constitutional issue which impacted a form of commerce in all Indigenous communities in Manitoba and none of the immediate parties had an Indigenous perspective. Here, the plaintiffs are well equipped to provide the Court with an Indigenous perspective to the issues that arise in the appeal and, given the high quality of their written submissions, are ably represented. In *Manitoba Métis #1* and *Manitoba Métis #2*, this Court made clear that the simple fact that an appeal involves a question of Indigenous law does not give rise to a right for every Indigenous community or organisation to intervene, even when the proposed intervener, like the AFN and MMF here, is acting in good faith with the sincere desire that justice be done. Ultimately, questions of intervention require a delicate balancing of competing interests. I have considered the circumstances of the intervention motions of the AFN and MMF separately and in neither case have I been satisfied that the interests of justice would be better served by granting leave to intervene.

Disposition

[59] In the result, the MMF's motion for an extension of time is granted. The motions of the AFN and MMF to intervene in the appeal are dismissed. The defendant does not seek costs; accordingly, there will be no order as to costs.

"Mainella JA"

APPENDIX

Intervention

46.1(1) Any person who is interested in an appeal may, by motion, apply to a judge for leave to intervene upon such terms and conditions as the judge may determine.

46.1(2) A motion for intervention shall be filed and served within 30 days after filing the notice of appeal.

46.1(3) A motion for intervention shall briefly

(a) describe the intervener and the intervener's interest in the appeal;

(b) identify the position to be taken by the intervener on the appeal; and

(c) set out the submissions to be advanced by the intervener, their relevancy to the appeal and the reasons for believing that the submissions will be useful to the court and different from those of the other parties.

46.1(4) If granted leave to intervene, an intervener has the right to file a factum.

46.1(5) Unless otherwise ordered by a judge, an intervener

(a) shall not file a factum that exceeds 20 pages;

(b) shall be bound by the case on appeal and may not add to it; and

(c) shall not present oral argument, without leave of the court.