

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231218

Docket: A-18-23

Citation: 2023 FCA 246

**CORAM: STRATAS J.A.
WEBB J.A.
DAWSON D.J.C.A.**

BETWEEN:

**SCOTT EASHAPPIE, SHAWN SPENCER, TAMARA THOMSON
AND CARRY THE KETTLE FIRST NATION**

Appellants

and

TERRINA BELLEGARDE AND JOELLEN HAYWAHE

Respondents

Heard at Edmonton, Alberta, on December 18, 2023.

Judgment delivered from the Bench at Edmonton, Alberta, on December 18, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Edmonton, Alberta, on December 18, 2023).

STRATAS J.A.

[1] The appellants appeal from a scheduling order dated January 19, 2023 of the Federal Court (*per* Grammond J., 2023 FC 86) dismissing an appeal from the order of the Associate Judge (Coughlan A.J.). In its Order, the Federal Court did not interfere with the Associate

Justice's scheduling order to the effect that a motion for interim relief should be heard before a motion challenging the Federal Court's jurisdiction.

[2] The appellants did not seek to stay this Order, nor did they attempt to expedite this appeal. The motion for interim relief has been heard and decided. In short, the Order that is the subject of this appeal has been carried out and is now spent.

[3] Thus, this appeal is moot: for recent cases similar to this: see *Peckford v. Canada (Attorney General)*, 2023 FCA 219 and *Wilson v. Meeches*, 2023 FCA 233 (which contains advice on how to prevent a case from becoming moot in situations such as this). We also do not consider that any public interest would be served in hearing and determining this moot appeal: *Borowski v. Canada (A.G.)*, [1989] 1 S.C.R. 342; 57 D.L.R. (4th) 231.

[4] The respondents seek costs at the high end of Column V of the Tariff. We see no circumstances that would warrant that award. However, there was a motion that was abandoned and this appeal was moot at the time the notice of appeal was filed.

[5] Therefore, we will dismiss this appeal with costs fixed in the all-inclusive amount of \$3,375.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-18-23

STYLE OF CAUSE: SCOTT EASHAPPIE, SHAWN
SPENCER, TAMARA THOMSON
AND CARRY THE KETTLE
FIRST NATION v. TERRINA
BELLEGARDE AND JOELLEN
HAYWAHE

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: DECEMBER 18, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
WEBB J.A.
DAWSON D.J.C.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

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FOR THE RESPONDENTS

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