

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240126**

**Docket: A-278-23**

**Citation: 2024 FCA 21**

**CORAM: WEBB J.A.  
RENNIE J.A.  
GOYETTE J.A.**

**BETWEEN:**

**KYRA WILSON, ALLEN DENNIS MYRAN,  
and KEELY ASSINIBOINE**

**Appellants**

**and**

**DAVID MEECHES, MARVIN DANIELS,  
and GARNET MEECHES**

**Respondents**

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on January 26, 2024.

**REASONS FOR JUDGMENT BY:  
CONCURRED IN BY:**

**RENNIE J.A.  
WEBB J.A.  
GOYETTE J.A**

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**REASONS FOR JUDGMENT**

**RENNIE J.A.**

[1] The issue before us is whether this appeal should be dismissed because it is moot.

[2] In the decision under appeal (*Meeches v. Wilson*, 2023 FC 1289, 2023 CarswellNat 3646, *per* Strickland J.), the Federal Court granted a judicial review application, set aside a decision of a band election appeal committee and remitted the question whether there had been an election

irregularity to a differently constituted band election committee. The Federal Court set strict deadlines within which the redetermination was to take place. The election appeal committee was accordingly reconstituted, considered the matter, declared the election invalid and required a new election take place in short order. That election has now been held.

[3] The respondents subsequently filed a motion under rule 369.2 of the *Federal Court Rules*, S.O.R./98-106 to dismiss the appeal on the basis that it was moot. The motion came before Stratas J.A on November 28, 2023 (*Wilson v. Meeches*, 2023 FCA 233, 2023 CarswellNat 4752). I will not repeat his detailed review of the events leading up to the decision in the Federal Court and thereafter; it is sufficient to say that Stratas J.A. observed that the Federal Court judgment was fully implemented. However, he concluded that the question whether the appeal should be dismissed on the basis that it was moot required a full panel of this Court and was to be determined on written submissions.

[4] The appellants resist the motion to dismiss their appeal. The substance of the appellants' argument is that there are significant legal issues arising from the judgment of the Federal Court and in respect of which the Federal Court erred. They argue that the Court's guidance on these issues would assist the Long Plain First Nation electorate going forward and also guide future election committees in the execution of their responsibilities.

[5] Whether an appeal that is otherwise moot ought nevertheless be heard is a discretionary decision, governed by the well-known criteria in *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342: the existence of an adversarial relationship, whether the

question is elusive of review, judicial economy and the overarching question of the best interest of the administration of justice (at 358-363).

[6] I would not exercise this Court’s discretion to hear this appeal. I am not persuaded that the legal issues raised by the appellants need to be addressed at this time or are elusive of review. Should these issues arise in the future, there are many steps available to the appellants to preserve their interests; including an interim stay motion, which can be brought in very short order with minimal procedural requirements.

[7] Stratas J.A. gave clear and complete guidance as to how steps can be taken to preserve legal rights pending an appeal, including a motion for an interim stay, which is temporary, brought on an urgent basis and designed to preserve matters before the Court decides whether the judgment under appeal ought to be stayed pending appeal. An interim stay having been obtained, parties can move quickly to file a motion for a stay and request an expedited hearing of the appeal on the merits. Again, adverting to Stratas J.A. in the earlier motion (at paras. 29 and 21):

This Court is “accessible 24 hours a day, [every day of the] year, from coast to coast for urgent applications, in both official languages”: *Brown [v. Canada (Citizenship and Immigration)]*, 2020 FCA 130, [2021] 1 F.C.R. 53] at para. 159. When necessary, this Court can act quickly outside of normal working hours, even on the evening of a quiet public holiday... In the Federal Courts system, things can and do move fast, especially when a party asks us to go fast. For us, “access to justice” is much more than an attractive slogan in a tweet or a lofty phrase in a news release. It has been a call to action. And, for a long time, plenty of action there has been. See the article by Professor Gerard Kennedy, “The Federal Courts Advantage in Civil Procedure” (October 31, 2023), online: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4619359](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4619359).

[8] I am therefore not satisfied that the appellants will inevitably or necessarily be prejudiced should these issues arise again. There is no procedural reason why the correctness of the Federal Court decision cannot be put before this Court in another appeal without prejudice to the rights of the parties.

[9] It is also preferable that important legal questions be decided in a factual context and between parties with opposing perspectives. Should the legal questions raised in the Notice of Appeal filed in respect of the Federal Court decision under appeal arise in the future, as counsel suggests they will, they can be addressed at that time and in that context, where there is a live controversy between parties with opposing interests.

[10] I would therefore dismiss the appeal with costs.

"Donald J. Rennie"

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J.A.

"I agree  
Wyman W. Webb J.A."

"I agree  
Nathalie Goyette J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET**

A-278-23

**STYLE OF CAUSE:**

KYRA WILSON, ALLEN  
DENNIS MYRAN, AND KEELY  
ASSINIBOINE v. DAVID  
MEECHES, MARVIN DANIELS,  
AND GARNET MEECHES

**DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR JUDGMENT BY:**

RENNIE J.A.

**CONCURRED IN BY:**

WEBB J.A.  
GOYETTE J.A.

**DATED:**

JANUARY 26, 2024

**WRITTEN REPRESENTATIONS BY:**

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