Federal Court of Appeal | Cour d'appel fédérale

Date: 20150615

Docket: A-117-14

Citation: 2015 FCA 144

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

BETWEEN:

DOUGLAS MICHAEL KEARNEY

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Toronto, Ontario, on June 15, 2015.
Judgment delivered from the Bench at Toronto, Ontario, on June 15, 2015.

REASONS FOR JUDGMENT OF THE COURT BY: RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 15, 2015).

RYER J.A.

[1] We are all of the view that the appeals in files A-117-14, a decision of Boivin J. (as he then was) and A-320-14, a decision of Gleason J. (collectively Boivin J. and Gleason J. are referred to as the "Federal Court Judges") are moot. The applications that were before the

Federal Court Judges in these appeals were for orders of *mandamus* to compel the Minister of Citizenship and Immigration to process applications for permanent residence under the federal Immigrant Investor Program ("IIP") in the *Immigration and Refugee Protection* Act, S.C. 2001, c. 27, ("*IRPA*") that had not been processed as fast as the applicants desired.

[2] The decision under appeal in A-320-14 was rendered on June 23, 2014. Four days earlier, section 87.5 of the *IRPA* came into force. Its effect was to terminate all of the applications of the appellants in these appeals.

[3] Before this Court, the Crown asserts that the effect of section 87.5 of the *IRPA* is to render all of the appeals moot on the basis that all of the applications have been terminated.

[4] The leading case on mootness is *Borowski v Canada (Attorney General)*, [1989] 1 S.C.R. 342. At page 353 Justice Sopinka states:

> The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. The relevant factors relating to the exercise of the court's discretion are discussed hereinafter.

[5] In the present circumstances, the live controversy was whether the Minister could be compelled by *mandamus* to process the applications that were outstanding at the time that the *mandamus* applications were made to, and heard by, the Federal Court Judges.

[6] The enactment of section 87.5 terminated all of the applications under the IIP. As a result, the issue of whether the Minister could be forced to process these applications was no longer a live controversy.

[7] The constitutional validity of section 87.5 of the *IRPA* was not part of the controversy before either of the Federal Court Judges. Neither was the question of whether an order of *mandamus* could be granted, on some basis, to compel the Minister to process applications under the IIP that had been terminated. We are not inclined to entertain these issues as a matter of first instance on appeal.

[8] Having concluded that the appeals are moot, we are not inclined to exercise our discretion to hear them, as we believe that doing so would have no practical effect.

[9] For the foregoing reasons, we would dismiss the appeals without costs. A copy of these reasons should be placed in the files in both A-320-14 and A-117-14.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE BOIVIN OF THE FEDERAL COURT OF CANADA DATED JANUARY 28, 2014, DOCKET NO. IMM-11890-12

DOCKET:	A-117-14
STYLE OF CAUSE:	DOUGLAS MICHAEL KEARNEY v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	JUNE 15, 2015
REASONS FOR JUDGMENT OF THE COURT BY:	RYER J.A. WEBB J.A. RENNIE J.A.
DELIVERED FROM THE BENCH BY:	RYER J.A.

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