

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121101

Docket: A-6-12

Citation: 2012 FCA 274

**CORAM: BLAIS C.J.A.
SHARLOW J.A.
MAINVILLE J.A.**

BETWEEN:

MICHAEL AARON SPIDEL

Appellant

and

CANADA (ATTORNEY GENERAL)

Respondent

Heard at Vancouver, British Columbia, on October 31, 2012.

Judgment delivered at Vancouver, British Columbia, on November 1, 2012.

REASONS FOR JUDGMENT BY:

MAINVILLE J.A

CONCURRED IN BY:

**BLAIS C.J.
SHARLOW J.A**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121031

Docket: A-6-12

Citation: 2012 FCA 274

**CORAM: BLAIS C.J.A.
SHARLOW J.A.
MAINVILLE J.A.**

BETWEEN:

MICHAEL AARON SPIDEL

Appellant

and

CANADA (ATTORNEY GENERAL)

Respondent

REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This concerns an appeal from an order of Justice Barnes of the Federal Court dismissing an appeal from an order of Prothonotary Lafrenière.

[2] The Prothonotary ordered the appellant to return to the respondent privileged documents which had inadvertently been provided to him. He also ordered that certain paragraphs and exhibits

be struck from the appellant's affidavit sworn in support of an application for judicial review filed in the Federal Court.

[3] The appellant acknowledges that the concerned documents are privileged communications, and he has accordingly returned these documents to the respondents. He also acknowledges that the judicial review proceedings underlying the order have been resolved.

[4] The only ground of appeal pursued by the appellant concerns a challenge to the jurisdiction and authority of the Federal Court to issue the order for the return of the privileged documents. In the circumstances at hand, where privilege is acknowledged, the documents have been returned, and the underlying litigation has been resolved, this is now an academic issue.

[5] Moreover, none of the factors set out in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 militate in favour of exercising our discretion to decide this issue despite it being moot. There is no longer an adversarial context between the parties, and neither judicial economy nor the public interest militate in favour of deciding the issue in this appeal, particularly in light of this Court's decision in *Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 223, [2012] 2 F.C.R. 243.

[6] Furthermore, the appellant no longer challenges in this appeal that part of the Federal Court judge's order confirming, with certain corrections, the Prothonotary's order striking out certain portions of the appellant's affidavit.

[7] This appeal should consequently be dismissed with costs in the lump sum amount of \$900, including disbursements and taxes.

"Robert M. Mainville"

J.A.

"I agree
Pierre Blais C.J."

"I agree
K. Sharlow J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-6-12

STYLE OF CAUSE: Michael Aaron Spidel v.
Canada (Attorney General)

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 31, 2012

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: BLAIS C.J.
SHARLOW J.A.

DATED: November 1, 2012

APPEARANCES:

Michael Aaron Spidel FOR THE APPLICANT

Liliane Bantourakis FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada