

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210125

Docket: A-29-20

Citation: 2021 FCA 11

**CORAM: STRATAS J.A.
DE MONTIGNY J.A.
RIVOALEN J.A.**

BETWEEN:

TIM GRAY AND MUHANNAD MALAS

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online video conference hosted by the registry on January 25, 2021.
Judgment delivered from the Bench at Ottawa, Ontario, on January 25, 2021.

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 Ottawa, Ontario, on January 25, 2021).

STRATAS J.A.

[1] The Attorney General has moved to dismiss this appeal from the judgment of the Federal Court (2019 FC 1553 *per* Zinn J.) because the appeal is moot and should not be heard. We will grant the motion.

[2] The aim of the appeal is to force the Minister of Environment and Climate Change to investigate allegations against Volkswagen AG and related companies. But the allegations have already been investigated. They resulted in charges, convictions and sentences in criminal court. These were the product of a plea agreement settling all issues globally involving Volkswagen AG and related companies in this matter.

[3] The plea agreement, the prosecutorial discretion to enter into it, and the sentences ordered by the criminal court cannot be reviewed by this Court. The matter giving rise to the charges, convictions and sentences is now completed and final. Civil redress against Volkswagen AG and related companies for this matter has been obtained through a class action settlement. As a result, in law, there is nothing further for the Minister of Environment and Climate Change to investigate in this matter. Any order requiring the Minister to investigate further would have no practical consequences.

[4] In the hearing before us, the appellant submits that the plea agreement foreclosed its use in other proceedings. This is not correct. The plea agreement provides that the admissions made in it cannot be used against Volkswagen AG and related companies. The legal consequences of the plea agreement and later convictions and sentences stand unaffected.

[5] We exercise our discretion not to hear this moot appeal. We acknowledge the importance of issues arising under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33. But several factors cause us to exercise our discretion against hearing this appeal. The issues raised in this appeal are not evasive of review. Further, the public interest has been served by the

convictions and sentences given to Volkswagen AG and public disclosure of what led to that consequence—effectively a report—has been given in the criminal court. This Court cannot indirectly supplement or change what the criminal court did. We do not consider the Federal Court’s judgment in this particular case on its particular circumstances to affect attempts by others, if necessary, in the future to force the Minister of Environment and Climate Change to investigate wrongdoing of this sort. These reasons should not be taken as an affirmation or rejection of anything in the Federal Court’s reasons.

[6] Therefore, we will grant the motion and dismiss the appeal, both with costs. In the circumstances, we shall award costs at the midpoint of column II.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-29-20

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE ZINN DATED
DECEMBER 4, 2019, DOCKET NO. T-1252-17**

STYLE OF CAUSE: TIM GRAY v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: JANUARY 25, 2021

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
DE MONTIGNY J.A.
RIVOALEN J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

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