

Federal Court of Appeal



Cour d'appel fédérale

Date: 20230117

**Dockets: A-183-21 (lead)
A-191-21**

Citation: 2023 FCA 8

**CORAM: WOODS J.A.
LASKIN J.A.
MONAGHAN J.A.**

Docket: A-183-21 (lead)

BETWEEN:

**BARBARA SPENCER, SABRY
BELHOUCHE, BLAIN GOWING, DENNIS
WARD, CINDY CRANE, DENISE
THOMSON, NORMAN THOMSON, and
STEVEN DUESING & NICOLE MATHIS**

Appellants

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: A-191-21

AND BETWEEN:

KEEAN BEXTE

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on January 17, 2023.

Judgment delivered from the Bench at Toronto, Ontario, on January 17, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 17, 2023).

WOODS J.A.

[1] The Attorney General of Canada, the respondent in these appeals, has brought a motion seeking dismissal of the appeals on grounds of mootness. As explained below, the motion will be granted.

[2] The appeals are from a decision of the Federal Court rendered on June 18, 2021 in which the Court dismissed a challenge to the validity of certain federal quarantine measures affecting air travellers (2021 FC 621, *per* Crampton C.J.). The measures were part of the federal government's response to the COVID-19 global pandemic and were implemented by way of a series of Orders in Council.

[3] In the appeals, the appellants primarily seek declarations that the impugned quarantine provisions are invalid, either on grounds that they violate the *Canadian Charter of Rights and Freedoms* or are *ultra vires* the *Quarantine Act*, S.C. 2005, c. 20.

[4] Since the filing of the appeals, the impugned provisions have ceased to have effect. The respondent submits that the relevant provisions terminated partly on August 9, 2021 and the balance on January 15, 2022. The appellants do not dispute this.

[5] As the impugned provisions are no longer in effect, we are of the view that these appeals are now moot (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th)

231). Where declarations are sought as in this case, relief will be granted only if the relief will settle a “live controversy” between the parties (*Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99 at para. 11). Although the appellants have a genuine interest in the outcome of the appeals, there is no longer a live controversy between the parties. Therefore, the appeals have become moot.

[6] With respect to the Court’s exercise of discretion to hear the appeals despite their mootness, we have considered the relevant factors set out in *Borowski* and agree that the exercise of our discretion is not warranted. It is not necessary to hear the merits of the appeals.

[7] The appeals will be dismissed for mootness, with costs payable to the respondent in a total amount of \$5,000 to be divided equally between the two appeals.

"Judith Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-183-21(lead) and A-191-21

DOCKET: A-183-21 (lead)

STYLE OF CAUSE: BARBARA SPENCER, SABRY
BELHOUCHE, BLAIN
GOWING, DENNIS WARD,
CINDY CRANE, DENISE
THOMSON, NORMAN
THOMSON, and STEVEN
DUESING & NICOLE MATHIS v.
ATTORNEY GENERAL OF
CANADA

AND DOCKET: A-191-21

STYLE OF CAUSE: KEEAN BEXTE v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 17, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** WOODS J.A.
LASKIN J.A.
MONAGHAN J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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BELHOUCHE, BLAIN
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CINDY CRANE, DENISE
THOMSON, NORMAN
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