

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230314**

**Docket: A-32-23**

**Citation: 2023 FCA 60**

**CORAM: STRATAS J.A.  
WEBB J.A.  
MONAGHAN J.A.**

**BETWEEN:**

**HIS MAJESTY THE KING AND THE MINISTER OF  
FOREIGN AFFAIRS AND INTERNATIONAL TRADE**

**Appellants**

**and**

**BOLOH 1(a), BOLOH 2(a) male only, BOLOH 12, and  
BOLOH 13**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 14, 2023.

**REASONS FOR ORDER BY:**

**STRATAS J.A.**

**CONCURRED IN BY:**

**WEBB J.A.  
MONAGHAN J.A.**

**Federal Court of Appeal**



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BOLOH 13**

**Respondents**

**REASONS FOR ORDER**

**STRATAS J.A.**

[1] The appellants move for a stay of the Federal Court's judgment in file T-1483-21 pending appeal.

[2] I would grant the motion and stay the Federal Court's judgment until final determination of the appeal, except that subparagraphs 4(a) and 4(b) of this Court's February 16, 2023 Order remain in effect.

**A. Serious issue to be tried**

[3] The parties agree that there is a serious issue to be tried in the appeal. Thus, the first element in the three-fold test for a stay is met: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; 111 D.L.R. (4th) 385.

**B. Irreparable harm**

[4] The appellants will suffer irreparable harm if the stay is not granted.

[5] Under this branch of the test, the only issue is whether there is irreparable harm, not its degree or extent. The affidavits from senior officials of Global Affairs Canada, Public Safety Canada, and Immigration, Refugees and Citizenship Canada detail the real likelihood of irreparable harm based on their current information and their knowledge and experience. Current information is that the protocol to be followed for the release of the four respondents is likely to be more stringent than that followed for the release of the nineteen others that the appellants have agreed to repatriate.

**C. Balance of convenience**

[6] The balance of convenience lies in the appellants' favour.

[7] The harm detailed by the appellants is significant and affects the wider interests of Canadian security and the safety of persons involved in any repatriation of the respondents. Among other things, sensitive information may well have to be shared with the Autonomous Administration of North and East Syria and, once shared, the appellants would lose control over the circulation of that information. This is to be balanced against the severe and continuing harm being suffered by the four respondents.

[8] Overall, the balance lies in favour of the appellants, particularly in light of the following considerations unique to this unusual case.

– I –

[9] The appeal is scheduled to be heard in less than two weeks. The panel will endeavour to render judgment as quickly as possible. There may be additional harm suffered by the respondents as a result of the delay but that delay will be short.

[10] This is to be balanced against the more general and serious harm suffered by the appellants, some of which may last much longer, have longer ramifications, and may be permanent.

[11] In these circumstances, maintaining the *status quo* for the short time necessary for this Court to consider these wide and important issues is compelling.

– II –

[12] The respondents took additional time to file their motion materials. To some extent, this undercuts their assertion that further delay in the implementation of the Federal Court’s judgment—perhaps just a couple of weeks if they are successful in the appeal—would cause them unacceptable additional harm.

– III –

[13] In subparagraphs 4(a) and 4(b) of its February 16, 2023 Order, this Court ordered the appellants to take steps to implement paragraph 2 of the Federal Court’s judgment. That paragraph required the appellants to make “formal requests to [the Autonomous Administration of North and East Syria] that [the Autonomous Administration of North and East Syria] allow the voluntary repatriation of the [respondents] held in the prisons run by [the Autonomous Administration of North and East Syria’s] military wing, the [Syrian Democratic Forces]”. The evidence is that the appellants are attempting to do so but are encountering obstacles: see appellants’ written representations at paras. 24-25. The respondents did not cross-examine this evidence.

[14] This is a necessary first step in the implementation of the Federal Court's judgment. Arguably the other obligations cannot be implemented until this step is completed. There is no evidence before the Court suggesting that this first step has been completed.

[15] Thus, even if a stay were denied, it is not clear from the evidence before the Court that any practical effect would result before the Court issues its judgment in this appeal.

– IV –

[16] The denial of the stay might work to render portions of the appeal moot in this sense: the appellants might take irreversible or harmful steps that, if the appeal is allowed, they would not have otherwise taken.

[17] The appeal has arguable and important issues with potentially wide ramifications and significance for the public interest and the rights and interests of the respondents. While the Federal Court's judgment represents an expression of the public interest and is deserving of great weight, so too are these other elements of the public interest.

– V –

[18] The evidence filed by the respondents in opposition to the stay consists largely of media reports appended to affidavits of non-experts. It is hearsay.

[19] Overall, however, this does not factor significantly into the analysis: the Federal Court's factual findings supply evidence of harm the respondents are suffering.

**D. Conclusion**

[20] These reasons have no bearing on the outcome of the appeal and should not be taken to show any orientation concerning the issues raised in the appeal. All issues are live and in play.

[21] The appellants have not asked us to vary this Court's February 16, 2023 Order. In fact, the appellants agree that they should continue to take steps in furtherance of paragraph 2 of the Federal Court's judgment unless and until taking a particular step would be detrimental to the respondents, as determined by the appellants acting in good faith. Thus, the appellants shall continue to implement paragraph 2 of the Federal Court's judgment. Another way of expressing this is that subparagraphs 4(a) and 4(b) of this Court's February 16, 2023 Order (which address paragraph 2 of the Federal Court's judgment) will remain in effect.

[22] The obligations in subparagraphs 4(a) and 4(b) are serious and the appellants have agreed to implement them pending this appeal. There will be serious ramifications if it is later found that the appellants have manipulated the situation and played for time.

[23] Therefore, I would grant the motion for a stay. I would stay the judgment of the Federal Court in file T-1483-21 until final determination of the appeal, except that subparagraphs 4(a) and 4(b) of this Court's February 16, 2023 Order would remain in full effect.

“David Stratas”

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J.A.

“I agree  
Wyman W. Webb J.A.”

“I agree  
K.A. Siobhan Monaghan J.A.”



**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-32-23

**STYLE OF CAUSE:** HIS MAJESTY THE KING *et al.* v.  
BOLOH 1(a) *et al.*

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

**REASONS FOR ORDER BY:** STRATAS J.A.

**CONCURRED IN BY:** WEBB J.A.  
MONAGHAN J.A.

**DATED:** MARCH 14, 2023

**WRITTEN REPRESENTATIONS BY:**

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