

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20100416**

**Docket: A-155-10**

**Citation: 2010 FCA 105**

**Present: STRATAS J.A.**

**BETWEEN:**

**SEYMOUR GARFIELD GREY**

**Appellant**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**Respondent**

Heard via tele-conference between Ottawa, Ontario and Toronto, Ontario on April 16, 2010.

Order delivered at Ottawa, Ontario on April 16, 2010.

**REASONS FOR ORDER BY:**

**STRATAS J.A.**

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**REASONS FOR ORDER**

**STRATAS J.A.**

[1] The appellant is about to be deported to England under a removal order. The removal order was issued on the basis of two convictions of the appellant in 2005 for juvenile prostitution. The appellant has fifteen other convictions for offences in Canada since 1981.

[2] In response to the removal order, the appellant started an action in the Federal Court. It is very similar to one brought earlier in the Federal Court, T-1470-09, which was struck out without leave to amend.

[3] After bringing his action in the Federal Court, the appellant brought a motion for a stay of the removal order. Justice Hughes dismissed the motion: 2010 FC 266.

[4] The appellant has now appealed to this Court from that dismissal. The appellant also has moved in this Court for a stay of the removal order.

[5] In this stay motion, the Court is to apply the test set out in *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. There are three requirements in the test. The appellant must demonstrate that there is a serious issue to be tried, he will suffer irreparable harm if the relief is not granted and the balance of convenience lies in his favour.

[6] Justice Hughes applied this test in the stay motion before him and found that none of the three requirements were met.

[7] I have studied carefully all of the appellant's motion record and I have considered carefully all of the appellant's oral submissions.

[8] In particular, in the oral hearing on this motion before me, the appellant reviewed and amplified upon all of his grounds of appeal from Justice Hughes' decision. Among other things, the appellant emphasized that he was coping with challenges from earlier in his life. He admitted that he had been convicted of seventeen offences in Canada, but submitted that some of these were minor and were prompted by the challenges he faced. The appellant also submitted that Justice Hughes

erred in failing to give sufficient weight to the hardship he will encounter when he is deported due to his lack of connection to anything in England and his present connections with his business and relationships in Canada.

[9] I agree with the conclusions and reasons of Justice Hughes and, like him, would dismiss the appellant's motion for a stay.

[10] On whether there is a serious issue to be tried, I note that the appellant's present action in Federal Court does not seek to quash the removal order, nor does it raise any ground for doing so that is known to law. I agree with Justice Hughes' conclusion that the appellant's present action raises no justiciable issue within the jurisdiction of this Court. As a result, the removal order exists without any challenge against it founded on grounds known to law.

[11] On whether the appellant will suffer irreparable harm if a stay is not granted, I agree with Justice Hughes that the appellant must demonstrate prejudice over and above that typically encountered as a result of a deportation. The record here does not establish any such prejudice.

[12] On whether the balance of convenience lies in the appellant's favour, I am required to take into account that there is a "very important" public interest that "weigh[s] heavily" in this determination — in this case, the public interest underlying the enforcement of Canada's immigration laws: *143471 Canada Inc. v. Quebec (Attorney General)*, [1994] 2 S.C.R. 339 at page 383, *per* Cory J. (for the majority); *Harper v. Canada (Attorney General)*, [2000] 2 S.C.R. 764 at

paragraph 9. Justice Hughes relied in part on this public interest in dismissing the appellant's motion for a stay. Here again, I agree with Justice Hughes.

[13] I add that section 48 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 increases the weight that must be given to the public interest factor in this case. Section 48 of the Act provides that a foreign national against whom a removal order is made "must leave Canada immediately" and that the order must be enforced "as soon as is reasonably practicable." These are unambiguous words of mandatory obligation.

[14] The appellant has established none of the requirements for a stay. Therefore, his motion for a stay shall be dismissed.

"David Stratas"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-155-10

**STYLE OF CAUSE:** Seymour Garfield Grey v. Her  
Majesty The Queen In Right of  
Canada

**MOTION DEALT VIA TELE-CONFERENCE WITH APPEARANCE OF PARTIES**

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

**DATED:** April 16, 2010

**APPEARANCES:**

Seymour Garfield Grey

ON HIS OWN BEHALF

Michael Butterfield

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
Deputy Attorney General of Canada

FOR THE RESPONDENT