

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211130

Docket: A-47-21

Citation: 2021 FCA 233

**CORAM: GAUTHIER J.A.
DE MONTIGNY J.A.
LEBLANC J.A.**

BETWEEN:

DR. GÁBOR LUKÁCS

Appellant

and

**MINISTER OF CITIZENSHIP AND IMMIGRATION
and
ATTILA KISS AND ANDREA KISS and
LÁSZLÓ SZÉP-SZÖGI, JUDIT SZÉP-SZÖGI,
LAURA SZÉP-SZÖGI, LÉNA SZÉP-SZÖGI**

Respondents

Heard by online video conference hosted by the Registry on November 30, 2021.
Judgment delivered from the Bench at Ottawa, Ontario, on November 30, 2021.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on November 30, 2021).

GAUTHIER J.A.

[1] Dr. Lukács appeals an interim Order of the Federal Court dated February 6, 2021. This Order was issued further to an urgent request for relief made over the weekend by the Minister of

Citizenship and Immigration (the “Minister”) following his inadvertent disclosure of sensitive information (redactions made with improper technology) in the supplemental certified tribunal record filed on February 5, 2021 in the context of two applications for judicial review by the respondents (other than the Minister) (the “applicants”) of decisions made by Canada Border Services Agency Liaison Officers.

[2] Dr. Lukács is not a party to these applications for judicial review. Dr. Lukács is a Canadian air passenger rights advocate who is not a solicitor, and he does not represent the applicants in the two files at issue (IMM-2967-19 AND IMM-5570-19). During the leave stage of these applications, Dr. Lukács provided the applicants with *pro bono* assistance. The applicants’ counsel, whom they retained after leave was granted, forwarded to him the supplemental certified tribunal record filed on February 5, 2021.

[3] In its February 6, 2021 Order, the Federal Court ordered that the applicants’ counsel maintain the disputed information (for which the Minister is claiming national security privilege pursuant to section 87 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27) in a separate, secure folder pending further instructions from the Court. The Court also ordered that any third party (such as Dr. Lukács) in receipt of the disputed information destroy it and that the applicant’s counsel confirm this destruction with the Court. Thereafter, the Minister filed a corrected version of the supplemental certified tribunal record. Dr. Lukács claims to be an interested party because of paragraph 2 of the Federal Court Order directed to any third party in receipt of the disputed information. The Minister did not contest his right to file a Notice of Appeal.

[4] Since the interim Order was issued, it has been confirmed that Dr. Lukács and his father destroyed the information received from the applicants' counsel. Furthermore, upon a formal motion made by the Minister pursuant to Rule 369 of the *Federal Courts Rules*, S.O.R./98-106, the Federal Court issued a further Order dated March 22, 2021 dealing with the injunctive relief sought (*Kiss v. Canada (Citizenship and Immigration)*, 2021 FC 248). This now supersedes the interim Order. In its said Order, among other things, the Federal Court acknowledged that both the appellant and counsel for the applicants confirmed their compliance with the interim Order. The March 22, 2021 Order expressly addressed how third parties should treat the information at issue. It is currently the subject of another appeal (Court File A-91-21).

[5] We are of the view that the present appeal is moot and we have not been persuaded that this is a case where we should exercise our discretion to deal with the issues raised despite its mootness (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, 57 D.L.R. (4th) 231). Indeed, most issues raised in the appellant's memorandum of fact and law can be addressed in the other appeal (Court file A-91-21). We are also of the view that, on the very particular circumstances of this matter, it is not the proper case to address the wide jurisdictional or procedural issues raised by the appellant with respect to this interim Order.

[6] In these circumstances, the appeal will be dismissed without costs.

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE FOTHERGILL
DATED FEBRUARY 6, 2021, DOCKETS NO. IMM-2967-19 AND IMM-5570-19**

DOCKET: A-47-21

STYLE OF CAUSE: DR. GÁBOR LUKÁCS v.
MINISTER OF CITIZENSHIP
AND IMMIGRATION AND,
ATTILA KISS AND ANDREA
KISS AND, LÁSZLÓ SZÉP-
SZÖGI, JUDIT SZÉP-SZÖGI,,
LAURA SZÉP-SZÖGI, LÉNA
SZÉP-SZÖGI

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: NOVEMBER 30, 2021

**REASONS FOR JUDGMENT OF THE COURT
BY:** GAUTHIER J.A.
DE MONTIGNY J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Dr. Gábor Lukács FOR THE APPELLANT
ON HIS OWN BEHALF

Patricia MacPhee FOR THE RESPONDENT
MINISTER OF CITIZENSHIP
AND IMMIGRATION

Benjamin Perryman FOR THE RESPONDENTS
ATTILA KISS AND ANDREA
KISS AND LÁSZLÓ SZÉP-
SZÖGI, JUDIT SZÉP-SZÖGI,
LAURA SZÉP-SZÖGI, LÉNA
SZÉP-SZÖGI

SOLICITORS OF RECORD:

A. François Daigle
Deputy Attorney General of Canada
Ottawa, Ontario

Benjamin Perryman
Halifax NS

FOR THE RESPONDENT
MINISTER OF CITIZENSHIP
AND IMMIGRATION

FOR THE RESPONDENTS
ATTILA KISS AND ANDREA
KISS AND
LÁSZLÓ SZÉP-SZÖGI, JUDIT
SZÉP-SZÖGI,
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