

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240408

Docket: A-181-23

Citation: 2024 FCA 64

**CORAM: BOIVIN J.A.
LEBLANC J.A.
GOYETTE J.A.**

BETWEEN:

DEMOCRACY WATCH

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on April 8, 2024.
Judgment delivered from the Bench at Ottawa, Ontario, on April 8, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on April 8, 2024).

BOIVIN J.A.

[1] The appellant, Democracy Watch, appeals from the judgment of Furlanetto J. of the Federal Court (the Federal Court) rendered on June 20, 2023 (2023 FC 825), which dismissed the appellant's application for judicial review of two reports of the Commissioner of Lobbying of Canada (the Commissioner). In its reports, the Commissioner concluded that the *Lobbyists' Code*

of Conduct (former Code), developed pursuant to subsection 10.2(1) of the *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.), was not breached by two registered lobbyists.

[2] Specifically, the Commissioner was tasked with determining whether the registered lobbyists had breached Rules 6 and 9 of the *former Code*—which related to conflicts of interest—by attempting to lobby the then Minister of International Trade after having conducted political activities on her behalf. The appellant alleges that the Federal Court erred by finding that the Commissioner’s interpretation and application of Rules 6 and 9 of the *former Code* were reasonable.

[3] It is noteworthy that a new version of the *former Code* came into force on July 1, 2023, (*current Code*).

[4] Namely, the *current Code* does not contain former Rules 6 and 9. In fact, they no longer exist. Current Rule 4.3 replaces former Rule 6 and current Rule 4.2 replaces former Rule 9 (see Office of the Commissioner of Lobbying of Canada, *Renewing the Lobbyists’ Code of Conduct—Updated standards for ethical and transparent lobbying* (Ottawa: OCLC, 2022) at 15–18).

[5] Given the coming into force of the *current Code*, this Court must now determine whether the appellant’s appeal has become moot and, if so, whether it should exercise its discretion to hear it. A matter becomes moot when there is no longer a live controversy affecting the rights of the parties (*Borowski v. Canada (Attorney General)*, 57 D.L.R. (4th) 231, [1989] 1 S.C.R. 342 at 353 (*Borowski*)). A court must consider the following criteria when deciding to exercise its

discretion to hear a moot matter: (i) whether there exists an adversarial context; (ii) whether deciding the matter would result in a waste of judicial resources; and (iii) whether the Court would exceed its proper role by deciding the issue (*Borowski* at 358–63).

[6] It is apparent that no live controversy exists in this case. The appellant acknowledged that it is not pursuing this appeal with the objective of finding the registered lobbyists in contravention of the *former Code*, but rather to seek guidance, “going forward”, on the interpretation of specific expressions contained in the *former Code* (Memorandum of fact and law of the Appellant at para. 8). Although the appellant contends that some expressions contained in the *former Code* also appear in the *current Code*, their meaning remains to be informed by the entirety of the new text of the Sections or Rules of the *current Code* in which they appear. Hence, considering that: (i) the *former Code*, which contextualized these expressions, no longer exists; (ii) the issues that were before the Commissioner will not arise in the same way under the *current Code*; and (iii) the *current Code* was not before the Commissioner nor before the Federal Court, no live issue remains between the parties. This Court has consistently held that a “mere jurisprudential interest fails to satisfy the need for a concrete and tangible controversy” (*Canadian Union of Public Employees (Air Canada Component) v. Air Canada*, 2021 FCA 67 at para. 7; see also *Public Service Alliance of Canada v. Canada (Attorney General)*, 2021 FCA 90; *Peckford v. Canada (Attorney General)*, 2023 FCA 219). We are therefore of the view that this appeal is moot.

[7] Neither has the appellant convinced us that we should exercise our discretion to hear the appeal. A weighing of the *Borowski* factors strongly opposes the hearing of the appeal as it

would result in a waste of judicial resources and offend the principle of judicial economy. Further, the appellant has not persuaded us that the issues raised are elusive of review. It would be inappropriate for the Court to rule on the interpretation of expressions and rules contained in the *former Code*. Should these issues arise again; the appellant will have the opportunity to challenge the interpretation of these expressions in the context of the *current Code* and the Commissioner will provide its interpretation. In sum, the appellant is asking our Court to provide a legal opinion in the abstract, which is not our role, as ruling on these issues in the absence of a live controversy would lead the Court to overstep its adjudicative role.

[8] Finally, the appellant challenges the Federal Court's award of costs on the basis that it was acting in the public interest and that it did not seek its own costs. However, the appellant's public interest standing does not provide immunity from costs and, consequently, did not preclude the Federal Court from rendering a cost award. The appellant has not convinced us that, in the circumstances of this case, the Federal Court erred in its discretionary decision to award costs. Our intervention is not warranted.

[9] The appeal will therefore be dismissed, with costs payable to the respondent.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-181-23

STYLE OF CAUSE: DEMOCRACY WATCH v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: APRIL 8, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** BOIVIN J.A.
LEBLANC J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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