

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140606

**Dockets: A-177-14
A-178-14
A-181-14
A-182-14
A-183-14
A-184-14
A-186-14**

Citation: 2014 FCA 151

**Present: SHARLOW J.A.
STRATAS J.A.
MAINVILLE J.A.**

Docket: A-177-14

BETWEEN:

ANTHONY VAN EDIG

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-178-14

AND BETWEEN:

MICHAEL K. SPOTTISWOOD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-181-14

AND BETWEEN:

CHERYLE M. HAWKINS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-182-14

AND BETWEEN:

VICTORIA HOLLINRAKE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-183-14

AND BETWEEN:

GARY PALLISTER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-184-14

AND BETWEEN:

SHARON MISENER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-186-14

AND BETWEEN:

DALE COLLINS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 6, 2014.

REASONS FOR ORDER BY:
CONCURRED IN BY:

SHARLOW J.A.
STRATAS J.A.
MAINVILLE J.A.

Federal Court of Appeal



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REASONS FOR ORDER

SHARLOW J.A.

[1] Each of the appellants has commenced an action against the respondent in the Federal Court seeking constitutional relief and damages in relation to certain changes to the legal regime governing the medical use of marihuana. Each of them has appealed an interlocutory case management order of the Federal Court relating to his or her own action. Each of them has now filed, in the context of his or her appeal, a motion seeking an interim constitutional exemption

pending the outcome of the trial. The Chief Justice has directed that the motions be determined on the basis of the parties' written submissions pursuant to Rule 369.

[2] The Crown has filed a motion record in each case to oppose the motion on a number of grounds. The Crown also argues that the appeals should be dismissed as moot, based on the steps recently taken by the Federal Court as described below.

[3] In a Direction dated March 7, 2014, Chief Justice Crampton of the Federal Court directed a stay of a number of Federal Court proceedings, including the actions of the appellants, and directed that no further steps were to be taken pending the completion of certain steps in what he considered to be a similar matter in the Federal Court, T-2030-13, *Allard et al v. Her Majesty the Queen*.

[4] On March 21, 2013, Justice Manson made an interlocutory order in the *Allard* matter that reads in relevant part as follows:

1. The Applicants who, as of the date of this Order, hold a valid Authorization to Possess pursuant to section 11 of the *Marihuana Medical Access Regulations*, are exempt from the repeal of the *Marihuana Medical Access Regulations* and any other operation of the *Marihuana for Medical Purposes Regulations* which are inconsistent with the operation of the *Marihuana Medical Access Regulations*, to the extent that such an Authorization to Possess shall remain valid until such time as a decision in this case is rendered and subject to the terms of paragraph 2 of this Order;

2. The terms of the exemption for the Applicants holding a valid Authorization to Possess pursuant to section 11 of the *Marihuana Medical Access Regulations* shall be in accordance with the terms of the valid Authorization to Possess held by that Applicant as of the date of this Order, notwithstanding the expiry date stated on that Authorization to Possess, except that the maximum quantity of dried marihuana authorized for possession shall be that which is specified by their licence or 150 grams, whichever is less;

3. The Applicants who held, as of September 30, 2013, or were issued thereafter a valid Personal-use Production Licence pursuant to section 24 of the *Marihuana Medical Access Regulations*, or a Designated-person Production Licence pursuant to section 34 of the *Marihuana Medical Access Regulations*, are exempt from the repeal of the *Marihuana Medical Access Regulations* and any other operation of the *Marihuana for Medical Purposes Regulations* which are inconsistent with the operation of the *Marihuana Medical Access Regulations*, to the extent that the Designated-person Production Licence or Personal-use Production Licence held by the Applicant shall remain valid until such time as a decision in this case is rendered at trial and subject to the terms of paragraph 4 of this Order;

4. The terms of the exemption for an Applicant who held, as of September 30, 2013, or was issued thereafter a valid Personal-use Production Licence pursuant to section 24 of the *Marihuana Medical Access Regulations*, or a Designated-person Production Licence pursuant to section 34 of the *Marihuana Medical Access Regulations*, shall be in accordance with the terms of their licence, notwithstanding the expiry date stated on the licence....

[5] On March 31, 2014, Chief Justice Crampton made an order in a number of Federal Court files, including the actions of the appellants. That order is the subject of each of these appeals.

The Order reads in relevant part as follows:

1. These proceedings shall continue as specially managed proceedings.
2. Pursuant to Rule 383, Justice Michael L. Phelan is assigned as Case Management Judge in these matters.
3. Further directions from the Case Manager will be issued shortly, regarding the management and scheduling of these proceedings. Among other things, those directions will address the timing of the lifting of the stay of proceedings currently in place on these matters.
4. For greater certainty, the Registry shall not accept any filings or correspondence on these matters until further instructions have been issued by Justice Michael L. Phelan.

[6] On April 3, 2014, Justice Phelan made an order lifting the stay imposed by the March 31, 2014 order of Chief Justice Crampton. On April 8, 2014, the Crown moved in the Federal Court

for a new stay of a number of Federal Court proceedings, including the proceedings commenced by each of the appellants, pending the final disposition of the *Allard* matter. On May 7, 2014, Justice Phelan granted that motion in an order that reads in relevant part as follows:

1(a) All Court files wherein the Plaintiff meets the criteria of the injunction in the *Allard* matter [the Allard Injunction] are stayed except with leave of the Court to bring any proceeding.

1(b) Such Plaintiffs shall be entitled to the terms of the Allard Injunction.

1(c) The Defendant shall by motion under Rule 369, within 7 days hereof, advise the Court and the relevant party as to those Plaintiffs who, in their view, are subject to the Allard Injunction.

1(d) Any Plaintiff identified by the Defendant as subject to the Allard Injunction may within ten (10) days of service of the Defendant's motion oppose the motion in accordance with Rule 369. The Defendant shall have give (5) days for reply.

1(e) Pending some other decision by the Court, those parties whom the Defendant has identified as entitled to the benefit of the Allard Injunction, shall be treated as if the Allard Injunction applies to them. A copy of the Allard Injunction is attached to this Order and incorporated *mutatis mutandis*.

2(a) All other Plaintiffs who have applied for interim relief may, within ten (10) days hereof, amend their pleadings including in particular their motion for interim relief to provide such additional evidence and submissions as they deem necessary.

2(b) The Defendant shall have ten (10) days to respond to such amendment and shall propose a timetable for such further steps as they consider necessary.

2(c) Pending further Order of the Court, and except with respect to their motions for interim relief, these Plaintiffs' matters are likewise stayed.

3. All other matters not provided for in paragraphs 1 and 2 are stayed subject to any party obtaining leave of the Court to bring any other related proceedings or seeking some further relief.

4. The terms of this Order shall apply to any new application or statement of claim filed subsequent to this Order which is substantially identical to those already subject to this Order.

5. The terms of this Order may be varied or amended as the Court determines necessary.

[7] The Crown submits that each of the appellants is a person who is entitled to the benefit of the Allard injunction. That submission is consistent with the record.

[8] In my view, the May 7, 2014 Order of Justice Phelan has rendered moot the March 31, 2014 Order of Chief Justice Crampton, which is the order under appeal in each of the cases now before this Court. No appellant has contested the submission of the Crown that this appeal is moot, although that could have been done by filing a reply to the Crown's motion record. Nor does the record disclose any basis upon which this Court could reasonably conclude that the appeals should be heard despite being moot (see *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342).

[9] Accordingly, I would dismiss for mootness each appeal, and the related motions with costs payable to the Crown in each case in the amount of \$500 inclusive of all disbursements and taxes. A separate judgment will be issued for each appeal.

"K. Sharlow"

J.A.

"I agree.

David Stratas J.A."

"I agree.

Robert M. Mainville J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-177-14, A-178-14, A-181-14, A-182-14, A-183-14, A-184-14 AND A-186-14

DOCKET: A-177-14

STYLE OF CAUSE: ANTHONY VAN EDIG v. HER MAJESTY THE QUEEN

AND DOCKET: A-178-14

STYLE OF CAUSE: MICHAEL K. SPOTTISWOOD v. HER MAJESTY THE QUEEN

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AND DOCKET: A-186-14

STYLE OF CAUSE: DALE COLLINS v. HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.
CONCURRED IN BY (STRATAS, MAINVILLE J.J.A.)
DATED: JUNE 6, 2014

WRITTEN REPRESENTATIONS BY:

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MICHAEL K. SPOTTISWOOD	FOR THE APPELLANT MICHAEL K. SPOTTISWOOD
JON BRICKER	FOR THE RESPONDENT HER MAJESTY THE QUEEN
CHERYLE M. HAWKINS	FOR THE APPELLANT CHERYLE M. HAWKINS
JON BRICKER	FOR THE RESPONDENT HER MAJESTY THE QUEEN
VICTORIA HOLLINRAKE	FOR THE APPELLANT VICTORIA HOLLINRAKE
AILEEN JONES	FOR THE RESPONDENT HER MAJESTY THE QUEEN
GARY PALLISTER	FOR THE APPELLANT GARY PALLISTER
JON BRICKER	FOR THE RESPONDENT HER MAJESTY THE QUEEN
SHARON MISENER	FOR THE APPELLANT SHARON MISENER

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FOR THE RESPONDENT
HER MAJESTY THE QUEEN

DALE COLLINS

FOR THE APPELLANT
DALE COLLINS

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