Federal Court of Appeal | Cour d'appel fédérale

Date: 20160909

Docket: A-39-16

Citation: 2016 FCA 227

CORAM: **WEBB J.A.**
RENNIE J.A.
GLEASON J.A.

BETWEEN:

DR. GÁBOR LUKÁCS

Applicant

and

CANADIAN TRANSPORTATION AGENCY

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on September 9, 2016.

REASONS FOR ORDER BY: GLEASON J.A.

CONCURRED IN BY: WEBB J.A.
RENNIE J.A.

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REASONS FOR ORDER

GLEASON J.A.

[1] The Court has before it a motion to strike this application for mootness. For the reasons that follow, I would grant this motion, without costs.

[2] This application was launched in January of 2016. It seeks declarations regarding the lack of authority of the respondent to make a decision or order that has the effect of excluding or exempting Indirect Air Service Providers (ISPs) from the requirement of holding a licence under

the *Canadian Transportation Act*, S.C. 1996, c. 10 (the *CTA*). In addition to declaratory relief, the applicant also seeks in this application an order of prohibition, enjoining the respondent from making a decision or order that purports to exclude or exempt ISPs from the requirement of holding a licence under the *CTA*. The applicant brought this application after the respondent announced that it intended to undertake public consultations as to whether it should modify its approach to the licencing of domestic ISPs or resellers under the *CTA*.

[3] Following the conclusion of those consultations, and while this application was still pending, the respondent issued Decision No. 100-A-2016 on March 29, 2016. In that decision the respondent determined that:

1. Resellers do not operate air services and are not required to hold an air licence under the *CTA*, as long as they do not hold themselves out to the public as an air carrier operating an air service; and

2. New Leaf Travel Company Inc., which is an ISP or reseller, would not be required to hold an air licence under the *CTA* if it proceeded with its proposed business model.

[4] It is common ground between the parties that the terms “ISP” and “reseller” are interchangeable and refer to companies who sell air transportation services but contract with a third party carrier to actually provide those services. Thus, the decision that the applicant sought to prohibit in this application was made by the respondent on March 29, 2016.

[5] By order dated June 9, 2016, this Court granted the applicant leave to appeal the respondent's March 29, 2016 decision and that appeal is currently pending before the Court.

[6] There is a high threshold for striking an application for judicial review on a preliminary basis in that such orders should only be made where the application is so flawed as to be bereft of any chance of success: *Canada (National Revenue) v. JP Morgan Asset Management (Canadian) Inc.*, 2013 FCA 250 at paras. 47-48, [2014] 2 F.C.R. 557. Where an application has been rendered moot, this high threshold may be met especially where, as here, the issues in the moot proceeding are fully engaged in another matter that is pending before the Court.

[7] A matter is moot when there is no longer a live controversy between the parties and an order will therefore have no practical effect: *Borowski v. Canada*, [1989] 1 S.C.R. 342 at para. 16, 57 D.L.R. (4th) 231 and *Lavoie v. Canada (Minister of the Environment)*, 2002 FCA 268 at para. 6, 291 N.R. 282. Even where a matter is moot, the Court may still decide to hear a case if the circumstances warrant it.

[8] Here, the issues raised by this application are fully engaged by the pending appeal brought in respect of the respondent's March 29, 2016 decision. A remedy identical to the requested declaratory relief will necessarily be considered by the Court in deciding the appeal. As for the requested remedy of prohibition, there is no longer anything to prohibit as the respondent has made the decision that the applicant sought to prohibit in this application. I therefore conclude that this application is moot and can have no practical effect. Moreover, there is no reason why it should be pursued – or even stayed – as all the issues raised in the application

are now before the Court in the pending appeal of the respondent's March 29, 2016 decision. Thus, the only impact of this application would be the incurring of unnecessary costs by the parties and the expenditure of unnecessary time by the Court.

[9] I would accordingly grant this motion and strike this application, without costs.

"Mary J.L. Gleason"
J.A.

"I agree.
Wyman W. Webb J.A."

"I agree.
Donald J. Rennie J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-39-16
STYLE OF CAUSE:	DR. GÁBOR LUKÁCS v. CANADIAN TRANSPORTATION AGENCY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	GLEASON J.A.
CONCURRED IN BY:	WEBB J.A. RENNIE J.A.
DATED:	SEPTEMBER 9, 2016

APPEARANCES:

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Allan Matte	FOR THE RESPONDENT

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