

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230328**

**Docket: A-48-22**

**Citation: 2023 FCA 71**

**CORAM: PELLETIER J.A.  
DE MONTIGNY J.A.  
GLEASON J.A.**

**BETWEEN:**

**MARK DINAN**

**Appellant**

**and**

**FEDERAL MINISTER OF TRANSPORT**

**Respondent**

Heard at Vancouver, British Columbia, on March 28, 2023.

Judgment delivered from the Bench at Vancouver, British Columbia, on March 28, 2023.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**PELLETIER J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230328**

**Docket: A-48-22**

**Citation: 2023 FCA 71**

**CORAM: PELLETIER J.A.  
DE MONTIGNY J.A.  
GLEASON J.A.**

**BETWEEN:**

**MARK DINAN**

**Appellant**

**and**

**FEDERAL MINISTER OF TRANSPORT**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on March 28, 2023).**

**PELLETIER J.A.**

[1] We have not been persuaded that the Federal Court fell into error in dismissing the appellant's application for judicial review.

[2] While the appellant does not concede that the appeal is moot, we are satisfied, for the reasons set out by the Federal Court, that the decision of the Federal Court or of this Court would not have a practical effect on Captain Dinan's rights.

[3] Captain Dinan's desire to see the law settled does not constitute "a live issue between the parties" as that phrase is used in the jurisprudence. The questions involved are not, at this stage, so obviously evasive of review that they require adjudication in spite of their mootness in this case.

[4] The appellant's concerns with respect to the respective roles of the Transportation Appeal Tribunal of Canada [TATC] and the Minister in the adjudication of disputes as to the issuance of Canadian Aviation Documents can best be decided in a case in which the outcome affects the rights of a document holder. On these facts, the questions raised are, in effect, an impermissible reference of questions of law to the Federal Court, and now this Court.

[5] One of the sources of Captain Dinan's preoccupations is the statement at paragraph 4 of the Federal Court's reasons which we reproduce for the sake of convenience:

Importantly, the Minister's March 16, 2021 reconsideration decision could have been the subject of a further request for review to the TATC. As a general rule, this Court will decline to review decisions for which a statutory administrative review or appeal is available. The Court should respect Parliament's intention that such issues be decided by the TATC before being considered by the Federal Court.

[6] These comments give rise to Captain Dinan's concerns about an endless loop of reviews and reconsiderations.

[7] Since the Federal Court decided the application for judicial review on the basis that it was moot, the question of the appropriate recourse from a decision of the Minister was not necessary to its decision. These comments quoted above are therefore *obiter dicta* which have no precedential value. The question of the proper recourse from a Ministerial decision remains to be decided in a case whose facts raise it.

[8] We agree with the Federal Court that the application for judicial review was moot. We see no error in the Federal Court's exercise of its discretion which would justify our intervention.

[9] As a result, the appeal will be dismissed with costs of \$1,500 all inclusive.

"J.D. Denis Pelletier"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-48-22

**STYLE OF CAUSE:** MARK DINAN v. FEDERAL  
MINISTER OF TRANSPORT

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MARCH 28, 2023

**REASONS FOR JUDGMENT OF THE COURT  
BY:** PELLETIER J.A.  
DE MONTIGNY J.A.  
GLEASON J.A.

**DELIVERED FROM THE BENCH BY:** PELLETIER J.A.

**APPEARANCES:**

Raymond D. Hall FOR THE APPELLANT

Michele Charles FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Raymond D. Hall FOR THE APPELLANT  
Richmond, B.C.

Shalene Curtis-Micallef FOR THE RESPONDENT  
Deputy Attorney General of Canada