

Houston & Associates Realty Ltd. v. Canada (Attorney General), 2026 CanLII 63491 (FC)

Source: Federal Court
Date: 2026-06-26
File number: T-2206-25
Citation: Houston & Associates Realty Ltd. v. Canada (Attorney General), 2026 CanLII 63491 (FC),
<<https://canlii.ca/t/klrrb>>, retrieved on 2026-07-01

Date: 20260626

Docket: T-2206-25

Vancouver, British Columbia, June 26, 2026

PRESENT: Madam Associate Judge Catherine A. Coughlan

BETWEEN:

HOUSTON & ASSOCIATES REALTY LTD.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

MANOR WINDSOR REALTY LTD.

Non-Party

ORDER

I. Overview

[1] The Court has two motions before it. The first, filed on February 20, 2026 by a non-party, Manor Windsor Realty Ltd. [Manor Windsor], seeks to vary the Confidentiality Order issued in this proceeding on August 13, 2025. Manor Windsor submits that the variation is necessary so that it can gain access to documents covered by the Confidentiality Order in order to determine whether it will seek leave to intervene in the underlying proceeding. In other words, Manor Windsor says that it is hindered in making its decision to intervene when it does not have full access to the record.

[2] The second motion, filed on March 16, 2026, by the Respondent, Attorney General of Canada [AGC], seeks an order quashing the motion to vary on the basis that Manor Windsor is not a party to the now discontinued proceeding, and in any case, lacks standing to bring the motion to vary because it not directly affected by the Confidentiality Order.

[3] For the reasons set out more fully below, the AGC's motion to quash is granted and Manor Windsor's motion to vary is dismissed.

II. Background

[4] The Applicant, Houston & Associates Realty Ltd [Houston], is a real estate brokerage that was assessed an administrative monetary penalty [AMP] by the Financial Interactions and Reports Analysis Centre of Canada [FINTRAC]. The AMP resulted from alleged violations of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, [PCMLTFA] and *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184 [PCMLTFR].

[5] On June 30, 2025, Houston filed an appeal of the AMP, alleging that FINTRAC erred in its approach to determining whether violations were committed, and in assessing a proper penalty.

[6] During the proceeding, the AGC made an informal request for a confidentiality order pursuant to subsections 55, 73.21(4), and 73.21(4.1) of the *PCMLTFA*. On August 30, 2025, acting as case management judge in the Houston appeal, I granted the Confidentiality Order. By virtue of the Confidentiality Order, significant portions of the of the parties' submissions were redacted from the public record.

[7] While the Houston appeal was ongoing, Manor Windsor was also assessed a similar AMP, under the *PCMLTFA* and *PCMLTFR*. Manor Windsor filed their own appeal under Court File No. T-5112-25. Shortly thereafter, Manor Windsor filed its motion to vary the Confidentiality Order in the Houston appeal.

[8] Manor Windsor asserts that its appeal raises grounds that overlap with the Houston appeal. As a result, it seeks access to the positions and arguments advanced in the Houston appeal that are shielded from public view by the Confidentiality Order. In its own appeal, Manor Windsor has served a Notice of Constitutional Question, challenging the constitutionality of the provisions under which the Confidentiality Order was made.

[9] After Manor Windsor served its motion to vary, Houston and the AGC settled the Houston appeal, and a Notice of Discontinuance was filed on March 9, 2026. Despite the settlement, Manor Windsor advised Houston and the AGC that it intended to proceed with its motion to vary.

[10] The Court initially directed the parties to serve and file submissions on the AGC's motion to quash.

[11] Following the receipt of those submissions, the Court issued further directions seeking submissions from the parties on the issue of mootness and its application to this now discontinued appeal.

III. Issue

[12] Having reviewed the submissions of the parties, I am satisfied that the only issue for the Court is whether the discontinuance of the Houston appeal renders the motion to vary moot.

[13] When mootness is raised, the Court must engage in the two-part *Borowski* test for determining whether a proceeding is moot: *Borowski v Canada (Attorney General)*, [1989 CanLII 123 \(SCC\)](#), [1989] 1 S.C.R. 342 [*Borowski*]. The first part of the test asks whether there is still a live controversy between the parties. If the matter is moot, the second part of the test asks whether the Court should exercise its discretion to hear a moot matter. In exercising that discretion, the Court considers the underlying policy rationales, including whether there remains a sufficient adversarial context, whether special circumstances justify the use of scarce judicial resources, and whether deciding the matter would be consistent with the Court’s proper adjudicative role: *Borowski* at pp. 345, 358–363. No single criterion is determinative. However, at the second stage, the burden of proof shifts to the party seeking to have the moot matter heard to persuade the Court to exercise its discretion to hear the moot appeal. Or in this case, the motion to vary.

IV. Position of the Parties

i) Manor Windsor

[14] Manor Windsor argues that the motion is not moot. First, it asserts that notwithstanding the discontinuance, the Confidentiality Order remains in force and continues to limit Manor Windsor’s access to the confidential court documents. The Confidentiality Order, Manor Windsor says, did not expire when the appeal was resolved because it was worded in such a manner that its effect extends beyond the determination of the appeal.

[15] Second, Manor Windsor submits that its motion to vary would determine whether, and on what terms, it may access the confidential materials, and that a live controversy therefore remains. It further submits that the Court retains jurisdiction to address confidentiality orders after a decision on the merits has been rendered: *Canadian Broadcasting Corp. v Manitoba*, [2021 SCC 33](#) CanLII, [2021] 2 SCR 785 at para 36 [*Canadian Broadcasting Corp.*]; *Fibrogen, Inc. v Akebia Therapeutics, Inc.*, [2022 FCA 135](#) at paras 11–12 [*Fibrogen*].

[16] Even if no live controversy remains, Manor Windsor submits that the Court should exercise its discretion to hear the motion under the *Borowski* policy factors, as recently summarized in *Taylor v Newfoundland and Labrador*, [2026 SCC 5](#) at para 44 [*Taylor*]. It relies on the existing an

adversarial context and argues that its written motion imposes only a minimal burden on the Court and would not require the Court to legislate from the bench or otherwise exceed its proper role.

[17] Manor Windsor submits that the central issue is one of statutory interpretation. Relying on *Hunter v Canada (Consumer and Corporate Affairs)* (CA), [1991 CanLII 8251 \(FCA\)](#), [1991] 3 FC 186, and *Ruby v Canada (Solicitor General)*, [2002 SCC 75](#), [2002] 4 SCR 3, it argues that the provisions under which the Confidentiality Order was made must be interpreted in light of the [PCMLTFA](#) as a whole, and that this interpretation permits a non-party such as Manor Windsor to apply to vary the Confidentiality Order.

[18] Lastly, Manor Windsor submits that refusing to allow a non-party to vary the Confidentiality Order risks impermissibly violating the open court principle for the sake of judicial economy. Manor Windsor argues that as the AGC has not led any evidence, nor requested an oral hearing, and witness credibility is not in issue, the demands on judicial resources are minimal. In any case, Manor Windsor submits that despite the discontinuance, the Court retains the authority to review access to the record of its own proceedings, including by non-parties: *Canadian Broadcasting Corp. v Manitoba*, [2021 SCC 33](#), [2021] 2 SCR 785, at para 6.

ii) AGC

[19] The AGC advances extensive arguments on the issue of mootness. It asserts that there is no live controversy and, in any case, the court should not exercise its discretion to hear Manor Windsor's motion to vary.

[20] At the first stage of the *Borowski* test, the AGC submits that a matter is moot where a decision would have no practical effect on the parties' rights: *Borowski* at p. 353; *Sierra Club Canada Foundation v Canada (Environment and Climate Change)*, [2024 FCA 86](#) at para 63. It argues that a decision on the motion to vary would have no practical effect on Houston or the AGC. In the AGC's submission, a dispute that is disconnected from the parties' rights is insufficient to avoid a finding of mootness. Importantly, Manor Windsor is not, and has never been, a party to the underlying appeal.

[21] The AGC argues that neither Manor Windsor’s jurisprudential interest in FINTRAC’s decisions in other cases, nor its speculation as to similarities between the Houston appeal and its own appeal satisfy the first step of the *Borowski* test. The AGC notes that the Federal Court of Appeal has consistently held that a “mere jurisprudential interest” fails to satisfy the requirement for a concrete and tangible controversy: *Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 at para 7; *Public Service Alliance of Canada v Canada (Attorney General)*, 2021 FCA 90 at para 8; *Democracy Watch v Canada (Attorney General)*, 2024 FCA 64 at para 6).

[22] Similarly, the Federal Court of Appeal has held that speculative possibilities are insufficient to avoid a finding of mootness; *Yahaan v Canada*, 2018 FCA 41 at para 26. Citing *Fibrogen* at para 28, the AGC submits that the “potential” use of materials in another proceeding is “simply conjecture” which has “none of the immediacy, certainty and precision” to constitute an exception to the general rule that moot issues should not be heard.

[23] At the second stage of the *Borowski*, the AGC submits that the Court should not exercise its discretion to hear the motion. While acknowledging an adversarial relationship with Manor Windsor, the AGC says the strength of the relationship is weakened by Houston’s non-participation. That aside, the AGC argues that hearing the motion will violate the remaining policy rationales of judicial economy and the proper adjudicative role of the court.

[24] With respect to judicial economy, the AGC argues that hearing the motion will have no practical effect on Manor Windsor’s rights since it is not a party to the appeal and the underlying appeal is concluded. Moreover, the issues raised on the motion are not evasive of review. Indeed, the Court’s recent decision in *Norwich Real Estate Services Inc. (RE/MAX Kelowna) v Financial Transactions and Reports Analysis Centre of Canada*, 2025 FC 663, at paras 17-18 [*Norwich*], considered the proper scope and interpretation of s.55(1) and s.73.21 of the *PCMLTFA*- the same provisions at issue in the motion.

[25] The AGC further submits that the constitutional issues raised by Manor Windsor can and should be addressed in their own appeal. Noting that Manor Windsor has filed a Notice of Constitutional Question in their own appeal, the AGC argues that duplicative proceedings are not

an efficient use of the Court's resources: *Lavergne-Poitras v Canada (Attorney General)*, 2022 FC 1391, at para 33.

[26] The AGC also disputes Manor Windsor's assertion that the motion would impose only a minimal burden on the Court. It notes that the motion and accompanying Notice of Constitutional Question challenge both the interpretation and constitutionality of s. 73.21(4) of the *PCMLTFA*. Manor Windsor's interpretation—that the provision is discretionary—may be inconsistent with *Norwich*, which suggests that subsection 73.21(4) is not discretionary. The constitutionality of s. 73.21(4) is therefore engaged on the motion to vary. The AGC submits that it is entitled to lead evidence justifying the impugned provision under section 1 of the *Canadian Charter of Rights and Freedoms* [Charter]: *Lougheed v Canada*, 2013 FCA 138 at para 20. In the AGC's view, judicial economy does not favour adducing and weighing that evidence in the context of a moot appeal.

[27] As to the last *Borowski* factor, the AGC urges the Court to decline to make a pronouncement on the proper interpretation and/or constitutionality of section 73.21(4) when the same issue will have to be addressed in Manor Windsor's own appeal. The AGC argues that the Court should avoid unnecessary constitutional pronouncements, which may prejudice future cases, including Manor Windsor's own appeal.

V. Analysis

[28] Mootness is tool that allows the Court to manage its own proceedings in a fair and judicially expedient manner. Where there is no longer a live issue in a proceeding, or where a case raises an issue that is purely academic or abstract, the Court should decline to hear it as, to do so could be a waste of precious judicial resources (*Borowski*, at p. 353).

[29] I am satisfied that Manor Windsor's motion is moot because the order sought would have no practical impact for the parties: *Borowski*, at p. 353.

[30] As a starting point, it is important to recall that Manor Windsor is not now, nor has it ever been a party to the Houston appeal. Throughout its submissions, Manor Windsor erroneously assumes it has some form of standing in the Houston appeal to file its motion and make its submissions. To be clear, it has none. It is a stranger to the litigation. Accordingly, and for the

purposes of the *Borowski* analysis, I find there is no live controversy between the actual parties to the proceeding.

[31] Even assuming Manor Windsor had standing, the foundation or ‘substratum’ of Manor Windsor’s motion has disappeared with the filing of the discontinuance: *Borowski*, p. 357. The basis for the motion to vary was Houston’s underlying appeal. Once the parties (Houston and the AGC) filed the Notice of Discontinuance, they ceased to have a live controversy. Houston’s discontinuance of the underlying appeal rendered Manor Windsor’s motion moot.

[32] At the second stage of *Borowski*, I am equally satisfied that there are no policy rationales upon which the Court should exercise its discretion to hear the motion.

[33] With respect to the presence of an adversarial context, as explained by the Supreme Court of Canada in *Taylor v Newfoundland*, 2026 SCC 5, an adversarial context “[...] does not require complete overlap on the issues raised by the parties [...] rather, it will exist where the issues were ‘well and fully argued by parties who have a stake in the outcome’” (*Taylor* at para 51, citing *Borowski*, at pp. 358-59). Here, the AGC and Manor Windsor acknowledge that there is an adversarial context at play, arising from Manor Windsor’s motion to vary and the AGC’s motion to quash.

[34] The existence of an adversarial context is not determinative. The more significant policy consideration in this case is whether exceptional circumstances justify using scarce judicial resources. In assessing judicial economy, the Court considers whether a decision would have a practical effect on the parties’ rights, whether the issue is recurring but evasive of review, and whether it raises a matter of public importance requiring resolution. In my view, Manor Windsor’s motion does not advance those objectives.

[35] As I have noted, the decision will have no practical effect on the rights of the actual parties – Houston and the AGC. Moreover, Manor Windsor, is not directly affected by the confidentiality order, nor does it suggest otherwise. Rather, its stated purpose in bringing the motion to vary was to determine whether it should make a motion to intervene in Houston’s appeal. Its purpose has been frustrated by the discontinuance.

[36] Importantly, the issues are not evasive of review. In fact, Manor Windsor is challenging the practice of obtaining confidentiality orders in its own appeal and filed a Notice of Constitutional Question in that proceeding. Any issues of statutory interpretation or *Charter* infringement – something that is intrinsically fact-based (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, at para 21) – are better addressed at the merits of Manor Windsor’s own appeal, not in a now discontinued proceeding.

VI. Conclusion

[37] The Court should not expend scarce judicial resources on a moot motion brought by a non-party in a discontinued proceeding, particularly where that non-party can and has raised the same issues in its own appeal. Doing so would invite duplicative and potentially abusive proceedings. The motion to quash is therefore granted. Manor Windsor’s motion to vary is dismissed.

THIS COURT ORDERS that:

1. The AGC’s motion to quash is granted.
2. Manor Windsor’s motion to vary is dismissed
3. The motion to vary the Confidentiality Order is struck.
4. The whole without costs.

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"Catherine A. Coughlan"
Associate Judge