

**In the Court of Appeal of Alberta**

**Citation: The Owners: Condominium Plan No 002 1156 (Castledowns Pointe) v The Bank of Nova Scotia, 2026 ABCA 28**

**Date:** 20260129  
**Docket:** 2403-0246AC;  
2403-0248AC  
**Registry:** Edmonton  
**Docket:** 2403-0246AC

**Between:**

**The Owners: Condominium Plan No. 002 1156 o/a Castledowns Pointe**

Applicant

- and -

**The Bank of Nova Scotia and Scotia Mortgage Corporation**

Respondents

- and -

**Parties Listed on Schedule “A”**

Respondents

**Docket:** 2403-0248AC

**And Between:**

**The Owners: Condominium Plan No. 002 1156 o/a Castledowns Pointe**

Applicant

- and -

**Toronto-Dominion Bank, Bank of Montreal, and Royal Bank of Canada**

Respondents

- and -

**Parties Listed on Schedule “A”**

Respondents

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**The Court:**

**The Honourable Justice Kevin Feehan  
The Honourable Justice Tamara Friesen  
The Honourable Justice Karan Shaner**

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**Memorandum of Judgment**

Application to Dismiss Appeals

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## Memorandum of Judgment

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### The Court:

[1] The applicants have applied to have the underlying appeals dismissed as moot. The sole question to be determined in this application is whether a panel of three judges of this Court should be tasked with hearing those appeals when the outcome will have no practical effect on any live controversy between the parties.

[2] For the following reasons the application is granted. The appeals are declared moot and will not be sent for further hearing.

### Background

[3] The underlying action relates to Castledowns Pointe, a residential condominium building damaged by fire in March 2023. In assessing the extent of the fire damage, engineers discovered numerous pre-existing structural issues and in September 2023, the City of Edmonton directed that the building be vacated. The building has never been repaired.

[4] In March 2024, the Castledowns Pointe condominium corporation filed an originating application seeking to approve the sale of the condominium building and lands, the distribution of those sale proceeds, and the ultimate dissolution or termination of the condominium corporation. Sometime later, the condominium corporation filed an application seeking an order approving and accepting an offer to purchase the lands.

[5] The respondents – Bank of Nova Scotia and Scotia Mortgage Corporation, Toronto-Dominion Bank, Bank of Montreal, and Royal Bank of Canada – are mortgagees who are secured lenders on a total of 29 condominium units in Castledowns Pointe. The respondents did not contest termination of the condominium corporation or acceptance of the offer to purchase; however, they were opposed to two provisions of the ensuing order made October 9, 2024 (the 2024 Order): (1) the direction that \$230,286.04 of the sale proceeds would go towards the condominium corporation’s legal fees and (2) a \$100,000 hold back from the sales proceeds to allow the condominium corporation to make “[p]ayments owing to any other vendor or incurring of expense, which ... is properly owed or incurred by the [condominium corporation] for the benefit of the [condominium corporation] or for the purpose of preserving the lands”: 2024 Order at para 9(h).

[6] The respondents appealed the 2024 Order arguing that the chambers judge had misinterpreted the Court’s discretion to order certain payments on termination of a condominium pursuant to s 61(3) of the *Condominium Property Act*, RSA 2000, c C-22, and that the impugned

provisions of the 2024 Order improperly allowed the unsecured debts of the condominium corporation to be paid in priority to the secured interests of the mortgagees.

[7] The sale contemplated by the 2024 Order did not proceed and the appeals of the 2024 Order (Appeals No. 2403-0246AC and 2403-0248AC) were accordingly rendered moot. Those appeals are the subject of the present dismissal application.

[8] A subsequent order made January 17, 2025 (the Insurance Order), relisted the lands for sale and contained provisions mirroring the impugned provisions of the 2024 Order. Those provisions similarly direct payment out of the condominium corporation's insurance proceeds for the condominium corporation's legal fees and other holdbacks. In his written reasons, the chambers justice described the Insurance Order as reflecting "the intention of the *Act* which is that the Corporation's expenses be paid in priority to owners and mortgagees": *Condominium Plan v Owners and Mortgagees*, 2025 ABKB 43 at para 61.

[9] The Insurance Order is the subject of ongoing Appeal No. 2503-0034AC and is not subject to this dismissal application. The appeals of the 2024 Order and the Insurance Order are currently scheduled to be heard by the same panel of the Court, on the same day, and involve the same parties.

[10] Ultimately, another sale was approved by the Court in March 2025 (the 2025 Order). The 2025 Order did not include the direction to pay the condominium corporation's legal fees or the holdback.

## Discussion

[11] The parties agree that the tangible and concrete dispute over the 2024 Order disappeared when the underlying offer to purchase fell through and the appeals are therefore moot. The question for this panel is whether this Court should exercise its discretion to send those appeals to hearing despite their mootness: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 1989 CanLII 123 (CanLII) [*Borowski*]; *CM v Alberta*, 2024 ABCA 136 [*CM*]; *Conifer Energy Inc v Razor Energy Corp*, 2025 ABCA 14.

[12] In deciding whether to exercise our discretion, to send these matters for hearing despite lack of a live controversy between the parties, we have considered the following factors:

- (a) the presence of an adversarial context
- (b) the concern for judicial economy
- (c) the court's proper law-making function.

*Borowski* at 358-63; *BN v Alberta (Director of Child Welfare)*, 2004 ABCA 40 at para 13 [BN].

[13] With respect to the first factor, the applicant argues that there is no longer an adversarial context because the issues raised can be fully and vigorously argued in the appeal of the Insurance Order. The respondents counter that the parties have already filed their *facta* for the appeals of both the 2024 Order and the Insurance Order and allowing the moot appeals to proceed will contribute to the Court making “a fully informed decision on the merits”: *BN* at para 15. The respondents further submit that litigation over priority issues with the condominium corporation is ongoing in the Court below. We agree with the respondents and are satisfied that in the circumstances of this case an adversarial context remains.

[14] Regarding concerns about judicial economy, the jurisprudence indicates a court should be more willing to hear cases where resolving the legal issues will have “some practical effect on the rights of the parties” or where the legal issues of a case are recurrent but brief and therefore evasive of judicial review: *Borowski* at 360; *CM* at para 36. The respondents suggest that resolving the issues raised in their appeals would be of some value to the parties and the public because issues of priority in the condominium corporation termination context are of ongoing concern, particularly with respect to payment of legal fees. The respondents further argue these issues commonly arise but are often moot before they can be addressed by a court. The applicant does not disagree with these submissions, but counters that proceeding with the appeals of the 2024 Order would be an unnecessary duplication of effort because the respondents raise precisely the same issue in both appeals.

[15] In their written argument the respondents agree that the central issue in both appeals is “whether the Court has discretion to prioritize payment of the Condo Corp’s unsecured debts in priority to the interest to registered mortgagees”: Memorandum of Argument of the Respondents at para 5. In oral argument, the respondents argued that, in fact, the appeals are different from one another because the source of the money being drawn upon is different: the 2024 Order purports to draw these funds from the land sale proceeds while the Insurance Order purports to draw them from the insurance proceeds. We agree with the applicant and find this to be a distinction without a difference in terms of the potential precedential value of a decision from this Court dealing with the proper interpretation of s 61(3) of the *Act* and its impact on established priorities principles.

[16] That the central issue in the appeals of the 2024 Order duplicates the central issue in the Insurance Order appeal also undercuts the appellant’s argument that this Court ought to hear the moot appeals because the issues are evasive of review. Assuming, but without deciding, that these issues are *ordinarily* evasive of review, here, there is currently an ongoing appeal which will address essentially the same issue, but in the context of a live controversy. This factor weighs heavily against the hearing of these moot appeals and in favour of preserving scarce judicial resources, although we acknowledge that concern is somewhat attenuated by the fact that the

appeals from the 2024 Order were to be heard by the same panel hearing the appeal from the Insurance Order.

[17] Finally, that the moot appeals and the Insurance Appeal raise the same interpretation issue is also relevant to our consideration of the third factor: the appropriate role of this Court. The respondents argue that s 61 of the *Act* has received little published judicial consideration to date and determining the priority issue does not intrude into the legislative role. We agree. Interpreting s 61 falls squarely within the role of this court as an adjudicator: see *BN* at para 23. But this conclusion does not weigh in the respondents' favour. Clarity and predictability with respect to interpretation of s 61(3) and its impact on priority payments will be achieved through the hearing of the Insurance Order appeal.

[18] Considered as a whole, the above factors weigh in favour of the dismissal application. The respondents have not illustrated that there are sufficient special circumstances to justify exercising the Court's discretion to hear these moot appeals.

### **Disposition**

[19] The application to dismiss Appeals No. 2403-0246AC and 2403-0248AC is granted. The appeals are dismissed.

Application heard on January 22, 2026

Memorandum filed at Edmonton, Alberta  
this 29th day of January, 2026

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Feehan J.A.

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Friesen J.A.

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Shaner J.A.

**Appearances:**

M.L. Stappler

H. Willis

for the Applicant, The Owners: Condominium Plan No. 002 1156 o/a Castledowns Pointe

G. Miciak

A. Willey

for the Respondent, The Bank of Nova Scotia and Scotia Mortgage Corporation

C.J. Mohr

A. Coleman (no appearance)

for the Respondents, Toronto-Dominion Bank and Bank of Montreal

S. Chau

for the Respondent, Royal Bank of Canada

T.J. Bond (no appearance)

for the Respondents, AST Trust Company (Canada) and Computershare Trust Company of Canada

Respondent ATB Financial (no appearance)

Respondent Atco Gas and Pipelines Ltd. (no appearance)

Respondent Canada Mortgage and Housing Corporation (no appearance)

S.J. Weatherill (no appearance)

for the Respondent Canadian Imperial Bank of Commerce CIBC Mortgages Inc.

C.J. Ashmore (no appearance)

for the Respondent, City of Edmonton

Respondent Computershare Trust Company of Canada c/o CMLS Financial Ltd. (no appearance)

Respondent Computershare Trust Company of Canada c/o First National Financial LP (no appearance)

D.J. Hughes (no appearance)

for the Respondents, Computershare Trust Company of Canada c/o MCAP Service Corporation (ON), ICICI Bank Canada and MCAP Service Corporation (AB) MCAP Service Corporation (ON)

Farm Credit Canada (no appearance)

His Majesty the King c/o Minister of National Defence (no appearance)

His Majesty the King in right of Alberta as represented by the Minister of Seniors and Housing  
(Seniors Home Adaptation and Repair Program - SHARP) (no appearance)

D.E. Stewart (no appearance)  
for the Respondent, Servus Credit Union Ltd.

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**Schedule "A"**  
**Non-Owners**

- A. The Owners: Condominium Plan No. 002 1156 o/a Castledowns Pointe
- B. AST Trust Company (Canada)  
Computershare Trust Company of Canada
- C. ATB Financial
- D. Atco Gas and Pipelines Ltd.
- E. Bank of Montreal
- F. Canada Mortgage and Housing Corporation
- G. Canadian Imperial Bank of Commerce  
CIBC Mortgages Inc.
- H. City of Edmonton
- I. Computershare Trust Company of Canada  
c/o CMLS Financial Ltd.
- J. Computershare Trust Company of Canada  
c/o First National Financial LP
- K. Computershare Trust Company of Canada  
c/o MCAP Service Corporation (ON)
- L. Farm Credit Canada
- M. His Majesty the King c/o Minister of National Defence
- N. His Majesty the King in right of Alberta as represented by the Minister of Seniors and  
Housing (Seniors Home Adaptation and Repair Program - SHARP)
- O. ICICI Bank Canada
- P. MCAP Service Corporation (AB)  
MCAP Service Corporation (ON)
- Q. Royal Bank of Canada
- R. Servus Credit Union Ltd.
- S. The Bank of Nova Scotia

Scotia Mortgage Corporation

T. The Toronto Dominion Bank

U. Canadian Imperial Bank of Commerce

**Owners (by legal unit)**

1. June Maxine Duggan
2. Nadine Eljabi and Nehmat Annette Eljabi
3. Angele J Plourde
4. Gordon Husieff
5. Darell William Chetyrbuk
6. Sonia Fruhbrodts and Waldy Espinoza
7. Tricia L Lowrey
8. Peter Zoranic
9. Jena Un
10. Salwa Mohamud and Shirwa Ali
11. Patricia Brockie and Shane Brockie
12. Neil J Godlien and Elaine N Godlien
13. Rebecca Rose Ferris
14. Lisa-Marie Brown
15. Melinda McComb
16. 1623688 Alberta Ltd.
17. Jeffrey Co and Moises Fernandez
18. Evone Foong Liew
19. Salim Choufi and Wafaa Elzughbi
20. Brian Murray and Sheena Murray
21. Seham Moullem and Ali Moullem
22. Linda Cabral
23. Peter Zoranic

24. Lorne Claypool and Christine Claypool
25. Elizabeth Abou Ltaif and Ziad Abou-Lteif
26. Chantal Piche
27. Rabha Ammar
28. Susan Strebchuk
29. Cuong Duc Ly
30. Ching Ngan Long
31. Jeffrey Chupik
32. Susanne Averay-Jones
33. Patricia Lynn Farris and Jaylene Farris
34. Kelly-Anne M Aurat
35. Erin Melissa Thompson
36. Christina Williams
37. Denise Holm
38. Maria Millionor Leoparte
39. Jose Rivera
40. Mohammed Hussein Sandouga and Suzan Mah'd Masoud
41. Melinda Mccomb and Mark Mccomb
42. Amin Hamid Zahalan
43. Nga Thi Thuy Bui
44. Perica Meseldzija and Dragica Meseldzija
45. Juanita Ta
46. Leigh O'Quinn
47. Jessica Lynn Cline
48. Gladys A Mina
49. Suzanna Dobson
50. Kristen Smith and Ken Smith
51. Kristen Evans

52. Jeanette L Dominico
53. Dimce Janeski and Nikolina Janeska
54. M Dolores Berlin
55. Kevin S Chehade and Yojainas Chehade and Maila Chehade
56. Michelle Phillips
57. Zeljko Savka and Dragica Resnjak-Savka
58. Sidney Cranston
59. Christopher Terrio
60. Lai Alex Huynh
61. Antonio Gallace and Rosa Gallace
62. Muslim Al Farttoosi
63. Rosemary Sibanda
64. Morris Glena and Marian L Glena
65. Melvin Alexander Lavallee
66. Francis Petras
67. Perica Meseldzija and Dragica Meseldzija
68. Elizabeth Aboultaif
69. Deborah Turner
70. Hoda A Mohamoud and Galad S Yousuf
71. Ibrahim Darwish and Shady Darwish
72. Asha Hussein
73. Deogratias Rukandira
74. Rally Gacho and Jasmin Gacho
75. Deb Orr
76. Susanne Pasay
77. Douglas Nikolic
78. Tao Qing Huang
79. Alan William Standerwick

80. Kelsey Elizabeth Doucette
81. Eric S Mah
82. Leif E Puffer and Lindsay Schreiner
83. Barbara Kuz