

Federal Court



Cour fédérale

Date: 20250410

Docket: T-2021-23

Citation: 2025 FC 663

Ottawa, Ontario, April 10, 2025

PRESENT: Mr. Justice Norris

BETWEEN:

**NORWICH REAL ESTATE SERVICES
INC.,
DBA RE/MAX KELOWNA**

Appellant

and

**FINANCIAL TRANSACTIONS AND
REPORTS ANALYSIS CENTRE OF
CANADA**

Respondent

ORDER AND REASONS

I. OVERVIEW

[1] In a Judgment and Reasons dated December 10, 2024 (2024 FC 1996), the Court allowed the appellant's appeal against an administrative monetary penalty imposed by the Director of the

Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) for a violation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (the Act).

[2] As described in the Judgment and Reasons, the Director found that the appellant had violated the Act by failing to report financial transactions that occurred in the course of its activities with respect to which there were reasonable grounds to suspect that they related to the commission or attempted commission of a money laundering offence, as required by section 7 of the Act. After receiving the Notice of Violation, the appellant submitted reports concerning the suspicious transactions in question, albeit belatedly. The appellant did not contest that it committed the alleged violation; the focus of its response to the Notice of Violation was the appropriate penalty. The sole issue raised on appeal was whether the Director fell into reviewable error in imposing the administrative monetary penalty.

[3] Subsection 73.21(4) of the Act provides that, in an appeal, the Court “shall take every reasonable precaution, including, where appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person or entity of information referred to in subsection 55(1).” (The categories of information referred to in subsection 55(1) of the Act are set out below.)

[4] In view of this requirement, on the joint request of the parties, on November 3, 2023, Associate Judge Horne issued a Confidentiality Order pursuant to Rule 151 of the *Federal Courts Rules*, SOR/98-106 (*FCR*) with respect to those parts of the appeal record falling within section 55(1) of the Act “or that should otherwise be treated as confidential under Rule 151.” The Order expressly left the confidentiality of the hearing of the appeal and the published

reasons to the discretion of the judge hearing the appeal. Subsequently, the Court directed that the hearing of the appeal proceed in the absence of the public.

[5] On December 10, 2024, the Court released its Judgment and Reasons to the parties on a confidential basis so that they could provide their positions on whether any information contained therein should not be made public.

[6] On February 7, 2025, the parties provided comprehensive and very helpful submissions setting out their positions concerning the information that should be redacted from the public version of the Judgment and Reasons.

[7] To a large extent, the parties agree on the information that should be redacted to ensure that no information falling within subsection 55(1) of the Act is disclosed. Having considered subsection 55(1) and the information the parties agree should not be disclosed, I am satisfied that that information should be redacted from the public version of the Judgment and Reasons.

[8] The parties disagree in a some specific respects over whether additional redactions are required to prevent the disclosure of information falling within subsection 55(1) of the Act. The reasons that follow will address this disputed information.

[9] As well, the appellant submits that some information should be redacted to ensure consistency with the Confidentiality Order made under Rule 151 of the *FCR*, a point on which the respondent takes no position. This submission will also be addressed below.

[10] The Court's determinations are reflected in the redacted version of the Judgment and Reasons to be released concurrently with this Order and Reasons.

II. LEGAL FRAMEWORK

[11] The appellant appealed the Director's decision under section 73.21 of the Act.

Subsection 73.21(4) provides as follows:

(4) In an appeal, the Court shall take every reasonable precaution, including, when appropriate, conducting hearings in private, to avoid the disclosure by the Court or any person or entity of information referred to in subsection 55(1).	(4) À l'occasion d'un appel, la Cour fédérale prend toutes les précautions possibles, notamment en ordonnant le huis clos si elle le juge indiqué, pour éviter que ne soient communiqués de par son propre fait ou celui de quiconque des renseignements visés au paragraphe 55(1).
---	---

[12] Subsection 55(1) of the Act obliges FINTRAC not to disclose several categories of information. It provides as follows:

Disclosure by Centre prohibited	Interdiction : Centre
55 (1) Subject to subsections (3) and (6.1), sections 52, 53.1, 53.31 to 53.6, 55.1, 56.1 and 56.2, subsection 58(1) and sections 58.1, 65 to 65.1 and 68.1 of this Act and to subsection 12(1) of the <i>Privacy Act</i> , the Centre shall not disclose the following:	55 (1) Sous réserve des paragraphes (3) et (6.1), des articles 52, 53.1, 53.31 à 53.6, 55.1, 56.1 et 56.2, du paragraphe 58(1) et des articles 58.1, 65 à 65.1 et 68.1 de la présente loi et du paragraphe 12(1) de la <i>Loi sur la protection des renseignements personnels</i> , il est interdit au Centre de communiquer les renseignements :

(a) information set out in a report made under section 7;	a) contenus dans une déclaration visée à l'article 7;
(a.1) information set out in a report made under section 7.1;	a.1) contenus dans une déclaration visée à l'article 7.1;
(b) information set out in a report made under section 9;	b) contenus dans une déclaration visée à l'article 9;
(b.1) information set out in a report referred to in section 9.1;	b.1) contenus dans une déclaration visée à l'article 9.1;
(b.2) information provided under sections 11.12 to 11.3 except for identifying information referred to in subsection 54.1(3);	b.2) qui ont été fournis sous le régime des articles 11.12 à 11.3, à l'exclusion des renseignements identificateurs visés au paragraphe 54.1(3);
(c) information set out in a report made under subsection 12(1), whether or not it is completed, or section 20;	c) contenus dans une déclaration — complète ou non — visée au paragraphe 12(1) ou un rapport visé à l'article 20;
(d) information voluntarily provided to the Centre about suspicions of money laundering, of the financing of terrorist activities or of sanctions evasion;	d) se rapportant à des soupçons de recyclage des produits de la criminalité, de financement des activités terroristes ou de contournement de sanctions qui lui sont transmis volontairement;
(e) information prepared by the Centre from information referred to in paragraphs (a) to (d); or	e) préparés par le Centre à partir de renseignements visés aux alinéas a) à d);
(f) any other information, other than publicly available information, obtained in the	f) obtenus dans le cadre de l'administration et l'application de la présente partie, à l'exception de ceux

administration or
enforcement of this Part.

qui sont accessibles au
public.

[13] Subsection 55(3) of the Act authorizes the disclosure of designated information by FINTRAC to various law enforcement and other types of agencies in certain circumstances. It has no bearing on the present matter.

[14] A further exception to the general prohibition on disclosure of information by FINTRAC is found in section 73.22 of the Act. It requires FINTRAC to make public certain information relating to its enforcement actions – specifically, “the nature of the violation or the default, as the case may be, the name of the person or entity and the amount of the applicable penalty.” In relation to the enforcement action taken against the appellant, FINTRAC made this information public on or about October 27, 2023.

[15] Returning to subsection 73.21(4), in simple terms, it requires the Court to take every reasonable precaution to avoid the disclosure of information contained in the suspicious transaction reports the appellant submitted to FINTRAC (paragraph 55(1)(a)). It also requires the Court to take every reasonable precaution to avoid the disclosure of information prepared by FINTRAC from information contained in these reports (paragraph 55(1)(e)). Finally, it requires the Court to take every reasonable precaution to avoid the disclosure of “any other information, other than publicly available information, obtained in the administration or enforcement” of Part 3 of the Act (paragraph 55(1)(f)). (Part 3 of the Act concerns the establishment and responsibilities of FINTRAC.) It does not appear that any of the other categories of protected information identified in subsection 55(1) of the Act are in issue here.

[16] Subsection 73.21(4.1) of the Act provides that subsection (4) does not apply to the name of the person or entity that was served with the notice of violation, the nature of the violation, or the amount of the penalty imposed. As a result, this information may be made public in this appeal, even if it would otherwise be protected under subsection 55(1) of the Act. Indeed, this is the information FINTRAC made public in October 2023 pursuant to section 73.22 of the Act.

[17] The Court's records and proceedings (including its decisions) are presumptively open and accessible to the public (*Attorney General (Nova Scotia) v MacIntyre*, [1982] 1 SCR 175 at 189; *AB v Bragg Communications Inc*, 2012 SCC 46 at para 11; *Sherman Estate v Donovan*, 2021 SCC 25 at paras 37 and 44). Subsection 73.21(4) is a statutory limitation on the open court principle. Decisions of this Court and the Federal Court of Appeal have held that subsection 73.21(4) affords the Court no discretion with respect to the protection of information covered by subsection 55(1): see *British Columbia Lottery Corporation v Canada (Attorney General)*, 2012 FC 1204 (aff'd in *British Columbia Lottery Corporation v Canada (Attorney General)*, 2013 FC 307) and *Canada (Attorney General) v Violator No 10*, 2015 FCA 155 at paras 9-10. (These decisions pre-date the enactment of subsection 73.21(4.1).) The parties have approached the redaction process accordingly, although they do not always agree on what information must be protected. The determinative question, then, is whether information in the Judgment and Reasons is covered by subsection 55(1) and does not fall within the exceptions carved out by subsection 73.21(4.1).

[18] That being said, given the fundamental importance of the open court principle and its protection under the *Charter* (see *Sherman Estate*, at para 30 and the cases cited therein),

subsection 73.21(4) of the Act should not be used to limit court openness any more than is necessary to protect the important public interests it is meant to serve, which include preventing the unauthorized disclosure of personal information collected by FINTRAC (see paragraph 40(c) of the Act). Consequently, the provision should be applied stringently; any uncertainty about what it requires should be resolved in favour of openness, as long as this is consistent with the text, context and purpose of the provision.

[19] Finally, as mentioned above, the appellant seeks to maintain the confidentiality of certain information in the Judgment and Reasons under Rule 151 of the *FCR* even though that information is not covered by subsection 55(1) of the Act. As I understand the appellant's position, it maintains that, even though the November 3, 2023, Confidentiality Order expressly does not apply to the Judgment and Reasons, the information protected by that Order in the appeal record should also be protected in the Judgment and Reasons.

[20] Rule 151(2) provides that, before making a confidentiality order under Rule 151(1), the Court "must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings." This is a discretionary determination that must be made in accordance with the test articulated in *Sherman Estate* (at para 38). That is to say, in the present circumstances, disclosure of information in the Judgment and Reasons must pose a serious risk to an important public interest; any redactions over information in the Judgment and Reasons must be necessary to prevent this risk; and, as a matter of proportionality, the benefits of redacting the information outweigh its negative effects.

III. THE INFORMATION IN ISSUE

[21] A key point of dispute between the parties is what to do about information mentioned in the Judgment and Reasons that is already publicly available. Since the resolution of this issue has implications for much of the information in dispute, it is helpful to begin there. As I will explain, I am not persuaded that any such information should be redacted under either subsection 73.21(4) of the Act or pursuant to Rule 151 of the *FCR*.

[22] By way of additional background, an unusual feature of the present matter is that FINTRAC was alerted to the possibility that the appellant had failed to report suspicious transactions coming within the scope of section 7 of the Act when, in the course of a routine compliance audit of the appellant, it came across two news articles published by the *Vancouver Sun* in 2019. The articles were reporting on an action that had been commenced in the British Columbia Supreme Court by the BC Civil Forfeiture Office in relation to two British Columbia properties – one a home in Kelowna, the other a condominium at the Big White ski resort. The appellant was identified by name as having been involved in the transactions under investigation, as were several parties alleged to have an interest in the properties.

[23] These news articles were included in the Certified Tribunal Record (CTR) produced by FINTRAC pursuant to Rule 317 of the *FCR*. When the CTR was produced, FINTRAC identified ten items that were “subject to” subsection 55(1) of the Act and that were to be treated as confidential by the Court pursuant to subsection 73.21(4) of the Act. The two *Vancouver Sun*

articles were not so identified. Instead, they were included on a list of non-confidential documents. Despite this, the articles (along with three other articles FINTRAC had obtained during its investigation) were redacted from the public version of the Appeal Book Index pursuant to the November 3, 2023, Confidentiality Order. (The Appeal Book itself is also subject to that Order.)

[24] One other important piece of background information should be mentioned at this point. This is that there is a reported decision of the British Columbia Supreme Court granting an interim preservation order with respect to the proceeds of the sale of two properties in British Columbia, one in Kelowna, the other in Big White: see *British Columbia (Director of Civil Forfeiture) v Cuatro Cienagas Inversiones Ltd*, 2020 BCSC 2177. There is no issue that this decision is part of the legal proceeding on which the *Vancouver Sun* reported in the two articles mentioned above, nor is there any issue that it concerns the two properties mentioned in those articles.

[25] With this background in mind, I would make the following determinations with respect to information mentioned in the Judgment and Reasons that remains in dispute between the parties.

[26] First, I agree with the respondent that there is no basis to redact the style of cause or citation of the British Columbia Supreme Court decision in paragraph 23 of the Judgment and Reasons (which are also set out above). The decision is a public document that came into existence independently of any enforcement action by FINTRAC. Furthermore, apart from suggesting that the appellant played some sort of role in the real estate transactions in question,

the decision does not reveal what that role was. It clearly does not fall within subsection 55(1) of the Act. As a result, there is no basis to withhold the style of cause or the citation under subsection 73.21(4) of the Act.

[27] Turning to Rule 151 of the *FCR* and the *Sherman Estate* test, given that the decision is publicly available and that it says very little about the appellant's involvement, I am not persuaded that referring to it in the public version of the Judgment and Reasons would pose a serious risk to an important public interest. As a result, redaction of the style of cause and citation under Rule 151 of the *FCR* is not warranted.

[28] Second, I agree with the appellant that redactions over information that discloses the general nature of the transactions with which it was involved – that they relate to the purchase and/or sale of real estate – are not warranted. As the appellant points out, it would be a matter of public knowledge that this is the nature of its business as a real estate company.

[29] Third, it follows from the foregoing that there is no basis to redact any parts of paragraphs 20, 29, or 37 of the Judgment and Reasons where the Court discusses the proceedings in the British Columbia Supreme Court and the *Vancouver Sun* news articles reporting on those proceedings. As a result of that decision and those articles, it is public knowledge that the appellant had *some* connection to the real estate transactions discussed in the articles, transactions that were also implicated in the civil forfeiture proceedings. Few details of the appellant's involvement are provided, however. I have already explained why there is no basis to redact references to the British Columbia Supreme Court decision. With respect to the

Vancouver Sun news articles, as noted above, when they were produced as part of the CTR, they were expressly excluded from the list of items subject to subsection 55(1) of the Act. The rationale for this is obvious: while they were obtained by FINTRAC in the administration of Part 3 of the Act, they are publicly available information and, as such, they are excluded under paragraph 55(1)(f) of the Act.

[30] Turning to Rule 151 of the *FCR*, it may well have been appropriate, out of an abundance of caution, for the parties to agree that the copies of the news articles in the Appeal Book should be subject to the November 3, 2023, Confidentiality Order; however, the question at hand now is whether references to the articles should be redacted from the public version of the Judgment and Reasons. Applying the *Sherman Estate* test, I am not persuaded that information relating to the articles should be redacted. Given that the articles are publicly available and that they say little about the appellant's involvement, I am not persuaded that including references to them in the public version of the Judgment and Reasons would pose a serious risk to an important public interest. This analysis also applies to the reference to the date of the news articles in paragraph 30 of the Judgment and Reasons as well as the discussion of some other news articles in paragraph 37 (third bullet).

[31] On the other hand, since the appellant's precise role in the transactions(s) is not a matter of public knowledge, I agree that information that would disclose this should be redacted from the Judgment and Reasons pursuant to subsection 73.21(4) of the Act (something on which the parties are largely in agreement). This is the rationale for redactions in paragraphs 1, 2, 9, 18, 19, 22, 24, 25, 26, 27, 32, 34, 37 (third and fourth bullets), and 61 of the Judgment and Reasons.

[32] Fourth, I agree with the appellant that there is no basis to redact references to the involvement of the BC Civil Forfeiture Office in paragraphs 4, 24, 29 or 30 of the Judgment and Reasons. As discussed above, the fact that that office had taken legal action against a property (or properties) with which the appellant had some connection is a matter of public knowledge. The respondent points out that the fact that the appellant knew about the involvement of the Civil Forfeiture Office at the material time is not a matter of public knowledge; however, I consider this distinction to be too fine a basis on which to redact this information, especially considering its importance for understanding the appellant's position on the appeal and for understanding the overall analysis in the Judgment and Reasons. As the Supreme Court of Canada has observed, "the public can understand the work of the courts, and thus come to trust the judicial process and its outcomes, only if informed of what a judge decides and why the particular decision was made" (*La Presse inc v Quebec*, 2023 SCC 22 at para 7 [internal quotation marks, emphasis, and citation omitted]). Moreover, and in any event, the appellant does not object to this fact being disclosed in the Judgment and Reasons. In such circumstances, it is difficult to see how redacting this information would further the objective of preventing the unauthorized disclosure of personal information.

[33] Fifth, given the publicly available information discussed above, I am not persuaded that there is any basis to redact the reference to the date when the appellant was aware of the involvement of the Civil Forfeiture Office, found in paragraph 30 of the Judgment and Reasons, or the Court's synopsis of publicly available information in paragraph 48.

[34] With these main points of dispute out of the way, only a few miscellaneous pieces of information in the Judgment and Reasons remain to be addressed:

- Regarding paragraph 18, I agree with the appellant that the number of deficiencies identified by FINTRAC is information obtained in the administration or enforcement of Part 3 of the Act that is not publicly available. This information should be redacted.
- Regarding paragraphs 24 and 30, I agree with the appellant that the name of its compliance officer falls within subsection 55(1) of the Act. It should be redacted. I would note that the respondent did not disagree with this submission; rather, it had sought more extensive redactions over these two paragraphs, a position I rejected above.
- Regarding paragraph 32, given that the fact that the appellant made representations to FINTRAC is made abundantly clear in other parts of the Judgment and Reasons, given that no one seeks redactions over those other parts of the Judgment and Reasons, and given that the appellant does not object to disclosure of this information, there is no basis to redact the phrase “the appellant’s representations,” as the respondent requests.
- Regarding the block quotation in paragraph 34, which sets out part of the Notice of Violation, I agree with the respondent that it is not covered by subsection 55(1) of the Act. The parties did agree that the copy of the Notice of Violation in the Appeal Book should be subject to the November 3, 2023, Confidentiality Order. At this stage, however, applying the *Sherman Estate* test, I am not persuaded that including this information in the public version of the Judgment and Reasons would pose a serious risk to an important public interest. In any event, even assuming without deciding that this information met the first part of the *Sherman Estate* test, redacting it from the public version of the

Judgment and Reasons would be a disproportionate measure given the importance of that information for understanding the Court's resolution of the issues raised in the appeal.

This analysis also applies to information from the Notice of Violation set out in paragraph 37 (fourth bullet).

IV. CONCLUSION

[35] For these reasons, I am satisfied that the redactions applied to the version of the Judgment and Reasons to be released concurrently with this Order and Reasons are required by subsection 73.21(4) of the Act. I am not satisfied that any redactions of information under Rule 151 of the *FCR* are warranted.

[36] In order to preserve any appeal rights the parties may have in relation to the present Order and Reasons, it will be released first to the parties on a confidential basis along with the redacted Judgment and Reasons. A further Order will address the public release of this Order and Reasons and the redacted Judgment and Reasons.

ORDER IN T-2021-23

THIS COURT ORDERS that

1. The public version of the Judgment and Reasons dated December 10, 2024
(2024 FC 1996) shall be redacted in accordance with this Order and Reasons.
2. This Order and Reasons and the redacted Judgment and Reasons shall be released to
the parties on a confidential basis.
3. The public release of this Order and Reasons and the redacted Judgment and Reasons
will be addressed in a further Order.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2021-23

STYLE OF CAUSE: NORWICH REAL ESTATE SERVICES INC, DBA
RE/MAX KELOWNA v FINANCIAL
TRANSACTIONS AND REPORTS ANALYSIS
CENTRE OF CANADA

**CONSIDERED IN WRITING AT OTTAWA, ONTARIO PURSUANT TO RULE 369
OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: NORRIS J.

DATED: APRIL 10, 2025

JOINT WRITTEN REPRESENTATIONS BY:

Sara Bolourchian

FOR THE APPELLANT

SOLICITORS OF RECORD:

Blake, Cassels & Graydon LLP
Barristers & Solicitors
Toronto, Ontario

FOR THE APPELLANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT