

NOVA SCOTIA COURT OF APPEAL

Citation: *Resolve Business Outsourcing Income Fund v. Canadian Financial Wellness Group Inc.*, 2014 NSCA 98

Date: 20141028

Docket: CA 423907

Registry: Halifax

Between:

Resolve Business Outsourcing Income Fund,
Resolve Corporation and D+H Limited

Appellants

v.

The Canadian Financial Wellness Group Limited

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: September 16, 2014, in Halifax, Nova Scotia

Subject: Confidentiality orders

Summary: The Defendants sought a confidentiality order, to prevent the public disclosure of documents that would be produced by the defendants to the plaintiff in the discovery stage of the lawsuit. The defendants were concerned that the plaintiff would exhibit the documents to an affidavit for a chambers motion. The motions judge denied the confidentiality order. He ruled that the defendants had not established a public interest in confidentiality under the *Sierra Club* test. The defendants applied for leave to appeal to the Court of Appeal.

Issues: Did the motions judge err in principle in his application of the open courts principle formulated in *Sierra Club*?

Result:

The Court of Appeal granted leave to appeal, allowed the appeal and issued a confidentiality order. The documents are integral to servicing a federal Government-sponsored project for which a competitive tender call is imminent. The contract to be awarded would involve hundreds of millions of dollars for the servicing of student loans to tens of thousands of students across the country. The Government's Rules of Engagement for the tender process emphasized confidentiality of proprietary information and fair treatment of bidders. Disclosure of the Defendants' confidential information would give other bidders an advantage in the tender process contrary to the principles in the Rules of Engagement. The Court of Appeal held there was a public interest in confidentiality and that the salutary effects of a confidentiality order outweigh its deleterious effects.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 12 pages.