

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20260422**

**Docket: A-131-25**

**Citation: 2026 FCA 78**

**CORAM: MACTAVISH J.A.  
ROUSSEL J.A.  
GOYETTE J.A.**

**BETWEEN:**

**DAVID JOSEPH MACKINNON and  
ARIS LAVRANOS**

**Appellants**

**and**

**CANADA (ATTORNEY GENERAL)**

**Respondent**

**and**

**DEMOCRACY WATCH and the  
UNIVERSITY OF OTTAWA PUBLIC LAW  
CENTRE'S CONSTITUTIONAL LAW INITIATIVE**

**Interveners**

Heard at Toronto, Ontario, on April 22, 2026.  
Judgment delivered from the Bench at Toronto, Ontario, on April 22, 2026.

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

**MACTAVISH J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT  
(Delivered from the Bench at Toronto, Ontario, on April 22, 2026).**

**MACTAVISH J.A.**

[1] On January 6, 2025, then-Prime Minister Justin Trudeau announced his intention to resign his position as Prime Minister and leader of the Liberal Party. He also advised the Governor General to prorogue the first session of the 44<sup>th</sup> Parliament of Canada. Her Excellency accepted that advice, and Parliament was prorogued until March 24, 2025.

[2] Two days later, the appellants brought an application in the Federal Court, seeking judicial review of the Prime Minister's decision to advise the Governor General to exercise her prerogative power to prorogue Parliament. The Federal Court subsequently dismissed the appellants' application for judicial review in a decision reported as 2025 FC 422.

[3] The appellants appealed from the judgment of the Federal Court, asserting that the Court erred in dismissing their application for judicial review. Following receipt of the appellants' Notice of Appeal, this Court issued a Direction seeking submissions from the parties as to whether the appeal had become moot. After reviewing the submissions provided by the parties, the Court directed that the issue of mootness be heard by way of an oral hearing, in advance of any hearing with respect to the merits of the appeal. The mootness issue is thus before us today.

[4] As is always the case where a question of mootness arises, we must address two issues. The first is whether the appeal has indeed become moot. In the event that we determine that to be the case, we must then go on to decide whether to exercise our discretion to hear the matter,

notwithstanding its mootness: *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342.

[5] The appellants argue that there remains a “live controversy” as to the legality of the Prorogation Decision despite the fact that the 44<sup>th</sup> Parliament has been dissolved. According to the appellants, the issue is not moot because the prorogation prerogative continues to exist, and the underlying substratum of the litigation has not disappeared.

[6] The respondent and the interveners submit that the appeal is moot, as the 44<sup>th</sup> Parliament was dissolved in March of 2025, a general election was then held, and a new Parliament was summoned to meet in May of 2025.

[7] We agree with the respondent and the interveners that this appeal has indeed become moot. As noted in the appellants’ Notice of Appeal, they sought to challenge the decision of Prime Minister Trudeau to advise the Governor General to prorogue the 44<sup>th</sup> Parliament. That has already occurred and the 45<sup>th</sup> Parliament has been in session for months. There is thus no live controversy as to whether the 44<sup>th</sup> Parliament should be prorogued.

[8] That said, the parties and interveners all contend that we should exercise our discretion to hear and decide this appeal, as it raises important legal issues of significant public interest that are generally evasive of review. They further agree that it is important that there be appellate guidance regarding the role, if any, that the Courts should play in overseeing advice provided to Governors General by Prime Ministers with respect to the exercise of the prorogation power.

[9] The fact that the litigants agree that we should exercise our discretion to hear this matter, notwithstanding the fact that it has become moot, does not mean that we should simply “rubber stamp” their agreement and direct that the appeal proceed to a hearing on its merits. The Supreme Court tells us that courts should generally decline to hear cases that raise hypothetical or abstract questions that will have no practical effect: *Borowski*, above at p. 353. Thus, we must determine for ourselves whether exceptional circumstances arise in this case that would justify the exercise of our discretion to hear the appeal.

[10] The Supreme Court’s most recent pronouncement on the issue of mootness appears in *Taylor v. Newfoundland and Labrador*, 2026 SCC 5. There the Court reaffirmed that the “*Borowski* criteria” continue to guide the exercise of a court’s discretion to hear a matter that has become moot: at para. 44. In determining whether to exercise its discretion to hear a moot appeal, the Court should consider whether an adversarial context continues to exist, whether the issues raised by the matter justify the use of scarce judicial resources, and the need for courts to stick to their proper adjudicative role. The Supreme Court recognized that each of these factors may not lead to the same conclusion and that “[t]he presence of one or two of the factors may be overborne by the absence of the third, and *vice versa*”: *Taylor* at para. 44, citing *Borowski* at p. 363.

[11] We are satisfied that an adversarial context continues to exist in this matter. The parties and interveners have filed their memoranda of fact and law, the competing arguments have been carefully and skilfully fleshed out, and it appears that the appeal will be well and fully argued:

*Borowski*, at pp. 358–359. As was the case in *Taylor* (at para. 52), while the specific dispute underlying this appeal may be moot, the legal questions it raises remain very much alive.

[12] Insofar as the question of judicial economy is concerned, we are satisfied that the circumstances of this case are such as to make it worthwhile to devote scarce judicial resources to resolve it. The case raises important questions as to the justiciability and reviewability of a Prime Minister’s advice to a Governor General to prorogue Parliament, and it appears that the Federal Court’s decision in this matter is the only consideration of these questions by a Canadian court. Appellate guidance on these questions would thus be helpful, and there is a social cost to leaving the issues unresolved.

[13] In addition, even though prorogation is a regular and important feature of our Parliamentary system, prorogation periods are typically of short duration. Indeed, the uncontested evidence before the Federal Court was that the average prorogation period is approximately 40 days. This short time period makes the important legal and constitutional issues raised by this case evasive of appellate review.

[14] This evasiveness of review is illustrated by what happened in this case. The Federal Court rendered its decision on March 6, 2025, and Mark Carney was sworn in as Prime Minister by the Governor General on March 14, 2025. On March 23, 2025, Prime Minister Carney advised the Governor General to dissolve the 44<sup>th</sup> Parliament, and it was dissolved that same day: *Proclamation Dissolving Parliament*, March 23, 2025, SI/2025-57, Canada Gazette, Part II, Volume 159, No. 3. The appellants filed their Notice of Appeal with this Court on April 4, 2025.

[15] This Court always endeavours to be responsive to the needs of litigants and will do its best to deal with urgent matters in a timely manner: see, for example, *Canada (Commissioner of Competition) v. Rogers Communications Inc.*, 2023 FCA 16. That said, no amount of speed on the Court's part could have allowed this matter to be heard before it became moot: it had become moot before the Court was even seized with the appeal.

[16] Finally, without opining in any way as to whether a Prime Minister's advice to a Governor General with respect to the prorogation of Parliament is reviewable or justiciable, we are nevertheless satisfied that the determination of these issues comes within the accepted role of courts to decide contested legal issues, including those with respect to the division of responsibilities between the branches of government.

[17] Consequently, we are satisfied that this Court should deal with the merits of this appeal, notwithstanding its mootness. The case will be referred to the Office of the Judicial Administrator to schedule a date for the hearing of the appeal, with the costs associated with this hearing to be determined by the panel hearing the appeal.

"Anne L. Mactavish"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-131-25

**STYLE OF CAUSE:** DAVID JOSEPH MACKINNON et al. v. CANADA (ATTORNEY GENERAL) et al. AND DEMOCRACY WATCH et al.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 22, 2026

**REASONS FOR JUDGMENT OF THE COURT BY:** MACTAVISH J.A.  
ROUSSEL J.A.  
GOYETTE J.A.

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

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