

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 1

NOTICE OF APPEAL (RULE 6(1))



Court of Appeal File No.
(For Registry Use Only)

Case File No. **CA48578**

Supreme Court File No.

S217586

The file number can be found on the upper right corner of the Supreme Court documents

Supreme Court Registry Location

Vancouver

To the respondent(s)

A court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. PARTIES TO THE APPEAL

Appellant(s)

List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

Action4Canada, Linda Morken, Gary Morken, Jane Doe #1, Brian Edgar, Jane Doe #2, Ilona Zink, Valerie Ann Foley, Pastor Randy Beatty, Michael Martinz, Melissa Anne Neubauer, Jane Doe #3. *Appellants (Plaintiffs)*

Respondent(s)

List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

His Majesty the King in Right British Columbia, Prime Minister Justin Trudeau, Chief Public Health Officer Theresa Tam, Dr. Bonnie Henry, Premier John Horgan, Arian Dix, Minister of Health, Jennifer Whiteside, Minister of Education, Mable Elmore, Parliamentary Secretary for Seniors' Services and Long-Term Care, Mike Farnworth, Minister of Public Safety and Solicitor General, British Columbia Ferry Services Inc. (operating as British Columbia Ferries), Omar Alghabra, Minister of Transport, Vancouver Island Health Authority, The Royal Canadian Mounted Police (RCMP), and the Attorney General of Canada, Brittney Sylvester, Peter Kwok, Providence Health Care, Canadian Broadcasting Corporation, Translink (British Columbia) *Respondents (Defendants)*

2. THE ORDER YOU ARE APPEALING

Is leave to appeal required?
Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes."

Yes No

Who made the order?
Name the justice or other decision maker who pronounced the order you are appealing.

The Honourable Justice A. Ross

What court and/or tribunal pronounced the order(s)?

Supreme Court Tribunal

Name of tribunal

Date the order was pronounced
Include the day, month and year that the order being appealed was pronounced (not the date the order was entered).

29/08/22

DD/MM/YYYY

City where the order was pronounced

Vancouver

Length of lower court hearing
Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."

One Day

What type of proceeding are you appealing from?
Check only one.

Trial Judgment Order of a Tribunal
 Summary Trial Judgment Chambers Judgment

3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

PART A: LEAVE NOT REQUIRED

Part of the order being appealed
If you only want to appeal one part of an order, enter the part that is being appealed.

The Appellants Appeal to the British Columbia Court of Appeal, pursuant to s.13 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, from the judgment of the BC Supreme Court, Ross, J., dated August 29th, 2022, in BC Supreme Court File No. S217586 by which the Court struck the entirety of the claim, with leave to amend, as well as awarding costs against the Plaintiffs' on the motion.

The Appellants are seeking to appeal:

- (a) Determination of what the Plaintiffs can or cannot seek as relief;
- (b) What the Court jurisdiction is or is not with respect to relief sought;
- (c) The misapplication of the test and jurisprudence on the motion to dismiss (strike);
- (d) The award of costs to the Defendants in circumstances where no costs should have been awarded, or an order of costs in the cause should have been awarded in that the results of the motion were split;
- (e) Other legal errors and misdeterminations of the Learned motions judge;
- (f) Such further and other relief as relief as counsel may advise and this Honourable Court grant;

The grounds of appeal are as follows:

- (a) That the Learned motions judge erred, in law, and jurisprudence with respect to Justice Ross' ruling on declaratory and other relief at paragraphs 52 to 55 and Declarations at paragraph 56 to 58;
- (b) That the Learned judge erred, in law, contrary to the Supreme Court of Canada jurisprudence on the test to be applied on a motion to dismiss/strike;
- (c) That the Learned motions judge erred, in law, in ruling sufficient facts were not pleaded to support the causes of action advanced;
- (d) That the Learned motions judge erred, in law, in usurping the function of the trial judge, and making determinations of fact, mixed fact and law, on the basis of bare pleading(s);
- (e) The award of costs to the Defendants in circumstances where no costs should have been awarded, or an order of costs in the cause should have been awarded in that the results of the motion were split;
- (f) Such further and other grounds as counsel may advise and this Honourable Court permit

Order(s) you are seeking on appeal
*Briefly list the order(s) you will ask this Court to make on appeal.
For example: "Set aside the trial judgment and order a new trial."*

The Appellant Asks that:

- (a) That the decision be set aside and that the matter proceed to trial with the Plaintiffs permitted to pursue the relief sought in this (amended) Statement of Claim;

- (b) The order (judgment) of granting costs against the Plaintiffs be set aside; and;
- (c) Costs of the motion to strike and within appeal, and, in accordance with ***Native Women's Assn. of Canada v Canada [1994] 3 SCR 627***, such further and other relief as counsel may request and this Honourable Court deems just.

PART B: SEEKING LEAVE TO APPEAL

Part of the order being appealed
If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

N/A

Grounds for leave to appeal
Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

N/A

4. ADDITIONAL INFORMATION

Sealing order
Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).

Yes No Date

DD/MM/YYYY

Anonymity order/publication ban
Are there orders that protect the identity of a party or parties? If yes, add date(s).

Yes No Date

DD/MM/YYYY

Areas of law raised in the appeal
You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a motor vehicle accident.

<input checked="" type="checkbox"/> Constitutional/Administrative	<input type="checkbox"/> Civil Procedure	<input type="checkbox"/> Commercial
<input type="checkbox"/> Motor Vehicle Accidents	<input type="checkbox"/> Municipal Law	<input type="checkbox"/> Real Property
<input checked="" type="checkbox"/> Torts	<input type="checkbox"/> Equity	<input type="checkbox"/> Wills and Estates
<input type="checkbox"/> Divorce Act (Canada)	<input type="checkbox"/> Family Law Act	<input type="checkbox"/> Other

Appeals involving children
Does this appeal involve the rights or interests of a child? E.g., parenting order.

Yes No

5. SERVICE

Are you representing yourself?

Yes No

Name(s) and address(es) within BC for service of appellant(s) If you have a lawyer, include the law firm's address; otherwise provide your own residential address.

Lawrence Wong & Associates
Lawrence Wong & Rocco Galati
210-2695 Granville St., Vancouver, BC
V6H 3H4

Phone number(s) of appellant(s)

TEL: 604-739-0118 TEL: 416-530-9684
FAX: 604-739-0117 FAX: 416-530-8129

Email address(es) for service of the appellant(s) If you provide an email address, you consent to have documents served on you by email.

Email: lwong@lwacorp.com Email: rocco@idirect.com

Date form completed

28/09/22

Name of lawyer or party authorizing filing of this form

Rocco Galati
Lawrence Wong

To the appellant(s):

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and *Court of Appeal Rules*. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

To the respondent(s)

If you intend to participate in this proceeding, you must give notice of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the *Court of Appeal Rules*) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file and serve a Notice of Appearance:

- You are presumed to take no position on the appeal, or the application for leave to appeal (if leave is required).
- The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).

You are presumed to take no position if you fail to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby St.
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248
STN PROV GOVT
850 Burdett Ave.
Victoria BC V8W 1B4

B.C. Court of Appeal
223 - 455 Columbia St.
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.

**TO: MINISTRY OF ATTORNEY GENERAL
LEGAL SERVICES BRANCH**
1301 - 865 Hornby Street
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Per: Mark Witten
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Counsel for the Defendants,
Her Majesty the Queen in right British Columbia, Dr. Bonnie Henry, Premier John Horgan, Minister of Health, Jennifer Whiteside, Minister of Education, Mike Farnworth, Minister of Public Safety and Solicitor General

AND TO: CARFRA LAWTON LLP
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Counsel for the Defendants,
Vancouver Island Health Authority and Providence Health Care

**AND TO: ATTORNEY GENERAL OF CANADA
DEPARTMENT OF JUSTICE CANADA
BRITISH COLUMBIA REGIONAL OFFICE**
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Counsel for the Defendants,
The Attorney General of Canada, Prime Minister Justin Trudeau, the Royal Canadian Mounted Police (RCMP), Chief Public Health Officer Dr. Theresa Tam, and Omar Alghabra Minister of Transport

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Counsel for the Defendants,
Peter Kwok and Translink