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FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE		D É P O S É
MAR 28 2024		
CHARLOTTE TORGERSON		
EDMONTON, AB	-23-	

CONTAINS DOCS No. 21, 22  
CONTIENT LES DOCS No.

Court File No.: A-33-25

FEDERAL COURT OF APPEAL

BETWEEN:

QUALIZZA, FRANCESCO GABRIELE, AND OTHERS

Appellants

and

HIS MAJESTY THE KING IN RIGHT OF CANADA, AND OTHERS

Respondents

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**MOTION RECORD OF THE RESPONDENTS**

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**Counsel for the Respondents:**

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CANADA**

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**FEDERAL COURT OF APPEAL**

BETWEEN:

**QUALIZZA, FRANCESCO GABRIELE, AND OTHERS**

Appellants

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA, AND OTHERS**

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**AFFIDAVIT OF GIUSTINA BOMBINI**

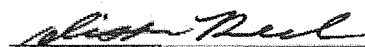
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I, Giustina Bombini, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SWEAR THAT:

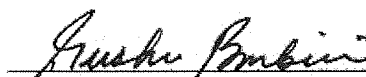
1. I am employed as a legal assistant with the Department of Justice Canada in Edmonton, Alberta. As a result of my employment, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information or belief, and where so stated, I believe the same to be true.
2. Based upon my review of the Department of Justice ("DOJ") file pertaining to this action, I note the following relevant steps have taken place in this litigation:
  - a) On November 13, 2024, Associate Judge Coughlan issued a decision striking the action (the "Coughlan Decision").
  - b) On December 11, 2024, counsel for the Plaintiff served counsel for the Respondents with 36 individual discontinuances. Mr. Lolacher is not among them. These were not filed as reflected on the online Federal Court and Federal Court of Appeal docket.

- c) On December 12, 2024, the Plaintiffs filed a motion in Federal Court for an extension of time to appeal the Coughlan Decision. Mr. Lolacher was listed as one of the Plaintiffs.
- d) On January 14, 2025, Mr. Justice Manson dismissed the motion for an extension of time (the "Manson Decision"). Mr. Lolacher is listed as a Plaintiff.
- e) On January 23, 2025, the Plaintiffs filed an appeal of the Manson Decision in the Federal Court of Appeal. Mr. Lolacher is listed as an appellant.
- f) January 31, 2025, counsel for the Appellants filed a discontinuance on behalf of 51 Appellants in the Federal Court of Appeal. This discontinuance included Mr. Lolacher.
- g) On February 26, 2025, the Appellants' motion was filed in relation to the contents of the appeal book. Lolacher is still listed as a party.

SWORN BEFORE ME at the City of  
Edmonton, in the Province of Alberta,  
this 26<sup>th</sup> day of March, 2025.

  
Commissioner for Oaths in and for  
the Province the of Alberta.

Alissa Laura Katherine Reed  
A Commissioner for Oaths  
In and for the Province of Alberta  
My Commission Expires August 26, 2025

  
GIUSTINA BOMBINI

**FEDERAL COURT OF APPEAL**

BETWEEN:

**QUALIZZA, FRANCESCO GABRIELE, AND OTHERS**

Appellants

and

**HIS MAJESTY THE KING IN RIGHT OF CANADA, AND OTHERS**

Respondents

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**WRITTEN REPRESENTATIONS OF THE RESPONDENTS**

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## **PART I – FACTS**

1. The Respondents take no position with respect to the dispute between Mr. Lolacher and Ms. Chrsitensen. The Respondents will not address facts tied to those interactions, of which they have limited knowledge.
2. A timeline of the material proceedings from the Respondents’ perspective is as follows:<sup>1</sup>
  - a) **November 13, 2024** Associate Judge Coughlan’s decision striking the action (the “Coughlan Decision”).
  - b) **December 11, 2024** Counsel for the Plaintiff served 36 individual discontinuances. Mr. Lolacher was not one of them. These don’t appear to have been ever filed.
  - c) **December 12, 2024** The Plaintiffs filed a motion in Federal Court for an extension of time to appeal the Coughlan Decision. Mr. Lolacher was listed as one of the Plaintiffs.
  - d) **January 14, 2025** Mr. Justice Manson dismissed the motion for an extension of time (the “Manson Decision”). Mr. Lolacher is listed as a Plaintiff.
  - e) **January 23, 2025** The Plaintiffs filed an appeal of the Manson Decision in the Federal Court of Appeal. Mr. Lolacher is listed as an appellant.
  - f) **January 31, 2025** Counsel for the Appellants filed a discontinuance on behalf of 51 Appelants in the Federal Court of Appeal. This discontinuance included Mr. Lolacher.
  - g) **February 26, 2025** Appellant’s motion filed in relation to the contents of appeal book. Mr. Lolacher is still listed as a party.

## **PART II – POINTS IN ISSUE**

3. The appeal should proceed forthwith.

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<sup>1</sup> Affidavit of Giustina Bombini, sworn March 26, 2025.

### **PART III – SUBMISSIONS**

4. The allegations made by Mr. Lolacher are troubling. It appears that Ms. Christensen unilaterally changed the terms of her contingency agreement, is running some sort of not-for-profit designed to pay her legal fees, failed to report to her client, has not taken steps to remove herself as counsel for Mr. Lolacher, and instead filed a discontinuance on his behalf without instructions.
5. However, except for the filing of the discontinuance and her status as Mr. Lolacher's counsel, all of these matters are more properly between Ms. Christensen, Mr. Lolacher and the Law Society of Alberta.
6. With respect to the discontinuance, it should be noted from the above timeline that Mr. Lolacher was a party up to and including the filing of the Notice of Appeal of the Manson decision. From the Respondents' and the Court's perspective he was at all times represented by Ms. Christensen up and until the filing of the Discontinuance.
7. Further, Ms. Christensen has not taken any steps to remove herself formally as Mr. Lolacher's counsel, and her latest motion confusingly still listed him as a party. Mr. Lolacher has also not availed himself of Rule 124 to remove his solicitor. It is evident that the dispute about the intentions of solicitor and client have been magnified by a lack of understanding of the Rules.
8. As a solution, it would seem to the Respondents (without having heard from Ms. Christensen) that the discontinuance filed on behalf of Mr. Lolacher could be set aside. This would allow him to participate. There is some precedent for this - if there is a fundamental event that strikes at the root of the decision to discontinue.<sup>2</sup>
9. However, it would be fundamentally prejudicial to the Respondents (who are innocent in all of this) for them to have to redo any of the steps undertaken so far, including their Respondents' Motion Record with respect to the contents of the appeal book. If the discontinuance is set aside, the Respondents do consent to Mr. Lolacher being allowed to make submissions on the appeal of the Manson decision. In other words, once the extant motion on the contents of the appeal book is

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<sup>2</sup> *Philipos v Canada (Attorney General)*, 2017 FCA 117.



determined by this Court, Mr. Lolacher should be allowed to make submissions on the appeal proper.

**PART IV – ORDER SOUGHT**

10. The Respondents suggest the following order may be appropriate:

- a) That the Notice of Discontinuance filed on behalf of Mr. Lolacher be set aside;
- b) That Mr. Lolacher or Ms. Christensen take immediate steps to formally remove Ms. Christensen as counsel for Mr. Lolacher;
- c) That Mr. Lolacher be allowed to make submissions on the appeal proper on the same timelines as the remaining Appellants (in accordance with Rule 346(1)).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**DATED** this 28<sup>th</sup> day of March, 2025 in the City of Edmonton, in the Province of Alberta.

**DEPARTMENT OF JUSTICE CANADA**



Per: Barry Benkendorf

Counsel for the Respondents

## **LIST OF AUTHORITIES**

### Case Law

1. *Philipos v Canada (Attorney General)*, 2017 FCA 117.