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June 19, 2023		19 juin 2023	
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FORM 337 - Rule 337

NOTICE OF APPEAL

BETWEEN:

R. MAXINE COLLINS

Appellant/Plaintiff

and

ATTORNEY GENERAL OF CANADA

Respondent/Defendant

Court seal

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard in Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date:

Issued by: _____ **Registry Officer**

Address of local office: 90 Sparks Street, Ottawa, Ontario K1A 0H9

TO: Attorney General of Canada
Department of Justice Canada
Civil Litigation Section
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Counsel for the Defendant

TO: Registry of the Federal Court of Appeal
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Ottawa, Ontario K1A 0H9

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal pursuant to paragraph 27(1)(c) of the *Federal Courts Act* from the Federal Court Order of Justice Fuhrer, issued June 19, 2023, under File # T-217-22, being with respect to the disposition of the Appellants' motions under Rule 210 and Rule 51 of the *Federal Courts Rules*, and the award of costs in the amount of \$500.

THE APPELLANT ASKS that the order of Justice Fuhrer be set aside and the order issued that should have been issued by the Federal Court pursuant to section 52 of the *Federal Courts Act*.

THE GROUNDS OF APPEAL are as follows:

1. On May 9, 2023, the Order of Chief Justice Paul S. Crampton appointed Associate Judge Molgat and Justice Fuhrer as case management judges with respect to the Simplified Action under Federal Court File T-217-22.
2. The Respondent's motion to strike under Rule 221, filed pursuant to Rule 369, was complete for hearing as of March 25, 2022; however, a decision was not issued until April 21, 2023. This Order was issued by Associate Judge Molgat on that date.
3. The Appellant's Rule 51 motion, under Rule 369, was accepted for filing by the Registry on May 1, 2023, as notified at 10:10 a.m. The Appellant's Rule 51 motion requests the Order of Associate Judge Molgat issued on April 21, 2023, be set aside.
4. On April 19, 2022, the Registry had notified acceptance of the Appellant's *ex parte* Rule 210 motion record.
5. On April 27, 2022, Prothonotary Tahib issued a Direction stating the Respondent could file a responding motion record on the Appellant's Rule 210 motion after the decision of the Respondent's Rule 221 motion.
6. The Respondent did not serve and file a motion for an extension of time under Rule 8 either with respect to Rule 204, Rule 210 or Rule 211.
7. On May 1, 2023, at 3:16 p.m. the Respondent served the Appellant with a responding motion record on the Appellant's Rule 210 motion record apparently accepted for filing by the Registry pursuant to the Direction of Prothonotary Tahib issued on April 27, 2022.
8. On May 16, 2023, the Respondent served the Appellant with a responding motion record on the Appellant's Rule 51 motion.

9. As such, Associate Judge Molgat and Justice Fuhrer were appointed as case management judges before the Appellants' motions under Rule 210 and Rule 51 had been decided thereby leaving the decisions to Justice Fuhrer as Associate Judge Molgat's partnered case management judge. It is under these circumstances and conditions Justice Fuhrer issued the decisions on June 19, 2023.
10. As such, the Appellant is left with little choice but to appeal the decision of Justice Fuhrer due to the potential for bias and unfairness going forward – as detailed below - in addition to the documented bias and unfairness in the decision issued June 19, 2023.

Rule 210 – Defendant in Default

11. With respect to the Appellant's motion under Rule 210, the Order is not consistent with the Reasons in that the Reasons state the Appellant's motion is dismissed without prejudice to a further motion with proper supporting affidavit evidence.
12. The operative part of the Order simply dismisses the Appellant's Motion under Rule 210 as requested in the Responding motion record of the Respondent.
13. Had the Order dismissed the Rule 210 motion without prejudice to a further motion, costs would not have been awarded consistent with the decision in *Monsanto Canada Inc. v Verdegem*, 2013 FC 50, which is directly on point.
14. Justice Fuhrer views this instant case as different from that in *Monsanto*, stating at paragraph [35] of the Reasons, in that the Defendant chose to avail himself of procedural steps open to him, e.g., in lieu of complying with Rule 204. This conclusion is incorrect as a motion to dismiss under Rule 221 was not a procedural step open to the Defendant in a Simplified Action.
15. Counsel for the Defendant mistakenly served and filed a motion under Rule 221 which was dismissed by Associate Judge Molgat as filed one date late under Rule 298 and absent a request for an extension of time.
16. Under Rule 298(3)(c) a motion for default judgement can be brought at any time unlike a motion under Rule 298(2)(b) whereas a motion under Rule 221 is simply not permitted at all in a Simplified Action. Rule 298 is a specific rule governing a Simplified Action which takes precedence over general Rule 221.

Iberville Developments Limited v. Canada, 2020 FCA 115 (CanLII) at paragraph 30. *Canada (National Revenue) v. Conoco Phillips Canada Resources Corp.*, 2017 FCA 243 (CanLII) at paragraphs 48 & 49.

17. The conclusions reached by Justice Fuhrer in paragraph [24] of the Reasons are contrary to this established principle of statutory interpretation, i.e., an error of law. Therefore, the Appellant requests an Order stating: The motion is dismissed without prejudice to a further motion supported by proper affidavit evidence; and no order as to costs.

Rule 51 – Set Aside Decision of Associate Judge Molgat

18. With respect to the Appellant’s Rule 51 motion, Justice Fuhrer found no reviewable error and in paragraph [27] of the Reasons states “Contrary to the Plaintiff’s submission, I am not persuaded, however, the Associate Judge instructed the AGC to file a new motion under the *FCR* Rule 298(3)(a).”
19. The Defendant was and is out of time to file a motion under Rule 298(2)(b) and therefore the Defendant did not have any right at that point in time – April 21, 2023 – to file a later motion under Rule 298(2)(b).
20. A motion under Rule 221 is not permitted in a Simplified Action and therefore the Defendant did not have any right at that point in time to file a second motion under Rule 221 at a later date.
21. Therefore, Associate Judge Molgat Ordered the Defendant had a right to file a motion under Rule 298(3)(a) to remove the proceeding from the restrictions of Rule 298 and file a second motion under Rule 221 at a later date. The Reasons of Associate Judge Molgat do not include any other rationale or reason justifying filing a motion under Rule 298(3)(b).
22. In addition, Justice Fuhrer did not consider the Appellants’ arguments with respect to at page two Associate Judge Molgat having added the statement “the Claim is frivolous and an abuse of the Court’s process because it is the same as a Statement of Claim previously filed by the Plaintiff against Canada Post in Court File No. T-663-20, and is contrary to an Order by Madam Justice McDonald in that proceeding dated July 29, 2020;”
23. These grounds were not included in the Respondent’s Motion under Rule 221. Therefore, this matter was not before Associate Judge Molgat for consideration. Associate Judge Molgat personally introduced new grounds to strike the statement of claim.

24. Justice Fuhrer did not consider at page four Associate Judge Molgat states “**CONSIDERING** that the Defendant has not included in its motion record (a) the Statement of Claim filed in this proceeding; (b) the Statement of Claim filed in Court file No. T-663-20; and (c) the Order of Madam Justice McDonald referred to in its written representations in support of the motion;”
25. Therefore, Associate Judge Molgat provided legal advice and guidance to counsel for the Defendant informing counsel of new grounds to be argued, and the support needed by the Court for these new grounds [i.e., the Statement of Claim on File T-663-20, Justice McDonald’s File T-663-20 Order and the Statement of Claim on File T-217-22] to be included in the motion record, and the means to open the door to arguing these new grounds.
26. Pursuant to ss. 12(3) of the *Federal Courts Act* “The powers, duties and functions of the prothonotaries shall be determined by the Rules.”
27. Pursuant to Rule 47(2) of the *Federal Courts Rules*, an Associate Judge is without power to consider and render a decision on a matter that is not properly before the Court. Misstating the grounds argued in a written motion does not create a power where none existed previously. The standard of review with respect to jurisdiction is correctness.
28. The Appellant requests an Order setting aside the decision of Justice Fuhrer dismissing the Appellant’s Rule 51 motion.

Bias & Unfairness – Discrimination

29. Justice Fuhrer has removed the final stumbling block to the Respondent filing a second Rule 221 motion through dismissing with finality the Appellant’s Rule 210 motion despite the fact the Respondent as Defendant is in default.
30. If filed, Justice Fuhrer will decide a second motion by the Respondent under Rule 221, and the decision issued on June 19, 2023, indicates Associate Judge Molgat’s decision on April 21, 2023, will be fully supported including the new grounds of the Appellant didn’t comply with the Order of Justice McDonald.
31. With respect to perceived bias and unfairness, it is patently obvious. Counsel for the Defendant makes multiple mistakes regarding the *Federal Courts Rules* and receives the assistance of an Associate Judge with no costs awarded to the successful party. The Plaintiff as a self-represented party allegedly makes mistakes with respect to the *Federal Courts Rules* and comes under attack by a federally appointed judge because she should know better.

32. Adding injury to insult costs are awarded to the Respondent for these alleged mistakes and misunderstandings.
33. In addition, there is a long history of refusing to note the opposing party in default or uphold the opposing party being noted in default regardless of the *bona fides* of the request made by this Appellant as Plaintiff. This long history is documented on Ontario Court of Appeal File # COA-23-CV-0394.
34. Whether in the Federal Courts or in the Provincial Courts, under no circumstances is the Appellant to be allowed to succeed as clearly demonstrated in the decision of Associate Judge Molgat on April 21, 2023. This the Appellant perceives as discrimination and retaliation against the Appellant as a federal government whistleblower. It is an ongoing series of assaults on the Appellant in every aspect of the Appellant's life meant to discredit and undermine everything she is as a person regardless of the damage caused. Recently, the Appellant has come to realize just how far up the food chain these actions originate.

June 20, 2023

R. Maxine Collins

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