

Federal Court of Appeal File No. **A-182-23**
Federal Court File No. T-1415-21

FEDERAL COURT OF APPEAL

BETWEEN:

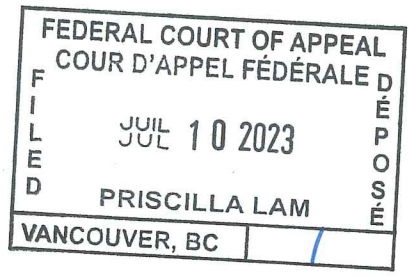
HIS MAJESTY THE KING

APPELLANT

AND

ROBERT MARCUS HIRSCHFIELD

RESPONDENT



NOTICE OF APPEAL

TO THE RESPONDENT:

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

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 at Vancouver, British Columbia.

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 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after 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 341B 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.

July 10, 2023

**ORIGINAL SIGNED BY
PRISCILLA LAM
A SIGNÉ L'ORIGINAL**

Issued by: _____

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Robert Marcus Hirschfield

APPEAL

THE APPELLANT, HIS MAJESTY THE KING APPEALS to the Federal Court of Appeal from the Order of the Honourable Mr. Justice Michael D. Manson (“Motion Judge”), dated June 28, 2023, in which he granted the Respondent’s, Robert Marcus Hirschfield, motion and ordered that this matter be certified as a Class Proceeding (“Order”).

THE APPELLANT ASKS that this Honourable Court:

1. allow the appeal and set aside the Order;
2. dismiss the motion for certification; and
3. grant such further and other relief as counsel may seek and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. The Motion Judge erred in law or mixed fact and law by certifying this matter as a class proceeding, contrary to *Federal Courts Rules*, SOR/98-106, R 334.16.
2. In finding that the pleadings disclose a reasonable cause of action, the Motion Judge erred in law or made an error of mixed fact and law by not fulfilling the Court’s gatekeeping role and failing to address the pleadings as drafted in determining the certification motion, including:
 - a. erroneously certifying causes of action in negligence, breach of fiduciary duty, and unjust enrichment, including novel causes of action with respect to each of them, and including certifying causes of action that are contrary to settled law;
 - b. failing to apply the legal requirements of negligence, fiduciary duty, and unjust enrichment to the pleadings, including certifying causes of action on a basis not found in the pleadings and not addressing the individual elements of each cause of action;
 - c. erroneously certifying public or administrative law claims that are meant to be addressed within a statutory process, as private law causes of action in negligence, breach of fiduciary duty, and unjust enrichment;
 - d. failing to address or engage with the applicable law, including:
 - i. failing to consider or apply binding, settled, and more recent jurisprudence to the causes of action alleged, or where so considered, incorrectly applied jurisprudence; and
 - ii. failing to consider the plain language of the applicable statutory scheme and in particular the *Pension Act*, RSC 1985, cP-6 and the *Veterans Review and Appeal Board Act*, SC 1995, c18; and

- e. failing to distinguish between proven facts, allegations of fact, assertions of legal conclusions, and legal argument in respect of the pleadings, including relying on legal argument and conclusions as material facts.
3. With respect to the issue of preferable procedure, the Motion Judge erred in law or mixed fact and law, contrary to *Federal Courts Rules*, SOR/98-106, R 334.16 (1) and (2), by finding that a class proceeding is preferable. In particular, he erred by:
 - a. not identifying evidentiary support constituting “some basis in fact” to recognize the Federal Court as the preferable procedure;
 - b. finding that the objectives of class proceedings would not be met by the Veterans Review and Appeal Board process with respect to judicial economy and access to justice;
 - c. failing to consider or address the full and exclusive jurisdiction of the Veterans Review and Appeal Board pursuant to the statutory scheme under the *Veterans Review and Appeal Board Act*, SC 1995, c18;
 - d. failing to give due consideration to the Veterans Review and Appeal Board as a preferable procedure, or to address the mechanisms available under the *Veterans Review and Appeal Board Act*, SC 1995, c18 for addressing the issues raised in the Statement of Claim;
 - e. failing to give due consideration to the overlap between the Statement of Claim and the remedies available through the Veterans Review and Appeal Board; and
 - f. failing to adequately address the limits of the claims of individuals in the class, in that the claims are limited to a correction of past determinations by a statutory decision maker.
 4. The Appellant relies on, *inter alia*:
 - a. *Federal Courts Rules*, SOR/98-106, including R 334.16;
 - b. *Pension Act*, RSC 1985, cP-6, including ss 2, 3, 3.1, 25-26, 30, 32, 35-43, 45-57; and
 - c. *Veterans Review and Appeal Board Act*, SC 1995, c18, including ss 3, 4, 18, 20-32, 35, 37, 39-40.

5. Such further and other grounds as counsel may advise and this Honourable Court may permit.

July 10, 2023



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