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August 21, 2023 21 août 2023			
Lindsay Krieger			
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FORM 337

NOTICE OF APPEAL

RULE 337

Court File No.: \_\_\_\_\_

## FEDERAL COURT OF APPEAL

BETWEEN:

**HIS MAJESTY THE KING**

Appellant

and

**632738 ALBERTA LTD**

Respondent

## NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED 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 at Edmonton, Alberta.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step on 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 Court Rules*, and serve it on the appellant's solicitor, or where 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 341 prescribed by the *Federal Court Rules*, instead of serving and filing a notice of appeal.

Copies of the *Federal Court 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 (613-992-4283) or at any local office.

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

Date: \_\_\_\_\_ Issued by: \_\_\_\_\_  
(Registry Officer)

Federal Court of Appeal – Edmonton  
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10060 Jasper Avenue  
Suite 530  
PO Box 51  
Edmonton, Alberta T5J 3R8

TO: 632738 Alberta Ltd  
c/o  
Robert Neilson  
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## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the interlocutory order of the Honourable Don R. Sommerfeldt of the Tax Court of Canada (the **Motion Judge**) dated August 10, 2023 (the **Order**) in Tax Court of Canada Appeal Number 2016-3653(IT)G (the **Tax Court Appeal**) by which the Motion Judge, among other things:

1. Denied the Appellant's request to compel responses to disputed discovery questions 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 27, 29, 30, 32, 33, 35, 36, 37, 38 and 39 (the **Disputed Questions**), on the basis that the Respondent had not waived existing solicitor-client privilege over the information sought; and
2. Found that costs of the motion would be in the cause unless otherwise determined by the trial judge.

THE APPELLANT ASKS that the appeal be allowed with costs here and below and that the Order be set aside, with this Court granting the order that should have been given.

THE GROUNDS OF APPEAL are as follows:

1. The Motion Judge denied the Appellant procedural fairness and made a reviewable error by failing to consider an issue raised by the Appellant in its motion, namely, whether the information sought by the Disputed Questions was subject to solicitor-client privilege;
2. The Motion Judge made a reviewable error by finding that the Disputed Questions did not need to be answered because they sought information that was subject to solicitor-client privilege;

3. In the alternative, if the information sought by the Disputed Questions was privileged, the Motion Judge made a reviewable error by concluding that the Appellant did not put its state of mind at issue in the appeal and therefore did not implicitly waive privilege; and
4. Such further and other grounds as counsel may advise and this Honourable Court may allow.

August 21, 2023

  

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**ATTORNEY GENERAL OF CANADA**

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