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F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE  June 14, 2023 14 juin 2023  Lindsay Krieger
EDM	1

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

## FEDERAL COURT OF APPEAL

BETWEEN:

SALT RIVER FIRST NATION #195

**Appellant**

RICHARD SHANKS

**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 Edmonton, Alberta.

**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.**

\_\_\_\_\_, 2023

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

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## APPEAL

**THE APPELLANT APPEALS** to the Federal Court of Appeal from the Order of Madam Justice McDonald (the “**Application Judge**”), dated May 16, 2023 (the “**Order**”), in which the Federal Court granted the Respondent’s application for judicial review of the Appellant’s Band Council Resolution, dated October 26, 2021, which granted a per capita distribution to certain classes of the Appellant’s members in accordance with the *Salt River Settlement Revenue Account Law*.

**THE APPELLANT ASKS** this Honourable Court to:

1. Allow the appeal and set aside the Order pursuant to subparagraph 52(b)(i) of the *Federal Courts Act*, RSC 1985, c F-7;
2. Award the Appellant its costs of this appeal pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106; and
3. Such further or other relief as this Honourable Court deems just.

**THE GROUNDS OF APPEAL** are as follows:

1. The Application Judge erred in law in failing to identify and apply the correct legal test for determining whether the Federal Court had jurisdiction over the subject matter of the application for judicial review by:
  - (a) Failing to identify the jurisdiction or power that the Appellant’s Council had exercised;
  - (b) Failing to identify any federal source or origin of the jurisdiction or power that the Appellant’s Council had exercised; and
  - (c) Failing to recognize that the Appellant’s Council has the power to exercise inherent rights of the Salt River First Nation that are recognized and affirmed by the *Constitution Act, 1982*, Schedule B to the *Canada Act*

1982 (UK), 1982, c 11, and that do not find their source or authority under the *Indian Act*, RSC 1985, c-I, or any other federal statute or prerogative.

2. The Application Judge committed errors of mixed law and fact by:
  - (a) Finding that the *Salt River Settlement Revenue Account Law* was an election law sourced or authorized under the *Indian Act*;
  - (b) Finding that all decisions made by Band Councils at duly convened meetings are subject to judicial review; and
  - (c) Finding that the decision to disburse funds derived from a trust established under the *Salt River First Nation Treaty Settlement Agreement* was not a private action.
3. Such further and other grounds as counsel may advise and this Honourable Court may permit.

Date: June 14, 2023



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