

F I L E D	FEDERAL COURT- COUR FÉDÉRALE	D É P O S É
June 10, 2024		
Abbie Abe		
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NOTICE OF APPEAL

RULE 337

Court File No.
(Federal Court File No.: T-455-16)

FEDERAL COURT OF APPEAL

BETWEEN:

HIS MAJESTY THE KING

Appellant
(Defendant in the Federal Court)

AND:

**KRISTEN MARIE WHALING
(FORMERLY KNOWN AS CHRISTOPHER JOHN WHALING)**

Respondent
(Plaintiff in the Federal Court)

NOTICE OF APPEAL

TO THE RESPONDENT:

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

THIS APPEAL will be heard by the Federal Court of Appeal 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 Suite 700 – 701 West Georgia Street, 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 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 341B prescribed by the *Federal Courts Rules*, instead of serving and filing a notice of appeal.

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 (613-996-6795) 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: June 10, 2024

Issued

by:

(Registry Officer) **ABBIE ABE**
REGISTRY OFFICER

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Counsel for the Respondent

APPEAL

THE APPELLANT, His Majesty the King, APPEALS to the Federal Court of Appeal from the judgment on a question of law determined before trial of the Honourable Mr. Justice Pamel of the Federal Court (“Justice Pamel”) dated May 9, 2024, in which he ordered that:

1. In answer to Preliminary Question of Law #3 (“PQOL #3”), Part 1:
 - (1) Can the estate of a deceased class member in this action claim Canadian *Charter of Rights and Freedoms* forming part of the *Constitution Act, 1982* (“Charter”) damages for violation of a paragraph 11(h) *Charter* right? Answer: Yes.

THE APPELLANT SEEKS THE FOLLOWING RELIEF pursuant to section 52 of the *Federal Courts Act*:

1. that the appeal be allowed and this Court substitute an answer of “No” to PQOL #3, Part 1;
2. alternatively, that this Court refer the matter back for determination in accordance with such directions as it considers to be appropriate; and
3. such further and other relief as counsel may seek and this Honourable Court may allow.

THE GROUNDS OF APPEAL are as follows:

1. the learned Justice Pamel erred in law in ordering that PQOL #3, Part 1 be answered “yes” by determining that an estate could possibly have capacity/standing to seek and/or obtain *Charter* damages solely by reference to provincial/territorial estates legislation where not otherwise permitted to under the *Charter* because:
 - a. a s. 11(h) *Charter* right is a personal one and may only be claimed by the individual whose right was infringed;

- b. *Charter* damages under s. 24(1) of the *Charter* are a personal remedy, and may only be sought and/or obtained by individuals whose rights were infringed or denied. S. 24(1) limits standing to pursue *Charter* damages claims to individuals whose rights were infringed or denied; and
- c. provincial/territorial estates legislation alone does not and/or cannot provide an estate of a deceased class member with standing to pursue a claim for *Charter* damages against the defendant due to crown immunity, intergovernmental immunity and/or interjurisdictional immunity.

2. such further and other grounds as the appellants advise and this Honourable Court may permit.

THE APPELLANT REQUESTS that this appeal be heard at Vancouver, British Columbia, in the English language.

DATED at Vancouver, British Columbia, this 10th day of June, 2024.



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