

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 1

NOTICE OF APPEAL (RULE 6(1))

VANCOUVER
21-Aug-23
COURT OF APPEAL
REGISTRY

Court of Appeal File No.
(For Registry Use Only)

Case File No. CA49296

Supreme Court File No.

n/a

Supreme Court Registry Location

Vancouver

The file number can be found on the upper right corner of the Supreme Court documents

To the respondent(s)

A court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. PARTIES TO THE APPEAL

Appellant(s)
List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

Mark Morabito

Respondent(s)
List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

Executive Director of the British Columbia Securities Commission;
British Columbia Securities Commission; and
Global Crossing Airlines Group Inc., formerly known as Canada Jetlines Ltd.

2. THE ORDER YOU ARE APPEALING

Is leave to appeal required?
Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes."

☒ Yes☐ No

Who made the order?
Name the justice or other decision maker who pronounced the order you are appealing.

British Columbia Securities Commission:

Judith Downes, James Kershaw, and Marion Shaw (Commissioners)

What court and/or tribunal pronounced the order(s)?

☐ Supreme Court☒ Tribunal

British Columbia Securities Commission

Name of tribunal

Date the order was pronounced
Include the day, month and year that the order being appealed was pronounced (not the date the order was entered).

17/08/2023

DD/MM/YYYY

City where the order was pronounced

Vancouver, British Columbia

Length of lower court hearing
Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."

Two days.

What type of proceeding are you appealing from?
Check only one.

☐ Trial Judgment☒ Order of a Tribunal☐ Summary Trial Judgment☐ Chambers Judgment

3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

PART A: LEAVE NOT REQUIRED

Part of the order being appealed
If you only want to appeal one part of an order, enter the part that is being appealed.

Order(s) you are seeking on appeal
Briefly list the order(s) you will ask this Court to make on appeal. For example: "Set aside the trial judgment and order a new trial." Include any order as to costs.

PART B: SEEKING LEAVE TO APPEAL

Part of the order being appealed
If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

The whole of the Order of the British Columbia Securities Commission, issued on 17 August 2023, dismissing the Appellant’s application to permanently stay the proceedings arising from the Notice of Hearing dated 7 October 2021 (citation 2021 BCSECCOM 397) as an abuse of process.

Grounds for leave to appeal
Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

1. The Commission erred in law by:

a. misapprehending the legal test for determining whether an administrative proceeding has become an abuse of process;

b. finding that this proceeding had not come to constitute an abuse of process for which a stay of proceedings was the appropriate remedy;

c. making findings of fact or drawing inferences not supported by the record, or even advanced by the Executive Director; and

d. failing to identify and give effect to the evidentiary burden borne by the Executive Director or, alternatively, wrongly relieving him from that burden.
2. Such further and other grounds as the Appellant may advise and the Court may permit.

4. ADDITIONAL INFORMATION

Sealing order

Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).

☐ Yes

☒ No

Date

DD/MM/YYYY

Anonymity order/publication ban

Are there orders that protect the identity of a party or parties? If yes, add date(s).

☐ Yes

☒ No

Date

DD/MM/YYYY

Areas of law raised in the appeal

You may check more than one box if appropriate. For example, you should check “motor vehicle accidents” and “torts” for a personal injury claim involving a motor vehicle accident.

☒ Constitutional/ Administrative

☐ Civil Procedure

☐ Commercial

☐ Motor Vehicle Accidents

☐ Municipal Law

☐ Real Property

☐ Torts

☐ Equity

☐ Wills and Estates

☐ Divorce Act (Canada)

☐ Family Law Act

☐ Other

Appeals involving children

Does this appeal involve the rights or interests of a child? E.g., parenting order.

☐ Yes

☒ No

5. SERVICE

Are you representing yourself?

☐ Yes

☒ No

Name(s) and address(es) within BC for service of appellant(s)

If you have a lawyer, include the law firm’s address; otherwise provide your own residential address.

Robert J. C. Deane / Paige Burnham
Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2

Phone number(s) of appellant(s)

(604) 640 4250 / (604) 640 4243

Email address(es) for service of the appellant(s)
If you provide an email address, you consent to have documents served on you by email.

rdeane@blg.com / pburnham@blg.com

Date form completed

21/08/2023

DD/MM/YYYY

Name of lawyer or party authorizing filing of this form

Robert J. C. Deane

To the appellant(s):

You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

To the respondent(s)

If you intend to participate in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a “Notice of Appearance” (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file and serve a Notice of Appearance:

- (a) You are presumed to take no position on the appeal, or the application for leave to appeal (if leave is required).
- (b) The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).

You are presumed to take no position if you fail to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby St.
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248
STN PROV GOVT
850 Burdett Ave.
Victoria BC V8W 1B4

B.C. Court of Appeal
223 - 455 Columbia St.
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.