

# COURT OF APPEAL FOR BRITISH COLUMBIA

## FORM 1

## NOTICE OF APPEAL (RULE 6(1) )



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

Case File No. **CA50998**

Supreme Court File No.

S248620

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

Supreme Court Registry Location

Vancouver Registry

### 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.)

TELUS International (Cda) Inc., Jeffrey Puritt, Vanessa Kanu, Gopi Chande, Michael Ringman, Beth Howen, Darren Entwistle, Josh Blair, Madhuri Andrews, Olin Anton, Navin Arora, Doug French, Tony Geheran, Sue Paish, Carolyn Slaski and Sandra Stuart

(Defendants)

### 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).

Kayne Michael Middleton

(Plaintiff)

## 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.*

The Honourable Justice Kevin D. Loo

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

Supreme Court  Tribunal

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).*

21 / August / 2025

DD/MM/YYYY

**City where the order was pronounced**

Vancouver

**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."*

Half day

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

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.

**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.

The Defendants appeal the order of Justice Loo ("Application Judge") pronounced August 21, 2025 ("Order"), ordering that the Plaintiff's petition for leave under s. 140.8 of the *Securities Act*, R.S.B.C. 1996, c. 418 ("Leave Petition") be heard concurrently with his application for certification under s. 4(1) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 ("Certification Application").

The Order is the result of reversible errors by the Application Judge, including the following:

1. The Application Judge did not apply the correct legal framework in arriving at the Order. The decisions of the British Columbia Supreme Court in *Larouche v. Pure Gold Mining Inc.*, 2024 BCSC 1889 ("*Pure Gold*"), and *0116064 B.C. Ltd. v. Alio Gold Inc.*, 2019 BCSC 1829 ("*Alio Gold*") clearly determine as a legal principle that a secondary market *Securities Act* claim commenced without leave is a nullity. Until leave has been granted, there is no *Securities Act* claim before the Court that can be the subject of a certification application. The Application Judge failed to apply this legal principle.
2. Instead, the Application Judge applied the factors set out in *British Columbia v. The Jean Coutu Group (PJC) Inc.*, 2021 BCCA 219 ("*Jean Coutu*"). The *Jean Coutu* framework applies with respect to sequencing issues when there is a request to schedule a preliminary application prior to certification, where there is no requirement for leave of the Court to be granted before the claim can be asserted. The *Jean Coutu* framework is not applicable in circumstances where a plaintiff is required by statute to obtain leave before commencing the action he seeks to certify as a class proceeding, and where the failure to do so means that the asserted claim is a nullity.
3. Even if the *Jean Coutu* framework applies, the Order reflects an error of principle by giving too much weight to delay (which should have been a neutral factor as it was in *Jean Coutu*) and insufficient weight to other factors like the extent to which the Leave Petition would narrow the issues to be determined on the Certification Application. In *Jean Coutu*, the British Columbia Court of Appeal clarified that it can intervene when the Court below gives no or insufficient weight to relevant considerations. The Application Judge spent a significant portion of his reasons discussing the potential for delay arising from interlocutory appeals of the Leave Petition, which was the only factor in the Plaintiff's favour. However, as highlighted in *Jean Coutu*, the potential for delay is outweighed where there is a foundational issue sought to be determined prior to addressing certification. Without leave under the *Securities Act*, the Plaintiff's claim as a practical matter will be stopped in its tracks. As in *Pure Gold* and *Alio Gold*,

without leave having been granted, the proceeding is a nullity. Thus, determining *Securities Act* leave is required before a certification application can be considered.

The proposed appeal raises important issues for the practice. As highlighted by the Application Judge, there is no decision in British Columbia addressing the issue of whether leave under the *Securities Act* is to be heard and determined prior to class certification. Appellate guidance is required, particularly in view of the contradiction between the legal principle that a case commenced without leave is a nullity, and the Order which applies the discretionary framework from *Jean Coutu*.

The proposed appeal also raises important issues for the underlying proceeding. The timing of the Leave Petition will have a significant impact on the arguments advanced by the parties on the Certification Application.

The proposed appeal is meritorious and the Appellants will move forward on an expedited basis so as to minimize any delay in the progress of the underlying proceedings.

#### 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.

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Constitutional/Administrative | <input checked="" type="checkbox"/> Civil Procedure | <input checked="" type="checkbox"/> Commercial |
| <input type="checkbox"/> Motor Vehicle Accidents       | <input type="checkbox"/> Municipal Law              | <input type="checkbox"/> Real Property         |
| <input type="checkbox"/> Torts                         | <input type="checkbox"/> Equity                     | <input type="checkbox"/> Wills and Estates     |
| <input type="checkbox"/> Divorce Act (Canada)          | <input type="checkbox"/> Family Law Act             | <input type="checkbox"/> 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

<b>Name(s) and address(es) within BC for service of appellant(s).</b> <i>If you have a lawyer, include the law firm's address; otherwise provide your own residential address.</i>	Katherine L. Kay and Maryam Shahid Stikeman Elliott LLP 666 Burrard Street Suite 1700 Vancouver, British Columbia, V6C 2X8			
<b>Phone number(s) of appellant(s)</b>	Katherine L. Kay: (416) 869-5507 Maryam Shahid: (416) 869-5671			
<b>Email address(es) for service of appellant(s)</b> <i>If you provide an email address, you are consenting to have documents served on you by email.</i>	kkay@stikeman.com mshahid@stikeman.com			
<b>Date form completed</b>	Date	19/ September / 2025	<b>Name of lawyer or party authorizing filing of this form</b>	Katherine L. Kay
DD/MM/YYYY				

**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 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.