

# COURT OF APPEAL FOR BRITISH COLUMBIA

## FORM 1

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

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

CA 49428

Supreme Court File No.

S219179

**VANCOUVER**  
OCT 25 2023  
COURT OF APPEAL  
REGISTRY

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

Supreme Court Registry Location

Vancouver

#### 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.)*

Sm'ooygit Nees Hiwaas, also known as Matthew Hill, on behalf of the Smgyiyetm Gitxaala, and Gitxaala Nation (petitioners)

##### 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).*

Chief Gold Commissioner of British Columbia, Lieutenant Governor in Council of British Columbia, Attorney General of British Columbia  
Christopher Ryan Paul, Oliver John Friesen (petition respondents)

## 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 A. Ross

**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).*

26/09/2023

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."*

14 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.

To the extent the following orders are inconsistent with the orders sought on this appeal below:

- (1) Subsection 2(a) of the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (“DRIPA”), does not implement the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) into the domestic law of British Columbia.
- (2) Section 3 of DRIPA does not create justiciable rights.
- (3) The mineral claims challenged by the petitioners are not quashed.
- (4) The declaration granted by the Court is suspended for 18 months.
- (5) Injunctive relief is denied.

**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.

- (1) A declaration that, pursuant to section 2 of the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (“DRIPA”), the *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) applies to all laws of British Columbia.
- (2) A declaration that under section 3 of DRIPA, consistency between any law of British Columbia and UNDRIP is justiciable; the Provincial Crown's system for granting mineral titles through the combined operation of the *Mineral Tenure Act*, RSBC 1996, c 292, the *Mineral Tenure Act Regulation*, BC Reg 529/2004, and the Mineral Titles Online Registry, taken together (the “Mineral Grant Regime”), is not consistent with UNDRIP; and the Provincial Crown has a statutory duty to consult and cooperate with Gitxaala concerning measures necessary to ensure the Mineral Grant Regime is consistent with UNDRIP.
- (3) An order quashing the mineral claims challenged by the petitioners held at the time of judgment of the Supreme Court by Christopher Ryan Paul and Oliver John Friesen.
- (4) An order enjoining the Chief Gold Commissioner from allowing for registration of any mineral claim, without prior consultation with Gitxaala, over the lands over which Gitxaala has asserted aboriginal title (the “Title Lands”).

(5) Costs in this Court and the Court below.

(6) Such further relief as the Court considers just.

**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.*

[Empty box for part of the order being appealed]

**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.*

[Empty box for grounds for leave to appeal]

**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

[Empty date box]

*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

[Empty date box]

*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.*

Ng Ariss Fong, Lawyers  
Suite 800 – 555 West George Street  
Vancouver, BC V6B 1Z5  
ATT’N: Lisa C Fong, KC

**Phone number(s) of appellant(s)**

(604) 331-1155

**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.*

general@ngariss.com

Date form completed

25/10/2023

Name of lawyer or party authorizing filing of this form

Lisa C. Fong, KC

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 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.