



Date: 20250507

Docket: A-33-25

Citation: 2025 FCA 93

Present: LOCKE J.A.

**BETWEEN:**

FRANCESCO GABRIELE QUALIZZA, JOEL THOMAS WILLIAM ELLIS,  
PATRICK MERCIER, JILL LYNE DUCHESNEAU, JOSEPH BENJAMIN  
STEWART, ERIC DAVID FAUCHER, SCOTT PETER BACON, STEPHEN TROY  
CHLEDOWSKI, AMANDA LEIGH BENHAM, JOSHUA MARTIN MCCULLOCH,  
KYLE CORRIVEAU, JOSEPH DANIEL ERIC LOUIS MONTGRAIN, DUSTIN  
SHANE WIEBE,  
STEPHEN WJ MORRIS, DAVID GARCIA VARGAS, MICHAEL JOSEPH LIS,  
NATASHA KATRINA LIS, SOLANGE SINE DJOUECHE, PETER VLASSOV,  
FREDERIC VILLENEUVE-NORMAND, ESTATE OF JONATHAN EMMERSON  
JENKINSON, VALENTIN LAVROV, MARIE-EVE LABONTE, JESSE DALE  
FRIESEN, TANIA CATHERINE NORDLI, ANDRZEJ SKULSKI, DENNIS JOHN  
PAUL TONDREAU, EMMY-LOU LAURIE FORGET, DALLAS ALEXANDER  
FLAMAND,  
CHELSEA ELAINE ROGAL, BARON HORDO, TAYLOR MICHAEL HARVIE,  
VANESSA RAE LAROCHELLE, JACQUELINE MARIE FRANCE BOEHME,  
JAMES PAUL DANIEL FORMOSA, KAITLYN E CAMPBELL, LUCAS TIMOTHY  
VANCUREN, JERMAINE SHERIDAN BURRELL, ANTHONY DAVID HIATT,  
MICHAEL ST-LAURENT, ARMAND EDWARD A. GARNER, AMIT SODHI,  
CAMILLE FELIX J TURGEON, SAMANTHA GWENDOLYN STYLES,  
CAROL-ANN MARY T OUELLETTE, ROBERT JAMES TEREMCHUK,  
NATHANIEL J P TONDREAU, NIKOLA J GUY TONDREAU, LISA PAULINE  
LEOPOLD, HAILEY NOELLE SCHRODER, DOMINIQUE LAUZIER,  
VALERIE OUELLET, JOHN M GILLIS, MORGAN CHRISTOPHER WARREN,  
MARK ANDREW GOOD, SEAN MICHAEL MARCOTTE, MARK ANDREW  
LOLACHER, GABRIEL VILLENEUVE, KIRA ANNE YAKIMOVICH,  
MATHIEU W PETIT-MARCEAU, KIMBERLY NEDRA ETTTEL,  
CHRISTOPHER WILLIAM RAMBHAROSE, MICHAEL RYAN FRANK,  
EVAN JEFFERY MCFATRIDGE, PIERRE-ELIE LASNIER, ALESSANDRU WARD  
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MACKENZIE, SARAH EVELYN LAPRADE, DANY PILON, JAMES ANDREW  
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WILSON, BRENDAN V. T. LEBERT, JOCELYN LAMOTTE, ANTHONY J. DUKE,  
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DHILLON DAVID COLE, PIERRE-OLIVIER COTE-GUAY, IAN M MENZIES, ERIC  
MONNIN, ELLIOT GAMACHE, NICHOLAS NEIL LLOYD CROCKER, ROBERT  
ALLAN HENDERSON,  
GABRIEL GILLES RJ RAMSAY, DEVIN JAMES MCKENNA**

**Appellants**

**and**

**HIS MAJESTY THE KING IN RIGHT OF CANADA, CHIEF OF THE DEFENCE  
STAFF GENERAL WAYNE EYRE, VICE CHIEF OF DEFENCE STAFF  
LIEUTENANT-GENERAL FRANCES J ALLEN, LIEUTENANT GENERAL  
JOCELYN J M J PAUL, VICE ADMIRAL ANGUS L TOPSHEE, and LIEUTENANT  
GENERAL ERIC J KENNY, MINISTER OF NATIONAL DEFENCE, THE  
HONOURABLE ANITA ANAND, FORMER DEPUTY MINISTER OF NATIONAL  
DEFENCE JODY THOMAS, SURGEON GENERAL MAJOR-GENERAL JGM  
BILODEAU, CHAPLAIN GENERAL BRIGADIER- GENERAL JLG BELISLE,  
JUDGE ADVOCATE GENERAL REAR-ADMIRAL GENEVIEVE BERNATCHEZ,  
and  
BRIGADIER GENERAL LIAM WADE RUTLAND**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 7, 2025.

REASONS FOR ORDER BY:

LOCKE J.A.



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**Appellants**

**and**

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JUDGE ADVOCATE GENERAL REAR-ADMIRAL GENEVIEVE BERNATCHEZ,  
and  
BRIGADIER GENERAL LIAM WADE RUTLAND**

**Respondents**

### **REASONS FOR ORDER**

**LOCKE J.A.**

[1] I have before me a motion by Mark Lolacher, one of the appellants named in this proceeding, to set aside a partial notice of discontinuance filed on January 31, 2025 (the Notice) that indicated that Mr. Lolacher and a number of other named appellants were discontinuing their appeal. Mr. Lolacher's argument is that he never authorized the discontinuance of his appeal or the filing of the Notice.



[2] Having now reviewed Mr. Lolacher's submissions, as well as submissions on behalf of the remaining appellants, I find that this situation is problematic in several ways. I have some comments before deciding Mr. Lolacher's motion.

[3] The present appeal takes issue with an Order of the Federal Court (dated January 14, 2025, *per* Justice Michael D. Manson in Court File No. T-1296-23) that denied an extension of time to appeal the decision of Associate Judge Catherine A. Coughlan dated November 13, 2024. Associate Judge Coughlan's decision granted a motion to strike a statement of claim against the respondents that had been filed on behalf of many plaintiffs, including Mr. Lolacher.

[4] The notice of appeal of Justice Manson's decision was filed in this Court on January 23, 2025, naming many appellants, including Mr. Lolacher. An exchange of correspondence in the following days between Mr. Lolacher and the appellants' counsel, Catherine M. Christensen indicates that Mr. Lolacher had questions about a proposed legal services agreement, and failed to make a payment contemplated therein. In response, Ms. Christensen indicated that she no longer represented Mr. Lolacher. She filed the Notice a few days later.

[5] The respondents take no position on the motion. However, they note that (i) the present appeal was commenced naming Mr. Lolacher among the appellants, (ii) the Notice included Mr. Lolacher, and (iii) the appellants' motion filed on February 26, 2025 to determine the contents of the appeal book listed Mr. Lolacher as still being a party.

[6] For their part, the appellants oppose the motion. They take the position that Mr. Lolacher's failure to sign the legal services agreement that he had received from Ms. Christensen and make the payment contemplated therein constituted his withdrawal as a party to the proceeding in the Federal Court, and that he was never a party to the present appeal.

[7] The appellants' position is incomprehensible. It also betrays a failure to understand the responsibilities of counsel representing a party to a proceeding in this Court.

[8] The appellants' position is incomprehensible in that Mr. Lolacher was clearly a party to the present appeal since he was named in the notice of appeal. The appellants have not alleged that Mr. Lolacher was named inadvertently. Accordingly, any alleged withdrawal by Mr. Lolacher would have to have occurred after the commencement of the appeal. Moreover, the filing of the Notice was effectively an acknowledgement that Mr. Lolacher was a party to the present appeal. Otherwise, it would have been unnecessary.

[9] The argument that Mr. Lolacher withdrew as an appellant because of what he did not do is disingenuous. Ms. Christensen's filing of the Notice without authorization from Mr. Lolacher was inappropriate and high-handed.

[10] The appellants make an argument concerning another partial notice of discontinuance that was allegedly submitted to the Federal Court in December 2024 in Court File No. T-1296-23. However, that argument is no more than a red herring since Mr. Lolacher was apparently not named in that notice of discontinuance. Accordingly, the information before the Court is that

Mr. Lolacher was among the plaintiffs in the proceeding before the Federal Court and remained so through to the filing of the notice of appeal.

[11] The appellants' position betrays a failure to understand the responsibilities of counsel in that Ms. Christensen became counsel of record for Mr. Lolacher in the present appeal when she filed the notice of appeal on behalf of the appellants, including Mr. Lolacher (see Rule 123(1) of the *Federal Courts Rules*, S.O.R./98-106). Ms. Christensen is not entitled to decide unilaterally and without constraint to discontinue her representation of a client (*R v Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331 at para. 9). That representation continues until either (i) Mr. Lolacher removes or replaces her pursuant to Rule 124, (ii) the Court orders her removal pursuant to Rule 125, (iii) she ceases to represent Mr. Lolacher because she dies, is appointed to public office incompatible with the solicitor's profession, or is suspended or disbarred as a solicitor, as contemplated in Rule 126, or (iv) the end of the mandate. Based on the record before me, none of these has occurred, and Ms. Christensen remains counsel of record for Mr. Lolacher.

[12] My conclusion that Mr. Lolacher was indeed a party to the present appeal represented by Ms. Christensen at least at the time of filing the notice of appeal also addresses the appellants' arguments that Mr. Lolacher has no standing to bring his motion and that he should have brought his motion before the Federal Court. Mr. Lolacher has standing and has brought his motion to the proper Court.

[13] Mr. Lolacher makes allegations of professional misconduct by Ms. Christensen in his motion materials. The appellants argue that Mr. Lolacher should have brought these issues to the

attention of the Law Society of Alberta as a complaint against Ms. Christensen. While filing such a complaint is certainly an option that is open to Mr. Lolacher to address issues of professional misconduct, the motion to set aside the Notice must be made in this Court and could not be addressed by the Law Society of Alberta. The appellants' argument on this point is not sufficient to dismiss Mr. Lolacher's motion entirely. However, despite my view that Ms. Christensen acted inappropriately, without authorization and in a high-handed manner, my Order will not refer to ss. 3.7-1 [1] and [2] of the Law Society of Alberta Code of Conduct as Mr. Lolacher requests. That issue should be left to the Law Society of Alberta.

[14] The appellants also criticize Mr. Lolacher for his handling of privileged information. This seems to be another example of a failure to understand the nature of the situation and counsel's and parties' responsibilities herein. Firstly, the question of privilege is not relevant to the present motion to set aside the Notice. It is not necessary to have reference to any privileged information to conclude that Mr. Lolacher was an appellant in the present appeal and that Ms. Christensen acted on his behalf. This can be seen from the notice of appeal alone. It is likewise not necessary to have reference to any privileged information to conclude that Ms. Christensen acted without authority when she filed the Notice.

[15] Secondly, privilege arises between a lawyer and their client and belongs to the client, not the lawyer: *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53, [2016] 2 S.C.R. 555 at para. 35. The appellants seem to recognize that the client is entitled to waive privilege, while counsel can do so only with the client's authorization. Any assertion by the appellants that Mr. Lolacher received privileged information in this case would

seem to amount to an acknowledgement that he was a client at the time he received it. Any intentional disclosure of privileged information to someone other than a client would constitute a waiver of privilege by the person disclosing it. If Mr. Lolacher was not a client, as the appellants assert, then information disclosed to him could not remain privileged.

[16] Moreover, any allegation that Mr. Lolacher received privileged information belonging to other appellants and handled it improperly is irrelevant to this motion. It also has not properly been put to this Court. If the appellants wish to have measures put in place to shield allegedly privileged information from the public, they should bring a separate motion in that regard and include therein sufficient detail to identify the allegedly privileged information and demonstrate how it has been mishandled.

[17] For the foregoing reasons, I will grant Mr. Lolacher's motion and will set aside the Notice, thus restoring his status as an appellant.

[18] Ms. Christensen remains counsel of record for all the appellants including Mr. Lolacher until that status is properly changed. That said, the relationship between Mr. Lolacher and Ms. Christensen appears strained to say the least. While I will not make any Order in that regard, one or both of them may wish to take steps to change Mr. Lolacher's counsel of record.

[19] The appellants seek their costs of this motion on a solicitor-client basis. However, they provide no argument to justify such elevated costs. Even if I were inclined to grant costs to the appellants, which I am not, I see no reason to do so on an elevated basis. If the appellants are

concerned about Mr. Lolacher's handling of allegedly privileged information, elevated costs in relation thereto could be sought in the possible separate motion alluded to above. Of course, costs of such a motion would be an issue for the judge assigned to decide the motion.

[20] My view is that the costs of this motion should be awarded against the appellants in favour of Mr. Lolacher and in an amount that reflects the Court's view that this motion should not have been necessary, and certainly should not have been opposed, because the Notice, at least to the extent that it includes Mr. Lolacher, should never have been filed in the first place.

[21] Though Mr. Lolacher's notice of motion does not explicitly identify costs as part of the relief sought, it does seek "[a]ny further or additional relief as this Honourable Court deems just and equitable in the circumstances." Moreover, Mr. Lolacher explicitly seeks costs at paragraph 12 of his notice of motion, as well as at paragraphs 12 and 21 of his written representations. Therefore, there is nothing unfair in awarding the costs of this motion to Mr. Lolacher and against the appellants.

[22] I will award costs in the amount of \$2,000 to be paid forthwith by the appellants to Mr. Lolacher.

"George R. Locke"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-33-25

**STYLE OF CAUSE:** FRANCESCO GABRIELE QUALIZZA, et al. v.  
HIS MAJESTY THE KING IN RIGHT OF  
CANADA, et al.

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** LOCKE J.A.

**DATED:** MAY 7, 2025

**WRITTEN REPRESENTATIONS BY:**

Catherine Christensen FOR THE APPELLANTS

Mark Andrew Lolacher FOR THE APPELLANTS  
ON HIS OWN BEHALF

Barry Benkendorf FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Valour Legal Action Centre FOR THE APPELLANTS  
St. Albert, Alberta

Shalene Curtis-Micallef FOR THE RESPONDENTS  
Deputy Attorney General of Canada