

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. **CA49506**

Supreme Court File No.

S226670

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.)

Glencore International AG, Glencore AG, and Glencore Canada Corporation
(Respondents)

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).

Trevali Mining Corporation
(Petitioner/Applicant)

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 Fitzpatrick

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).

07/11/2023

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."

1 day

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.

Seeking leave to appeal the orders:

- (a) that any payments made, or that may potentially be made, to or on behalf of Glencore International AG, Glencore AG, or Glencore Canada Corporation or any other party as may be directed by Glencore, pursuant to section 5 of the Settlement Agreement dated effective October 12, 2022, among Glencore, the Lenders, and the Trevali Group: (a) are not new or additional post-filing liabilities of Trevali, Trevali Mining (New Brunswick) Ltd. or any entity in the Trevali Group; and (b) have been, and shall only be, paid as a reduction of the amounts outstanding under the Glencore Facility and shall not exceed the amounts owing under the Glencore Facility (as set out in the Distribution Order made in the Supreme Court action pronounced April 24, 2023); and
- (b) granting Scale B costs against the Glencore entities.

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 supervising judge erred in her contractual interpretation of the Settlement Agreement determining that the payments to be made to or on behalf of Glencore International AG, Glencore AG, or Glencore Canada Corporation under the Settlement Agreement dated effective October 12, 2022 were payments in reduction of the amounts owing under the Glencore Facility, and were not payments for concessions contained within the Settlement Agreement.

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

14/09/2022
14/09/2022
21/12/2022
28/06/2023

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 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

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.

McCarthy Tétrault LLP
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5

Attention: H. Lance Williams and Ashley Bowron

Phone number(s) of appellant(s)

(604) 643-7154

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.

lwilliams@mccarthy.ca
abowron@mccarthy.ca
sdanielisz@mccarthy.ca

Date form completed

28/11/2023

DD/MM/YYYY

Name of lawyer or party authorizing filing of this form

H. Lance Williams

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.