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	August 13, 2024 13 août 2024
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COURT FILE NO.

FEDERAL COURT OF CANADA

B E T W E E N:

DAVID JACOB ROTFLEISCH

Applicant

— and —

MINISTER OF NATIONAL REVENUE

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at the Federal Judicial Centre, 180 Queen Street West, in the City of Toronto, in the Province of Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the Applicant's solicitor WITHIN 10 DAYS of being served with this notice of application.

Copies of the [Federal Courts Rules](#) information concerning the local offices of the court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED at Toronto, Ontario this ____ day of August, 2024.

Issued By:

(Registry Officer)

Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **Minister of National Revenue**
Attention to the Attorney General of Canada
Department of Justice Canada
Ontario Regional office
120 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 1T1

(service to be effected by filing duplicate copies in the Registry
pursuant to Rule 133 of the *Federal Courts Rules*)

APPLICATION

I. APPLICATION FOR JUDICIAL REVIEW

1. This is an application for judicial review in respect of the decision made by Mare-France Montreuil of the Canada Revenue Agency (“CRA”), on behalf of the Minister of National Revenue, and issued to David Jacob Rotfleisch (hereinafter referred to as the “Applicant”), on July 22, 2024 (the “Decision”). The Decision bears the CRA reference number GB2414 5133 8397.

II. THE APPLICANT MAKE AN APPLICATION FOR

2. A declaration that the Decision is unreasonable, in whole or in part;
3. An Order pursuant to section 18.1(3) of the *Federal Courts Act*, RSC 1985, c F-7, quashing and setting aside the Decision, in whole or in part, and referring the Decision back to the Minister for redetermination;
4. A declaration by the Court that this Application is filed on a timely basis in accordance with subsection 18.1(2) of the *Federal Courts Act*;
5. An Order granting the costs of this Application; and
6. Such further and other relief as counsel may advise and this Honourable Court may deem just.

III. THE GROUNDS FOR THE APPLICATION ARE

A. Background: The Applicant

7. The Applicant is an individual who was born on July 8, 1953, in Canada.

8. The Applicant currently resides at 12 Windsor Avenue, Toronto, Ontario M1N 1A7.

B. Background: The Applicant's Underlying Tax Debt and Objection History

9. In the 2000 taxation year, the Applicant made a total of \$75,000 in charitable donations to Ideas Canada Foundation ("Ideas"), a registered Canadian charity. The Applicant claimed a corresponding charitable donation tax credit on his 2000 income-tax return.

10. On February 27, 2004, the Canada Customs and Revenue Agency (as it then was) informed the Applicant of an ongoing investigation concerning Ideas and individuals who made donations to Ideas. The Canada Customs and Revenue Agency allowed the Applicant an opportunity to make representations concerning the potential disallowance of his charitable tax credits claimed in 2000. The Canada Customs and Revenue Agency also notified the Applicant that it intended to reassess his 2000 taxation year by denying the entire amount of the charitable donation that the Applicant claimed in connection with Ideas.

11. On May 4, 2004, the Canada Customs and Revenue Agency sent a follow-up notice to the Applicant stating that only 80% of his total claimed donations, equal to \$60,000, would be denied.

12. On June 18, 2004, the Applicant was reassessed by the Canada Customs and Revenue Agency and was denied \$60,000 in charitable donations claimed by the Applicant in connection with Ideas for his 2000 taxation year.

13. On December 15, 2004, the Applicant objected to the reassessment of his 2000 taxation year by filing a Notice of Objection with the Canada Customs and Revenue Agency.

14. The Applicant's objection was held in abeyance by the Canada Customs and Revenue Agency (and subsequently the CRA) pending the Tax Court of Canada's disposition of the appeal in the case of *Kossow v The Queen*, 2012 TCC 325 ("Kossow"), an appeal

concerning a reassessment denying charitable tax credits in connection with Ideas for another taxpayer.

15. The Tax Court of Canada's final decision was rendered on September 14, 2012. The decision of the Tax Court of Canada was subsequently appealed to the Federal Court of Appeal. The Federal Court of Appeal's decision in *Kossow v The Queen*, 2013 FCA 283, was rendered on December 6, 2013. An application for leave to appeal that decision to the Supreme Court of Canada was rejected on May 15, 2014, rendering the Federal Court of Appeal's disposition final.
16. On November 7, 2014, the CRA confirmed the reassessment of the Applicant, denying \$60,000 of the donations claimed by the Taxpayer in the 2000 taxation year.

C. The Applicant's Taxpayer Relief Application

17. On December 22, 2014, the Applicant submitted a request to the Minister of National Revenue pursuant to subsection 220(3.1) of the Act and the CRA's Taxpayer Relief Program guidelines as published in the CRA's Information Circular IC07-1R1, requesting that the CRA cancel any arrears interest that accumulated since January 1, 2004, onward, on the basis of the actions taken by the CRA holding the Applicant's objection in abeyance.
18. Paragraph 23 of the CRA's Information Circular IC07-1R1 states that the Minister will consider granting relief from penalties and interest where the actions of the CRA are the principal cause any penalties and interest. Paragraph 26 of the CRA's Information Circular IC07-1R1 further includes the following examples of circumstances where waiver of penalties and interest caused by the actions of the CRA may be considered:
 - a) processing delays that result in the taxpayer not being informed, within a reasonable time, that an amount was owing; [...]
 - e) delay in providing information, such as when a taxpayer could not make the appropriate instalment or arrears payments because the necessary information was

not available; and

f) undue delays in resolving an objection or an appeal, or in completing an audit.

19. The above-noted examples are not an exhaustive list. Rather, subsection 220(3.1) of the Act provides that if an application for relief is made in time, the Minister has unqualified discretion to grant relief against penalties and interest. That power must be interpreted and applied by the Minister in accordance with the governing law, and not narrowly according to a select administrative publication of the CRA's own design.
20. On January 5, 2015, the Applicant paid in full the outstanding balance of his arrears in relation to his 2000 taxation year, preventing the further accumulation of compounding interest.
21. On November 9, 2023, an initial decision was rendered concerning the Applicant's request, granting interest relief for the period from December 6, 2013, to November 7, 2014. The Minister denied interest relief for the remaining periods from January 1, 2004, to December 5, 2013, and from November 8, 2014, to January 5, 2015.
22. In its November 9, 2023, decision, the Minister acknowledged the time period between the Applicant filing his Notice of Objection on December 15, 2004, and the time that the final disposition was made by the Federal Court of Appeal concerning *Kossow* was extensive. The Minister further acknowledged the CRA could not continue to work on the Applicant's objection during that extended period. The Minister nevertheless concluded the Applicant had the responsibility to "clear the outstanding amount in a timely manner to avoid further arrears interest charged." The Minister further alleged that it was the Applicant's "conscious choice" to wait for the final disposition of *Kossow* at the Tax Court of Canada before addressing the arrears interest charged.
23. On February 28, 2024, the Applicant requested that the CRA reconsider its decision issued on November 9, 2023.

D. The Decision

24. On July 22, 2024, the CRA issued the Decision, denying the Applicant’s request for reconsideration.
25. The Decision stated that the review of the Applicant’s request for reconsideration “revealed no circumstance that would have” prevented the Applicant from paying the amount owing. The Decision concluded, *inter alia*, that:
- a. The nearly ten-year time gap between the Applicant’s objection being filed and the CRA rendering its decision following the final disposition of *Kossow* did not qualify as an “undue delay”;
 - b. The Tax Court of Canada and the CRA are independent from one another, and the CRA was not responsible for lengthy procedural delays by the Tax Court of Canada in rendering a decision in *Kossow*; and
 - c. The Applicant was solely responsible for the decision to appeal his 2000 reassessment, and it was the Applicant’s responsibility to have any resulting balance paid by the original due date to avoid arrears interest charged.
26. The Decision concludes by stating, *inter alia*, that:
- ...In addition, you should not expect to profit from a charitable donation, and it was by your own choosing to wait for the outcome of the related TCC case before taking action to reduce the accumulated interest.
27. The Applicant submits that the Minister impermissibly fettered the discretion granted to her by subsection 220(3.1) of the Act in rendering the Decision, the Minister’s Decision is unreasonable, and the Decision demonstrates that the consideration of the Applicant’s request by the Minister’s representative was biased and not impartial, rendering the review procedurally unfair.

E. The Minister Impermissibly Unfettered her Discretion when Rendering the Decision

28. The Minister's reasoning as presented in the Decision failed to take into account relevant considerations, and erred in law in refusing to exercise her discretion pursuant to subsection 220(3.1) of the Act.
29. The Minister improperly appealed to mere notice issued to the Applicant concerning his outstanding debt as a justification to deny relief, and in doing so not only ignored the totality of the Applicant's circumstances, but also the CRA's underlying legal obligation to consider a taxpayer's objection with all due dispatch. In doing so, the Minister improperly appealed to the narrow construction of the CRA's Information Circular IC07-1R1 when assessing the Applicant's request, and the defined examples of actions of the CRA justifying relief, as a basis for denying that relief requested.

F. The Decision was Unreasonable

30. The Minister's decision was unreasonable because it is not internally coherent or justified in light of the legal and factual constraints that bear on the Minister.
31. The Minister improperly appealed to the complexity of the case of *Kossow* as an excuse for the delays the CRA experienced processing the Applicant's objection. The Minister's representative incorrectly concluded in the Decision that the Tax Court of Canada, the Federal Court of Appeal, and the Supreme Court of Canada, exercising control over their own procedures bound the CRA to hold the Appellant's objection in abeyance, even when the Appellant was not a party to *Kossow*. The Decision therefore conflated the delays caused by the courts themselves with the delays caused by the CRA's own hand, while simultaneously acknowledging in the Decision that the Tax Court of Canada and the CRA act completely independent from one another.

G. The Minister's Decision Demonstrated Bias Breaching Procedural Fairness

32. The Decision demonstrated inappropriate bias on the part of the Minister's representative who rendered the Decision, breaching the Applicant's rights to procedural fairness.
33. The Decision alleged that because the Applicant did not pay the amount owing in connection with his 2000 taxation year in full prior to the final disposition of *Kossow*, the Applicant "expect[ed] to gain a financial advantage in excess of the donation amount in the first place." The statements in the Minister's Decision demonstrate that the decision-maker was prejudiced toward the Applicant, and that her personal opinions of the Applicant and baseless interpretation of his actions were used as justify the denial of the Applicant's request. As a result, the decision-maker's bias has tainted the entire foundation of the Minister's Decision.
34. In support of the Application, the Applicant intends to rely upon sections 18 and 18.1 of the *Federal Courts Act*, subsection 220(3.1) and paragraph 152(4)(a) of the Act, and the Taxpayer Relief Provisions guidelines as published in the CRA's Information Circular IC07-1R1.
35. The Applicant intends to also rely upon such further and other grounds as counsel may advise and this Honourable Court may allow.

IV. THE APPLICATION WILL BE SUPPORTED BY

36. An affidavit, or affidavits to be sworn by one or more individual(s);
37. Written correspondence between the Applicant and the CRA;
38. The Certified Tribunal Record produced by the Respondent pursuant to Rule 318; and
39. Such further and other evidence as counsel may advise and this Honourable Court may allow.

V. RULE 317 REQUEST

40. Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicant requests the Respondent send a certified copy of the following materials that are in the possession of the Respondent to the Registry and to the Applicant:

- a. All documents and information relied upon by the CRA in issuing the Decision;
- b. Any internal policies, procedures or guidelines that were referred to by the relevant decision maker at the CRA when preparing the Decision;
- c. All communication between CRA employees related to the Applicant, including memoranda, letters and emails;
- d. All internal communications made between the responsible officers and the CRA's Taxpayer Relief Centre of Expertise;
- e. Any and all notes taken by the responsible officer, whether electronic or hand-written, in the course of evaluating the Applicant's request for relief under the CRA's Taxpayer Relief Program and the preparation of the Decision; and
- f. Any and all other documents not listed above that are in the possession of the CRA and that were relied upon in issuing the Decision.

DATED at Toronto, Ontario this 13th day of August, 2024.



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PROFESSIONAL CORPORATION**

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Per:

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COUNSEL FOR THE APPLICANT

TO: **The Registrar**
Federal Court of Canada
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

AND TO: **Minister of National Revenue**
Attention to the Attorney General of Canada
Department of Justice Canada
Ontario Regional office
120 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 1T1

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