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F I L E D	FEDERAL COURT COUR FÉDÉRALE October 08, 2024 08 octobre 2024
	D É P O S É
Court File No: Ginette Lischenski (SA)	
EDM	1

FEDERAL COURT

BETWEEN:

LEONARD WOROBEK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Notice of Application

TO THE RESPONDENT(S):

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

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 Court in Edmonton, Alberta.

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, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after 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, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

(Date)

Issued by: _____
(Registry Officer)

Address of local office: _____

TO: Attorney General of Canada
EPCOR Tower
300, 10423-101 Street
Edmonton, Alberta T5H 0E7

Application for Judicial Review

This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act* in respect of a decision made by the Minister of National Revenue or her delegate within the Canada Revenue Agency (the “**Minister**”).

The following facts are relevant and material for the purposes of this application:

Decision under review

1. On or about September 12, 2024, the Minister on second review refused to waive or cancel Part XI.01 amounts assessed to the Applicant (the “**Decision**”) for the Applicant’s 2018, 2019, 2020 and 2021 taxation years (the “**Relevant Years**”) pursuant to sections 207.02 and 207.06 of the *Income Tax Act* (Canada) (the “**Act**”).
2. The Decision was communicated to the Applicant on or about September 12, 2024.
3. All statutory references in this notice of application will be to the Act unless otherwise indicated.

Statement of Facts

4. At all material times the Applicant was an individual resident in Canada for the purposes of the Act.
5. In 2019, the Applicant opened an account with QTrade Direct Investing (“**Qtrade**”), an online brokerage platform, with eight character account number ending 4XAL (the “**Account**”).
6. The Applicant did not realize at that time that the Account was a Tax-Free Savings Account (“**TFSA**”), as he had intended to open a regular, non-registered trading account.
7. Shortly after opening the Account, the Applicant deposited approximately \$321,954 of his personal funds into the Account to facilitate his trading activities.
8. All or substantially all of the investments the Applicant acquired in the Account consisted of penny stocks.
9. The Minister eventually contacted the Applicant to advise him that the Account was a TFSA to which he had overcontributed. In response, the Applicant took immediate steps to obtain advice and withdraw the overcontribution.

10. Unfortunately, the Applicant's portfolio had been significantly reduced in value by that time on account of the many of the penny stocks he had invested in losing almost all their value over time.
11. Given this drop in value, the Applicant was unable to liquidate his portfolio and realize sufficient proceeds to withdraw the inadvertent overcontribution.
12. The Applicant instead moved his portfolio out of the TFSA and into a regular account. Moving the portfolio out of the TFSA took some time due to administrative roadblocks and other actions of Qtrade that were beyond the Applicant's control.
13. Without cancellation or waiver of the resulting Part XI.01 amounts, the Applicant will be liable under Part XI.01 for every taxation year into the foreseeable future.

The Applicant accordingly makes application for an Order:

1. In the nature of *certiorari* to quash and set aside the Decision on the basis that the Decision is unreasonable since, *inter alia*, the Decision is based on significant errors of fact and law, and the reasons given for the Decision are inadequate, illogical and do not justify the Decision.
2. Returning the matter to the Minister for reconsideration as to whether the Applicant is entitled to waiver or cancellation of the Part XI.01 amounts assessed in relation to the Relevant Years.
3. Allowing such further relief as this Honourable Court may deem fit.
4. Allowing costs in respect of this application.

The grounds for this application are that:

1. The Minister constitutes a federal board, commission or other tribunal for the purposes of section 18.1 of the *Federal Courts Act*.
2. In making the Decision, the Minister unreasonably denied the Applicant's waiver or cancellation request:
 - a. The Minister failed to adequately consider the Applicant's circumstances.
 - b. The Minister failed to adequately explain the reasons for the Decision in light of the submissions made by the Applicant.
 - c. The Minister made significant errors of fact and mixed fact and law in concluding that the Applicant did not withdraw the overcontribution to the TFSA within a reasonable timeframe.

- d. The Decision was not adequately justified, transparent or intelligible as it did not reasonably account for the central issues and concerns raised by the Applicant.
3. Such further and other grounds as counsel may argue and this Honourable Court accept.

This application will be supported by the following material:

1. The affidavit of Leonard Worobec.

The Applicant requests that the Minister send a copy of the following material that is not in the possession of the Applicant but is in the possession of the Minister to counsel for the Applicant and to the Registry:

1. All written instructions, letters, e-mails, memoranda and other documents which the Minister, or her delegate, considered or had before her when the Decision was made.

Dated at Edmonton, Alberta, this 8th day of October, 2024.



Robert A. Neilson
Counsel for the Applicant

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