

Court File No. A-259-22

FEDERAL COURT OF APPEAL

B E T W E E N :

IRIS TECHNOLOGIES INC.

and

HIS MAJESTY THE KING

FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE	
FILED	28-NOV-2022
Vanessa George	
TORONTO, ON	- 1 -

Appellant

Respondent

**NOTICE OF APPEAL**(pursuant to subsection 27(1.1) of the *Federal Courts Act*)

TO THE RESPONDENT:

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

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

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 613-996-6795) or at any local office.

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

November 28, 2022

Issued by: Vanessa George

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(Registry Officer)

Address of local office: 180 Queen Street West, Suite 200  
Toronto, ON M5V 3L6

AND TO: Attorney General of Canada  
Solicitor for the Respondent  
Email: Tor.Taxfed@justice.gc.ca

Attn:

Department of Justice Canada  
Tax Law Services Section  
120 Adelaide Street, Suite #400  
Toronto, Ontario M5H 1T1

Attention: Michael Ezri  
Wendy Linden  
Email: Michael.Ezri@justice.gc.ca  
Wendy.Linden@justice.gc.ca  
Facsimile: 416-973-0810  
Telephone: 647-297-4835  
647-256-7408

Counsel for the Respondent

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order of the Honourable Justice Visser of the Tax Court of Canada issued November 18, 2022 in *Iris Technologies Inc. v. His Majesty the King*, Court File No. 2021-226(GST)G (the “Order”).

The Order dismissed the appellant’s motion for an order declaring that seven documents produced by the respondent (the “Documents”) are not subject to the implied undertaking rule or alternatively that the rule should be waived if otherwise applicable.

THE APPELLANT ASKS that this Honourable Court allow this appeal by:

1. setting aside the Order;
2. granting the order that the Tax Court of Canada should have made, that the motion be allowed, and that,
  - a. the implied undertaking rule does not apply to the Documents; or
  - b. if the implied undertaking rule does apply, that it be waived in respect of the Documents; and
3. granting the appellant costs in this Court and in the court below.
4. for such further and other relief as this Honourable Court deems just.

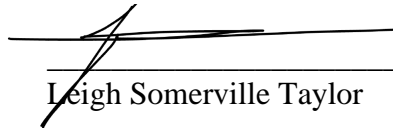
THE GROUNDS OF APPEAL are as follows:

1. The Documents are documents created by the Canada Revenue Agency and comprise 2 Audit Reports, 2 Penalty Recommendation Reports, 2 Appeals Screening Sheets and a T2020 diary.

2. The respondent asserted the Documents are subject to an implied undertaking prohibiting their use and disclosure in any other proceeding, including any litigation between the respondent and the appellant in the Federal Court and Federal Court of Appeal.
3. The Tax Court dismissed the appellant's motion finding the Documents in the versions produced were protected by the implied undertaking rule and that the interests of justice do not outweigh the values the implied undertaking rule should protect.
4. The Tax Court made a palpable and overriding error and erred in law in dismissing the appellant's motion.
5. The Tax Court erred in determining:
  - a. the Documents were compelled in discovery in the Tax Court;
  - b. the production of the Documents by the Canada Revenue Agency and the policy and practice of the Canada Revenue Agency to produce the Documents voluntarily and early is not relevant to the application of the implied undertaking rule to the Documents;
  - c. the Documents are protected by the implied undertaking rule;
  - d. the respondent's privacy interest in the Documents outweighs the public interest in disclosure of the Documents;
  - e. the implied undertaking rule should not be waived; and
  - f. the purpose of the appellant's request for the Documents was for use in collateral proceedings and the rules of the Tax Court were abused.

6. *Rules 4, 65, 105 and 126 of the Tax Court of Canada Rules (General Procedure), SOR/90-688A; sections 4 and 7 of the Access to Information Act, R.S.C. 1985.*
7. Such further and other grounds as counsel may advise and this Honourable Court may allow.

Dated at Toronto, Ontario this 28<sup>th</sup> day of November, 2022.



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Leigh Somerville Taylor

**Leigh Somerville Taylor**  
Professional Corporation  
4789 Yonge Street, Suite 204  
Toronto, ON M2N 0G3

Email: leigh@LSTLAW.ca

Telephone: 416-590-2671

Facsimile: 416-907-2671

Cellular: 416-930-3555

Solicitor for the Appellant

**Court File No.**

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*Federal Courts Act*)

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Solicitor for the Appellant