

Court File #: A-242-22

Form 337

Rule 27(1.1)(c); Rule 335(b); Rule 335(c)

### Notice of Appeal

FEDERAL COURT OF APPEAL

FEDERAL COURT COUR FÉDÉRALE		D É P O S É
NOV 15 2022		
KYLEA CHISHOLM		
TORONTO, ON	-/-	

Between:

Tax Court File #: 2021-1537(IT)G

Ehtesham A Rafique

Appellant,



Minister of National Revenue,

Respondent.

(Court Seal)

### Notice of Appeal

TO THE RESPONDENT:

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

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 the Federal Judicial Centre in 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 341A prescribed by the *Federal Courts Rules* and serve it on the Appellant, WITHIN 10 DAYS after 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 341B 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 613-992-4238) 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.

**KYLA CHISHOLM  
REGISTRY OFFICER  
AGENT DU GREFFE**

Date: 15 November, 2022

Issued by: \_\_\_\_\_

(Registry Officer)

Address of the local office:  
180 Queen Street West  
Federal Judicial Centre  
Toronto, Ontario  
M5V 3L6

TO: The Minister of National Revenue

AND TO: Deputy Attorney General of Canada  
c/o Counsel Allan Mason  
Department of Justice Canada  
Atlantic Region  
National Litigation Centre  
5251 Duke Street, Suite 1400  
Halifax, NS B3J 1P3  
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## Appeal

[01] WHEREAS, this appeal of taxation has been initiated in the Federal Court of Appeal pursuant to Rule 27(1.1)(c) of the *Federal Courts Act*.

[02] TITLED "Appeals from Tax Court of Canada, except from informal procedure", Rule 27(1.1)(c) of the *Federal Courts Act* stipulates:

**27(1.1)** An appeal lies to the Federal Court of Appeal from

- (a) a final judgement of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies;
- (b) a judgement of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies, on a question of law determined before trial; or
- (c) an interlocutory judgement or order of the Tax Court of Canada, other than one in respect of which section 18, 18.29, 18.3 or 18.3001 of the *Tax Court of Canada Act* applies.

[03] AND WHEREAS, paragraph 335(b) and 335(c) of the *Federal Courts Rules* for Appeals stipulate:

### **Application**

**335** This part applies to

- (a) appeals to the Federal Court of Appeal from the Federal Court, including appeals from interlocutory orders;
- (b) appeals to the Federal Court of Appeal from the Tax Court of Canada under subsections 27(1.1) and (1.2) of the Act; and

(c) appeals to the Court under an Act of Parliament, unless otherwise indicated in that Act or the Rules.

- [04] THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Right Honourable Chief Justice Eugene P. Rossiter, dated 08-Nov-2022.
- [05] The issues of this Appeal arise from an interlocutory judgement that was decided on 08-Nov-2022 and pronounced in the Federal Judicial Centre of the Tax Court of Canada in Toronto, by the presiding judge of the Motion hearing, the Right Honourable Chief Justice Eugene P. Rossiter.
- [06] The Appeal of taxation had been filed with the Tax Court of Canada pursuant to section 17 of the *Tax Court of Canada Act* R.S.C., 1985, c. T-2 on 24-Jun-2021, under file #: 2021-1537(IT)G. The Appellant had filed the Motion for Judgement on 10-Nov-2021 pursuant to section 65 and 170.1(a) of the *Tax Court of Canada Rules (General Procedure)*.
- [07] After two adjournments and a cancellation, the Motion hearing was ordered by the Honourable Judge following a case management conference call that he presided over on 15-Sep-2022.
- [08] Following presentations by parties to the proceeding, the Appellant and Motion Applicant himself, Ehtesham A Rafique, and Counsel Allan Mason, the Attorney General of Canada and attorney for the Respondent, His Majesty the King, the Motion judgement was pronounced by the Right Honourable Chief Justice.
- [09] The Appellant requests the Federal Court of Appeal to send a certified copy of the following material that is not in the possession of the Appellant but is in the possession of the Tax Court of Canada to the Appellant and to the Registry: A print-out of the 08-Nov-2022 decision of the Tax Court of Canada, under file #: 2021-1537(IT)G.

[10] THE GROUNDS OF APPEAL, in accordance with Rule 337 of the Federal Courts Rules, are:

(a) The Appeal arises from an interlocutory decision of the Tax Court of Canada described in paragraph [04] to [07] above, and that has been filed with registry the Tax Court of Canada under file #: 2021-1537(IT)G.

(b) Names of the parties:

Appellant: EHTESHAM A RAFIQUE

Respondent: HIS MAJESTY THE KING

(c) A precise statement of relief sought.

(i) To pronounce and to issue a rescission order dismissing the order of the Right Honourable Chief Justice Eugene P. Rossiter, that he pronounced on 08-Nov-2022 after hearing a Motion Application by the Appellant.

(ii) To pronounce and to issue a rescission order to dismiss an award of costs for the Respondent that was pronounced and issued by the Right Honourable Chief Justice Eugene P. Rossiter, on 08-Nov-2022 in response to the Respondent's Reply of 05-Oct-2021 to the Appellant's 24-Jun-2021 Notice of Appeal to the Tax Court of Canada.

(iii) To pronounce and to issue an order to vacate two Notices of Assessment of the Minister of National Revenue of returns of income of the Appellant from taxation year 1994 and from taxation year 1995, dated 02-Dec-2020.

- (d) A summary statement of legal grounds has been enunciated in subparagraphs (i) – (vii) below:
- (i) Section 8 of the *Tax Court of Canada Act* was exercised by the Right Honourable Chief Justice Eugene P. Rossiter without due regard to the legal basis and factual grounds presented to the Court by the Appellant's Motion. Where the Motion Applicant had determined in whole, substantive rights in dispute among the parties, The Right Honourable Chief Justice failed to exercise his public duty to apply section 167 of the *Tax Court of Canada Rules (General Procedure)*, which is an imperative of law that is incumbent upon him to uphold.
  - (ii) Omissions by the Minister of National Revenue of subsection 150(2), subsection 163(3) and of subsection 165(3) of the *Income Tax Act* were not adjudicated.
  - (iii) The Honourable Judge omitted the Minister's burden of proof completely and awarded an order of costs to the Respondent even though the party had admittedly based its section 49 Reply on assumptions, without filing a single Court form, without filing or adducing any documentary evidence, and without calling any witnesses. Whether for the Appeal or for the Motion, the judgement of the Right Honourable Chief Justice Eugene P. Rossiter is a without-evidence outcome of law.
  - (iv) The Honourable Judge ignored submissions of factual evidence by the Appellant, including an

affidavit by a material witness. Instead of facilitating and advancing discovery, the Honourable Judge ordered inadmissible a transcript of examination for discovery between the Appellant and the Minister of National Revenue, another material witness, another form of material evidence. The transcript was denied by the Court's registry twice and the third time by the Honourable Judge even though he could have partially sworn the document in Court.

- (v) The case law precedents cited by the Honourable Judge, *Bolton v. The Queen*, [1996] F.C.J. No. 820, 96 DTC 6413 (FCA) and *Georgeson Shareholder Communication Canada Inc. v. The Queen 2009 TCC 148*, are barely relevant to the Appellant's legal grounds. The distinction between a presumptively imperative provision of law and a functional imperative of law was not applied correctly by the Honourable Judge. Seven, factual admissions presented by the Motion Applicant are true, and three admissions are material. The proceeding required direction from the Right Honourable Chief Justice for the completion of discovery and resolution.
- (vi) The Honourable Judge was instead passive towards the insufficiency of legal grounds of the Respondent in opposition to the Appellant's Motion, and loudly and aggressively critical of attempts of the Appellant to make a Motion presentation. In so doing, the Right Honourable Chief Justice erred in skilfully and knowledgeably executing the powers and trusts reposed in him.

(vii) A principal issue to be resolved in this Appeal is whether or not it falls within the jurisdiction of the Tax Court of Canada to issue direction to an awarded party, any awarded party, for preparing a draft judgement so that a draft order with inappropriate terms may be edited to be constituted of appropriate terms only and then approved by presiding judge in accordance with section 169 of the *Tax Court of Canada Rules (General Procedure)*. If the drafting of such orders until appropriate is allowed by law, the Right Honourable Chief Justice Eugene P. Rossiter failed to exercise the jurisdiction of the Tax Court of Canada to uphold laws of the *Income Tax Act* and to apply the laws of the *Tax Court of Canada Rules (General Procedure)*.

(e) This Appeal to the Federal Court of Appeal rises from a decision of the Tax Court of Canada.

(f) Orders that were pronounced: An order to dismiss the Motion for Judgement by the Appellant, and an order of costs for the Respondent.

(g) Place proposed for the hearing: Toronto, Ontario

[11] A partial list of authorities that the Appellant intends to cite for the attention of the Court:

(a) *Minister of National Revenue v. Ginsberg* (1996) 198 N.R. 148 FCA, per Huggessen, Desjardins & Linden JJ.A. in paras. 9-13.

(b) *Apotex Inc. v. Canada (Attorney General)* (2009) FC 721, per Beaudry J. in paras. 49-50, para. 82.

- (c) *Apotex Inc., v. Canada* [1994] 1 F.C. 742, (C.A.) aff'd [1994] 3 S.C.R. 1100, per Mahoney, Robertson & McDonald JJ.A.
- (d) *Canada (Attorney General) v. Schafer* (2000) A-414-98, per Strayer, Isaac & Sharlow JJ.A. in paras. 9-11.
- (e) *Roy v. The Queen* (2009) TCC 573, per Angers J. in para. 8.
- (f) *Canada (Attorney General) v. Bowen (C.A.)* (1992) 1 F.C. 311, per Heald, Stone & Linden, JJ.A. at pp. 313.
- (g) *9067-9051 Québec Inc., Vincent v. The Queen* (2011) TCC 456, per Hogan J. in para. 80.
- (h) *Siméon v. The Queen* (2008) TCC 214, per Tardif J. in para. 48.
- (i) Burden of Proof, defined in "Permanent Edition". Publisher: Thomson West. Copyright 2007.
- (j) *Tax Court of Canada Rules (General Procedure)* sor/90-688a.
- (k) *Tax Court of Canada Act* R.S.C., 1985, c. T-2.
- (l) *Income Tax Act* R.S.C., 1985, c. 1 (5th Supplement).
- (m) *The Interpretation Act* R.S.C., 1985, I-21.

Date: 15 November, 2022

Signed:   
Ehtesham A Rafique, Appellant  
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(416) 477-8536  
ea.rafique@outlook.com

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of / filed in the Court on the \_\_\_\_\_

day of NOV 15 2022 A.D. 20 \_\_\_\_\_

Dated this \_\_\_\_\_ day of NOV 15 2022 20 \_\_\_\_\_

Kc

**KYLA CHISHOLM  
REGISTRY OFFICER  
AGENT DU GREFFE**