

Court File No.: A-261-23

ID 1

FEDERAL COURT OF APPEAL

FEDERAL COURT OF APPEAL		D E P O S E
COUR D'APPEL FÉDÉRALE		
F I L E D	29-SEP-2023	
TORONTO, ON		1

BETWEEN:

HIS MAJESTY THE KING

Appellant

and

THE INDEPENDENT ORDER OF FORESTERS

Respondent

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED 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 on 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 Court Rules*, and serve it on the appellant's solicitor, or where the appellant is self-

represented, 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 341 prescribed by the *Federal Court Rules*, instead of serving and filing a notice of appeal.

Copies of the *Federal Court 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 (613-992-4283) or at any local office.

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

Date: _____ Issued by: _____
(Registry Officer)

Address of Local Office:

TO: The Registrar
Federal Court of Appeal

AND: Osnat Nemetz / Daniel Sandler
EY Law LLP
The EY Tower
100 Adelaide Street West, P.O. Box 1
Toronto, Ontario M5H 0B3

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Judgment of the Honourable Justice Monica Biringier of the Tax Court of Canada (**the “Trial Judge”**) dated August 17, 2023, by which the appeal for the respondent’s taxation year ending December 31, 2014 was allowed and the matter was referred back to the Minister of National Revenue (**the “Minister”**) for reconsideration and reassessment under the *Income Tax Act* (**the “Act”**) on the basis that the Minister’s assessment of the respondent’s tax liability be determined in accordance with the Trial Judge’s decision.

THE APPELLANT ASKS that:

- A. The appeal be allowed with costs in this Court and the Tax Court of Canada, and any Order of the Tax Court of Canada with respect to costs be set aside.
- B. The Judgment of the Tax Court of Canada be set aside.
- C. The matter under appeal be referred back to the Minister for reconsideration and reassessment on the basis that the Minister’s reassessment be restored.
- D. Such further and other relief as counsel may advise and this Honourable Court permits.

THE GROUNDS OF APPEAL are as follows:

1. The Trial Judge erred in law and/or mixed fact and law in concluding that the respondent may designate assets to a non-taxable business despite the text, context and purpose of sections 138 and 149 of the Act, and sections 2400 and 2401 of the Income Tax Regulations.

2. The Trial Judge erred in law by misdirecting herself as to the legal test for exclusion of assets and liabilities from computation of tax liability pursuant to sections 138 and 149 of the Act and sections 2400 and 2401 of the Income Tax Regulations. Having misapprehended the legal test, the Trial Judge then erred in mixed fact and law and made palpable and overriding errors of fact in applying that legal test to the adduced evidence.
3. In having found that the Canadian Investment Fund was greater than the size reported by the respondent, the Trial Judge erred in failing to give effect to paragraph 2401(1)(b) and subsection 2401(2) which entitles the Minister to designate assets once the Minister has determined that the insurer has not designated assets in accordance with the regulations.
4. Such further and other grounds as counsel may advise and this Honourable Court permits.

September 29, 2023



ATTORNEY GENERAL OF CANADA

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