

FEDERAL COURT

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Toronto, ON		69

B E T W E E N:

SHENGLIN XIAN, YUANSHENG OU YANG, OU YANG
FINANCIAL INVESTMENT CORP., WEALTH ONE CANADA
INC., MAO HUA CHEN (a.k.a. MORRIS CHEN), MINGYAN
LIU, HE YUAN INVESTMENT LTD. and XIN YUAN HUI
HOLDINGS LTD.

Applicants

and

THE MINISTER OF FINANCE

Respondent

APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A 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 Toronto, 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 file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if 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 180 Queen Street West, Suite 200
local office: Toronto, ON M5V 3L6

TO: Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

APPLICATION

This is an application for judicial review in respect of the following decisions of the Respondent, The Minister of Finance (“**Minister**”):

1. The Minister’s decisions dated March 20, 2023, and communicated March 21, 2023, made pursuant to subsection 973.03(1) of the *Bank Act*, SC 1991, c 46, to revoke the approvals granted on:

- (a) July 22, 2015 to the Applicants:
 - (i) Morris Chen (a.k.a. Mao Hua Chen) (“**Chen**”);
 - (ii) Yuansheng Ou Yang (“**Ou Yang**”);
 - (iii) Shenglin Xian (“**Xian**”);
 - (iv) Mingyan Liu (“**Liu**”); and
 - (v) Wealth One Canada Inc. (“**WOCI**”) (the approvals listed at paragraphs 1(a)(i)-(v) are hereinafter referred to collectively as the “**2015 Approvals**”); and

- (b) December 10, 2018 to the Applicants:
 - (i) Chen and Liu, acting in concert;
 - (ii) Xian;
 - (iii) Ou Yang;
 - (iv) He Yuan Investment Ltd. (“**HYI**”) and, by extension, to Xin Yuan Hui Holdings Ltd. (“**XYHH**”);
 - (v) Ou Yang Financial Investment Corp. (“**OYFIC**”); and

- (vi) WOCI (the approvals listed at paragraphs 1(b)(i)-(vi) are hereinafter referred to collectively as the “**2018 Approvals**”)

for the acquisition of common shares of Wealth One Bank of Canada (“**WOBC**” or “**Bank**”) (the approvals listed at paragraphs 1(a)-(b) are hereinafter referred to collectively as the “**Approvals**”) (the decisions of the Minister referred to in paragraph 1 are hereinafter referred to collectively as the “**Revocation Orders**”); and

2. The Minister’s decisions dated April 24, 2023, and communicated the same day, made pursuant to subsection 402(1) of the *Bank Act*, to direct the Applicants to either dispose of all of their shares of the Bank or to cause any entity they control to dispose of all of their shares of the Bank, as applicable, within 120 calendar days of April 24, 2023 (“**Disposition Orders**”).

3. In this Application, the Revocation and Disposition Orders are referred to collectively as the “**Decisions**”.

THE APPLICANTS MAKE APPLICATION FOR:

1. A Declaration that, in rendering the Decisions, the Minister failed to observe a principle of natural justice, procedural fairness or other procedure that she was required by law to observe;
2. A Declaration that the Minister based the Decisions on erroneous findings of fact that made in a perverse or capricious manner or without regard to the material before her;
3. A Declaration that the Decisions were *ultra vires*, unreasonable, and/or taken for improper purposes or on the basis of irrelevant grounds (and/or without consideration of relevant grounds);
4. An Order in the nature of *certiorari* setting aside the Decisions;

5. An Order permitting the review of more than a single decision in respect of which relief is sought pursuant to Rule 302 of the *Federal Court Rules*;
6. Costs of this application; and
7. Such further relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THIS APPLICATION ARE:

A. Overview

8. As set out in detail below, the Decisions constitute a closely connected and continuing course of unlawful government action taken by the Minister.
9. In 2016 the Applicants Chen, Ou Yang, and Xian (collectively, “**Shareholders**”) founded the Bank to serve the needs of the Canadian Chinese community. In 2015, the Minister had approved the Bank and the Applicants as shareholders (the 2015 Approvals).
10. Commencing in 2022, in a climate of anti-Chinese sentiment, and without any new information to support any relevant concerns about the Applicants, the Minister undertook a course of action, pursuant to subsections 973.03(1) and 402(1) of the *Bank Act*, to revoke the Approvals and to remove the Applicants as shareholders. By that time, the first Approvals had been in place for approximately seven and a half years.
11. The Minister made the Decisions in a procedurally unfair manner without regard to the material before her. The Decisions were unreasonable and were made for an unlawful and improper purpose, namely, in response to adverse publicity against and pressure on the Prime Minister’s Office, rather than any genuine concern about the operation of the Bank or Canada’s financial system.

12. The Decisions, in addition to having clear and significant financial consequences, will harm the professional reputations of the Applicants seriously and irreparably. Despite this harm, the Minister denied the Applicants' rights to procedural fairness and natural justice throughout. The Minister failed to inform the Applicants of the case they had to meet and, thereby, denied the Applicants a full and fair chance to respond. The Minister never informed the Applicants of all the evidence on which the Minister was relying, despite the Applicants' repeated and specific requests for disclosure of the same. The Minister provided the Applicants only limited and vague disclosure, despite the Applicants' repeated and specific requests for meaningful disclosure.
13. Moreover, the Minister's reasons are internally incoherent. The resulting Decisions are untenable in light of the relevant factual and legal constraints that bear upon them.
14. Since the Minister granted the 2015 Approvals, there has been no material change in the Applicants' personal or business relationships that could justify the reversal of the Approvals approximately seven and a half years later. Put simply, the Minister's conclusions cannot follow from the analysis she undertook and/or the facts before her.
15. The Minister failed to address the Independent Investigations, as defined below, which concluded that there was no evidence that could substantiate the Minister's concerns.
16. The reasons provided for the Decisions fail to identify any specific activities of any of the Applicants that could substantiate the putative concerns animating them. Rather, the reasons rest on unfounded generalizations and fail to grapple with any of the Applicants' representations. As such, the Decisions can be explained only by the Minister's reliance on an irrelevant consideration or improper purpose –

namely, the recent rise in geopolitical tensions between Canada and the Peoples Republic of China, the Applicants' ancestral homeland.

17. The Applicants, therefore, seek the relief set out above.

B. The Parties

i. Shenglin Xian

18. The Individual Applicant, Xian, is a Canadian citizen. Xian founded the Bank.

ii. Yuansheng Ou Yang

19. The Individual Applicant, Ou Yang, is a Canadian citizen. Ou Yang is a founding shareholder of the Bank.

iii. Mao Hua Chen (a.k.a. Morris Chen)

20. The Individual Applicant, Chen, is a Canadian citizen. Chen is a founding shareholder of the Bank.

iv. Mingyan Liu

21. The Individual Applicant, Liu, is a Canadian Citizen. Liu is Chen's wife.

v. WOCI

22. The Organizational Applicant, WOCI, is a corporation established under the *Canada Business Corporations Act*, RSC, 1985, c C-44, that is controlled by the Individual Applicant, Xian.

vi. He Yuan Investments Ltd.

23. The Organizational Applicant, HYI, is a corporation established under British Columbia's *Business Corporations Act*, SBC 2002, c 57 ("**BCBCA**") that is controlled by the Individual Applicants Chen and Liu.

vii. Xin Yuan Hui Holdings Ltd.

24. The Organizational Applicant, XYHH, is a corporation established under the *BCBCA* that is controlled by the Individual Applicant Chen and Liu.

viii. Ou Yang Financial Investment Corp.

25. The Organizational Applicant, OYFIC, is a corporation established under Ontario's *Business Corporations Act*, RSO 1990, c B16 that is controlled by the Individual Applicant Ou Yang.

ix. The Minister of Finance

26. The Department of Finance ("**Department**") is established under section 14 of the *Financial Administration Act*, RSC 1985, c F-11 ("**FAA**").
27. Pursuant to section 15 of the *FAA*, the Minister manages and directs the Department, manages the Consolidated Revenue Fund and supervises, controls, and directs all matters relating to the financial affairs of Canada not by law assigned to the Treasury Board or to any other minister.

C. Founding of the Bank and the 2015 and 2018 Approvals

28. The Bank is registered under Schedule I of the *Bank Act*.
29. The Bank received its Letters Patent on July 22, 2015, and commenced its operations on July 7, 2016.
30. On July 22, 2015, the Minister approved the following acquisitions pursuant to section 373(1) of the *Bank Act*:
- (a) by Chen of [REDACTED] of the common shares of the Bank;
 - (b) by Chen and Liu, acting in concert, of [REDACTED] of the common shares of the Bank;

- (c) by WOCI of [REDACTED] of the Bank that would cause WOCI, Xian and Xian Family Trust (“XFT”), an entity that was then contemplated but not ultimately incorporated, to control and to have a significant interest of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; and
- (d) by Ou Yang of [REDACTED] of the common shares of the Bank (“2015 Approvals”).

31. On December 10, 2018, the Minister approved the following acquisitions pursuant to section 373(1) of the *Bank Act*:

- (a) by Chen and Liu, acting in concert, to increase their authorized significant interest in the common shares of the Bank from [REDACTED]
[REDACTED] to up to [REDACTED];
- (b) by HYI of [REDACTED] of the common shares of the Bank that would cause HYI and XYHH to have a significant interest of [REDACTED]
[REDACTED] in the common shares of the Bank;
- (c) by WOCI that would cause WOCI, XFT, and Xian to increase their authorized significant interest in the common shares of the Bank from [REDACTED] to [REDACTED];
- (d) by Ou Yang to increase his authorized significant interest in the common shares of the Bank from [REDACTED] to [REDACTED]
[REDACTED]; and
- (e) by OYFIC of [REDACTED] of the common shares of the Bank; (“2018 Approvals”).

32. The Shareholders were shareholder directors of the Bank until their resignations on December 7, 2022.

D. Initial Letters from Minister in December 2022

33. On or about December 6, 2022, each of the Shareholders received substantially identical letters from the Minister ("**December 6 Letters**").
34. The December 6 Letters notified the Shareholders that there were serious concerns related to foreign-influenced activities and vulnerability to coercion and compulsion by the Chinese Communist Party (CCP) and the Government of the People's Republic of China (PRC) compliance with federal anti-money laundering law, that affected the basis for the Minister's previous Approvals ("**Concerns**").
35. The December 6 Letters further notified the Shareholders that they could make representations by December 20, 2022, and that, if the Minister was not satisfied that approval of the Shareholders' significant interests should continue, that the Minister may take action under the *Bank Act*, including revoking the Approvals pursuant to section 973.03(1).
36. On December 16, 2022, the Shareholders, through counsel, wrote to the Minister to advise of their intention to cooperate in responding to the Concerns. The Shareholders requested details regarding the Concerns to allow for a targeted and meaningful response.

E. The Minister's December 19 Letters and the Summary of Concerns Document

37. On December 19, 2022, the Minister sent three substantially identical letters to the Shareholders ("**December 19 Letters**"). Attached to each of the December 19 Letters was a document titled "Summary of Concerns".

38. The Summary of Concerns included no specific evidence, information, or transactions regarding the Concerns expressed in the December 6 Letters. The Summary of Concerns included no information on which the Minister could reasonably base her pending decision.
39. To the extent that the Summary of Concerns document referenced any particular financial activities of the Shareholders, the majority of references were to activities preceding the granting of the Approvals.
40. The December 19 Letters advised the Shareholders further that the Minister had extended the deadline for making representations to January 26, 2023.

F. The Independent Investigations

41. On December 23, 2022, in accordance with a Ministerial direction to the Bank, the Chair of the Board of Directors of the Bank retained PricewaterhouseCoopers LLP ("**PwC**") to conduct an independent investigation relating to the Concerns. PwC's review period was from the inception of the Bank's operations (i.e. July 7, 2016) to December 31, 2022.
42. PwC concluded that no evidence available to them could substantiate the Minister's Concerns. Notwithstanding that PwC was engaged pursuant to the Minister's direction to the Bank, the Minister did not address PwC's report ("**PwC Report**") in her Decisions.
43. The Bank also retained Borden Ladner Gervais LLP ("**BLG**") to conduct an independent investigation into the Concerns. BLG was similarly unable to substantiate the Concerns. Notwithstanding that BLG's report ("**BLG Report**") was provided to the Minister, the Minister did not address BLG's conclusions in her Decisions.

44. During the course of the investigations by PwC and BLG (“**Independent Investigations**”), which lasted approximately from December 23 until February 13, the Shareholders produced approximately 4,400 historical financial documents from the preceding two years to show that no basis existed for the Concerns in that period.

G. Shareholders’ Requests for Information

45. On January 20, 2023, the Shareholders wrote to the Minister asking for meaningful disclosure to substantiate the allegations mentioned in the December 19 letters as is required to ensure that the principles of natural justice and procedural fairness are observed. Without full particulars of the Concerns or allegations, it was impossible for the Shareholders to understand the specific allegations against them sufficiently and to provide a meaningful response to the same.
46. The Shareholders requested that the Minister disclose the relevant details relating to each of them.
47. On January 23, 2023, the Ministry wrote to the Shareholders’ counsel to advise them that the Minister had extended the date by which the Shareholders could make representations to February 17, 2023. The letter did not reference the Shareholders’ January 20, 2023 request for disclosure.
48. On February 6, 2023, the Shareholders wrote again to the Minister, reiterating their request for the relevant disclosure (“**February 6 Letter**”). They requested further that the Minister disclose all relevant information provided to the Minister or considered by the Minister in the course of making a decision.
49. On February 15, 2023, the Shareholders wrote a further letter to the Minister, stating that they were being asked to provide submissions without having been provided any substantive information upon which

the Concerns were based. The Shareholders reiterated the requests for disclosure made in the February 6 Letter.

50. On February 16, 2023, the Ministry of Finance acknowledged the Shareholders' request for further information and advised that consideration would be given to allowing the Shareholders to make additional representations in response to any further information that may be disclosed.

H. The Shareholders' February 2023 Written Representations

51. On February 17, 2023, the Shareholders submitted preliminary written representations regarding the Concerns.
52. In their written representations, the Shareholders stated, among other things, that there had been no material change in their personal, or business relationships that could affect the Approvals.
53. The Shareholders noted further that the Concerns predated the Approvals, which had been in place for approximately seven and a half years, and could have been raised and addressed at the time that the Approvals were sought and granted.
54. The Shareholders denied the allegations stated in the Concerns and in the Summary of Concerns. They stated that the Minister had provided them with no information suggesting their participation or involvement in foreign interference or money laundering activities. The Shareholders stated further that they would welcome the opportunity to address any specific evidence related to any such allegations.

I. The Shareholders' March 6, 2023 Representations

55. On March 6, 2023, the Shareholders wrote to the Minister. In their letter, the Shareholders reiterated their earlier requests for additional information to allow them to provide a complete and thorough response

to the Minister's Concerns. The Shareholders provided a response in respect of the limited detail provided. They stated further that they could not respond to the vague and unsubstantiated suspicions that either had not been communicated to them or that were so old that no records remain extant to support a response.

56. The Shareholders referenced further the conclusions of PwC and BLG. They also stated that it was evident that the Minister had targeted them unfairly due to the rise in geopolitical tensions with China, which lead to an unwarranted challenge to their loyalties to Canada.

J. The Revocation Orders

57. On March 20, 2023, the Minister wrote three substantially identical letters to the Shareholders advising them of her decision to revoke the Approvals pursuant to section 973.03(1) of the *Bank Act* ("**Revocation Reasons**"). Attached to the Revocation Reasons were the Revocation Orders themselves.
58. The Revocation Reasons stated that the Minister had determined that the Shareholders' significant ownership interests in the Bank "creates significant risk to the Bank and the broader financial system in Canada". Thus, the Minister revoked the Approvals effective immediately.
59. The Revocation Reasons failed to:
 - (a) Identify any particular activities of concern by any of the Shareholders;
 - (b) Refer to any new information or evidence that was not available at the time that the Minister granted the Approvals and that could substantiate any of the Concerns or the Summary of Concerns;

- (c) Refer to the conclusions of PwC or BLG; nor did they provide any further evidence or information substantiating any of the Concerns or the Summary of Concerns; and
 - (d) Respond to, or even to reference specifically, any of the Shareholders' representations, including the Shareholders' responses and requests for additional information.
60. Under the heading "Conclusion and further representations", the Revocation Reasons stated that, given the Revocation Orders, the Minister could consider issuing an order under subsection 402(1) of the *Bank Act* directing the Shareholders to dispose of some or all of their shares. The Revocation Reasons concluded by saying that, in light of the Revocation Orders, the Shareholders could provide further representations for the Minister's consideration by April 3, 2023.

K. The Shareholders' March 31, 2023 Representations

61. In accordance with the Revocation Reasons, the Shareholders made further representations to the Minister on March 31, 2023.
62. The Shareholders stated that they had played a critical role in the ongoing viability of the Bank. Over the years, the Shareholders made numerous capital contributions totalling ██████████ in share purchases. These contributions have been made in situations, including at the request of the Bank or of the Office of the Superintendent of Financial Institutions, where such contributions were required to support the Bank's liquidity and stability.
63. The Shareholders explained further, in detail, that any section 402(1) order requiring them to dispose of their shares in a time period shorter than 24 months would be detrimental to both the financial stability of the Bank and of Canada's financial system.

L. Disposition Orders

64. On April 24, 2023, the Minister sent three substantially identical letters to the Shareholders notifying them of her decision to direct them to dispose of their shares in the Bank (“**Disposition Reasons**”). Attached to the Disposition Reasons were the Disposition Orders.
65. The Disposition Reasons stated that they were further to the Revocation Reasons and that, following the Minister’s receipt of the Shareholders’ written representations of March 31, 2023, the Minister had decided that the Shareholders’ continued ownership of the shares of the Bank would be contrary to the public interest as it would pose risks to the Bank and the broader financial system, as set out in the Revocation Reasons.
66. Like the Revocation Reasons, the Disposition Reasons failed to:
 - (a) Identify any particular financial activities of any of the Shareholders as a basis for the Decisions;
 - (b) Refer to any new information or evidence that was not available at the time that the Minister granted the Approvals and that could substantiate any of the Concerns or the Summary of Concerns;
 - (c) Refer to the conclusions of PwC or BLG; nor did they provide any further evidence or information substantiating any of the Concerns or the Summary of Concerns; and
 - (d) Respond to, or even to reference specifically, any of the Shareholders’ representations, including the Shareholders’ responses and requests for additional information.

M. The irrelevant and/or improper purpose of the Minister’s Decisions

67. The Shareholders fulfilled their duties as shareholders and directors of the Bank for approximately seven and a half years. During that period,

there was not so much as a suggestion that the Shareholders had ever acted improperly in their capacity as shareholder directors. Further, the two Independent Investigations, with which the Shareholders cooperated fully, found no improprieties.

68. The process leading up to and resulting in the Decisions was effected in geopolitical climate of tension between Canada and China. The Decisions were made in a climate of distrust of Canadians of Chinese heritage within the federal government.
69. While the process engaged by the Minister was to be confidential, the activities of the Minister relating to the Bank and the alleged concerns were leaked deliberately by a government source to the media, fueling the existing anti-Chinese sentiment further.
70. The Minister made the Decisions improperly as a result only of the publicity by the media and pressure from the Leader of the Official Opposition of Canada, from CSIS, and from anonymous whistleblowers within CSIS, rather than any relevant, genuine concern about the operation of the Bank or the broader financial system. The Applicants state that this was perverse, capricious, arbitrary, discriminatory, unfair and unreasonable. Thus, the reasoning process leading to the Decisions was internally incoherent, and the resulting Decisions are untenable in light of the relevant factual and legal constraints that bear upon them. The Decisions are unreasonable, unlawful and were made for an improper purpose.

N. Request for Rule 302 Order

71. The foregoing conduct of the Minister constitutes a continuing course of conduct culminating in the requirement imposed on the Shareholders to dispose of all their shareholdings in the Bank. The Applicants request

an Order, pursuant to Rule 302, permitting the review of more than one decision in this Application.

O. Statutory Provisions

72. The Applicants intend to rely on the following:

- (a) Sections 18, 18.1 of the *Federal Courts Act*;
- (b) Rules 1.1, 3, 4, 53, 61(2), 62(1), 63(1)(d), 300, 301, 302 and 317 of the *Federal Courts Rules*, as applicable;
- (c) Sections 372, 373(1), 973, 973.01, 973.03(1), 973.03(3) and 402 of the *Bank Act*; and
- (d) Any other provisions of which Counsel may advise.

THIS APPLICATION WILL BE SUPPORTED BY:

- 4. The Affidavit of Shenglin Xian, to be affirmed; and
- 5. Any other evidence of which Counsel may advise and this Court will accept.

Pursuant to Rule 317 of the *Federal Court Rules*, the Applicants request the Minister to send a certified copy of all materials that are not in the possession of the Applicants but are in the possession of the Minister to the Applicant and to the Registry, including:

- (a) All materials relating to the Applicants that are relevant to the Minister's granting of the Approvals;
- (b) All materials relating to the Applicants referenced in the Minister's December 19, 2022 letters to the Shareholders;
- (c) All materials relating to the Applicants referenced in the Minister's February 24 and 28, 2023 letters to the Shareholders;

- (d) All information, communication, and materials, not referred to in the Minister's December 19, 2022 letters, that were not disclosed already by the Ministry on February 24, and 28, 2023;
- (e) All communications relating to the Bank, its shareholders and its relationship with China that are relevant to the Approvals or the Decisions;
- (f) All communications, intelligence reports and other documents relating to the Applicants and their relationship(s) with China that are relevant to the Approvals or the Decisions; and
- (g) All communications with or within:
 - (i) The Minister's Office;
 - (ii) The Prime Minister's Office;
 - (iii) The Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**");
 - (iv) CSIS; or
 - (v) Any other government agency, entity or actor

in respect of the Bank, the shareholders of the Bank, or foreign influence on or interference with either the Bank or the Shareholders, that:

- (vi) were before the Minister in the course of the Minister's review of the Approvals and in the course of making the Decisions; or

- (vii) are relevant to the Approvals or the Decisions; and
- (h) Where no documentary record exists of a communication that falls into any of the foregoing categories, a statement from the Minister as to the contents or subject matter of the communication.



May 24, 2023

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