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**Court File No.** \_\_\_\_\_

**FEDERAL COURT**

B E T W E E N :

**MA. MARIBEL ACEVEDO VIRGEN**

Applicant

-and-

**ATTORNEY GENERAL OF CANADA**

Respondent

**Notice of Application**

Under s. 18.1 of the *Federal Court Act, RSC 1985, c. F-7*

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 (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

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.

September 20, 2022

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

Address of local office: 180 Queen Street West  
Toronto, On. M5V 3L6

AND TO: ATTORNEY GENERAL OF CANADA  
Department of Justice Canada  
Ontario Regional Office  
National Litigation Sector 120 Adelaide Street West Suite #400  
Toronto, ON M5H 1T1  
Fax: (416) 973-0810

## Application

### **This is an application for judicial review in respect of**

1. This application is for judicial review concerning the Canada Revenue Agency and the Chief of Appeals Division, Calgary TSO, Calgary, AB, T2G 0L1. The applicant, Ma. Maribel Acevedo Virgen seeks relief from the decision to suspend participation in the Canada Revenue Agency's EFILE Program Helpdesk. The decision, communicated to the applicant on August 21, 2024, under Case number GB2404 6153 0208 and reference number V7197 (the "DECISION"), was delivered in written correspondence.

### **The applicant makes an application for:**

2. A judicial review is sought to challenge the decision of the Canada Revenue Agency, issued on August 21, 2024, under Case number GB2404 6153 0208 and reference number V7197.

### **Grounds for the Application for Judicial Review**

#### **Lack of Procedural Fairness:**

3. The Applicant submits that the Canada Revenue Agency (CRA) failed to provide a fair opportunity to submit additional information during the administrative review process, violating the principles of procedural fairness.
4. In *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817, the Supreme Court established that procedural fairness requires affected individuals to be given a reasonable opportunity to participate in administrative decision-making, which the CRA failed to do by not allowing the Applicant to present evidence before the April 11, 2023, decision.

#### **Failure to Follow Court Orders:**

5. The Federal Court's judgment dated November 15, 2022 (Case T-888-22) required the CRA to appoint a new decision-maker and conduct a fresh review of the Applicant's EFILE privileges. However, the CRA delayed the process and failed to provide a fair review, leading to ongoing prejudice to the Applicant.
6. The CRA's failure to comply with the court's directive in a timely and adequate manner violates the principles of administrative fairness and justifies judicial intervention. (*Doucet-Boudreau v. Nova Scotia* [2003] 3 SCR 3).

#### **Unreasonable Decision:**

7. The CRA's decision to revoke the Applicant's EFILE privileges was unreasonable because it relied on ambiguous and unclear guidelines, such as **RC4018** and **RC4004**, and failed to justify the decision adequately.
8. The CRA's decision is subject to the standard of reasonableness, which requires the decision to fall within a range of acceptable outcomes based on the facts and law. The decision to revoke the Applicant's privileges does not meet this standard. (*Paterson v. Canada* [2010 FC 644 at para 20]).
9. As stated in *Canada (Minister of Citizenship and Immigration) v. Vavilov* [2019 SCC 65], the court must determine whether the decision falls within a range of reasonable outcomes. In

this case, the CRA's decision to revoke EFILE privileges fails to meet the required standard of reasonableness due to its lack of clarity and justification.

10. In *Saber & Sone Group v. MNR* [2014 FC 1119 at para 73], the court found the CRA's revocation of EFILE privileges unreasonable when it failed to consider the impact of the loss of privileges on the appellant. In this case, the CRA similarly failed to consider the significant impact on the Applicant's business.

#### **Absence of Clear Criteria and Transparency:**

11. The CRA did not provide clear criteria or guidelines to justify the suspension of the Applicant's EFILE privileges under **section 150.1(2)** of the Income Tax Act. The lack of transparency in the application of **Criterion 13** further undermines the legitimacy of the decision. (*Canada (Attorney General) v. Mavi* [2011] 2 SCR 504).
12. The court has emphasized that if the reasons provided by a decision-maker do not allow the court to understand why the decision was made, it cannot be considered reasonable. (*Saber & Sone Group v. MNR* [2014 FC 1119 at para 35]).

#### **Unclear Application of the Law:**

13. The CRA retroactively applied **Criterion 13**, which refers to fraud, dishonesty, or breach of trust, without clear notice or explanation, resulting in an arbitrary decision.
14. According to *Canada v. Vavilov* [2019 SCC 65 at para 85, 304], a decision must be supported by a logical and coherent analysis based on the legal framework and factual circumstances. The CRA's failure to clearly explain how **Criterion 13** applies to the Applicant renders the decision unreasonable and unjustifiable.

#### **Discriminatory Practices in Applying EFILE Rules to SAWP Workers:**

15. The CRA's inconsistent application of EFILE rules to Seasonal Agricultural Workers Program (SAWP) participants creates an unjustifiable and discriminatory burden.
16. The CRA's decision fails to consider the Canada-Mexico Tax Treaty's relevance to the tax residency status of SAWP workers, which should have been addressed when applying the EFILE rules. The discriminatory nature of the decision is unreasonable. (*Saber & Sone Group v. MNR* [2014 FC 1119]).

#### **This application will be supported by the following material:**

##### **a) FORM 301. Notice of Application.**

- b) **A letter dated Aug 21, 2024:** The CRA's decision regarding the suspension of EFILE privileges.
- c) **A response letter dated July 26, 2024, to the Chief of Appeals:** Regarding the new Administrative Review.
- d) **A request letter dated June 24, 2024, to the Chief of Appeals:** to extension of time.
- e) **A letter dated May 30, 2024:** The Appeals Division confirmed the suspension EFILE privileges.

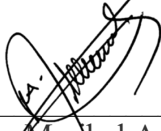
- f) **A letter dated March 18, 2024, issued from the applicant (Ma. Maribel Acevedo Virgen):** provide new information.
- g) **A letter dated Feb 26, 2024.** The CRA's request for additional/new information to be considered in the new review.
- h) **A letter dated February 15, 2024:** From the Department of Justice, informing the new officer to reinstate participation in the EFILE program, which was suspended on March 31, 2022, and was subject to the Court's review in the Judgment.
- i) **A letter dated February 1, 2024:** From the Department of Justice Canada, advising me to direct all future correspondence to their attention. Attached is the Court case submission confirmation.
- j) **A letter issued from me (Ma. Maribel Acevedo Virgen):** Addressed to the Attorney General of Canada, Department of Justice Canada, Ontario Regional Office, requesting a response from the new decision-maker.

**Request for Legal Material in the Possession of a Tribunal:**

Under **Rule 317(1)** of the Federal Courts Rules, the Applicant (Ma. Maribel Acevedo Virgen) respectfully requests that the following material relevant to the judicial review application, which is in the possession of the Canada Revenue Agency (CRA), be produced. Send a certified copy of this material that is not currently in the Applicant's possession and is essential for the fair adjudication of this application. The Applicant requests that the CRA provide:

- Any internal records, memoranda, correspondence, reports, Guides RC4004 and RC4018 or communications relevant to the decision to suspend the Applicant's EFILE privileges.
- All documents, guidelines, or criteria, including those under subsection **150.1(2)** of the Income Tax Act, that were relied upon by the CRA in reaching the decision.
- A full copy of the administrative file regarding the Applicant's EFILE privileges, including records of any internal decision-making processes or communications related to the suspension.

September 20, 2024



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