

Court File No.: A-166-22**FEDERAL COURT OF APPEAL**

<b>FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE</b>	
FILED	12-AUG-2022
TORONTO, ON	1

B E T W E E N:

**EL AD ONTARIO TRUST**

Appellant

- and -

**HER MAJESTY THE QUEEN**

Respondent

**NOTICE OF APPEAL****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 Federal Court of Appeal 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 341A 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 judgment 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 613-996-6795) 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.

DATED: August 12, 2022.

Issued by: Beatriz Winter  
(Registry Officer)

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

**TO:** ATTORNEY GENERAL OF CANADA  
Solicitor for the Respondent

Department of Justice Canada  
NCR Tax Litigation Section  
Sun Life Building  
99 Bank Street, 10th Floor  
Ottawa, ON K1A 0H8

Per: Daniel Bourgeois  
Dominik Longchamps  
Gabriel Caron

**AND TO:** Minister of National Revenue

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Order of the Honourable Justice D'Arcy of the Tax Court of Canada, dated August 3, 2022, by which the motion of the respondent for leave to amend the reply was granted (Tax Court of Canada File No. 2018-4828(IT)G).

THE APPELLANT ASKS that the appeal be allowed with costs, the Order of the Tax Court be set aside except as to costs, and the respondent's motion for leave to amend the reply be dismissed.

THE GROUNDS OF APPEAL are as follows:

1. The motion judge erred in law in concluding that subsection 152(9) of the *Income Tax Act* (Canada) gives the respondent the right to withdraw any admission of fact contrary to a new basis or argument raised pursuant to that subsection.
2. The motion judge erred in fact and in law in concluding that it is in the interests of justice to allow the respondent to amend the reply under rule 54 of the *Tax Court of Canada Rules (General Procedure)* and to withdraw key admissions of fact under rule 132 of the *Tax Court of Canada Rules (General Procedure)* in the absence of any new facts, evidence, or circumstances that justify the withdrawal of such admissions.
3. Such further and other grounds as counsel may advise and this Honourable Court permit.

The appellant requests that the Tax Court of Canada 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:

- (i) Notice of Motion, dated November 26, 2021;
- (ii) Affidavit of Manon Bourgeois, dated November 26, 2021;
- (iii) Affidavit of Barbara Stopka, dated May 17, 2022 (Tab 1 of the Appellant's Responding Motion Record);
- (iv) Reasons for Judgment of Justice D'Arcy, dated August 2, 2022.
- (v) Judgment of Justice D'Arcy, dated August 3, 2022; and

DATED this 12<sup>th</sup> day of August, 2022.



---

**THORSTEINSSONS LLP**

P.O. Box 786  
Bay Wellington Tower  
181 Bay Street, 33<sup>rd</sup> Floor  
Toronto, Ontario  
M5J 2T3

Matthew Williams  
Michael Colborne  
Florence Sauvé  
Sarah Faber

Counsel for the Appellant