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Court File No :

FEDERAL COURT

BETWEEN:

HILLCORE FINANCIAL CORPORATION

Applicant

AND:

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

(Section 18.1 of the *Federal Courts Act*, R.S.C 1985, c. F-7)

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TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED 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 30, McGill Street, in Montréal, Province of Québec.

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 prepare 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.

MONTRÉAL, this 20th day of December, 2023.

Issued by: _____
(Registry Officer)

Address of local office:
Registry of the Federal Courts
30 McGill Street
Montreal, Québec H2Y 3Z7

TO : Attorney General of Canada

FEDERAL COURT

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APPLICATION

(Section 18.1 of the *Federal Courts Act*, R.S.C 1985, c. F-7)

THIS IS AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 18.1 OF THE *FEDERAL COURTS ACT* to quash and set aside a decision rendered by the Minister of National Revenue (the “**Minister**”) on 20 November 2023 and communicated to the Applicant on that same day (the “**Decision**”). The Decision denied the Applicant’s request made on 16 October 2023 for the return of an amount of \$879,092.36 (the “**Amount**”) garnished by the Canada Revenue Agency (“**CRA**”) allegedly pursuant to the *Excise Tax Act*¹ (the “**ETA**”), for an alleged debt owing under that statute but that has since been extinguished (the “**Request**”).

THE APPLICANT MAKES AN APPLICATION TO:

- (a) **SET ASIDE** the Decision;
- (b) **ORDER** the Minister to return the amount of \$879,092.36 to the Applicant;
- (c) In the alternative, **REFER** the matter back to the Minister for reconsideration by a different decision maker, so that the Amount be returned to the Applicant;

¹ R.S.C., 1985, c. E-15.

- (d) **GRANT** the Applicant all reasonable and proper costs that this Court deems just and equitable in the circumstances; and
- (e) **GRANT** such further or other relief as this Court may deem just in the circumstances.

THE GROUNDS FOR THE APPLICATION ARE:

I. THE FACTS

A. THE GST REASSESSMENTS

2. On 25 August 2017, the CRA issued the following reassessments against the Applicant under the *ETA* (the “**GST Reassessments**”):

Reporting Period	Reassessments
2015/03/01 to 2015/03/31	\$174,452.32
2015/06/01 to 2015/06/30	\$180,606.17
2015/09/01 to 2015/09/30	\$283,807.07
2015/12/01 to 2015/12/31	\$309,108.34
2016/12/01 to 2016/12/31	\$782,669.49
Total	\$1,730,643.39

3. On 15 November 2017, the CRA garnished the Applicant’s bank accounts at the Bank of Montréal (the “**BMO**”) and seized \$876,757.55 which it applied against the amounts of GST debt resulting from the GST Reassessments.
4. On 28 November 2017, the Applicant filed a notice of objection against the GST Reassessments.
5. On 14 November 2018, the CRA garnished additional funds deposited in the same BMO accounts in the amount of \$1,150.55 and \$1,184.26 (collectively, the “**Seized Funds**” and the “**Garnishment**”).

B. THE VACATED GST REASSESSMENTS

6. On 15 July 2020, the CRA vacated the GST Reassessments by issuing new reassessments (the “**Vacated GST Reassessments**”):

Reporting Period	Vacated Reassessments
2015/03/01 to 2015/03/31	(\$171,870.58)
2015/06/01 to 2015/06/30	(\$181,998.20)
2015/09/01 to 2015/09/30	(\$287,366.85)
2015/12/01 to 2015/12/31	(\$258,257.22)
2016/12/01 to 2016/12/31	(\$831,257.54)
Total	(\$1,730,750.40)

7. Pursuant to the Vacated GST Reassessments, the CRA was bound to refund the Applicant and return the Seized Funds to the Applicant but failed to do so.

C. THE INCOME TAX REASSESSMENTS

8. On 19 June 2020, less than a month before the Vacated GST Reassessments were issued, the CRA issued reassessments against the Applicant under the *Income Tax Act*² (the “**ITA**”) for its 2012 to 2017 taxation years (the “**ITA Reassessments**”).
9. On 15 July 2020, instead of returning the Seized Funds to the Applicant, the CRA claimed to set them off against the alleged ITA debt, purportedly pursuant to section 224.1 *ITA*.
10. In September 2020, the Applicant filed a notice of objection against the ITA Reassessments and, in January 2022, appealed them to the Tax Court of Canada (the “**TCC**”).
11. To date, the TCC had rendered no decision in relation to that appeal.

² R.S.C., 1985, c. 1 (5th Supp.)

12. By a letter dated 16 October 2023, the Applicant made the Request to the CRA, pursuant to the ETA and the ITA.
13. On 20 November 2023, Mr. Andrew Poon, a CRA collections officer, informed the Applicant, via telephone, that all outstanding tax debts of any kind must be paid by the Applicant before a return is possible, thereby refusing the Request.
14. Mr. Poon refused the Applicant's request to obtain a written decision and no further reasons were given for the Decision.

II. **GROUNDINGS FOR JUDICIAL REVIEW**

A. **The Untenable DECISION**

15. The Decision cannot reasonably stand in light of the facts and the governing statutory scheme of the ITA and the ETA
16. First, the decision maker failed to grasp the legal framework of the applicable legislation. Indeed, the Garnishment was issued under subsection 317(1) ETA and its sole purpose was to seize amounts owed by the Applicant to the CRA pursuant to the GST Reassessments. The CRA's authority to garnish under subsection 317(1) ETA was limited by the very words of that provision to "moneys otherwise payable to the tax debtor in whole or in part to the Receiver General on account of the tax debtor's liability **under this Part**," being Part IX ETA.
17. The ETA did not and does not allow the CRA to seize funds by garnishment for liability under one statute and, then, allocate it to another liability – which in fact did not exist at the time the Garnishment was executed. Once the Vacated GST Reassessments were issued and the GST debt was extinguished, the CRA had no option but to return the Seized Funds to the Applicant.
18. Second, the lack of the decision maker's engagement with and lack of responsiveness to the issue raised by the Applicant is telling. It is clear that the

decision maker was neither alert nor sensitive to the matter before him or her. This demonstrates the absence of an internally coherent and rational chain of analysis. Here, the lack of justification, transparency and intelligibility in the decision-making process at issue is salient.

19. Third, even if the CRA was entitled to set-off the Seized Funds against the ITA debt, which is not admitted but expressly denied, the Minister clearly had the statutory authority to provide the relief sought by the Applicant in its Request. In fact, section 224.1 provides that the Minister “may require the retention by way of deduction or set-off.” By refusing to even consider the application of this relief, the Minister fettered its discretion, thereby rendering her Decision unreasonable.

B. The Breach of Natural Justice and Procedural Fairness

20. The Minister acted contrary to the principles of natural justice and procedural fairness in rendering the Decision and thereby erred in law. The process leading to the Decision – or lack thereof – was not procedurally fair. The Applicant had a legitimate expectation that the Request would be reviewed and that it would be afforded a chance to respond.
21. Nevertheless, the decision maker failed to provide justified and justifiable reasons. Reasons ensure a fair and transparent decision-making process – such process is clearly lacking in the present circumstances. Even if a request is to be ultimately rejected, there must be an actual interaction with the reasons provided by the Applicant for the relief requested and an explanation as to why the request would be rejected, so as to provide the Applicant with proper opportunity to present a meaningful and informed response.
22. The Applicant has a right to seek judicial review of the Decision and needs to know the reasons for the Decision in order to properly prepare for judicial review. The lack of reasons for the Decision renders the Applicant unable to understand the basis for the Decision to deny relief.
23. Ultimately, the absence of guidelines or information into the process denies the

Applicant fair notice of the case it had to meet to be granted relief, and thus, breaches the duty of procedural fairness.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL :

- (a) the Applicant' Record including affidavits sworn on behalf of the Applicant, to be filed herein;
- (b) any information filed with the Court in accordance with the request below pursuant to Rules 317 and 318 of the *Federal Courts Rules*; and
- (c) such further and other affidavits and materials as counsel may advise and this Court may permit.

THE REQUEST PURSUANT TO RULES 317 AND 318

24. The Applicant requests that the Respondent send to the Applicant and to the Registry a certified copy of the following material (that is not in the possession of the Applicant but is in the possession of the Respondent):
- (a) All documents that were considered and/or consulted by the CRA to render the Decision;
 - (b) All documents and communications (including but not limited to memoranda, reports, studies, comments, notes, and documents and communications in electronic form such as email correspondence or voicemail messages) relating to, or in any way pertaining to the Decision;
 - (c) All T2020 reports filled out by CRA officers involved in the Decision, including but not limited to Andrew Poon's; and
 - (d) All CRA policies, published guidelines, bulletins, or other internal administrative guidelines, which relate to CRA's practices with respect to garnishments and refunds.

MONTREAL, 20 December 2023

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