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FORM 301 Rule 301
Notice of Application
FEDERAL COURT

BETWEEN:

ANDREW CHABURSKY,
and

Applicant,

INFORMATION COMMISSIONER OF CANADA,

Respondent.

APPLICATION UNDER section 18.1 of the *Federal Courts Act* (Canada)

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

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 180 Queen Street West, Suite 200 Toronto.

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.

January 18, 2024

Issued by: *(Registry Officer)*

Address of local office:

TO:

Office of the Information Commissioner of Canada
30 Victoria Street
Gatineau, Quebec K1A 1H3

AND TO: THE ATTORNEY GENERAL OF CANADA

APPLICATION

1. This is an application by Andrew Chabursky (the “**Applicant**”) pursuant to section 18.1 of the *Federal Courts Act* (the “**Act**”) for judicial review of a decision dated December 22, 2023 (the “**Decision**”) made by the Office of the Information Commissioner of Canada (“**OIC**”) refusing to accept the Applicant’s complaint under the *Access to Information Act*¹.

RELIEF SOUGHT

2. The Applicant makes the application for:
 - a. an Order setting aside the Decision.
 - b. an Order sending the matter back to the Information Commissioner and directing the Information Commissioner to reconsider the Applicant’s complaint.
 - c. costs of the application above the tariff rate, or in the alternative, according to the tariff; and,
 - d. such further and other relief as this Honorable Court considers appropriate in the circumstances.

FACTS

Background

3. The Applicant resides at 90 Madison Avenue, Toronto, Ontario, M5R 2S4.
4. In a letter dated November 16, 2017, the Canada Revenue Agency (“**CRA**”) informed the Applicant that they were auditing his income tax returns for the 2010, 2011 and 2012 taxation years (the “**Relevant Period**”).

Audit of the Applicant

5. The CRA conducted a net worth audit of the Applicant for the Relevant Period.
6. At the conclusion of the audit, the CRA issued a proposal letter dated January 27, 2020 with adjustments to the Applicant’s income for the Relevant Period.

¹ (R.S.C., 1985, c. A-1).

7. The CRA assessed, among others, unreported income against the Applicant in the form of shareholder benefits from 1614276 Ontario Limited (“**Tryst**”) as well as A.O.C. Company Ltd. (“**A.O.C.**”) and imposed gross negligence penalties thereon.
8. Tryst and A.O.C. are companies controlled by the Applicant.
9. Notices of Reassessments for the Relevant Period were issued on February 18, 2020. The Applicant timely filed a Notice of Objection to these reassessments on May 12, 2020.
10. It was not until August 25, 2022 that the CRA assigned an appeals officer to the Applicant’s file and issued a proposal letter of even date proposing to confirm the reassessments at issue.
11. The Applicant’s counsel requested copies of all working papers relied on by the appeals officer for the proposal letter in order to make responsive submissions.
12. On October 3, 2022, in response to this request, the appeals officer provided documents but did not include all the working papers and the documents contained incomplete information on some of the pages. Thus, the Applicant’s counsel reiterated their request that copies of all the working papers be provided, indicating the working papers which were not included as well as the information which were omitted from the pages in the disclosure.
13. On November 11, 2022, the CRA informed the Applicant through his counsel that a new appeals officer was assigned to the file (the “**New AO**”) who, among others, will provide all the working papers requested and provide a period of time for the Applicant’s counsel to make further submissions.

Provision of Requested Documents

14. On November 25, 2022 the New AO provided documents to the Applicant’s counsel. However, the documents were heavily redacted and prevented the Applicant’s counsel to perform a complete analysis.
15. On May 30, 2023, the New AO issued a proposal letter regarding the Applicant’s objection, vacating the shareholder benefits allegedly received from Tryst but proposing to confirm the remaining amount of alleged unreported income from A.O.C.
16. On June 6, 2023, the Applicant’s counsel responded to the proposal letter indicating their intention to make additional submissions and reminded the New AO of the request for unredacted working papers, stating that they could provide cross-consents of the necessary individuals if it was necessary to remove the redactions.
17. On June 28, 2023, the Applicant’s counsel wrote to the New AO indicating the working papers that were not yet disclosed, including the CRA documents required to complete their analysis:

- a. Working Paper #4601
 - b. Working Paper #9200
 - c. Audit Report
 - d. Report on Objection
 - e. Penalty Recommendation Report
 - f. the Net Worth Schedules of the Applicant in Microsoft Excel Spreadsheet format.
18. The Applicant also requested a call with the New AO and his team leader to discuss the Applicant's file.
19. On July 14, 2023, the New AO contacted the Applicant's counsel and indicated that:
- a. Working Paper #4601 cannot be provided because it pertains to a company, "A.O.C";
 - b. Working Paper #9200 could not be located;
 - c. The Audit Report, Report on Objection and Penalty Recommendation Report could have been disclosed in a previous ATIP disclosure A-2017-099519; and,
 - d. The CRA does not provides digital copies of net worth schedules.
20. On August 4, 2023, the Applicant's counsel wrote to the New AO's Team Leader (the "**Team Leader**") regarding the requested documents that have not been provided and explained why they are important in making a responsive submission. Counsel also explained that despite the request for ATIP disclosure, the requested documents were not included.
21. On August 17, 2023, the Applicant's counsel held a video conference call with the New AO and his Team Leader to discuss the Applicant's file. During the call, the New AO confirmed that they would not be able to provide the documents requested, particularly the Working Paper #4601 and the digital copies of the net worth schedules. Nevertheless, the New AO and Team Leader indicated that they will give feedback on our requests as well as any information that would assist us.
22. Despite the discussions with the New AO and Team Leader, the requested documents were not provided.
23. The Applicant, through counsel, was constrained to make a responsive submission without a complete review of the relevant documents and information on August 25, 2023 because the CRA refused to give further extensions of time.
24. Thus, it was only during the call on August 17, 2023 that the Applicant was made aware of the grounds to file a complaint.

Complaint to the OIC

25. On September 29, 2023, the Applicant's counsel filed a complaint before the OIC with respect to the CRA's refusal to provide copies of the documents requested on behalf of the Applicant.
26. The complaint to the OIC was filed within 60 days from the CRA's denial of our request.

OIC Denial

27. On December 22, 2023, the OIC sent an email to the Applicant's counsel informing them that they refused to accept the complaint because it was filed outside the 60-day statutory period to file a complaint under the *Access to Information Act*.

GROUND FOR THE APPLICATION

28. The standard of review for the Minister's Decision is reasonableness.
29. The Decision was *unreasonable* because of the following:
 - a. The OIC held that the Applicant became aware of the grounds to file a complaint on June 28, 2023 and thus, the complaint was not accepted for being filed out of time. This is factually incorrect because the grounds were made known to the Applicant much later and the complaint was filed well within the 60-day period.
 - b. The OIC failed to consider that the CRA's response to the request for documents did not end at June 28, 2023 but continued per the correspondence attached to the complaint.
 - c. The OIC failed to consider the documents attached to the complaint that clearly showed the timeline and factual circumstances showing that the complaint was timely filed.
 - d. The OIC failed to appreciate the nature of the request for documents, as they were essential and relevant to the Applicant's case but they were being withheld from disclosure for no valid reason.
 - e. The OIC failed to uphold the Applicant's right to accurately, timely and completely receive the information and documents requested under *Access to Information Act*.

STATUTORY PROVISIONS RELIED ON

30. Subsection 220(3.1) of the Act and subsection 18.1 of the *Federal Courts Act*.
31. Subsection 4(2.1) of the *Access to Information Act*

Request for Certified Copies of Material

32. The Applicant requests that the Respondent send a certified copy of the following materials that is not in the possession of the Applicant, but is in the possession of the Respondent, to the Applicant and to the Registry:
- a) A copy of all documents, records, and information which were considered by in the making of the Decision.

DOCUMENTARY EVIDENCE RELIED UPON

33. This application will be supported by the following material:
- a) Affidavit of Jason Lambe to be sworn later; and,
 - b) Such further evidence as Counsel for the Applicant may submit and this Honorable Court may permit.

January 18, 2024.



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Counsel for the Applicant

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