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	December 28, 2023 28 décembre 2023
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Court file No.

FEDERAL COURT

DARRELL LUTZKO

Applicant

THE ATTORNEY GENERAL OF CANADA

Respondent

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 18.1
OF THE FEDERAL COURTS ACT FORM 301 RULE 301**

**NOTICE OF APPLICATION TO FEDERAL COURT
FOR JUDICIAL REVIEW**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the Applicant appears on the following page 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 Saskatoon, Saskatchewan.

THE APPLICANT HAS BEEN ADVISED by Federal Court Registry Officers that this Application will be served to the Respondent by a Federal Court Registry Officer and not by the Applicant due to covid guidelines protocol.

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 court 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 court 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, Canada, (telephone 316-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date _____

Issued by _____
(Registry Officer)

Address of
Local office:

TO: ATTORNEY GENERAL OF CANADA
DEPARTMENT OF JUSTICE
Melissa Nicolls Counsel

Prairie Regional Office (Saskatoon)
410 - 22nd Street East, Suite 410, Saskatoon, SK S7K 5T6

National Litigation Sector

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RESPONDENT

APPLICATION

1. THE APPLICANT makes an application for:

(a) Judicial review of the decisions of the Canada Revenue Agency (CRA), (The Attorney General of Canada, the Minister) for the request for Taxpayer relief to cancel or waive some or all of the penalties and interest pursuant to subsection 204.1 (4) resulting from an extraordinary circumstance which caused a Tax Free Savings Account over contribution for the Applicant.

(b) Judicial review of the decisions of CRA from the CRA notice of assessment (NOA) issued July 14th, 2020, for the 2019 tax year, stating that the Applicant needs to pay \$4,184.55 as a result of penalties and interest on excess TFSA over contribution amounts.

(c) Judicial review of the decisions of CRA from the CRA NOA issued August 4th, 2021, for the 2020 tax year, stating the Applicant needs to pay \$5,402.02 as a result of penalties and interest on excess TFSA contribution amounts. The total amount owed including the balance owed from the 2019 NOA was \$10,089.53 as shown on the 2020 NOA.

(d) The Applicant applied for the first review, request for taxpayer relief to cancel and waive penalties and interest on October 5th, 2020. The Applicant received his reply from CRA on February 22nd, 2021, stating that CRA could not grant a request for cancellation of the tax in this particular situation and was advised to write to the Assistant director of the TFSA processing unit and request a second independent review.

(e) The Applicant applied for the second review request for relief to cancel and waive penalties and interest on July 5th, 2021. The applicant received his reply from CRA on July 26th, 2021, stating that CRA could not grant a request for cancellation of the tax in this particular situation and was, once again by CRA error, advised to write the Assistant director of the TFSA processing unit and request a second independent review.

(f) The Applicant received an additional and almost identical letter from his request for a second review from CRA on August 20th, 2021 , stating that he can apply to the court for a judicial review.

(g) The Applicant sent a Notice of Appeal to the Tax Court of Canada on September 16th, 2021, for a judicial review for waiver and cancellation of some or all of the tax, penalties and interest from the TFSA excess over contribution amounts from the 2019 and 2020 tax years.

(h) CRA NOA for 2022 tax year , dated April 24th, 2023, CRA had the entire 2022 tax year tax refund of \$10,896.19 seized to cover the tax, interest and penalties from the 2019 and 2020 tax years. The Applicant then paid the remaining balance owed of \$269.12 on May 12th, 2023.

(i) The Applicant received notification that the Tax Court date was to be May 23rd, 2023. On May 9th 2023, the Applicant received a letter from the Department of Justice that the Tax Court of Canada does not have jurisdiction in this matter and that it is a Federal Court issue. A Tax Court discontinuance was agreed to.

(j) The Applicant filed a Notice of Motion, Motion Record, to seek an extension of time to file an application for judicial review. The Applicant was granted an extension of time to January 3rd, 2024 to commence applications for judicial review, by Judge Christine M. Pallotta, docket 23-T-139, to challenge the decisions from CRA.

(k) The amount sought by the Applicant is \$11,165.31 from amounts seized by CRA on April 24th, 2023, and balance paid on May 12th, 2023, plus ongoing interest. A judicial review will have the decision returned to the Minister for redetermination by a different CRA delegate to review the case and allow the request for the tax payer relief of all penalties and interest sought in this matter.

(l) The Applicant asks the Court to declare that his over contribution amounts have not damaged the Canadian treasury and that the applicant has not benefitted from the over contributions.

2. THE GROUND FOR THE APPLICATION ARE:

(a) Pursuant to subsection 204.1 (4) of the Income Tax Act, the minister, CRA, may waive the tax, penalties and interest if:

- The excess amount or cumulative excess amounts on which the tax is based arose as a consequence of reasonable error, and
- Reasonable amounts were taken to eliminate the excess without delay.

(b) Pursuant to subsection 207.06 (1), in decision the Ministers delegate, CRA, determined not to waive the tax , penalties and interest on the excess contributions to the applicants TFSA.

(c) The Applicant filed his Motion Record for the extension of time for the Judicial review based on a continuing attempt to pursue the application, the application has some merit, that no prejudice to the Respondent arises from the delay and that a reasonable explanation for the delay exists.

(d) This extraordinary circumstance arose from the death of the Applicants mother, Mary Lutzko, passed away June 7, 2019, when the Applicant was sole beneficiary of the mothers TFSA account. As the result of many reasonable errors, the applicant transferred the TFSA amounts, in kind, to his own personal TFSA. The Applicant never received any specific TFSA educational letters from CRA for the 2019 and 2020 tax years in question.

(e) The CRA decision is unreasonable because it did not fully assess the extent in which the excess contributions may of resulted from the mistakes of persons other than the Applicant. Computing and clerical reasonable errors in the claimant process suggested that Mary Lutzko was the Applicant's spouse and not his mother. Being in emotional and mental distress, the Applicant failed to recognize this reasonable error while filing the claim and applying for the exempt transfer.

(f) Noticing the reasonable errors, without delay, steps were taken by the applicant to remove the excess amounts from his TFSA on September 23rd, 2020. After this date, the Applicant continuously received letters from CRA containing details advising him to remove any excess amounts to avoid further interest and penalties. The Applicant received other harassing letters; multiple NOA requests and notices as if CRA was trying to take advantage of the Applicant's emotional and mental distress. CRA was notified to stop this practice immediately.

The Ministry, CRA, Decisions are Unreasonable.

(g) CRA, failed to acknowledge that this extraordinary situation was the result of the death of the Applicant's mother.

(h) CRA failed to realize the emotional and mental distress that the applicant experienced throughout the years in dealing with this matter initiated by upon the death of the Applicants mother. Professional and medical expertise highly suggested that the applicant was under severe mental and emotion distress suggesting 'that there could have been impairment in his executive functioning that might of contributed to simple mistakes that were made' resulting in multiple reasonable errors.

(l) CRA errors and delays prove to be inaccurate and did not clearly acknowledge the reasoning from the Applicant in both of the Applicant's formal requests for taxpayer relief and other written correspondence from the Applicant.

(j) CRA never sent the Applicant any specific TFSA education letters for the 2019 and 2020 tax years advising the Applicant that there may be TFSA over contributions and that the Applicant should address the issue without delay.

(k) CRA proved to be not understanding that the excess over contribution amounts were removed without delay.

3. This application will be supported by the following material:

(a) Motion Record filed November 21, 2023, docket 23-T-139.

(b) Applicant sworn and/or affirmed affidavit.

(c) Income Tax Act, RSC 1985, Subsection 204.1 (4).

- (d) Income Tax Act, RCS 1985, Subsection 207.06 (1).
- (e) Federal Court decision transcripts and case files.
- (f) Documentary exhibits
- (g) Such further and other grounds that the Applicant may be advised upon and the honorable Court may permit.

December 28th, 2023



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