

Court File No.:

**FEDERAL COURT**

BETWEEN:

**SCOTT FULTON MURRAY**

Applicant

and

**ATTORNEY GENERAL OF CANADA**

Respondent

(Court seal)

**APPLICATION UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT***

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** 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 Ottawa.

**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 where 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.**

May , 2023

Issued by: \_\_\_\_\_  
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa, Ontario K1A 0H9

TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
284 Wellington Street  
Ottawa, Ontario K1A 0H8

**Counsel for the Respondent**

## APPLICATION

### The applicant makes application for:

- a) An Order in the nature of *mandamus* requiring the Minister of National Revenue (the “Minister”) to vacate or discharge the certificates filed with the Federal Court on November 10, 2017, being File Nos. ITA-19720-17 and ITA-10721-17
- b) In the alternative, an Order in the nature of *certiorari* that the ongoing decision to maintain the certificates filed on November 10, 2017, be set aside and the matter be referred back to the Minister for redetermination by a different decision maker in light of the reasons to be released by this Honourable Court.
- c) Costs of this Application on a substantial indemnity basis.

### Grounds for the Application

- a) The Applicant, Scott Fulton Murray was the director of the corporation known as Organization Metrics Inc. (“OMI”)
- b) Organization Metrics Inc. is a corporation organized according to the laws of Ontario with a registered mailing address of 1135 Meadowshire Way, in Manotick, Ontario.
- c) As a result of a trust examination by the Minister, OMI was apparently assessed with a significant payroll liability relating to the 2010, 2011, 2012 and 2013 tax years.
- d) Scott Fulton Murray was assessed by the Minister as a director pursuant to subsection 227.1(1) of the *Income Tax Act* (“ITA”) on May 15, 2017, with respect to the unpaid deductions, interest, and penalties owed by OMI as a result of the trust examination for the 2013 tax year.
- e) On November 10, 2017, the Minister apparently filed two Certificates in this Court based on the amount originally assessed. The Certificates bear Court File Nos. ITA-19720-17 and ITA-10721-17.

- f) On November 10, 2017, Writs of Seizure and Sale were issued to the Sheriff by this Court at the request of the Minister.
- g) The Minister subsequently registered liens against the Mr. Murray's property at 1135 Meadowshire Way in Manotick, Ontario.
- h) Based on the Applicant's review of the subsection 227.1(1) ITA assessments and liens, the Applicant has determined that the underlying debt owing upon which the assessments were issued as against the Applicant and the derivative assessments issued against Scott Fulton Murray has been reduced by the Minister, effective November 15, 2022.
- i) According to the available records at CRA's My Business Account for OMI, there is a credit with respect to its Payroll account for the 2013 tax year in the amount of \$78,594.61 as of today's date.
- j) Despite the reduction of the debt on which the subsection 227.1(1) ITA assessments were based, the Minister has not vacated those assessments against the Applicant even though there is no longer underlying debt associated with the subsection 227.1(1) ITA assessments.
- k) The continued registration of the Certificates dated November 10, 2017, has an adverse impact on the ability of Mr. Murray to conduct his other business and personal affairs.
- l) Despite their being a significant reduction in the debt owed by OMI, causing the underlying debt as assessed against the Scott Fulton Murray to be erased, the Minister has failed to remove the Certificate filed in this Court and the Writ of Seizure and Sale issued for an amount which is apparently no longer owing.
- m) The Applicant submits that the impugned decision of the Minister was unreasonable in that:
  - i. the Minister failed to observe principles of natural fairness and procedural fairness;
  - ii. the Minister has acted in bad faith in maintaining collection action for an amount that is no longer owing to the Receiver-General;

- iii. the Minister has based their decision on erroneous findings of fact that were made without regard to the material before them and ignored the fact that the underlying debt is no longer owing by OMI;
  - iv. the Minister failed to give any or adequate reasons for her decision including relevant findings of fact and the standards CRA purportedly applied;
  - v. the Minister erred in law in making their decision; and
  - vi. it would be completely unreasonable for the Minister to maintain collection procedures in place given the underlying debt is no longer owing by OMI.
- n) As a result, the Applicant respectfully requests that this Court either order the Minister to review and revise its decision or substitute its own decision for that of the Minister and vacate the Certificates and their appurtenant Writs of Seizure and Sale.
- o) This Application is made to the Federal Court for an Order that the Minister vacate or discharge the Certificates and Writs of Seizure and Sale issued by this Court on the basis that there is no underlying debt; or, in the alternative, an Order that the Certificates and Writs of Seizure and Sale be set aside and the matter be referred back to the Minister for redetermination by a different decision maker in light of the reasons to be released by this Honourable Court.
- p) The Applicant respectfully submits that the present Application should not have been necessary in the present circumstances and asks this Court order that the Respondent the costs of this Application on a substantial indemnity basis.

**This Application relies on the following statutory provisions:**

- a) Section 227.1(1) of the Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.)) as amended;
- b) Section 26 of the *Interpretation Act*, R.S.C. 1985, c. I-21;
- c) Section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7; and
- d) The *Federal Courts Rules*

**This Application will be supported by the following material:**

The Affidavit of the Scott Fulton Murray to be sworn.

**The Applicant requests** that the Canada Revenue Agency send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Canada Revenue Agency to the Applicant and to the Registry: any Notes or Records pertaining to the Respondent's decision not to lift the collection action against the Applicant in respect of the director liability assessments.

All of which is respectfully submitted.

Dated at Ottawa, Ontario this 23<sup>rd</sup> of May, 2023.



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**Solicitor for the Applicant**