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

May 21, 2024

Issued by: (Registry Officer)

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## Appeal

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Federal Court dated April 19, 2024 by which the Honourable Mr. Justice Gleeson set aside decisions declaring ineligibility for Canada Emergency Response Benefit and the Canada Recovery Benefit without canvassing: (a) whether the agreement (“the Santillana agreement”), considered and disregarded by the tribunal, setting out a lodging benefit establishes income according to the CERB and CRB determination guidelines or pursuant to section 6(1)(a) of the Income Tax Act; and (b) whether the Federal Court has jurisdiction to review determinations of income by the Canada Revenue Agency when the *Income Tax Act* provides for appeals of determinations of tax, which encompass determinations of income, exclusively to the Tax Court of Canada.

THE APPELLANT ASKS that the judgment be set aside and the matter be remitted to the Federal Court for full consideration of the Santillana agreement, or alternatively that the declarations of ineligibility for benefits based on determinations of income be appealed in the Tax Court of Canada.

THE GROUNDS OF APPEAL are as follows:

1. Binding precedent sets out that a court undertaking judicial review intervenes when there is a fundamental misapprehension of the evidence, per *Sjorgen v. Canada (Attorney General)*, 2023 FC 24, at paragraph 43 citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653, (“Vavilov”);
2. Both of the second review letters from the Canada Revenue Agency cite the *Income Tax Act* in respect of keeping of records of income, as does the Appellant’s arguments below which sought valuation of income under the *Income Tax Act*.

Section 17(1) of the *Federal Courts Act* sets out concurrent jurisdiction in the Federal Court except as provided in any Act of Parliament, and the *Tax Court of Canada Act* sets out at s. 12(1) exclusive original jurisdiction to hear and determine references and appeals to that Court on matters arising under the *Income Tax Act*. The *Tax Court of Canada Act* set out further exclusive jurisdiction at s. 12(3) in reference to ss. 173(1) of the *Income Tax Act* in respect of any determination. The cases brought for review deal with income. Income is the core of the *Income Tax Act*. The “complex structure to deal with a multitude of tax- [and income] related claims and this structure relies on an independent and specialized court, the Tax Court of Canada. Judicial review should not be used to develop a new form of incidental litigation designed to circumvent the system of tax [and income] appeals established by Parliament and the jurisdiction of the Tax Court. Judicial review should remain a remedy of last resort in this context.” *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33 (CanLII), [2007] 2 SCR 793 at para. 11. Furthermore, the Taxpayer Bill of Rights sets out the right to have the law applied consistently. This right extends, or should

extend, to the right to have consistent determinations of income.

A court has a duty independent from any legislative scheme, and regardless of whether the parties have raised the issue, to ensure that it has subject-matter jurisdiction. In *Pfizer Canada Inc. v. Teva Canada Limited*, 2016 FCA 218 (CanLII), at para. 7, the court states “the fact that the parties have not raised such issues does not relieve this Court of its responsibility to ensure that it has subject-matter jurisdiction. A court must always be certain that it is legally authorized to act. A court that acts without legal authorization is acting contrary to law and fundamental constitutional arrangements.”

3. Reimbursement of the filing fees is not sufficient, per *Russell v. Canada (Attorney General)*, 2023 FC 713 (CanLII), at para. 28.

May 21, 2024



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