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Form 337
Rule 337

Court file no. _____
Tax Court of Canada file no. 2019-243(IT)I

Notice of Appeal

Federal Court of Appeal

Between:

Dave Shull,

Appellant, Appellant

- and -

His Majesty the King,

Respondent, Respondent.

NOTICE OF APPEAL

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TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant requests that this appeal be heard at Vancouver.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a Notice of Appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the Appellant's solicitor, or where the Appellant

is self-represented, on the Appellant, WITHIN 10 DAYS of being served with this Notice of Appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the Judgment appealed from, you must serve and file a Notice of Cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a Notice of Appearance.

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

Dated this ____ day of February, 2024

Issued by: _____

(Registry Officer)

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Appeal

1. THE APPELLANT APPEALS to the Federal Court of Appeal from the **Judgment** of the Tax Court of Canada dated the 18th day of January, 2024 by which the Appellant's Notice of Appeal was dismissed by Judge Visser; and further appeals from the **Judgment** dated the 24th day of January, 2022, where the Appellant's Notice of Motion was dismissed by Judge D'Arcy.
2. The Appellant asks that the said **Judgment** of Judge Visser be set aside, overturned, struck or quashed as the case may be, and the said **Judgment** of Judge D'Arcy be set aside, overturned, struck or quashed as the case may be.
3. The Appellant asks that his **Notice of Appeal** to the Tax Court be granted, with costs.
4. The Appellant asks that his Notice of Motion be granted and that the **Amended Reply** filed by the Respondent, dated April 3rd, 2019 be struck, in whole or alternatively, in part.
5. The Appellant seeks that his **Notice of Appeal** to this Honourable Court be granted, with costs.
6. The Appellant asks that an Order be granted that the Respondent nor the Tax Court Judges, including Judge D'Arcy and Judge Visser, are permitted to raise issues, allegations or claims in Court or in Judgment, in relation to the "*detax*" movement, "*OPCA litigants*", "*Freeman-on-the-land*", *Meads v Meads* case law, and similar labels, in the absence of a demonstrable basis to so do, and then, only after the Appellant or other taxpayer has been given reasonable, written notice of any such claims and the factual and legal basis for making said allegations or Judgment on this basis, and reasonable opportunity to respond.
7. The Appellant respectfully asks that this Honourable Court permit the Appellant to appear by way of his chosen agent in this Appeal.
8. The Appellant further asks, if necessary, that any and all time periods required to file this Appeal, including if necessary to the **Judgment** of Judge D'Arcy on the Appellant's **Notice of Motion**, be extended if and as required.
9. **That the Transcripts of the January 18, 2024 Tax Court hearing be produced.**
10. Such further and other relief as may be requested, or beneficial to the Appellant,

and granted by this Honourable Court.

THE GROUNDS OF APPEAL

Judge D’Arcy

11. The Appellant filed a Motion to Strike the **Amended Reply** of the Respondent as containing argument, non-material facts, and/or conclusions of law or mixed fact and law, and being contrary to Tax Court Informal **Rule 6 (Rule 6)**. This was heard via a Zoom call on January 24, 2022.
12. The Appellant, who is under intellectual disability, appeared in Court by way of his chosen agent.
13. Judge D’Arcy appeared in Court with written reasons for **Judgment** previously prepared and typed out, and his mind made up on the **Motion** of the Appellant in the Tax Court prior to this hearing. Judge D’Arcy read from his prepared **Judgment** just seconds after final submissions from the Appellant’s agent and without leaving the courtroom.
14. Judge D’Arcy was leading the Attorney General’s representative to get arguments on the record that were not forthcoming.
15. The Respondent raised during the Court hearing, for the first time and not raised in its **Amended Reply**, issues with respect to the Appellant and/or his agent being part of a “*detax*” movement, or “*Freeman-on-the-land*”, that were not before the Court in the pleadings. Judge D’Arcy already had similar reasons drafted in his prepared **Judgment**, and refused to give the Appellant an adjournment or reasonable opportunity to address these issues, which were raised for the first time. Judge D’Arcy has acted similarly in past cases as has the Respondent. Minimally, *a fortiori* due to the prejudicial nature of these comments upon the Appellant and his agent David Lindsay, there should have been an adjournment to so do as these issues formed the basis of his **Judgment** and were material thereto, were prejudicial to the Appellant.
16. Judge D’Arcy was biased against the Appellant, and/or the Appellant has a reasonable apprehension of bias. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.
17. Judgments given without jurisdiction, are void. **27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.

Judge Visser

18. Judge Visser erred in refusing to recuse himself, and in failing to find that he was in a conflict of interest and/or there existed a reasonable apprehension of bias, and/or that he was being a judge in his own cause, resulting from his previous Informal GST decision, involving the Appellant on May 26, 2016 also before Judge Visser, court file no. 2015-5383 (GST) I. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.
19. Judge Visser erred in refusing to adjourn this hearing, both on the request of the Appellant's agent on the aforesaid basis, as well as the Appellant's personal request to adjourn after his agent withdrew, to permit him to obtain legal counsel. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.
20. Judge Visser erred in forcing the Appellant to proceed on his own in Court, after being made aware on this day, and in the previous 2015 hearing, of the Appellant's head injury and intellectual disability and speech/reading deficiencies, inability to concentrate and focus. Judge Visser ignored the Appellant, who had a physical and intellectual disability preventing him from fully putting forth his case. **S. 27(1.3)(b)(c)(d)(f)** of the *Federal Courts Act* applies.
21. Judge Visser erred in characterizing the Appellant's position as *OPCA*, pseudo-legal, or "*freeman-on-the-land*" arguments, especially prior to hearing submissions and evidence from the Appellant. The Appellant's position was based on solid legal principles recognized by the Courts, including the Supreme Court of Canada. **S. 27(1.3)(c)(d)(f)** of the *Federal Courts Act* applies.
22. Judge Visser erred in his surprise attack on the Appellant's agent, David Lindsay on the basis of an alleged vexatious order in the Supreme Court of B.C., especially without giving the Appellant and/or David Lindsay reasonable notice or opportunity to fully address this matter, which is not raised in the pleadings. This again constituted a violation of natural justice, including but not restricted to *audi alteram partem*, and/or procedural fairness. This alleged BCSC decision is not binding in the Tax Court. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.
23. The *Meads* issue(s) were not raised in any of the pleading and Judge Visser's raising this new issue impromptu at court, was an error of law and violation of natural justice and procedural fairness, and in the absence of either noticing the Appellant with reasonable notice prior to hearing, or giving the Appellant sufficient adjournment time thereafter being raised, constituted a want of

jurisdiction by Judge Visser to raise and rule on this issue. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.

24. Judge Visser erred in refusing to permit the Appellant and his agent to advance the defence the source of income test pursuant to *Stewart v Canada* 2002 SCC 46. This was a denial of natural justice, including but not restricted to *audi alteram partem*, and/or procedural fairness to the Appellant. It is further contrary to the Supreme Court of Canada's recognition in *Stewart v Canada* that personal endeavours are the starting point or default position, where there is no evidence of a source of income. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.
25. Judge Visser expressly and erroneously ruled orally that *Stewart v Canada* did not apply in the Tax Court and refused to apply it, restricting the Appellant's defences as to being only an independent contractor or employee. *Stare decisis* was ignored by Judge Visser. **S. 27(1.3)(a)(b)(c)(f)** of the *Federal Courts Act* applies.
26. Judge Visser further erred in law in his reliance upon the **Amended Reply**, by failing to consider, or give proper or sufficient weight to the commercial nature of the *Income Tax Act*, and the meaning and/or application of these impugned words in the context of the commercial nature of that *Act*. Judge Visser failed to apply that the Respondent has pleaded commercial words, with commercial meanings in the context of a commercial statute and as such, these words represent the conclusion that the Appellant's activity in question is a commercial activity, as opposed to what facts, if any, existed to support this conclusion. **S. 27(1.3)(a)(c)(f)** of the *Federal Courts Act* applies.
27. The Appellant possesses a reasonable apprehension of bias from Judge Visser against himself and/or his agent David Lindsay in that, as with Judge D'Arcy previously, Judge Visser had already made up his mind on fact and/or law, prior to hearing the Appellant and was not open to persuasion. Further, despite only permitting agent David Lindsay to appear if not advancing the personal endeavour issue or defence, Judge Visser permitted the Appellant to personally read his short, incomplete evidence and make incomplete submissions into the record on this very same position. **S. 27(1.3)(a)(b)(d)(c)(f)** of the *Federal Courts Act* applies.
28. The swearing in procedure for the Appellant was prejudicial to him by way of the Court Clerk asking him to state his occupation into evidence after being sworn in, when his defence was that he had no occupation. The Appellant, who

has a significant brain injury and resulting cognitive disabilities, was unable to notice this prejudicial evidentiary request from the Court Clerk.

29. Judge Visser was without jurisdiction, acting beyond the Court's jurisdiction in making this request or allowing this request to be made of the Appellant into evidence. **S. 27(1.3)(a)(b)(d)(e)(f)** of the *Federal Courts Act* applies.
30. Judge Visser erred in failing to consider and apply **s. 18.28** of the *Tax Court of Canada Act* to the Minister's claims of estoppel, from the said previous Informal GST case involving the Appellant in 2016.
31. Pursuant to Tax Court of Canada **Rule 6**, the Respondent is only permitted to plead the material facts relied upon by the Minister in his Assessment. The Respondent failed to plead any material facts in its **Amended Reply** on at least one essential element of the employment relationship it claims the Appellant was involved in, that being an intention to be in a commercial employment relationship. The **Amended Reply** was conspicuously absent of any such facts and Judge Visser acted without jurisdiction, beyond his jurisdiction or refused to exercise his jurisdiction in permitting the **Amended Reply** to be accepted and/or relied upon in whole or in part, and making his **Judgment** based on this fatally defective **Amended Reply**. If the **Judgment** is permitted, it will undermine **Rule 6**. **S. 27(1.3)(a)(c)(f)** of the *Federal Courts Act* applies.
32. Judge Visser erred in failing to consider and/or apply the Westminster Principle, which recognizes that the Appellant has the right, freedom or power as the case may be, to order his affairs so that the tax attaching is less than it otherwise would be. **S. 27(1.3)(b)(c)(f)** of the *Federal Courts Act* applies.
33. Judge Visser has erroneously confused the legal nature of the impugned pleadings (conclusions) with the facts required to support those conclusions. **27(1.3)(c)(d)(f)** of the *Federal Courts Act* applies
34. **S. 27(1), (1.2), (1.3)** of the *Federal Courts Act*
35. **Rule 335(b), 337.1, 400** Federal Courts Rules.
36. **S. 27(1.1)(c), (1.2), (1.3)(a)-(f), (2)(b), 52(c)(i)(ii)** of the *Federal Courts Act* of Canada.
37. **Rule 6** of the Tax Court of Canada Rules of Court.
38. **S. 171(4)** *Income Tax Act*

39. Such further and other grounds as may be respect fully submitted.
40. **That the Transcripts of the January 18, 2024 Tax Court hearing be produced.**

Dated this 13th day of February, 2024



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Dave Shull
Appellant, Applicant

v

His Majesty the King
Respondent

Federal Court of Appeal file no. _____
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Federal Court of Appeal

Notice of Appeal

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