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		October 03, 2023 03 octobre 2023	
Frank Fedorak			
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Court File No. \_\_\_\_\_

**FEDERAL COURT OF APPEAL**

BETWEEN:

**HIS MAJESTY THE KING**

Appellant

- and -

**VEFGHI HOLDING CORPORATION**

**S.O.N.S. ENVIRONMENTAL LTD.**

Respondents

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**NOTICE OF APPEAL**

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**TO THE RESPONDENTS:**

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

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 after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order 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) 992-4283) or at any local office.

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

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

Address of Local office:  
Registry of the Federal Courts  
P.O. Box 10065  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1B6

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## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honourable Justice Steven K. D’Arcy of the Tax Court of Canada dated September 5, 2023, by which the Court determined a question of law or mixed law and fact pursuant to Rule 58 of the *Tax Court of Canada Rules (General Procedure)*.

THE APPELLANT ASKS that:

1. the order of the Tax Court of Canada be set aside;
2. this Court answer the question posed under Rule 58 by declaring that where a trust designates a portion of a taxable dividend (the “**Amount**”) received on a share of the capital stock of a taxable Canadian corporation (the “**Issuer**”), pursuant to subsection 104(19) of the *Income Tax Act* (the “**Act**”), such that the Amount is deemed to have been received by a beneficiary (the “**Beneficiary**”), the determination of whether the Issuer is connected with the Beneficiary for purposes of paragraph 186(1)(a) of the *Act* is made when the Amount is designated by the trust at the end of the particular taxation year of the trust in which the trust received the dividend; and
3. the appeal to this Court be allowed with costs in this Court and the Tax Court of Canada.

THE GROUNDS OF APPEAL are as follows:

1. The Tax Court of Canada erred in law by answering the question posed under Rule 58 as follows:
  - a. Where a trust designates the Amount, pursuant to subsection 104(19) of the *Act*, such that the Amount is deemed to have been received by the Beneficiary, the determination of whether the Issuer is connected with the Beneficiary is made at the time that the taxable dividend was, as a question of fact, received by the trust provided that the Beneficiary is deemed under subsection 104(19) to have received the Amount in the same taxation year as the taxable dividend was, as a question of fact, received by the trust.

- b. However, if the Beneficiary is deemed under subsection 104(19) to have received the Amount in a taxation year that is subsequent to its taxation year in which the taxable dividend was, as a question of fact, received by the trust, then the determination of whether the Issuer is connected with the Beneficiary is made in the subsequent taxation year of the Beneficiary.
2. The Appellant says that the Tax Court's answer to the Rule 58 question, among other things:
  - a. misinterprets and misapplies the deeming rule in subsection 104(19) of the *Act*;
  - b. fails to identify a point in time for the determination of connectedness where the Beneficiary is deemed under subsection 104(19) to have received the Amount in a taxation year that is subsequent to its taxation year in which the taxable dividend was received by the trust; and
  - c. produces absurd consequences.
3. The Appellant relies on sections 104 and 186 of the *Act*, and on such further and other grounds as counsel may advise and this Honourable Court may allow.

**October 3, 2023**

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**ATTORNEY GENERAL OF CANADA**

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