

Court File No:

FEDERAL COURT

B E T W E E N:

DEBBIE RENE VORSTEVELD

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION PURSUANT to Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c F-7

NOTICE OF APPLICATION

TO THE RESPONDENT.

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears 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 Toronto.

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 Courts 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 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.

Date _____ Issued by _____
Registry Officer

Address of 180 Queen St W, Suite 200
court office: Toronto ON, M5V 1Z4

TO: **ATTORNEY GENERAL OF CANADA**
Ontario Regional Office, Department of Justice Canada
120 Adelaide St W, Suite 400
Toronto ON, M5H 1T1

APPLICATION

1. This is an application for judicial review in respect of a decision made by the Canada Revenue Agency (the “**CRA**”) on or around 7 January 2025 to administer a proposed increase to the inclusion rate for capital gains under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (respectively, the “**Act**” and the “**New Inclusion Rate**”, the latter of which is hereinafter more fully described) before said proposal had been authorized by the Parliament of Canada (“**Parliament**”) by way of duly enacted legislation originating in the House of Commons (the “**Decision**”, hereinafter more fully described).

2. The Applicant makes application for:

- (a) An order in the nature of *certiorari* quashing the Decision.
- (b) An order in the nature of *prohibition* restraining the CRA from administering the New Inclusion Rate without authorization from Parliament by way of duly enacted legislation originating in the House of Commons.
- (c) Additionally, or alternatively, a declaration that the Decision is *ultra vires* and beyond the jurisdiction of the CRA, and therefore invalid and/or unlawful.
- (d) Additionally, or alternatively, a declaration that the Decision is unconstitutional and therefore invalid and/or of no force and effect.
- (e) Additionally, or alternatively, a declaration that the Decision is unreasonable and therefore invalid and/or unlawful.
- (f) Additionally, or alternatively, an order pursuant to Rule 8 of the *Federal Court Rules*, SOR/98-106 (the “**Rules**”) that this application be heard on an expedited

basis, and, in any event, with sufficient time for a ruling on this application to be rendered by this Honourable Court reasonably in advance of 30 April 2025, the Applicant's deadline for filing her return of income for the 2024 taxation year.

- (g) Additionally, or alternatively, an order that this application proceed as a specially managed proceeding pursuant to Rule 384 of the Rules.
- (h) Additionally, or alternatively, an order that each party shall bear their own costs regardless of the outcome of this application.
- (i) Such further and other relief as may be requested and as this Honourable Court may deem just.

3. The grounds for the application are:

The Decision Under Review

- (a) On 16 April 2024, former Deputy Prime Minister and Minister of Finance, The Honourable Chrystia Freeland ("**Minister Freeland**"), tabled the budget documents for 2024 in the House of Commons.
- (b) In her statement to the House of Commons, Minister Freeland announced, *inter alia*, that the Government of Canada (the "**Government**") proposed, subject to limited exceptions, to raise the inclusion rate for capital gains under Section 38 of the Act from one-half to two-thirds (the aforementioned "**New Inclusion Rate**").
- (c) On 10 June 2024, Minister Freeland tabled a notice of ways and means motion containing draft legislation to implement the New Inclusion Rate as an amendment to the Act (the "**First Ways and Means Motion**").

- (d) On 11 June 2024, the House of Commons voted and agreed upon the First Ways and Means Motion on division. No bill to implement the draft legislation in the First Ways and Means Motion was subsequently tabled for first reading in the House of Commons.
- (e) On 23 September 2024, Minister Freeland tabled a second notice of ways and means motion in the House of Commons, which contained revised draft legislation implementing the New Inclusion Rate as an amendment to the Act (the “**Second Ways and Means Motion**”).
- (f) The House of Commons did not vote to adopt the Second Ways and Means Motion.
- (g) On 15 November 2024, the CRA announced that – although the New Inclusion Rate had yet to be adopted by way of duly enacted legislation originating in the House of Commons – it would begin administering the New Inclusion Rate effective 25 June 2024.
- (h) On 6 January 2025, on the request and advice of the Prime Minister, the Right Honourable Justin Trudeau, the Governor General, Her Excellency the Right Honourable Mary Simon, prorogued Parliament until 24 March 2025 (the “**Prorogation**”).
- (i) As a result of the Prorogation, all unfinished business of the House of Commons, including the Second Ways and Means Motion, was terminated.
- (j) On or around 7 January 2025, the CRA decided to administer the New Inclusion Rate for taxation years ending on or after June 25, 2024, even though the House

of Commons did not adopt the Second Ways and Means Motion before Prorogation (the aforementioned “**Decision**”).

- (k) On 7 January 2025, the CRA announced the Decision in a statement issued to members of the press and further published the following statement on its website:

On September 23, 2024, the government tabled a Notice of Ways and Means Motion to introduce a bill entitled *An Act to amend the Income Tax Act* and the *Income Tax Regulations*. This Notice of Ways and Means Motion modified the motion tabled on June 10, 2024. For more information about the capital gains tax changes, please visit the Notice of Ways and Means Motion.

Notwithstanding that Parliament is prorogued, the Canada Revenue Agency (CRA) will continue to administer the proposed capital gains legislation.

The CRA will issue the forms to allow taxpayers to file in accordance with the new capital gains rules by January 31, 2025. Arrears interest and penalty relief, if applicable, will be provided for those corporations and trusts impacted by these changes that have a filing due date on or before March 3, 2025.

- (l) On 8 January 2025, the CRA issued the following additional statement on its website:

On September 23, 2024, the Deputy Prime Minister and Minister of Finance tabled a Notice of Ways and Means Motion (NWMM) to introduce a bill entitled *An Act to amend the Income Tax Act* and the *Income Tax Regulations*. This NWMM modified the motion tabled on June 10, 2024. For more information about the capital gains tax changes, please visit this NWMM.

Although these proposed changes are subject to parliamentary approval, consistent with standard practice, the CRA is administering the changes to the capital gains inclusion rate effective June 25, 2024, based on the proposals included in the NWMM tabled September 23, 2024.

For all taxpayers, the new inclusion rate will apply to capital gains realized on or after June 25, 2024. Impacted forms for individuals, trusts, and corporations are expected to be on Canada.ca as of January 31, 2025.

Arrears interest and penalty relief, if applicable, will be provided for those corporations and trusts impacted by these changes that have a filing due date on or before March 3, 2025. The interest relief will expire on March 3, 2025. More information will be made available in the coming weeks.

The Applicant

- (m) The Applicant, Debbie Rene Vorsteveld, is an individual residing in the Township of Mapleton, Ontario.
- (n) The Applicant, together with her non-party husband, purchased a property municipally located at 110 Peel Street in the Township of Woolwich, Ontario (the "**Property**") on 30 October 2009 for \$495,000.00.
- (o) The Applicant and her husband owned the Property as joint tenants in equal shares.
- (p) The Property consists of two houses on five acres of land. During the time that the Applicant and her husband owned the Property, one of these houses was ordinarily inhabited by the Applicant and her husband, while the other house was leased to their adult children as tenants.
- (q) The Applicant and her husband sold the Property on 31 July 2024 for \$1,750,000.00.
- (r) The Applicant and her husband reasonably believe, and are correct, that each of them realized a capital gain of \$627,500.00 on the sale of the Property, of least half of which (*i.e.*, \$313,750.00) was attributed to the leased portion of the Property (the "**2024 Capital Gain**").

- (s) If the New Inclusion Rate was lawfully enacted, the Applicant reasonably believes, and is correct, that she would be required to include the portion of the 2024 Capital Gain above \$250,000.00 in her taxable income at the rate of two-thirds instead of one-half.
- (t) The Applicant's deadline for filing her return of income for the 2024 taxation year and for payment of any amounts owing is 30 April 2025.
- (u) Based on the Decision and the CRA's statements communicating the Decision to the public, the Applicant understands that the CRA is treating the New Inclusion Rate to be compulsory or enforceable by law with respect to the Applicant's 2024 taxation year.

The Decision is Not Authorized by Law

- (v) The Rule of Law, a foundational principle of Canada's constitutional order, demands that all action undertaken by the state be authorized by law.
- (w) More specifically, section 53 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (the "**1867 Act**") requires that "[b]ills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons".
- (x) The CRA accordingly possesses no legal authority to unilaterally adopt, implement, or impose a tax absent parliamentary authorization by way of duly enacted legislation originating in the House of Commons.
- (y) The CRA has decided to compulsorily implement the New Inclusion Rate for returns of income for taxation years ending on or after 25 June 2024 pursuant to the proposed legislative amendments of the Second Ways and Means Motion.

- (z) The House of Commons did not adopt the Second Ways and Means Motion, nor enact legislation implementing the New Inclusion Rate before Prorogation.
- (aa) Pursuant to the Decision, the CRA has stated that it “**is** administering the changes to the capital gains inclusion rate effective June 25, 2024” and that the “the new inclusion rate **will** apply to capital gains realized on or after June 25, 2024” (emphases added).
- (bb) As such, the Decision seeks to unconstitutionally implement the New Inclusion Rate absent parliamentary authorization by way of duly enacted legislation originating in the House of Commons.
- (cc) Under no correct (or reasonable) interpretation of its own authority is the CRA thus permitted to arrogate powers (namely, that of Parliament’s sovereign legislative function) that it does not possess.
- (dd) Consequently, the Decision is invalid and/or of no force and effect.
- (ee) Additionally, or alternatively, the Decision is *ultra vires* and beyond the jurisdiction of the CRA, and therefore invalid and/or unlawful.
- (ff) Additionally, or alternatively, the Decision is an unreasonable interpretation by the CRA of its own authority, and therefore invalid and/or unlawful.
- (gg) For the reasons that the Decision must be quashed, an order in the nature of *prohibition* is also required restraining the CRA from taking any further future steps to administer the New Inclusion Rate until and unless the New Inclusion Rate is authorized by Parliament by way of duly enacted legislation originating in the House of Commons.

An Expedited Hearing is Required

- (hh) The interests of justice require that an abridgement of time be granted pursuant to Rule 8 of the Rules for this application to be heard on an expedited basis.
- (ii) With limited exceptions, individual taxpayers such as the Applicant are required to file their return of income for the 2024 taxation year (and pay any taxes owing thereon) to the CRA by no later than 30 April 2025. The public interest strongly favours providing these taxpayers with clarity regarding whether they are legally compelled to file returns and pay taxes pursuant to the New Inclusion Rate.
- (jj) There is, consequently, an urgent need for this Honourable Court to issue a decision regarding the constitutionality and/or legality of the Decision so that the Applicant and other individual taxpayers have sufficient time to prepare or modify their return of income for the 2024 taxation year before 30 April 2025 deadline.
- (kk) To this end, the Applicant requests that this application be heard, in any event, with sufficient time for this Honourable Court to issue a ruling with respect to the constitutionality and/or legality of the Decision reasonably in advance of 30 April 2025 to permit the Applicant to prepare her return of income with professional assistance.
- (ll) Furthermore, the issues raised on this application and the anticipated evidentiary record are not complex, allowing for an expedited hearing of this matter.
- (mm) Additionally, or alternatively, the Respondent will suffer no prejudice if the hearing of this application is expedited. To the contrary, a prompt ruling by this Honourable Court will provide the CRA with clarity regarding the scope of its

legal authority to implement the New Inclusion Rate in advance of the foregoing 30 April 2025 deadline.

- (nn) Additionally, or alternatively, this application may become moot (and a hearing no longer warranted) should the House of Commons reconvene and legislatively adopt the New Inclusion Rate before this Honourable Court has issued a decision with respect to this matter.
- (oo) Should this matter become moot, the Applicant will be denied access to meaningful justice and deprived of her opportunity to seek necessary clarity from this Honourable Court regarding the CRA's authority (or lack thereof) to implement tax policy absent parliamentary authorization.
- (pp) Additionally, or alternatively, an expedited hearing of this application will not prejudice other litigants by jumping the queue.
- (qq) To this end, although the Applicant has commenced this application in Toronto, she is willing to argue the hearing of this application at any other location of the Federal Court to facilitate an expedited hearing of this matter.

Rules and Provisions

- (rr) Sections 2, 3, 38, 40, 54, 150, 152, 164, and 248, *inter alia*, of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp).
- (ss) Section 53, *inter alia*, of the *Constitution Act, 1867*, 30 & 31 Vict, c 3.
- (tt) Section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

- (uu) Section 18 and 18.1 of the *Federal Courts Act*, R.S.C. 1985, c F-7.
 - (vv) Rules 8 and 384 of the *Federal Court Rules*, SOR/98-106.
 - (ww) Such further and other grounds as counsel may advise and this Honourable Court may deem just.
4. The application will be supported by the following material:
- (a) The Affidavit of Debbie Rene Vorsteveld, to be sworn;
 - (b) Such further and other documentary evidence as counsel may advise and this Honourable Court permits.

24 January 2025



Kristopher E.G. Kinsinger



Benjamin L. Grant



Devin Drover

SMITHVALERIOTE LAW FIRM LLP

Barristers and Solicitors
245 Hanlon Creek Blvd, Suite 102
Guelph ON, N1C 0A1

Kristopher E.G. Kinsinger (LSO # 80031L)

Email: kkinsinger@svlaw.ca

Tel: 519.837.2100 x 338

Fax: 519.837.1617

Benjamin L. Grant (LSO # 633900)

Email: bgrant@svlaw.ca

Tel: 226.971.2398

Fax: 519.837.1617

CANADIAN TAXPAYERS FEDERATION

68 Green Acre Dr
St. John's NL, A1H 1C2

Devin Drover (LSNL #1946)

Email: ddrover@taxpayer.com

Tel: 709.222.9092

Lawyers for the Applicant

DEBBIE RENE VORSTEVELD
Applicant

v. **ATTORNEY GENERAL OF CANADA**
Respondent

Court File No.:

FEDERAL COURT

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

SMITHVALERIOTE LAW FIRM LLP

Barristers and Solicitors
245 Hanlon Creek Blvd, Suite 102
Guelph ON, N1C 0A1

Kristopher E.G. Kinsinger (LSO # 80031L)
Benjamin L. Grant (LSO # 633900)

CANADIAN TAXPAYERS FEDERATION

68 Green Acre Drive
St. John's NL, A1H 1C2

Devin Drover (LSNL #1946)

Lawyers for the Applicant