



Court File No. T-1282-13

**FEDERAL COURT**

**ROBERT MCNALLY**

Applicant

- and -

**MINISTER OF NATIONAL REVENUE**

Respondent

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages.

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, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* 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 Court Rules, 1998*, 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.**

**DATED:** July 25, 2013

**OSLER, HOSKIN & HARCOURT LLP**

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JUL 25 2013

Counsel for the Applicant

Issued by:



**MICHELLE GAUVIN**  
**REGISTRY OFFICER**  
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**Address of local office: Registry of the Federal Courts**

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**To: Deputy Attorney General of Canada**

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Department of Justice  
Ontario Regional Office  
130 King Street West  
Suite 3400, Box 36  
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**Minister of National Revenue**

7th Floor  
555 MacKenzie Avenue  
Ottawa, ON  
K1A 0L5

## APPLICATION

### **THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF:**

1. the failure of the Minister of National Revenue (the “Minister”) to assess the income tax return filed by Mr. Robert McNally (the “Applicant”) for the 2012 taxation year (the “2012 Return”) and to issue a notice of assessment (“Assessment”) to the Applicant with all due dispatch as required by section 152 of the *Income Tax Act* (the “Act”).

### **THE DECISION WAS COMMUNICATED TO THE APPLICANT ON:**

June 25, 2013.

### **THE APPLICANT MAKES APPLICATION FOR:**

2. an Order compelling the Minister to forthwith assess the 2012 Return and to issue an Assessment to the Applicant;
3. in the alternative, an Order declaring that the Minister has no authority to delay the assessment of the 2012 Return and issuance of an Assessment for any of the following reasons:
  - (a) to deter or otherwise limit taxpayer participation in a registered tax shelter, namely, the EquiGenesis 2012 Structured Giving Program (also known as the EquiGenesis 2012 Investment & Donation Program); or
  - (b) to pursue any goals other than those directly related to examining the 2012 Return and ascertaining any tax, interest, or penalties payable by the Applicant under the Act;
4. an Order granting the costs of this Application; and
5. such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE APPLICATION ARE THAT THE MINISTER:**

1. acted without jurisdiction, beyond her jurisdiction, or refused to exercise her jurisdiction, in failing to assess the 2012 Return in good faith and with all due dispatch as required by section 152 of the Act;
2. failed to observe a principle of natural justice, procedural fairness, or other procedure that it was required by law to observe, or otherwise acted contrary to law, in failing or delaying the examination of the 2012 Return and issuance of the Assessment;
3. section 152 of the Act;
4. section 18.1 of the *Federal Courts Act* and section 8 of the *Federal Court Rules*; and
5. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

1. an affidavit or affidavits, to be sworn; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

**THE APPLICANT REQUESTS** that the Minister send a certified copy of the following material, which is in the possession of the Minister, to the Applicant and to the Registry:

1. all materials in the possession of the Minister and Canada Revenue Agency relating to the decision of the Minister's consideration of the 2012 Return, and her failure to examine and assess that return and issue an Assessment to the Applicant.

**DATED** at City of Toronto, in the Province of Ontario, this 25<sup>th</sup> day of July, 2013.

**OSLER, HOSKIN & HARCOURT LLP**

Per:   
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**Counsel for the Applicant**

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