Federal Court  Cour fédérale

Date: 20190524

Docket: T-1463-17

Citation: 2019 FC 738

Toronto, Ontario, May 24, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

RICHARD GLATT

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

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I. Introduction

[1] This case raises a novel question: whether the Minister had an obligation to provide interest on a refund to the Applicant, who had been assessed a significant penalty under the *Income Tax Act*'s "planner" provisions. As a result of this assessment, the Applicant paid advance funds of $1,000,000 [$1M] to the Minister as an amount in controversy, to offset the interest should he ultimately have been found liable. That never occurred. The Applicant objected and appealed. The parties ultimately settled before trial.

[2] The Minister issued a reassessment, cancelling the penalty, and returning $1M to the Applicant without paying any interest on it. Whether the Minister should have paid interest is the key issue before the Court. After reading and hearing compelling submissions from both sides, I have concluded that the Minister's refusal to provide interest was unreasonable. Before providing my rationale as to why, I will provide a brief factual background and address three preliminary issues.

II. Background

[3] The Canada Revenue Agency [CRA] issued a Notice of Assessment [Assessment] to the Applicant on June 12, 2012, levying a penalty of $2,890,050 pursuant to section 163.2 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act]. All future statutory references are to the Act, unless specified otherwise. The Applicant's Assessment did not refer to a specific taxation

year. Instead, the Assessment specified that the taxation year was not applicable, or "N/A" (see a censored copy of the Assessment at Annex A).

[4] The Applicant filed a Notice of Objection to the Assessment on August 30, 2012, and on November 8, 2013, paid the $1M as an amount in controversy [Principal Amount], in an effort to reduce interest charges in the event that challenge to the Assessment was unsuccessful.

[5] The Applicant then filed a Notice of Appeal with the Tax Court of Canada [Tax Court] on December 7, 2015. On May 25, 2016, the Respondent agreed to a "Consent to Judgment", allowing the appeal, which the Tax Court endorsed on August 10, 2016 [Judgment], reproduced at Annex B of these Reasons. As a result of this Judgment, on December 7, 2016 the Respondent issued a Notice of (Re)Assessment [Reassessment] (see Annex C) which cancelled the original assessment, and refunded the Principal Amount. However, she did so without providing any interest on that Principal Amount. It is worth noting that, unlike the Assessment dated June 12, 2012, the Reassessment specified that the taxation year was '2012'.

[6] The parties communicated by phone and e-mail between January 9, 2017 and March 1, 2017, regarding the interest issue.

[7] On February 28, 2017, Respondent's counsel e-mailed Applicant's counsel, stating there was no statutory authority to pay interest, because the relevant provisions of the Act require that a taxation year to be specified in order for interest to be paid, including subsection 164(3) which obliges the Minister to pay interest when an amount in respect of a taxation year is refunded or

repaid. The assessment did not specify a taxation year. Counsel noted that the Applicant was welcome to make submissions on the issue.

[8] In response, the Applicant filed an April 18, 2017 letter containing formal written submissions setting out why he was requesting that the refund include interest, including the statutory basis and justification for such payment. The Respondent replied via e-mail on June 9, 2017, stating that counsel had been conducting "extensive review on the issue" and that the "problem is that there is no authority in the legislation to provide for the payment of interest under the law", and consequently the Respondent "cannot pay any interest in respect of the amount refunded".

[9] There were two subsequent communications between counsel for the Applicant and Respondent. First, on June 26, 2017, the Applicant requested a written explanation for the refusal to pay interest on the Principal Amount. Then, on August 22, 2017, Respondent's counsel advised Applicant's counsel that a response would be forthcoming. None ever came. As a result, on September 20, 2017, the Applicant filed this application for judicial review.

III. Issues and Analysis

[10] The following three preliminary issues are raised by the Applicant:

i. Is the Federal Court the proper venue for this matter?
ii. Did the Respondent make a decision, and if so, when was the decision made?
iii. Is the Applicant out of time, and if so, is an extension of time justified?

[11] The crux of this matter, however, resides with the other three issues raised, namely:

iv. What is the standard of review?

v. Whether the Respondent erred in failing to pay interest on the Principal Amount, and if so;

vi. What is the appropriate remedy?

I will first address the three preliminary issues.

(i) *Is the Federal Court the proper venue for this matter?*

Parties' positions

[12] The parties agree, for slightly different reasons, that the Federal Court is the proper venue to hear the challenge to the Reassessment (see Annex C).

[13] The Applicant submits that he cannot challenge in the Tax Court a situation in which a taxpayer owes no tax. In terms of payments owing for Mr. Glatt, the Reassessment shows that only a refund of $1M is due to him. The law is settled that a taxpayer cannot appeal from a nil assessment. In *Canada v Interior Savings Credit Union*, 2007 FCA 151 [*Interior*] at para 17, Chief Justice Noël held:

> Nonetheless, the term nil assessment is often used in the case law to identify an assessment which cannot be appealed. There are two reasons why a so-called nil assessment cannot be appealed. First, an appeal must be directed against an assessment and an assessment which assesses no tax is not an assessment (see *Okalta Oils Limited v. MNR*, 1955 CanLII 70 (SCC), 55 DTC 1176 (SCC) at p. 1178: "Under these provisions, there is no assessment if there was not tax claimed"). Second, there is no right of appeal from a nil assessment since: "Any other objection but one related to an

> amount claimed [as taxes] was lacking the object giving rise to the right of appeal …" (*Okalta Oils, supra*, at p. 1178).

[14] The Respondent provides a related reason as to why the proper venue for this dispute is the Federal Court, relying on *Imperial Oil Resources Ltd v Canada (Attorney General)*, 2016 FCA 139 [*Imperial Oil FCA*] at paragraph 61 for the proposition that the Tax Court does not have jurisdiction over issues relating to overpayments. The following is the key passage on this issue in Chief Justice Noël's decision:

> [61] The objection procedure before the Minister and the subsequent right to bring an appeal before the Tax Court only applies to assessed amounts (*Perley*, paras. 1 and 7). An assessment determines or confirms the liability of a taxpayer to pay specified amounts. Pursuant to subsection 152(1) of the ITA, the only amounts that can be assessed are taxes, interest and penalties. To be clear, assessed interest is interest claimed by the Minister pursuant to the ITA (see for example section 161), and interest payable by the Minister pursuant to section 164 does not come within that description. As explained by Rip J. (as he then was) in *McMillen Holdings Ltd v. M.N.R.*, [1987] 2 C.T.C. 2327 (T.C.C.) [*McMillen*], the amount of a refund resulting from an overpayment, although often set out on the notice of assessment, is not an assessed amount (*McMillen*, para. 47). The objection procedure does not apply to a contested refund and the Tax Court is therefore without jurisdiction to hear an appeal pertaining to its computation …

[15] Based on this explanation, the Respondent contends that a right to appeal a notice of assessment or reassessment to the Tax Court is only available where there is an assessed amount. Here, instead of an assessed amount, there is only a refund, and the Respondent, like the Applicant, contends that this matter is properly before the Federal Court.

Analysis

[16] I agree that whichever lens is used – that of the Applicant or the Respondent – this judicial review is properly before the Federal Court. As the refund here was payable by the Minister, it was not an assessed amount, and thus provided no right to appeal to the Tax Court, as noted by the Respondent. The same is true of a nil assessment, as observed by the Applicant. Finally, I would note that when the decision in *Interior Savings* (as well as the others cited above including *Okalta Oils* and *Imperial Oil FCA*) enunciate the principle that an assessment which assesses no tax is not an assessment, this relates exclusively to venue. It does not apply to the status of the assessment itself. In other words, that CRA document itself maintains its quality as an assessment (or reassessment), even though the amount of tax owing reflected in that document, is nil, and it might also contain a refund.

[17] I thus conclude on this first issue that whether viewed as a "nil assessment" or a refund, either way this application was filed in the correct venue.

(ii) *Did the Respondent make a decision, and if so, when was the decision made?*

[18] This issue is comprised of three questions, namely whether: (a) the Reassessment constitutes a final decision; (b) a reconsideration is pending; and (c) the reasons communicated were sufficient.

a. Did the Reassessment Constitute a Final Decision

Parties' positions

[19] According to the Applicant, the Respondent has not yet issued a decision in respect of the interest payment. Mr. Glatt argues that the Reassessment could not constitute a decision because it predates his written request for payment of interest. As a result, he asserts that the Respondent has still not provided a written decision, which also explains her refusal to make a payment of interest. Mr. Glatt submits that the Reassessment lacks any finality, explanation, or reasoning. Furthermore, he asserts that neither the February 2017 discussions which took place after the Reassessment, nor a June 9, 2017 e-mail from the Respondent's counsel, could constitute a decision because both lacked substance, finality, and formality.

[20] The Respondent disagrees, arguing that the Reassessment indeed constituted a decision. It provided the Applicant with the requisite information to understand that interest would not be paid, and thus with sufficient information to commence an application for judicial review in a timely manner.

Analysis

[21] While the Applicant contends that the Reassessment did not constitute a decision regarding the refusal to pay interest, I disagree and conclude that it was indeed a final decision. The Reassessment clearly indicates that no interest was to be paid, and rather shows that only $1M is being repaid. It also "cancels" the original Assessment which had issued the tax planner

penalty in the first place (see Annex C). There was no need for the Minister to provide more formal or lengthy reasons explaining the decision. The Reassessment sets out a clear explanation, including that the prior Assessment was cancelled due to the Tax Court Judgment.

[22] The Minister need not provide lengthy or detailed reasons in assessments (or reassessments). They are summaries of tax owing or refunded, and if applicable, interest and penalties, determined by the Minister "with all due dispatch" after examination of a tax return (subsection 152(1)). Assessments are intended to be summations of a quantum and confirm or reject positions taken by a taxpayer. They need not provide detailed written explanations, and are indeed often very concise.

[23] Notices of Reassessment have been found to be decisions by the Courts. For instance, in *Imperial Oil Resources Ventures Limited v Canada (Attorney General)*, 2014 FC 839 (aff'd *in Imperial Oil FCA*), Justice Gagné, as she then was, held at paragraph 64:

> As conceded by *Imperial Oil*, the Minister's position that it had no entitlement to refund interest with respect to its 1996 taxation year was communicated on the Notice of Reassessment dated June 10, 2003. That communication which was consistent with prior practice was treated as a decision.

[24] In sum, I find that the Reassessment issued to the Applicant was a final decision stating that the refund of the Principal Amount was being returned with no interest. Considering the lack of a right to appeal the Reassessment to the Tax Court, it is difficult to conclude that the Reassessment was anything but a final decision.

b. Is a reconsideration decision pending?

Parties' positions

[25] The Applicant rejects that a final decision has yet been rendered because he maintains that the Respondent offered to reconsider her position that no interest could be refunded. Mr. Glatt argues that even if a decision was indeed made, then this offer to reconsider superseded and replaced it – but the Minister failed to decide the reconsideration, despite the Applicant's April 2017 submissions sent in response to the offer to reconsider. The Applicant argues that he is still awaiting the promised reconsideration decision, and that the February 28, 2017 e-mail response from counsel for the Respondent stating that the Act does not allow for interest to be paid, does not constitute that reconsideration decision. Mr. Glatt relies on this Court's decision in *Dumbrava v Canada (Minister of Citizenship and Immigration)*, (1995), 101 FTR 230 where Justice Marc Noël, as he was then, found that:

> [15] […] Whenever a decision maker who is empowered to do so agrees to reconsider a decision on the basis of new facts, a fresh decision will result whether or not the original decision is changed, varied or maintained.

[26] The Respondent disagrees, countering that there was not any reconsideration of – or even any offer to reconsider – the decision. Rather, the Respondent asserts that its counsel offered only to consider any follow-up submissions provided by the Applicant. According to the Respondent, this did not constitute a formal offer to reconsider the decision, and "the Minister had no discretion to reconsider her decision: either she could pay interest (in which case she was obligated to do so) or she could not. Once the Minister had decided the question of law, there was nothing to reconsider" (Respondent's Memorandum at para 29).

Analysis

[27] I once again agree with the Respondent on this preliminary point. The Act does not provide for a reconsideration mechanism. Rather, assessments are deemed to be final, subject to reassessment (subsection 152(8)). Here, both occurred: the assessment was challenged, resulting in the Tax Court Judgment, and as a result, the reassessment vacated the original assessment.

[28] Furthermore, while counsel for the Respondent communicated with Applicant's counsel in response to his requests that the Minister pay interest on the Principal Amount, and then provided the Applicant with an opportunity to make further submissions, this did not constitute a formal "reconsideration" of the decision. Legislators did not include a reconsideration procedure in the Act. Contrast the silence of the Act, for instance, with Rule 397 of the *Federal Courts Rules*, SOR/98-106, which provides one example of a formal reconsideration procedure. Rule 397 limits the ambit for reconsideration to rare situations where there are administrative errors, such as clerical mistakes, where an order does not accord with a decision's reasons, or where a matter that should have been dealt with was overlooked (*Cowessess First Nation No. 73 v Pelletier*, 2017 FC 859 at para 16).

[29] Certainly, there are conventional ways to appeal decisions under the Act – namely through objections and appeals, and on occasion, through judicial review. Those mechanisms are all set out in the legislation, unlike reconsideration of an assessment or reassessment. Simply because counsel for the Respondent, in the upshot of the Reassessment resulting from Mr. Gatt's

successful Tax Court appeal, offered to consider submissions from Applicant's counsel, this offer did not trigger a reconsideration.

[30] Finally, Respondent counsel's June 9, 2017 email stated conclusively, with respect to the refund, that "there is no authority in the legislation to provide for the payment of interest under the law". This confirms that a final decision had been made.

c. Were the reasons communicated, and/or sufficient?

Parties' positions

[31] The Applicant also argues that no reasons were communicated to Mr. Glatt, and that the Respondent's position was only communicated to his counsel by an e-mail. The Reassessment itself lacked any reasons. The Respondent, on the other hand, maintains that the Reassessment constituted a decision with adequate reasons.

Analysis

[32] Beginning with the lack of a detailed explanation in the Reassessment, the Applicant is correct that in certain circumstances, the requirements of procedural fairness will require a written explanation for a decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 43). The Court has also been clear that when reasons are provided, the adequacy of those reasons is not a stand-alone basis for reviewing a decision (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14). As the SCC said at paragraph 16 of *Newfoundland Nurses*, "if the

reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met" (see also, more recently, *Delta Air Lines Inc v Lukács*, 2018 SCC 2 at paras 21-24).

[33] That said, a failure to understand the reasons given will be a basis to interfere, despite the overriding deference owed in a reasonableness review. Certainly, this happens from time to time (see, for instance, *Lloyd v Canada (Attorney General)*, 2016 FCA 115 at para 24; *Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227 at para 137).

[34] Going back to the first principles, procedural fairness may require that reasons be given, recognizing the day-to-day realities of administrative agencies (*Baker* at para 43). The requirement for reasons thus will vary according to the situation. Decision-makers may be found along a large spectrum. Some conduct purely paper-based administrative reviews with clear eligibility thresholds and narrow discretion. Others, such as tribunal members holding greater discretion and autonomy, may be permitted to hear witnesses at an oral hearing. The former will invariably produce shorter decisions with minimal or no reasons. The latter have a higher duty to explain the decisions they render.

[35] The Canada Revenue Agency sends out about 29 million Notices of Assessment to individuals each year: David M. Sherman, *Practitioner's Income Tax Act*, 55th ed. (Toronto: Thomson Reuters Canada Limited, 2019 at p 1144).

[36] Given the nature of the assessment process, the narrow discretion exercised by CRA agents, and the legislative framework, I find that the requirement for income tax assessments to provide reasons necessarily falls at the very low end of this decision-making spectrum. In fact, the FCA has held that no prescribed form of assessment is even necessary in *Stephens v The Queen*, 88 DTC 1170 at 1171:

> Subsection 152(2) requires the Minister to "send a notice of assessment" to the taxpayer. Nowhere in the *Act* do we find prescriptions relating to the form of that notice. It follows, in our view, that the form of the notice does not matter and that the subsection merely requires that the notice be expressed in terms that will clearly make the taxpayer aware of the assessment made by the Minister.

[37] Indeed, the Tax Court in *Greene v The Queen*, 2010 TCC 162 [*Greene*] at paragraph 18 held that "an assessment may be valid even if the reasons relied on by the Minister are incorrect" (see *Riendeau v The Queen*, 91 DTC 5416 (FCA), referred to in *Les Entreprises Ludco Ltée et al v The Queen*, 94 DTC 6221 at 6223).

[38] In my estimation, the Applicant should have understood from the Reassessment that no interest was being paid by the Minister. Mr. Glatt stated as much during the cross-examination on his October 30, 2017 Affidavit (Respondent's Record at pages 9–10). Counsel for the Respondent was steadfast in the subsequent sequence of communications that interest was not being paid because the Minister took the position that the legislation did not allow it. Therefore, the reasons provided in the Reassessment to Mr. Glatt were both clear and adequate.

(iii) *Is the Applicant out of time? If so, is an extension of time justified?*

Parties' positions

[39] The Respondent argues that because the Reassessment constitutes a final decision dated December 7, 2016, and the application for judicial review was only filed on September 20, 2017, the Applicant is well beyond the 30-day Federal Court filing deadline, and this judicial review should be dismissed for delay. The Respondent further argues that the Applicant did not seek to extend the period of time, and in any event does not meet the criteria to obtain an extension at this point in time.

[40] The Applicant counters that the 30-day time limitation does not apply in this case. Rather, that deadline only applies to decisions and orders, of which there have been none in this case. Mr. Glatt asserts that the Minister never actually made a decision, but instead issued "an act" or "proceeding", and while Administrative acts and proceedings are reviewable by the Federal Court, they are not subject to the time limitation set out in subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c. F-7 (relying on *Markevich v Canada*, [1999] 3 FC 28 at para 11). Furthermore, Mr. Glatt contends that any delay cannot be considered undue or unreasonable in the circumstances, because he has maintained an intention to challenge the Minister's decision to refuse to pay interest at all material times.

Analysis

[41] I do not agree that the Reassessment can be classified as an “act or proceeding”, as the Applicant asserts. The determination of whether a decision-maker issued an act or proceeding is a contextual inquiry. As Justice Evans noted in *Markevich*:

> The words "act or proceeding" are clearly broad in scope and may include a diverse range of administrative action that does not amount to a "decision or order", such as subordinate legislation, reports or recommendations made pursuant to statutory powers, policy statements, guidelines and operating manuals, or any of the myriad forms that administrative action may take in the delivery by a statutory agency of a public program (at para 10).

[42] While the category of acts and proceedings is broad in scope, the Reassessment in question does not fit within it. As explained above, the Reassessment was a conclusive determination of the Applicant’s rights and interests. Thus, the decision communicated to the Applicant in the December 7, 2016 Reassessment falls within the 30-day time limitation as set out in subsection 18.1(2) of the *Federal Courts Act*.

[43] As a result, I agree with the Respondent that an application of subsection 18.1(2) leads to a finding that the Applicant is out of time. Therefore, an extension of time is required to address the key issue raised in this judicial review, namely whether the Minister’s decision not to pay interest on the refund was reasonable.

[44] To grant an extension of time, there must be (i) a continuing intention to pursue the application, (ii) some merit to the application, (iii) no prejudice to the Respondent, and (iv) a reasonable explanation for the delay (*Canada (AG) v Hennelly* (1999), 244 NR 399 (FCA)

[*Hennelly*]. The interests of justice can override an applicant's failure to meet the *Hennelly* test (*Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41 at para 33; *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62).

[45] Here, the Applicant has met the *Hennelly* test. This is demonstrated by the Applicant's repeated attempts to recoup interest on the Principal Amount. These attempts began as early as January 9, 2017, less than one month after receiving the Reassessment. Furthermore, the parties continued to discuss the issue of interest after the Reassessment was issued, including the Respondent's correspondence on February 17, 2017 inviting submissions on the issue of whether interest repayment was required, and the Applicant's legal submissions in reply. The Respondent's counsel, less than a month before this application was commenced, advised Applicant's counsel that a response would be forthcoming, which did not occur. Even though a formal reconsideration process did not take place, this is not a situation where the delay has prejudiced the Respondent. Furthermore, dismissing this judicial review for lateness would, in my view, undermine the interests of justice.

[46] Having addressed each of the preliminary issues, we can now turn to the central issue – whether the decision not to add interest to the refund of the Principal Amount was reasonable.

(iv) *What is the applicable Standard of Review?*

Parties' positions

[47] The Applicant, while acknowledging that much of the jurisprudence suggests a reasonableness standard, argues that in *Grenon v Canada (National Revenue)*, 2017 FCA 167 [*Grenon*], Justice Webb intimated that correctness might be the appropriate standard of review (at paras 9-10). The Applicant also asserts that even if reasonableness is found to apply, the range of reasonable outcomes is narrow because *Grenon*, which raises similar facts, holds that questions of statutory interpretation have a narrow range of reasonable interpretations (*Grenon* at para 10). The Respondent, by contrast, asserts that in keeping with a reasonableness review, deference should be given to the Minister and her officials, who have expertise in tax matters and in interpretation of the Act.

Analysis

[48] I agree with certain aspects of each party's arguments. The Respondent is correct in that the Court is being asked to review the Minister's interpretation of the Act, her home statute. Administrative decision-makers' interpretations of their home statutes attract a standard of reasonableness, as was established in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paragraph 54. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47;

Canada (Minister of Citizenship and Immigration) v Khosa, 2009 SCC 12 at para 59). Put another way, the Court should intervene only if the decision was unreasonable in the sense that it falls outside the range of possible, acceptable outcomes.

[49] This standard has been confirmed repeatedly since *Dunsmuir* by the Supreme Court of Canada [SCC] (see, for instance, *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55; *Groia v Law Society of Upper Canada*, 2018 SCC 27 at para 46; *West Fraser Mills Ltd v British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para 8).

[50] The Respondent is also correct in that none of the *Dunsmuir* presumptions or factors that favour a correctness standard apply, such as legal questions of central importance, or a decision lying outside the specialized expertise of the decision-maker, the CRA, which has specialized expertise in this area (*AFD Petroleum Ltd v Canada (Attorney General)*, 2016 FC 547 at para 20). Accordingly, I do not find the presumption of reasonableness has been rebutted.

[51] Having established that a reasonableness standard applies, I nonetheless agree with the Applicant that the boundary between correctness and reasonableness can begin to blur when the key issue is statutory interpretation, and where the wording of the statute is clear, and supports only one reasonable answer (*McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at para 38 [*McLean*]; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53 at paras 34, 64). In *Grenon*, the FCA cited *Imperial Oil FCA*, where the

Court ruled that a decision involving statutory interpretation of the Act will necessarily have a narrow range of reasonable outcomes (at para 10).

[52] Ultimately, in this case, the Applicant bears the dual burden of demonstrating that, vis-a-vis the interest issue, not only is his interpretation reasonable, but that the Respondent's interpretation is unreasonable (*McLean* at para 41).

(v) *Was the Respondent's decision reasonable?*

[53] In a nutshell, the Applicant argues that a contextual analysis of the relevant legislative provisions requires that the refund of the Principal Amount should have included interest. The Respondent counters that there is no connection between the statute's provisions related to the Minister's charging, and refunding of interest. These concepts derive from distinct provisions of the Act, and the Minister had no discretion to pay interest on the Principal Amount in this situation. The key statutory provisions raised by the parties are reproduced in Annex D to these Reasons, and are referenced in the following summary of the parties' positions, which focus on the issue of whether section 163.2 (the planner penalty) requires a taxation year as the Applicant argues, or does not require a taxation year, as the Respondent submits.

Applicant's position

[54] The Applicant argues that third party penalties pursuant to subsection 163.2(2) must be in respect of a taxation year due to the wording of subsection 152(4). Specifically, because subsection 152(4) allows the issuance of assessments and reassessments in respect of a year, an

assessment under section 163.2 must therefore also be in respect of a year. The Applicant contends that the reference to the word "year" in subsection 152(4) must mean a taxation year (referencing *Desroches c R*, 2013 TCC 81 at paras 26-27).

[55] The Applicant points to the Reassessment itself, which clearly sets out the taxation year as being 2012. This aligns with its statutory analysis as to why section 163.2 third party penalties must be in respect of a taxation year.

[56] According to the Applicant, subsection 164(1.1) sets out the authority for repayment on objections and appeals, and although it does not explicitly reference interest, the wording of the text refers to repayment of amounts, and if its conditions are met, interest should be provided pursuant to subsection 164(3).

[57] The Applicant relies on the FCA's decision in *Grenon* to support this position. He asserts that *Grenon* required interest payments in similar circumstances, and thus an approach consistent with *Grenon* entitles Mr. Glatt to interest under subsection 164(3) of the Act.

[58] The Applicant concedes that while subsection 164(1.1) stipulates that the Minister must "repay" an "amount" to the taxpayer, those words should be read consistently and given the same meaning as those used in paragraph 164(3)(e), which uses the same words in requiring the Minister to pay interest on refunds where conditions are met. He submits that the use of "amount," "amounts payable," and "amount repaid" is significant because those words have been

interpreted to include interest in *Subsidiaries Holding Co v R*, [1956] Ex CR 443, CTC 240 at para 37).

[59] Broadly speaking, the Applicant argues that section 163.2 must be tied to a taxation year, like any other assessment provision under the Act. Because there is no special limitation period set out for planner and preparer penalties contained in section 163.2 (unlike, for instance, the 'zapper' provisions contained in section 163.3), any assessment of the Act must be made in accordance with default limitation period of three years (see subsection 152(3.1)).

[60] Finally, with respect to section 161, the Applicant argues that failing to provide interest results in a windfall for the government. The Minister is authorized to collect interest at a high rate which continues to accumulate during the litigation process, resulting in Mr. Glatt's payment of the Principal Amount. With the Applicant being unable to recover interest if successful in his defense could lead to a windfall for the Minister.

Respondent's position

[61] The Respondent starts off with foundational principals from each of the main statutes implicated in this judicial review. First, section 26 of the *Financial Administration Act*, RSC 1985, c F-11 [FAA] only allows the Minister to make payments when authorized to do so by statute. In this vein, the FCA has held that section 26 of the FAA applies to payments of refunds under section 164 of the Act (*Union Gas Ltd. v. Minister of National Revenue*, [1991] 1 CTC 1 at para 6). By logical implication, section 26 of the FAA must also bind the Minister when making interest payments on refunds. Therefore, the Respondent asserts that

section 26 of the FAA allows the Minister to only pay the interest on refunds if authorized by section 164 of the Act.

[62] Second, the Respondent argues that the Act operates as a complete code to determine the payment of refund interest for amounts paid in respect of liabilities arising; subsection 164(3) stipulates that the Minister shall refund interest only where amounts have been collected in respect of a taxation year. The Respondent argues that penalties for third party representatives under section 163.2 are not in respect of a taxation year, and spends the majority of her legal arguments on this key issue explaining her statutory interpretation underlying this position.

[63] The Minister observes that section 163.2 contains fifteen paragraphs, and not one refers to a liable third party's taxation year. Indeed, neither the charging provisions (i.e. subsections 163.2(2) and (4)), nor the penalty calculation provisions (i.e. subsections 163.2(3) and (5)), mention a taxation year. By contrast, the subsection 163(2) gross negligence penalty provision specifically references a taxation year. The Respondent contends that the distinction is intentional in that "Parliament has considered these provisions at the same time twice" (Memorandum at para 71).

[64] Thus, in turning its mind to both subsection 163(2) and section 163.2, the Respondent submits that Parliament made a conscious decision to explicitly legislate that the penalties levied under subsection163(2) are in respect of a taxation year. This gives rise to an expectation that if Parliament similarly wanted to legislate that penalties under the third party provisions of section 163.2 also be in respect of a taxation year, it would have done so. Rather, the exclusion

was intentional, and the implied exclusion rule applies, making its interpretation consistent with the ordinary meaning of the statute's text as required by *Canada Trustco Mortgage Co v Canada*, 2005 SCC 54 [*Canada Trustco*]. As a result, the Respondent submits that the requirement under subsection 164(3) that there be an underlying taxation year – and specifically regarding overpayments (paragraph 164(3)(e)) – is not met in this case.

[65] The Respondent adds that the subsection 161(11) (charging of interest) provisions demonstrate that Parliament intended assessments under the section 163.2 penalties should not be issued in respect of a taxation year. Subsection 161(11) states that interest begins to accrue on penalties payable under sections 162, 163 or 235 by reference to a taxation year, just as is the case for interest on a penalty under section 163.1. Had Parliament intended section 163.2 assessments to be in respect of a taxation year, 163.2 penalties would have been included in 161(11). An individual is assessed under section 163.2 for "gross compensation" or "gross entitlements" which can span a number of taxation years. In such a circumstance, interest cannot be linked to a definitive single taxation year, and thus begins to accrue on the date the Notice of Assessment is sent.

[66] The Respondent notes that the Applicant's underlying premise is that the assessments giving rise to the payment and refund are in respect of a taxation year, but has failed to identify which taxation year his assessment relates to. This is consistent with the Respondent's position of no taxation year being necessary for a section 163.2 planner penalty.

[67] As for the Applicant's subsection 152(4) arguments, the Respondent accepts that section 163.2 assessments are issued under subsection 152(4). However, she argues that the proper construction of subsection 152(4) allows the Minister to make assessments, reassessments or additional assessments outside the confines of a taxation year. The placement of "for a taxation year" following "tax" in that provision, according to the Respondent, demonstrates a legislative intention to tie the concept of a taxation year to solely the assessment of tax. Parliament could just as easily have drafted the provision to read "…assessment of tax, interest or penalties for a taxation year, if any…" and tied the assessment of penalties and interest to a taxation year – but the Respondent argues that Parliament did not do so.

[68] The only reasonable inference from this is that Parliament's choice was to limit only assessments of tax to a taxation year. The Respondent observes that the French version of subsection 152(4) also supports this position. It translates to "assessment…concerning tax for a taxation year as well as interest or penalties…". The use of "as well as" and "or" indicates a legislative intention to separate "tax for a taxation year" from "interest" or penalties.

[69] The Respondent argues that the balance of subsection 152(4)'s preamble also supports its position, since the text states "except that an assessment…", limiting the Minister's ability to make an assessment, reassessment or additional assessment beyond the taxpayer's "normal reassessment period in respect of the year" where certain conditions are satisfied. The words "in respect of the year" are a direct reference to the "taxation year". The Respondent observes that both references must be construed harmoniously. From a practical level, the Respondent notes that any other construction would lead to an absurd result, in that the Minister would have to tie a

third party penalty to a taxpayer's year, whereas the culpable conduct or quantum of the penalty could span multiple first party taxpayers over differing taxation years.

[70] The Minister argued at the hearing of this judicial review that the Reassessment was not truly a reassessment. Rather, it was simply a notice of refund - nothing more and nothing less - since at the time of issuance the original assessment had been vacated by the Tax Court. When then asked about the deemed finality of assessments issued by the Minister per subsection 152(8), counsel responded that since the Minister had no authority to issue the Reassessment, subsection 152(8) did not apply.

[71] Regarding the "erroneous" issuance of the Reassessment, the Respondent argued that the Act does not provide for a notice of refund, unlike a notice of reassessment. This is why the Reassessment (reproduced at Annex C to these Reasons) is really rather a "notice" or "receipt" of the $1M refund. The Respondent further argues that the taxation year indicated as 2012 in the Reassessment was also an error. Rather, the original assessment issued in 2012, which did not list a taxation year, is the correct legal position, and that which the Minister continues to maintain.

[72] As for the Applicant's windfall argument, the Respondent notes that it is based on fairness rather than on the logic of the Act. While the Minister charging taxpayers interest in some situations and refusing to refund interest in others may seem unjust, it does not lead to an unreasonable or absurd result. The Respondent notes that *Canada v Cheema*, 2018 FCA 45

[*Cheema*], at para 80, cautions against seeking a sensible, practical or common sense result which judges may disagree about, and points to Justice Stratas' decision in this regard:

> This sort of thing, akin to relying upon "what [they] think is best for Canadian society" and choosing "what [they] want the legislation to mean," has nothing to do with the judges' real task, which is to discern "what the legislation authentically means …"

[73] The Respondent submits that the Applicant's reliance on *Grenon* is misplaced; that case involved a situation where a payment was clearly made in respect of a taxation year, as well as pursuant to a jeopardy order that was vacated. Unlike this case, the Respondent notes that *Grenon* involved a request for repayment pursuant to subsection 164(1.1) of the Act, not an amount in controversy repaid under subsection 164(4.1) as occurred for Mr. Glatt.

[74] Finally, the Respondent notes that in the context of interest payments by a government body, jurisprudence has recognized that gaps exist where the legislation requires a taxpayer to pay interest on outstanding amounts, but the legislation does not create a similar obligation on a government agency to pay interest on refunds of money. In such instances, the Respondent warns that courts should not interpret the legislation to achieve what the court might consider a fair result, as observed by the Ontario Court of Appeal in *Gorecki v Attorney General of Canada*, [2006] O.J. No. 1130, at para 7:

> The CPP is a complete statutory code that makes no provision for the payment of interest on benefits where there is a delay between the date the beneficiary becoming entitled to the benefit and the date on which the benefit was paid. It has been held that where a comprehensive statutory scheme does not provide for the payment of interest by the Crown, no interest is payable… [i]t is settled jurisprudence that interest may not be allowed against the Crown, unless there is a statute or a contract providing for it.

Analysis

[75] The facts raised by this judicial review are largely settled. The effect of the Reassessment is ultimately the Minister's refund of Mr. Glatt's $1M with no payment of interest. The problem that this Court is asked to resolve is whether the failure to add interest to that refund was reasonable in the circumstances. The key issue thus underlying this judicial review - of whether interest must be paid - turns on the interpretation of the Act, and the application of the settled facts to the statute. In oral submissions at the hearing of this matter, Minister's counsel succinctly articulated the core issue to be determined:

> At its most fundamental level, this case distills down to an issue of statutory interpretation: was the $1M paid by the applicant towards his penalty assessment in respect of a taxation year? The Applicant says it was. The Minister says it was not. I don't think there is much dispute between the parties. If the $1M paid was in respect of a taxation year, the Minister will be obligated by the *Income Tax Act* to pay the Applicant his refund interest. Conversely, if the $1M paid was not in respect of a taxation year, the Minister will be prohibited by the *Financial Administration Act* from paying the Applicant any refund interest. The Minister does not enjoy any discretion in this case.

a) Approach to statutory interpretation in tax matters

[76] The Supreme Court of Canada's "text, context and purpose" approach currently used to interpret legislation in taxation matters was summarized in *Canada Trustco* (para 10) as follows:

> The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on

> the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[77] Previously, the Supreme Court held that the "economic realities" of a particular transaction or the general object and spirit of the provision at issue can never supplant a court's duty to apply an unambiguous provision of the Act to a taxpayer's transaction. Where a provision is clear and unambiguous, its terms must "simply be applied" (*Shell Canada Ltd v Canada*, [1999] 3 SCR 622 at paras 39-40).

[78] Recent cases have continued to confirm the 'text, context and purpose' approach to interpreting a provision of taxing statutes, including *Cheema* (with respect to an *Excise Tax Act* housing rebate provision) in which Justice Stratas concluded for the majority:

> Where, as here, Parliament grants a rebate in a discrete section for a discrete policy reason, it does not normally express itself in vague terms or require that we undertake a circuitous, serpentine and roundabout tour of various other provisions in the Act to find out when the rebate is available. To understand who may claim a rebate and in what circumstances, normally we need only read the plain language granting the rebate (at para 86).

[79] Based on the evidence and the law in this case, I find that there is only one reasonable answer to the question of whether the $1M the Applicant paid towards his assessment was in respect of a taxation year, in light of the Reassessment, given sections 152 and 164. This provides clear and straightforward approach to interpreting the Act respecting its text, context and purpose, and avoiding a circuitous, roundabout way of analysing the statute and the evidence. Before that analysis, a brief comment is warranted on the burden of proof at play.

b) Whose burden of proof?

[80] The Minister carries the burden of establishing the facts justifying assessments of the penalty, pursuant to subsection 163(3). Here, the Minister was ultimately unsuccessful in assessing the penalty, after the taxpayer, Mr. Glatt, successfully appealed to the Tax Court. The outcome of that appeal vacated his assessment. The Reassessment resulting from that the Tax Court Judgment cancelled his $2.8M penalty, and refunded Mr. Glatt's Principal Amount of $1M. In the absence of other evidence, the Minister failed to meet her subsection 163(3) burden of justifying the penalty against Mr. Glatt.

[81] The Minister appears to reverse the onus when asserting that Mr. Glatt has failed to identify which taxation year his planner penalty assessment relates to, which the Minister asserts is consistent with the fact that section 163.2 assessments are not issued with respect to a taxation year. The onus, however, cannot be on the taxpayer to identify which taxation year(s) - whether any, some or none - apply to the Minister's penalty assessment, particularly when, as here, the Reassessment itself indicates a taxation year on its face.

c) Was the refusal of interest unreasonable?

[82] The aim of this analysis is to address the question at the heart of this judicial review – whether it was reasonable for the Minister not to pay interest on the Principal Amount – as opposed to settling how the third party representative penalty sections of the Act should operate, and whether those penalties must be associated with a taxation year or not.

[83] A direct approach to the reasonability assessment of the Minister's decision not to pay interest simply examines the three key pieces of evidence – namely the Assessment, Judgment, and Reassessment (Annexes A - C) – under sections 152 and 164.

[84] This analysis thus starts with the Reassessment, which reads:

> This reassessment cancels the assessment dated June 12, 2016 [*sic*], that was issued pursuant to subsection 163.2(4) of the Income Tax Act. This reassessment is a result of the Consent to Judgment dated June 6, 2016. (Extract from Assessment at Annex C)

[85] Although the CRA provided a taxation year of 2012 in the Reassessment (see top right hand corner of Annex C), the Minister argues, including for the reasons provided in their submissions summarized above, that this was an error and should not have been written into the Reassessment; after all, the original Assessment of 2012 had only "N/A" written beside the space on that form for a taxation year (see Annex A).

[86] Subsection 152(8) deems that an assessment (or a reassessment that replaces it) shall be "deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto" [my emphasis]. Subsection 248(1) provides that "assessment' includes a reassessment". Therefore the deeming provision contained in subsection 152(8) applies equally to reassessments as it does to assessments (see also *Canadian Marconi Co v Canada (C.A.)*, [1992] 1 FC 655 (FCA) at para 10).

[87] Therefore, on a strict reading of the text of the statute, the 2016 Reassessment is presumed to be valid and binding given the intervening Judgment, not the 2012 Assessment.

That earlier Assessment was "vacated" by the Tax Court in its Judgment. The CRA then noted it to be "cancelled" in its Reassessment.

[88] No one compelled the Minister to indicate a taxation year in the Reassessment. I recognize the Minister's assertion that no taxation year had been listed in the original Assessment. However, that Assessment became null and void upon the June 2016 Tax Court Judgment, and confirmed by the Minister's Reassessment some six months later. In other words, the 2012 Assessment is deemed to no longer exist, having been replaced by a subsequent reassessment (see, by analogy, *Grenon* at paras 20-25).

[89] The Minister further argues that the Reassessment is properly described as a "notice of refund" or "refund receipt", and that it was improperly named by the CRA as a Reassessment in spite of its title, format and content.

[90] I note that the Minister has ample resources at her disposal. If a refund receipt were intended, such a form could be provided. And if a standard "notice of refund" or "refund receipt" does not exist, one could certainly be created without any great expense or effort. Barring that option, the CRA could have written a simple letter enclosing Mr. Glatt's refund, with a short explanation as to its genesis.

[91] Either way, when dealing with the return an overpayment of $1M, which is neither an insignificant amount, nor an insignificant step in a protracted dispute regarding an unusually large penalty, one would expect the CRA to have placed particular attention on what should have

amounted to the final chapter. At minimum, one would certainly expect the Minister to tie up loose ends with the document rather than create them.

[92] Subsection 152(8) has been interpreted to shield the CRA from errors: the jurisprudence acknowledges that administrative errors do not vitiate an assessment and subsection 152(8) exists to protect the Minister from taxpayers attempting to invalidate assessments based on technicalities. As already cited above in issue (ii) of these Reasons, *Greene* confirmed that an assessment may be valid even if the reasons relied on by the Minister are incorrect, and relying on *The Queen v Riendeau*, [1990] 1 CTC 141 (FCTD) at para 21, aff'd [1991] 2 CTC 64 (FCA) [*Riendeau*] which had held that subsection 152(8) is "designed to relieve the Minister from detrimental consequences of errors in his department", and cannot be used to force the Minister to honour a wording error in a notice of assessment.

[93] However, in this case the Minister is attempting to use its alleged errors as a sword rather than a shield. Using what it claims to be an error would run counter to the ratio of cases such as *Riendeau* and *Greene*, and create great uncertainty on any assessment or reassessment that a taxpayer received from the CRA. According to that jurisprudence, the Minister could certainly assert that any minor error such as a typographical slip in the year of the Assessment (which states June 12, 2016, when it was really June 12, 2012) does not give open license to the taxpayer to hold the Minister to detrimental consequences of errors of her department: it makes good common sense that a taxpayer should not be able to rely on this kind of error to undermine an otherwise valid assessment, or escape tax liability based on a technicality.

[94] The converse should not be true. Simply because the Minister now feels that she can point to an error based on her interpretation of the statute, she should not be able to point to something like the taxation year and assert it is an error that undermines the validity of the Reassessment, the net effect of which conveniently relieves her from an obligation to provide an interest payment to a taxpayer.

[95] It is one thing for the Minister seeking to prevent a taxpayer relying on minor defects in her department's document. But it is another for the Minister to then herself claim that the minor error undermines the validity of her own document to avoid adherence to it, when all other data points of the form are entirely accurate, including the taxpayer's current and prior balances, and penalty reversal, not to mention the Reassessment's explanation of the reason for the refund, which accurately refers to the cancelling of the earlier Assessment due to the Tax Court Judgment.

[96] Consequently, for the purpose of this specific case, this Court concludes that the Reassessment issued by the Respondent is a valid reassessment, even if it also included both a refund to, and a nil balance owing from, Mr. Glatt. Other elements further support this conclusion, as detailed below.

[97] I have not been presented with any compelling evidence or legal authority to demonstrate that a taxation year could not have been associated with the CRA's imposition of the penalty on Mr. Glatt. After all, in the vast majority of instances, assessments and penalties are tied to a taxation year. That is the very basis for the operation of the Act. That is reflected by the recent

decision of the FCA, which held that assessments are customarily for a period of one year (*Canada v 594710 British Columbia Ltd.*, 2018 FCA 166 at para 84). And it also underlies the words of Justice Hirshfeld in *Sicoli v The Queen*, 2013 TCC 207 at para 9:

> One issue that I will mention is that subsection 152(4) of the *ITA* requires that assessments of interest and penalties be made for a taxation year. In my view, that does not mean: as attested to by an officer of the CRA. It means the assessment must on its face be made for a taxation year.

[98] I have considered the Respondent's comprehensive submissions, as summarized above, as to why the Act's planner penalty cannot be interpreted to be associated with a taxation year. However, I do find the interpretation to be serpentine in light of the statutory provisions such as section 152, and the evidence.

[99] From a conceptual standpoint, while it certainly may make sense that a planner, more than a preparer, might be pursued by the CRA for activities over a long period of time rather than for a unique taxation year, because a preparer might well come up with a tax scheme that runs afoul of the Act and which is relied on by its users, across a number of taxation years. However, this reality does not mean that the penalty could not have been issued with respect to a specific taxation year (or even that more than one penalty be issued in relation to specific taxation years) as the Reassessment plainly states, particularly when any users of an improper scheme would be pursued for tax returns filed for specific taxation years.

[100] In other words, is it possible that with respect to Mr. Glatt, the planner penalty was issued outside of a taxation year? That certainly could be possible. But that evidence – other than an assertion with respect to the 2012 Assessment – was not before this Court. Such evidence may

have been before the Tax Court, but very limited evidence from that appeal was included in the record of this judicial review. To enter into a detailed analysis of how third party penalty regimes must operate, including whether or not a taxation year must attach to planner or preparer penalties, need not – and thus should not – be answered by this Court on judicial review. Those should be saved for another day when that issue, and the evidence to support it, are provided to the Court.

[101] In any event, this Court would be ill-equipped to pronounce on how planner penalties should be assessed, given the paucity of interpretative tools provided in the record, such as a lack of any Hansard debates or parliamentary summaries, should those indeed exist. For instance, neither party produced nor relied on CRA's Information Circular IC 01-1, "Third-Party Civil Penalties" (September 18, 2001), which at least provides some historical context and case studies.

[102] Indeed, the central issue in Mr. Glatt's Tax Court appeal was the planner penalty assessed against him. A key sub-issue would have been the taxation year(s) involved, if any. But we will never know the outcome of that determination due to the out-of-court agreement, and Justice Guy Smith's endorsement of it in his Consent Judgment. What is at issue in this judicial review is whether the Reassessment was reasonable in light of the information provided in it – namely a taxation year, and vacating of the earlier Assessment. I find that it was not, through the Application of subsection 152(8), and paragraph 164(3)(e), which requires the payment of interest on refunds of amounts in controversy paid with respect to a taxation year.

[103] The Minister asserts that the entire Reassessment is tainted, based on her premise that a taxation year could not have attached to Mr. Glatt's penalty. That the entire Reassessment is not an assessment due to her disagreement with the statutory interpretation of the planner penalty, and the underlying concept of a taxation year, simply strains the bounds of credulity.

[104] Yet, the vast majority of the document's information appears to be entirely accurate, including all data points regarding the taxpayer, details of the underlying Assessment, updated accounting information with respect to his balance and reversed penalty, an explanation for underlying reasons for the Reassessment. Only the one technicality appears to be in error. The document cannot be said to be inherently tainted or replete with errors. I therefore cannot accept the Respondent's submission that the whole document is not the reassessment that it purports to be.

[105] Turning back to the statute, the Minister acknowledges that subsection 152(8) deems assessments to be binding, although she disputes that deeming provision is determinative in this case, due to the purported CRA errors made in the Reassessment, and the legal impossibility of having a taxation year attached to the planner penalty. I cannot support the Respondent's position on this point.

[106] The interpretation provided above is consistent with the approach to statutory interpretation that the Respondent urges the Court to follow as enunciated in some of the leading cases cited above. For instance, the Minister argues that the Act must be interpreted strictly, being a complete code, and a judge's evaluation of fairness in that interpretation – or "what is

best for Canadians" – are not relevant (*Cheema* at para 80). Rather, the Minister reminds the Court that when the words of a provision of the Act are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process (*Canada Trustco* at para 10).

[107] The unequivocal, ordinary meaning of the words lead to one conclusion in this case in light of the evidence presented – that the inclusion of a taxation year in a reassessment means interest must be paid by operation of subsections 152(8) and paragraph 164(3)(e) of the Act. The clear reading of the text of the Act makes this the only reasonable interpretation in these particular circumstances.

[108] An interpretation in favour of the Minister would also be inconsistent with the jurisprudence. The non-payment of interest in these circumstances runs counter to recent FCA case law in *Grenon*. Here, Mr. Glatt's $1M payment in controversy was clearly made to avoid the accrual of interest with respect to an assessment that was then vacated. This is akin to *Grenon*, where the taxpayer provided $12.75M to the Minister in response to a Jeopardy Order that this Court issued against him, which was then vacated by the Court. The FCA wrote that with respect to the pending appeal of reassessments against Mr. Grenon:

> If he would be entitled to interest on this amount if it is refunded to him following the reassessments being vacated, then it is far from clear why Parliament would have intended that he not receive interest on this amount if it is refunded to him before the reassessments are vacated. In either case, in this scenario, the ultimate determination is that the reassessments are vacated and therefore, the refunded amount was not payable by Mr. Grenon (at para 29).

The FCA concluded that the refund of interest:

> would support the contextual interpretation that interest should be paid to him on the refunded amount…. the interpretation of subsection 164(1.1) of the Act by the Minister in this case that no interest is payable to Mr. Grenon as provided in subsection 164(3) of the Act on the refunded amount is incorrect and unreasonable (at paras 34-35).

[109] The parties did not point to any jurisprudence, nor does there appear to be any, directly on the issue of whether penalties for preparers are not issued with respect to a taxation year. The Courts thus appear to have neither pronounced on whether (i) the planner and preparer penalties are tied to a taxation year, or (ii) interest must be paid by the Minister to the taxpayer for refunds of amounts paid in controversy for such third party penalty assessments under section 163.2 of the Act.

[110] The one Supreme Court case that has ruled on third party penalties was *Guindon v Canada*, 2015 SCC 41, which addressed issues not raised in this judicial review, namely the notice requirements and merits of a constitutional challenge to the third party provisions.

[111] I do not find the cases that the Applicant relied on helpful, namely *Subsidiary Holdings* and *Desroches.* Both address other provisions of the Act, each in very different circumstances. In *Subsidiary Holdings*, the context was an overpayment relating to corporate taxes and subsequent dividends received from a subsidiary. The comments about interest and penalties were *obiter*. Likewise, *Desroches* ruled on different matters than those before the Court today, namely penalties for the gross negligence under subsection 163(2) of the Act.

[112] In summary, I find that the current jurisprudence supports a finding that interest must be paid on the Principal Amount. As the reassessment still exists despite its nil status for the purpose of venue, subsection 152(8) continues to apply, as do the other provisions of the Act that then flow from it confirming that the refund must be returned with interest at the prescribed rate, including paragraph 164(3)(e). This is the only reasonable interpretation of the statute's provisions in this case (*McLean* at para 38).

(vi) *What is the appropriate remedy?*

[113] The Court declares that interest must be paid on the $1M Principal Amount refunded to the Applicant in December 2016 in accordance with the Act. The matter will accordingly be remitted to the Minister for the calculation and payment of interest on the refund, in accordance with the Act and these Reasons.

IV. Costs

[114] Costs are awarded to the Applicant.

V. Conclusion

[115] In conclusion, I find that the Reassessment is valid and binding on the Minister. There is no compelling evidence to suggest that the Reassessment was something other than what it purported to be, or that the inclusion of a taxation year was a mistake.

[116] The day may well soon arrive when the assessment of third party penalties places the penalties on the decision block; this remains a ripe area for judicial commentary. However, this is not that day, because the issue before the Court today is only whether the Minister's decision to refuse interest on the refund was reasonable. I have found that it was not. Rather interpreting the Act in a manner inconsistent with its text, context and purpose, and when read as a harmonious whole, leaves us with only one reasonable outcome when applying these facts to the law – that interest must be provide to Mr. Glatt on the Principal Amount. As a result, the matter shall be remitted for the calculation and repayment of interest on the Principal Amount.

JUDGMENT in T-1463-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is allowed.

2. The Decision is set aside.

3. The matter will be sent back to the Respondent for the issuance of a refund of interest on the Principal Amount in accordance with the provisions of the *Income Tax Act* and these Reasons.

4. Costs are awarded to the Applicant.

"Alan S. Diner"

Judge

ANNEX A

Canada Revenue Agency / Agence du revenu du Canada

[redacted]

Page 1 of 1

NOTICE OF ASSESSMENT – AVIS DE COTISATION

Date of mailing – Date de l'envoi	Account number – Numéro de compte	Taxation year / Année d'imposition	Tax centre – Centre fiscal
June 12, 2012	[redacted]	N/A	Sudbury ON P3A 5C1

Richard Glatt
[redacted]

Previous balance (interest included) / Solde antérieur (intérêt compris)	Tax / Impôt	Penalty amount / Montant de la pénalité	Instalment penalty / Pénalité sur acompte provisionnel
NIL	NIL	$2,890,050.00 DR	NIL
Instalment interest / Intérêt sur acompte provisionnel	**Arrears interest / Intérêt sur arriérés**	**Refund interest / Intérêt sur remboursement**	**Balance / Solde**
NIL	NIL	NIL	$2,890,050.00 DR

Please pay any balance owing when you receive this notice. We will not charge you additional interest from the date of this notice if you pay your balance within 20 days of this date.

* Veuillez payer le solde dû sur réception de cet avis. Si vous payez le solde dans les 20 jours suivant la date de cet avis, nous ne vous imposerons aucun intérêt supplémentaire.

Return Type: T1

This assessment results from participating in a misrepresentation as per subsection 163.2(4) of the Income Tax Act and the proposal letter dated June 29, 2011. For more information, call Sheila Pang at 416 952-3196.

ou need more information or disagree with notice, see the back of this form.

Linda Lizotte-MacPherson
Commissioner of Revenue
Commissaire du revenu

Lisez le verso de cet avis si vous désirez plus de précisions ou si vous voulez vous opposer à cet avis.

Canada

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d in Canada – Imprimé au Canada

ANNEX B

Tax Court of Canada | Cour canadienne de l'impôt

2015-5332(IT)G

RICHARD GLATT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Counsel for the Appellant: Yves St-Cyr

Counsel for the Respondent: Charles Camirand

JUDGMENT

Upon reading the Consent to Judgment filed on June 6, 2016:

The appeal from the assessment made under the *Income Tax Act*, notice of which is dated June 12, 2012 and bears number 9-120608-102525 is allowed, without costs, and the assessment is vacated in accordance with the Consent to Judgment attached.

Signed at Ottawa, Canada, this 10th day of August 2016.

"Guy Smith"

Smith J.

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the registry of the Tax Court of Canada.

Je CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au greffe de la Cour canadienne de l'impôt.

Dated / Fait le: AUG 12 2016

For the Registrar / Pour le Greffier
ALEKSANDRA MIHIC
General Support Services Clerk / Commis général, Services de soutien

2015-5332(IT)G

TAX COURT OF CANADA

BETWEEN:

RICHARD GLATT

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

CONSENT TO JUDGMENT

The appellant and the respondent consent to judgment allowing the appeal – without costs - and vacating the assessment [redacted] dated June 12, 2012.

Dated at the City of Ottawa, Ontario
May 25, 2016

Charles Camirand
Counsel for the respondent

Dated at the City of Toronto, Ontario
May 6, June, 2016

Yves St-Cyr
Counsel for the appellant

ANNEX C

Canada Revenue Agency / Agence du revenu du Canada

Sudbury ON P3A 5C1

December 7, 2016

Account Number [redacted]

Tax year
2012

RICHARD GLATT
[redacted]

NOTICE OF (RE)ASSESSMENT

Summary of (Re)Assessment

Balance	
Prior balance (interest included)	$ 1,890,050.00
Federal tax	$ 0.00
Penalties/interest	
Penalty amount	$ 2,890,050.00 CR
Arrears interest	$ 0.00
Refund interest	$ 0.00
Total balance	$ 1,000,000.00 CR

Explanation
T1 Penalty

This reassessment cancels the assessment dated June 12, 2016, that was issued pursuant to subsection 163.2(4) of the Income Tax Act. This reassessment is a result of the Consent to Judgement dated June 6, 2016.

Please pay any balance owing when you receive this notice. We will not charge you additional interest from the date of this notice if you pay your balance within 20 days of this date.

Bob Hamilton
Commissioner of Revenue

pd. TY

ANNEX D

Legislation

Income Tax Act
RSC 1985, c 1 (5th supp)

Assessment and reassessment

152 (4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, or

(ii) has filed with the Minister a waiver in prescribed form within the normal reassessment period for the taxpayer in respect of the year;

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and …

Loi de l'impôt sur le revenu,
SRC 1985, ch 1 (5e suppl.)

Cotisation et nouvelle cotisation

152 (4) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l'impôt pour une année d'imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu'aucun impôt n'est payable pour l'année à toute personne qui a produit une déclaration de revenu pour une année d'imposition. Pareille cotisation ne peut être établie après l'expiration de la période normale de nouvelle cotisation applicable au contribuable pour l'année que dans les cas suivants :

a) le contribuable ou la personne produisant la déclaration :

(i) soit a fait une présentation erronée des faits, par négligence, inattention ou omission volontaire, ou a commis quelque fraude en produisant la déclaration ou en fournissant quelque renseignement sous le régime de la présente loi,

(ii) soit a présenté au ministre une renonciation, selon le formulaire prescrit, au cours de la période normale de nouvelle cotisation applicable au contribuable pour l'année;

b) la cotisation est établie avant le jour qui suit de trois ans la fin de la période normale de nouvelle cotisation applicable au contribuable pour l'année et, selon le cas : …

Assessment deemed valid and binding

152 (8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.

Présomption de validité de la cotisation

152 (8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

Interest

Intérêts

General

Disposition générale

161 (1) Where at any time after a taxpayer's balance due day for a taxation year

161 (1) Dans le cas où le total visé à l'alinéa a) excède le total visé à l'alinéa b) à un moment postérieur à la date d'exigibilité du solde qui est applicable à un contribuable pour une année d'imposition, le contribuable est tenu de verser au receveur général des intérêts sur l'excédent, calculés au taux prescrit pour la période au cours de laquelle cet excédent est impayé :

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

a) le total des impôts payables par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI et VI.1;

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year,

b) le total des montants représentant chacun un montant payé au plus tard à ce moment au titre de l'impôt payable par le contribuable et imputé par le ministre, à compter de ce moment, sur le montant dont le contribuable est redevable pour l'année en vertu de la présente partie ou des parties I.3, VI ou VI.1.

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

Interest on penalties

161 (11) Where a taxpayer is required to pay a penalty, the taxpayer shall pay the penalty to the Receiver General together with interest thereon at the prescribed rate computed, …

(a) in the case of a penalty payable under section 162, 163 or 235, from the day on or before which

(i) the taxpayer's return of income for a taxation year in respect of which the penalty is payable was required to be filed, or would have been required to be filed if tax under this Part were payable by the taxpayer for the year, or

(ii) the information return, return, ownership certificate or other document in respect of which the penalty is payable was required to be made,

as the case may be, to the day of payment;

(b) in the case of a penalty payable for a taxation year because of section 163.1, from the taxpayer's balance-due day for the year to the day of payment of the penalty;

(b.1) in the case of a penalty under subsection 237.1(7.4) or 237.3(8), from the day on which the taxpayer became liable to the penalty to the day of payment; and

(c) in the case of a penalty payable

Intérêts sur les pénalités

161 (11) Tout contribuable tenu de payer une pénalité doit la verser au receveur général avec intérêts calculés au taux prescrit : …

a) s'il s'agit d'une pénalité visée aux articles 162, 163 ou 235, pour la période allant du jour ci-après jusqu'à la date du paiement :

(i) le jour où la déclaration de revenu du contribuable pour l'année d'imposition à l'égard de laquelle la pénalité est payable doit au plus tard être produite ou le devrait si le contribuable devait payer un impôt en vertu de la présente partie pour l'année,

(ii) le jour où tout autre document — déclaration de renseignements, déclaration, certificat de propriété ou autre — à l'égard duquel la pénalité est payable doit au plus tard être produit ou présenté, selon le cas;

b) s'il s'agit d'une pénalité visée à l'article 163.1 relative à une année d'imposition, pour la période allant de la date d'exigibilité du solde qui est applicable au contribuable pour l'année jusqu'à la date du paiement de la pénalité;

b.1) s'il s'agit d'une pénalité visée aux paragraphes 237.1(7.4) ou 237.3(8), pour la période allant du jour où le contribuable est devenu passible de la pénalité jusqu'à la date du paiement;

c) s'il s'agit d'une pénalité visée à une

by reason of any other provision of this Act, from the day of sending of the notice of original assessment of the penalty to the day of payment.

autre disposition de la présente loi, pour la période allant de la date d'envoi de l'avis de cotisation initial concernant la pénalité jusqu'à la date du paiement.

Burden of Proof

163 (3) Where, in an appeal under this Act, a penalty assessed by the Minister under this section or section 163.2 is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Charge de la preuve relativement aux pénalités

163 (3) Dans tout appel interjeté, en vertu de la présente loi, au sujet d'une pénalité imposée par le ministre en vertu du présent article ou de l'article 163.2, le ministre a la charge d'établir les faits qui justifient l'imposition de la pénalité.

Penalty for misrepresentations in tax planning arrangements

163.2 (2) Every person who makes or furnishes, participates in the making of or causes another person to make or furnish a statement that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by another person (in subsections (6) and (15) referred to as the "other person") for a purpose of this Act is liable to a penalty in respect of the false statement.

Pénalité pour information trompeuse dans les arrangements de planification fiscale

163.2 (2) La personne qui fait ou présente, ou qui fait faire ou présenter par une autre personne, un énoncé dont elle sait ou aurait vraisemblablement su, n'eût été de circonstances équivalant à une conduite coupable, qu'il constitue un faux énoncé qu'un tiers (appelé « autre personne » aux paragraphes (6) et (15)) pourrait utiliser à une fin quelconque de la présente loi, ou qui participe à un telé noncé, est passible d'une pénalité relativement au faux énoncé.

Penalty for participating in a misrepresentation

163.2 (4) Every person who makes, or participates in, assents to or acquiesces in the making of, a statement to, or by or on behalf of, another person (in this subsection, subsections (5) and (6), paragraph (12)(c) and subsection (15) referred to as the "other person") that the person knows, or would reasonably be expected to know but for

Pénalité pour participation à une information trompeuse

163.2 (4) La personne qui fait un énoncé à une autre personne ou qui participe, consent ou acquiesce à un énoncé fait par une autre personne, ou pour son compte, (ces autres personnes étant appelées « autre personne » au présent paragraphe, aux paragraphes (5) et (6), à l'alinéa (12)c) et au paragraphe (15)) dont elle sait ou aurait vraisemblablement su, n'eût été de circonstances équivalant à

circumstances amounting to culpable conduct, is a false statement that could be used by or on behalf of the other person for a purpose of this Act is liable to a penalty in respect of the false statement.

une conduite coupable, qu'il constitue un faux énoncé qui pourrait être utilisé par l'autre personne, ou pour son compte, à une fin quelconque de la présente loi est passible d'une pénalité relativement au faux énoncé.

Interest on refunds and repayments

164 (3) If, under this section, an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5 or 122.61) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of the days referred to in the following paragraphs and that ends on the day on which the amount is refunded, repaid or applied:

Intérêts sur les sommes remboursées

164 (3) Si, en vertu du présent article, une somme à l'égard d'une année d'imposition est remboursée à un contribuable ou imputée sur tout autre montant dont il est redevable, à l'exception de tout ou partie de la somme qu'il est raisonnable de considérer comme découlant de l'application des articles 122.5 ou 122.61, le ministre paie au contribuable les intérêts afférents à cette somme au taux prescrit ou les impute sur cet autre montant, pour la période commençant au dernier en date des jours visés aux alinéas ci-après et se terminant le jour où la somme est remboursée ou imputée :

…

…

(d) in the case of a refund of an overpayment, the day on which the overpayment arose; and

d) dans le cas du remboursement d'un paiement en trop d'impôt, le jour où il y a eu paiement en trop;

(e) in the case of a repayment of an amount in controversy, the day on which an overpayment equal to the amount of the repayment would have arisen if the total of all amounts payable on account of the taxpayer's liability under this Part for the year were the amount by which

e) dans le cas du remboursement d'une somme en litige, le jour où il y aurait eu un paiement en trop égal à la somme remboursée si le total des sommes payables sur ce dont le contribuable est redevable en vertu de la présente partie pour l'année était égal à l'excédent du total visé au sous-alinéa (i) sur la somme visée au sous-alinéa (ii) :

◦ (i) the lesser of the total of all amounts paid on account of the taxpayer's liability under this Part for the year and the total of all

(i) le total des sommes versées sur ce dont il est redevable en vertu de la présente partie pour l'année ou, s'il est moins élevé, le total des sommes

amounts assessed by the Minister as payable under this Part by the taxpayer for the year

exceeds

◦ (ii) the amount repaid.

qui, selon la cotisation établie par le ministre, sont à payer en vertu de la présente partie par le contribuable pour l'année,

(ii) la somme remboursée.

Refunds

Repayment on objections and appeals

164 (1.1) Subject to subsection 164(1.2), where a taxpayer

(a) has under section 165 served a notice of objection to an assessment and the Minister has not within 120 days after the day of service confirmed or varied the assessment or made a reassessment in respect thereof, or

(b) has appealed from an assessment to the Tax Court of Canada,

and has applied in writing to the Minister for a payment or surrender of security, the Minister shall, where no authorization has been granted under subsection 225.2(2) in respect of the amount assessed, with all due dispatch repay all amounts paid on account of that amount or surrender security accepted therefor to the extent that …

Remboursement

Remboursement sur opposition ou appel

164 (1.1) Sous réserve du paragraphe (1.2), lorsqu'un contribuable demande au ministre, par écrit, un remboursement ou la remise d'une garantie, alors qu'il a :

a) soit signifié, conformément à l'article 165, un avis d'opposition à une cotisation, si le ministre, dans les 120 jours suivant la date de signification, n'a pas confirmé ou modifié la cotisation ni établi une nouvelle cotisation à cet égard;

b) soit appelé d'une cotisation devant la Cour canadienne de l'impôt,

le ministre, si aucune autorisation n'a été accordée en application du paragraphe 225.2(2) à l'égard du montant de la cotisation, avec diligence, rembourse les sommes versées sur ce montant ou remet la garantie acceptée pour ce montant, jusqu'à concurrence de l'excédent du montant visé à l'alinéa c) sur le montant visé à l'alinéa d): …

Interest on refunds and repayments

(3) If, under this section, an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5 or 122.61) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of the days referred to in the following paragraphs and that ends on the day on which the amount is refunded, repaid or applied:

…

(e) in the case of a repayment of an amount in controversy, the day on which an overpayment equal to the amount of the repayment would have arisen if the total of all amounts payable on account of the taxpayer's liability under this Part for the year were the amount by which

(i) the lesser of the total of all amounts paid on account of the taxpayer's liability under this Part for the year and the total of all amounts assessed by the Minister as payable under this Part by the taxpayer for the year

exceeds

(ii) the amount repaid.

Intérêts sur les sommes remboursées

(3) Si, en vertu du présent article, une somme à l'égard d'une année d'imposition est remboursée à un contribuable ou imputée sur tout autre montant dont il est redevable, à l'exception de tout ou partie de la somme qu'il est raisonnable de considérer comme découlant de l'application des articles 122.5 ou 122.61, le ministre paie au contribuable les intérêts afférents à cette somme au taux prescrit ou les impute sur cet autre montant, pour la période commençant au dernier en date des jours visés aux alinéas ci-après et se terminant le jour où la somme est remboursée ou imputée :

…

e) dans le cas du remboursement d'une somme en litige, le jour où il y aurait eu un paiement en trop égal à la somme remboursée si le total des sommes payables sur ce dont le contribuable est redevable en vertu de la présente partie pour l'année était égal à l'excédent du total visé au sous-alinéa (i) sur la somme visée au sous-alinéa (ii) :

(i) le total des sommes versées sur ce dont il est redevable en vertu de la présente partie pour l'année ou, s'il est moins élevé, le total des sommes qui, selon la cotisation établie par le ministre, sont à payer en vertu de la présente partie par le contribuable pour l'année,

(ii) la somme remboursée.

Duty of Minister

(4.1) Where the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada has, on the disposition of an appeal in respect of taxes, interest or a penalty payable under this Act by a taxpayer resident in Canada,

(a) referred an assessment back to the Minister for reconsideration and reassessment, or

(b) varied or vacated an assessment,

the Minister shall with all due dispatch, whether or not an appeal from the decision of the Court has been or may be instituted,

(c) where the assessment has been referred back to the Minister, reconsider the assessment and make a reassessment in accordance with the decision of the Court, unless otherwise directed in writing by the taxpayer, and

(d) refund any overpayment resulting from the variation, vacation or reassessment,

and the Minister may repay any tax, interest or penalties or surrender any security accepted therefor by the Minister to that taxpayer or any other taxpayer who has filed another objection or instituted another appeal if, having regard to the reasons given on the disposition of the appeal, the Minister is satisfied that it would be just and equitable to do so, but for greater certainty, the Minister may, in accordance with the provisions of this Act, the Tax Court of Canada Act, the Federal

Obligation du ministre

(4.1) Lorsque la Cour canadienne de l'impôt, la Cour d'appel fédérale ou la Cour suprême du Canada, en se prononçant sur un appel concernant des impôts, intérêts ou pénalités payables par un contribuable résidant au Canada en vertu de la présente loi, ordonne :

a) soit le renvoi d'une cotisation au ministre pour réexamen et pour établissement d'une nouvelle cotisation;

b) soit la modification ou l'annulation d'une cotisation, le ministre, avec diligence, qu'un appel de la décision de la cour ait été ou puisse être interjeté ou non :

c) d'une part, réexamine la cotisation et en établit une nouvelle conformément à la décision de la cour, sauf instruction écrite contraire du contribuable, dans le cas du renvoi d'une cotisation au ministre;

d) d'autre part, rembourse tout paiement en trop qui découle de la modification ou de l'annulation d'une cotisation, ou de l'établissement d'une nouvelle cotisation; de plus, le ministre peut rembourser tout impôt, tout intérêt ou toute pénalité ou remettre toute garantie qu'il a acceptée, pour ceux-ci, à ce contribuable ou à un autre contribuable qui a fait opposition ou interjeté appel, s'il est convaincu, compte tenu des motifs exposés dans le prononcé sur l'appel, qu'il serait juste et équitable de faire ce remboursement ou cette remise; il est entendu toutefois que le ministre peut en appeler de la décision de la cour conformément aux

Courts Act or the Supreme Court Act as they relate to appeals from decisions of the Tax Court of Canada or the Federal Court of Appeal, appeal from the decision of the Court notwithstanding any variation or vacation of any assessment by the Court or any reassessment made by the Minister under paragraph 164(4.1)(c).

dispositions de la présente loi, de la Loi sur la Cour canadienne de l'impôt, de la Loi sur les Cours fédérales ou de la Loi sur la Cour suprême relatives à l'appel d'une décision de la Cour canadienne de l'impôt ou de la Cour d'appel fédérale, malgré la modification ou l'annulation de la cotisation par la cour ou l'établissement d'une nouvelle cotisation par le ministre en vertu de l'alinéa c).

Interest - disputed amounts

(5.1) Where a portion of a repayment made under subsection (1.1) or (4.1), or an amount applied under subsection (2) in respect of a repayment, can reasonably be regarded as being in respect of a claim made by the taxpayer in an objection to or appeal from an assessment of tax for a taxation year for a deduction or exclusion described in subsection (5) in respect of a subsequent taxation year, interest shall not be paid or applied on the portion for any part of a period that is before the latest of the dates described in paragraphs (5)(i) to (l).

Intérêts — sommes en litige

(5.1) Lorsqu'il est raisonnable de considérer qu'une partie d'une somme en litige remboursée en vertu des paragraphes (1.1) ou (4.1) ou imputée en vertu du paragraphe (2) sur un autre montant dont le contribuable est redevable concerne, dans le cadre d'une opposition faite ou d'un appel interjeté par le contribuable au sujet d'une cotisation concernant l'impôt pour une année d'imposition, une déduction ou une exclusion visée au paragraphe (5) que le contribuable demande pour une année d'imposition ultérieure, aucun intérêt n'est payé ni imputé relativement à la partie de la somme pour toute partie d'une période antérieure au dernier en date des jours visés aux alinéas (5)i) à l).

Federal Courts Act
RSC, 1985, c F-7

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Time limitation

18.1 (2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

Powers of Federal Court

18.1 (3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Loi sur les Cours fédérales
LRC (1985), ch F-7)

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Délai de présentation

18.1 (2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Pouvoirs de la Cour fédérale

18.1 (3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Financial Administration Act
RSC 1985, c F-11

Payments out of C.R.F

26 Subject to the Constitution Acts, 1867 to 1982, no payments shall be made out of the Consolidated Revenue Fund without the authority of Parliament.

Loi sur la gestion des finances publiques,
LRC (1985), c F-11

Versements sur le Trésor

26 Sous réserve des Lois constitutionnelles de 1867 à 1982, tout paiement sur le Trésor est subordonné à l'autorisation du Parlement.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1463-17
STYLE OF CAUSE:	RICHARD GLATT V THE MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 17, 2018
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APPEARANCES:

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