

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250911

Docket: A-310-24

Citation: 2025 FCA 163

**CORAM: LEBLANC J.A.
ROUSSEL J.A.
PAMEL J.A.**

BETWEEN:

3533158 CANADA INC.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on September 11, 2025.
Judgment delivered from the Bench at Montréal, Quebec, on September 11, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

ROUSSEL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on September 11, 2025).

ROUSSEL J.A.

[1] This is an appeal from a judgment of the Federal Court (2024 FC 1090) dated July 11, 2024, dismissing the appellant's application for judicial review. The appellant had sought an order of *mandamus* compelling the Minister of National Revenue, acting through the

Canada Revenue Agency, to refund the appellant's input tax credits under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 in respect of three GST/HST reporting periods.

[2] In its decision, the Federal Court concluded that the appellant had not established a clear right to the refund and that there was an equitable bar to the issuance of the order requested.

[3] We find that the Federal Court's conclusion that there was an equitable bar to the relief sought is sufficient to dispose of this appeal. The Federal Court found that the unexplained 15-month delay of inactivity between the appellant being notified by the CRA that its objection was invalid and the appellant initiating proceedings before the Tax Court of Canada created an equitable bar to the issuance of an order of *mandamus* in the appellant's case. This finding is a discretionary finding (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at p. 76, citing *Charles Osenton & Co. v. Johnston*, [1942] A.C. 130). Absent a palpable and overriding error, this Court cannot interfere with the Federal Court's exercise of discretion (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215). The appellant has not persuaded us of such an error.

[4] Having reached this conclusion, we need not comment on the Federal Court's interpretation of paragraph 296(4)(b) of the *Excise Tax Act* and these reasons should not be construed as an endorsement of the Federal Court's analysis or conclusions with respect to this issue.

[5] For these reasons, we shall dismiss the appeal with costs.

"Sylvie E. Roussel"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-310-24

STYLE OF CAUSE: 3533158 CANADA INC. v. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: SEPTEMBER 11, 2025

**REASONS FOR JUDGMENT OF THE COURT
BY:** LEBLANC J.A.
ROUSSEL J.A.
PAMEL J.A.

DELIVERED FROM THE BENCH BY: ROUSSEL J.A.

APPEARANCES:

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FOR THE RESPONDENT

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FOR THE RESPONDENT