Federal Court Cour fédérale

Date: 20251119

Docket: T-1973-25

Citation: 2025 FC 1842

2025 FC 1842 (CanLII)

Ottawa, Ontario, November 19, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

INGREDION CANADA CORPORATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] This decision relates to two motions: 1) a motion brought by the Respondent Attorney General of Canada, to strike the Applicant, Ingredion Canada Corporation's, notice of application without leave to amend; and 2) a motion brought by the Applicant to amend and update their notice of application, which was ordered to be heard at the same time as the motion to strike.

[2] The underlying application for judicial review [Application] concerns a purported decision by the Minister of National Revenue [Minister], communicated verbally by the Canada Revenue Agency [CRA], to reverse an alleged agreement to hold certain objections made by the Applicant against tax assessments for the 2014 and 2015 taxation years in abeyance. The alleged agreement provided that the objections would be held in abeyance until the final adjudication of related appeals brought by the Applicant in the Tax Court of Canada [TCC] to assessments from the 2012 and 2013 taxation years.

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[3] The Respondent contends that the application discloses no reasonable cause of action as there was never any binding abeyance agreement, nor is there any foundation for judicial review as the arguments made, and relief sought, are properly dealt with outside of judicial review now that an appeal of the 2014 and 2015 assessments has been filed with the TCC.

[4] For the reasons that follow, I find as a matter of jurisdiction that the motion to strike should be allowed, the application struck, and the motion to amend dismissed accordingly.

II. **Background**

[5] In 2020, the Minister issued notices of assessment under Parts I and XIII of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [ITA] for the Applicant's predecessor's 2012 and 2013 taxation years. The Applicant filed notices of objection to the 2012 and 2013 assessments and appealed the 2012 and 2013 assessments after they were confirmed to the TCC in 2021.

[6] In 2022, the Minister issued notices of assessment under Parts I and XIII of the ITA for the Applicant's predecessor's 2014 and 2015 taxation years. The Applicant filed notices of objection to the assessments under Part I of the ITA.

[7] On February 2, 2023, prior to filing notices of objection to the 2014 and 2015 assessments under Part XIII of the ITA, the Applicant wrote to the Minister and requested that its proposed objections to the 2014 and 2015 assessments be held in abeyance until final adjudication of the pending appeals to the 2012 and 2013 assessments.

[8] The Applicant filed notices of objection to the 2014 and 2015 assessments under Part XIII of the ITA on February 14, 2023.

[9] On January 22, 2024, the CRA responded to the Applicant's February 2, 2023 correspondence, confirming in writing its agreement to hold the Applicant's objections to the 2014 and 2015 assessments in abeyance.

[10] On May 5, 2025, the Applicant was verbally advised by the Minister that it would no longer be holding the objections in abeyance.

[11] On May 9, 2025, the CRA sent the Applicant a letter setting out its analysis and basis for dismissing the notices of objection and proposing to confirm the 2014 and 2015 assessments.

[12] On June 9, 2025, the Applicant filed the present application.

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[13] On June 12, 2025, the Applicant was sent a Notice of Confirmation in respect of the 2014 and 2015 assessments, which advised the Applicant of the Minister's dismissal of the Applicant's objections.

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[14] The present motion to strike was filed on July 28, 2025.

[15] On August 26, 2025, the Applicant brought a motion to amend their notice of application to refer to, challenge, and seek additional relief in respect of the Notice of Confirmation. The motion also sought an interim stay of the effect of the confirmation [First Motion].

[16] A notice of appeal was filed in the TCC against the 2014 and 2015 assessments on September 8, 2025 [Appeal].

[17] On September 29, 2025, the Applicant filed a second motion [Second Motion], seeking to amend the First Motion to remove the request for an interim stay, which had become moot because of their appeal, and to add additional proposed amendments relating to the Appeal. By oral judgment made at the hearing, I granted the Applicant's Second Motion. Thus, the revised motion materials submitted by the Applicant on September 29, 2025 in their Second Motion at Tab 14 are those which are before the Court for decision.

[18] Additionally, I note that at the outset of the hearing I also made other oral dispositions, including dismissing a request by the Respondent to amend the written representations on their

motion to strike and removing certain materials from the Applicant's Reply to their Second Motion. The reasons for those determinations were provided orally at the hearing.

III. **Issues**

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[19] The legal test on a motion to strike an application is well established. The threshold is high: the Court will strike a notice of application for judicial review only in exceptional circumstances, where it is "so clearly improper as to be bereft of any possibility of success": *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 (FCA) at 600. As stated in *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*] at paragraph 47, "[t]here must be a 'show stopper' or a 'knockout punch'– an obvious, fatal flaw striking at the root of the Court's power to entertain the application".

[20] In applying this standard, the Court is to focus on the application as filed, taking the facts pleaded as true. The application is to be read holistically and realistically with a view to determining the real essence of the application: *JP Morgan* at para 50; *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 34.

[21] In this case, the notice of application alleges that the May 5, 2025 communication is a decision [Alleged Reversal Decision] that reversed a binding agreement made by the CRA on January 22, 2024 to hold the Applicant's objections to the 2014 and 2015 assessments in abeyance [Alleged Abeyance Agreement]. The Applicant seeks to set aside the Alleged Reversal Decision, direct the Minister to abide by the terms of the Alleged Abeyance Agreement, and

prohibit the Minister from taking any step or action in contravention of the terms of the Alleged Abeyance Agreement.

[22] In the Applicant's proposed amendment, they seek to update the Application to note the Notice of Confirmation and pending appeal before the TCC. The Applicant also seeks additional relief, including to: (i) set aside the confirmation of the 2014 and 2015 assessments and refer this back to the Minister for determination in accordance with the Alleged Abeyance Agreement; (ii) quash the Notice of Confirmation; (iii) declare the parties bound by the Alleged Abeyance Agreement; (iv) declare that the Minister's resumption of the processing of the objections and the subsequent confirmation of the 2014 and 2015 assessments was made in contravention of the terms of the Alleged Abeyance Agreement; (v) declare the Notice of Confirmation in violation of the Alleged Abeyance Agreement; and (vi) stay the proceedings before the TCC until a date that is 30 days after the date on which the alleged "Lead Case Appeals" are finally adjudicated.

[23] The Respondent asserts that the application discloses no reasonable cause of action. First, they assert that there was never any binding abeyance agreement. Rather, the Minister had a non-discretionary statutory duty to consider the taxpayer's objections with all due dispatch. Second, they assert that section 18.5 of the *Federal Courts Act*, RSC, 1985 c F-7 [*Federal Courts Act*] precludes an application for judicial review now that an appeal to the TCC of the 2014 and 2015 assessments is pending.

[24] The Applicant asserts that a determination of whether there was a binding and enforceable abeyance agreement is a matter for the merits. It contends that the allegations fall

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within a grey area that has not been clearly established to be outside this Court's jurisdiction. It argues that the proceedings before the TCC do not provide adequate alternative relief.

[25] There are three issues thus raised by the motions before me:

A. Can the Court conclude that the Application discloses no reasonable cause of action because there was no binding agreement?

B. Does section 18.5 of the *Federal Courts Act* bar an application for judicial review?

C. Should the Application be amended?

IV. **Analysis**

A. *Can the Court conclude that the Application discloses no reasonable cause of action because there was no binding abeyance agreement?*

[26] The Respondent contends it is plain and obvious that the Alleged Abeyance Agreement cannot bind the Minister. It characterizes the agreement as administrative and without any legal effect.

[27] The Respondent argues that there is a statutory duty on the Minister to address a notice of objection with all due dispatch. It relies on subsection 165(3) of the ITA which sets out the duties of the Minister on receipt of a notice of objection to assessments:

Duties of Minister	**Obligations du ministre**
(3) On receipt of a notice of objection under this	(3) Sur réception de l'avis d'opposition, le ministre, avec

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section, the Minister shall, with all due dispatch, reconsider the assessment and vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister’s action.	diligence, examine de nouveau la cotisation et l’annule, la ratifie ou la modifie ou établit une nouvelle cotisation. Dès lors, il avise le contribuable de sa décision par écrit.

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[28] The Respondent contends that the Minister has no discretion but to assess a notice of objection as quickly as possible. It argues that this obligation cannot be set aside by an administrative agreement to hold an objection in abeyance.

[29] As highlighted by the Applicant, however, the Respondent’s position runs contrary to the language of subsection 225.1(5) of the ITA. While this provision deals with the Minister’s duties on collection, the language of the provision nonetheless expressly contemplates that abeyance agreements between a taxpayer and the Minister may exist and have implications both when a taxpayer has served a notice of objection under the ITA or has appealed to the TCC from an assessment:

Idem	**Idem**
(5) Notwithstanding any other provision in this section, where a taxpayer has served a notice of objection under this Act to an assessment or has appealed to the Tax Court of Canada from an assessment and agrees in writing with the Minister to delay proceedings on the objection or appeal, as the case may be, until judgment has been given in another action before the Tax Court of Canada, the Federal Court of Appeal or the	Malgré les autres dispositions du présent article, lorsqu’un contribuable signifie, conformément à la présente loi, un avis d’opposition à une cotisation ou en appelle d’une cotisation devant la Cour canadienne de l’impôt et qu’il convient par écrit avec le ministre de retarder la procédure d’opposition ou la procédure d’appel jusqu’à ce que la Cour canadienne de l’impôt, la Cour d’appel fédérale ou la Cour suprême

Supreme Court of Canada in which the issue is the same or substantially the same as that raised in the objection or appeal of the taxpayer, the Minister may take any of the actions described in paragraphs (1)(a) to (g) for the purpose of collecting the amount assessed, or a part thereof, determined in a manner consistent with the decision or judgment of the Court in the other action at any time after the Minister notifies the taxpayer in writing that	du Canada rende jugement dans une autre action qui soulève la même question, ou essentiellement la même, que celle soulevée dans l'opposition ou l'appel par le contribuable, le ministre peut prendre les mesures visées aux alinéas (1)a) à g) pour recouvrer tout ou partie du montant de la cotisation établi de la façon envisagée par le jugement rendu dans cette autre action, à tout moment après que le ministre a avisé le contribuable par écrit que, selon le cas :
(a) the decision of the Tax Court of Canada in that action has been mailed to the Minister,	a) le jugement de la Cour canadienne de l'impôt dans l'action a été posté au ministre;
(b) judgment has been pronounced by the Federal Court of Appeal in that action, or	b) la Cour d'appel fédérale a rendu jugement dans l'action;
(c) judgment has been delivered by the Supreme Court of Canada in that action,	c) la Cour suprême du Canada a rendu jugement dans l'action.
as the case may be	

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[30] Such agreements are intended to save the Minister and the taxpayer administrative and litigation costs where the decision in another pending appeal is the same, or substantially the same, and may be dispositive of the taxpayer's objection or appeal: *Webster v Canada (Minister of National Revenue)*, 2003 FCA 442 [*Webster NR*] at para 8. While the taxpayer and the Minister are not required to enter into an abeyance agreement under this provision, if they choose

to do so, they are bound by the agreement and the subsection 225.1(5) procedure to delay collection until after notification of the decision in the other action: *Webster NR* at para 18.

[31] In *Rosenberg v Canada (National Revenue)*, 2016 FC 1376 [*Rosenberg 2016*], the Court rejected the Minister's argument that an agreement with a taxpayer was null and void because it was unable to waive its general obligation under section 220 to enforce the ITA. In that case, the Court found that the Minister was not off-side their duty under section 220 as they had already conducted an assessment for the taxation years in question. Further, the Minister had not agreed that a reassessment of the taxpayer would never occur; they had only limited the circumstances under which the reassessment would occur:

> [77] The Minister did not waive her duty to administer and enforce. Rather she has chosen to administer and enforce the Act by reaching an agreement whereby the Minister and the taxpayer agree that the assessment made for years 2006 and 2007 is complete, having concluded the audit and review of the taxpayer, with a specific focus on the straddling transactions of those two years. The Minister has no choice: she "shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interests and penalties, if any …" (ss 152(1) of the *ITA*). This has been done and there is no indication that the assessment already conducted has not been done in accordance with the facts and the law. The effect of the contract is not even that the Minister, through her own agreement, has committed to never reassess the taxpayer with respect to the 2006-2007 straddling transactions. She merely agreed to reassess only where the taxpayer has breached his obligation under the contract and where the fact pattern that was found to reach the conclusion in the initial assessment changes in the future. Section 220 of the *ITA* requires that the Minister administer and enforce the *ITA*. That section does not mandate how the statute must be administered and enforced, and how the powers are to be used.

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[32] The Respondent argues that *Rosenberg 2016* is distinguishable on its facts as in that case, the settlement occurred later in the process after reassessment, while here, the alleged agreement relates to correspondence at the objections stage, before confirmation of assessment.

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[33] As noted by the Federal Court of Appeal in *Hillier v Canada (Attorney General)*, 2001 FCA 197 at paragraph 13, the purpose of the requirement "with all due dispatch" is "primarily to protect the individual taxpayer by bringing certainty to his financial affairs at the earliest reasonably possible time". While the language indicates a requirement for the Minister to act within a reasonable period, there is no rigid time limit provided in the statute. Rather, the length of time will vary in the circumstances of each case.

[34] In my view, the language of subsection 165(3) of the ITA is not sufficient on its own to make the determination that there could not be any implication on the timing of the assessment flowing from the Alleged Abeyance Agreement.

[35] The Respondent also raises an issue with the terms of the alleged agreement. It contends that unlike in *Rosenberg 2016* where there were formalized contractual terms that were binding on each of the parties setting out the consideration for the agreement (see *Rosenberg 2016* at paragraph 17), no consideration was exchanged to make the Alleged Abeyance Agreement binding here.

[36] However, to make this argument, the Respondent relies heavily on the evidence filed by the Applicant to provide context and to add further details relating to the correspondence exchanged between the Applicant and the CRA.

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[37] As a general rule, affidavits are not admissible in support of a motion to strike an application for judicial review. A respondent who brings such a motion must be able to identify an obvious and fatal flaw in the notice of application itself. If a flaw can only be shown with the assistance of affidavit evidence, it cannot be considered obvious: *JP Morgan* at paras 51-52.

[38] As stated by Justice Bédard in the decision from the related motion to strike in *Rosenberg v Canada Revenue Agency*, 2015 FC 549 [*Rosenberg 2015*] "[i]t is not up to the Court, at this stage in the proceedings, to interpret the Agreement, or to rule on the binding nature and, if applicable, the scope of the Agreement" (at para 41).

[39] The interpretation of documents and determination of whether there was a binding agreement and if so, its terms, is a merits-based assessment. In my view, findings on these issues are not clear from the face of the Application. Thus, I cannot conclude that the application discloses no reasonable cause of action based on the Respondent's first argument.

B. *Does section 18.5 of the Federal Courts Act bar the Application?*

[40] Pursuant to section 18.5 of the *Federal Courts Act* if an Act expressly provides for an appeal to the TCC from a decision or order, that decision or order is not, to the extent that it is

appealed, subject to review, or to be restrained, prohibited, removed, set aside, or otherwise dealt with, except in accordance with that Act.

[41] Subsection 169(1) of the ITA provides for a right of appeal to the TCC from a confirmation of assessment.

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[42] Pursuant to subsection 171(1) of the ITA, when disposing of an appeal of an assessment, the TCC may: (a) dismiss the appeal; or (b) allow the appeal, by either (i) vacating the assessment, (ii) varying the assessment, or (iii) referring the assessment back to the Minister for reconsideration and reassessment. As highlighted earlier, subsection 225.1(5) of the ITA provides the Minister with extended collection powers once a judgment has been rendered on a “test case”, where the issue on appeal is the same or substantially the same as the issue raised in the taxpayer’s objection or appeal.

[43] The confirmation of the 2014 and 2015 assessments in this case has been appealed to the TCC. The Respondent argues that staying the TCC proceedings in respect of these assessments until after the appeal of the 2012 and 2013 assessments would give the Applicant the relief it seeks. It argues that section 18.5 of the *Federal Courts Act* is invoked, and that the Applicant therefore cannot pursue a judicial review in this Court. The Respondent cites to *Canada (Attorney General) v Webster*, 2003 FCA 388 [*Webster AG*] where the Federal Court of Appeal stated at paragraph 19:

> [19] Pursuant to subsection 169(1) of the *Income Tax Act*, the decision of an appeals officer under subsection 165(3) of the *Income Tax Act* to confirm an assessment may be appealed to the Tax Court of Canada. It follows, according to subsection 18.5 of the *Federal Court Act*, that the decision to confirm cannot be the subject of an application for judicial review in the Federal Court [.]

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[44] As noted by the Applicant, there is a difference between the product and the process of determining a taxpayer's liability. An assessment is the amount of tax at issue, not the process that resulted in the determination of that amount: *Dow Chemical Canada ULC v Canada*, 2024 SCC 23 at para 44, citing *Okalta Oils Ltd v Minister of National Revenue*, 1955 CanLII 70 (SCC) at 825-826; see also *Milgram Foundation v Canada (Attorney General)*, 2024 FC 1405 [*Milgram*] at paras 43-46 (appeal to the FCA pending). While the TCC is the appropriate forum to challenge the assessment itself, a judicial review in the Federal Court is the forum for challenging the Minister's discretionary decisions, including the Minister's conduct or process leading to the tax assessment: *Milgram* at para 46.

[45] As stated by the Supreme Court of Canada [SCC] in *Iris Technologies Inc v Canada*, 2024 SCC 24 [*Iris*] at paragraph 9, "the Tax Court is not a one-stop judicial shop for resolving tax disputes". If there are allegations of improper purpose or reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness, this may be appropriate subject-matter for judicial review (*Iris* at para 41, citing to *JP Morgan* at para 83; *Spennie Holdings Inc v Canada (Attorney General)*, 2025 FC 1381 [*Spennie*] at para 18 (appeal to the FCA pending)), unless an adequate, effective recourse is available elsewhere (*JP Morgan* at paras 84-88).

[46] In *Iris*, the SCC found that in the circumstances of that case the TCC could provide an "adequate, curative remedy" for allegations that the CRA breached procedural fairness. While the Applicant argued that the essential character of the application was a challenge to the conduct of the Minister on administrative law principles and not the product of the assessment, the Court

found Iris' claim was grounded in the timing of the assessment and the consequential failure to provide the taxpayer with an opportunity to respond to any of the Minister's proposed adjustments. It found that Iris would have an opportunity to respond to these aspects in the appeal before the TCC: *Iris* at paras 36-37.

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[47] In *Webster AG,* the Federal Court of Appeal similarly found that an alleged breach of procedural fairness in the objection/confirmation process was ancillary to the correctness of the assessment such that a finding by the TCC on appeal would be dispositive of the procedural issue (at paras 20-21):

> [20] Counsel for Mr. Webster argued that if the Federal Court is not permitted to consider Mr. Webster's application for judicial review, he will have been deprived of a fair hearing of his objection. It is perhaps more accurate to say that once the objection process was complete, Mr. Webster was deprived of an opportunity to argue in the Federal Court, through a judicial review application, that the Minister has an obligation to conduct the objection process fairly, and that the process followed in his particular case was unfair. However, Parliament has spoken on this matter. Whatever flaws there may have been in the objection process in Mr. Webster's case, it resulted in a decision that can be challenged in only one way, and that is by an appeal to the Tax Court.
>
> [21] I would add that the right to appeal an income tax assessment to the Tax Court is a substantial one. The mandate of the Tax Court is to decide, on the basis of a trial at which both parties will have the opportunity to present documentary and oral evidence, whether the assessments under appeal are correct in law, or not. If the assessments are incorrect as a matter of law, it will not matter whether the objection process was flawed. If they are correct, they must stand even if the objection process was flawed.

[48] In order to properly assess whether the Federal Court has jurisdiction in this matter, it is thus essential to determine the true purpose of the Application: *Iris* at para 50.

[49] In the Application, the Applicant alleges that:

> 28. The Minister's Reversal Decision is unreasonable and *ultra vires* because:
>
> (a) the Minister was bound by the Abeyance Decision and Agreement. The Abeyance Decision and Agreement is an enforceable agreement and, at a minimum, gives rise to the reasonable expectation that its terms will be respected;
>
> (b) the Minister arrived at the Reversal Decision in a manner that denied procedural fairness to the Applicant, namely by refusing to communicate in writing the Reversal Decision and its underlying reasons, thus denying the Applicant the right to be heard in rendering the Reversal Decision and, instead, insisting that the only subject matter that may be discussed is the Proposal Letter and the substantive tax aspects of the Abeyanced Objections set forth therein;
>
> (c) in any event, the Reversal Decision is not sufficiently justified, transparent or intelligible; and
>
> (d) the Minister failed in his duty to act fairly throughout the process.

[50] As noted earlier, the Applicant seeks to set aside the Alleged Reversal Decision, direct the Minister to abide by the terms of the Alleged Abeyance Agreement, and prohibit the Minister from taking any step or action in contravention of the terms of the Alleged Abeyance Agreement.

[51] In the proposed amendments to the Application, the Applicant further asserts that:

> 38 ~~37.~~ The Minister's conduct culminating in the issuance of the Notice of Confirmation is abusive, reprehensible, unreasonable and ultra vires because:
>
> (a) the Minister was bound to respect the terms of the Abeyance Agreement, the main purpose of which was to suspend the treatment of the Abeyanced

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> Objections until the final adjudication of the Lead Case Appeals already proceeding before the TCC;
>
> (b) the issuance of the Notice of Confirmation was made further to (and the consecration of) the Reversal Decision, which itself is unreasonable and *ultra vires*;
>
> (c) the Minister breached the terms of the Abeyance Agreement in bad faith and for an improper purpose;
>
> (d) the Minister failed to treat the Applicant in the same manner as other similarly situated taxpayers; and
>
> (e) the Minister, by issuing the Notice of Confirmation precipitately while duly informed of the filing of the Application, acted in a way that interferes with the orderly administration of justice and that impairs the authority of this Court.

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[52] The Applicant seeks to: (i) set aside the confirmation of the 2014 and 2015 assessments and send the matter back for determination in accordance with the Alleged Abeyance Agreement; (ii) quash the Notice of Confirmation; (iii) declare the parties bound by the Alleged Abeyance Agreement; (iv) declare that the Minister's resumption of the processing of the objections and the subsequent confirmation of the 2014 and 2015 assessments were made in contravention of the terms of the Alleged Abeyance Agreement; (v) declare the Notice of Confirmation in violation of the Alleged Abeyance Agreement; and (vi) stay the proceedings before the TCC until a date that is 30 days after the date on which the alleged "Lead Case Appeals" are finally adjudicated.

[53] In my view, the essential character of the Application (whether in its current form or as amended) is one of contract and of timing. It is a challenge to the Minister's determination to move forward with the objections to the 2014 and 2015 assessments despite the Alleged

Abeyance Agreement. The relief sought is primarily in contract and relates to enforcement of the Alleged Abeyance Agreement, although various declarations are also sought.

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[54] The Federal Court of Appeal has stated that where allegations are for a breach of agreement, the alleged reprehensible conduct may be redressed by means other than an application for judicial review, for example, by an action for breach of contract. Whether this constitutes an adequate, effective recourse depends on the circumstances of the particular case: *JP Morgan* at para 89.

[55] The Applicant asserts that this is a novel situation. It argues that there are no cases which have directly addressed the jurisdiction of the Court to enforce an abeyance agreement at the objections stage. It points to the decisions in *Rosenberg 2015/2016* and *Milgram* as those closest to the present situation.

[56] In each of *Rosenberg 2015* and *Milgram,* the Court refused a motion to strike, albeit for different reasons.

[57] The proceeding in *Rosenberg 2015*, involved an audit and a request made by the Minister for certain documents and information pursuant to section 231.1 of the ITA. The applicant alleged that there was a binding agreement that limited the extent of audit powers the Minister could exercise under the ITA. Although there were no decisions from the Federal Court on the validity of such agreements, the Court found that the issue was important to the parties, and it

was not plain and obvious that the Applicant would be unsuccessful in their allegations. As there was no reassessment in issue, there was no dispute as to possible jurisdiction of the TCC.

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[58] In *Milgram*, Justice Go found the essential character of the application to be focussed on the Minister's discretionary conduct and the process that led to reassessment, not on the reassessment that had taken place. As such, she found the application's subject-matter fell within subsection 18.1(1) of the *Federal Courts Act*:

> [24] The Applicant also references Associate Judge [AJ] Steele's following observation in her April 13, 2022 order dismissing the Respondents' motion to strike the Applicant's judicial review application:
>
> > [40] While Rosenberg 2015/2016, as well as other cases cited by Milgram (eg: *Sifto; Canada v CBS Canada Holdings Co*., 2020 FCA 4), are factually different, this does not, in my view, preclude the application of the broader principle that the Federal Court has jurisdiction to entertain matters relating to the existence, scope and legality of an agreement between the Minister and a taxpayer.
>
> [25] I come to the same conclusion as AJ Steele, albeit on different grounds. I find that because the Applicant is challenging the Minister's conduct or process that led to the proposed reassessment, and not the proposed reassessment itself, the Applicant is raising a matter that falls within subsection 18.1(1) of the *Federal Courts Act*. I also find that the FCA's decision in *Prince FCA* does not stand for the proposition that all proposal letters are non-reviewable decisions. Instead, whether or not there is a reviewable matter arising from a proposal letter must be determined in the context of that case.

[59] In that case, the Voluntary Disclosure Program [VDP] that relies on subsection 220(3.1) of the ITA was central to the issues in the proceeding. As described at paragraph 17 of *Milgram*, the VDP is "a relief mechanism that allows the Minister to use her <u>discretion</u> to waive or cancel

some or all penalties or interests that would otherwise be payable under the ITA, where a taxpayer voluntarily reports any errors or omissions in their dealings with the CRA" [emphasis added].

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[60] Here, the Applicant has not pointed to any express discretionary provision. Rather, the act in question relates to an alleged obligation arising as a matter of agreement between the parties.

[61] The Applicant asserts that the status of the Alleged Abeyance Agreement should be restored and the confirmation of the 2014 and 2015 assessments withdrawn. It argues that a stay of the appeal of the assessments in the TCC cannot provide the relief sought nor achieve the same effect as enforcing and restoring the agreement.

[62] I agree that the enforcement of an agreement between parties falls outside the TCC's jurisdiction. As stated in *Marine Atlantic Inc v The Queen*, 2016 TCC 46 at paragraphs 40-44:

> [40] In reply argument, the respondent clarified that her request to bind Marine to the Agreement is based on the Court's inherent jurisdiction to control its processes. The respondent argued that Marine's abeyance request was made and granted by the Court based on the understanding that the issues in Marine would be resolved by the BCF Decision.
>
> [41] In *Garber*, the Court states that the "Court has jurisdiction to enforce its own rules, insist on standards of fairness, and prevent an abuse of its process." Bowman C.J. (as he then was) accepted that the Court has an inherent jurisdiction to control its own processes but found that does not extend to settlement negotiations outside of a pre-trial conference. This decision was upheld by the Federal Court of Appeal.
>
> [42] A declaration that Marine is bound by the Agreement can only be justified if the Court's inherent jurisdiction to control its own process extends to an agreement between the parties to hold an appeal in abeyance.

> [43] In *Webster v Canada (Minister of National Revenue – MNR)*, 2003 FCA 442, 2003 DTC 5729 (FCA) [*Webster*], Rothstein J. (as he then was) stated that an agreement to hold an objection or appeal in abeyance under subsection 221.1(5) of the *ITA* "is not an agreement whereby the Minister and the taxpayer are necessarily bound by the decision in the other action. The taxpayer is not precluded from filing an appeal or continuing with an appeal irrespective of the decision in the other action." Rothstein J.'s comments indicate that an abeyance does not in itself bind the parties to the decision in another appeal. The agreement to be bound by a decision in another appeal is an agreement between the parties, external to the Court's processes.
>
> [44] Similarly, I find that the Court's granting of the abeyance did not bind Marine and the respondent to the BCF Decision. The Agreement to be bound by the BCF Decision was between the parties and external to the Court's processes. I dismiss the respondent's motion on this aspect.
>
> [Footnotes removed]

[63] However, the problem I have with the Applicant's argument is that the proverbial horse has already left the barn. The Alleged Abeyance Agreement in question here arose during the objections stage, before confirmation of the 2014 and 2015 assessments. Now that the Notice of Confirmation has been issued, the assessments confirmed, and an appeal filed, there is no practical purpose for restoring the Alleged Abeyance Agreement and section 18.5 of the *Federal Courts Act* prohibits any consideration of the confirmation of assessment outside the TCC.

[64] While the Applicant raises procedural issues, any procedural issues relating to the timing of the assessment can be dealt with by the TCC (*Iris* at paras 36-37) and any issues relating to the handling of the notices of objection have become ancillary (*Webster AG* at paras 20-21).

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[65] In *Spennie*, Associate Judge Horne recently commented on the very narrow and limited exceptions for allowing judicial review in the face of alternative remedies:

> [30] The fact that an alternative is not preferable or has disadvantages does not mean it is unavailable or inadequate. I cannot agree that these applicants, or applicants generally, are left without a remedy if they are obliged to bring appeals in the Tax Court. Such proceedings may be expensive and public, but that does not mean that they are inadequate or that any defects in the assessment cannot be cured in the Tax Court.
>
> [31] The applicants also make a compelling argument that, if the notices of application are struck, the conduct of the Minister during the objection process will be immune from judicial scrutiny. In circumstances of abusive conduct, the Minister would not be held to account, and the confirmation process could be reduced to a box checking exercise.
>
> [32] The appeal path to the Tax Court was a decision made by Parliament. The Court cannot pick up the legislator's pen and create a parallel course of judicial review. Also recall that there may be circumstances where allegations of improper purpose can be subject to judicial review. Neither *Iris* nor *JP Morgan* completely preclude judicial review in matters involving tax assessments, rather indicate that there may be narrow and limited exceptions where that procedure is available. I am therefore not satisfied that the objection process is entirely immune from judicial scrutiny.

[66] Like in *Spennie*, here I appreciate the Applicant's argument that an abeyance agreement becomes meaningless unless a party can move to enforce it and there are consequences for its breach. However, it must be emphasized that judicial review is a process of last resort: *JP Morgan* at paras 81-89, 101.

[67] Although restoring the Alleged Abeyance Agreement is the Applicant's preferred remedy, here the Applicant can move in a Superior Court of the province to seek damages for

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breach of contract. In doing so, it would be in the right court to consider whether a binding agreement existed and if so, whether it was frustrated.

[68] With respect to the declaratory relief contemplated in the Applicant's amendments, I also find that it will serve no practical purpose now that the 2014 and 2015 assessments have been confirmed and an appeal with the TCC filed. As stated by Justice Rennie in *Canada (Attorney General) v Iris Technologies Inc*, 2022 FCA 101 at paragraph 18, cited with approval by the SCC in *Iris* at paragraph 58:

> [18] A declaration is a prerogative remedy and hence discretionary. One consideration in the exercise of that discretion is whether the declaration will have any real or practical effect (*Metro Vancouver Housing*, at paragraph 60). Here, even assuming the Federal Court had jurisdiction to review the purpose behind the decision to assess, a declaration should not issue. The assessment remains valid and binding until vacated by the Tax Court. Issuing a declaration that does not quash or vacate the assessments would serve little or no purpose (*Johnson*, at paragraph 41). Nor will a declaration be issued where there exists an adequate alternative remedy. The declarations here will have no practical effect—they are purely academic.

[69] As emphasized by the SCC in *Iris* at paragraphs 57-58, a declaration must settle a "live controversy" between the parties; it can only be granted if the notice of application discloses a practical utility for the declaration:

> [57] In this case, however, Iris's notice of application discloses no basis on which to conclude the declarations sought could ever have any practical utility. The notice of application merely states that "[t]he declaration sought will have import in the Minister's ongoing actions in relation to the applicant, including the applicant's application for emergency wage subsidy" (A.R., at p. 43).
>
> [58] It is settled law that "[a] declaration can only be granted if it will have practical utility, that is, if it will settle a 'live controversy' between the parties" (*Daniels v. Canada (Indian*

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> *Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99, at para. 11). No such live controversy was disclosed here. Rennie J.A. observed that in this instance, "[i]ssuing a declaration that does not quash or vacate the assessments would serve little or no purpose" (para. 18). He added that a declaration will not be issued "where there exists an adequate alternative remedy" (*ibid.*). Declarations with no practical effect will not issue, and a claim seeking such declarations cannot therefore succeed. This is another basis for which the Federal Court of Appeal rightly struck Iris' application for judicial review.

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[70] In this case, the Application in its proposed amended form does not assist, particularly in view of the appeal in the TCC that is now pending. The assessments have been made and must be dealt with in the TCC. The declarations requested would not serve to quash or vacate the assessments, which is outside the Federal Court's jurisdiction: *Johnson v Canada*, 2015 FCA 51 at para 41.

[71] Pursuant to subsection 26(d) of the *Tax Court of Canada Rules (General Procedure)* SOR/90-688a, an applicant can seek to hold an appeal in abeyance where the TCC determines that doing so would be in the interests of justice. Staying the appeal of the 2014 and 2015 assessments in the TCC until after the determination of the 2012 and 2013 appeal proceedings would effectively serve the same down-stream purpose as the Alleged Abeyance Agreement. To the extent there is similarity between the 2014 and 2105 assessments and those for 2012 and 2013, it will inform the correctness of the 2014 and 2015 assessments. While a stay is not guaranteed, the TCC, which is a specialized court, is well positioned to evaluate whether any similarity exists.

[72] For all these reasons, I agree with the Respondent that an adequate alternative remedy can be obtained through a stay of the TCC proceedings and if desired, an action for breach of contract. As such, the application for judicial review should be dismissed.

[73] In view of these findings, there is no need to separately consider the Applicant's proposed amendments.

V. **Costs**

[74] At the hearing I asked the parties for their submission on costs.

[75] The Applicant asserted that if it was not successful on the motion to strike, as the motion raised a novel issue, no costs should be awarded or at most costs should be limited to those calculated in accordance with column III of Tariff B. The Respondent agreed that column III of Tariff B was the right scale for whoever won the motion and stated that this totalled $4,000. I agree this amount is appropriate in the circumstances.

[76] With respect to the motion to amend, it is my view that costs must similarly flow to the Respondent. The Respondent asked for an award of $1,300 in line with column III of Tariff B. It argues that no costs should be awarded for the Second Motion as it simply was intended to replace the earlier motion materials. I again agree with these submissions.

[77] A total costs award of $5,300 shall accordingly be awarded to the Respondent.

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ORDER IN T-1973-25

THIS COURT ORDERS that:

1. The motion to strike is granted, the application is struck, and the proceeding is dismissed accordingly.

2. The motion to amend the notice of application is dismissed.

3. Costs are awarded to the Respondent in the amount of $5,300.

"Angela Furlanetto"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1973-25
STYLE OF CAUSE:	INGREDION CANADA CORPORATION v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 24, 2025
ORDER AND REASONS:	FURLANETTO J.
DATED:	NOVEMBER 19, 2025

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