Federal Court  Cour fédérale

**Date: 20260327**

**Docket: T-961-24**

**Citation: 2026 FC 408**

**Ottawa, Ontario, March 27, 2026**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**JWALANTKUMAR PATHAK**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondents**

# SUPPLEMENTARY JUDGMENT AND REASONS

## I. Overview

[1] This Supplementary Judgment and Reasons address costs of the within application for judicial review of a decision by a delegate of the Minister of National Revenue [the Minister] dated March 27, 2024 [the Decision], denying the Applicant's request for relief under subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [the ITA], against arrears interest and penalties imposed pursuant to subsection 163(2) of the ITA as a result of the Applicant's failure to report taxable capital gains [the Application]. On December 23, 2025, the Court

released its Judgment and Reasons in *Pathak v Canada (Attorney General)*, 2025 FC 2020, which dismissed the Application [the Judgment].

[2] This decision will also address costs of a motion filed by the Applicant on January 15, 2026 [the Motion], requesting that the Court reconsider the Judgment under Rule 397(1)(b). On February 5, 2026, the Court issued an Order dismissing the Motion [the Order].

[3] For the reasons below, costs of the Application are awarded to the Respondent, quantified at $7740.00. Costs of the Motion, which the Order awarded to the Respondent, are quantified at $1260.00.

## II. **Background**

[4] In relation to the 2019 and 2020 taxation years, the Canada Revenue Agency [CRA] reassessed the Applicant's taxes on March 2, 2023, due to the Applicant having failed to report taxable capital gains in 2019 and 2020 arising from the disposition of shares [the Interim Reassessments]. The Interim Reassessments also imposed arrears interest and penalties pursuant to subsection 163(2) of the ITA.

[5] The Applicant has asserted the position that he had originally reported his income incorrectly because the financial institutions through which he invested failed to provide him with T5 information sheets for the 2019 and 2020 taxation years, such that he was unable to report the gains on his investments when filing his tax returns. The Applicant asserted that, because his investments were on a downward trend, he had estimated when filing his returns that there would ultimately be very little or no tax owing.

[6] On March 12, 2023, the Applicant submitted to the Minister a request to cancel or waive the penalties and interest assessed for the 2019 and 2020 taxation years, pursuant to subsection 220(3.1) of the ITA, which provides the Minister discretion to waive or cancel any penalty or interest otherwise payable under the ITA [the Relief Request]. The Applicant asserted that he had not received the relevant T5s from his stockbroker before filing his returns, that he was a responsible citizen and devoted family man who had been facing financial difficulties due to unforeseen circumstances, and that he was unable to keep up with his tax payments due to a series of unfortunate events including a significant loss in the stock market creating a severe financial setback and the poor health of his father.

[7] On August 4, 2023, the Minister denied the Relief Request. In the meantime, the Applicant became aware in 2023 that he had access to his T5 data through the CRA and identified 80 tax slips related to the relevant investments. He then hired an accountant and refiled his tax returns, taking into account large capital losses that he had incurred. As a result, on June 22, 2023, the CRA reassessed the Applicant for the 2019 and 2020 taxation years [the Final Reassessments], and the applicable taxes were substantially reduced and the interest was somewhat reduced. However, the penalties were not adjusted and the bulk of the interest remained applicable.

[8] On August 15, 2023, the Applicant submitted a second-level request for relief under subsection 220(3.1) of the ITA for the 2019 and 2020 taxation years. The Applicant asserted that the major capital losses he had incurred had impacted his well-being and job security and provided further details about his financial circumstances, including being laid off from his job for six months during the COVID-19 pandemic and bearing substantial debt. In addition to his financial situation, the Applicant emphasized that the penalties and interest he had been assessed

were calculated based on the tax amounts for which he had earlier been assessed in the Interim Reassessments. The Applicant argued that it would be fair for the penalties and interest to align with the lesser tax amount for which he had subsequently been reassessed in the Final Reassessments.

[9] In a letter dated March 27, 2024 [the Decision Letter], the Minister denied the second-level review request for the Applicant's 2019 and 2020 taxation years.

[10] The Decision Letter included the following reasoning:

> You stated that you missed providing your capital gain income on your 2019 and 2020 tax returns because your stockbroker did not provide you with any physical documents. Although not having all documents needed to file may cause challenges, you had the option to reach out to your stockbroker to obtain this missing information. There are no records that indicate you reaching out to your stockbroker, nor to the Canada Revenue Agency (CRA), to request the required information before filing. I have determined that you did not exercise reasonable care to make efforts to obtain your investment income amounts, in order to file accurately.
>
> Also, you stated that you later had capital losses, which is unfortunate. However, it is your choice to invest in the stock market, at your own risk. The loss of value in investments and the lack of effort to resolve any missing information needed to file your return correctly were not completely out of your control. Relief is not warranted on the basis of these circumstances.
>
> Additionally, you told us that you were laid off from your job for six months, from March 2020 to September 2020, during the Covid-19 pandemic. In consideration of the pandemic, the CRA did not charge interest from March 18, 2020 to September 30, 2020, which is the same period of time that you were affected. Therefore, relief cannot be granted under the reason of natural or man-made disasters, for the period of time that interest did not accrue.
>
> Lastly, I have reviewed and taken into consideration the financial documents you submitted to us, the information on our systems, and our telephone conversation from February 15, 2024. I have determined that you earned sufficient income in both years, to be

> able to pay taxes owing when due and payable. You also had the financial ability to contribute to your Registered Retirement Savings Plan (RRSP) in both years under review. I can also see that you have chosen to prioritize other creditors over your tax debt, by making more than the monthly minimum payment amount required. According to your statements, you have paid the majority of your creditors in full, each month, rather than paying more towards your taxes owing. You also have funds in your RRSP account, available balances in your bank accounts, and assets. Financial hardship is not supported.
>
> Therefore, the relief of the provincial and federal omissions penalties and arrears interest for the 2019 and 2020 tax years, is denied, on the basis of financial hardship/inability to pay, natural or man-made disasters and other circumstances.
>
> Please note that your request for your tax returns to be re-evaluated, based on the updated information and calculations that you provided in your supporting documents for this review, may be addressed by contacting the CRA's general enquiries line at 1-800-959-8281.

[11] By Notice of Application dated April 26, 2024, the Applicant commenced the Application seeking judicial review of the Decision, asserting both that the Decision was unreasonable and that the Applicant had been deprived of procedural fairness. Similarly, in the Applicant's Memorandum of Fact and Law dated April 8, 2025, and filed as part of the Application Record, the Applicant raised both reasonableness and procedural fairness arguments.

[12] The parties argued the Application on November 13, 2025, and on December 23, 2025, the Court released its Judgment, which dismissed the Application and, at the parties' request, reserved the Court's decision on costs to be adjudicated following completion of a process for the parties to provide written submissions thereon. The Respondent filed such submissions on January 8, 2026. The Applicant did not at that time file responding submissions on costs.

[13] In the course of its analysis, in paragraphs 22 to 23 of the Judgment, the Court identified as follows the issues to be adjudicated in the Application (and the relevant standard of review):

> 22. Counsel also explained that the CRA has accepted the Applicant's communications with CRA, in support of his request for subsection 220(3.1) relief, as objections for purposes of challenging the correctness of the CRA's assessments of the Applicant in relation to the 2019 and 2020 taxation year and, if necessary, appealing the assessments to the Tax Court. The Applicant had previously been advancing arguments to the effect that, in responding to his request for subsection 220(3.1) relief, the Minister was obliged to decide whether his request constituted a valid objection, consider granting an extension of time to make a valid objection, and/or forward the request to those within the CRA who were charged with considering objections to the correctness of an assessment. As such, the CRA's acceptance of the Applicant's communications with the CRA as objections has further reduced the number of issues to be determined by the Court in this judicial review, including eliminating a procedural fairness argument that the Applicant had advanced.
>
> 23. Although the Applicant still asserts a number of arguments in challenging the Decision, which I will address below, these remaining arguments all require the Court to assess whether the Decision is reasonable. As suggested by this articulation, the merits of the Decision are to be assessed on the reasonableness standard of review, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 16 to 17.

[14] On January 15, 2026, the Applicant filed the Motion, returnable in writing under Rule 369 of the *Federal Courts Rules*, SOR 98-106 [the Rules], seeking reconsideration of the Judgment on the basis that the Court had overlooked or accidentally omitted the Applicant's prayer for relief concerning procedural fairness, as well as seeking an extension of the deadline in the Judgment for filing submissions on costs. The Applicant argued that the Court overlooked a particular procedural fairness argument, that the Minister failed to follow a process pursuant to which the Relief Request would first be considered as an objection to the correctness of the

relevant reassessments and, only then, given consideration as to whether there were other residual discretionary grounds for relief [the Procedural Fairness Argument].

[15] The Applicant's Motion Record consisted of his Notice of Motion and Written Representations, with arguments focusing on the portion of the Reasons quoted above. In reciting facts in support of his arguments, the Applicant's Written Representations included the following paragraphs:

> 11. Prior to the hearing, the CRA conceded that the Relief Requests were, in fact, valid objections, and agreed to treat them as such. Counsel for both parties jointly provided this update at the hearing.
>
> 12. A corollary of this admission is that the decision maker was incorrect to assume the Relief Requests were not valid objections on the basis that she did.

[16] On January 22, 2026, the Respondent filed its responding Motion Record, consisting of solely its written representations (and a supporting authority), opposing the Motion other than the Applicant's request for an extension of time to file submissions on costs. The Respondent's recitation of facts relevant to this Motion included the following paragraphs:

> 2. One of the three issues before the Court was whether the Applicant's request should have been forwarded to the Appeals Branch of the Canada Revenue Agency (CRA) for consideration as an objection to the assessment. The relief sought included an order to that effect.
>
> 3. After initiating the judicial review, the Applicant served the Minister with a notice of objection to the penalties and interest, attaching his prior correspondence with the CRA concerning taxpayer relief. The Minister accepted the objection and agreed to reconsider the assessment.
>
> 4. The Applicant has characterized the Minister's decision to accept the objection as a concession made prior to the hearing. The Respondent does not accept this characterization, which is not made out on the record. Nor does the Minister's acceptance of the

> objection amount to an admission that it was an error for the Minister's delegate to treat the taxpayer relief request according to its stated purpose.
>
> 5. At the outset of the hearing of the judicial review application, counsel informed the Court that the Applicant's objection had been accepted and that, as a result, he retained his right to appeal to the Tax Court of Canada.

[17] The Applicant subsequently filed his Reply, which included not only written representations as contemplated by Rule 369(3) but also an affidavit affirmed on January 23, 2026, by a paralegal employed in the office of the Applicant's counsel [the Paralegal], for purposes of introducing as evidence in this Motion the following two documents [the Reply Affidavit]:

A. a September 25, 2024 communication from the Applicant to the CRA through its online portal, referencing the Relief Request as having disputed the validity of the CRA's reassessments for the 2019 and 2020 taxation years; and

B. a response from the CRA by letter dated May 9, 2025, stating that the part of the Applicant's objection that related to penalties was valid and was considered to have been filed on March 12, 2023, the date of the Relief Request.

[18] The written representations included in the Applicant's Reply identified as an issue the question whether the Court should permit the introduction of the new evidence. On January 29, 2026, the Respondent submitted to the Court a Respondent's Sur-Reply and shortly thereafter (to correct a typographical error) an Amended Respondent's Sur-Reply [the Sur-Reply], accompanied by a letter seeking the Court's leave under Rule 55 to file the Sur-Reply. This letter explained that the Sur-Reply consisted of written representations intended to respond to the fact

that the Applicant had sought to advance new evidence in his Reply. Consistent with that characterization, the Sur-Reply focused substantively upon the question whether the Court should permit the introduction of the new evidence. However, the Sur-Reply also asserted that the Applicant's effort to introduce the new evidence, in the context of what the Respondent submitted was an unmeritorious motion, had sufficiently delayed the resolution of the Application that an extension of time to file costs submissions may not be warranted.

[19] The Court issued a Direction on January 29, 2026, seeking the Applicant's position on the Respondent's request for leave to file the Sur-Reply. On January 30, 2026, in response to that direction, the Applicant filed a letter opposing the Respondent's request.

[20] In its subsequent Order dated February 5, 2026, the Court: (a) granted the Respondent's request for leave to file the Sur-Reply; (b) dismissed the Applicant's request for permission to rely on the Reply Affidavit; (c) dismissed the Motion, finding that Rule 397(1)(b) did not afford the Court jurisdiction to reconsider the Judgment on the basis that the Applicant requested; (d) extended the deadlines provided by the Judgment for the Applicant to provide his costs submissions and for the Respondent's cost submissions in reply; and (e) awarded the Respondent its costs of the Motion.

[21] Because neither party had made any submissions on the quantification of costs of the Motion, the Order also provided the Respondent an opportunity to furnish submissions on the quantification of those costs, following which the process contemplated by the Judgment would resume, through which process both response submissions by the Applicant and reply submissions by the Respondent on quantification of costs of the Motion could also be provided.

[22] The Respondent’s submissions on the costs of the Application had previously been filed on January 8, 2026, and on February 10, 2026, the Respondent filed its submissions on quantification of costs of the Motion.

[23] On February 17, 2026, the Applicant filed written submissions on costs of the Application (but not the Motion), supported by affidavit evidence. The Applicant also filed a letter of the same date [the Applicant's Letter], noting that he had appealed the Order and asserting that the Order was procedurally unfair, *inter alia* because the Order afforded the Respondent three pages for submissions on costs of the Motion without adding to the number of submission pages afforded by the overall process to the Applicant. The Applicant asserted that he was unable to speak to the costs of the Motion within his allocated page limit and, as he had appealed the Order (as well as the Judgment), took the position that the Court should rule on the costs of the Application without determining the costs of the Motion.

[24] On February 23, 2026, in the last step contemplated by the combination of the Judgment and the Order, the Respondent filed its reply submissions on costs of the Application, accompanied by a Bill of Costs related to the Application. Those submissions did not speak to costs of the Motion but did briefly respond to the Applicant's Letter, citing authorities in support of the Respondent’s position that the general practice was to determine costs of a proceeding notwithstanding that the merits of the matter were under appeal.

[25] On February 27, 2026, the Court issued a Direction, noting the Applicant's point that the Order had expanded the number of costs submission pages allocated to the Respondent without expanding the number of pages allocated to the Applicant. As the Court has not yet adjudicated the costs of the Application or the quantification of costs of the Motion, the Direction afforded

the Applicant a further opportunity to provide submissions on the quantification of costs of the Motion, followed by an opportunity for the Respondent to reply.

[26] On March 6, 2026, the Applicant filed his submissions on costs of the Motion, and on March 9, 2026, the Respondent filed its reply submissions.

## III. **Issues**

[27] The issues to be adjudicated by the Court in this Motion are as follows:

A. To which party, if any, should the Court award costs of the Application?

B. If the Court awards costs of the Application, how should those costs be quantified?

C. How should the Court quantify the costs of the Motion?

## IV. **Analysis**

### A. *To which party, if any, should the Court award costs of the Application?*

[28] In relation to the Application (excluding, for present purposes, the Motion), the Respondent argues that it should be awarded costs, relying on its success in responding to the Application and an assertion that certain conduct on the part of the Applicant tended to increase the duration of the proceeding. These are factors relevant to the Court's discretionary authority on costs pursuant to Rule 400(3).

[29] The Applicant takes the position that, notwithstanding the Respondent's success in the Application, the Court should award costs to the Applicant. In support of that position and again in reference to the factors identified in Rule 400(3), the Applicant relies on the result of the

proceeding (which the Applicant submits should be understood to be mixed); written offers to settle that the Applicant extended in the course of the proceeding; the public interest in litigating the issues in this matter; conduct on the part of the Respondent that the Applicant submits lengthened the proceeding; failure of the Respondent to admit facts and update the Court in relation to same; the Respondent taking what the Applicant submits was a vexatious and unnecessary step bringing an interlocutory motion to strike the Applicant's record; and (as another relevant matter) the Respondent confusing and complicating the issues in this Application by taking shifting and inconsistent positions in the course of the litigation.

[30] I will accordingly assess the application of each of the factors upon which one or both of the parties relies.

(1) Result of the proceeding

[31] On its face, the result of the Application, which the Court dismissed, favours the Respondent. However, citing paragraph 22 of the Judgment (reproduced earlier in these Reasons), the Applicant argues that, while the Respondent succeeded in arguing that the Decision was reasonable, the Court concluded that the Applicant's procedural fairness argument was eliminated because (at what the Applicant characterizes as the last minute) the Respondent was willing to consider the Relief Request as objections for purposes of challenging the correctness of the CRA's assessments of the Applicant in relation to the 2019 and 2020 taxation year and, if necessary, appealing those assessments to the Tax Court. On this basis, the Applicant submits that the result of the proceeding should be understood to be mixed, favouring no costs being awarded to either party.

[32] As reflected in paragraph 22 of the Judgment, as a result of CRA's acceptance of the Relief Request as objections to the correctness of its assessments, it became unnecessary for the Court to consider the Applicant's arguments to the effect that, in responding to his request for subsection 220(3.1) relief, the Minister was obliged to decide whether his request constituted a valid objection, consider granting an extension of time to make a valid objection, and/or forward the request to those within the CRA who were charged with considering objections to the correctness of an assessment. I agree with the Respondent's position that the elimination of issues as a result of the CRA accepting the Relief Request as objections, while reducing the number of issues to be determined by the Court in the Application, does not translate into a conclusion that the result of the proceeding was mixed.

[33] I therefore agree with the Respondent that this factor favours it receiving its costs.

(2) Written offers to settle

[34] Supported by affidavit evidence provided with his written submissions, the Applicant notes that he made multiple written offers to settle the Application. He argues that the Respondent largely failed to engage with these settlement attempts, militating against awarding costs to the Respondent, as the objectives of costs awards include the promotion of settlement (*Pharmascience Inc v Teva Canada Innovation*, 2022 FCA 207 [*Pharmascience*] at para 18). The Applicant notes that whether a party has responded to good faith efforts to end litigation, or rather has failed to respond to such efforts, may affect a costs decision (*Pharmascience* at para 21).

[35] Referencing those principles, the Applicant submits that the Respondent failed to consider his settlement offers seriously, even though the parties ultimately agreed on most of the

issues, and that, had the Respondent participated in settlement discussions, the Application may well have been settled before the hearing.

[36] In reply, Respondent argues that the Applicant's settlement offers proposed no meaningful compromise, as they required the Respondent to concede that the Decision under review was unreasonable.

[37] The Applicant's settlement position can be derived from its counsel's "without prejudice" letter dated October 15, 2024, attached to a second Affidavit of the Paralegal, affirmed on February 17, 2026 [the Paralegal's Affidavit]. That letter demonstrates that the settlement terms proposed by the Applicant would have required the Respondent to agree to remit the Applicant's request for subsection 220(3.1) relief to CRA for reconsideration. That was the principal remedy that the Applicant sought in the Application, which the Respondent opposed and which was ultimately denied in the Judgment.

[38] *Pharmascience* refers to considering whether a settlement offer addressed the essential matters in the litigation and contained significant compromise (at para 23). In addition to requiring reconsideration of the Applicant's relief request, his settlement offer would also have required the Respondent to refer his request to CRA's appeals division to be treated as a notice of objection. This latter remedy is the result to which CRA ultimately agreed prior to the commencement of the hearing of this Application. However, while that element of compromise was achieved, the Applicant's offer cannot overall be characterized as a significant compromise, as it proposed an outcome akin to that which would have resulted from the Court allowing the Application in full. I agree with the Respondent's position that this factor does not favour the Applicant.

(3) Public interest in litigating proceeding

[39] The Applicant submits that the Application was the first matter to raise the question whether CRA is required to consider the proportionality of a gross negligence penalty in relation to the alleged misconduct and that, although the Applicant was unsuccessful, the public interest in resolving this question favours costs not being awarded against him.

[40] In reply, relying on *Doherty v Canada (Attorney General)*, 2021 FC 695 [*Doherty*], Respondent argues that the Applicant is not a public interest litigant.

[41] Given the Applicant's substantial personal interest in the outcome of the Application, I agree with the Respondent that the Applicant cannot be characterized as a public interest litigant within the meaning of *Doherty*. That said, I would not necessarily consider a personal interest to eliminate the possibility that other public interests in the outcome of a piece of litigation could be relevant to a subsequent costs analysis. However, in the case at hand, I do not regard the fact that the Judgment may in some respects represent a decision of first impression to favour departing from the usual result of costs following the cause.

(4) Conduct of parties that lengthened the proceeding

[42] Each of the parties asserts that the other engaged in conduct that lengthened the litigation of the Application.

[43] The Respondent asserts that the Applicant's conduct of his written cross-examination of the Respondent's affiant tended to increase the duration of the proceeding, because it consisted of more than 130 questions, the bulk of which improperly sought irrelevant information (such as the affiant's salary) or treated the cross-examination at it as if it were an examination for

discovery by attempting to require the affiant to inform herself or to provide undertakings and/or documents.

[44] The Respondent also submits that the Applicant's decision to file an application record of more than 1000 pages, including duplicative and irrelevant material most of which was never relied upon or referred to by the Applicant or the Court, required the Respondent to spend unnecessary time reviewing that material and preparing its responding record.

[45] The Respondent, as the successful party in the Application, argues that this conduct by the Applicant should result in an elevated costs award against the Applicant in connection with certain assessable services under Table 2 of Tariff B of the Rules, in relation to the Applicant's cross-examination of the Respondent's affidavit and the Respondent's preparation of its response to the Applicant's record. (I will address the details of the Respondent's proposed costs calculations when addressing the quantification of costs under the next issue in this decision.)

[46] I am not convinced that the Applicant's conduct materially lengthened the proceeding. I agree with the Applicant's response that the Respondent's affiant refused to respond to many of the questions posed and that, in any event, any extra time incurred would have been limited because the examination was conducted in writing. In relation to the Respondent's position on the length of the Applicant's record, a party cannot always know when preparing its record as to exactly which evidence it will require in order to advance its positions or respond to those of the opposing party as the litigation advances. The Respondent has not convinced me that the length of the Applicant's record can be characterized as having materially lengthened the proceeding.

[47] The Applicant submits that it was the Respondent's conduct that unnecessarily lengthened this proceeding, in that it filed an incomplete Certified Tribunal Record [CTR], which also unlawfully disclosed sensitive personal information.

[48] The Respondent acknowledges that, following the production of the original CTR, it identified two additional documents which required production of a supplementary CTR. In relation to the steps taken to protect the personal information that was inadvertently disclosed, the Respondent notes that an Order the Court issued on December 22, 2025, directing the refiling of records with confidential information redacted as a remedy for this problem, did not award costs to either party.

[49] I appreciate that the Applicant argues that the CTR was missing documents other than the two that were subsequently produced through the supplementary CTR. However, as the Respondent submits, the Applicant did not pursue interlocutory relief on this point, and it is not the role of the Court to adjudicate that issue in the course of a costs determination. I consider this situation distinct from that which was addressed by Associate Judge Shannon in *Patahak v Canada (Attorney General)*, 2025 FC 1109 [the Shannon Decision], in which the Court held that the Respondent's concerns about the length of the Applicant's record should be addressed through methods including costs submissions rather than through seeking interlocutory relief (at paras 13,15). The Applicant has not convinced me that the introduction of the two additional documents through the supplementary CTR materially contributed to the length of this proceeding.

[50] With respect to the disclosure and subsequent protection of personal and confidential information, I note the Applicant's recognition that the Respondent's counsel did the bulk of the

work required to file the motion for that relief. While the Applicant submits that there was still substantial additional work for the Applicant's counsel to perform, I find little merit to his position that he should therefore be awarded costs of this Application regardless of its outcome, particularly taking into account the fact that Associate Judge Shannon ordered the relevant relief without an award of costs.

[51] I find this to be a neutral factor that does not favour either party.

(5) Failure of a party to admit anything that should have been admitted

[52] The Applicant submits that the Respondent should have earlier admitted the acceptance of the Applicant's Relief Request as objections to the correctness of CRA's assessments and updated the Court as to these facts. The Applicant notes that he filed his record on April 8, 2025, and that (relying on the Reply Affidavit, which the Applicant has filed in support of his costs submissions), the CRA's decision to accept the Relief Request as objections was made on May 9, 2025. However, the Respondent filed its record, including a memorandum of fact and law, on June 18, 2025, without referencing the CRA's acceptance of the objections. The Applicant submits that he was therefore forced to proceed as though the related issues in the Application were live until the morning of the hearing, warranting costs being awarded to the Applicant.

[53] In response to this argument, the Respondent submits that paragraph 400(3)(j) of the Rules, relating to failure to admit a fact that should have been admitted, is not applicable in the context of this application for judicial review. I understand the Respondent's point to be that Rules 255 and 256, which relate to admissions, are found within the Rules governing actions.

[54] In the absence of authority for the proposition that paragraph 400(3)(j) can only be engaged where Rules 255 to 256 are potentially applicable, I am not prepared to arrive at that conclusion. However, I am also not convinced that the Applicant's argument under this paragraph supports an award of costs in his favour.

[55] I do not understand the Applicant to be arguing, and in any event do not find that the record before the Court supports a conclusion, that he was unaware of CRA's decision to accept the Relief Request as objections. The Reply Affidavit states that the Paralegal's knowledge of the May 9, 2025 response letter from CRA, which conveyed that acceptance, was found in the Applicant's client file. Also, correspondence from the Applicant's counsel to the Respondent's counsel on July 21, 2025, included in the evidence supporting the Applicant's costs submissions, references CRA's acceptance of the Relief Request as objections, which CRA was proceeding to review.

[56] Moreover, I do not read the Respondent's memorandum of fact and law filed in the Application as taking a position inconsistent with the CRA's acceptance of the Relief Request as objections. I find nothing in this aspect of the litigation that would support a conclusion that the Applicant should be awarded costs of the Application notwithstanding that the Respondent was the successful party.

(6) Improper, vexatious or unnecessary steps

[57] The Applicant refers to the Respondent's filing of the interlocutory motion to strike the Applicant's record, resulting in the Shannon Decision in which Associate Judge Shannon remarked on the requirement to conduct litigation in a professional and collegial manner (at para

15). The Applicant submits that the motion to strike was vexatious and unnecessary, militating in favour of awarding costs to the Applicant rather than to the Respondent.

[58] The Respondent notes that the Shannon Decision did not order costs to either party, as neither party was successful (at para 16). Associate Judge Shannon's comment about neither party being successful relates to the fact that, in addition to dismissing the Respondent's motion, the Shannon Decision also dismissed an informal request by the Applicant to remove the Respondent's motion from the Court file (at para 14). I read Associate Judge Shannon's comments on the obligation to conduct litigation in a professional and collegial manner to be directed at counsel for both parties (at para 15).

[59] I find that this factor does not favour either party.

(7) Other relevant matters

[60] Finally, the Applicant argues that the Respondent confused and complicated the issues in this Application by taking shifting, inconsistent positions during the litigation.

[61] The Applicant submits that, after the Respondent filed its record, taking the position that the Federal Court did not have jurisdiction to consider penalty relief, CRA contacted the Applicant's representative to advise that his objections would be placed on hold pending the outcome of the Application. He submits that, without further warning, CRA then confirmed the assessments, partly on the basis that the Application was pending before the Federal Court, which the Applicant argues appeared to be contrary to the jurisdictional position taken in the Respondent's factum.

[62] The Applicant further submits that the Respondent's counsel refused to discuss this apparent inconsistency with the Applicant's counsel, instead admonishing the Applicant's counsel for communicating directly with CRA (which, the Applicant notes, had initiated that communication). The Applicant argues that this all resulted in additional time necessary to determine the Respondent's position, including substantial confusion surrounding the requisition for a hearing.

[63] The Applicant also repeats a version of the submission canvassed above under the admissions factor (i.e., failing to admit and advise the Court at an early date as to CRA's acceptance of the Applicant's Relief Request as objections), which the Applicant submits forced the Applicant to bring the Motion for reconsideration. The Applicant further submits that the Respondent again shifted its position during the course of the Motion for reconsideration, prolonging the process, and that he was deprived of any substantive decision concerning the Procedural Fairness Argument that was the subject of that Motion. The Applicant argues that this factor favours awarding costs to him regardless of the outcome of the Application.

[64] The Respondent disputes the Applicant's assertion that its position shifted in the course of the litigation. The Respondent submits that its position in the litigation was to oppose an order from the Federal Court that would have required the Minister to accept the Applicant's relief requests as objections, circumventing the statutory scheme applicable to the correctness of assessments that lies outside the jurisdiction of the Federal Court. The Respondent further argues that, by asking the Minister to accept his relief request as objections, the Applicant has now availed himself of the correct procedure under subsection 165(6) of the ITA, which is an outcome consistent with the Respondent's position.

[65] I will consider the Applicant's arguments surrounding the Motion for reconsideration, and its assertion that Respondent advanced shifting positions therein, when addressing the quantification of costs of the Motion later in these Reasons. I have already considered and rejected the Applicant's arguments surrounding the Respondent's conduct in relation to CRA's acceptance of the Relief Request as objections.

[66] As for the Applicant's arguments surrounding the Respondent's position on the Federal Court's jurisdiction, I note that the Paralegal's Affidavit provides the following transcription of a July 11, 2025 message left by a CRA appeals officer on the voicemail of the Applicant's counsel:

> Hello Bhuvana, my name is Pierre from CRA. I called you earlier this week regarding the case of Pathak, uh, Jwalantkumar. I saw that a, the case for the year 2019 and 20 are, uh, in front or [*sic*] the Court, uh Federal Court. So just want to know, uh, for the time being if it's truly, uh, going forward with the Court case. I will put the objection for 2019, 20, and 2021 on hold to see, uh, the outcome of that Court case. Um, I just want to, to, know if it's possible for you to confirm this, and as I say, I'll put them on hold for the time being. So my direct line is 438 304 7902. Thank you!

[67] The Paralegal's Affidavit also attaches subsequent communications exchanged between counsel on September 12, 2025, commencing with the Applicant's counsel stating the following to the Respondent's counsel:

> CRA Appeals called me this morning. The Appeals officer indicate [*sic*] that he confirmed the assessment without analysis, because CRA's position is that this matter (concerning the <u>correctness</u> of penalties) should be dealt with *not* at CRA appeals, but rather, by the Federal Court. This is wholly contrary to the Respondent's submissions filed with the Federal Court.
>
> This is new information relevant to the application which should be brought to the Court's attention. Please advise us <u>immediately</u> (since our requisition for hearing is due today) as to how the Respondent intends to proceed given this new information.

[Emphasis in original]

[68] The Respondent's communication in response to this request included the following:

> It is unclear to us how the Notice of Confirmation that you sent indicates that the penalty should be dealt with by the Federal Court. It is equally unclear how the objections were confirmed without analysis. Could you please explain how you came to those conclusions and what impact you believe they have on the applicant's application for judicial review,

[69] This reference to a Notice of Confirmation appears to relate to another document (dated September 2, 2025) attached to the Paralegal's Affidavit, in which CRA appears to be rejecting the Applicant's objections to the correctness of his assessments. This document culminates with an explanation that the Applicant may appeal the decision therein within 90 days to the Tax Court of Canada.

[70] The remainder of counsel's September 12, 2025 correspondence focuses principally upon the scope of the Respondent's client relationship with CRA and whether it was appropriate for the Applicant's counsel to be in direct communication with CRA. These communications did not assist in resolving the apparent inconsistency between, on the one hand, the position that the Applicant's counsel stated had been taken on the telephone by CRA's representative on September 12, 2025, and, on the other hand, the position taken in the Notice of Confirmation.

[71] I accept that those positions appear inconsistent, and that the position said to have been taken by CRA's representative on the telephone also appears inconsistent with the Respondent's position in the Application. However, I have difficulty concluding that any of this is particularly relevant to the Court's determination of costs of the Application. I agree with the Respondent's submission that its position in the Application has consistently been that the authority to

adjudicate the correctness of an assessment rests with those within CRA charged with considering objections and appeals, with the review of such decisions being within the jurisdiction of the Tax Court rather than the Federal Court. To the extent that a CRA appeals officer may have expressed a different position (and one potentially inconsistent with the Notice of Confirmation) in a telephone call with the Applicant's counsel, this strikes me as more relevant to any litigation that the Applicant may be pursuing in the Tax Court, challenging CRA's rejection of his objections.

[72] Again, I do not find these events to support a conclusion that costs of the Application should be awarded to the Applicant.

(8) Conclusion

[73] As the Respondent submits, the Applicant has the burden of demonstrating why the Court should depart from the ordinary practice of costs following the event (*Hussey v Bell Mobility Inc*, 2022 FCA 95 at para 103). None of the Applicant's arguments under the factors identified in Rule 400(3) have discharged this burden. As such, I find that costs of the Application should be awarded to the Respondent.

B. *If the Court awards costs of the Application, how should those costs be quantified?*

[74] The Respondent's Bill of Costs in relation to the Application claims amounts for assessable services based on steps in this proceeding, for a total costs claim of $9000.00. For most of those steps, the Respondent claims amounts based on units at or near the midpoint of Column 2 of Table 2 (related to applications) of Tariff B. However, as noted earlier in these reasons, for items 13 (preparation relating to cross-examination of each witness other than an

expert witness) and 15 (preparation and filing of record, including memorandum of fact and law), the Respondent instead claims elevated amounts (respectively, 6 units and 13 units) based on Column 3.

[75] When addressing the preceding issue, I considered and rejected the Respondent's arguments that the Applicant's conduct (in relation to the Applicant's cross-examination of the Respondent's affiant and the Applicant's preparation of his record to which the Respondent was required to respond) had lengthened this proceeding. As such, I will reduce the Respondent's claims under items 13 and 15 to amounts based on the midpoint of Column 2 being, respectively, 4 units and 8 units. This represents an overall reduction of 7 units at $180.00 per unit, for a total reduction of $1260.00

[76] Subtracting that amount from the $9000.00 claimed by the Respondent, I will award the Respondent costs of the Application quantified at $7740.00.

C. *How should the Court quantify the costs of the Motion?*

[77] In relation to the Motion for reconsideration, the Respondent has filed a Bill of Costs claiming costs of $1800.00. This figure is derived from a claim of 7 units for item 8 (preparation and filing of motion record of responding party, including preparation of written representations or memorandum of fact and law) and 3 units for item 9 (preparation and filing of moving party's reply on a motion in writing). Each of these claims seeks an elevated amount at the top of the range of Column 3.

[78] In support of its position that increased costs are warranted, the Respondent argues that the Motion was without merit and should not have been brought. The Respondent also argues

that it was improper and unnecessary for the Applicant to seek leave to introduce irrelevant reply evidence that prolonged the Motion and to make what the Respondent submits represented unwarranted attacks on the Respondent's counsel's credibility, while also opposing the Respondent's opportunity to respond. The Respondent also argues that costs of the Motion should be payable forthwith, as contemplated by Rule 401(2) in circumstances where the Court is satisfied that a motion should not have been brought.

[79] In response, the Applicant notes that costs are within the full discretion of the Court, which may refuse to award costs in respect of a particular step in the proceeding or award costs against a successful party. In support of his position that the Court should adopt such an approach, he argues that the Respondent unnecessarily confused and complicated the issues in this proceeding by failing to accurately communicate its legal position prior to the hearing of the Application, which necessitated the Motion for reconsideration. The Applicant also asserts that, in responding to the Motion, the Respondent made bald and unsupported allegations surrounding the Applicant's objection to CRA and its acceptance by CRA, which necessitated the Applicant's introduction of reply evidence.

[80] The Applicant also asserts its disagreement with certain of the Court's findings in dismissing the Motion.

[81] Based on these arguments, the Applicant takes the primary position that the Court cannot make any meaningful determination as to costs of the Motion, because it cannot determine whether the Motion was necessary without the receipt of substantive submissions following a fair process, of which the Applicant says it was deprived. The Applicant prefers that costs of the

Motion be determined by the Federal Court of Appeal to which the Applicant has appealed the Order.

[82] The Applicant's secondary position is that the Respondent's conduct warrants a reversal of the ordinary rule that costs follow the cause. The Applicant again references pre-litigation conduct, such as advising the Applicant to file the wrong type of request, and the Respondent confusing the issues and changing its position in the Application, resulted in the filing of the Motion for reconsideration, and then making baseless allegations therein.

[83] The Applicant's submissions are not particularly probative of the quantification of costs of the Motion. As noted earlier in these Reasons, the Order has already awarded the costs of the Motion to the Respondent, and the only remaining issue for the Court's determination is their quantification.

[84] However, for purposes of addressing the Applicant's submissions, I will treat them as an argument either that the Court should decline to quantify the costs it has previously awarded or that the Applicant's submissions support a zero quantification.

[85] As for the Applicant' s primary position, I agree with the Respondent's reply that the Court's general practice is to determine costs of proceedings before it, notwithstanding that the Court's decision on the merits is under appeal (*Safe Gaming System Inc v Atlantic Lottery Corporation*, 2018 FC 871 at para 10). I find no basis to depart from that practice in the matter at hand. To the extent the Applicant is arguing that he was deprived of procedural fairness in connection with the Motion, that is a position to be taken on appeal and does not support a conclusion that the Court should decline to adjudicate costs at this juncture.

[86] Turning to the Applicant's secondary position, I have rejected earlier in these Reasons the Applicant's arguments that the Respondent adopted changing positions in the Application that should militate against awarding it costs. In relation to the Motion in particular, my Order rejected the Applicant's effort to file reply evidence in part because I was not satisfied that the Applicant's arguments, surrounding a perceived divergence in the parties' positions on the characterization of the CRA's acceptance of his objections, were relevant to the Court's adjudication of the issue in the Motion. I similarly find that those arguments do not favour the Applicant in the Court's adjudication of costs.

[87] Finally, I note that, in reply to the Applicant's reference to pre-litigation conduct by CRA in advising the Applicant to file the wrong type of request, the Respondent refers the Court to notes (found in the CTR and in the Applicant's Record) of a CRA officer's March 9, 2023 conversation with the Applicant, in which the officer advised the Applicant both to file a relief request and to discuss with his accountant how to appeal the relevant reassessments. This is not a point on which the Court made findings in either the Judgment or the Order, and I am not convinced that it is material to the Court's adjudication of costs of the Motion, which concerned the issues surrounding the Court jurisdiction under Rule 397(1)(b) to reconsider the Judgment on the basis raised by the Applicant in the Motion.

[88] Having considered the Applicant's arguments, I will proceed to quantify the costs that my Order awarded to the Respondent.

[89] While the Motion was dismissed, I do not agree with the Respondent that the fact that the Motion was unmeritorious itself supports an elevated costs award. Nor do I find that the Motion should not have been brought, such that an award of costs payable forthwith is warranted.

However, I do agree with the Respondent that the Applicant's effort to introduce reply evidence that was irrelevant to the issue in the Motion, as well as the Applicant's opposition to the Respondent's effort to respond through its Sur-Reply, prolonged and complicated the Motion.

[90] In the result, I will therefore allow the Applicant's claim for 3 units under Column 3 in relation to item 9 (for the preparation and filing of the Respondent's Sur-Reply) but, in connection with item 8, I will reduce the claim for 7 units under Column 3 to 4 units under Column 2. This reduction of 3 units, at $180.00 per unit, reduces the Respondent's costs claim by $540.00.

[91] Subtracting that amount from the $1800.00 claimed by the Respondent, I will quantify the Respondent's costs of the Motion at $1260.00.

**SUPPLEMENTARY JUDGMENT IN T-961-24**

**THIS COURT orders that**:

1. The Respondent is awarded costs of the Application (excluding the Motion) in the amount of $7740.00.
2. The costs of the Motion, previously awarded to the Respondent in the Order, shall be in the amount of $1260.00.

"Richard F. Southcott"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-961-24 |
| **STYLE OF CAUSE:** | JWALANTKUMAR PATHAK v ATTORNEY GENERAL OF CANADA |

**ADJUDICATED IN WRITING**

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|---|---|
| **JUDGMENT AND REASONS:** | SOUTHCOTT J. |
| **DATED:** | MARCH 27, 2026 |

**WRITTEN SUBMISSIONS BY:**

| | |
|---|---|
| Bhuvana Rai | FOR THE APPLICANT |
| Andrea Ryer | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Mors & Tribute Tax Law<br>Toronto, Ontario | FOR THE APPLICANT |
| Attorney General of Canda<br>Ottawa, Ontario | FOR THE RESPONDENT |