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Docket: T-885-24

Citation: 2026 FC 367

Montréal, Québec, March 18, 2026

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

SAM PRINCE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

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[1] Although the pleadings in this matter are in English, at the request of the parties, the hearing proceeded in French. The parties have advised the Court that they do not require that this judgment be issued simultaneously in both official languages (*Official Languages Act*, RSC 1985, c 31 (4th Supp), s 20(1)b)). Therefore, the judgement and reasons will be provided in English, with a French translation to follow.

I. Overview

[2] Sam Prince [Applicant] is a resident of Canada. He held shares in various Canadian public corporations [Canadian Corporations] in two Israeli bank accounts, for which he received dividends. Mr. Prince alleges that the Canadian Corporations incorrectly assumed that he was a non-resident of Canada and withheld income tax pursuant to Part XIII of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA], in the amount of \$790,961.82 [*Part XIII Tax*].

[3] In 2015, Mr. Prince was the subject of an audit by the Canada Revenue Agency [CRA], for unpaid income tax in relation to the years 2006-2014 [Audit]. In the context of this Audit, Mr. Prince requested that the allegedly withheld *Part XIII Tax* be credited against the Part I income tax (*ITA*, Part I), interests and penalties he would owe the CRA as a result of the Audit [Reassessments], as provided for by section 221.2 of the *ITA* [Credit Request].

[4] After almost seven years of exchanges with the CRA, the Minister of National Revenue [Minister] refused Mr. Prince's Credit Request in a decision dated March 22, 2024, on the basis that the Applicant had failed to provide sufficient evidence that *Part XIII Tax* was withheld and that it was remitted to the CRA on his behalf [Decision]. Mr. Prince seeks the judicial review of this Decision.

[5] Mr. Prince submits that it was unreasonable for the Minister to find that the documents he provided the CRA in the context of the Audit were sufficient to assess his tax liability in relation to the gross amount of dividends he received from the Canadian Corporations, and then later find that the same evidence was insufficient to establish his entitlement to the Credit Request related to those same dividends. More specifically, he submits that by accepting the Israeli banks' accounts statements and certificates as sufficient to assess his *Part I* tax liability, to then claim that they cannot, on their own, sustain the Credit Request, the Minister tries to "have it both ways". Mr. Prince submits that the end result is unfair in that not only is he overtaxed but the CRA keeps the sums unjustly withheld, the whole in contravention of the first fundamental right cited in the CRA's Taxpayer Bill of Rights.

[6] He further submits that the CRA's insistence that he provide a "Statement of Amounts Paid or Credited to Non-Residents of Canada form" [NR4 Form], to establish that the *Part XIII Tax* was actually withheld and transmitted to the CRA on his behalf, is a requirement that "is impossible to meet for any taxpayer" - or at least any taxpayer in his situation. By imposing this "impossible" requirement, Mr. Prince submits that the decision maker exercised his discretion in a manner inconsistent with the legislative scheme it stems from, because his interpretation irremediably prevents taxpayers in the Applicant's situation from securing any credit under section 221.2 of the *ITA*. To support his position, Mr. Prince cites a passage from a 2017 Canadian Tax Foundation conference during which a then assistant commissioner of the CRA explained that he "agree[d] that the status quo is not acceptable when we have a policy that indicates there is a process for applying section 221.2 but in practice there is no viable route forward", promising "clarity on the issue" in 2018. The Applicant also highlights that pursuant to subsection 215(1) of the *ITA*, the obligation to submit this NR4 Form is imposed on the payer of the dividend (i.e. the Canadian Corporations) or their intermediaries, rather than on the taxpayer.

[7] Lastly, Mr. Prince submits that, if the Court agrees with his position, instead of remitting the matter back to the CRA, it should directly grant the Credit Request and order the CRA to remit the amount of this credit to the Applicant, pursuant to section 221.2 of the *ITA*.

[8] In response, the Attorney General of Canada [AGC] essentially submits that the Decision rests on simple and reasonable factual conclusions: The evidence that Mr. Prince provided was insufficient to establish that the *Part XIII Tax* was withheld and that it was remitted to the CRA on his behalf. While the evidence provided by Mr. Prince shows that dividends were deposited in two Israeli banks accounts, and that some sums were withheld, the evidence does not prove that

the sums withheld were in fact *Part XIII Tax*. Furthermore, even if they were, the evidence provided does not show that the *Part XIII Tax* was effectively remitted to the CRA on behalf of Mr. Prince. Therefore, requesting that he provides the relevant NR4 Forms or sufficient alternative evidence to support his Credit Request was proper and reasonable. This evidence is necessary when any taxpayer claims that he overpaid non-resident taxes (*Part XIII Tax*) and seeks either a credit or a refund. Furthermore, this evidence is necessary to ensure the integrity of the tax system so that several people cannot claim credits or refunds for the same amounts. Lastly, the AGC argues that section 221.2 of the *ITA* is a discretionary remedy. Therefore, given that a credit to Mr. Prince's income tax account is not automatic, in the event the Court finds the Decision unreasonable, it would be improper for the Court to issue its own decision.

[9] For the reasons that follow, the application is dismissed. The Decision is reasonable.

II. Factual background

[10] It is not contested that Mr. Prince was a resident of Canada during all the relevant years.

[11] In February 2015, the CRA began an Audit of Mr. Prince's obligations under the *ITA*. During this Audit, it was established that Mr. Prince had received dividends from the Canadian Corporations, that they had been deposited in two Israeli bank accounts, Hapoalim and Leumi [collectively, the Israeli Banks], but that they had not been properly reported to the CRA. On January 19, 2018, as a result of the Audit, the CRA issued the Reassessments.

[12] In parallel, in the context of the Audit, Mr. Prince claims that he discovered that the Canadian Corporations incorrectly assumed that he was a non-resident of Canada and withheld

Part XIII Tax on the dividends he had received. Given the fact that a refund needs to be requested within 2 years of the sums being withheld, pursuant to sections subsection 227(6) of the *ITA*, in 2017, Mr. Prince instead made an oral Credit Request, that was later confirmed in writing on September 21, 2017, by way of a letter sent by the Applicant's lawyers, pursuant to section 221.2 of the *ITA*. Mr. Prince thereby requested that the *Part XIII Tax* allegedly withheld be credited to the *Part I* taxes that would become due further to the Audit and related Reassessments.

[13] A few days after the Reassessment were issued, in the letter confirming the outcome of the Audit dated January 22, 2018, that CRA stated the following, under the title "Withholding tax on dividends from shares held outside of Canada for corporations' resident in Canada":

Dividends received from taxable Canadian corporations must be included on your income tax return as a "taxable amount of dividend from Canadian corporations", line 120 of your return.

To claim a refund of Part XIII tax withheld, you are required to file Form NR7-R within two years from the end of the calendar year which the tax was withheld.

The Minister may, on your request, consider applying the overpaid tax under Part XIII against your amounts payable under the Act. Your request in this regard, must be sent to the "non-resident withholding section" (contact information omitted).

(Emphasis added)

[14] On March 28, 2018, the Applicant's accountant sent the Credit Request to the non-resident section, along with voluminous supporting documentation. However, in a correspondence dated September 27, 2018 (and amended on November 27, 2018), the CRA explained that "the Non-Resident Section cannot process your application since you are a Canadian resident". The subject matter of this correspondence was "Your request to apply Part XIII withholding taxes against Part I liability Years 2005 to 2014". While the CRA indicated that Mr. Prince was not entitled to a

refund under subsection 227(6) of the *ITA*, the CRA also explained that, as mentioned in NR7-R forms, “Canadian resident must send an amendment request and/or T1ADJs (Adjustment Requests) with the NR4 tax slip(s) to the Returns Processing Division (RDP) (...) Please note that you must fill out NR7-R forms, if no NR4 tax slip(s) were issued by the Canadian payers, along with the T1ADJs”.

[15] According to the Applicant, throughout all of these exchanges, the CRA continuously misconstrued the true nature of his application. It considered it to be a request for a refund made under subsection 227(6) or 227(6.1) of the *ITA*, instead of a Credit Request. The Applicant explains that this is why, “[d]iscouraged by the CRA’s inability to understand the true nature of the Credit Request, the Applicant’s representatives decided that they should attempt to resolve this matter with the objections agent that would be appointed to deal with the notices of objection [to the Reassessments] filed by the Applicant”.

[16] On May 21, 2021, the Applicant withdrew his objections related to the Reassessments. He signed a waiver renouncing his right to oppose or appeal the Reassessment but with a caveat reading “the Taxpayer retains all its rights towards the Canadian Revenue Agency to demand and ensure that all Canadian tax which has been withheld on dividends paid by Canadian corporations in respect of shares of these companies held by the taxpayer in his account abroad either credit to the taxpayer’s account as tax paid by him or refunded to him” [Settlement].

[17] On June 21, 2021, the Applicant filed an application for administrative review regarding the Credit Request, asking the CRA to use its discretionary power pursuant to section 221.2 of the *ITA*. The Applicant explained the back and forth that had already happened since the Settlement,

appending all of the exchanges with the CRA in relation to the Credit Request to his application - including the evidence that accompanied the Credit Request sent to the non-resident section on March 28, 2018 (notably the Israeli Banks' statements and certificates, as well as some documents summarizing the amounts of dividends received and *Part XIII Tax* allegedly withheld which were prepared by Mr. Prince's accountant). This application, with over 400 pages of supporting documentation, was assigned to Mr. Joel Cormier, a team leader in the non-resident verification department, the decision maker for the Minister in this matter.

[18] With the assistance of Mr. Jodoin, an agent under his supervision, Mr. Cormier reviewed the Applicant's file and its voluminous documentation. The decision maker found that the evidence provided was still insufficient to support the Credit Request. In sum, while the Applicant provided bank statements, many of which in Hebrew, and bank certificates indicating that dividends were received and that some sums were withheld, there was no mention in these documents establishing that the sums withheld were in fact *Part XIII Tax*.

[19] There will be numerous exchanges between the parties regarding this issue and the evidence required from the Applicant, including a videoconference (or Microsoft Teams meeting) held on September 15, 2022, between the CRA and the Applicant's representatives and a phone conversation on September 19, 2023. The Applicant was furthermore given the opportunity to provide additional evidence.

[20] The CRA also verified its systems under Mr. Prince's name and the names of the Israeli Banks, as well as under any Israeli beneficiary for amounts corresponding with the amounts

claimed by the Applicant, and this, to attempt to locate any potentially related NR4 Form, the whole to no avail.

[21] Lastly, further to the Applicant's request, Mr. Cormier consulted with someone he considered to be the most knowledgeable expert in *Part XIII Tax* in Canada, who after discussing the Applicant's case, agreed with Mr. Cormier's findings concerning the evidence required to potentially grant the request.

[22] On October 17, 2023, the Applicant submitted complementary documentation, but not the documents required by the CRA.

[23] Therefore, at the end, the Applicant having failed to provide the requested NR4 Forms or similar evidence such as NR7 forms, affidavits from the Israeli Banks or any other evidence that could show that the sums withheld in the Israeli Banks were in fact *Part XIII Tax* and that same had been remitted to the CRA on behalf of Mr. Prince, the Minister rendered the Decision declining to use his discretionary power to grant the Credit Request pursuant to subsection 221.2 of the *ITA*.

III. The Decision under review

[24] The Decision in this matter was drafted in French. It acknowledges the receipt of the letter of June 21, 2021, as well as the one of March 28, 2018, and their voluminous documentation. It also reiterates the alternative supplementary documentation required and the process to follow in the context of a situation like the one alleged by the Applicant, as previously explained by the CRA in their letter of September 27, 2018, and amended in November 27, 2018, the whole in conformity with paragraphs 75 and 76 of the information circular *IC77-16R4* (this information

circular has since been replaced by Guide, T4061 NR4 - Non-Resident Tax Withholding, Remitting, and Reporting [NR4 Guide] which is publicly available):

75. Un résident du Canada qui reçoit divers genres de revenus à une adresse hors du Canada et qui n'a pas reçu une formule NR4B Supplémentaire doit suivre les instructions suivantes:

- a) remplir la formule NR7-R, y compris la section "Attestation";
- b) envoyer la formule NR7-R au payeur ou à l'agent payeur afin qu'il remplisse la partie "Certificat d'impôt retenu";
- c) joindre la formule NR7-R à sa déclaration T1 ou T2 pour l'année d'imposition et demander qu'un crédit d'impôt de non-résidents lui soit accordé à l'égard de l'impôt à payer sur sa déclaration.

76. Un résident du Canada qui a reçu un revenu à une adresse hors du Canada et qui a reçu une formule NR4B Supplémentaire doit joindre la copie 3 de la Supplémentaire à sa déclaration T1, Déclaration de revenus fédérale des particuliers, ou à sa déclaration T2, Déclaration d'impôt sur le revenu des corporations.

(Soulignement ajouté)

NON-OFFICIAL translation

75. A resident of Canada who receives various types of income at an address outside Canada and who has not received an NR4B Supplementary form must follow the following instructions:

- a) complete the NR7-R form, including the "Certification" section;
- b) send the NR7-R form to the payer or paying agent to complete the "Certificate of Tax Withheld" section;
- c) attach form NR7-R to their T1 or T2 return for the tax year and claim a non-resident tax credit for the tax payable on their return.

76. A resident of Canada who has received income at an address outside Canada and who has received an NR4B Supplementary form must attach copy 3 of the Supplementary to their T1 return, federal

personal income tax return, or to their T2 return, Corporation Income Tax Return.

(Emphasis added)

[25] The Decision goes on to state:

Les documents exigés sont nécessaires afin de préserver l'intégrité du système fiscal. Tout payeur canadien qui effectue une retenue sur un dividende versé à un non-résident doit remettre cette retenue à l'Agence et, à la fin de l'année, produire un feuillet NR4 à l'Agence avec une copie expédiée au contribuable. Ce feuillet est une preuve de remise de la retenue et l'identification du contribuable non-résident pour lequel la retenue est versé. Ceci permet à l'Agence de ne pas accorder plusieurs fois des crédits ou des remboursements pour une même retenue reçue.

Votre lettre du 21 mai 2021 mentionne que les sociétés canadiennes ne savaient pas que votre client était un actionnaire canadien alors que celui-ci a toujours résidé au Canada. Ceci nous indique que l'information transmise par les deux institutions en Israël n'avaient pas les précisions requises sur le bénéficiaire effectif des comptes.

Une institution financière peut faire enregistrer les titres financiers de ses clients en leurs noms personnels ou au nom de l'institution qui conserve les certificats (appelé « certificats de courtier »). Les institutions financières de votre client pourraient lui fournir les informations d'enregistrement de ses certificats d'actions. Il n'est pas exclu qu'un autre courtier (canadien ou étranger) ait servi d'intermédiaire afin de percevoir les dividendes et les relayer en Israël et que cet autre courtier était désigné comme bénéficiaire des certificats.

Tout dépendant des circonstances ayant réellement eu lieu, les documents pouvant relier votre client aux retenues versées à l'Agence pourraient varier. Malgré les nombreux documents fournis, il n'y a aucune indication qu'un payeur a effectué des remises à l'Agence pour les retenues de non-résidents reliées à votre client.

Nous espérons que ces précisions vous aident à mieux comprendre le refus actuel de l'Agence de rembourser des retenues au nom de votre client. Nous n'avons pas reçu les informations requises, tel que mentionné dans la circulaire d'information, pour retracer des remises reliées à votre client. Nous espérons que ces précisions orienteront la poursuite de vos démarches.

NON-OFFICIAL translation

The required documents are necessary to preserve the integrity of the tax system. Any Canadian payer who withholds a tax on a dividend paid to a non-resident must remit this withholding tax to the Agency and, at the end of the year, file an NR4 slip with the Agency with a copy sent to the taxpayer. This slip is proof of the remittance of the withholding tax and of the identification of the non-resident taxpayer for whom the withholding tax is paid. This allows the Agency to avoid granting multiple credits or refunds for the same withholding tax received.

Your letter of May 21, 2021, mentions that the Canadian companies did not know that your client was a Canadian shareholder, even though he always resided in Canada. This indicates to us that the information provided by the two institutions in Israel did not contain the required details about the ultimate beneficiary of the accounts.

A financial institution may register its clients' securities in their personal names or in the name of the institution that holds the certificates (known as "broker certificates"). Your client's financial institutions could provide him with the registration information for his share certificates. It is not excluded that another broker (Canadian or foreign) acted as an intermediary in order to collect the dividends and forward them to Israel, and that this other broker was designated as the beneficiary of the certificates.

Depending on the actual circumstances, the documents that could link your client to the withholdings paid to the Agency may vary. Despite the numerous documents provided, there is no indication that a payer made remittances to the Agency for non-resident withholdings related to your client.

We hope that these clarifications help you better understand the Agency's current refusal to refund withholdings on behalf of your client. We have not received the information required, as mentioned in the information circular, to trace remittances related to your client. We hope that these clarifications will guide you in your further efforts.

[26] Therefore, as previously mentioned, notwithstanding the voluminous documentation provided, given that none actually demonstrated that a Canadian payer withheld any *Part XIII Tax* on behalf of Mr. Prince, the Credit Request was denied.

IV. Analysis

(1) *Preliminary issues*

(a) *The Motion to rule on the objections is denied*

[27] On December 13, 2024, the Applicant filed a motion to dismiss the objections raised by the Respondent during the cross-examinations of Joel Cormier (the CRA audit team leader who signed the Decision) and during the re-examination of James A. Morrissey (the Applicant's accountant) so that he can include an example of an NR4 Form [NR4 Example] as an exhibit.

[28] According to the Applicant, Mr. Morrissey would have shown the NR4 Example to Mr. Cormier during a Microsoft Teams meeting. It is on this basis that Mr. Prince's lawyers attempted to question Mr. Cormier regarding this NR4 Example during his cross-examination. The Respondent's counsel objected on the basis that Mr. Cormier did not remember having seen the document, which was not otherwise part of the record given that it was attached to none of the affidavits produced. Mr. Cormier ultimately answered questions 94 to 99 under reserve of the objections. Later, during his cross-examination, Mr. Morrissey offered to discuss the NR4 Example but counsel for the Respondent chose not to address it. In re-examination, counsel for the Applicant attempted to re-visit the topic which resulted in further objections on the part of the Respondent. Mr. Morrissey answered questions 430 to 433 of his re-examination under reserve of the objections.

(i) *The Applicant's submissions*

[29] The Applicant acknowledges the general principle that, because the opposing party will not normally have the opportunity to cross-examine the witness again, re-examination on an affidavit is to be limited to matters that were addressed during cross-examination (citing *Canada (National Revenue) v ASB Holdings Limited*, 2024 FC 494 [ABS Holdings] at para 32; *R v Morre*, 1984 CanLII 3542 (ON CA) [Morre] at 568). However, he suggests that the trial judge can allow new matters to be introduced on re-examination on the condition that the opposing party be afforded the opportunity to cross-examine on these new facts (citing *R v Candir*, 2009 ONCA 915 [Candir] at para 148 citing *Morre* at 568).

[30] Furthermore, the Applicant submits that the Court can and should exercise its discretion to overrule the Respondent's objections because the document was "implicitly referred to" in Mr. Morrissey's affidavit and discussed during both Mr. Cormier's cross-examination and Mr. Morrissey's re-examination. Because the AGC had a full opportunity to further examine both Mr. Cormier and Mr. Morrissey in relation to the NR4 Example, the AGC will suffer no prejudice if this document and the associated exchanges are deemed admissible. He pleads that both are relevant if the Court is to have a "complete picture of the facts", to ensure its decision is informed (citing *Female Infant (Re)*, 1982 CanLII 618 (BC SC) at para 4). The Applicant argues that the NR4 Example is highly relevant as it "goes to the heart of the matter before this Court" because it "provides a clear example of a bulk NR4 Form between two intermediaries" thereby showing that the CRA's request is "unreasonable, given that the documentation requested (NR4 forms in the name of the Applicant) simply doesn't exist".

[31] With respect to admissibility, the Applicant claims that, contrary to what the Respondent asserts, the idea that this NR4 Example was not before the decision maker “is far from sustained by the evidentiary record, as witness James A. Morrissey clearly affirms that the NR4 Example was exhibited to Joel Cormier and his colleagues during a TEAMS call held before the Decision was rendered, while witness Joel Cormier merely states that he does not remember”.

(ii) *The Respondent’s submissions*

[32] In response, the AGC submits that the Applicant’s motion should be dismissed, and the objections upheld for the document is not relevant to the judicial review application, and its admission would cause it a prejudice. Furthermore, the NR4 Example would not be admissible because it wasn’t part of the decision maker’s file when they rendered the Decision and the Applicant did not demonstrate that any exception to the principle that, on judicial review, only the documents that were before the decision maker are admissible (citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 19; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 [*Tsleil-Waututh*] at para 86). Indeed, “the Applicant’s motion is silent to that effect”.

[33] For the AGC, even if Mr. Cormier had remembered seeing the NR4 Example, “[s]howing a document on Teams is insufficient for it to be part of the file as it was not “in possession” of the decision maker in conformity to rule 317 of the Rules” (*Federal Courts Rules*, SOR/98-106 [*Rules*]). Further and subsidiarily, paragraph 91(2)c) of the *Rules* limits cross-examinations to documents that are relevant and, in the possession, power or control of the person being cross-examined. In the case at bar, the NR4 Example was not in the possession of the decision maker, and its relevance is not demonstrated. The document is but a mere example that doesn’t involve

the Applicant, who in fact never even confirmed if he was using intermediaries to the decision maker. What matters is that the decision maker evaluated all the documentation transmitted by the Applicant and offered his representatives the opportunity to submit more, as the law required him to do.

[34] Moreover, the AGC submits that questions related to the NR4 Example went beyond the scope of the cross-examination of Mr. Cormier because “apart from questions going to the witness’s credibility, [cross-examination] is limited to relevant matters arising from the affidavit itself”, except for matters that arise from the affiant’s answers and documents filled in support of the affidavit or otherwise produced (citing *Merck Frosst Canada Inc v Minister of National Health and Welfare et al*, 1994 CanLII 19508 (FCA) [*Merck Frosst FCA*] at 320; *Royal Bank of Scotland plc v Golden Trinity (The) (TD)*, 2000 CanLII 15740 (FC) [*Golden Trinity*] at para 19). Hence, the AGC submits that Mr. Cormier was entitled to refuse to answer (citing *Global Television v Canadian Energy and Paperworkers Union*, 2002 FCA 376 [*Global Television*] at para 8), especially as he did not even recognize the document.

[35] Therefore, contrary to the Applicant’s submissions, the Respondent submits they did not have the opportunity to cross-examine on the NR4 Example because “[a]s stated earlier, cross-examination on affidavit should be limited to matter and documents directly addressed in the affidavit” (citing *Golden Trinity* at para 19). The Respondent risks a prejudice if the document is admitted now, because, had the NR4 Example been introduced into evidence earlier, they could have filled evidence related to it in their own record, or cross-examined Mr. Morrisey as to its contents. Mr. Morrisey did not “address the matter during cross-examination”, instead his “offer” to explain the document “had no rational link with the previous discussion” which concerned the

bank statements attached to his affidavit. The AGC submits that a witness should not, on his own, attempt to file new documents when not called upon to do so by the questioner.

[36] Lastly, re-examination cannot not be used to attempt the late filing of a document that was available earlier (citing *ASB Holdings Limited* at para 32). The document could not be filed during re-examination without causing a prejudice to the Respondent as it existed at the moment of the Decision but was neither transmitted to the decision maker nor filed in any affidavit in support of the judicial review application. Indeed, the Applicant “does not justify why this document was not sent to the decision maker or filed earlier in M. Morrisey or any other affidavit in the file”.

(iii) The NR4 Example is inadmissible as it was not provided to the decision maker

[37] While the Court agrees with the Applicant that courts should be presented with a complete picture of the facts to ensure their decisions are informed, it should be understood that mere relevance does not make a document admissible. This is especially true in the context of judicial review proceedings because the scope of the evidentiary record is singularly limited to the evidence presented to the decision maker.

[38] In the present matter, the NR4 Example is not admissible. Although the evidence is unclear as to whether or not Mr. Cormier ever saw the NR4 Example, both parties agree that a copy was never provided to the decision maker prior to the Decision. As the Federal Court of Appeal explained in *Access Copyright*, the answers to many procedural questions, including whether a document is admissible in a judicial review proceeding rest “in an appreciation of the different roles played by judicial review courts and the administrative decision-makers they review” (at

paras 14-16 citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*]).

[39] In a judicial review proceeding “[t]he essential purpose (...) is the review of decisions, not the determination, by trial de novo, of questions that were not adequately canvassed in evidence at the tribunal or trial court.” (*Access Copyright* at para 19). Hence, the Court has “only limited powers”, it “can only review the overall legality of what [the decision maker] has done, not delve into or re-decide the merits of what [the decision maker] has done” (*Access Copyright* at para 18). Barring limited exceptions applicable “in situations where the receipt of evidence by this Court is not inconsistent with the differing roles of the judicial review court and the administrative decision-maker”, the record is therefore limited to what was before the administrative decision maker (*Access Copyright* at paras 20). (see also *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Tsleil-Waututh* at paras 86-87; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 [*Bernard*] at paras 13 and ff). The Applicant did not suggest that any exception to this principle would apply in the present matter (*Bernard* at paras 23-28 citing notably *Access Copyright* at para 20; *Shhadi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1580 at para 43).

[40] While there are cases where a document not specifically included in the certified tribunal record pursuant to section 317 of the *Rules*, can still be admissible pursuant to the principle reaffirmed in *Access Copyright*, such a document still has to have been properly transmitted to the decision maker or be readily available to them prior to them rendering the Decision (*Mailloux c Canada (Procureur général)*, 2025 CF 582 at paras 23-25; *Nabbachi c Canada (Procureur général)*, 2025 CF 580 at paras 21-23; *Yao v Canada (Attorney General)*, 2025 FC 2014 at para 23). This is not the case here.

[41] This alone is sufficient to dismiss the motion, but there is more.

(iv) *Questions on the NR4 Example went beyond the scope of cross-examination on affidavit*

[42] The NR4 Example is not specifically mentioned in the Affidavit of Mr. Morrissey, nor attached as one of its exhibits. Furthermore, contrary to the Applicant's submission, it is not "implicitly referred to" in Mr. Morrissey's affidavit. As for Mr. Cormier, not only is it not mentioned in his affidavit, but he testified that he does not remember ever seeing it. Since no one alleges that Mr. Cormier ever had a copy of the NR4 Example, he evidently could not be compelled to come to his examination with the NR4 Example under paragraph 91(2)c) and section 94 of the *Rules*. In fact, according to his testimony, he could not even have accessed it in the CRA systems had he wished to do so. The NR4 Example was not in his possession, control or power.

[43] Except for questions going to the affiant's credibility, cross-examinations are generally limited to those matters that are addressed in the affidavit itself, arise from the affiant's own answers, or relate to documents already in the record (*CBS Canada Holdings Co v Canada*, 2017 FCA 65 [CBS] at para 29 citing amongst others *Ottawa Athletic Club Inc (Ottawa Athletic Club) v Athletic Club Group Inc*, 2014 FC 672 [*Ottawa Athletic Club*] at paras 130-32; see also *Merck Frosst* FCA at 320; *Golden Trinity* at para 19). The questions related to the NR4 Example were not collateral to Cormier's own answers, and the document was not part of the record when they were asked. Therefore, in the case at bar, although the AGC was invited to ask further questions to Mr. Morrissey, it could not legally proceed.

[44] The jurisprudence of this Court does recognize that affiants can sometimes be cross-examined on documents that are relevant to the determination of the issue in debate, even if said documents are not mentioned in their affidavit (*Thibodeau v Edmonton Regional Airport Authority*, 2021 FC 146 at para 14 citing *Sierra Club of Canada v Canada (Minister of Commerce)*, [1998] FCJ No 1673 at para 9). However, even assuming that the NR4 Example was relevant, Cormier could refuse to answer any question regarding said document given that he did not recognize it (*Canada (National Revenue) v ASB Holdings Limited*, 2024 FC 425 [ASB Holdings] at paras 25-26; *Global Television* at para 8 cited in *Rebel News Network Ltd v Guilbeault*, 2023 FC 121 at para 70).

[45] Furthermore, while it is true that the NR4 Example came up during the AGC's examination of Mr. Morrissey, the truth is that it is Mr. Morrissey who brought it up and offered to show the NR4 Example. The AGC declined his offer. As the AGC notes, the Court agrees that this "offer" "had no rational link with the previous discussion". Morrissey was asked to confirm whether he did in fact obtain credits in relation to overpaid *Part XIII tax* for some of his other clients by simply submitting bank statements similar to those provided to the CRA here, and if so how. He answered by proposing to discuss the NR4 Example. But the NR4 Example cannot prove that bank statements were sufficient to obtain credits for other clients, in any way. This is even more apparent in the context of the re-examination. With all due respect, given Mr. Cormier's testimony during his cross-examination, to the effect that he did not remember ever seeing the NR4 Example, the Applicant's representatives' attempts to introduce it after the fact appear self-serving.

[46] As explained by Justice Ayles in *ABS Holdings*, at paragraph 32:

In relation to the re-examination, the purpose of re-examination is largely rehabilitative and explanatory. Re-examination on an affidavit must be confined to dealing with or explaining matters which have been raised in cross-examination, and cannot be used as an excuse for introducing evidence which should have been put in the affidavit [see *Monarch Marketing Systems, Inc v Glenwood Label & Box MFG Ltd*, [1988] FCJ No 1206, 20 CIPR 99; *R v Candir*, 2009 ONCA 915 at para 148].

[Emphasis added]

[47] Therefore, asking Mr. Cormier questions on this NR4 Example went beyond the scope of an examination on affidavit and he could legitimately refuse to answer.

(v) *The NR4 Example is not relevant*

[48] While the Applicant submits that this document is highly relevant to his case, even when he was invited to provide the decision maker with additional relevant evidence, before the Decision was rendered, he did not include this NR4 Example.

[49] The Court is far from convinced that the NR4 Example is relevant to the present matter. In short, while the NR4 Example may shed light on situations in which some taxpayers who own Canadian securities could find themselves, it does not clearly speak to the reasonableness of the impugned Decision. It does not further this judicial review.

[50] In *Merck Frosst Canada Inc v Canada (Minister of Health)*, 1997 CanLII 26719 (FC) [Merck Frosst FC] at para 5-8 (aff'd 1999 CanLII 8930 (FCA), which remains one of the leading authority on the scope of cross-examinations on affidavits (see *Canada (Attorney General) v Fink*, 2017 FCA 87 at para 7; *Nguesso v Canada (Citizenship and Immigration)*, 2015 FC 102 [Nguesso] at para 39), Justice Hugessen distinguished two kinds of relevance for questions in an examination

on affidavit: legal relevance and formal relevance. Although the scope of cross-examinations has somewhat widened since Justice Hugessen's pronouncements in *Merck Frosst FC* (see *Nguesso* at paras 104-107), this widening relates to factual (or formal) relevance. Yet factual relevance cannot suffice. Legal relevance is still a threshold issue. It must always be met, so the questioner can never venture beyond the scope of what is truly apposite to the resolution of the underlying judicial review application, even when he relies on affirmations that the affiant himself made (*Moosomin First Nation et al v Canada* (January 9, 2014), Ottawa T-1848-11 (FC) at para 18 cited in *ASB Holdings* at para 9). In other words, and as Justice Hugessen indicated, "even when a fact has been sworn to in the proceeding, it does not have legal relevance unless its existence or non-existence can assist in determining whether or not the remedy sought can be granted" (*Merck Frosst FC* at 556).

[51] The NR4 Example does not bear Mr. Prince name and is completely unrelated to the facts of the present matter. Still, in his written memorandum, the Applicant argues that the NR4 Example is highly relevant because it "provides a clear example of a bulk NR4 Form between two intermediaries" thereby showing that the documentation requested by the CRA is "unreasonable, given that it simply "doesn't exist". While Mr. Prince did not submit that he personally resorted to intermediaries, he claims that the Israeli Banks and/or the Canadian Corporations probably, if not most likely, involved intermediaries. Hence, the NR4 Forms that could exist would have been made between these intermediaries, for a pool of shareholders and therefore none would bear his name. The Applicant however submits no evidence to support these claims.

[52] As for its potential "objective evidentiary value", given that it was not part of the decision maker's record, it is impossible to know if they would have found this evidence sufficient to prove

that *Part XIII Tax* was actually withheld and actually remitted to the Agency for the benefit of the Applicant. In sum, whether NR4 Forms sometimes look like the NR4 Example does not assist the Court in determining whether the Decision at play here is unreasonable. This is a clear case where an applicant must carry the consequences of his failure to put his best foot forward in due course (*Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 [*Danyluk*] at para 18 cited in *Building Products of Canada Corp v Canada (Attorney General)*, 2020 FC 784 [*Building Products*] at para 33).

[53] In view of all the above, the motion is denied, the objections are maintained and the NR4 Example will not be considered.

(b) *Two of the exhibits in support of the Morrissey affidavit are inadmissible*

[54] According to Mr. Cormier's affidavit, Exhibits JM-10 and JM-14 filed in support of Mr. Morrissey's affidavit, both of which relate to the Audit, were not before the decision maker. The Applicant did not deny this.

[55] As previously mentioned, the principle of judicial review is to assess whether the decision impugned is reasonable in light of the record that was before the decision maker when he rendered it. Therefore, the record is, barring narrow exceptions, limited to what was before Mr. Cormier. The Applicant did not explain which exception, if any, would justify admitting these documents in the record. In view of the above, these exhibits are inadmissible, and the Court will not consider them.

(c) *The Applicant's new argument is inadmissible*

[56] As previously mentioned, Mr. Prince submits that it was unreasonable for the Minister to find that the documents he provided the CRA in the context of the Audit were sufficient to assess his tax liability in relation to the gross amount of dividends he received from the Canadian Corporations, and then later find that the same evidence was insufficient to establish his entitlement to the Credit Request for those same dividends. He submits that by accepting the Israeli banks' accounts statements and certificates as sufficient to assess his *Part I* tax liability, to then claim that they cannot, on their own, sustain the Credit Request, the Minister tries to "have it both ways". He further adds that the Reassessment constitutes an admission on the part of the Minister that the evidence provided proves, not only that he received dividends, but that *Part XIII Tax* was both erroneously withheld and remitted to the CRA on his behalf.

[57] In his affidavit, Mr. Cormier unambiguously stated that this theory of an alleged admission was never put before him before he made his decision. When asked whether this argument was formulated in due course, at the hearing, the Applicant's counsel first asserted that it was not an argument but rather something that flowed from the record. Later, they pointed to the letter addressed to the CRA on October 17, 2023, as evidence that this argument was indeed before Mr. Cormier, specifically highlighting the following paragraph:

Dans ce contexte, le Contribuable est en droit d'obtenir un crédit de 790 887\$, tel que calculé par M. Morrisey, en vous soulignant que c'est en fonction des représentations des anciens procureurs du Contribuable que les dividendes ont été imposés au brut puisque le projet initial de la vérificatrice les imposait au net (voir l'Annexe B de nos représentations du 21 juin 2021). Par conséquent, il est injuste pour le Contribuable de ne pas se faire créditer l'impôt de la Partie XIII.

UNOFFICIAL TRANSLATION

In this context, the Taxpayer is entitled to a credit of \$790,887, as calculated by Mr. Morrissey, we underline for you that it was based on representations made by the Taxpayer's former attorneys that the dividends were taxed on a gross basis, since the auditor's initial proposal taxed them on a net basis (see Appendix B of our representations dated June 21, 2021). Consequently, it is unfair for the taxpayer not to be credited for the Part XIII tax.

[58] The letter of June 21, 2021, is in the Applicant's Record as Appendix C (Exhibit JM-3) to Mr. Morrissey's affidavit, but without any appendixes. In the certified tribunal record, this letter also appears without appendixes. When asked at the hearing, the Applicant's counsel could not establish that Mr. Cormier had indeed effectively been pointed to the evidence that was before the CRA staffers who conducted the Audit.

[59] The different roles of administrative decision makers and reviewing courts as well as considerations of fairness for the opposing party both limit the arguments that can be raised on judicial review, just as they limit the scope of admissible evidence (*Alberta Teachers* at paras 22-26; *Manneh v Unifor*, 2022 FCA 107 at para 9; *Efamehule v Canada (Citizenship and Immigration)*, 2025 FC 1026 [*Efamehule*] at paras 41-46).

[60] As this Court explained in *Efamehule*, this is true even when the new arguments rest on documents that were before the decision maker, “[i]f the applicant did not clearly link specific portions of the record to a live issue during the administrative proceedings, the decision-maker would not have had the opportunity to assess that evidence properly” (at para 44).

[61] The prohibition against raising new arguments only suffers narrow exceptions, essentially where the applicant could not have raised the argument before the decision maker (*Efamehule* at para 46). None was pleaded here. It is clear that Mr. Prince could have submitted to Mr. Cormier

the documents he provided to the CRA during the Audit and could have articulated this argument before the Decision was rendered.

[62] Therefore, I find that the argument regarding an alleged admission of the withholding and remittance of *Part XIII Tax* on behalf of Mr. Prince was not properly put before Mr. Cormier. The record did not allow him to ascertain whether the Israeli banks' accounts statements and certificates produced in support of the Credit Request had actually been deemed sufficient by the CRA to assess Mr. Prince's *Part I* tax liability during the Audit.

[63] Furthermore, there is no evidence that the CRA ever made any admission when it assessed Mr. Prince's tax liability based on the gross amount of dividends he received. Indeed, as the Respondent submits, whether any taxes were withheld and remitted on Mr. Prince's behalf does not appear to have been relevant in the context of the Audit.

(d) *The Respondent's objection to the supplemental jurisprudence submitted by the Applicant 24 hours before the hearing*

[64] The day before the hearing, the Applicant submitted three new supplemental Court decisions in support of its application for judicial review. The Applicant provided no explanation as to why these decisions were not previously referred to in their memorandum but insisted that they did not raise any new arguments and simply flowed from the teachings of the Supreme Court of Canada in *Vavilov*. Mostly, these decisions relate to the Applicant's position that, instead of remitting the matter back to the CRA, the Court should directly order that the Credit Request be paid to him. Given the Court's conclusions, these decisions are of no assistance to the Applicant and there is no need for the Court to rule on the objection. To the extent that one of the decisions

(*Onex v Canada (Attorney General)*, 2024 FC 1247) also deals with the reasonability of the Decision and how administrative decision makers have to approach exercises of statutory interpretation, the Court adds that considering it would not have altered its decision.

(2) *The standard of review*

[65] Both parties submit and the Court agrees, that the standard of review in the present matter is reasonableness (*Vavilov; Mailloux c Canada (Procureur général)*, 2025 CF 583 at paras 16-20; *Forbes Painting and Decorating Ltd v Canada (Attorney General)*, 2019 FC 160 [*Forbes*] at para 21; *Pomeroy’s Masonry Limited v Canada (Attorney General)*, 2017 FC 952 [*Pomeroy*] at paras 10-12; *Cybernius Medical Ltd v Canada (Attorney General)*, 2017 FC 226 at paras 34-36 [*Cybernius*]). This standard applies to discretionary decisions, such as those made under section 221.2 of the *ITA* (*Ifi v Canada (Attorney General)*, 2020 FC 1150 at para 12; *Pomeroy* at paras 10-12; *Cybernius* at para 35; *Kapil v Canada (Revenue Agency)*, 2011 FC 1373 at para 19).

[66] As explained in *Vavilov*, “[r]easonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.” (at para 13; see also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 57). The Applicant bears the burden of establishing that the decision under review suffers from a fundamental or fatal flaw (*Vavilov* at paras 100-102).

[67] Furthermore, at the hearing, the Applicant’s counsel emphasized paragraphs 15, 85, 95, 101-103, 106-110, 121 and 131 of the *Vavilov* decision, including the principles that 1) any exercise of discretion must “accord with the purposes for which it was given” and “with the rationale and purview of the statutory scheme under which it is adopted” (*Vavilov* at para 108); and 2) the governing statutory scheme is amongst the legal constraints that bear upon any administrative decision maker, regardless of the discretionary nature of the power they exercise (*Vavilov* at para 106-10).

(3) *Section 221.2 of the ITA confers a large discretionary relief power on the Minister*

[68] Section 221.2 of the *ITA* reads as follows:

Re-appropriation of amounts

221.2 (1) Where a particular amount was appropriated to an amount (in this section referred to as the “debt”) that is or may become payable by a person under any enactment referred to in paragraphs 223(1)(a) to 223(1)(d), the Minister may, on application by the person, appropriate the particular amount, or a part thereof, to another amount that is or may become payable under any such enactment and, for the purposes of any such enactment,

(a) the later appropriation shall be deemed to have been made at the time of the earlier appropriation;

(b) the earlier appropriation shall be deemed not to have been made to the extent of the later appropriation; and

(c) the particular amount shall be deemed not to have been paid on account of the debt to the extent of the later appropriation.

[Emphasis added]

[69] As already stated by this Court in *Clover International Properties (L) Ltd v Canada (Attorney General)*, 2013 FC 676 [*Clover*], at paragraph 41, this section is not a model of clarity.

Still, the Court agrees with the AGC that this section does not, *per se*, confer any rights to the taxpayer. It only confers a large discretionary power to the Minister to reassess the situation and determine if the re-appropriation of amounts is warranted (*Pomeroy* at paras 24-25). To do so, the Court in *Clower* explained:

[42] In interpreting that provision, both parties agree that there is a two step analysis to be applied:

- i) there must be a particular amount that was appropriated to an amount that is or may become payable by the Applicant;
- ii) an application must be made by the Applicant, and be granted by the Minister, to re-appropriate all or a part of the particular amount to another amount that “is or may become payable” under any enactment described therein.

[Emphasis added]

[70] In the present matter, both parties submit, and the Court agrees, that the decision maker stopped at the first step of the analysis. Mr. Cormier considered that the evidence was insufficient to show that the Canadian Corporations actually paid *Part XIII Tax* on behalf of Mr. Price, i.e. that “a particular amount was appropriated to an amount that is or may become payable by the Applicant”. The decision maker declined to use his discretion for that reason and therefore did not determine if section 221.2 of the *ITA* could or should be used to re-appropriate all or part of the amounts calculated by Mr. Prince’s accountant as *Part XIII Tax* allegedly withheld, “to another amount that “is or may become payable” under any enactment described therein”.

(4) *The Decision is reasonable*

[71] While the Applicant did submit substantial evidence to support his Credit Request, it was not unreasonable for the decision maker to find this evidence insufficient.

[72] First, although the evidence demonstrates that dividends were deposited in Mr. Prince's accounts with the Israeli Banks and that sums were withheld, the documents provided do not clearly or expressly indicate that *Part XIII Tax* was in fact withheld, let alone remitted to the CRA and if so, on whose behalf.

[73] Second, while Mr. Prince's accountant, Mr. Morrissey, proceeded with a substantial analyses and calculations, it was not unreasonable for the CRA to find this evidence insufficient. For instance, in the context of his cross-examination, Mr. Morrissey confirmed that 1) his calculation were based on partial Israel Banks' statements, written in Hebrew; 2) he does not read Hebrew; 3) he based himself on a translation that was provided by an unnamed bank representative occupying an unknow role; and 4) his calculation were never corroborated by the Israeli Banks or the Canadian Corporations.

[74] Third, from this evidence, it is unclear if these bank statements and the certificates provided by the Israeli Banks mention the word "tax", but it is clear that they do not refer to *Part XIII Tax* and do not mention the CRA.

[75] Therefore, as previously mentioned, it is impossible to know, based on this evidence, 1) if the amounts indicated as "withheld" were actually withheld for *Part XIII Tax* or for any other reasons, 2) if the sums were remitted to the CRA or to another entity - Canadian or otherwise, and 3) if the remittance was made for the benefit of Mr. Prince.

[76] As the Decision indicates, any Canadian payer of dividends (i.e. here the Canadian Corporations) to a non-resident taxpayer (or someone they erroneously considered to be a non-

resident), must remit the *Part XIII Tax* to the CRA and, at the end of the year, produce an NR4 Form to the CRA with a copy to the taxpayer. As the AGC explains, the NRA Form received by the CRA and the taxpayer normally contains the following information:

- a. The calendar year in which the Canadian payers made the payment to the recipient;
- b. The recipient code;
- c. Country code for tax purposes in which the recipient is a resident for tax purposes;
- d. Payer or agent identification number for the non-resident payees;
- e. The gross income paid or credited to non-residents of Canada;
- f. Non-resident tax withheld;
- g. Non-resident recipient's name and address;
- h. The Canadian payer's name and address; and,
- i. Non-resident account number under which the Canadian payer remits non-resident tax deductions to the CRA.

[77] Thus, NR4 Forms not only confirm that sums were withheld and have been remitted to the CRA, but also provide the identification of the taxpayer on behalf of whom the withheld taxes have been paid (*ITA*, s 215(1) *in fine*; CRA, Guide, T4061 R22 “NR4 - Non-Resident Tax Withholding, Remitting, and Reporting” (2022) at 9).

[78] Mr. Prince did not provide the CRA with the relevant NR4 Forms and claims it was impossible for him to do so. While he himself did not use intermediaries, he claims that both the Canadian Corporations and the Israeli Banks may have used some, such that his name would not appear on the NR4 Forms. Yet, there is no evidence in the record to support these claims. Furthermore, when questioned on this issue, Mr. Morrissey (Mr. Prince's accountant) confirmed

that he did not take any steps to obtain information regarding potential intermediaries and this, notwithstanding the fact that the CRA had advised the Applicant, back in September 2022, that in support of the Credit Request, they needed NR4 Forms or other equivalent documents that would enable the tracing of the amounts withheld.

[79] It was not unreasonable for the decision maker to consider the fact that, given that the Israeli Banks did not know that Mr. Prince was a Canadian resident, even though he always resided in Canada, they did not have the required particulars on the effective beneficiary of the accounts. Since financial institutions may register the securities of their clients in their personal names or in the names of intermediaries, it was not unreasonable for the decision maker to conclude that he could not exclude the possibilities that 1) an intermediary (from Canada or elsewhere) might have obtained the dividends as the designated beneficiary of the shares' certificates and transferred them in Israel, and 2) someone else could have already secured a CRA refund or credit for the amounts allegedly withheld in *Part XIII Tax*. In mentioning these possibilities, Mr. Cormier was not engaging in baseless speculations but merely explaining why the CRA actually requires documentation capable of allowing tracing.

[80] Since a taxpayer may apply for a refund no later than two years after the end of the calendar year in which *Part XIII Tax* was erroneously withheld (pursuant to subsection 227(6) of the *ITA*), but that no such time frame apply to a credit request pursuant to section 221.2 of the *ITA*, it was not unreasonable for the decision maker to want to be certain that the alleged sums withheld were not the subject of more than one request for credit or reimbursement. In fact, even if the Applicant had actually paid *Part XIII Tax*, since it appears that this may not have been done under his name,

there was a risk that a second claim for refund or credit could have been made by someone else for the same dividends.

[81] Given this possibility, even if Mr. Prince could not provide NR4 Forms, it was not unreasonable for the decision maker to suggest that Mr. Prince provide NR7s or affidavits from the Israeli Banks that would include the registration information in relation to Mr. Prince's shares certificates. In fact, the decision maker's position is in line with the instructions for an NR7 application. For residents of Canada the NR7-R application form (CRA, Form, "NR7-R18 Application for Refund Part XIII Tax Withheld") it clearly indicates:

You must complete the NR7-R application if you do not have an NR4 tax slip issued in your name, or, if third parties participated in the transaction. Attach this completed form, the appropriate affidavits and other documents to your T1, T2 or T3 Income Tax Return for the year of payment to claim a credit for any tax withheld.

[82] Although this matter was not *per se* a refund request, the AGC submits that this requirement should be the same regardless of whether the Applicant asks for a refund or a credit. Given that "[taxpayers] are entitled to expect that like cases will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker" (*Vavilov* at para 129), the Court agrees that it was not unreasonable for the decision maker to request this type of evidence.

[83] Indeed, the CRA was open to receiving alternative documents such as NR7s, affidavits from the Israeli Banks or any other evidence that could show the path taken by Mr. Prince's investments and that could confirm that the sums withheld in his accounts with the Israeli Bank were in fact for *Part XIII Tax* and that they were remitted to the CRA on his behalf. He failed to provide any.

[84] When questioned on the possibility of obtaining affidavits from the Israeli Banks, Mr. Morrissey indicated that he did not obtain them because when the Audit began in 2015, the Applicant was outside the two-year period for an NR7 refund request for most of the relevant years. Yet not only did he admit that tracing the funds withheld was impossible without such affidavits, but he also admitted that, had he acted sooner, he would have been able to obtain them, at least for the period of 7-years during which the banks retained their records, but failed to do so.

[85] The Court agrees with the AGC that it was “the Applicant’s responsibility to put his best foot forward” to establish the basis of his Credit Request (*Danyluk* at para 18 cited in *Building Products* at para 33). He did not do so.

[86] As for Mr. Morrissey’s claim that he could not obtain the proper documentation due to the lack of cooperation of the Israeli Banks, who were “the subject of very significant SCC (Securities and Exchange Commission of the United States) investigation” (...) “for assisting (...) American taxpayer in maintaining foreign accounts without appropriate reporting”, the Court agrees with the AGC that this issue cannot shift the evidentiary burden onto the CRA’s shoulders. First, the Applicant chose to use Israeli Banks’ accounts for his investments in Canadian Corporations. Second, while the Applicant submits that he only learned that *Part XIII Tax* had allegedly been withheld during the Audit, he is still responsible for the fact that this occurred over a period of 10 years while he neither validated that proper reporting to the CRA had been done, nor attempted to properly report the income from these dividends to the CRA.

[87] Despite the above, the decision maker, on his own accord, did some internal verifications to attempt to locate evidence that *Part XIII Tax* had indeed been remitted to the CRA on behalf of

Mr. Prince, but to no avail. These verifications were done using the Applicant's name, the names of the Israeli Banks, the names of some of the Canadian Corporations, and any Israeli beneficiary for amounts corresponding with the amounts claimed by the Applicant. Since Mr. Prince did not provide the names of any intermediaries, no additional verifications could be made by the CRA to potentially identify any NR4 Forms concerning the Applicant, if they existed. The decision maker also consulted a principal specialist in non-resident tax at the CRA and explained the Applicant's file. This specialist came to the same conclusion regarding the evidence required to consider potentially granting the Credit Request. These additional steps speak to the depth of the assessment that Mr. Cormier conducted.

[88] Therefore, while the Court agrees with the Applicant that the Minister's discretion pursuant to section 221.2 of the *ITA* must be exercised reasonably and "must accord with the purposes for which it was given" (*Vavilov* at para 108), the facts and evidence in the present matter do not suggest that the decision maker acted unreasonably.

[89] Mr. Prince submits that by asking for NR4 Forms, NR7s or other documents capable of allowing the CRA to trace the *Part XIII Tax* allegedly withheld, the CRA imposed unreasonable requirements to prevent the application of this discretionary power. The Applicant adds that the decision maker ignored both the remedial nature of section 221.2 of the *ITA* and the rest of the legislative scheme including 1) the fact that it is the payer of the dividend (i.e. the Canadian Corporations) that has to submit NR4 Forms to the CRA (*ITA*, s 215(1)); and 2) the very purpose of section 221.2 which is to enable taxpayers to "arrange payment for a tax indebtedness in such a manner that best ensures that the debt will ultimately be paid" (see *Cybernius* at paras 51-55). Ultimately, he submits that the situation is the same as the one described at the 2017 Canadian Tax

Conference mentioned above, i.e. that there is no practicable path to securing credits under s. 221.2 of the *ITA*.

[90] Given the fact that the documents Mr. Prince provided simply did not allow the CRA to trace the amounts allegedly withheld for *Part XIII Tax* into his personal account with the agency, the decision maker did not exercise his discretion in a manner incompatible with the remedial nature of this provision, or its underlying purpose. The argument put forward here largely resembles the one set forth in *Pomeroy*, where the Applicant relied on *Cybernius* too (*Pomeroy* at paras 23-24). In *Pomeroy*, Justice Shore found that, even if subsection 221.2(2) is to be interpreted “such that the retirement of outstanding debts is a factor, and indeed an important one, to be taken into account in the exercise of the Minister’s discretion”, the section “affords a discretion to the Minister, not an entitlement to the taxpayer” so that to conclude that taxpayers ought to be permitted to have statute-barred tax credits re-appropriated when they are in good standing would be improper (at paras 24-25).

[91] I find that although subsection 221.2(2) is indeed meant to give taxpayers some leeway in how they repay outstanding debts (*Cybernius* at paras 51-55), to conclude that Mr. Prince was entitled to a credit in the present circumstances would be improper. Just because taxpayers are to be given some leeway cannot mean that CRA officials are bound to exercise their discretion to grant credits when the taxpayer has not proven his entitlement, at the risk of granting several credits or refunds for a same amount of taxes paid. Nothing indicates that the decision maker failed to take into account the remedial nature of this provision, he merely exercised his discretion in a way consistent with other purposes of the *ITA*, including the need to preserve the integrity of the Canadian tax system.

[92] While it is possible that Mr. Prince may end up paying more income tax than the correct amount required by law (which has not been established), this is mostly the result of Mr. Prince's lack of diligence and the fact that the necessary documentation was not obtained to support his claim, as opposed to an unreasonable CRA requirement.

[93] Once again, the Applicant's main argument for this judicial review is that it was unreasonable for the Minister to "have it both ways" by accepting the Israeli Banks' statements and certificates as sufficient evidence to assess Mr. Prince's tax liability on the full amount of the dividends issued but insufficient to issue the credit requested. He further argues that the Reassessments based on this evidence constitute an admission that the *Part XIII Tax* was withheld. However, as previously mentioned, the Applicant did not present this argument, nor the evidence used by the CRA in the context of the Audit to the decision maker before the Decision was rendered. In any event, as the AGC submits, the CRA was not concerned, in the context of the Audit, with the nature of the withholdings that were seemingly made. It only needed to know the gross amount of the dividends perceived by Mr. Prince. Whether sums were withheld for the purpose of Canadian taxes, or for any other reason, was, in the context of the Audit, entirely immaterial. The present matter does not involve the same burden of proof or the same provisions of the *ITA* either. Furthermore, the evidence before the decision maker is not the same as the evidence that was before the CRA in the context of the Audit. Therefore, even if this argument had been presented to the decision maker, it would not have been sufficient to render the Decision unreasonable.

V. Conclusion

[94] Considering the reasons above, the application is dismissed. The Applicant has not proven that the Decision suffers from a fatal flaw making it unreasonable.

VI. Costs

[95] During the hearing, the Court invited the parties to reach an agreement regarding the quantum of costs to be paid. On February 12, 2026, the parties informed the Court that they had reached an agreement. In accordance with this agreement, the Court orders the lump sum cost award of \$15,141.08, inclusive of disbursement and tax, in favor of the Respondent.

JUDGMENT in T-885-24

THIS COURT’S JUDGMENT is that:

1. The application is dismissed, with costs in the amount of \$15,141.08 in favor of the AGC.

“Danielle Ferron”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-885-24

STYLE OF CAUSE: SAM PRICE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUÉBEC

DATE OF HEARING: FEBRUARY 5, 2026

JUDGMENT AND REASONS: FERRON J.

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APPEARANCES:

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