COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Glencore Canada Corporation v. FTI Consulting Canada Inc.,* 2026 BCCA 167

Date: 20260420
Docket: CA50345

Between:

Glencore Canada Corporation

Appellant

And

FTI Consulting Canada Inc., as the Monitor of Trevali Mining Corporation and Trevali Mining (New Brunswick) Ltd., and as the Receiver of certain assets of Trevali Mining (New Brunswick)

Respondent

And

The Attorney General of Canada on behalf of His Majesty the King in Right of Canada

Respondent

Before: The Honourable Justice Fisher
The Honourable Justice Edelmann
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated December 13, 2024 (*Trevali Mining Corporation (Re)*, 2024 BCSC 2252, Vancouver Docket S226670).

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Counsel for the Respondent, the Attorney General of Canada on behalf of His Majesty the King in Right of Canada:	A. Sabzevari

Place and Date of Hearing:	Vancouver, British Columbia February 4, 2026
Place and Date of Judgment:	Vancouver, British Columbia April 20, 2026

Written Reasons by:
The Honourable Justice Fisher

Concurred in by:
The Honourable Justice Edelmann
The Honourable Justice Francis

Summary:

This is an appeal from an order requiring payment of harmonized sales tax (HST) by the appellant, a recipient of a taxable supply, to a receiver acting for a supplier in a proceeding under the Companies' Creditors Arrangement Act (CCAA). The supplier had failed to report and remit HST to the Crown (through the Canada Revenue Agency or CRA) prior to its insolvency. The supplier also owed a substantial sum to the appellant in relation to a settlement agreement. When the receiver demanded payment of the HST owing under certain supply contracts between the parties, the appellant sought to set off the amounts of the invoices, including HST, under a set-off clause in the supply contracts.

The supervising judge concluded the appellant did not have the right to a contractual set-off of the HST as against another liability of the supplier. She held that under the Excise Tax Act (ETA), HST payable by a recipient is a debt to CRA, not the supplier. Although the scheme of the ETA requires the supplier to collect the HST from the recipient, it does so as agent for CRA. The judge could not interpret the set-off clause in the parties' contract to negate the legal requirement of mutuality. She also ordered the appellant to pay the interest and penalties CRA assessed as against the supplier for the failure to report and remit.

Held: Appeal allowed only to the extent of varying the order to exclude the requirement for the appellant to pay the interest and penalties assessed against the supplier. The judge did not err in her interpretation of the ETA or the set-off clause in the parties' contract. Under the ETA, the supplier acts as a trustee for CRA, and its obligations are to collect the HST for and on behalf of CRA and hold the funds in trust for CRA until they are remitted. The set-off clause permitted either party to "set off any of its liabilities to the other party against any liabilities of the other party to itself", thus incorporating a requirement of mutuality. The set-off clause, while broadly worded, did not permit the appellant to set off HST in the circumstances here because the tax was not a liability to the supplier in its own right.

The judge's order that the appellant pay the HST to the receiver was a reasonable exercise of her discretion under s. 11 of the CCAA. It allowed the receiver to receive the funds on behalf of the supplier as agent for CRA and distribute them among the creditors in accordance with the CCAA. However, the order that the appellant pay the interest and penalties CRA assessed against the supplier was unreasonable in light of the record.

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Reasons for Judgment of the Honourable Justice Fisher:

[1] The issue in this appeal is whether parties to a supply contract are entitled to exercise a contractual right of set-off of amounts payable by the recipient to the supplier for harmonized sales tax (HST) under the *Excise Tax Act*, R.S.C. 1985, c. E-15 [*ETA*] as against other liabilities owing by the supplier to the recipient. In this case, the supplier did not remit the HST to the Crown (referred to as the Canada Revenue Agency or CRA) and the recipient issued notices of set-off just as the supplier was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (*CCAA*).

[2] The supervising judge in the *CCAA* proceeding concluded that the recipient was not entitled to a contractual set-off because the HST is owed to CRA, not to the supplier, and the supplier's obligations under the *ETA* are to collect the HST for and on behalf of CRA and to hold the funds in trust for CRA until they are remitted. The judge interpreted the set-off clause in the contract between the parties as applying only to the recipient's debts owed to the supplier in the supplier's own right, or personal capacity.

[3] The recipient is the appellant, Glencore Canada Corporation (Glencore) and the supplier was Trevali Mining Corporation (TMC) and Trevali Mining (New Brunswick) Ltd. (TNB).[1] These companies were parties to various "Offtake Agreements" by which TMC agreed to sell metals to Glencore at certain prices under certain conditions. The respondent, FTI Consulting Canada Inc. (FTI) is the monitor of TMC and TNB in the *CCAA* proceeding and the receiver of the assets of TNB (the Monitor or Receiver).

[4] In these reasons, I refer to the supplier company as TNB.

[1] Glencore's parent company, Glencore AG, entered into the Offtake Agreements with TMC and assigned its rights under those agreements to Glencore. Because TNB mined the metals and sold them to Glencore, the parties treated TNB as the proper party to the agreements.

Background

[5] TMC and TNB were part of the Trevali corporate group, which owned and operated mines around the world. TNB operated a mine in New Brunswick and sold metal from that mine to Glencore. The Offtake Agreements were entered into in 2020 and 2021 and the sales from TNB were made between December 2021 and October 2022.

[6] Under the terms of the Offtake Agreements, TNB rendered provisional invoices to Glencore upon delivery of the metals. Final invoices were rendered after the metals were weighed or measured and a final price was determined. During this process, amounts due by Glencore would be adjusted up or down. In addition to the purchase price, Glencore was liable under s. 165(2) of the *ETA* to pay TNB HST of 15% of the purchase price.[2] The HST amounts on the invoices were also adjusted up or down by debits and credits during the invoicing process. According to Glencore, this was routinely done under the set-off clause in the Offtake Agreements.

[7] The set-off clause is the key provision in this appeal. It provided:

> Either party may at any time without notice to the other party set off any of its liabilities to the other party against any liabilities of the other party to itself (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by the parties of its rights under this clause shall be without prejudice to any other rights or remedies available to the parties under this Contract or otherwise.

[8] During 2021 and 2022, TNB failed to deliver the minimum amounts of metals required under the Offtake Agreements. Consequently, Glencore incurred USD $12.9 million in replacement and shipping costs (the Replacement Costs). TNB delivered some metals to Glencore after that and invoiced USD $8.7 million plus

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[2] The *ETA*, in s. 165, requires “every recipient of a taxable supply made in Canada” to pay Goods and Services Tax (GST) or HST to “Her Majesty in right of Canada”. Because New Brunswick is a “participating province” under s. 165(2) of the *ETA*, Glencore as a recipient was required to pay HST rather than GST. I therefore refer to the tax as HST but the same analysis would apply to the payment of GST.

CAD $1.5 million in HST. On August 18 and September 8, 2022, Glencore issued notices of set-off to TMC, setting off the USD $12.9 million in Replacement Costs that TNB owed to Glencore against TNB's invoices to Glencore that included the HST.

[9] Meanwhile, on August 19, 2022, TNB was granted a stay of proceedings under the *CCAA* and FTI was appointed as Monitor. Effective January 24, 2023, TNB was placed into receivership and FTI was appointed as Receiver.

[10] In audit letters dated January 23 and March 22, 2023, CRA advised TNB that it proposed to assess the company for its net HST liability as a result of unreported sales and unreported GST/HST collectible. On March 29, 2023, CRA assessed TNB for CAD $1,546,331 including interest and penalties in respect of the HST collectible from the sales to Glencore. On April 18, 2023, CRA submitted a proof of claim against TNB with respect to a pre-filing claim, and on August 20, 2024, an amended claim with respect to the receivership.

[11] On April 21, 2023, Glencore filed a Proof of Claim with the Receiver for CAD$6,579,722.53 million in Replacement Costs, calculated with a set-off that included the HST. Prior to this, at TNB's request, Glencore had sent revised notices of set-off that excluded the HST, but on April 14, 2023, after receiving certain tax advice, Glencore sent updated notices of set-off for the Replacement Costs that again included the HST.

[12] The Receiver did not dispute Glencore's claim for the Replacement Costs or its contractual right to set off those costs against Glencore's liability to TNB. The Receiver did dispute Glencore's right to set off the HST on the basis that the tax payable is an obligation of Glencore to CRA, not to TNB, who acts as an agent for CRA in collecting the HST. On September 13, 2023, the Receiver demanded payment from Glencore for USD $1,129,129 in HST (roughly equivalent to the $1,546,331 CRA assessed against TNB). Glencore refused to do so, relying on its right of set-off in the Offtake Agreements as having satisfied its HST liability to TNB.

[13] The Receiver then sought an order from the supervising judge requiring Glencore to pay it the HST allegedly owing under the invoices relating to TNB's sale and delivery of metals to Glencore prior to and just after TNB's insolvency.

The decision below

[14] The Receiver's position before the supervising judge was the same as expressed in its demand letter to Glencore: the contractual set-off clause does not apply to the HST amount because Glencore does not owe the HST to TNB in TNB's "personal capacity"; rather TNB is required to collect HST received from Glencore as agent and trustee for CRA. The Attorney General, who filed an application response on behalf of CRA and appeared at the hearing, agreed with the Receiver that a set-off of HST is not available to Glencore because HST is owing to CRA, not TNB.

[15] Glencore disputed this for three reasons: (1) TNB cannot resile from the contractual right of set-off given past practices; (2) under the *ETA*, Glencore is required to pay the HST to TNB, not CRA; and (3) the result sought by the Receiver is commercially unreasonable and without precedent.

[16] The judge identified four issues:

1) Who is liable to pay the HST amount and to whom?

2) Is Glencore entitled to exercise its contractual set-off rights?

3) Is TNB/the Receiver estopped from asserting that no right of set-off exists? and

4) Is the result sought by the Receiver commercially reasonable?

1) Liability to pay HST

[17] The judge devoted much of her analysis to the first issue, reviewing in some detail the legislative scheme under the *ETA* in relation to the GST and HST.

[18] She began with s. 165, which requires "every recipient of a taxable supply made in Canada" to pay GST or HST to "Her Majesty in right of Canada" (thereafter referred to as CRA).

[19] The judge recognized that despite the requirement for the recipient to pay the tax to CRA, "that person does not pay CRA directly" because the scheme of the *ETA* requires the recipient to pay the HST to the supplier: at para. 41. She referred to s. 221, which requires the supplier to collect the HST from the recipient as agent of CRA, to s. 222, which deems a supplier to hold the amount collected in trust for CRA until it is remitted, and to s. 278(2), which provides that a recipient required to pay HST under s. 165 is not required to pay the tax to CRA when it is to be collected by another person (here TNB).

[20] Interpreting these provisions, the judge stated:

> [44] There is no doubt that Glencore was liable to pay the HST under s. 165. In addition, there is no doubt that TNB was required to collect and remit the HST to CRA under ss. 221 and 222. The Receiver and Glencore are agreed that, in the normal course, TNB would collect the HST paid by Glencore and remit the HST to CRA.

[21] However, she went on to examine the provisions of this "complex scheme for HST" in terms of the role, responsibilities and liabilities of Glencore (recipient), TNB (supplier) and CRA (ultimate beneficiary) as she considered relevant to the set-off issue: at para. 45.

[22] First, the judge considered the fact that the *ETA* permits the supplier to remit "net tax" to CRA, calculated after offsetting the supplier's input tax credits (ITCs), rather than the total amount received from the recipient. She did not see this process as altering Glencore's liability to pay HST under the *ETA*.

[23] Second, the judge considered the recourse provided to suppliers under s. 224 of the *ETA*, which gives a supplier the right to sue a recipient in certain circumstances:

> 224 Where a supplier has made a taxable supply to a recipient, is required under this Part to collect tax from the recipient in respect of the supply, has

> complied with subsection 223(1) in respect of the supply and has accounted for or remitted the tax payable by the recipient in respect of the supply to the Receiver General but has not collected the tax from the recipient, the supplier may bring an action in a court of competent jurisdiction to recover the tax from the recipient as though it were a debt due by the recipient to the supplier.
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> [Emphasis added by the judge.]

[24] She held that TNB, not having used its own funds to pay the HST to CRA, was unable to bring an action against Glencore under this provision. She also held the *ETA* (presumably in s. 224) "does not impose an obligation on a recipient to pay the HST to a supplier *unless and until* the supplier has paid the HST to CRA" at para. 48 (emphasis by the judge).

[25] The judge rejected an argument by Glencore that s. 224 is a complete code for the collection and remittance of HST. In her view, s. 224 does not alter the fundamental liability of Glencore as recipient to pay the HST to CRA:

> [51] … Section 224 only allows a supplier (TNB) to sue the recipient "*as though* it were a debt due by the recipient". That provision does not replace Glencore's liability to pay HST under s. 165 to CRA with a debt owed to TNB or transmogrify Glencore's debt to CRA into a debt legally owed to TNB as the supplier.
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> [Emphasis added by the judge.]

[26] She considered the fact that CRA can assess both the supplier and the recipient under s. 296(1)(a) and (b) of the *ETA* and referred to commentary by David Sherman, "a leading GST/HST commentator" (at paras. 54–57) about the implications of this authority and the fact that CRA rarely assesses the recipient:

> … If the recipient does not pay the tax … [CRA] may assess the recipient for the tax pursuant to paragraph 296(1)(b), though this is rarely done …
>
> …If the vendor does not collect the tax, however, the purchaser is still required to pay it if the conditions of section 165 require that tax be paid. Under subsection 278(2), the purchaser is not required to pay the amount to [CRA] if it is required to be collected by another person under section 221. However, paragraph 296(1)(b) allows [CRA] to assess the purchaser for tax payable. …
>
> The CRA rarely assesses a purchaser. …
>
> [Emphasis added by judge.]

[27] The judge relied on Mr. Sherman's opinion that the recipient's obligation is to pay HST to CRA, not the supplier, considering the interplay among ss. 165, 221, 278(2) and 224.

[28] The judge next considered *Royal Bank of Canada v. The Queen*, 2007 TCC 281, which discussed the "duality of liability" or "co-existing liabilities" of recipients and suppliers under the *ETA* and clarified that CRA's ability to assess a supplier does not undermine the payment liability of a recipient:

> [60] The above provisions make clear that it is the recipient (Glencore) who is liable to pay HST under s. 165 and who is assessable under s. 296(1)(b). That amount is a "tax debt" owed to CRA and recoverable by legal action: *ETA*, s. 313 (1.1) and (2). In addition, CRA can assess Glencore for HST even though it has already assessed the supplier (TNB) for the same amount on the same supply. Glencore's liability to CRA to pay the HST does not cease to exist simply because CRA has assessed TNB, instead of Glencore.

[29] The judge accepted that a recipient effectively pays the tax when it pays it to the supplier who acts as agent for CRA but found that in this case, Glencore had not done so (having asserted its right of set-off): at paras. 63–64. She agreed with the Receiver that the *ETA*, particularly ss. 165(1) and (2), supported the proposition that HST is not payable to or collectible by TNB as supplier, and answered the first question as follows:

> [65] … The HST is not a debt owing by the recipient to the supplier. HST is owed to CRA and the supplier simply collects the HST for and on behalf of the CRA as its agent and under the requirement that, upon receipt, it must hold the tax in trust for CRA until it is remitted to CRA (net of any ITCs).

2) Contractual right of set-off

[30] Glencore relied only on its contractual right of set-off under the Offtake Agreements, but the judge considered the core principles of legal set-off relevant to interpreting the set-off clause. She was primarily concerned about the requirement of mutuality, "in that there must be 'mutual cross-obligations' arising between the parties": *Citibank Canada v. Confederation Life Insurance Co*., [1996] O.J. No. 3409 (Ont. S.C.). She recognized that equitable set-off relaxed, but did not eliminate, this

requirement, citing *Canada Trustco Mortgage Co. v. Sugarman*, [1999] O.J. No. 3888 (Ont. C.A.): at para. 67.

[31] The judge held that cross-claims must be owed to the other party in the same right or capacity and mutual debts mean debts due "from either party to the other": *Holt v. Telford,* [1987] 2 S.C.R. 193 at 204. Therefore, the mutuality condition for legal set-off is not met if the debt is not owed to the other party. Similarly, set-off will not be allowed where a trustee in its personal capacity owes a debt to a third party and that third party in turn owes a debt to the trustee on behalf of the trust: *Colonial Furniture Co. (Ottawa) Limited v. Saul Tanner Realty Limited,* [2001] O.J. No. 292 (Ont. C.A.) at para. 16. She relied on the concept as expressed by this Court in *McMahon v. Canada Permanent Trust Company*, [1979] B.C.J. No. 1951 (C.A.):

> [9] … The basic rule is that set-off (in effect the combination of accounts) is only available short of agreement, express or implied, when the debts or accounts are mutual, between the same parties in the same right. It is not necessary that debts which are mutual must be of the same nature: see Houlden and Morawetz, Bankruptcy Law of Canada (1960), p. 160 et seq. "Mutual debts" are debts or claims due from one to another which are ascertainable and which are in the same right. A person in his individual capacity is not in the same right as he is when acting as trustee for another. Hence, it is trite law that, subject to certain limited exceptions, an amount owed by a person in his capacity as trustee holding property, credits or funds for another or others cannot combine them with or set them off against a personal debt owed to him in his personal capacity by the beneficiary or beneficiaries of the trust: see *Garnett v. McKewan* (1872), L.R. 8 Exch. 10. In such a case there is no mutuality as one account is held in a fiduciary capacity and the other in a personal capacity. …
>
> [Emphasis added by judge.]

[32] The judge considered the words in the set-off clause and accepted that it "expands what would otherwise be the requirements of legal set off" by applying to both liquidated and unliquidated claims: at para. 75. However, she remained concerned about mutuality and interpreted the set-off clause as follows:

> [78] In my view, the plain and ordinary meaning of the phrase "Glencore's liabilities to [TNB]" means Glencore's debts owed to TNB in TNB's own right (i.e. personal capacity) and not in any representative capacity held by TNB (such as its role under the *ETA* to collect HST on behalf of CRA). I am unable to read the Set-Off Clause as negating the usual requirement for mutuality in

> legal set-off or even relaxing the mutuality requirement, such as in equitable set-off.

[33] The judge then repeated her conclusion that under the *ETA*, Glencore does not owe the HST to TNB in its personal capacity and, therefore, not in the same capacity or right in which TNB owes the Replacement Costs to Glencore. She therefore agreed with the Receiver that Glencore could not apply contractual set-off with respect to the HST amount in relation to its claim for the Replacement Costs.

3) Estoppel

[34] The judge rejected Glencore's estoppel argument based on TNB's previous and routine application of the set-off clause under the Offtake Agreements. She agreed the parties had a shared assumption that they could set off HST in the ordinary course of the reconciliation process relating to the provisional and final invoices as this was an efficient way to adjust the amounts and avoid a multitude of payments. However, she found no evidence of a shared assumption relating to Glencore setting off any damage claims, no reliance, and no unfairness to Glencore. To the contrary, the judge considered it unfair to burden the estate with a debt owed to CRA: at paras. 84–87.

4) Commercial unreasonableness

[35] The judge also rejected Glencore's argument that the order for payment was commercially unreasonable. She was satisfied that the facts in this case are unique as to the application of this set-off clause "between these two sophisticated parties and the background of TNB's insolvency": at para. 90.

[36] In the result, the judge ordered Glencore to pay the HST as well as the interest and penalties assessed against TNB by CRA. She considered the interest and penalties, which arose from a failure to file tax returns and a failure to pay CRA upon filing, to be "a direct result of Glencore not remitting the HST to TNB": at para. 94.

On appeal

[37] Glencore contends the judge made three errors of law:

a) reading s. 224 out of the *ETA* by giving TNB the benefit of the provision without satisfying its requirements;

b) bypassing the statutory appeal process that Parliament put in place to govern these types of disputes; and

c) making inconsistent and irreconcilable findings in concluding that TNB can set off HST but Glencore cannot.

[38] Underlying these alleged errors is the primary issue in this appeal: whether the set-off clause in the Offtake Agreements allows Glencore to set off its obligation under the *ETA* to pay HST to TNB against TNB's liability to pay the Replacement Costs to Glencore. To answer that question, the words of the contract must be interpreted in accordance with the usual rules of contractual interpretation and in the context of the legislative scheme under the *ETA* and the nature of Glencore's obligation to pay HST.

[39] Glencore interprets ss. 165, 221(1), and 224 of the *ETA* to create a liability on it as a recipient to pay HST to TNB as a supplier. It focuses much of its argument on s. 224, emphasizing that this is the only mechanism in the *ETA* by which a supplier may recover unpaid HST from a recipient. Glencore questions how the judge could have ordered it to pay TNB (via the Receiver) given that TNB failed to report sales and remit the HST to CRA. It says the Receiver cannot maintain that the HST is owed to CRA, but that Glencore must pay it to TNB.

[40] Both the Receiver and CRA maintain that Glencore cannot set off the HST amount because it owes HST to CRA, not TNB. They say this is the case with respect to the set-off clause in question, but they go further to say that HST cannot be set off as between parties regardless of the terms of contract.

[41] That said, neither the Receiver nor CRA expressed concern about the parties' practice of adjusting the amounts of HST payable under TNB's invoices to Glencore in the ordinary reconciliation process, which the judge accepted was done pursuant to their contractual set-off: at para. 84. The Receiver says the problem arises only where the supplier is insolvent. If the HST is allowed to be set off by Glencore, the Receiver maintains that all creditors of TNB will be $1.5 million short. They do not dispute that TNB cannot bring an action under s. 224 given its failure to remit, but rely on the broad discretionary authority provided to the supervising judge under s. 11 of the *CCAA* to ground the order requiring Glencore to pay the Receiver.

[42] Before the supervising judge, the parties did not dispute that any contractual rights of set-off existing between TNB and Glencore prior to the *CCAA* proceedings and receivership may equally be asserted as against the Receiver: see para. 25. This is consistent with s. 21 of the *CCAA*, which provides that the law of set-off applies to all claims made against a debtor company and all actions instituted by the debtor company for the recovery of debts "in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be". It follows then that if Glencore is entitled to set off all amounts owing under the invoices, including the HST, against the Replacement Costs absent TNB's insolvency, it can do the same after the insolvency.

[43] In the context of TNB's insolvency, the real problem is that TNB did not set aside sufficient funds to remit the HST collected or collectible from its customers and fell into arrears in reporting, accounting for and remitting the net HST it was liable to pay to CRA. This entire case depends on whether Glencore's asserted set-off was permitted under the Offtake Agreements and not prohibited by the *ETA*. If it was, Glencore has paid the tax, and no order can be made against it. If it was not, and Glencore has not paid the tax, the question is whether the judge ought to have ordered Glencore to pay the outstanding HST to the Receiver, as agent for CRA or otherwise.

[44] I would therefore approach the issues by asking the following questions:

1) Does the set-off clause in the Offtake Agreements allow Glencore to set off its obligation under the *ETA* to pay HST to TNB against TNB's liability to pay the Replacement Costs to Glencore?

2) If not, did the supervising judge properly exercise her discretion under s. 11 of the *CCAA* to order Glencore to pay the unpaid HST to the Receiver?

1) The set-off clause

[45] The first question involves both contractual and related statutory interpretation.

Standard of review

[46] Contractual interpretation involves questions of mixed fact and law, as the principles of contractual interpretation are applied to the words of the contract in light of the factual matrix: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 50. Therefore, the judge's interpretation of the set-off clause in the Offtake Agreements is reviewable on the standard of palpable and overriding error, absent an extricable error of law.

[47] The rationale for this deferential standard in contractual interpretation is to limit appellate intervention to cases where the result cannot be expected to have an impact beyond the parties to the dispute. However, where an extricable error of law is identified, the result may have a broader impact. While appellate courts are to be cautious in identifying an extricable error in this context, such questions may arise where the judge applies an incorrect principle, fails to consider a required element of a legal test, or fails to consider a relevant factor: *Sattva* at paras. 51–54*; Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20 at paras. 27–28; *Culos Development (1996) Inc. v. Baytalan*, 2025 BCCA 265 at para. 27.

[48] There is no dispute that the interpretation of the *ETA* in this case involves a question of law reviewable on the standard of correctness. The judge's interpretation

of the set-off clause involved a detailed consideration of the *ETA*. This fact alone does not necessarily require application of the correctness standard: *Earthco* at para. 32. However, the judge's interpretation of the *ETA* formed a key basis for her interpretation of the set-off clause, resulting in a conclusion about the right to set off HST that may have implications beyond this dispute. This is exemplified by the position of both the Receiver and CRA that parties cannot contractually set off HST because of the trust provisions in the *ETA*.

[49] What follows is this: an error of law in the judge's interpretation of the *ETA* would render her interpretation of the set-off clause reviewable on the correctness standard, but absent that error, her interpretation of the set-off clause is subject to the deferential standard of palpable and overriding error.

Analysis

[50] In my opinion, the supervising judge made no error in her interpretation of the *ETA* and no palpable and overriding error in her interpretation of the set-off clause.

[51] The basis for the judge's conclusion is straightforward: because Glencore owes the HST to CRA and not TNB, the mutuality requirement for legal or equitable set-off is not met and the set-off clause cannot be interpreted to allow Glencore to set off that liability against TNB's liability to Glencore for the Replacement Costs.

[52] The Receiver submits that what follows from this is that no contract can set off HST "as HST", although it may be possible to set off "an amount equal to HST". CRA goes further and submits that no contract between a supplier and recipient could achieve a set-off "of unpaid HST owed to the Crown against debts owed by the supplier to the recipient". However, both respondents contend the supervising judge's ruling is properly interpreted to apply only to the set-off clause in this case. Indeed, the judge considered the facts here to be unique and was not concerned about any disruption of commercial activity.

[53] I agree that the judge's order was intended to apply only in the unique circumstances of this case. It is, therefore, unnecessary to decide the broader

question. However, the conclusions reached about the nature of each party's obligations under the *ETA* and how this affects a contractual right of set-off may have broader implications, so some comment is in order.

[54] CRA's concerns about the ability of parties to a taxable supply contract to set off HST are expressed in the Attorney General's factum:

> …Such an ability would critically undermine the HST regime under the *ETA*, because it would deprive the collection of HST from the recipient in situations where a debt is owed by the supplier to the recipient.
>
> The set-off of unpaid HST conflicts with the supplier's obligation under subsection 221(1) of the *ETA* to collect the tax as the Crown's agent and the fact that such amounts collected are protected via a deemed trust imposed by subsection 222(1). Inherent in the concept that "the dollar collected is not the dollar remitted" is that the initial dollar must be collected, which does not occur if HST is set off against contractual obligations owed by the supplier to the recipient. …

[55] What follows from this is the Attorney General's assertion that the *ETA* requires HST to be paid only with money. This is an assertion based on his interpretation of various provisions in the *ETA* that set out how tax is paid by other means, such as coupons or gift cards, although he acknowledges that there is no provision that prohibits payment by means other than money. The Attorney also accepts that the judge correctly distinguished a set-off of damages from a set-off in the normal course of business but goes only so far as to suggest that this latter practice was "potentially unauthorized".

[56] It would not be appropriate to determine this issue here, especially in the absence of more comprehensive arguments. I will say only that the way in which parties to supply contracts carry out their obligations under the *ETA* does not appear to be prescribed. Unpaid tax is always a risk, and the *ETA* provides several methods of recourse, including CRA's assessment and collection authority as well as a supplier's right of action under s. 224.

The ETA

[57] I see no error in the judge's description of the HST as a "debt" owing by the recipient to CRA, which the supplier collects for and on behalf of the CRA as its

agent and under the requirement that, upon receipt, it must hold the tax in trust for CRA until it is remitted. Section 165(2), which requires Glencore as a recipient to pay the HST to CRA, is subject to Part IX of the *ETA*. Included in Part IX is the requirement for TNB as a supplier to collect the HST as agent for CRA under s. 221(1) and to remit it to CRA under s. 222(1), as well as Glencore's corresponding obligation to pay the HST to TNB under s. 278(2). This interpretation is consistent with the scheme of the *ETA* as described in *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, 2009 SCC 49 at para. 10.[3]

[58] That said, the question raised by Glencore is whether its *statutory obligation to pay HST to TNB* as a supplier is also a liability "howsoever arising" between it and TNB as contemplated by the set-off clause. Glencore relies on s. 224 and the dual liability scheme under the *ETA* to support this argument.

[59] Glencore submits s. 224 creates a "debt due" to a supplier from a recipient and, like any other debt, it can be set off or reduced by other liabilities owed to the recipient by the supplier. It says the judge erred by (a) effectively reading s. 224 out of the *ETA* by giving TNB the benefit of the provision without TNB having met its requirements, and (b) ignoring the intention of Parliament to treat the unpaid tax as a debt owing from the recipient to the supplier.

[60] I do not agree the judge gave TNB the benefit of s. 224. She recognized that TNB was unable to invoke s. 224 because it had not paid the tax to CRA.

[61] Nor do I agree the judge erred in concluding that s. 224 "does not alter the fundamental liability of the recipient" to pay HST to CRA. Glencore's reliance on s. 224 fails to consider the broader regime under the *ETA*. Section 224 provides a supplier with a direct cause of action to recover the tax from a recipient "as though it were a debt due" by the recipient to the supplier only where the supplier has paid the tax owing by a recipient to CRA. In that circumstance, the supplier has met its obligation to remit the tax and fulfilled its role as trustee, thereby becoming the *only*

[3] The relevant provisions of the *ETA* are attached as Appendix A to these reasons.

entity entitled to payment from the recipient. However, its role as agent for CRA never changes. Importantly, where the supplier does not fulfill its trust obligations to CRA, as in this case, any tax unpaid by the recipient remains owing to CRA. Therefore, s. 224, while an important part of the statutory scheme, does not change the nature of the recipient's liability to CRA.

[62] Glencore also submits the "dual liability" scheme under the *ETA* creates two co-existent yet distinct liabilities: one owing from the recipient to the supplier, and another from the supplier to the Crown. I agree that this scheme creates separate obligations to pay and remit tax but as the court held in *Royal Bank*, "[w]hether it is the Crown or the supplier that is the direct beneficiary of a collection against a recipient, there can only be one payment obligation": at para. 74. This is so even though CRA's ability to collect the tax from a recipient is limited by s. 278(2) where the supplier is required to collect the tax under s. 221, and even though a failure to remit usually results in the supplier being assessed by CRA under s. 296(1)(a): see *Royal Bank* at paras. 66, 68–69.

[63] Importantly, both parties to a supply are assessable under s. 296(1) and both parties owe a "tax debt" to CRA under s. 313(1), but these debts are of a different nature. The recipient owes a debt for any amount "payable" and the supplier for any amount "remittable" (see also *Royal Bank* at para. 66). Both constitute "a debt due to Her Majesty" that is recoverable as such under s. 313(1.1). Neither the existence of s. 224, nor the fact that the recipient's debt of payment is discharged after payment to the supplier (see *Airport Auto Limited v. The Queen*, 2003 TCC 683 at para. 19) alter the conclusion that the debt is owed to CRA.

[64] I therefore find no error in the judge's interpretation of the *ETA* with respect to the nature of Glencore's liability to pay HST to CRA.

[65] Because TNB did not have a cause of action against Glencore under s. 224, Glencore remains liable to CRA unless it is entitled to the benefit of its contractual right of set-off. If so, Glencore is entitled to assert that right as against the Receiver

and its liability to pay CRA is extinguished by having paid TNB*: Airport Auto Limited* at para. 19.

[66] This brings me to the judge's conclusion that the set-off clause was intended to apply only to liabilities owed to the other party in its own capacity due to the requirement of mutuality.

The set-off clause

[67] Although Glencore asserted only a right of contractual set-off, the judge appropriately considered the principles of legal and equitable set-off to be relevant to her interpretation of the set-off clause.

[68] As the judge recognized, the mutuality requirement for legal set-off applies to debts due "from either party to the other", i.e. from the same parties in the same capacity: *Holt* at 204–205; *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32 at para. 90. This requirement is not met where a debt has been assigned to a third party or where it is owed to the other party acting as trustee for another: *Holt* at 205; *McMahon* at para. 9; *Colonial Furniture Co*. at para. 16.

[69] Equitable set-off is available on a broader basis than legal set-off. It applies to both liquidated and unliquidated claims and regardless of whether there is mutuality. In *Holt*, the Court stated there was no requirement for mutuality in equitable set-off but other cases have described this requirement as "relaxed" or not strictly applicable: *Sugarman* at para. 18. What is important is the connection between the debts. It may be available against an assignee or third party where the transactions are "so inseparably connected that it would be manifestly unjust to allow the plaintiff to enforce payment without taking into consideration the cross-claim": *Scott* at para. 91; *Holt* at 206, 211–212.

[70] The judge acknowledged that the set-off clause in this case is "expansive in addressing the nature of the claims that are included": at para. 75. I reproduce it here for convenience:

> Either party may at any time without notice to the other party set off any of its liabilities to the other party against any liabilities of the other party to itself (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by the parties of its rights under this clause shall be without prejudice to any other rights or remedies available to the parties under this Contract or otherwise.
>
> [Emphasis added.]

[71] The judge read Glencore's contractual right to set off its liabilities to TNB as "not negating" the usual requirement for mutuality in legal set-off or even the relaxed requirement under equitable set-off. Because TNB in its personal capacity owed the Replacement Costs to Glencore but Glencore owed the HST to TNB on behalf of the trust in favor of CRA, there was no mutuality.

[72] In my view, the express words in the set-off clause that allow either party to "set off any of its liabilities *to the other party* against any liabilities of the other party *to itself*" support the judge's interpretation to the extent that Glencore continues to owe the HST to TNB in its trustee capacity. That is the case here because TNB never fulfilled its trust obligation to CRA by remitting the tax owed by Glencore and has no right to recover from Glencore under s. 224 of the *ETA*.

[73] The judge did not consider whether, if TNB had the right to recover unpaid tax from Glencore under s. 224, the relaxed requirement for mutuality under equitable set-off would have been met — presumably because s. 224 was not in play. In my view, the principles of equitable set-off could potentially be available under the expansive language of the set-off clause in response to a claim by the supplier under s. 224. In that circumstance, the supplier could be considered akin to an assignee of the tax debt and, if the dealings between the parties were determined to arise out of closely interrelated contracts or dealings that were "inseparably connected", the recipient could be entitled to assert its contractual set-off. However,

that is a question for another day since TNB has no right to recover under s. 224. This point simply underscores that s. 224 provides a unique and specific remedy to a supplier who meets its obligation to account for and remit the tax to CRA.

[74] All that said, outside of s. 224, Glencore's tax debt remains a debt to CRA, is unenforceable by TNB in its own right, and the set-off clause does not apply.

[75] I therefore find no reviewable error in the supervising judge's interpretation of the set-off clause as it applies in the circumstances of this case. It did not apply to Glencore's HST liability to CRA.

[76] I turn now to whether the judge's order for Glencore to pay the HST to the Receiver was a proper exercise of her discretion under s. 11 of the *CCAA*.

2) Discretion to order payment to the Receiver

[77] Although unstated in her reasons, the judge's order that Glencore remit the unpaid HST to the Receiver was made under s. 11 of the *CCAA*, which gives a broad discretion to the court on an application to "make any order that it considers appropriate in the circumstances". While this discretion is broad, it is not boundless, and must be exercised in furtherance of the remedial objectives of the *CCAA*: *9354-9186 Québec Inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 49, 67; *Port Capital Development (EV) Inc. v. 1296371 B.C. Ltd*., 2021 BCCA 382 at para. 17; *Canada v. Canada North Group Inc*., 2021 SCC 30 at para. 21. One of those remedial objectives is to determine a reorganization that is fair to all creditors: *Century Services Inc. v. Canada (A.G.)*, 2010 SCC 60 at para. 77. There is no dispute that the discretion cannot be used to override prohibitions under the *ETA*.

[78] A high degree of deference is accorded to discretionary orders made by judges supervising *CCAA* proceedings. Appellate intervention is justified only where the judge erred in principle or exercised her discretion unreasonably: *Callidus* at

para. 54; *Port Capital* at para. 39. In *Canada North*, Côté J. discussed the importance of deference in this context:

> [22] On review of a supervising judge's order, an appellate court should be cognizant that supervising judges have been given this broad discretion in order to fulfill their difficult role of continuously balancing conflicting and changing interests. Appellate courts should also recognize that orders are generally temporary or interim in nature and that the restructuring process is constantly evolving. These considerations require not only that supervising judges be endowed with a broad discretion, but that appellate courts exercise particular caution before interfering with orders made in accordance with that discretion (*Pacific National Lease Holding Corp., Re* (1992), 72 B.C.L.R. (2d) 368 (C.A.), at paras. 30-31).

[79] Glencore submits the judge's order that it pay the HST to the Receiver gives TNB the benefit of s. 224 without having met its requirements and leads to an absurd result: if Glencore owes the HST to CRA, how can it be ordered to pay TNB outside of s. 224?

[80] The answer to this question is informed largely by the fact that the order was made in the context of *CCAA* proceedings. The order required Glencore to pay the amount to the Receiver. It did not require TNB to remit the amount to be paid by Glencore to CRA, as asserted by Glencore. While TNB's obligation to collect the tax as CRA's agent never changed, it was no longer deemed to hold any amounts collected or collectible in trust for CRA once the *CCAA* proceeding commenced: s. 222(1.1) of the *ETA*; s. 37(1) *CCAA*; *Century Services* at paras. 88–89. Therefore, the order allowed the Receiver to receive the funds as agent for CRA and distribute them among the creditors in accordance with the *CCAA*.

[81] Having found that Glencore had not effectively paid the HST by set-off, the judge had discretion, under s. 11 of the *CCAA*, to make any order she considered appropriate in the circumstances. It was squarely within her discretion to order that Glencore pay TNB *as CRA's agent* and, in doing so, to satisfy Glencore's tax debt to CRA.

[82] Contrary to Glencore's submission, the judge did not give TNB, and now the Receiver, the benefit of s. 224. Glencore never denied its obligation to pay the HST.

Having found Glencore was not entitled to the benefit of the set-off clause, she simply required it to pay its tax liability to TNB as agent for CRA.

[83] Glencore also challenges the judge's jurisdiction to make the order (and by necessary implication, this Court's jurisdiction on appeal of that order). It submits the order permitted TNB to bypass the statutory regime that Parliament established for taxpayers to challenge tax assessments before the Tax Court of Canada. Glencore says the law requires parties to exhaust their rights and remedies under the administrative process before pursuing recourse to the courts, and here the process gives TNB two options — (1) challenge CRA's assessment under s. 301 of the *ETA* and then to the Tax Court under s. 302, or (2) commence an action against Glencore under s. 224 — but it cannot bypass these statutory remedies and seek a discretionary order in the superior court that requires someone else to pay the tax, interest and penalties assessed against it by CRA. Glencore says the proper course in this case is for CRA to assess it as the recipient under s. 296(1)(b) and, in the event Glencore disputes the assessment, it can appeal to the Tax Court.

[84] Respectfully, I disagree. The Tax Court of Canada has exclusive jurisdiction over the correctness of assessments under s. 302 of the *ETA*: *Iris Technologies Inc. v. Canada (Attorney General)*, 2024 SCC 24 at para. 10; *Canada (Attorney General) v. British Columbia Investment Management Corp.*, 2019 SCC 63 at para. 37 [*B.C. Investment*]. However, the issue here was not about the correctness of a tax assessment. It was about Glencore's entitlement to contractual set-off of HST, which raised issues of contractual and statutory interpretation about which the Tax Court does not have exclusive jurisdiction. Glencore's contention that it can appeal an assessment under s. 296(1)(b) *in the event it disputes the assessment* underscores the fact that the assessment itself is not in dispute in this proceeding.

[85] *Canada v. Addison & Leyen Ltd.*, 2007 SCC 33, relied on by Glencore to support this submission, involved tax assessments of non-arms length transactions under s. 160 of the *Income Tax Act* after which the taxpayers did not pursue an appeal but instead sought judicial review, circumstances that are not, in my view,

translatable here. The Court there cautioned against allowing "incidental litigation" to circumvent the statutory tax appeal mechanisms, but that does not mean an otherwise valid claim that may impact a Tax Court proceeding cannot proceed in a superior court: *B.C. Investment* at para. 38. Thus, the fact that this case involves an interpretation of the *ETA* does not mean the B.C. Supreme Court lacks jurisdiction to determine whether Glencore was entitled to pay the HST to TNB by way of contractual set-off.

[86] I accept that CRA could have assessed Glencore under s. 296(1)(b) of the *ETA*, but this is a matter within CRA's discretion. In any event, under s. 299(2), Glencore's liability to pay the HST is not affected by the fact that no assessment has been made, and s. 313 permits a "tax debt" to CRA to be recoverable in the Federal Court or any court of competent jurisdiction as long as the alleged debtor "has been or may be assessed" for the amount of the debt: see also *Royal Bank* at paras. 66, 72.

[87] Finally, I do not interpret the judge's order to have the effect of overriding prohibitions under the *ETA*. There is nothing in the statute that prohibits a receiver in *CCAA* proceedings from demanding payment of unpaid HST from a recipient on behalf of a supplier acting as agent for CRA. There is some debate as to whether a supplier's *only* recourse against a recipient for failure to pay HST is under s. 224: see, for example *OCCO Developments Ltd. v. McCauley*, 1996 CarswellNB 169 (N.B.C.A.); *S.P. Holdings Canada Inc. v. Ikea Ltd*., 2001 CarswellQue 1664 (Que. C.A.). However, that is not an issue to be resolved here, as s. 224 was not in play.[4]

[88] Here, CRA assessed TNB in accordance with its usual practice and then made a claim for TNB's failure to remit to the Receiver. In this process, CRA lost any priority over other creditors under s. 222(1.1) of the *ETA*. In the context of the

[4] Relatedly, there are numerous examples of cases where suppliers have brought actions in contract in superior court to seek payment of GST or HST from a recipient: see, for example, *Rive v. Newton*, [2001] OJ No 3226 (Ont. S.C.); *2137691 Ontario Ltd. v. Lucia Pessoa Park*, 2018 ONSC 4218. In such cases, the courts did not address the correctness of a CRA assessment, but rather whether the terms of the parties' contract required payment of the tax.

receivership, the cessation of the trust in favour of CRA (or at least part of it), and the fact that CRA did not object to payment being made in the receivership, the order that Glencore pay the unpaid HST to the Receiver was a reasonable exercise of the supervising judge's discretion under s. 11 of the *CCAA*. Moreover, according to the Receiver, Glencore remains entitled to deduct as an ITC the total HST liability in calculating its own net HST owing to CRA, so it is not prejudiced by this order.

[89] That said, I do not consider the requirement that Glencore also pay the interest and penalties CRA assessed against TNB to be reasonable. The problem was created by TNB's failure to account for and remit the HST payable by Glencore to CRA and its subsequent insolvency. Glencore would not have known about the status of TNB's HST account at the time, and, given the confluence of events, it was not unreasonable for Glencore to have sought to rely on its contractual set-off of the amounts owing pursuant to the final invoices rendered by TNB that included HST as against the Replacement Costs. The judge's finding that these additional charges were a direct result of Glencore not remitting the HST to TNB is not borne out in the record.

Conclusion

[90] For all these reasons, I would allow the appeal only to the extent of varying the judge's order to exclude the interest and penalty charges CRA assessed against TNB.

"The Honourable Justice Fisher"

I AGREE:

"The Honourable Justice Edelmann"

I AGREE:

"The Honourable Justice Francis"

Appendix A

Excise Tax Act, R.S.C. 1985, c. E-15

Part IX Goods and Services Tax

…

Division II Goods and Services Tax

165 (1) Subject to this Part, every recipient of a taxable supply made in Canada shall pay to Her Majesty in right of Canada tax in respect of the supply calculated at the rate of 5% on the value of the consideration for the supply.

(2) Subject to this Part, every recipient of a taxable supply made in a participating province shall pay to Her Majesty in right of Canada, in addition to the tax imposed by subsection (1), tax in respect of the supply calculated at the tax rate for that province on the value of the consideration for the supply.

…

Division V Collection and Remittance of Division II Tax

221 (1) Every person who makes a taxable supply shall, as agent of Her Majesty in right of Canada, collect the tax under Division II payable by the recipient in respect of the supply.

(2) A supplier (other than a prescribed supplier) who makes a taxable supply of real property by way of sale is not required to collect tax under Division II payable by the recipient in respect of the supply where

(a) the supplier is a non-resident person or is resident in Canada by reason only of subsection 132(2);

(b) the recipient is registered under Subdivision D and, in the case of a recipient who is an individual, the property is neither a residential complex nor supplied as a cemetery plot or place of burial, entombment or deposit of human remains or ashes;

(b.1) the supplier and the recipient have made an election under section 2 of Part I of Schedule V in respect of the supply; or

(c) the recipient is a prescribed recipient.

…

222 (1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

(1.1) Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the *Bankruptcy and Insolvency Act*), to any

amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.

…

224 Where a supplier has made a taxable supply to a recipient, is required under this Part to collect tax from the recipient in respect of the supply, has complied with subsection 223(1) in respect of the supply and has accounted for or remitted the tax payable by the recipient in respect of the supply to the Receiver General but has not collected the tax from the recipient, the supplier may bring an action in a court of competent jurisdiction to recover the tax from the recipient as though it were a debt due by the recipient to the supplier.

…

Division VIII Administration and Enforcement

…

s. 278 …

(1) Every person who is required under this Part to file a return shall file the return with the Minister in the prescribed manner.

(2) Every person who is required under this Part to pay or remit an amount shall, except where the amount is required under section 221 to be collected by another person, pay or remit the amount to the Receiver General.

…

296 (1) The Minister may assess

(a) the net tax of a person under Division V for a reporting period of the person,

(b) any tax payable by a person under Division II, IV or IV.1,

(c) any penalty or interest payable by a person under this Part,

(d) any amount payable by a person under any of paragraphs 228(2.1)(b) and (2.3)(d), section 230.1 and paragraphs 232.01(5)(c) and 232.02(4)(c), and

(e) any amount which a person is liable to pay or remit under subsection 177(1.1) or Subdivision A or B.1 of Division VII,

and may reassess or make an additional assessment of tax, net tax, penalty, interest or an amount referred to in paragraph (d) or (e).

…

299 (1) The Minister is not bound by any return, application or information provided by or on behalf of any person and may make an assessment, notwithstanding any return, application or information so provided or that no return, application or information has been provided.

(2) Liability under this Part to pay or remit any tax, penalty, interest or other amount is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

…

301 (1) Where an assessment is issued to a person in respect of net tax for a reporting period of the person, an amount (other than net tax) that became payable or remittable by the person during a reporting period of the person or a rebate of an amount paid or remitted by the person during a reporting period of the person, for the purposes of this section, the person is a *specified person* in respect of the assessment or a notice of objection to the assessment if

(a) the person was a listed financial institution described in any of subparagraphs 149(1)(a)(i) to (x) during that reporting period; or

(b) the person was not a charity during that reporting period and the person's threshold amounts, determined in accordance with subsection 249(1), exceed $6 million for both the person's fiscal year that includes the reporting period and the person's previous fiscal year.

(1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

…

302 Where a person files a notice of objection to an assessment and the Minister sends to the person a notice of a reassessment or an additional assessment, in respect of any matter dealt with in the notice of objection, the person may, within ninety days after the day the notice of reassessment or additional assessment was sent by the Minister,

(a) appeal therefrom to the Tax Court; or

(b) where an appeal has already been instituted in respect of the matter, amend the appeal by joining thereto an appeal in respect of the reassessment or additional assessment in such manner and on such terms as the Tax Court

…

313 (1) The following definitions apply in this section.

action means an action to collect a tax debt of a person and includes a proceeding in a court and anything done by the Minister under any provision of this Division.

legal representative of a person means a trustee in bankruptcy, an assignee, a liquidator, a curator, a receiver of any kind, a trustee, an heir, an administrator, an executor, a liquidator of a succession, a committee, or any other like person, administering, winding up, controlling or otherwise dealing in a representative or fiduciary capacity with any property, business, commercial activity or estate that belongs or belonged to, or that is or was held for the benefit of, the person or the person's estate.

tax debt means any amount payable or remittable by a person under this Part.

(1.1) A tax debt is a debt due to Her Majesty in right of Canada and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided under this Part.

(2) The Minister may not commence a proceeding in a court to collect a tax debt of a person in respect of an amount that may be assessed under this Part, unless when the proceeding is commenced the person has been or may be assessed for that amount.