

BETWEEN:

YUN ZHANG

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion by Appellant to enforce a settlement agreement heard together with motion by Sheng Tan (2023-768(GST)G) on November 7, 2025, at Toronto, Ontario

Before: The Honourable Justice Ryan P. Rabinovitch

Appearances:

Counsel for the Appellant: Bruce Laregina

Counsel for the Respondent: Jacqueline Blackett
Tony Cheung

AMENDED JUDGMENT

1. The Appellant’s motion is granted, with costs.
2. The appeal of the assessment issued under the *Excise Tax Act* (“**ETA**”) for the Appellant’s reporting periods ended February 28, 2015 and July 31, 2017 is allowed, without costs, and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that:
 - a. The Appellant’s sale of the property situated at 10 Eldora Avenue, North York, Ontario, in her reporting period ended February 28, 2015, was an exempt supply pursuant to subsection 4(b) of Part I of Schedule V of the ETA;
 - b. The amount of GST/HST that the Appellant was required to collect in her reporting period ended February 28, 2015 shall be reduced by \$110,175.00;

- c. The Appellant’s sale of the property situated at 234 Olive Avenue, North York, Ontario (the “**Olive Property**”), in her reporting period ended July 31, 2017, was a taxable supply;
 - d. The sale price of \$3,450,000 of the Olive Property was inclusive of GST/HST;
 - e. The amount of GST/HST that the Appellant was required to collect in her reporting period ended July 31, 2017 shall be reduced from \$224,250.00 to \$198,451.33;
 - f. The Minister shall allow a rebate in the amount of \$59,102.00 in respect of the Olive Property pursuant to section 257 of the ETA and apply it to offset the Appellant’s net tax for her reporting period ended July 31, 2017; and
 - g. If any failure to file penalties were previously assessed against the Appellant, she will remain liable for the amount thereof. If no such penalties were previously assessed against the Appellant, she will not be liable for any.
3. The Appellant shall have thirty days from May 1, 2026 to make submissions regarding the amount of the costs payable in respect of this motion, following which the Respondent will have thirty days to file a response. If no such submissions are received, costs will be awarded to the Appellant in the amount provided for in Schedule II of the *Tax Court of Canada Rules* (General Procedure).

This Amended Judgment is Amended Judgment is issued in substitution of the Judgment dated May 1, 2026.

Signed this 4th day of May 2026.

“Ryan Rabinovitch”

Rabinovitch J.

BETWEEN:

SHENG TAN

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion by Appellant to enforce a settlement agreement heard together with motion by Yun Zhang (2023-765(GST)G) on November 7, 2025, at Toronto, Ontario

Before: The Honourable Justice Ryan P. Rabinovitch

Appearances:

Counsel for the Appellant: Bruce Laregina
Counsel for the Respondent: Jacqueline Blackett
Tony Cheung

AMENDED JUDGMENT

1. The Appellant’s motion is granted, with costs.
2. The appeal of the assessment issued under the *Excise Tax Act* (“**ETA**”) for the Appellant’s reporting periods ended December 31, 2015 and December 31, 2017 is allowed, without costs, and the assessment is referred back to the Minister for reconsideration and reassessment on the basis that:
 - a. The Appellant’s sale of the property situated at 10 Eldora Avenue, North York, Ontario, in his reporting period ended December 31, 2015, was an exempt supply pursuant to subsection 4(b) of Part I of Schedule V of the ETA;
 - b. The amount of GST/HST that the Appellant was required to collect in his reporting period ended December 31, 2015 shall be reduced by \$110,175.00;

- c. The Appellant's sale of the property situated at 234 Olive Avenue, North York, Ontario (the "**Olive Property**"), in his reporting period ended December 31, 2017, was a taxable supply;
 - d. The sale price of \$3,450,000 of the Olive Property was inclusive of GST/HST;
 - e. The amount of GST/HST that the Appellant was required to collect in his reporting period ended December 31, 2017 shall be reduced from \$224,250.00 to \$198,451.33;
 - f. The Minister shall allow an input tax credit in the amount of \$59,102.00 in respect of the Olive Property and deduct it from the Appellant's net tax for his reporting period ended December 31, 2017; and
 - g. The gross negligence penalties previously assessed against the Appellant for his reporting period ended December 31, 2017 shall be adjusted to reflect the above-mentioned changes. No such penalties shall be payable for the Appellant's reporting period ended December 31, 2015.
3. The Appellant shall have thirty days from May 1, 2026 to make submissions regarding the amount of the costs payable in respect of this motion, following which the Respondent will have thirty days to file a response. If no such submissions are received, costs will be awarded to the Appellant in the amount provided for in Schedule II of the *Tax Court of Canada Rules* (General Procedure).

This Amended Judgment is Amended Judgment is issued in substitution of the Judgment dated May 1, 2026.

Signed this 4th day of May 2026.

"Ryan Rabinovitch"

Rabinovitch J.

Citation: 2026 TCC 71
Date: 20260504
Docket: 2023-765(GST)G

BETWEEN:

YUN ZHANG

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Docket: 2023-768(GST)G

AND BETWEEN:

SHENG TAN

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR JUDGMENT

Rabinovitch J.

I. INTRODUCTION:

[1] The Appellants have brought the present motions before this Court to enforce a settlement agreement which they allege was reached with the Respondent on October 14, 2025. The Respondent denies that any such agreement was reached.

[2] Before reviewing my analysis and conclusion on this question, I will provide a brief overview of the facts which led to the present motions.

II. FACTS:

The Appellants

[3] The Appellant Sheng Tan is a real estate broker and is registered for GST/HST purposes.

[4] The Appellant Yun Zhang is the Appellant Sheng Tan's spouse. She is not registered for GST/HST purposes.

The Eldora Property

[5] On November 30, 2011, the Appellants purchased a property situated at 10 Eldora Avenue, North York, Ontario (the "**Eldora Property**") with each of them as 50% co-owner for \$770,000.

[6] In 2012, the Eldora Property burned down. The Appellants claim that they then decided to rebuild it and make it their primary residence. At the time, they appear to have been living at a property situated at 234 Olive Avenue, North York, Ontario (the "**Olive Property**").

[7] According to the Appellants, the reconstruction of the Eldora Property was completed in July 2014 and they moved in the same month. They further maintain that they decided to move out of the property and sell it shortly thereafter due to safety concerns (e.g. the absence of any arrest in connection with the fire that had occurred in 2012).

[8] On February 4, 2015, the Appellants sold the Eldora Property for \$1,695,000. They did not collect any GST/HST upon the sale of the Eldora Property.

[9] The Respondent denies that the Appellants ever intended to or actually did reside in the Eldora Property. He notes that the reconstruction of the Eldora Property was financed with a private short-term loan, that an occupancy permit was only issued for the property in October 2014, and that the property was put on the market that same month.

The Olive Property

[10] On November 23, 2007, the Appellants purchased the Olive Property with

each of them as 50% co-owner for \$619,000 and then claim to have moved into the property.

[11] In the summer of 2015, the Appellants demolished and began reconstructing the Olive Property. They maintain that they intended to continue to use it as their primary family residence once the reconstruction was complete, and that they moved back into the property at the end of September 2016. They say that they then moved out a short time later when Sheng Tan began to experience allergy symptoms which he believed were connected to the property.

[12] On July 18, 2017, the Appellants disposed of the Olive Property for \$3,450,000. They did not collect any GST/HST upon the sale of the Olive Property.

[13] The Respondent denies that the Appellants ever intended to or actually did reside in the Olive Property after it was reconstructed. He points out that the reconstruction was financed with two private short-term loans, that an occupancy permit for the property was only issued at the end of June 2017, and that the property was listed for sale several months before that (i.e. in February 2017).

The assessments under appeal

[14] On November 24, 2021, the Minister issued an assessment (each an “**Assessment**”) to each Appellant in respect of her/his reporting periods including the dates the Eldora and Olive Properties were disposed of (“**2015**” and “**2017**”, respectively).

[15] In the Assessments, the Minister took the position that the Appellants were required to collect GST/HST in respect of the sale of the Eldora and Olive Properties, and that Sheng Tan (but not Yun Zhang) was liable for gross negligence penalties as a result of his failure to report the sale of the two properties in his sales tax returns for the reporting periods in issue.

[16] The Appellants filed notices of objection in respect of Assessments. When the Minister confirmed them, they then filed notices of appeal to this Court.

Parties' settlement negotiations

[17] At some point after the Appellants filed their Notice of Appeal, their counsel Bruce Laregina began to engage in settlement negotiations with the Respondent, who was at that time represented by Niloofar Sharif, a lawyer with the Department of Justice.

[18] These discussions appear to have led to:

1. The making of an offer by the Appellants on January 15, 2025;
2. The making of a counteroffer by the Respondent on June 16, 2025; and
3. The making of a further counteroffer by the Appellant on July 3, 2025 (the "**July Proposal**").¹

[19] The July Proposal was 21 pages long and was sent by Mr. Laregina to Ms. Sharif. It began with the following summary:

We are writing on behalf of Sheng Tan ("Mr. Tan") and Yun Zhang ("Mrs. Zhang") (collectively, the "Appellants") to offer a settlement of the above-noted appeals (the "Appeals") on the following basis:

1. The supply by way of sale in relation to 10 Eldora Ave, North York, ON, M2M 1R4 ("10 Eldora") is an exempt supply pursuant subsection 4(b), Schedule V, Part I of the ETA.
2. The Appellants are builders with respect to 234 Olive Ave, North York, ON, M2N 4P6 ("234 Olive") within the meaning of subsection 123(1) of the ETA.
3. The \$3,450,000 sale price of 234 Olive was inclusive of GST/HST.
4. Mr. Tan is entitled to Input Tax Credits ("ITCs") in the amount of \$59,102.10 paid for the construction of 234 Olive.
5. Mrs. Zhang is entitled to a rebate in the amount of \$59,102.10 paid for the construction

¹ Exhibit A to affidavit of Elukshayn Rishihsan (30 October 2025) (the "**Rishihsan Affidavit**").

of 234 Olive.

6. Mr. Tan is not liable for gross negligence penalties (“GNPs”) pursuant to subsection 285 of the ETA with respect to 234 Olive.

7. This offer is on a without costs basis - each party will bear its own costs.²

[20] The July Proposal then went on to explain why Mr. Laregina considered the above settlement to be principled. He concluded by indicating that the Appellant’s “settlement offer would remain open until 30 days before the commencement of the hearing of this appeal.” He also included a copy of the Agreement of Purchase and Sale entered into in respect of the Oliver Property and a detailed excel spreadsheet containing a breakdown of the \$118,204.20³ of input tax credits (“ITCs”) that he proposed would be issued to the Appellants. No documents were provided in connection with the Eldora Property.

[21] On August 1, 2025, Jacqueline Blackett, another lawyer with the Department of Justice, e-mailed Mr. Laregina to inform him that she had taken carriage of the Appellants’ files, and asked him to consent to electronic service.⁴

[22] On August 5, 2025, Mr. Laregina sent Ms. Blackett an e-mail which included a signed consent to electronic service and closed with the words “[i]f you have a moment it would be great to have a call to discuss the file as we recently made a settlement offer.”⁵ She responded the same day, indicating that she would not be able to discuss the Appellants’ files until early September 2025, as she would need a few weeks to review them and receive “instructions from the Canada Revenue Agency about [his] counteroffer.”⁶

[23] Mr. Laregina followed up on September 2, 2025, stating:

I am following up on the settlement offer sent to you. Kindly note that the deadline to advise the Court whether we are proceeding to trial is September 5, 2025.⁷

² Exhibit B to Rishihsan Affidavit.

³ \$59,102.10 * 2.

⁴ Exhibit C to Rishihsan Affidavit.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

[24] Ms. Blackett responded on September 3, 2025, indicating that she had a meeting with her client regarding the file the following day.⁸

[25] Mr. Laregina then followed up again on October 1, 2025, asking if Ms. Blackett knew when she was likely to get instructions, given that the parties were almost a month away from trial.⁹ Ms. Blackett said that she would speak to her client and revert.¹⁰

[26] On October 7, 2025, Ms. Blackett wrote: “I am not in receipt of instructions with respect to settlement, but I anticipate that I will have a final decision on the applicant’s counter offer this week.”¹¹

[27] Three days later, on October 10, 2025, she sent Mr. Laregina an e-mail stating:

In reference to the Appellant’s counteroffer of July 2, 2025, I note that the expiry of the offer was on October 6, 2025.

Notwithstanding the expiry, the Respondent is in agreement with the terms offered with the exception of the gross negligence penalties.

The Respondent is not willing to delete the gross negligence penalties.¹²

[28] On October 14, 2025, Mr. Laregina responded with an e-mail in which he wrote:

We are pleased to accept your counteroffer. Are you able to draft the consents to judgement?¹³

[29] On October 20, 2025, Ms. Blackett replied that she was in receipt of Mr. Laregina’s email and would send a “formal letter” with “the details of the settlement together with the consents to judgment” to him later in the week.¹⁴

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Exhibit D to Rishihasan Affidavit.

¹³ *Ibid.*

¹⁴ *Ibid.*

[30] The following day, Mr. Laregina sent her an e-mail back, saying:

Thanks Jacqueline. Since we've agreed to terms, do you think we should notify the court that we won't need to have the trial?¹⁵

[31] On October 23, 2025, Ms. Blackett responded with a letter purporting to contain the “specific terms” of their agreement, as well as minutes of settlement and consents to judgment.¹⁶

[32] The letter reiterated all of the principles set out in the July Proposal regarding the Olive Property, plus a statement that “failure to file penalties with respect of Yun Zhang,” would be considered to be properly assessed, but the amount adjusted to take into account the parties’ agreement.¹⁷ This was the first reference to such penalties in the portion of the parties’ correspondence that is before the Court.

[33] With respect to the Eldora Property, the letter indicated that each Appellant would be assessed pursuant to subsection 191(1) of the ETA for the reporting period including the month of October 2014. As a result, each Appellant’s GST/HST would be increased by \$110,175, Sheng Tan would be allowed ITCs in the amount of \$31,347, Yun Zhang would be allowed a rebate in the amount of \$31,347, gross negligence penalties would be assessed against Sheng Tan, and failure to file penalties would be assessed against Yun Zhang. Each of the Appellants would also be expected to waive their right to object to the Eldora Property assessments.

[34] On October 24, 2025, Mr. Laregina responded to this e-mail. Clearly taken by surprise, he referenced the parties’ exchanges on October 10, 2025, and October 14, 2025. He stated:

Your offer documents have added many additional terms [...] that were never agreed upon nor included in the July 2025 Offer, such as:

- The Minister reassessing Mr. Tan for the reporting period ending December 31, 2014 for the sale of 10 Eldora.
- The Minister reassessing Ms. Zhang for the reporting period ending October 31, 2014

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Exhibit E to Rishihsan Affidavit.

for the sale of 10 Eldora.

- The Appellants waiving their rights to object and appeal to their 2014 assessment/reassessment.

I note that the terms of the July 2025 Offer do not, in and of themselves, prohibit the Minister from assessing/reassessing Mr. Tan or Mrs. Zhang for their 2014 reporting periods following judgment in these appeals if the Minister is so inclined. However, if this occurs, the Appellants may be entitled to dispute such reassessments on several grounds including Mr. Tan's 2014 reporting period being statute-barred, the alleged self-supply occurring in July 2014 vs October 2014 and the fair market value of 10 Eldora at the time of any self-supply.¹⁸

[35] On October 27, 2025, Ms. Blackett responded to Mr. Laregina's with a letter, in which she wrote:

In reference to your e-mail dated October 24, 2025 responding to my e-mail of the same day attaching the Respondent's draft settlement documents, the Respondent disagrees that the parties have reached settlement in respect of the above-noted appeals for the following reasons:

1. The parties have not executed any Consents to Judgment or Minutes of Settlement.
2. The parties have not advised the Tax Court of Canada that the parties have reached settlement in these appeals.
3. Your October 24 e-mail confirmed that the parties have not yet agreed on all the essential terms of the settlement of these appeals.

The Respondent's understanding of the settlement was that both Sheng Tan and Yun Zhang will consent to the Minister of National Revenue (the "Minister") (re)assessing on the deemed self-supply of the Eldora Property in 2014.¹⁹

[36] On October 30, 2025, the Appellant filed the present motions to enforce the settlement agreement which he claims was entered into on October 14, 2025.

III. ANALYSIS:

¹⁸ Exhibit D to Rishihsan Affidavit.

¹⁹ Exhibit J to affidavit of Shubhjit Sohal (4 November 2025).

1. **Jurisdiction of the Court to enforce a settlement:**

[37] For many years, there was a debate in the jurisprudence concerning this Court’s ability to hold the parties to settlement agreement reached in a tax appeal.²⁰ The main concern was that doing so might prevent the Minister from complying with his duty to assess in accordance with the facts and the law of a given case. Eventually, the seeming conflict in the case-law was explained on the basis of the principled settlement rule, which requires that the result of a binding settlement agreement to be one which could at least possibly be arrived at following a full hearing on the merits.

[38] The above history is well-summarized by the Federal Court of Appeal in *CIBC World Markets Inc. v. R.* (“*CIBC*”).²¹ The taxpayer in the case argued that it should receive an enhanced costs award since the Crown had refused an offer of settlement it had made to allow it 90% of the ITCs it had claimed. The Crown said that this offer should be ignored by the Court since there was no factual distinction that could plausibly explain why only 10% of them should be denied. Stratas J.A. agreed, stating:

This Court is bound by its decision in *Galway v. Minister of National Revenue*, [1974] 1 F.C. 600 (Fed. C.A.). In that decision, Jackett C.J., writing for the unanimous Court, stated (at page 602) that — the Minister has a statutory duty to assess the amount of tax payable on the [facts] as he finds them in accordance with the law as he understands it.” In his view, — it follows that he cannot assess for some amount designed to implement a compromise settlement.” The Minister is obligated to assess — on the facts in accordance with the law and not to implement a compromise settlement.” See also *Cohen v. R.*, [1980] C.T.C. 318 (Fed. C.A.).

[...]

CIBC World Markets cites *1390758 Ontario Corp. v. R.* (2010), 2010 TCC 572 (T.C.C. [Informal Procedure]) at paragraph 36 and *Smerchanski v. Minister of National Revenue* (1976), [1977] 2 S.C.R. 23 (S.C.C.) for the proposition that courts have enforced settlements that apply tax law to agreed facts. That is true. But the Minister’s power to agree to facts is limited by the *Galway* principle — the Minister cannot agree to an assessment

²⁰ See e.g. *Galway v. Minister of National Revenue*, [1974] C.T.C. 454, *Smerchanski v. Minister of National Revenue*, [1977] 2 S.C.R. 23, *Cohen v. R.*, [1980] C.T.C. 318, *Harvey v. R.*, [1995] 1 C.T.C. 2507, *Consoltex Inc. v. R.*, [1997] 2 C.T.C. 2846, *Garber v. R.*, 2005 TCC 635 and *1390758 Ontario Corp. v. R.*, 2010 TCC 572.

²¹ 2012 FCA 3.

that is indefensible on the facts and the law. Nothing in *1390758 Ontario* and *Smerchanski* undercuts the *Galway* principle.

[...]

Finally, CIBC World Markets invokes policy considerations. Citing *1390758 Ontario, supra*, it submits that if every dispute had to be litigated to judgment, — unmanageable backlogs would quickly accumulate and the system would break down”: see also similar concerns expressed in *Garber v. R.* (2005), 2005 D.T.C. 1456 (Eng.) (T.C.C. [General Procedure]) at paragraph 23, *aff’d* 2006 D.T.C. 6358 (Eng.) (F.C.A.) and *Consoltex Inc. v. R.* (1997), 97 D.T.C. 724 (T.C.C.) at page 731.

This may be true, but, despite *Galway*, a high proportion of cases are not litigated to judgment. Often negotiations and discussions bring to light new facts, better characterizations of the overall situation, and richer appreciations of the applicable law. These negotiations and discussions can culminate in a settlement that the Minister can implement by reassessing on the basis of defensible views of the facts and the law [emphasis added].²²

[39] More recently, the Courts have made clear that the jurisdiction to enforce settlement agreements is conferred on the Court by section 309 of the ETA (via section 12 of the *Tax Court of Canada Act* (“**TCCA**”)), which states that it may dispose of a GST appeal by dismissing it, allowing it and vacating the underlying assessment, or allowing the appeal and referring the assessment back to the Minister for reconsideration and reassessment. By virtue of the provision’s broad language, this has been interpreted to include the power to do any of these things in accordance with an agreement entered into by the parties that complies with the principled settlement rule.

[40] The first case to clearly articulate this principle was *Huppe v. R.*,²³ which concerned section 171 of the *Income Tax Act* (“**ITA**”), a provision which is virtually identical to section 309. After reproducing the text of the provision, Webb J. (as he then was), wrote:

Therefore this Court has been granted the jurisdiction to determine appeals under the Act and in relation to such appeals has been granted the power to allow an appeal and to grant the remedies provided in paragraph 171(1)(b) of the Act including the power to vary the assessment or refer the assessment back to the Minister for reconsideration

²² *Ibid.* at paras. 22-27.

²³ 2010 TCC 644.

and reassessment. Since the remedy that the Appellant would be seeking (since the Appellant indicated that the matter was settled) would be to vary the assessment or to refer the matter back to the Minister for reconsideration and reassessment, and since this Court has been specifically granted the power to order this remedy in disposing of an appeal, it seems to me that this Court does have the jurisdiction to enforce the agreement (by allowing the appeal and varying the assessment or referring the assessment back to the Minister for reconsideration and reassessment), if the Appellant can establish that such an agreement was made in this case [emphasis added].²⁴

Ten years later, Woods J. relied on these statements in *Her Majesty the Queen v. CBS Canada Holdings Co. (“CBS Canada”)*,²⁵ stating, at paragraph 51 of her reasons, that “it is well established in Tax Court jurisprudence that the Court has jurisdiction to enforce a settlement agreement by allowing an appeal and ordering a reassessment in accordance with subsection 171(1) of the ITA.”

[41] The Respondent appeared to cast doubt on the above principles during the hearing. He argued that enforcing a settlement agreement would be tantamount to granting a remedy of specific performance, which only a court of equity would have the power to do. I presume this was a reference to comments made by Webb J. in *Huppe* to the effect that this Court, which is not a court of equity, does not have the general power to order the specific performance of a contract. That being said, he only made this comment by way of introduction to his analysis concerning section 171 of the ITA. At paragraph 18 of his reasons, he writes that “[f]or any of the remedies as provided in paragraph 171(1)(b) of the Act, this Court does not need to be a court of equity to grant such remedy as this Court has been granted the power to grant these specific remedies [emphasis added].”²⁶

[42] In the alternative, the Respondent argued that this Court lacked the jurisdiction to enforce a settlement agreement in the present case because no signed consent to judgment had been filed pursuant to section 170 of the *Rules*. It states:

170. When all parties have consented in writing to a judgment disposing of an appeal, the Court may,

(a) grant the judgment sought without a hearing,

²⁴ *Ibid.* at paras. 17-18.

²⁵ 2020 FCA 4.

²⁶ *Huppe*, *supra* note 23.

(b) direct a hearing, or

(c) direct that written representations be filed.

[43] Practice Note No. 20 of the Court then goes on to specify that all pages of a document filed under this provision “shall be initialed or signed by counsel and/or agent for the respondent and for the appellant, or by the appellant if the appellant is not represented.”

[44] I do not agree with the Respondent’s argument on this point. First, it misconstrues the role played by section 170. It seems to me that all the provision is intended to do is afford a simple mechanism to parties who agree that a settlement has been reached to have their dispute resolved by the Court without any need for a hearing or formal motion, and to provide a warning to such parties that the Court is not prevented from seeking clarifications or asking questions about that settlement before giving it its blessing (e.g. questions concerning the Court’s jurisdiction to grant the relief sought or whether the parties’ agreement complies with the principled settlement rule). It is understandable that the Court would require indisputable evidence that a settlement has been reached before adopting a “fast track” approach. Section 170 has nothing to do with situations where one of the parties alleges that a settlement agreement has been reached but the other disputes this claim, however. Clearly, a motion and hearing (be it written or oral) is needed in such circumstances.

[45] Second, I doubt that section 170 of the Rules could prevent the Court from enforcing a settlement agreement in the absence of a signed consent to judgment, even if it had been intended to do so. The jurisdiction to enact the Rules is conferred by section 20 of the TCCA, which states that the rules committee may, subject to the approval of the Governor in Council, make rules for regulating the “pleadings, practice and procedure” of the Court. This power does not include the ability to limit the jurisdiction of the Court. As Cameron J.A. of the Saskatchewan Court of Appeal wrote in *Ostrowski v. Saskatchewan (Beef Stabilization Board)*,²⁷ where it was argued that a provision in the Saskatchewan Queen’s Bench Rules which sought to impose a six-month limitation period of applications for *certiorari* exceeded the rule-making jurisdiction conferred by legislation containing similar wording to section 20 of the TCCA:

The power over pleadings can be discarded as irrelevant to the issue. As for the remainder,

²⁷ 1993 CanLII 6607.

the words “regulating” and “practice and procedure” serve to mark the general bounds of the power. Thus it does not embrace the authority to “limit the jurisdiction” of the court, “or to alter its extent or nature”: *Andrews v. Andrews*, [1945] 1 D.L.R. 595 (Sask. C.A.) per Gordon J.A. at p. 600. And as noted by Martin J.A., in *McKee v. Lavary*, [1923] 3 W.W.R. 727 (Sask. C.A.), at p. 734:

... the word “procedure” denotes the mode by which a legal right is enforced; it is akin to the word “practice,” and means the rules that are made to regulate the classes of litigation within the Court itself.

See, too, *Saskatchewan Insurance Office & Professional Employees' Union, Local 397 v. Saskatchewan Government Insurance*, [1984] 4 W.W.R. 668 (Sask. Q.B., per Malone J.).

The rule can hardly be said to fit within these bounds. It does not so much *regulate the mode* of proceedings in the nature of *certiorari*, as it *abrogates the right to take them*.²⁸

[46] Taxpayers have a right to hold the Minister to binding settlement agreements he has entered into, provided they comply with the principled settlement rule. The Rules cannot eliminate this right in circumstances where the Minister refuses to execute a consent to judgment.

[47] Third, the Respondent’s position regarding section 170 is inconsistent with the latest case-law of this Court. In *Kumar v. R.*,²⁹ for example, the Federal Court of Appeal dismissed a taxpayer’s argument that the trial judge had erred by giving effect to its agreement to the disposition of a motion because the agreement was not in writing, as required by section 170 of the Rules. In addition, there was no signed consent to judgment (or indeed, any signed document at all) in *Huppe* or in *CBS Canada*.³⁰ This Court also enforced settlements in the absence of any consent to judgment in *Softsim Technologies Inc. v. R.* (“*Softsim*”),³¹ which involved an agreement entered into via an exchange of e-mails between counsel, and in *Sifto Canada Corp. v. R.* (“*Sifto*”),³² which concerned an agreement entered into through the signing-back of a letter asking whether a taxpayer accepted the result of a competent authority negotiation between Canada and the United States. Most

²⁸ *Ibid.* at paras. 29-30.

²⁹ 2005 FCA 222.

³⁰ The parties in *CBS Canada* had signed minutes of settlement (*CBS Canada, supra* note 25 at para. 11).

³¹ 2012 TCC 181.

³² 2017 TCC 37.

recently, in *Mandic Estate v. R.*,³³ MacPhee J. held that he could issue a judgment in accordance with a settlement embodied in a consent to judgment that had been rejected by the Court because it provided for a notice of assessment to be vacated, rather than referred back to the Minister.³⁴

[48] Finally, in the further alternative, the Respondent suggested during the hearing that this Court could only have jurisdiction to enforce a settlement agreement if it was signed. This argument must also be rejected. The ETA does not contain any reference to a signature requirement, and although Practice Note No. 20 does, as mentioned above, it only concerns the simplified procedure for obtaining judgments on consent. Moreover, the existence of a signature requirement is not supported by the *Kumar*, *Huppe* and *Softsim* cases discussed above. Ultimately, in my view, it is the applicable principles of private law which must determine whether or not the absence of a signed document prevents a binding settlement from coming into existence. Accordingly, it is to this subject that I now turn.³⁵

2. Existence of a settlement agreement in the present case:

a. Applicable law:

[49] This Court has generally looked to the applicable private law in determining whether a settlement has been reached. This is consistent with the principle of complementarity which has now been encoded in sections 8.1 and 8.2 of the *Interpretation Act*.

[50] In *Sifto*, for example, Owen J. applied the common law of contracts to determine whether a settlement agreement had been entered into in an Ontario appeal. Similarly, Boyle J. referred to the provisions of the *Civil Code of Quebec* in determining whether a settlement had been reached in *Québec Fonte Inc. c. R.*

³³ 2024 TCC 91.

³⁴ The taxpayer had died before the consent to judgment could be fixed and he did not have any executor that could sign in his place. The only case I am aware of which suggests that it would be necessary to comply with section 170 in order to settle a tax appeal is *Yott (G.) v. Minister of National Revenue*, [1991] 2 C.T.C. 2001. In light of all of the above case-law, however, it is clear to me that it no longer represents good law.

³⁵ Although the Appellant suggested that the power to grant him the relief sought might be conferred by section 170.1 of the Rules, he did not discuss the provision in the course of his argument during the hearing. In light of the above analysis and conclusions, it is not necessary for me to comment on this provision.

(“*Québec Fonte*”), which concerned a taxpayer resident in Quebec.³⁶

[51] I note that in *Softsim*, which was decided before *Sifto* and *Québec Fonte*, D’Auray J. appeared to take the view that private law principles should not be used to determine whether a settlement agreement has been reached.³⁷ That being said, this appears to have been attributable to the fact that the Crown’s motion in the case was based on subsection 169(3) of the ITA (the equivalent of paragraph 298(3)(b) of the ETA), which contains rules regarding the form a taxpayer’s consent must take in certain circumstances. In addition, her comments were arguably *obiter*, since it seems clear that a settlement agreement existed in the case as a matter of Quebec civil law. They are also contradicted by the Federal Court of Appeal’s statements in *CBS Canada* that it is subsection 171(1) of the ITA and section 309 of the ETA that are the source of the Court’s authority to enforce settlements, rather than subsection 169(3) of the ITA and paragraph 298(3)(b) of the ETA.³⁸

[52] Accordingly, given that the Appellants are residents of Ontario and that the facts which gave rise to their appeals occurred in that province, the question in the present case is whether a settlement agreement was reached under the common law of contract in Ontario.

b. Basic elements of a contract of settlement in Ontario:

[53] The requirements which must be met in order for a settlement agreement to exist in common law provinces were set out by the Stratas J.A. of the Federal Court of Appeal in the case of *Apotex Inc. v. Allergan, Inc.* (“*Apotex*”)³⁹ They are as

³⁶ 2020 TCC 126, *aff’d* by the Federal Court of Appeal at 2022 FCA 75. It should be noted that the Federal Court of Appeal referred specifically to Boyle J.’s reference to these provisions before determining that he “correctly stated the law (see para. 6).

³⁷ *Softsim*, *supra* note 31 at paras. 23-24.

³⁸ I do not believe that subsection 169(3) of the ITA has anything to do with settlements enforced by the Court. Rather, its sole purpose is to clarify that settlements implemented without the Court’s assistance may provide for the issuance of reassessments of otherwise statute-barred taxation years. Paragraph 298(3)(b) of the ETA is much clearer in this respect. It states that “subsections [298](1) and [298](2) do not apply in respect of a reassessment of a person made [...] with the consent in writing of the person to dispose of an appeal.” Moreover, an entirely separate provision of the ETA governs reassessments of statute-barred years pursuant to a Court order, namely paragraph 298(3)(a), which states that “subsections [298](1) and [298](2) do not apply in respect of a reassessment of a person made to give effect to a decision on an objection or appeal.”

³⁹ 2016 FCA 155.

follows:

- i. There must be objective evidence that the parties had an intention to create legal relations;
- ii. There must be consideration;
- iii. The Court must find, as an objective matter, that the terms of the agreement are sufficiently certain;
- iv. There must be a matching offer and acceptance on all terms essential to the agreement; and
- v. Any other requirements relating to the parties' circumstances must be satisfied (e.g. the requirement that agreements for the sale of land be evidenced in writing).⁴⁰

[54] Each of these requirements is addressed in turn below.

i. Intention to create legal relations:

[55] Stratas J.A. provided useful guidance regarding this criterion in *Apotex*. He wrote:

First, the court must find on the evidence before it that, objectively viewed, the parties had a mutual intention to create legal relations.

The test is whether a reasonable bystander observing the parties would conclude that both parties, in making a settlement offer and in accepting it, intended to enter into legal relations: see, e.g., *McCabe v. Verge* (1999), 182 Nfld. & P.E.I.R. 135 (Nfld. C.A.) at para. 13; *Reon Management Services Inc. v. British Columbia*, 2001 BCCA 679, 208 D.L.R. (4th) 175 (B.C. C.A.) at para. 24.

The requirement of an objective, mutual intention to create legal relations does not mean that there must be formality. Settlements need not be reached through counsel or in pre-planned, formal discussions.

Indeed, many cases show that — sometimes much to the surprise of clients and lawyers alike — seemingly idle conversations can have binding, legal consequences. Binding

⁴⁰ *Ibid.* at paras. 16-43.

settlements can arise from impromptu, informal communications in relaxed, non-business settings. See, e.g., *McCabe*, above at para. 11; *UBS Securities Canada Inc. v. Sands Brothers Canada Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93 (Ont. C.A.); *Ward v. Ward*, 2011 ONCA 178, 104 O.R. (3d) 401 (Ont. C.A.) at para. 64; *RTS Flexible Systems Ltd. v. Molkerei Alois Muller GmbH & Co KG*, [2010] UKSC 14, [2010] 1 W.L.R. 753 (Eng. C.A.) at para. 45. [emphasis added]⁴¹

[56] It is very clear that a reasonable bystander observing the parties would have concluded that they intended to enter into legal relations. Such a bystander would have noted, in particular, that:

- They were exchanging proposals that they themselves referred to as “offers” and “counteroffers”;
- The July Proposal was sent with the indication that it was “WITHOUT PREJUDICE,” and indicated that it would remain open until 30 days before the hearing of the Appellant’s appeals;
- Ms. Blackett’s e-mails of August 5, 2025, September 3, 2025, and October 7, 2025, all refer to the need to receive “instructions” from her client;
- Ms. Blackett’s e-mail of October 7, 2025 indicates that she expects to have “a final decision” on the Appellants’ counteroffer that week;
- Ms. Blackett’s e-mail of October 10, 2025 notes the “expiry” of the Appellant’s offer on October 6, 2025, and states clearly that the Respondent “is in agreement” with the “terms offered” except those relating to gross negligence penalties; and
- Mr. Laregina’s e-mail of October 14, 2025, indicates that his clients are pleased “to accept” her client’s counteroffer.

[57] All of these terms have precise legal meanings in the law of contract and are not used lightly by trained lawyers. They are employed and would be understood by a reasonable person to underscore the seriousness of the parties’ discussions and the implications of those discussions. It is clear to me, therefore, that there was an intent

⁴¹ *Apotex*, *supra* note 39 at paras. 21-24.

to create legal relations in the present case.

[58] The Respondent has indicated that he does not believe there could have been an intention to create legal relations here because no formal agreement was signed by the parties. Stratas J.A. makes clear in his judgment, however, that the fact that the parties intend to draw up a more formal instrument to document their agreement after the fact does not prevent them from having formed a binding contract before it has been prepared. He stated:

Even though parties might agree that they will draw up a later formal written agreement evidencing the terms of the settlement, they may have already bound themselves because they have agreed, orally or in writing, to all the essential terms. Put another way, “[t]he fact that a further document was required to formalize the agreement between these parties is not an impediment to finding that [an oral or written exchange constitutes] a binding contract if the terms in the [exchange] contain agreement on all of its essential terms”: *Gutter Filter Co. LLC v. Gutter Filter Canada Inc.*, 2011 FC 234 (F.C.) at para. 11.

[...]

As the Court of Appeal for Ontario wrote in *Bawitko* (at p. 104):

When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, [parties] will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.

However, when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or preliminary agreement cannot constitute an enforceable contract. In other words, in such circumstances the “contract to make a contract” is not a contract at all. The execution of the contemplated formal document is not intended only as a solemn record or memorial of an already complete and binding contract but is essential to the formation of the contract itself [emphasis added].⁴²

[59] As discussed below, I believe that all essential provisions were agreed to in

⁴² *Ibid.* at paras. 35-37.

the present case, and do not find the agreement reached to be too uncertain or general. In addition, none of the e-mails sent on or before October 14, 2025, suggest that the parties' agreement was intended to be subject to the condition that consents to judgment or minutes would be drawn up and executed. A reasonable person would conclude that their understanding was that they had come to an agreement "and" consents or minutes would be prepared and signed, not "provided that" they were prepared and signed.

ii. Consideration:

[60] As Stratas J.A. wrote in *Apotex*, there is almost never any issue with consideration in the settlement agreement context, since "by definition, settlements are compromises, and so there will be consideration flowing both ways."⁴³

[61] I have similarly concluded that it does not present any issue here either. The Appellants' consideration consisted of their promise to end their litigation with the Respondent and accept their liability to pay him certain amounts. The Respondent's consideration consisted of his promise to drop certain of his claims against them. These promises qualify as consideration.

iii. Sufficiently certain terms:

[62] It appears to me that by "certainty" of terms, what Stratas J.A. had in mind was precision. It is not sufficient for the parties to agree to sell a "few" widgets, or that their purchase price be "approximately \$1,000 a piece", for example. The essential terms need to be agreed to with a more definite degree of certainty. I will return to the concept of an essential term below.

[63] Assuming that an agreement was reached in the present case, it resulted from the "offer" contained in the Respondent's e-mail of October 10, 2025, and the Appellants' "acceptance" of that offer through Mr. Laregina's e-mail of October 14, 2025. The Respondent's offer was for the parties' dispute to be settled on the basis of the Appellants' July Proposal, except as regards gross negligence penalties, and it was accepted by the Appellants. Accordingly, assuming that a contract was formed, its terms are those set out in the July Proposal, subject to the change that Mr. Tan would be assessed for penalties pursuant to section 285 of the ETA, contrary

⁴³ *Ibid.* at para. 25.

to what was indicated in point six of the summary reproduced above.

[64] Neither the July Proposal nor the Respondent's e-mail of October 14, 2025, was vague or open-ended. Thus, their terms were sufficiently certain for the purposes of the third criterion set out in *Apotex*. The only question was whether these documents gave rise to an agreement regarding the treatment of the Appellants' reporting periods including the month of October 2014 (“**2014**”), and if so, what that treatment would be. I believe that this is best addressed as part of the fourth *Apotex* criterion.

iv. Matching offer and acceptance on all essential terms:

[65] The Appellant maintains that his understanding when drafting the July Proposal and then accepting the further counteroffer made by the Respondent on October 10, 2025 was that the parties were agreeing for:

- The reporting periods before the Court (i.e., 2015 and 2017) to be reassessed in accordance with the terms of the July Proposal;
- The Minister to be free to assess 2014 if he wanted to (Mr. Laregina explained that he could not propose that the Minister be precluded from assessing 2014 as it would violate the principled settlement rule. Since Yun Zhang was not a registrant, her 2014 reporting period would not be statute-barred);⁴⁴ and
- The Appellants to be free to file notices of objection in respect of any reassessment issued by the Minister in respect of 2014.

[66] The Respondent, on the other hand, claims that his understanding when making the October 10, 2025 counteroffer was that the parties were agreeing for:

- 2015 and 2017 to be reassessed in accordance with the terms of the July Proposal;
- 2014 to be reassessed on the basis that they were deemed to make a supply

⁴⁴ Neither party suggested during the hearing that there was any intention to preclude the Minister from assessing 2014.

for that year based on the value of the Eldora Property at the later of the time its reconstruction was substantially completed and the time it was first occupied, pursuant to subsection 191(1); and

- The Appellants to commit not to file notices of objection in respect of the reassessments issued in respect of 2014.

[67] The Respondent argues that the treatment of 2014 was an essential term, and since the parties had different understandings regarding how it would be dealt with, there was not a matching offer and acceptance for the purposes of the above-mentioned criteria. He termed what occurred as a “mutual mistake.”

[68] I do not believe that this was the correct way to analyze the question. Contract law provides that offers and acceptances must be interpreted not in light of a party’s subjective intentions, but rather what a reasonable person would have concluded from what they said or did. As Gillese J.A., of the Ontario Court of Appeal, wrote in *Olivieri v. Sherman*:⁴⁵

A determination as to whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party’s subjective intention. See *Lindsey v. Heron Co.* (1921), 64 D.L.R. 92 (Ont. C.A.). Where, as here, the agreement is in writing, it is to be measured by an objective reading of the language chosen by the parties to reflect their agreement. As was stated by Middleton J.A. in *Lindsey* at 98-9, quoting *Corpus Juris*, vol. 13 at 265:3

The apparent mutual assent of the parties essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject.⁴⁶

[69] Accordingly, the question is how a reasonable person would have interpreted

⁴⁵ 2007 ONCA 491.

⁴⁶ *Ibid.* at para. 44. The Supreme Court of Canada has endorsed this principle on many occasions (see e.g. *Saint John Tug Boat Co. v. Irving Refinery Ltd.*, [1964] S.C.R. 614 at paras. 18-19, *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29 at paras. 29-33, *Corner Brook (City) v. Bailey*, 2021 SCC 29 at para. 49, and *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 at para. 35).

the offer contained in the Respondent's e-mail of October 10, 2025. As discussed above, it proposed that the parties settle based on the terms of the July Proposal, except as regards gross negligence penalties. A reasonable person would have interpreted this to mean that the parties would settle based on a reasonable person's interpretation of the July Proposal. Similarly, and because the Appellants simply agreed to the Respondent's e-mail of October 10, 2025, a reasonable person would have interpreted their acceptance as an agreement to be bound by the same reasonable person's interpretation of the July Proposal.

[70] It follows that the question which must be answered is what that reasonable person's interpretation would have been of the July Proposal. If there is a clear answer, there will necessarily be a matching offer and acceptance, since both parties will have agreed to the same reasonable interpretation. It is only if there is no clear answer (i.e., if a reasonable person could conclude, as the Appellant says he did, that the agreement was to leave 2014 open, and also, as the Respondent says he did, that the agreement was that it would be assessed with no possibility of objection), that it is possible for there to be a lack of consensus *ad idem*.

[71] In my view, a reasonable person would have considered the following factors in attempting to interpret the July Proposal:

- A. Exhaustive nature of July Proposal: The July Proposal clearly purports to be an exhaustive document. As mentioned above, it is 21 pages long, is quite detailed and contains a copy of the Agreement of Purchase and Sale entered into in respect of the Olive Property and a breakdown of the ITCs the Appellants' wished to have credited in respect of the Olive Property. This would suggest to a reasonable person that it was intended to cover all key figures relating to the parties' settlement. Conversely, the failure to refer to any assessment of 2014, any proposed value that would be used for the purposes of generating such assessments, any documentation that would support that value or any ITCs and/or rebates, would also have suggested to a reasonable person that it was unlikely that such assessments were intended to be issued as part of the implementation of the proposed arrangement.
- B. Prominent reference to exempt nature of supply of Eldora Property and absence of any reference to subsection 191(1) in summary: The exempt nature of the supply of the Eldora Property is given great prominence in the

July Proposal. It is the first point of the summary at the beginning of the document. In addition, unlike the section dealing with the principled nature of the settlement, the summary at the beginning of the document contains no reference to subsection 191(1). These two facts would have led a reasonable person think that the proposal was for the parties' dispute to notionally be divided in two, with the Appellants paying tax in respect of the sale of only one of the properties in issue.

- C. 2015 and 2017 were the only reporting periods in dispute: Given that 2015 and 2017 are the only reporting periods before the Court, a reasonable person would not have considered it unusual for the settlement put forward via the July Proposal to provide for the issuance of assessments in respect of only those two periods. Further support for this view is provided by the emphasis in the opening paragraph of the document of the fact that it offers "a settlement of the above-noted appeals" (as opposed to any broader dispute) and the following words in the section of the July Proposal dealing with subsection 191(1):

[...] [A] likely outcome at trial would be that subsection 191(1) would deem the Appellants to have received a taxable supply of 10 Eldora as of July 2014. This means the subsequent supply by way of sale on February 4, 2015 and assessments for the Appellants' relevant reporting periods would be an exempt supply under the ETA [...].

These references would have indicated to the reasonable person that the focus of the July Proposal was solely on the periods that would have been ruled upon by this Court.

- D. Decision to refer to exemption set out in subsection 4(b) and not section 3 of Schedule V: Subsection 191(5) provides that where a property constructed or renovated by a builder is used primarily as the builder's place of residence and no ITCs have been claimed in connection with the project, there is no deemed supply. Section 3 of Schedule V of Part I of the ETA then provides that a subsequent sale of the property is an exempt supply. A reasonable person might wonder why Mr. Laregina did not refer to these provisions in the July Proposal (as opposed to subsection 191(1) and subsection 4(b) of Schedule V) if he wanted to make it clear that no assessments should be issued for 2014. A logical answer, however, would be that it might be quite difficult to get the Respondent to settle based on

these provisions. Most of the caselaw regarding subsection 191(5) suggests that the taxpayer's primary intention must be to reside in the property in order for the provision to apply,⁴⁷ and one even suggests that the taxpayer cannot even have a secondary intention to sell.⁴⁸ It would also be necessary to show that no ITCs were claimed in connection with the reconstruction. The Notice of Appeal is vague on this point, stating simply that the Appellants "did not personally claim the ITCs in respect of the last acquisitions of the Properties."

- E. Absence of any prohibitive language: The July Proposal neither prohibits the Minister from assessing 2014 nor prohibits the Appellants from filing notices of objection in respect of such assessments. This would suggest to the reasonable person that these actions were intended to be permitted.
- F. Absence of any permissive language: The reasonable person would also wonder why the Appellants did not specify in the July Proposal that the Minister would be permitted to issue assessments for 2014 and that they would be free to file notices of objection in respect of those assessments if that was their intention. On the other hand, the reasonable person would also be aware that the Minister is generally free to assess any reporting period, and a taxpayer is free to object to any assessment. Repeating this in the parties' settlement agreement would simply have reiterated what was already the case and would merely have been "for greater certainty." The reasonable person would also have understood that Mr. Laregina might not have wanted to invite the Minister to assess 2014 by stating explicitly that he could do so. It is not uncommon for parties to seek to deemphasize aspects of their agreements that are unfavorable to their position. Less is sometimes more in this regard.
- G. Reasonableness of substantive outcome: In determining how the July Proposal should be interpreted, a reasonable person would have considered which interpretation was most plausible from a commercial point of view, in the sense of being one which would have been advantageous to the author (i.e. the Appellants). There were three possibilities here:

⁴⁷ See e.g. *Strumecki (J.) v. Canada*, [1996] G.S.T.C. 23 at para. 16, *Wallace Construction v. R.*, [1999] G.S.T.C. 97, at para. 9 and *Moss v. R.*, [1999] G.S.T.C. 89 at para. 6.

⁴⁸ *Genge (D.) v. Canada*, [1996] G.S.T.C. 38 at para. 23.

- 2014 left open: While leaving 2014 open did not guarantee that the Appellants would not have to pay tax for that period, it had a good chance of achieving this result. It would be unusual for the Minister to initiate a tax dispute in respect of a taxation year that was 11 years old. Doing so would raise a series of new issues, including whether any supply of the Eldora Property would be deemed to occur in July or October, 2014, what its value was at the time of its deemed supply, which may have been as many as seven months prior to its actual sale, and in the case of Sheng Tan, whether there had been a misrepresentation attributable to neglect, carelessness or willful default or fraud. These factors, combined with the fact that the total amount of tax payable in connection with the sale of the Eldora Property was much lower than the Olive Property (since it was sold for less than half of the price) made Mr. Laregina's assessment a reasonable one.
- 2014 to be reassessed based on 2015 value: This is the version put forward by the Respondent in his October 23, 2025 letter and is easy to discard. It simply causes the Appellants to be assessed for the same amount of tax, but a year earlier. All this would do would be to increase the amount of interest payable. The reasonable person would not expect the Appellants to propose a settlement which left them worse off.
- 2014 to be reassessed based on 2014 value: A more realistic option would have been that 2014 was intended to be assessed, but that this would be done using the value of the Eldora Property at the time the Appellants moved into the property (i.e. July or October 2014). In this scenario, the interest on the Appellants' tax debt would be increased, but the total amount of tax might also be reduced, since it might be computed by reference to a smaller value. This possibility makes sense in theory, but not in practice, however. The Eldora Property was sold on February 4, 2024. Accordingly, it did not have very much time to increase in value. Assuming a very healthy 10% annual growth rate in the value of residential properties, it would have produced a tax savings of approximately \$9,750.⁴⁹ Less than

⁴⁹ 13% of 5% (representing approximately half a year's growth at a rate of 10%) of 1,695,000/1.13

half of this amount would be left over when the additional interest was taken into account. The overall savings would be immaterial, particularly when considered as a percentage of the total amount in issue in the present case, which I presume to be more than \$1,000,000, including interest.

The first option is clearly the most favorable for the Appellants.

[72] In light of the above, it is clear to me that a reasonable person would have concluded that the Appellant's intention was exactly what Mr. Laregina says it was, namely, for only the sale of the Olive Property to be assessed, for the Respondent to retain the right to assess the deemed supply of the Eldora Property in 2014, and for the Appellants to retain the right to file notices of objection in respect of any such assessment. There is therefore matching offer and acceptance on all essential terms.

v. Other requirements:

[73] The only other requirement applicable in this case is the principled settlement rule. Given the way the jurisprudence on this point has developed, however, I will address that element separately after determining whether an otherwise valid settlement contract exists.

c. Role of the Respondent's alleged mistake:

[74] As already mentioned, I do not accept that a settlement agreement was prevented from being formed by a mutual mistake in the present case. That being said, there may have been a unilateral mistake on the part of the Respondent regarding the terms of that agreement. A question which arises is whether this would have any impact on the outcome of this motion.

[75] At common law, a unilateral mistake as to terms is generally insufficient to cause a contract to be considered to be void unless the other party knows that the mistaken party is operating under an invalid assumption. The leading decision on this issue is *Smith v. Hughes*,⁵⁰ in which the plaintiff offered to sell oats to the defendant. The oats were "new" oats, but the defendant believed them to be old oats.

= \$9,750. It should be noted that this calculation assumes that the parties would have agreed that the price of the Eldora Property was, like the price of the Olive Property, inclusive of sales tax.

⁵⁰ (1871), L.R. 6 Q.B. 597.

The question in the case was whether, in the event that the plaintiff had failed to specify whether the oats were new or old (there was some debate on this point), and a reasonable person would have concluded that they could be either, the defendant could avoid the contract on the basis that he had mistakenly believed that it was a term of their agreement that the oats were old. The Court held that this would only be the case if the plaintiff knew of the defendant's mistake regarding the terms of their agreement at the time it was concluded.

[76] The rule regarding unilateral mistakes is similar in equity, except that there a contract may be rescinded even if the other party did not have subjective knowledge of the mistake, but rather, only ought to have known of its existence. In *Bogue v. Bogue*,⁵¹ for example, the Ontario Court of Appeal wrote:

In cases of unilateral mistake, if the un mistaken party is ignorant of the other's mistake the contract is valid in law: *Fridman supra* at 261. Assuming a mistake was made in this case, in that the husband agreed to the settlement without realizing that it did not contain a repayment clause, there was no evidence that the wife or her lawyer were aware of the mistake. Nevertheless, the husband may be entitled to an equitable remedy if the wife ought to have known of his mistake: *Stepps Investments Ltd. v. Security Capital Corp.* (1976), 73 D.L.R. (3d) 351 (Ont. H.C.) at 364 [emphasis added].⁵²

[77] The Respondent has not alleged that the Appellants were aware of any mistake on his part, and there is no evidence before me of any such knowledge. There is also no evidence before me of circumstances which would make it reasonable to expect the Appellants to have known of the existence of such a mistake.⁵³ Accordingly, the parties' agreement can neither be avoided nor rescinded.

d. Failure to file penalties payable by Yun Shang:

[78] It is not clear to the Court whether or not failure to file penalties were assessed by the Minister against Yun Zhang. As mentioned above, this is not mentioned in her Notice of Appeal or the Minister's Reply. In addition, no submissions were made

⁵¹ [1999] O.J. No. 4310. See also *Deschenes v. Lalonde*, 2020 ONCA 304 at para. 45 and 256593 *B.C. Ltd. v. 456795 B.C. Ltd.* 1999 BCCA 137 at para. 28, and Bruce MacDougall, *Mistake in Contracting* (Toronto: LexisNexis Canada Inc., 2018) at p. 254 and following.

⁵² *Ibid.* at para. 18.

⁵³ In my opinion, the Respondent would have had to both allege and prove the existence of its mistake and actual or constructive knowledge thereof by the Appellants in order to avoid/rescind the agreement entered into here.

on this point during the hearing. On a balance of probabilities, I have concluded that a reasonable person would have understood from the July Proposal that they were to be left as they were by the Minister (meaning, if assessed, they would not be removed). This is therefore the result that will be provided for by this Court's order. The amount of these penalties would have been quite minor, relatively speaking, as the maximum penalty that may be imposed under section 280.1 of the ETA is only 4% of any tax owing and unpaid.

e. Principled nature of settlement:

[79] As mentioned above, the reasonable person's interpretation of the July Proposal was that it left 2014 open. Thus, it did not prevent the Minister from assessing Yun Zhang in respect of a non-statute-barred period. There is therefore no basis for concluding that the document is unprincipled on that basis.

[80] Nevertheless, the Respondent argued during the hearing that the terms proposed by the Appellant were unprincipled because they violated the object and spirit of the ETA. In essence, his claim was that they would be inconsistent with the tax policy underlying subsection 4(b) of Schedule V of Part I of the ETA, which is to exempt the sale of a property when tax having been paid in respect of its deemed supply under subsection 191(1) of the ETA. Since no such tax would be paid in respect of the Eldora Property, this policy was not respected.

[81] I do not accept this argument. As indicated in *CIBC*, the principled settlement is based on the Minister's duty to assess based on the "facts and the law." The Minister does not have a duty to assess based on tax policy. Subsection 4(b) of Schedule V of Part I of the ETA leaves little doubt in this regard. It covers the sale of a single unit residential complex made by a builder who has "was deemed under subsection 191(1) or (2) of the Act to have received a taxable supply of the complex or unit by way of sale, and that supply was the last supply of the complex or unit made by way of sale to the builder." It does not require an assessment to have been issued in respect of that supply. Furthermore, as noted by the Appellant in the July Proposal itself, in the recent case of *Nicosia v. R.*,⁵⁴ Yuan J. allowed the appeal of two siblings that had sold a property on the basis either that they were not builders, or that they were builders, but the exemptions in section 3 or 4(b) of Schedule V of Part I were applicable. He made clear in his decision, however, that no assessment

⁵⁴ 2024 TCC 112.

had been issued under subsection 191(1). More fundamentally, the Appellant's interpretation does not prevent the Minister from assessing 2014 if he so desires.

[82] The principled settlement rule has therefore been respected.

IV. CONCLUSION:

[83] The Appellants' motions are granted, with costs.

[84] The Appellants shall have thirty days to make submissions regarding the amount of the costs payable in respect of these motions (as opposed to the disposition of the appeals themselves), following which the Respondent will have thirty days to file a response. If no such submissions are received, costs will be awarded to each Appellant in the amounts provided for in Schedule II of the Rules.

[85] All parties confirmed that they were not seeking any confidentiality orders in the event that the motions were granted and that in such case, the Court's judgment should be published. Consequently, no such orders will be issued.

These Amended Reasons for Judgment are issued in substitution of the Reasons for Judgment dated May 1, 2026.

Signed this 4th day of May 2026.

“Ryan Rabinovitch”

Rabinovitch J.

CITATION: 2026 TCC 71

COURT FILE NO.: 2023-765(GST)G
2023-768(GST)G

STYLE OF CAUSE: YUN ZHANG AND HIS MAJESTY THE KING
SHENG TAN AND HIS MAJESTY THE KING,

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 7, 2025

AMENDED REASONS FOR JUDGMENTS BY: The Honourable Justice Ryan P. Rabinovitch

DATE OF JUDGMENTS: May 1, 2026

DATE OF AMENDED JUDGMENTS: May 4, 2026

APPEARANCES:

Counsel for the Appellant: Bruce Laregina
Counsel for the Respondent: Jacqueline Blackett
Tony Cheung

COUNSEL OF RECORD:

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