Federal Court Cour fédérale

Date: 20230220

Docket: T-1567-22

Citation: 2023 FC 248

Toronto, Ontario, February 20, 2023

PRESENT: Associate Judge Trent Horne

BETWEEN:

ADRIAN ROBINSON

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

ORDER AND REASONS

I. Overview

[1] This application for judicial review challenges a decision of the Minister of National Revenue that denied the applicant's request for relief under a "mutual agreement procedure" in a taxation treaty with the United Kingdom of Great Britain and Northern Ireland.

[2] The respondent has brought a motion to strike the notice of application, without leave to amend, on the basis that the Federal Court has no jurisdiction to grant the relief requested.

[3] For the reasons that follow, I am not persuaded that the respondent has met the high burden of demonstrating that the proceeding should be struck on a preliminary basis. The motion will be dismissed.

II. Background

[4] In 1978, Canada and the United Kingdom of Great Britain and Northern Ireland ("UK") entered into a treaty to avoid double taxation on the part of their respective taxpayers, specifically the *Convention Between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains*, signed on September 8, 1978, enacted in Canada by S.C. 1980-81-82-83, c. 44, Part X, in force December 18, 1980, as Amended by the Protocols signed on April 15, 1980 (enacted in Canada by S.C. 1980-81-82-83, c. 44, Part XI, in force December 18, 1980), October 16, 1985 (enacted in Canada by SI/86-47, in force December 23, 1985), May 7, 2003 (enacted in Canada by P.C. 2003-1374, in force May 4, 2004) and July 21, 2014 (enacted in Canada by SI/2015-82, in force December 18, 2014) (the "Convention").

[5] Article 23 of the Convention sets out a mutual agreement procedure ("MAP"). In very general terms, the MAP is a dispute resolution mechanism that allows Canadian officials to interact with tax officials in the UK to resolve issues of taxation, including double taxation, not in accordance with the Convention.

[6] The material facts, as set out in the notice of application, are:

> (1) the applicant filed income tax returns, as a resident of Canada, for the 2000 to 2015 taxation years;
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> (2) on May 24, 2013, the applicant and his past tax advisors filed an amended tax return to report income earned outside Canada under the Voluntary Disclosures Program;
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> (3) the Agency issued notices of reassessment, dated January 22, 2015;
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> (4) the Agency reviewed the applicant's VDP tax returns again, and the Agency issued notices of reassessment, dated September 7, 2017, related to the applicant's 2006 to 2010 and 2014 taxation years (the "post-VDP NoRs");
>
> (5) as of September 7, 2017, the applicant had not been assessed tax in the UK related to his 2000 to 2015 taxation years;
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> (6) on or around September 13, 2018, the applicant initiated a disclosure to HMRC under the Worldwide Disclosure Facility;
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> (7) the applicant did not know if HMRC would consider him a resident of the UK for tax purposes;
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> (8) HMRC sent the applicant a Certificate of Residence, dated April 25, 2019, certifying that "from 6 April 2002 to 5 April 2017 [the applicant] was a resident of the UK in accordance with Article 4 of the Convention in force between the UK and Canada";
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> (9) HMRC has reviewed the applicant's UK disclosure, and issued the assessments, dated March 8, 2021, related to the applicant's 2000/2001 and 2001/2002 taxation years;
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> (10) The applicant was first notified of taxation not in accordance with the Convention on March 8, 2021;
>
> (11) The applicant filed a request for assistance under Article 23 of the Convention on January 25, 2022;
>
> (12) The applicant filed the request for assistance under Article 23 of the Convention within three years from the first notification of taxation not in accordance with the Convention;
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> (13) The Agency deemed that the applicant's request was inadmissible on the basis that the applicant's request was not filed within three years from the "first notification of the action resulting

> in taxation not in accordance with the provisions of the Convention."

[7] The decision being challenged is dated June 30, 2022 ("Decision"), and is asserted to have been made by the Minister of National Revenue ("Minister"). It denied the applicant's request for relief under the MAP on the basis that the request was not filed within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention. The applicant particularly challenges the interpretation of the term "first notification."

[8] The notice of application seeks the following orders:

a) setting aside the Minister's decision on the basis that the Minister committed a reviewable error and confirming that the Minister's decision is not correct in law or reasonable;

b) identifying the specific errors of law and unreasonable findings of fact that underlie the Minister's decision and render the Minister's decision unreasonable;

c) remitting the matter back to a different decision maker to reconsider the applicant's competent authority request;

d) providing the Minister's decision maker with appropriate direction in respect of the Minister's errors and Minister's decision;

e) granting the applicant costs; and

f) such further and other relief as this Honourable Court may consider just.

[9] The respondent has brought a motion to strike the notice of application, without leave to amend, on the basis that this Court does not have jurisdiction to review the Minister's decision.

III. Test on a Motion to Strike

[10] The test to strike an application for judicial review is a high one. There must be a "show stopper" or "knockout punch" – an obvious, fatal flaw striking at the root of the Court's power to entertain the application. This is also referred to as the "doomed to fail" standard (*Rahman v Public Service Labour Relations Board*, 2013 FCA 117 at para 7 ("*Rahman*"); *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 33).

[11] Where the issue raised by the moving party as the basis for dismissing the application is determined to be debatable, the circumstances do not warrant dismissal of the application at a preliminary stage. Rather, the issue should be determined by the application judge (*David Suzuki Foundation v Canada (Health)*, 2017 FC 682 at para 7, aff'd 2018 FC 380; *David Bull Laboratories (Canada) Inc v Pharmacia Inc*., [1995] 1 FCJ No 588 (FCA) at para 15 ("*David Bull*"); *Apotex Inc v Canada (Minister of Health)*, 2010 FC 1310 at paras 12-13).

[12] Authorities that preceded *Rahman* also articulated a difficult test to meet on a motion to strike a notice of application, requiring that the proceeding be "bereft of all possibility of success" (*LJP Sales Agency Inc v Canada (National Revenue)*, 2007 FCA 114 at para 7) or "bereft of merit" (*Verma v Canada*, 2006 FC 1353 at para 16).

[13] There are two justifications for such a high threshold. First, the Federal Courts' jurisdiction to strike a notice of application is founded not in the *Federal Courts Rules*, SOR/98-106 ("Rules"), but in the Courts' plenary jurisdiction to restrain the misuse or abuse of courts' processes (*David Bull* at page 600; see also *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at paras 33-36 re. the Courts' plenary powers to investigate, detect and, if necessary, redress abuses of its own processes). Second, applications for judicial review must be brought quickly and must proceed "without delay" and "in a summary way" (*Federal Courts Act*, RSC 1985, c. F-7, subsection 18.1(2) and section 18.4 ("Act")). An unmeritorious motion – one that raises matters that should be advanced at the hearing on the merits – frustrates that objective (*Assouline v Canada (Attorney General*), 2021 FC 458 at para 12).

IV. Jurisdiction

[14] The respondent advances three arguments in support of the assertion that the Federal Court does not have jurisdiction to review the Decision:

i. The Decision was not rendered unilaterally by a federal board, commission or other tribunal, rather by treaty partners working in concert;

ii. The order sought would have no practical effect as the Court does not have the jurisdiction to bring the UK back to the bargaining table; and

iii. The Tax Court of Canada has exclusive jurisdiction to hear the appeal.

A. Federal board, commission or tribunal

[15] The operative words of the s. 2 definition of "federal board, commission or other tribunal" state that such a body or person has, exercises or purports to exercise jurisdiction or powers "conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown…". Thus, a two-step enquiry must be made in order to determine whether a body or person is a "federal board, commission or other tribunal". First, it must be determined what jurisdiction or power the body or person seeks to exercise. Second, it must be determined what is the source or the origin of the jurisdiction or power which the body or person seeks to exercise (*Anisman v Canada (Border Services Agency)*, 2010 FCA 52 at para 29).

[16] Specifically in respect of actions of the Canada Revenue Agency ("CRA") within the MAP process under a tax treaty, the jurisdiction of the Federal Court was considered by justice McDonald in *CGI Holding LLC v Canada (National Revenue)*, 2016 FC 1086 ("*CGI Holding*"):

> [16] The Minister argues that the actions of the CRA within the MAP process under the Treaty are not subject to judicial review because it is negotiations with another government and within the Crown's prerogative power over foreign affairs.
>
> [17] I note that this Court has previously considered judicial reviews in the context of this Treaty, see generally: *Teletech Canada, Inc v Canada (National Revenue)*, 2013 FC 572; *Robert Julien Family Delaware Dynasty Trust v Canada (National Revenue)*, 2007 FC 1071.
>
> [18] Furthermore, the decision of the Federal Court of Appeal [FCA] in *Hupacasath First Nation v Canada (Minister of Foreign Affairs)*, 2015 FCA 4 supports the finding that the administrative actions of the Minister even in the context of the MAP process are subject to review, provided the Court, in its supervisory role, shows appropriate deference to the role of the Minister and her prerogative powers over foreign affairs: *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 46, [*Khadr*].

> [19] Subject to these limitations, I conclude that this Court has jurisdiction to consider the administrative actions of the CRA as the Minister's representative within the MAP process under the Treaty.

[17] The respondent addresses *CGI Holding*, and argues that this decision, and the authorities relied on in it, are distinguishable on their facts.

[18] *CGI Holding* involved a tax treaty between Canada and the United States, the Convention between Canada and the United States of America with respect to Taxes on Income and on Capital, September 26 1980, Can TS 1984 No 15 (the "US Convention"). The US Convention also includes MAP articles. The respondent argues that there is no appreciable difference in the relevant MAP articles in the US Convention and the Convention, but that the evidence before the Court in this proceeding is different.

[19] The respondent asserts that in *CGI Holding*, the evidence indicated that there were negotiations between the two countries, and that the United States Internal Revenue Service ("IRS") formally opened the MAP process by sending a letter to the CRA requesting that it issue a refund (para 9). The CRA and IRS were unable to reach a mutual agreement, and the matter was concluded (para 11).

[20] By contrast, the respondent submits that, in this case, the evidence is that the Minister, along with her treaty partner, jointly consider whether the taxpayer is admissible into the MAP. The respondent submits that, in this case, the Minister was not acting alone, rather was acting

bilaterally with her treaty partner, the UK, who is not a "federal board, commission or other tribunal."

[21] The respondent's moving motion materials include two affidavits, and leave is sought to enter them into evidence on this motion. One was affirmed by Gwen Mah, the Acting Manager, Technical Cases Section, Competent Authority Services Division, International and Large Business Directorate, Compliance Programs Branch with the Canada Revenue Agency in Ottawa. Her affidavit states that it sets out the shared understanding of the CRA officers charged with negotiations of individual tax issues between Canada and its treaty partners, but does not comment on the specific facts of this application for judicial review. The affidavit attaches over 1,000 pages of exhibits, including information circulars created by CRA, and documents originating from the Organisation for Economic Co-operation and Development ("OECD").

[22] Ms. Mah was not cross-examined. The applicant's responding motion record does not include affidavit evidence.

[23] As a general rule, affidavits are not admissible in support of motions to strike applications for judicial review (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 51 ("*JP Morgan*")). This general rule is justified by several considerations:

> - Affidavits have the potential to trigger cross-examinations and refused questions and, thus, can delay applications for judicial review. This is contrary to Parliament's requirement that applications for judicial review proceed "without delay" and be heard "in a summary way."

> ● A respondent bringing a motion to strike a notice of application does not need to file an affidavit. In its motion, it must identify an obvious and fatal flaw in the notice of application, *i.e.*, one apparent on the face of it. A flaw that can be shown only with the assistance of an affidavit is not obvious. A respondent's inability to file evidence does not normally prejudice it. It can file evidence later on the merits of the review, subject to certain limitations, and often the merits can be heard within a few months. If an application has no merit, it will be dismissed soon enough. And if there is some need for faster determination of the merits, a respondent can always move for an order expediting the application.
>
> ● As for an applicant responding to a motion to strike an application, the starting point is that in such a motion the facts alleged in the notice of application are taken to be true: *Chrysler Canada Inc. v. Canada*, 2008 FC 727 at paragraph 20, aff'd on appeal, 2008 FC 1049. This obviates the need for an affidavit supplying facts. Further, an applicant must state "complete" grounds in its notice of application. Both the Court and opposing parties are entitled to assume that the notice of application includes everything substantial that is required to grant the relief sought. An affidavit cannot be admitted to supplement or buttress the notice of application.
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> (*JP Morgan* at para 52)

[24] There are, of course, exceptions to the rule. These include where a document is referred to and incorporated by reference in a notice of application (*JP Morgan* at para 54; see also *Ghazi v Canada (National Revenue)*, 2019 FC 860 at paras 11–12). In addition, this Court recognizes the admissibility of an affidavit in motions to strike where the moving party has added abuse of process as a supplementary ground. In these circumstances, the moving party may file documents to prove the alleged abuse, and the applicant may file any evidence to refute those allegations (*Turp v Canada (Foreign Affairs)*, 2018 FC 12 at para 21).

[25] The respondent asserts that the evidence on this motion is that the Minister, along with her treaty partner, jointly consider whether the taxpayer is admissible into the MAP. The evidence in this respect from Ms Mah is not specific to dealings with the applicant, rather general practices and procedures under the MAP provisions in Canada's tax treaties. Paragraph 19 of her affidavit states:

> 19. In an effort to improve the effectiveness of the MAP, the Group of Twenty ("G20") countries committed in 2013 to implement a minimum standard for the operation of the MAP, as part of Action 14 of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan. Item 3.1 of the BEPS Action 14 minimum standard provides that both competent authorities should give their views on whether a MAP request is accepted or rejected, even though the decision is made in the first stage of the MAP. Where a tax convention requires a MAP request be made to the competent authority of the contracting state of residence, as is the case with all of Canada's tax conventions, the minimum standard requires that a bilateral competent authority consultation process be implemented to allow both competent authorities to agree on whether a taxpayer's MAP request is admissible and justified. Attached to this Affidavit as Exhibit G is a true copy of OECD (2015), Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. This procedure is outlined at page 22.

[26] Even if I accept that both competent authorities *should* give their views on whether a MAP request is accepted or rejected, and that the *minimum standard* requires that a bilateral competent authority consultation process be implemented to allow both competent authorities to agree on whether a taxpayer's MAP request is admissible and justified, I have no information as to the circumstances leading to the Decision. I do not know if the Minister did what she was supposed to do, followed minimum standards in the decision-making process, or engaged in any form of consultation with the UK taxation authority (HM Revenue & Customs). A copy of the Decision was not included in the record, nor do I have any facts as to how it was made.

[27] The notice of application states that the Decision was made by the Minister of National Revenue, and names the three persons who made it. On a motion to strike, the pleaded facts are assumed to be true (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42, [2011] 3 SCR 45 at para 17).

[28] Given the high burden on a moving party on a motion to strike, I cannot accept that I should receive the Mah affidavit and conclude, on the basis of general policies or practices, that the Decision was made jointly by two treaty partners. Further, I draw a negative inference from the fact that the Decision and facts related to it were not included in the voluminous record.

[29] The respondent may have a compelling argument on the different facts and evidence that may be presented in this proceeding, and how it can be distinguished from *CGI Holding*. However, *CGI Holding* expressly determined that the Federal Court has jurisdiction to consider at least some administrative actions of the CRA as the Minister's representative within the MAP process under the US Convention (para 19). The respondent concedes that there is no appreciable difference in the relevant MAP articles in the Convention and the US Convention.

[30] In light of the jurisdictional findings in *CGI Holding* (which are binding on me), and the absence of facts relating to how the Decision was made, I cannot conclude that it is beyond debate that the Decision was not made by a federal board, commission or tribunal, or is otherwise not subject to judicial review. I express no opinion on whether the respondent's position will ultimately be successful on this point, but cannot conclude on this record that the

respondent has landed a knockout punch, or otherwise met the high burden to strike the notice of application on this basis.

B. Effectiveness of a Federal Court order

[31] An application is bereft of any possibility of success where it seeks a declaration that is of no practical effect (*Canada (Attorney General) v Iris Technologies Inc*, 2022 FCA 101 at para 6).

[32] The respondent relies on this principle, asserting that the Convention only requires the counterparties to endeavour to reach a mutual agreement; they are not required to find a common resolution (Convention, Article 23, paragraph 2). The respondent argues that this Court is not able to enjoin the UK to accept the Court's interpretation, such that admission into the MAP would be guaranteed. Therefore, in the respondent's submission, the order sought would have no practical effect. In reply submissions, the respondent asserts that the fundamental principle being advanced in this motion to strike is that decisions made in respect of MAP articles in Canada's tax conventions do not lend themselves to judicial review because they are made with treaty partners and they were not designed to be reviewed.

[33] The relevant Article in the Convention is:

> Article 23
>
> Mutual Agreement Procedure
>
> 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the

competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may reach agreement on:

   a. the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

   b. the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

[34] The MAP process occurs in two stages. The first involves the resident submitting an application in writing to the "competent authority of the Contracting State of which he is a resident." There is a threshold determination as to whether the objection appears to be justified. Here, the application was filed by the applicant, and was directed to the CRA.

[35] Paragraph 2 of Article 23 does not expressly require that the CRA consult or communicate with the other Contracting State (here, the UK) in determining whether the objection appears to be justified. It does not expressly state that a first stage decision must be made jointly between the Contracting States.

[36] Again, Ms Mah's evidence is not directed specifically to the Convention, or the way in which the Decision was made. Paragraph 19 of her affidavit reproduced above refers to a 2015 OECD/G20 Final Report at page 22. That page reads, in part:

> 35. The competent authorities of both Contracting States should be made aware of the MAP requests that are submitted pursuant to paragraph 1 of Article 25 and have the opportunity to provide their views on whether the MAP request should be accepted or rejected and on whether the taxpayer's objection is considered to be justified. To achieve this objective, countries should take one of two alternative approaches: (i) amend paragraph 1 of Article 25 to permit a request for MAP assistance to be made to the competent authority of either Contracting State; or (ii) implement a bilateral notification or consultation process for cases with respect to which the competent authority to which the case is presented does not consider the taxpayer's objection to be justified (making clear that such notification or consultation should not be interpreted as consultation as to how to resolve the case). (Emphasis added.)

[37] Even if I accept that Ms Mah's affidavit is admissible on the motion, this exhibit to her affidavit speaks to best practices and an opportunity to provide views. It does not establish or demonstrate that first stage MAP requests under Canada's bilateral tax treaties *must* be made in association with the other contracting state, or that HM Revenue & Customs is an equal partner or joint decision-maker in the assessment of an initial request presented to CRA.

[38] Further, I have no evidence as to how the Decision was made, which could inform what may happen in the event the relief requested in the application is granted. I do not know if Canada and the UK have implemented a bilateral notification or consultation process for MAP requests under the Convention or the nature of the communications between CRA and HM Revenue & Customs, if any, that preceded the Decision.

[39] I therefore cannot conclude on this record that it has been established that judicial review of a first stage decision by CRA can have no practical effect. The notice of application will not be struck on this basis.

C. Tax Court of Canada jurisdiction

[40] The respondent argues that the core of the applicant's grievance is the issue of residency and double taxation for his 2006 to 2010 and 2014 taxation years, and that a taxpayer's place of residence for the purposes of taxation falls within the exclusive jurisdiction of the Tax Court of Canada, and is not the proper subject matter of judicial review in this Court. The respondent further submits that the applicant has an adequate, alternative remedy available through proceedings commenced in the Tax Court of Canada.

[41] I agree that reassessment of tax is within the exclusive jurisdiction of the Tax Court of Canada.

[42] Assessments are legally conclusive of tax liability unless they are set aside by the Tax Court of Canada. Nevertheless, where the conduct of the Minister, as opposed to the correctness of an assessment, is in play, a notice of assessment does not deprive the Federal Court of jurisdiction to consider the Minister's exercise of discretion. The Federal Court retains jurisdiction to consider the exercise of discretion by the Minister in the application of the *Income Tax Act*, RSC 1985 c 1 (5th Supp) ("ITA"), including review of allegations of bad faith, abuse of power and unreasonable delay. The demarcation between the jurisdiction of the Tax Court of Canada and a judicial review in the Federal Court is not always clear. At times there is no bright

line. A court must always be cautious of artful pleading and attempts to cloak challenges to notices of assessments in administrative law language. In determining which court has the jurisdiction to entertain an application, the question of the essential nature of the dispute must be based on a realistic appreciation of the practical result sought. Each case will require a careful and realistic assessment of the true nature of the application. The Federal Court will have to determine whether the Minister's conduct is in issue, or whether it is, in essence, an attack on the correctness of the assessment itself. As a starting point, in light of the clear language of section 18.5 of the Act, the Federal Court should be cautious in authorizing judicial review in the face of an outstanding notice of assessment (*Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 223 at paras 34-39)

[43] In support of this argument, the respondent's second affidavit was affirmed by Jiaming (Alice) Tian. Ms Tian is a legal assistant in the Tax Law Services Section of the Department of Justice Canada. Her affidavit attaches four documents, specifically pleadings, from the Tax Court of Canada in Court file number 2021-825(IT)G. The appellant in that matter, Adrian Robinson, is the applicant in this proceeding. The notice of appeal challenges the notices of reassessment for the appellant's 2006 to 2010, and 2014 taxation years.

[44] Ms Tian's affidavit attaches documents without gloss or explanation. The documents come from a Court file, and speak for themselves. The argument in this respect is akin to abuse of process. I find that the affidavit is admissible on the motion.

[45] The parties are directly opposed on what is before the Tax Court of Canada, and the issues in this proceeding. The applicant asserts that the pending Tax Court of Canada appeal does not (and cannot) cover all the years listed by the applicant in his MAP request. The respondent argues that, in this particular case, the taxation years that the applicant submitted to the MAP are the same taxation years whose reassessments are the subject of an appeal in the Tax Court of Canada: 2006 to 2010, and 2014.

[46] So what does the MAP request say? I do not know. It is not included in the motion materials.

[47] Again, the moving party on a motion to strike bears a heavy burden. The respondent's motion materials include pleadings in the Tax Court of Canada, but not the MAP request that is a key document. Without it, I cannot conclude that the same relief is being sought in two courts at once, or that the applicant has an alternate and adequate remedy in the Tax Court of Canada.

V. Confidentiality

[48] The respondent places significant emphasis on the confidentiality provisions of the Convention and the ITA, and the principle that courts should avoid interpretations of the law that would place Canada in breach of its international obligations (*R v Hape*, 2007 SCC 26 at para 53). This is not raised as an independent basis to strike the notice of application, and I will not strike the proceeding on that basis alone. I do not know what documents were before the Minister when the Decision was made, or if documents were exchanged with HM Revenue &

Customs in the course of making the Decision. Those issues are best addressed on a motion (if need be) with a complete record.

[49] The respondent requests, as alternative relief, directions as to the procedure for making submissions with respect to the respondent's objection under subrule 318(2).

[50] Where an objection is brought to a production request, the requesting party can either accept the objection, or bring a motion to challenge the objection (*Passamaquoddy Nation v Canada (Attorney General)*, 2015 FC 1403 at para 58). If the applicant chooses not to accept the respondent's objection to the production request, he shall be the moving party on any motion. If the documents are determined to be relevant, the burden of proving that the documents are privileged, or otherwise should not be produced, lies on the respondent (*Bernard v Public Service Alliance of Canada*, 2017 FCA 35 at para 13).

VI. Style of Cause

[51] The respondent's notice of motion requests an order amending the style of cause to substitute the Minister of National Revenue with the Attorney General of Canada. The applicant consents to this request, and an order this respect will be made.

VII. Costs

[52] The Court has full discretionary power over the amount and allocation of costs (subrule 400(1)).

[53] As the successful party, the applicant is entitled to costs.

[54] Costs will be fixed in accordance with the middle of Column III of the Tariff for preparation and filing of a contested motion (5 units x $160 per unit = $800.00), payable in any event of the cause.

ORDER in T-1567-22

THIS COURT ORDERS that:

1. The style of cause is hereby amended to replace the Minister of National Revenue with the Attorney General of Canada.

2. The respondent's motion is otherwise dismissed.

3. Costs are payable by the respondent to the applicant, fixed at $800.00, payable in any event of the cause.

"Trent Horne"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1567-22
STYLE OF CAUSE:	ADRIAN ROBINSON v THE MINISTER OF NATIONAL REVENUE

MATTER CONSIDERED AT TORONTO, ONTARIO WITHOUT PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS:	HORNE A.J.
DATED:	FEBRUARY 20, 2023

WRITTEN REPRESENTATIONS BY:

Peter Aprile James Roberts	FOR THE APPLICANT
Samantha Hurst Isida Ranxi	FOR THE RESPONDENT

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