Federal Court  Cour fédérale

Date: 20251219

Docket: T-2707-23

Citation: 2025 FC 2009

Montréal, Québec, December 19, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

HILLCORE FINANCIAL CORPORATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Hillcore Financial Corporation [Applicant or "Hillcore"] brings forward an application for judicial review against an alleged decision that would have been communicated during a phone conversation held on November 20, 2023, with the Canada Revenue Agency [CRA] collections officer in charge of its file [Collections Officer]. Hillcore submits that the Collection Officer,

acting on behalf of the Minister of National Revenue [MNR], denied its request for the return of $879,092.36 in funds garnished by the CRA under the *Excise Tax Act* [ETA] RSC 1985, c E-15 [Seized Funds] in relation to amounts allegedly owed as general sales tax [GST Debt] [Decision].

[2] The Applicant submits that, pursuant to section 296(6) of the *ETA*, the Minister had the obligation to issue a refund, given that the GST reassessments that gave rise to it were subsequently vacated. The Applicant further submits that the CRA had no legal right to effect a set-off of "the seized funds by garnishment for liability under one statute [here the ETA] and then allocate it to another liability [here the Income Tax Act, RSC 1985, c 1 (5th Supp) or ITA]".

[3] The Applicant submits that the Decision is unreasonable because the Collections Officer fettered their discretion, erred in law and failed to engage with the key arguments it raised. The Applicant further contends that the Decision should be set aside because it is tarnished by breaches of procedural fairness given that it did not have the opportunity to respond to the decision-maker's concerns. Finally, the Applicant submits that since there is only one possible outcome in this matter, namely that the Minister has no choice but to issue the requested refund, there is no need to return this matter for redetermination and this Court should simply order that the Seized Funds be returned to Hillcore.

[4] The Respondent, Attorney General of Canada [AGC], argues that no reviewable decision was made during the phone conversation of November 20, 2023. The Collections Officer, who did not have any discretionary power to make a refund, was merely providing "a courtesy response confirming a prior decision".

[5] According to the AGC, the only real decision in this matter is the CRA's decision to set-off the Seized Funds, which was communicated to the Applicant in July 2020 in the context of the Income Tax Reassessment. Therefore, any attempt to seek the judicial review of the set-off would be time-barred under subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*], which provides that, unless leave is granted, applications for judicial review must be filed within 30 days of the decision's communication to the affected party.

[6] In any event, the AGC further contends that the Crown can hold onto the Seized Funds pursuant to a right of automatic set-off because the Applicant has an outstanding income tax debt in excess of $40 million for the 2012 to 2017 taxation years [the Income Tax Debt], as per the reassessments dated June 19, 2020 [the Income Tax Reassessments].

[7] However, if the Court finds that a decision was in fact made by the Collections Officer on November 20, 2023, then the AGC concedes that the Decision was not reasonable. In such a case, the AGC submits that the proper relief is to send the matter back to the MNR for reconsideration.

[8] For the reasons that follow, the application is granted. A Decision was in fact rendered by the Collection Officer on November 20, 2023, and that this Decision is not reasonable. The Court is, however, not convinced by Hillcore's argument that this matter raises such exceptional circumstances that it would warrant that this Court render a decision in lieu of the Minister. It will therefore return the matter to the MNR for redetermination.

II. Factual background

[9] On August 25, 2017, the CRA issued GST reassessments pursuant to which the Applicant owed an amount of $1,730,643.39 [the GST Debt]. The Seized Funds were then garnished in 2017 and 2018 by the CRA, pursuant to its powers under the *ETA*, to be applied to the GST Debt.

[10] On July 15, 2020, the CRA vacated the GST reassessments. However, instead of returning to Hillcore the Seized Funds, as well as the other sums credited on the GST account (both of which total $1,730,750,40), the CRA proceeded to set them off against Hillcore's income tax debt. The Applicant was informed of this through the notice of reassessments, which indicated that the amounts credited pursuant to the GST reassessments were transferred onto Hillcore's income tax account and that the balance remaining on its GST account was now $0.

[11] More than three years after the set-off had been made, namely on October 16, 2023, Hillcore sent a letter to the CRA Collections Officer requesting the return of the Seized Funds [October 2023 Letter]. It essentially argues that the CRA did not have a right to hold onto funds seized to cover a GST Debt and set-off these Seized Funds against a separate Income Tax Debt, given that neither the *ETA* nor the *ITA* provides for such a possibility. By way of this October 2023 Letter, Hillcore contests what it calls the "wrongful set-off" applied by the CRA on July 15, 2020, and insists on the immediate refund of the Seized Funds.

[12] The Collections Officer received the October 2023 Letter on November 3, 2023, and opened a support ticket to obtain assistance from a CRA "field support officer". On November 6, 2023, the field support officer wrote to the Collections Officer and indicated that, in their

understanding and based on two internal CRA policies, namely the "Authorizing Refunds and Repayments Policy" and the "Refunding Garnishments Amounts Policy" (collectively the "Policies"), the CRA did not have to return the Seized Funds. That same day, the Collections Officer tried to reach the Applicant's counsel by phone and left a message.

[13] On November 20, 2023, the Collections Officer communicated with the Applicant's counsel. According to his preparatory notes, he essentially stated that:

> Once a payment or credit is received and applied to a taxpayer's CRA account, it becomes part of the Consolidated Revenue Fund and, as a result, is the property of his Majesty. (…) it is necessary for all amounts in the taxpayer's name to be paid before a refund will be issued, even for garnisheed amounts. As such, we are not required to issue a refund under the ITA (or) the ETA while the taxpayer has debt in its name.

[14] While the Collections Officer appears to have based the Decision on the Policies, the record is unclear if he referred to them during the phone conversation. The record is, however, clear that the Collections Officer did not specifically identify which policies he consulted, nor did he provide a copy to the Applicant. Furthermore, it is admitted that the Collections Officer did not refer to any legislative provision of the *ETA* or of the *ITA*, and that beyond reading the Policies, he did not conduct any research of his own, nor did he ask further questions to the field support officer or anyone else at the CRA. Lastly, it is also admitted that the Collections Officer refused to provide written reasons to Hillcore.

[15] Given the above, on December 20, 2023, Hillcore filed an application for judicial review of the Decision. In the context of these proceedings, the Collections Officer swore an affidavit in

support of the respondent's Record. On September 18, 2024, Hillcore proceeded to the cross-examination of the Collections Officer on his affidavit.

[16] The main question raised by the judicial review is whether a reviewable decision was in fact made by the Collections Officer and communicated to the Applicant on November 20, 2023, and if so, what remedy, if any, should this Court order?

III. Analysis

[17] Hillcore's request for the return of the Seized Funds was made by way of its October 2023 Letter. This Letter specifically targets the fact that, in the Applicant's view, the July 2020 set-off of the Seized Funds was "wrongful" in law. Hillcore does not challenge the set-off of the other sums credited on the GST account. It only demands the return of $879,092.36 (the Seized Funds) rather than the totality of the funds that were set-off ($1,730,750,40).

[18] In summary, the Applicant's submission is that the Decision runs afoul of the applicable statutory scheme. The Applicant affirms that the MNR does not have the power to set-off amounts seized from a taxpayer under the *ETA* against that taxpayer's debt under the *ITA* and that the MNR was indeed compelled to return the Seized Funds once the initial GST reassessments were vacated. It did not have any discretion to do so. To support this position, Hillcore specifically highlights that (1) the power to garnish set forth in subsection 317(1) of the *ETA* is limited to covering amounts owed under Part IX of that Act (i.e. the GST Debt); (2) section 318 of the *ETA* only allows for discretionary set-offs "where a person is indebted to His Majesty in right of Canada under this Part (Part IX of the ETA)" and (3) subsection 296(6)-(7) of the ETA states that the MNR "shall"

refund amounts perceived in excess unless the taxpayer has failed to file its tax returns in due course, which is not the case herein. As for section 224.1 of the *ITA*, it only addresses the MNR's discretionary right of set-off for money owed "under this Act" (i.e. under the *ITA*). In any event, the Applicant submits that the MNR's obligation under the *ETA* trumps the MNR's discretion under the ITA. (My underlining)

[19] As a result, Hillcore claims that, as per the *ETA*, the "CRA must refund forthwith all of the Seized Funds (to it), with interests that accrued since the date of the Garnishment". Hillcore's main argument in its Memorandum of fact and law also lies with its view that "the Minister had no choice but to issue the Refund to the Applicant". (emphasis added)

[20] In its Memorandum of fact and law, Hillcore also submits an alternative argument. It claims that the Minister (through the Collections Officer) had the discretion to issue a refund:

> Alternatively, if the Minister was in fact not obligated to refund the amounts requested, which is not admitted but expressly denied, the Minister nevertheless had the power to issue the Refund, but she fettered her discretion and failed to meaningfully grapple with the key issues in the Request.

[21] Hillcore's Memorandum later indicates that it was clear that the October 2023 Letter was in relation to the Minister's authority to issue a refund. Hillcore submits that the MNR either failed to exercise or fettered its discretion by "binding itself to policy or to the views of others" in treating the policies "as if they were law" and without engaging with the specific situation of Hillcore, even though the applicable statutory framework is "broad" and gives it discretion (citing *Maple Lodge Farms v Government of Canada*, 1982 CanLII 24 (SCC) at p 7; *Waycobah First Nation v Canada (Attorney General)*, 2011 FCA 191 at para 28; *Thamotharem v Canada (Minister of Citizenship*

and Immigration). 2007 FCA 198 at para 62; *Guerra v Canada (Revenue Agency)*, 2009 FC 459 at para 26; *Stemijon Investments Ltd v Canada (Attorney General),* 2011 FCA 299 at paras 24, 43, 60; *British Oxygen Co Ltd v Minister of Technology*, [1970] UKHL 4 at page 4).

[22] While the AGC recognizes that the MNR has the discretion to issue a refund of funds withheld pursuant to the *ETA*, even when the taxpayer has an outstanding debt under another statute, it maintains that Hillcore never requested that the Minister exercise her discretion. The AGC highlights that the October 2023 Letter clearly indicates "(o)nce the Vacated GST Reassessments were issued and the GST Debt was extinguished, **the CRA had no option but to return the Seized Funds to (Hillcore Financial)**, (and) the CRA must refund forthwith all of the funds to (Hillcore Financial), with the interests that accrued since the date of the Garnishment" (emphasis by the respondent).

[23] I agree with the AGC that the October 2023 Letter never requested that the Collections Officer or the Minister to exercise any power or discretion to grant a refund. Rather, it only stated that the CRA had the obligation to issue a refund of the Seized Funds since it did not have the right to proceed to the 2020 set-off of the Seized Funds, without so much as mentioning the possibility of a discretion to refund, even in the alternative. Therefore, when the Collections Officer analyzed the October 2023 Letter, the only issue before him related to Hillcore's claim that a refund had to be effected given the alleged 2020 "Wrongful Set-Off" of the Seized Funds. This was the only argument raised by the Applicant at the time.

A. *The 2020 set-off "decision" and prescription period*

[24] The AGC contends that the primary purpose of the October 2023 Letter was to contest, three years after the fact, the set-off decision that occurred and was communicated in July 2020. Accordingly, the AGC argues that the Applicant's application is time-barred pursuant to subsection 18.1(2) of the *Federal Courts Act*, which provides that, unless leave is granted, applications for judicial review must be filed within 30 days of the decision being communicated to the affected party.

[25] The Applicant disagrees. First, since it is admitted that the set-off process was simply "an administrative mechanism that occurs automatically", Hillcore submits that the set-off entailed no exercise of discretion and therefore could not have been subjected to judicial review because it was not a "decision" within the meaning of section 18.1 of the *Federal Courts Act*. However, it did not submit any case law to support this submission.

[26] In any event, Hillcore submits that what it was truly seeking through its October 2023 Letter was not the contestation of the 2020 set-off "decision", whereby the MNR set-off approximately $1.7M, but the return of the Seized Funds pursuant to subsection 296 (6) of the *ETA* (i.e. approx. $880K included in the total set-off). Given that the *ETA* does not provide for a specific delay to seek said refund, the Applicant submits that the general 10-year prescription period applies to this case. Hillcore adds that, if the AGC's argument was to be followed, this would result in reducing the delay to seek a refund under 296 (6) of the *ETA* to 30 days, which is not what the law provides.

[27] The Court is not convinced by Hillcore's argument that it could not have contested the set-off sooner because it was made "automatically" by the ARC's system and would not constitute a decision susceptible to judicial review. The Court agrees with the AGC that automatic set-offs are mandated by an internal policy adopted by the MNR, which the system just implemented. Furthermore, as the AGC pointed out, this Court's jurisprudence accepts that a decision can be communicated via a notice of (re)assessment without detailed reasons (citing *Glatt v Canada (National Revenue)*, 2019 FC 738 [*Glatt*] at paras 21-22).

[28] In *Glatt*, the Court found that a reassessment is indeed a final decision that can be subjected to judicial review and noted that formal or detailed motives are not necessary because: "(a)ssessments are intended to be summations of a quantum and confirm or reject positions taken by a taxpayer (…) and are indeed often very concise." (*Glatt* at paras 21-23 citing *Imperial Oil Resources Ventures Limited v Canada (Attorney General)*, 2014 FC 839 at para 64 aff'd 2016 FCA 139). Justice Diner concluded that the decision had been communicated to the taxpayer through the notice of reassessment and was reviewable (*Glatt* at paras 21-24, 34-38, 40-43).

[29] Therefore, the Court is of the view that Hillcore could have challenged the set-off decision back in July 2020, either through a judicial review application brought before this Court within the 30-day delay of subsection 18.1(2) of the *Federal Courts* or through a notice of objection filed within 90 days of the notice of assessment and ultimately an appeal to the Tax Court of Canada targeting the reassessment of which the set-off forms but a part. For the reasons detailed below, whether one or the other was the proper procedure is immaterial.

[30] Indeed, while the Court agrees that, as drafted, the October 2023 Letter focuses on Hillcore's contestation, three years after the fact, of the July 2020 set-off, Hillcore is also specifically asking for the refund of the Seized Funds, pursuant to the *ETA*, and not the whole amount of the set-off. As for its delay to do so, the Court notes that the CRA accepts to consider requests for refund under the *ITA* as long as they are submitted within ten years (Canada Revenue Agency, "Limitation period on exercising discretion and the deadline for requesting relief" (last modified 12 February 2015), online: <www.canada.ca>). Nothing is said for the *ETA*. Hillcore did not provide any source for the ten-year prescription period it pleaded, and the Court did not find any limitation period regarding a request for refund pursuant to the *ETA*. Either way, the AGC has not pleaded, in the event the October 2023 Letter can be construed as a request for a refund rather than a request to set aside the set-off, that the requested refund would be time-barred. Therefore, this Court will not address this specific issue at this time.

[31] Hillcore's application for judicial review specifically relates to an alleged new decision, distinct from the $1.7M set-off decision, namely the Collections Officer's Decision not to return the Seized Funds, which was communicated during the November 20, 2023, phone call.

B. *The Decision was not simply a courtesy response*

[32] Both parties agree that for there to be a reviewable decision, there must be a "fresh exercise of discretion", citing *Dumbrava v Canada (Minister of Citizenship & Immigration)*, 1995 CanLII 19399 (FC) [*Dumbrava*]. Moreover, in *Independent Contractors and Business Association v Canada (Minister of Labour)*, 1998 CanLII 7520 (FCA) [*Independent Contractors*], the Federal

Court of Appeal specifically excerpted and endorsed the key passage of *Dumbrava* that both parties largely rely on:

> Whenever a decision maker who is empowered to do so agrees to reconsider a decision on the basis of new facts, a fresh decision will result whether or not the original decision is changed, varied or maintained (Compare Peplinski v. Canada (Minister of National Health and Welfare), (1993), 1992 CanLII 2399 (FC), 58 F.T.R. 247 (T.D.).). What is relevant is that there be a fresh exercise of discretion, and such will always be the case when a decision maker agrees to reconsider his or her decision by reference to facts and submissions which were not on the record when the original decision was reached.
> (at para 19 citing *Dumbrava* at p 236).

[33] Both parties further agree that "courtesy responses", whereby an administrative decision-maker merely confirms a pre-existing decision, are not reviewable decisions.

[34] However, the AGC contends that the Collections Officer "did not reconsider the decision or engage in a fresh exercise of discretion", that he did not deal with the new arguments that Hillcore set forth in its October 2023 Letter and that he merely "confirmed the basis for the original set-off and communicated this to the applicant".

[35] The AGC submits that in order for there to be a reviewable decision, there must be "a fresh exercise of discretion by reference to new facts or submissions" and because "a communication that confirms an earlier decision must have attributes of a decision in order to be considered a decision" then "if there is no reference to new facts or arguments, or the original decision is not re-examined, it is not a reviewable decision" (citing *Dumbrava* at para 15 cited in *Independent Contractors* at para 19; *9027-4218 Québec Inc v Canada (National Revenue)*, 2019 FC 785 [*Québec Inc*] at para 39; *1594418 Ontario Inc v Canada (National Revenue)*, 2021 FC 157

[*Ontario Inc*] at para 46; *McLaughlin v Canada (Attorney General)*, 2022 FC 1466 [*McLaughlin*] at para 40 aff'd 2025 FCA 91). Therefore, the AGC submits that the November 20, 2023, phone conversation was only a courtesy response to the October 2023 Letter and simply confirmed the 2020 set-off decision.

[36] Furthermore, the AGC submits that since the Collections Officer lacked the discretion to issue a refund or reconsider the 2020 set-off decision, there is no reviewable decision to be dealt with by the Federal Court. The AGC argues that the MNR is only a federal board under the *Federal Courts Act* "to the extent that (he) makes an administrative decision or exercises discretionary power", the decision must have been made by someone with the legal authority to make it (citing *Fee et al v Bradshaw et al.*, 1982 CanLII 177 (SCC) at 616; *Glatt* at para 26; see also *Québec inc.* at para 41, citing *Toronto Coalition to Stop the War v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 957 at para 137).

[37] Moreover, the AGC argues that the Collections officer's own use of the word "decision" to describe what he conveyed on the November 20, 2023, phone call is immaterial because "the legal concept of a decision for the purposes of subsection 18.1(2) of the Federal Courts Act and the colloquial understanding of making a 'decision' " are not the same thing, for the latter would encompass all "courtesy responses". The AGC also highlights that, when he was cross-examined by the Applicant's counsel, the Collections Officer stated that he contacted the field support officer to ascertain whether counsel for Hillcore "had made valid points and we should be looking at issuing a refund" (underlining added by the Respondent). Given that he concluded that the CRA should not issue the refund without "looking into" the matter, this would support their argument that no decision was ever made.

[38] Finally, the AGC asserts that, when a decision has been made and no judicial review was undertaken within 30 days, "a party cannot extend the decision date by writing a letter with the intention of provoking a reply" because the "courtesy response" that merely confirms the original decision and comes as a prompted response is not, itself, a reviewable decision (*McLaughlin* at para 40; *Ontario Inc* at para 46).

[39] As for the Applicant, it submits that there was in fact a fresh exercise of discretion by the Collections Officer, but that he merely refused to refund the Seized Funds by applying the CRA's Policies mechanistically. The Applicant relies on *Harrison v Canada (National Revenue)*, 2020 FC 772, as a comparable authority to show that the Decision not to refund the garnished funds is indeed a reviewable decision separate and distinct from the set-off.

[40] As was the case in *Dumbrava* and in *Independent Contractors,* Hillcore submits that even if the set-off was a decision, the fact that this decision was not changed or varied by the Collections Officer is not relevant. What is relevant is that the Collections Officer agreed to reconsider the matter by reference to facts and submissions which were not on the record when the set-off decision was reached.

[41] Furthermore, Hillcore submits that the fact that the Collections Officer did not expressly refer to Hillcore's new submissions is immaterial. Even though the Collections officer failed to meaningfully address Hillcore's new submissions, the Applicant contends that a "fresh exercise of discretion" nonetheless occurred (citing *Lynn v Nova Scotia (Lands and Forestry)*, 2020 NSSC 307 [*Lynn*] at paras 50, 61, citing *Dumbrava* at para 15):

> [61] The Minister should not be able to avoid judicial review simply by using vague language in the June 2020 response to Beth Skerrett, and then make a self-serving argument that the response does not show that there was a new exercise of discretion.

[42] As this Court stated in *Ontario inc.*, when answering whether there was a 'fresh exercise of discretion', "(m)uch will depend on the facts of each case" (at para 46). Had the Collections Officer refused to analyze the matter on the basis that Hillcore was attempting, three years after the fact, to challenge the set-off "decision", then the AGC's arguments that no decision was rendered would have been more convincing. But this is not what happened in this case. Here, the evidence in the file, including most notably the transcript of the cross-examination of the Collections Officer, makes it clear that (1) he understood that the Applicant was requesting a refund and (2) he decided to refuse to issue a refund. This was not simply a courtesy response by the Collections Officer but a verbal Decision.

[43] As for the fact that the Collections Officer construed the October 2023 Letter as a request for a refund, this appears clearly in the support ticket he submitted to secure assistance from the field support officer, which states:

> Request from Taxpayer's legal representative requesting that CRA issue a refund in relation to funds that were garnished from their client's account with BMO in relation to GST reassessments which were subsequently vacated. The funds garnished were used to offset the debt on the RC0C01 account. As these were funds that were garnished versus that of a credit return, I need some guidance as to whether or not we should be requested a refund be made to the taxpayer (plus interest) or not.

[44] In fact, before rendering the Decision, the Collections Officer (i) considered the new facts and submissions raised by the October 2023 Letter, which had never been considered before (ii) considered the particular circumstances of this file, (iii) considered the fact that, at that time, the Applicant still owed a substantial ITA Debt, (iv) sought advice from the field support officer,

(v) considered the Policies and (vi) prepared talking notes in anticipation of the November 20, 2024, phone conversation with the Applicant. The fact that he considered the situation as it was in 2023, rather than limiting himself to what existed when the set-off occurred, and investigated the possibility of issuing a refund, is enough to conclude that there was a new decision (*Dumbrava* at para 15; *Lynn* at para 57; *Brar v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 5685 (FC) au para 8).

[45] Furthermore, the fact that the Collections Officer thought that he was making a decision is evident from several excerpts of his cross-examination, such as:

> A: What I have before me is a copy of the October 16th letter.
>
> Q: That's exactly it.
>
> A: And I'm looking at points number 2 and points number 4. So I acknowledge that it is the request made by your law firm of requesting a refund in relation to those amounts mentioned.
>
> Q: Yes. And so is this the request that was made by Hillcore Financial Corporation, and that was made on October 16, 2023, and which you refused their request to refund the amounts on November 20th, 2023. Right?
>
> A: That's correct, yes.
>
> Q: Okay. And I just want to confirm that when I was talking about the tribunal record, you state that all of the documents included in the tribunal record are the one -- are the documents that were before you when you made the decision. I just want to confirm that there were no other documents that you reviewed to make your decision to refuse a refund.
>
> A: That's correct.
>
> Q: Okay. So you are aware that following your decision -- so just to be clear, when I refer to "your decision" from now on, it's going to be your decision to refuse the refund that we just talked about, just to get more simple. So you are aware that following the decision, Hillcore filed a notice of application in federal court regarding your decision?
>
> A: Yes.
>
> And later:

> Q: So if we combine both exhibit G and the entry at exhibit H for November 20th, those are your reasons for refusing to communicate a written decision?
>
> A: I felt that it was sufficient information to convey the decision that was being made.

[46] It also appears clearly from his cross-examination that he considered this request for a refund to be rather “unique” both because a) the assessments pursuant to which the funds had been garnished were vacated and b) an income tax debt was still owing, as evidenced by the following excerpts:

> Q: Okay. And here specifically it was a refund request. Do you generally receive requests for refunds by taxpayers?
>
> A: This particular instance was unique. I've never faced this type of request given the moving parts or all the facts relating to this particular case. So it's at that point I felt that it should be something that I should involve field support just in case there is some sort of policy or some sort of instance where a refund might in fact be available to be returned
>
> to the -- to your client.
>
> (…)
>
> Q: Okay. But -- so here you said that the specific thing about this request that made it necessary to send it to field support was simply because you said there were a lot of moving parts in the file. What did you mean by "moving parts"?
>
> A: Yeah. I think it is more about the unusual circumstances in the sense that the garnishments were linked to reassessments that were ultimately vacated. And the garnishment had retrieved a significant amount, and I wanted to make sure that my thoughts on the matter, which -- I thought because there was a corporate income tax amount owing on the corporate income tax account, that there wouldn't be the refund
>
> made available because of that outstanding large corp. amount sitting on the corporate income tax account.

[47] As for his consideration of the amounts still owed by Hillcore in October 2023, in his cross-examination, the Collections Officer notably said:

> Q: And the other thing you mentioned was that this was a specific case because you thought you could not issue the refund because of the income tax debt. On what basis did you think that?
>
> A: Okay. The amount that was owing on the large corp. -- okay. So Hillcore was deemed a large corp. under ITA subsection 225.1(8), and CRA is able to take legal action to attain 50 percent of the reassessed amounts. Because the request was asking for the return of 800,000 or so when the large corp. amount that was owing was well in excess of 20 million at that time, so for me it didn't really make much sense for us to return that amount, that 800-and-somethingthousand, when there was a large corp. that was enforceable. The large corp. amounts.
>
> Q: So your decision was based on the fact that it didn't make much sense to issue the refund
>
> because there was income tax owing?
>
> A: No. The policy that was provided indicates that if there are amounts owing, that garnished funds would not be returned.

And later:

> A: (…) if you look at November the 20th, that entry, I did explain that given the large corp. amount that is owing on this account, that there would be no refund.

[48] Furthermore, in the notes recorded in the shared CRA diary entry for the call held on November 20, 2023, the Collections Officer also wrote the following:

> Collections position is that no refund from the GST a/c will be issues given the large corp amount that is owing on this account. […] Told him [Hillcore's counsel] that he is should be asking his client about the 50% large corp. He said that it is not what is at issue. Told him these matters are intimately related.

[49] When this diary entry was discussed in cross-examination to establish why the Collections officer thought that no written motives were needed for his decision, he stated:

> A: I believe that the -- that what I'd communicated was sufficient to respond to the request for the refund, which included the fact that I brought up that no -- okay. So if I can reference exhibit H – -- the actual ACS diary entry.

> I did indicate that no refund would be issued given that the large corp. amount is owing on this account.

[50] As for the Collections Officer's authority to grant or deny the refund, the Court finds that the record is unclear. During cross-examination, the Collections Officer stated that he sometimes "needs different authorizations to do certain things" related to refunds, and then in re-examination, he explained that he didn't "believe" he could have authorized a refund without the approval of his management; However, he never informed Hillcore that he lacked the authority to grant the refund it sought. In fact, in his cross-examination, he makes it clear that he does not need approval for all decisions: "A: Yeah. So, in the case -- the other case of -- I don't generally consult my team leader in those instances. It's because I know that I need different authorizations to do certain things". Furthermore, his actions in the file appear to suggest that he did in fact believe he had the authority to make this Decision.

[51] Moreover, even if he did not, the October 2023 Letter indicated, in its opening paragraph, that Hillcore expected that the Collections Officer would transfer the letter to the appropriate person in the event he did not "have the capacity to provide us with a reply". The Collections Officer did not forward Hillcore's request to anyone else. This alone constitutes a breach of procedural fairness, if not a decision, because if he did not have the authority to deal with this matter, it prevented any genuine consideration of the Applicant's request.

C. *The standard of review*

[52] Both parties agree that if the Decision is in fact a reviewable decision, the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[53] Hillcore argues, amongst other things, that the Decision is unreasonable because the meager oral reasons given did not lay out an "internally coherent and rational chain of analysis", and the Collections Officer failed to meaningfully address its key arguments (citing *Vavilov* at paras 84-85, 128; *Mokrycke v Canada (Attorney General)*, 2020 FC 1027 [*Mokrycke*] at para 69).

[54] Further, Hillcore submits that the Decision should be set aside because it is not the product of a procedurally fair process given that 1) the Applicant was not provided written reasons that would allow it to understand the result - although the application of the framework set forth in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), make it clear that written reasons were required; 2) the Applicant was not provided with copies of the policies on which the Decision relied or information to locate them (*Waycobah First Nation v Canada (Attorney General)*, 2011 FCA 191 at para 29); and 3) the Applicant was not given a chance to respond. Hillcore also alleges it had legitimate expectations both regarding the provision of written reasons "in light of the fact that subsection 317(1) ETA limits the possibility to garnish funds to debts owed under Part IX of the ETA" and the opportunity of providing additional submissions.

[55] As for the AGC, their position relies on the fact that no decision was in fact made; they do not defend the reasonability or the legality of the Decision itself and accept that the matter should be remitted to the MNR should the Court find that a decision was rendered.

[56] The Court agrees with Hillcore that the Decision rendered verbally provided minimal reasoning and no supporting details. It was clearly not justified, transparent nor intelligible. The Court therefore finds that the Decision is unreasonable. Considering this conclusion, it is not necessary for the Court to analyze the issues of natural justice and procedural fairness also raised by the Applicant.

D. *The matter will be sent back to the MNR for redetermination*

[57] Because "the choice of remedy must be guided by the rationale for applying that [reasonableness] standard to begin with, including the recognition by the reviewing Court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide", it is only in "limited scenarios" or exceptional circumstances "where it becomes evident to the Court, in the course of its review, that a particular outcome is inevitable" that the Court will substitute its discretion to the one of the specialized federal office (*Vavilov* at paras 140-142; *Canadian Pacific Railway Company v Sauvé*, 2024 FCA 171 at para 54).

[58] At this point, the Court is not convinced by the Applicant's submission that exceptional circumstances exist or that the outcome is inevitable. Although, Hillcore raises a strong argument that the Minister could not exercise its discretion under the *ITA* to issue a set-off of the Seized Funds because, as per the *ETA*, the Minister had the obligation to return the Seized funds, this

argument must be adequately considered by the Minister who has been tasked to handle these matters. Therefore, the Court is of the view that the decision should be returned to the MNR for redetermination.

IV. Conclusion

[59] In light of the reasons above, the application is granted, with costs.

[60] Further to the agreement reached between the parties, the Court orders the lump sum cost award of $9,500, inclusive of disbursements and tax, in favor of the Applicant.

JUDGMENT in T-2707-23

THIS COURT'S JUDGMENT is that:

1. The Application is granted, with the lump sum cost award of $9,500, inclusive of disbursements and tax, in favor of the Applicant.

"Danielle Ferron"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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