Federal Court  Cour fédérale

Date: 20200721

Docket: T-868-19

Citation: 2020 FC 772

Vancouver, British Columbia, July 21, 2020

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ELIZABETH HARRISON

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of an Assistant Director, Revenue Collection, Canada Revenue Agency [CRA], on behalf of the Minister of National Revenue [Minister], dated April 26, 2019 [Decision], refusing the Applicant's request to refund an amount which CRA collected from her, on December 19, 2014, in relation to the Applicant's 1988 taxation year. The Applicant requested the refund on the basis that the 10-year collection limitation period [or CLP] set out in section 222 of the *Income Tax Act*, RSC 1985, c 1 (5th

Supp) [ITA] had expired on March 4, 2014. This judicial review is brought pursuant to s. 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

Background

[2] The factual background to this matter takes place over an extended period of time, starting in 1988. However, the underlying facts are largely not in dispute. Those facts are set out in some detail here as this will assist and add clarity to the analysis that follows.

[3] In her 1988 income tax return the Applicant claimed losses and other deductions in connection with her participation in two transactions: the Trinity Denton Partnership [Trinity Denton] and the Sierra Trinity Limited Partnership [Sierra Trinity].

[4] On December 29, 1992 the Applicant's 1988 taxation year was reassessed [First Reassessment].

[5] On March 23, 1993 the Applicant filed a Notice of Objection in response to the First Reassessment. Therein she objected to CRA's disallowance of certain Trinity Denton partnership losses allocated to her in her capacity as a general partner in that entity. Specifically:

i. $75,108 in non-capital loss [1988 Trinity Denton NCL]; and
ii. $25,125 capital loss [1988 Trinity Denton Capital Loss].

[collectively, the Trinity Denton Partnership Losses]

[6] On December 29, 1993 the Minister issued a Notice of Reassessment in respect of the Applicant's 1988 taxation year [Second Reassessment].

[7] On March 18, 1994 the Applicant filed a Notice of Objection to the Second Reassessment in which she disputed the:

i. disallowance of $174,000 of a claimed deduction of $203,278 in Canadian exploration expenses [1988 CEE]; and

ii. disallowance of $ 12,218 of a claimed deduction of $27,743 bank interest charges [1988 Bank Interest].

[8] The Applicant submits that the 1988 CEE and 1988 Bank Interest charges were connected to Sierra Trinity, not Trinity Denton. This is not disputed by the Respondent.

[9] On June 13, 1994, the Applicant and the Minister entered into a settlement agreement with respect to the claimed Trinity Denton Partnership Losses [Settlement Agreement]. In the Settlement Agreement the Minister agreed to provide some interest relief and the Applicant, amongst other things, agreed:

i. to the issuance of an assessment or reassessment to disallow the claimed partnership losses; and

ii. to waive any right to file a notice of objection or appeal regarding the disallowance of the losses described in the agreement; to the confirmation of such an assessment or reassessment if a notice of objection had been filed; and, that she would not take any other action to contest the validity of the Settlement Agreement.

[10] On March 30, 1995 the Minister issued a letter of confirmation pertaining to notices of objections filed for the 1988 and 1989 taxation years [First Confirmation]. As a result of its review, the Minister stated that:

i. Losses with respect to Trinity Denton Limited Partnership which were previously disallowed were confirmed, "as per our agreement"; and

ii. Interest charges on any taxes due for 1988 and 1989 taxation years, as a result of the reassessments relating to Trinity Denton, would be cancelled for the period prior to May 1, 1991, "as per our settlement agreement".

[11] On October 7, 2010, the Minister issued a letter of confirmation pertaining to Notices of Objections filed for the 1988, 1989 and 1990 taxation years [Second Confirmation]. With respect to the 1988 taxation year, it confirmed that:

i. The purchase of certain seismic data did not quality as 1988 CEE and the $174,000 in the 1988 taxation year (which had been disallowed by the Second Reassessment), was confirmed as disallowed; and

ii. The $12,218 of the $26,496.70 1988 Bank Interest (which had been disallowed by the Second Reassessment), was confirmed as disallowed.

[12] On January 4, 2011, the Applicant filed a Notice of Appeal in the Tax Court with respect to her 1988, 1989 and 1990 taxation years. With respect the 1988 taxation year, a more detailed version of the above history of events was recited. The Notice of Appeal identified as issues, as regards to the 1988 taxation year:

i. Whether the listed deductions (the 1988 Trinity Denton NCL, 1988 Trinity Denton Capital Loss, 1988 Bank Interest and 1988 CEE) were deductible in computing income;

ii. Whether the 1988 resource interest was deductible in computing income; and

iii. Whether the disallowance of the 1988 Trinity Denton NCL, 1988 Trinity Denton Capital Loss and 1988 Bank Interest were statute barred.

[13] The Applicant disputed the disallowance of the listed 1988 deductions which she submitted were validly made. She also asserted that the Second Reassessment was improper and ought to be vacated by virtue of laches of the CRA; the 1988 resource interest should be deducted and her income reduced accordingly; and, that the disallowance of the 1988 Trinity Denton NCL, 1988 Trinity Denton Capital Loss, and 1988 Bank Interest were statute barred. She requested that the Second Reassessment be vacated or, alternatively, that it be referred back to the Minister for reconsideration and reassessment.

[14] In a Reply to the Notice of Appeal, the Minister argued that paragraphs 5 and 9 (as well as paragraphs 6(b), 6(c) and 12(c)) of the Notice of Appeal were improperly pleaded and should be struck out because the issue of the losses arising from the Applicant's participation in Sierra Denton Limited Partnership was not properly before the Court due to the Settlement Agreement by which the Applicant agreed not to file any appeal and was, therefore, barred from appealing that issue pursuant to s 169(2.2) of the ITA. I note here in passing that, as acknowledged by the parties when appearing before me, the reference in the Reply to Sierra Denton Limited partnership is in error. The referenced paragraphs of the Notice of Appeal actually refer to the Trinity Denton partnership and the 1988 Trinity Denton NCL and 1988 Trinity Denton Capital Loss. The Settlement Agreement likewise refers to the Trinity Denton partnership.

[15] On December 19, 2014, the Minister issued a Notice of Reassessment in respect of the Applicant's 1988 taxation year [Third Reassessment]. The Applicant states that Third Reassessment restored the deductions that had been disallowed in respect to Sierra Trinity in

their entirety. It did not make any adjustments related to the Trinity Denton Partnership Losses. This is not disputed by the Respondent.

[16] The Third Reassessment indicates that the Applicant was due a refund of $929,152.13. In its explanation of changes, the reassessment states:

> We have made an adjustment according to the consent judgment.
>
> We reduced the instalment interest we charged you by $6,728.40.
>
> We reduced the arrears interest we charged you by $838,988.83.
>
> We have used your refund of $929,152.13 to reduce your previous balance outstanding.

[17] By letter of September 20, 2016, counsel for the Applicant advised the CRA of the Applicant's view that the collection of the debt in relation to the 1988 taxation year was statute barred, pursuant to s 222(4) of the ITA, as the 10-year limitation period prescribed by that section had expired. The letter noted that the Applicant had been subject to two separate reassessments in respect of her 1988 taxation year. The First Reassessment (December 29, 1992) made adjustments to her participation in Trinity Denton. The Second Reassessment (December 29, 1993) made adjustments to her participation in Sierra Trinity. The Applicant filed the First Notice of Objection, in respect of the First Reassessment, on March 23, 1993. In 1994, she entered into the Settlement Agreement with respect to the First Reassessment, in which she waived her right to make any further objection or appeal in respect of the amounts contested in the First Notice of Objection. She had then filed the Second Notice of Objection, in respect of

the Second Reassessment, which was ultimately confirmed by CRA. She then filed an appeal to the Tax Court in respect of the Second Reassessment.

[18] However, due to the passage of time and changes of counsel during that period, new counsel who prepared the Notice of Appeal was not aware of the Settlement Agreement made with respect to the First Reassessment. Because of this, new counsel included references to the First Assessment in the Notice of Appeal. In the Minister's Reply, the Minister asserted that these were improper pleadings as the matters relating to Trinity Denton had been finally resolved by the Settlement Agreement. The Applicant did not dispute this at the Appeal.

[19] The September 20, 2016 letter goes on to state that after the effecting of the Settlement Agreement, the CRA did not contact the Applicant in relation to an amount owing in respect to the First Assessment and only did so after the Appeal of the Second Reassessment was resolved in December 2014. As no collection action was taken by March 4, 2014, CRA was barred by s 222(4) of the ITA from now attempting to do so.

[20] By letter of December 12, 2017, counsel for the Applicant wrote to confirm the voicemail message of CRA that it would not be taking collection action in relation to an amount alleged to be owing with respect to the 1988 taxation year. A letter of January 25, 2018 from counsel for the Applicant to the CRA attached the Applicant's Detailed Arrears/Refund Interest Calculation for 1988, which indicates a credit of $91,080.10. The letter states that the Minister, on December 19, 2014, applied this credit against the 1988 debt and that the Minister improperly took collection action, contrary to the limitation period prescribed in s 222(4) of the ITA. The letter

requested a refund of that amount plus interest. A similar letter was sent by counsel for the Applicant on February 19, 2018. The Minister referred the matter to the Department of Justice [DOJ] for an opinion. On April 1, 2019, counsel for the Applicant wrote to DOJ outlining the lengthy history of the matter and the Applicant's position.

[21] By the letter of April 26, 2019, the CRA advised the Applicant that her refund request was refused. That letter comprises the Decision that is the subject of this judicial review.

Decision under review

[22] The April 26, 2019 letter is brief. It acknowledges the refund request and notes that the collections limitation period, or CLP, is restarted or extended when certain events occur, referring the Applicant to a link to CRA's website for additional information.

[23] The letter then states:

> On January 4, 2011, the taxpayer appealed to the Tax Court of Canada (TCC) in respect of its 1988 taxation year. In the "Notice of Appeal" filed, the reassessment dated December 29, 1992 ("First Reassessment") and the reassessment dated December 29, 1993 ("Second Reassessment") are both acknowledged. Filing an appeal with the TCC is an acknowledgement of the debt and restarted the CLP to day one. The CLP was simultaneously extended when the appeal to TCC was filed, which means that the CLP does not run during the time an appeal is with the TCC.
>
> On December 19, 2014, the 1988 taxation year was reassessed, and the CLP restarted again 90 days after that date. The CLP started again at day one, on March 20, 2015, and the CLP would expire 10 years from this date on March 20, 2025, unless it is restarted or extended further.
>
> The CLP for the 1988 taxation year had not expired on March 4, 2014, and the liability was not statute barred when the refund in the

> amount of $91,080.10 was applied to the 1998 tax liability. As a result, the requested refund will not be forthcoming.

Overview of the Applicant's position

[24] It is perhaps helpful, before proceeding further, to provide an overview of the Applicant's position as this provides context for the discussions that follow.

[25] The Applicant in her written submissions addresses the ITA provisions which pertain to the 10-year collection limitation period and the circumstances in which it can be extended or restarted.

[26] Specifically, that pursuant to ss 222(4)(a)(ii) and 222(4)(b) of the ITA, the limitation period for the collection of a tax debt that was payable on March 4, 2004, begins on March 4, 2004 and ends on the day that is 10 years after the day on which it began.

[27] Pursuant to s 222(8), the limitation period is *extended* in certain circumstances, specifically those set out in s 222(8)(a) to (d). Relevant to this matter is s 222(8)(a), which states that in computing the day on which a limitation period ends there shall be added the number of days that the Minister may not, because of s 225.1(2) to (5), take any of the actions described in s 225.1(1) in respect of the tax debt. Section 225.1(3) stipulates that where a taxpayer has appealed to the Tax Court from an assessment of an amount payable under the ITA, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the collection actions described in s 225.1(1)(a) to (g). Thus, the effect of filing an appeal in the Tax Court is

that the Minister is precluded from collecting the tax debt while the appeal is ongoing and the limitation period is extended by that same period.

[28] Pursuant to s 222(5), the 10-year limitation period for the collection of a tax debt can be *restarted*, then ending on the day 10 years after the day on which it restarted, in the three circumstances set out in s 222(5)(a),(b) and (c):

a) the taxpayer acknowledges the tax debt in accordance with subsection (6);

b) the Minister commences an action to collect the tax debt; or

c) the Minister, under subsection 159(3) or 160(2) or paragraph 227(10)(a), assesses any person in respect of the tax debt.

[29] With respect to an acknowledgment of a debt, s 222(6) states:

> **(6**) A taxpayer acknowledges a tax debt if the taxpayer
>
> > **(a)** promises, in writing, to pay the tax debt;
> >
> > **(b)** makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or
> >
> > **(c)** makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

[30] The Applicant's overarching position in this case is that, pursuant to s 222(4)(a)(ii) the limitation period for debt owed by Trinity Denton for the 1988 taxation year [1988 Debt] began on March 4, 2004 and, pursuant to s 222(4)(b), ended on March 4, 2014. She submits that during that timeframe that the Minister took no steps to collect the 1988 Debt. Nor do the circumstances

of this case support that the limitation period was extended or was restarted. Accordingly, pursuant to s 222(3), the Minister was precluded from commencing an action to collect the 1998 Debt after the end of the limitation period. An "action" is defined in s 222(1) and means an action to collect a debt of a taxpayer and includes anything done by the Minister under s 164(2):

> **(2)** Instead of making a refund or repayment that might otherwise be made under this section, the Minister may, where the taxpayer is, or is about to become, liable to make any payment to Her Majesty in right of Canada or in right of a province, apply the amount of the refund or repayment to that other liability and notify the taxpayer of that action.

[31] On December 19, 2014, and despite the expiry of the limitation period, the Minister took collection action by applying a credit otherwise refundable to the Applicant against the 1988 Debt. The Applicant submits that the grounds relied upon by the Minister in the Decision refusing her request for a refund are incorrect in law.

Relevant provisions of the ITA

[32] The full text of the relevant provisions of the ITA are reproduced in Annex "A" of these reasons.

Issues

[33] The Applicant submits that the sole issue is whether the Minister made a substantive error of law by concluding that the limitation period under s 222(4) of the ITA, in respect of the 1988 Debt, had not expired prior to December 19, 2014.

[34] The Minister submits that there are three issues arising and that if the answer to any one of them is affirmative, then the application for judicial review must be dismissed. Specifically:

i. Did the issuance of the Third Reassessment on December 19, 2014 operate as a wholly new reassessment with an entirely new CLP in respect to the Applicant's 1988 tax liability?

ii. Did the Applicant's filing of the Appeal on January 4, 2011 suspend the CLP in existence at that time for the duration of the Appeal?

iii. Did the Applicant "acknowledge" her 1988 tax liability by filing the Appeal [to the Tax Court], thereby restarting the CLP in existence at that time?

[35] In my view, and given my conclusion on the applicable standard of review as set out below, the overarching question is whether the Minister reasonably concluded that the CLP, as prescribed by s 222(4) of the ITA, had not expired as of December 19, 2014. This question requires the determination of three issues:

> Issue 1: Did the Applicant "acknowledge" her 1988 tax liability by filing her Appeal to the Tax Court, thereby restarting the CLP?
>
> Issue 2: Did the Applicant's filing of her Appeal to the Tax Court, on January 4, 2011, extend the existing CLP?
>
> Issue 3: Did the issuance of the Third Reassessment on December 19, 2014 operate as a new reassessment, initiating a new CLP, in respect of the Applicant's 1988 tax liability?

Standard of Review

Parties' positions

[36] In her written submissions the Applicant asserted that correctness is the applicable standard of review, relying on *Connolly v Canada (National Revenue)*, 2019 FCA 161 ("*Connolly*"):

> [54] I agree with Mr. Connolly that the first aspect of the delegate's consideration of the subsection 204.1(4) analysis, involving delineation of the applicable test enshrined in the subsection, raises a question of law and that, to date, this Court has reviewed legal interpretations made by the Minister or a ministerial delegate of provisions in the ITA for correctness, even though under the *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 framework such questions normally subject to review on a reasonableness standard: see, e.g., Redeemer Foundation at para. 24; *Bozzer* at para. 3; *Sheldon Inwentash and Lynn Factor Charitable Foundation v. Canada*, 2012 FCA 136 at paras. 19-23, 432 N.R. 338; Prescient Foundation v. Canada (National Revenue), 2013 FCA 120 at paras. 12-13, 358 D.L.R. (4th) 541; *Opportunities for the Disabled Foundation v. Canada (National Revenue)*, 2016 FCA 94 at para. 16, 482 N.R. 297.

[37] The Respondent submitted in its written submissions that an administrative decision maker's interpretation of their home statute is subject to deference on judicial review. Here the ITA is the Minister's home statute and the Applicant is challenging the Minister's interpretation and application of the ITA. The Respondent submitted that the reasonableness standard presumptively applies (*Canada (Human Rights Commission) v Canada (Attorney General*), 2018 SCC 31 at para 27 and 28) and that none of the exceptions to this presumption have application in this matter (*British Columbia (Securities Commission) v McLean*, 2013 SCC 67 at paras 25-33 ("*McLean*")).

[38] Subsequent to the parties filing their written submissions, the Supreme Court of Canada issued its decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*"). The parties were permitted to file further written submissions to address the impact of *Vavilov* on their positions.

[39] In those further submissions, the parties agreed that post-*Vavilov*, the presumptive standard of review is reasonableness.

[40] However, the Applicant contends that this presumption is rebutted in the circumstances of this matter and, therefore, the applicable standard of review continues to be correctness. Specifically, she submits that the interpretation of statutory limitation periods is a pure question of law and is of central importance to the functioning of the legal system in Canada (*Markevich v Canada*, 2003 SCC 9 at para 17 ("*Markevich*"); *McLean* at para 28). The Applicant submits that to allow the Minister's delegate to interpret s 222(4) of the ITA "under the guise of 'reasonableness' review would be inconsistent with the rule of law and would introduce an unacceptable degree of uncertainty into the interpretation of the legal question". Further, that the CRA, acting on behalf of the Minister, has no particular expertise in interpreting legal issues involving limitation periods and the ITA does not suggest that the Minister is to be afforded deference. In the alternative, if the Court determines that the reasonableness standard does apply, then when assessing the Decision the Court must apply that standard in the manner set out in *Vavilov*. This should include recognizing that the CRA is not an independent tribunal and has an interest in the outcome, the continued withholding of the refund. The CRA cannot be permitted to reverse engineer its statutory interpretation to achieve its desired outcome (*Vavilov* at para 121).

[41] The Respondent submits that *Vavilov* contemplates two situations where the presumption is rebutted: (1) where legislation speaks directly to standard or review or does so implicitly by providing for direct appeal a decision maker to a court, and (2) where required by the rule of law.

However, neither of these exceptions have application in this matter. The rule of law only requires courts to have the final word with regard to general questions of law that are of central importance to the legal system as a whole (*Vavilov* at paras 58-59, 61). The Decision does not raise a general or abstract question relating to limitation periods generally. Rather, it raises questions of mixed fact and law that are specific to the administration of the ITA.

Analysis

[42] As to the Applicant's reliance on *Connolly*, it is significant to note that following paragraph 54, relied upon by the Applicant and quoted above, the Court went on to say:

> [55] That said, given significant developments in the common law of judicial review in recent years, it may well be that this approach is no longer correct as my colleague, Woods J.A., recently noted in *Bonnybrook Park Industrial Development Co. Ltd. v. Canada (National Revenue*), 2018 FCA 136 at paras. 22-24 and Ark *Angel Foundation v. Canada (National Revenue)*, 2019 FCA 21 at paras. 30-31. However, for the reasons set out below, it is in my view unnecessary to decide this issue in the present case.

[43] Subsequent to *Connolly*, the Supreme Court of Canada in *Vavilov* held that the standard of reasonableness presumptively applies whenever a court reviews an administrative decision (*Vavilov* at paras 16, 23, 25). That presumption may be rebutted in two circumstances. The first is where the legislature has prescribed the standard of review or has provided a statutory appeal mechanism thereby signalling the legislature's intent that appellate standards should apply (*Vavilov* at paras 17, 33). The second circumstance is where the rule of law requires the application of the correctness standard. This will be the case for certain categories of questions, namely, constitutional questions, general questions of law of central importance to the legal

system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at paras 17, 53).

[44] The Applicant does not suggest that the first circumstance has any application in this matter. She takes the position that the Minister's Decision falls into the category of a general question of law of central importance to the legal system as a whole and, as such, rebuts the presumption that the reasonableness standard applies.

[45] In my view, this position is not supported by *Vavilov* or the factual circumstances of this matter. In *Vavilov*, the Supreme Court stated that the presumptive standard of reasonableness applies to the administrative decision maker's interpretation of its enabling statute, as well as applying more broadly to other aspects of its decision (para 25). And, as to general questions of law of central importance to the legal system as a whole, the Supreme Court referenced its decision in *Dunsmuir*, 2008 SCC 9 at para 60, which held that general questions of law which are "both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise". However, while the Court remained of the view that the rule of law requires courts to have the final word with regard to general questions of law that are "of central importance to the legal system as a whole", it found that it is no longer necessary to evaluate the decision maker's specialized expertise in order to determine whether the correctness standard must be applied in cases involving such questions (*Vavilov* at paras 58). That is, expertise is no longer relevant to the determination of the standard of review as it was in the previously required contextual analysis. The role of expertise in decision-making is now a consideration in conducting the presumptive reasonableness review (*Vavilov* at para 31).

[46] The Supreme Court then noted that the key underlying rationale for this category of question is the reality that certain general questions of law "require uniform and consistent answers" as a result of "their impact on the administration of justice as a whole" (*Dunsmuir*, para. 60). In these cases, correctness review is necessary to resolve general questions of law that are of "fundamental importance and broad applicability", with significant legal consequences for the justice system as a whole or for other institutions of government (*Vavilov* at para 59). The Court cited its prior decisions in this regard and then stated:

> [59] … For example, the question in *University of Calgary* could not be resolved by applying the reasonableness standard, because the decision would have had legal implications for a wide variety of other statutes and because the uniform protection of solicitor-client privilege — at issue in that case — is necessary for the proper functioning of the justice system: *University of Calgary*, at paras. 19-26. As this shows, the resolution of general questions of law "of central importance to the legal system as a whole" has implications beyond the decision at hand, hence the need for "uniform and consistent answers".

[47] Further:

> [61] We would stress that the mere fact that a dispute is "of wider public concern" is not sufficient for a question to fall into this category — nor is the fact that the question, when framed in a general or abstract sense, touches on an important issue: see, e.g., *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458, at para. 66; *McLean*, at para. 28*; Barreau du Québec v. Quebec (Attorney General)*, 2017 SCC 56, [2017] 2 S.C.R. 488, at para. 18. The case law reveals many examples of questions this Court has concluded are not general questions of law of central importance to the legal system as a whole. These include whether a certain tribunal can grant a particular type of compensation (*Mowat*, at para. 25); when estoppel may be applied as an arbitral remedy (*Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59, [2011] 3 S.C.R. 616, at paras. 37-38); the interpretation of a statutory provision prescribing timelines for an investigation (*Alberta Teachers*, at para. 32); the scope of a management rights clause in a collective agreement (Irving Pulp &

> Paper, at paras. 7, 15-16 and 66, per Rothstein and Moldaver JJ., dissenting but not on this point); whether a limitation period had been triggered under securities legislation (*McLean*, at paras. 28-31); whether a party to a confidential contract could bring a complaint under a particular regulatory regime (*Canadian National Railway*, at para. 60); and the scope of an exception allowing non-advocates to represent a minister in certain proceedings (Barreau du Québec, at paras. 17-18). As these comments and examples indicate, this does not mean that simply because expertise no longer plays a role in the selection of the standard of review, questions of central importance are now transformed into a broad catch-all category for correctness review.
>
> [62] In short, general questions of law of central importance to the legal system as a whole require a single determinate answer. In cases involving such questions, the rule of law requires courts to provide a greater degree of legal certainty than reasonableness review allows.

[48] I note that in *McLean*, referenced above in paragraph 61 of *Vavilov* by the Supreme Court as an example of questions that are not general questions of law central to the importance to the legal system as a whole, the Supreme Court considered whether, for the purposes of s 161(6)(d) of the British Columbia *Securities Act*, "the events" that triggered the six-year limitation period found in s 159 were triggered by the underlying conduct that gave rise to a settlement agreement or by the settlement agreement itself. The majority found that although limitation periods, conceptually, are "*generally* of central importance to fair administration of justice", it did not follow that the Security Commissioner's interpretation of the limitation period must be reviewed for its correctness. Rather, that the meaning of "the events" in s 159 was "a nuts-and-bolts question of statutory interpretation confined to a particular context" (*McLean* at para 28).

[49] In my view, this is a similar circumstance. The Decision in this matter does not turn purely on the Minister's interpretation of s 222(4) of the ITA, but on the Minister's application

of that, and related provisions, to the facts of the Applicant's case. That is, it is an issue of mixed fact and law. I am also not persuaded that any interpretation of that provision by the Minister in the Decision gives rise to a general question of law central to the importance to the legal system as a whole. The Minister's interpretation is confined to the Applicant's particular circumstances, being whether the Settlement Agreement caused the limitation period to be extended or restarted and, if it did not, whether the limitation period had expired prior to, and could not be revived by, the Third Reassessment. It will primarily have an effect on the specific circumstances of the Applicant and it does not amount to a general question of law of central importance to the legal system as a whole which requires a single determinate answer. Accordingly, the presumption of reasonableness as the applicable standard of review of the Decision has not been rebutted.

[50] Finally, I note that the Supreme Court in *Vavilov* also addressed how a reasonableness review is to be conducted by a reviewing court (at paras 73-145).

[51] Within that discussion, the Supreme Court addressed the principles of statutory interpretation as an element of a reasonableness analysis and held that matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard (para 115).

[52] More generally, it held that a reviewing court must determine whether the decision as a whole is reasonable and, to make that determination, the reviewing court "asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the

decision" (*Vavilov* at paras 15, 99). When a decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and the law that constrain the decision maker it is reasonable and is to be afforded deference by a reviewing court (*Vavilov* at para 85).

Issue 1: Did the Applicant "acknowledge" her 1988 tax liability by filing her Appeal to the Tax Court, thereby restarting the CLP?

Applicant's position

[53] This first issue concerns whether the Applicant made a "written acknowledgment" of the 1988 Debt, as that term is described in s 222(6)(b) of the ITA, by filing her Appeal to the Tax Court, thereby restarting the CLP pursuant to s 222(5)(a). The Applicant submits that the Appeal did not constitute a written acknowledgment of the 1988 Debt by the Applicant and therefore it did not restart the limitation period.

[54] She submits that because what constitutes a written acknowledgment is not defined in the ITA, it is therefore is properly interpreted by reading the words of the statutory provision "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21), including considering the ordinary meaning of those words. Such an interpretation does not support that the Appeal is a written acknowledgment of the 1988 Debt.

[55] In that regard, the Applicant notes, amongst other points, that s 222(8)(a) provides that the limitation period is extended while an appeal is outstanding. It would be redundant and

incoherent to conclude that s 222(5)(a) is also intended to simultaneously restart the limitation period. Had Parliament intended to restart the limitation period on the filing of any Notice of Appeal to the Tax Court, it would have said so. The Applicant submits that this interpretation is also consistent with the legislative purpose of s 222 and the policy underlying limitation periods in general (Alberta Law Reform Institute, Report No. 55, Limitation's (Edmonton: The Commissions, 1989) at 92). That is, where a taxpayer does not admit or verify their liability, they have not renounced their need to be protected by the limitation period and there is no justification for renewing the limitation period. Conversely, based on estoppel, if a debtor has promised to pay a debt, then the creditor should be entitled to rely on this new promise and a limitation period should not be renewed in view of that promise.

[56] Further, by its very nature an appeal is a dispute as to the existence of a tax debt, not a confirmation of its existence. By filing the Appeal the Applicant merely acknowledged that the First and Second Reassessments had been issued for her 1988 taxation year. She did not acknowledge the existence of the alleged 1988 Debt itself or her liability for that debt. Rather, she expressly denied the existence of any liability for the 1988 taxation year. As the Appeal did not "confirm and concede" (*Buik Estate v Canasia Power Corp*, 2014 ONSC 2959 at paras 35 ("*Buik*")) the correctness of the First Reassessment or the Second Reassessment or the existence of the 1988 Debt, it was not a written acknowledgment of the tax debt and did not restart the limitation period.

Respondent's position

[57] The Respondent submits that the Minister's interpretation of what constitutes a "written acknowledgment" in the context of the ITA was reasonable and is to be afforded deference. While the Respondent concedes that language similar to that found in s 222(5) of the ITA appears in the *Limitation Act*, RSBC 1979 c 236, it asserts that the authorities relied upon by the Applicant are nevertheless distinguishable due to the statutory context and purpose of the ITA, its purpose being to raise revenues to operate the public sector.

[58] Further, s 152(8) of the ITA states that an assessment shall, subject to being varied or vacated on an objection or appeal under Part I and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under the ITA relating thereto. Section 152(3) states that liability for the tax under Part I is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

[59] Accordingly, the Respondent submits that there is no need for a taxpayer to make an admission of liability because the ITA already deems that liability to exist and ousts any common law precondition of an admission of liability in order to constitute an acknowledgment. The filing of an appeal of a valid and binding tax debt is an acknowledgment of that debt. The ordinary meaning of the word "acknowledge" can bear this interpretation and is reasonable.

Analysis

[60] The Decision states that the Notice of Appeal acknowledged both the First Reassessment and the Second Reassessment. Further, that "Filing an appeal with the TCC is an

acknowledgement of debt and restarted the CLP to day one". This appears to express a view generally held by CRA that the filing of any appeal is an acknowledgment of the subject debt and, therefore, restarts the limitation collection period.

[61] I note in passing here that the Respondent's above reasoning referencing s 152(3) and (8) of the ITA is not found in the Decision refusing the requested refund. The Decision makes no explicit reference to any provisions of the ITA in support of its conclusion. The certified tribunal record, like the Decision, does not include any notes or analysis. It includes only excerpts from the CRA National Collections Manual and a screen print of a portion of CRA's external website concerning limitation periods, which both indicate, without explanation, that the filing of a notice of objection or an appeal to the Tax Court is an acknowledgment of the debt. The external website extract states that these actions will restart the collections limitation period as they "are considered acknowledgments of debt". The electronic link to which the Applicant was referred in the Decision is, presumably, a link to the CRA website. That said, the interpretation of s 222(5)(a) and 222(6) was not directly at issue when the Applicant made her submissions to the CRA seeking a refund. However, the CRA appears to rely on a stated interpretation of the ITA in the Decision without offering any justification for its conclusion.

[62] Accordingly, the first question to be addressed is whether CRA reasonably concluded that the act of filing an appeal is, in and of itself, an acknowledgment which will suffice to restart a limitation period in every case.

[63] The Supreme Court of Canada has held that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Vavilov* at para 117; *Rizzo* at para 21; in the context of the ITA also see *Trustco Mortgage v Canada*, 2005 SCC 54, at para. 10). Further, that assessing the reasonableness of a statutory interpretation requires the reviewing court to ask "[…] whether the tools of statutory interpretation – including the text, context and purpose of the provision – can reasonably support the [Minister's] conclusion" (*Williams Lake Indian Band v. Canada* (*Aboriginal Affairs and Northern Development*), 2018 SCC 4 at para. 108).

[64] In terms of context, s 222 must be viewed in context of that section as a whole, other relevant provisions and the object of that Act. In that regard, the ITA does not define "acknowledges" or "written acknowledgment" as found in s 222(5)(a) and s 222(6)(b), respectively. Nor do those provisions state that the filing of an appeal is an acknowledgment or that the filing of an appeal will serve to *restart* a limitation period. Significantly, however, s 222(8) and s 225.1(3), read together, explicitly contemplate that, when an appeal to the Tax Court has been filed, the Minster will not take any collection action for the amount in controversy and the limitation period will be *extended* to account for the period of time that the matter was under appeal. The effect of s 222(8) and s 225.1(3) is that the filing of an appeal with the Tax Court will pause the running of the existing limitation period for the duration of the appeal. When the appeal has been determined, the limitation period will resume running and will be extended by the time of the pause for the appeal. That is, the 10-year limitation period is preserved.

[65] In my view, had it been Parliament's intent that the filing of an appeal with the Tax Court would restart the limitation period, then it presumably would have clearly said so (see, for example, *Doig v Minister of National Revenue*, 2011 FC 371 at para 27). Further, the fact that s 222(8) and s 225.1(3) explicitly contemplate the extension of a limitation period by the filing of an appeal, while s 222(5)(a) and s 222(6)(b) which concern the restarting of limitation periods are silent as to appeals, mitigates against the interpretation of an "acknowledgement" of the subject tax as including the filing of an appeal.

[66] It would also be absurd if the limitation period could be both restarted by the filing of an appeal to the Tax Court pursuant to s 222(5)(a) and (6)(b) and, at the same time, also be extended pursuant to s 222(8). This could have the result of two different limitation periods running with respect to the same matter. To the extent that this was what CRA was suggesting in the Decision when it stated that the filing of the Appeal restarted the limitation period and that the limitation period "was simultaneously extended when the appeal to the TTC was file", in my view, this is an unreasonable interpretation.

[67] Based on the foregoing considerations, it is my view that the Minister's general conclusionary statement that filing an appeal with the Tax Court is an acknowledgement of debt, thereby restarting the limitation period, is not justified, intelligible or transparent and is unreasonable (*Vavilov* at para 14, 86, 95, 99-101, 105, 120-121).

[68] However, I will also consider the parties' other submissions as to the interpretation of the word "acknowledgment" found in s 222(6)(b).

[69] In applying the ordinary meaning rule, interpretation starts with ordinary meaning – reading the words in their grammatical and ordinary sense. But, "[i]nterpreters are obliged to consider the total context of the words to be interpreted in every case, no matter how plain those words seem upon initial reading" (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, ON: LexisNexis Canada, 2014) at §3.7). The grammatical and ordinary sense of words in a statutory provision is not determinative, rather, the section must be read in its entire context: "This inquiry involves examining the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and Parliament's intent both in enacting the Act as a whole, and in enacting the particular provision at issue" (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 34).

[70] With respect to interpreting the ITA, in *Markevich* the Supreme Court of Canada stated:

> [14] There is no authority to support the proposition that the ITA is a complete code that cannot be informed by laws of general application. The *ITA* does not operate in a legislative vacuum: see *Will-Kare*, *supra*, at para. 31. See also P. W. Hogg, J. E. Magee and T. Cook, *Principles of Canadian Income Tax Law* (3rd ed. 1999), at p. 2, where the authors note that the "Income Tax Act relies implicitly on the general law". Accordingly, whether a statute or legal principle affects the operation of the ITA must be decided by an analysis of the specific provisions involved.

[71] Here, the relevant sections of the ITA are s 222(5)(a) and s 222(6):

> **(5)** The limitation period described in subsection (4) for the collection of a tax debt of a taxpayer restarts (and ends, subject to subsection (8), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which
>
> > **(a)** the taxpayer acknowledges the tax debt in accordance with subsection (6);

> **(b)** the Minister commences an action to collect the tax debt; or
>
> **(c)** the Minister, under subsection 159(3) or 160(2) or paragraph 227(10)(a), assesses any person in respect of the tax debt.

(6) A taxpayer acknowledges a tax debt if the taxpayer

> **(a)** promises, in writing, to pay the tax debt;
>
> **(b)** makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or
>
> **(c)** makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

[72] As noted above, these provisions do not state that the filing of a Notice of Appeal with the Tax Court is a written acknowledgment of the tax debt, which would serve to restart, rather than suspend and extend the limitation period. Instead, Parliament chose to limit the circumstances in which the limitation period is restarted to those set out in s 222(5), including where the taxpayer acknowledges the debt (s 222(5)(a)).

[73] The Applicant submits that the plain and ordinary meaning of the term "acknowledgment" indicates that there must be some form of admission or verification of the debt owing in order to restart the limitation period under s 222(5) and that this interpretation is consistent with the case law she has referenced. She points to Black's Law Dictionary (*Black's Law Dictionary* online, 2nd ed, *sub verbo* acknowledgement) definition as "Stating that something is true or factual…A message that confirms a communication was received…aka verification". Further, the Oxford English Dictionary (*Oxford English Dictionary* online, 3rd ed,

sub verbo “acknowledgement”) defines the terms as “the action or an act of acknowledging, confession, admitting, or owning something: admission, confession”.

[74] The Respondent refers to a similar definition from Black’s Law Dictionary being “to recognize (something) as being factual or valid” (*Black’s Law Dictionary, 10th Ed,* Thomson Reuters, 2014, p. 27). The Respondent says that the use of the disjunctive word “or” is important because by appealing an assessed tax debt the taxpayer is acknowledging that the assessed debt is factual – it exists as a liability – even if it disputes it validity.

[75] I note that the Merriam-Webster online dictionary (*Merriam-Webster Online Dictionary, sub verbo* “acknowledgement”) defines “acknowledgment” as including the act of acknowledging something or someone, such as the acknowledgment of a mistake; and as a declaration or avowal of one's act or of a fact to give it legal validity.

[76] In my view, the plain meaning of “acknowledgment” requires an admission or confirmation by the person making the acknowledgment of the thing alleged, be it an admission of liability for damages, blame, responsibility or liability for a tax debt.

[77] As to judicial interpretation of the term, there would not appear to be a great deal of case law directly on point. The Respondent provided no cases and the Applicant identified only one case which addresses s 222(5) and (6) of the ITA. That case is *Thandi (Re)*, 2017 BCSC 1201 (“*Thandi*”). There, the British Columbia Supreme Court [BCSC] held that participation by CRA in foreclosure proceedings with the express purpose of attempting to collect on the outstanding

debt was an “action to collect a debt” under s 222(1). Further, that there was sufficient evidence to support the CRA’s position that they had received a written acknowledgment of the debt, pursuant to s 222(5) and 222(6). Specifically, a notation found in a CRA collection diary stated that counsel for Mr. Thandi had sent a letter (which was not in evidence) requesting confirmation that the CRA would release judgements once any excess funds went to CRA. In the absence of any contradictory evidence submitted by Mr. Thandi, the BCSC found that by his counsel’s letter, Mr. Thandi had acknowledged his debt in writing such that the limitation was restarted (*Thandi* at paras 31-33).

[78] What I take from *Thandi* is that when it is alleged that there has been a written acknowledgment of a tax debt, pursuant to s 222(6)(b) of the ITA, it is the content of that acknowledgment that will determine if this is the case. In the context of this matter, this supports that even if the filing of an appeal with the Tax Court can potentially trigger the restarting of a limitation period, the mere filing of the appeal will not automatically serve to act as a written acknowledgment of the debt. Rather, the content of the appeal itself must be scrutinized in each case.

[79] The remaining jurisprudence provided by the Applicant considers whether there was a written acknowledgment of a debt sufficient to restart a limitation period in the context of provincial limitation statutes. In *Buik*, the Ontario Court of Justice considered whether the limitation period found s 51(1) of the *Limitations Act*, RSO 1990 c L.15, which provided that a written acknowledgment of a debt delivered prior to the expiration of the limitation period, from which a promise to pay could be inferred, restarted a fresh limitation period. It concluded that in

the case before it the debt had been acknowledged by letters which served to restart the limitation period. The court's survey of relevant case law included the following:

> [35] In *Canada (AG) v. Simpson* (1995), 1995 CanLII 7230 (ON SC), 26 O.R. (3d) 317 (Gen. Div.), the court held that a debtor's applications for interest relief did not constitute an acknowledgment of debt within the meaning of the law. Charron J. held that there must be greater certainty before a writing will put the parties out of the operation of the statute. In addition to being in writing, and signed by the person making it (or that person's agent), the acknowledgement of the debt must "confirm and concede the amount that remains owing": *West York International Inc. v. Importanne Marketing Inc*., 2012 ONSC 6476 (CanLII), at para. 92. See also Ainsley v. Fitzpatrick, 2013 ONSC 3338 (CanLII), at para. 55, aff'd 2014 ONCA 93 (CanLII); Graeme Mew, The Law of Limitations, 2d ed. (Markham, Ont.: Butterworths, 2004), at pp. 115-1.

[80] I note that *West York International Inc. v. Importanne Marketing Inc*., 2012 ONSC 6476, cited in *Buik*, stated:

> [92] It is well established law that in considering whether an acknowledgment satisfies the requirements made under s.13 of the *Limitations Act***, the acknowledgement must, at a minimum, confirm and concede the amount that remains owing**. Further, the acknowledgment must be in writing and signed by the person making it, or the person's agent.
>
> (emphasis added)

[81] *Canada (Attorney General) v Simpson*, 26 OR (3D) 317, [1995] OJ No 2850 (QL) (ONSC) ("*Simpson*"), also cited in *Buik*, concerned an application for interest relief under *Canada Student Loans Act*. The Ontario Court (General Division) held that this did not constitute an acknowledgment of debt sufficient to rescue claim from operation of s. 45 the *Limitations Act*, R.S.O. 1990, c. L.15. It dismissed the plaintiff's motion for summary judgment. The court held

that none of the defendant's applications for interest relief constituted an acknowledgment of debt within the meaning of the law as the wording was too equivocal:

> In my view, none of the defendant's applications for interest relief constitute an acknowledgment of debt within the meaning of the law. Nor would the plaintiff be in any better position had the forms been subsequently completed by the lending institutions and returned to the defendant in accordance with the established procedure. Indeed had the details of the loan been set out on the form before the defendant signed it, the plaintiff's position would have been stronger but in my view, the matter would have still been quite debatable. Of course the question that immediately comes to mind is "why would the debtor be applying for interest relief on loans unless they were his?" I would think in the usual case the applicant for interest relief would be one who acknowledges that he or she owes the money but is having difficulty discharging the debt at that time. Nevertheless, a debtor who disputes the principal amount of "his" loans as set out by the lending institution in part or in totality could just as well apply for interest relief as one who does not dispute it. The disputing debtor would have nothing to lose; if he or she were ultimately found liable on the debt, at least some of the interest would be forgiven.

[82] In my view, *Simpson* is relevant to this matter as it demonstrates that the filing of a document that may, on its face, suggest that it is an acknowledgment of a debt is not, in and of itself, sufficient to restart a debt. It is the content of the document that is determinative. In that case, owing to a lack of detail pertaining to the underlying loan, the request for interest relief was found not to be a written acknowledgment of the debt (also see *Canada v Stasiuk*, 2018 ONSC 1226 at paras 15, 28-38).

[83] In *Podovinnikoff v Montgomery* (1984), 14 DLR (4^{th} 716, 58 BCL4 204 (BCCA) the British Columbia Court of Appeal considered whether, pursuant to the British Columbia *Limitation Act*, the acknowledgment of a cause of action must amount to an admission of liability if the acknowledgment is to serve as a confirmation of the cause of action. It concluded that:

> …. a person may acknowledge as a bare fact that someone has asserted (probably by making a claim) a cause of action against him without acknowledging any liability. However, I am also of the view that such a bare acknowledgment of the existence of a cause of action is quite insufficient to meet the requirements of s.5 (2) (a) (i) of the Act. Those provisions provide that a person confirms a cause of action only if he "... acknowledges a cause of action, right or title of another; ...". The acknowledgment of a right or title must, in my view, involve the acknowledgment of some liability. The word "acknowledgment" must have the same meaning when used with reference to a cause of action. It follows, therefore, that what binds a defendant and activates s.5 (2) (a) (i) is an acknowledgment in writing of a cause of action which admits some liability thereunder.

(Also see *Ryan v Moore*, 2005 SCC 38 at paras 43-46).

[84] As indicated above, what I take from *Thandi* is that when it is alleged that there has been a written acknowledgment of a tax debt, pursuant to s 222(6)(b) of the ITA, it is the content of that acknowledgment that will determine if this is the case. This requirement for scrutiny of the content of the document in issue is also supported by the above case law interpreting written acknowledgements in the context of provincial limitations legislation.

[85] In my view, this jurisprudence does not support an analysis which interprets a written acknowledgment, as that term is utilized in s 222(5)(a) and 222(6), such that the mere filing of an appeal in the Tax Court will automatically and in every case serve as an acknowledgment of a disputed, in whole or in part, tax debt by the appellant, thereby restarting the 10-year limitation period. Rather, if the filing of an appeal can potentially trigger those provisions, then whether it will do so is dependent upon the content of the subject appeal.

[86] The Respondent submits, however, that there is no need for a taxpayer to make an admission of liability because the ITA already deems the liability to exist and, therefore, that the

ITA ousts any common law precondition of an admission of liability to constitute an "acknowledgement". More specifically, the legislative purpose of the ITA, being to raise revenue to operate the public sector, as viewed in the context of s 152(8) and 152(3), serves to distinguish the Minister's interpretation of "acknowledgment" from the jurisprudence relied upon by the Applicant and render it reasonable.

[87] In my view, although the ITA is a distinct statutory scheme, "it does not operate in a legislative vacuum" (*Markevich* at para 14). Further, because what comprises a "written acknowledgment" is not defined by the ITA, the jurisprudence pertaining to civil limitation periods which contains wording very similar to s 222(6) is a useful interpretation tool in identifying, more generally, what is required for a document to be considered an acknowledgment.

[88] The Respondent relies on s 152(3) and (8) of the ITA, asserting that they serve to oust the common law requirement for an acknowledgement to contain admission of liability. However, by their terms those sections do not state that they do this. Section 152(3) states that liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. Section 152(8) states that an assessment shall, subject to being varied or vacated on an objection or appeal and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under the ITA.

[89] I agree that s 222(5)(a) and 222(6)(b) are to be interpreted keeping in mind the overall purpose of the ITA, which the Respondent states is to raise revenue and support the public sector. However, unlike the provisions cited by the Respondent, s 222 is specifically concerned with collections. Sections 222 (4) – (10) are concerned with limitation periods as related to collections. Section 222(3) states that the Minister may not commence an action to collect a tax debt after the end of the limitation period for the collection of the tax debt. I am not persuaded that reading s 152(3) and (8) of the ITA in the context of the overall purpose of the ITA leads to the Respondent's conclusion that an acknowledgement, pursuant to s 222(5)(a) and 222(6)(b), does not require an admission of liability and serves to oust the common law requirement for such an admission. Nor has the Respondent pointed to any jurisprudence in support of this assertion.

[90] I agree with the Applicant's submission that by filing an appeal to the Tax Court a taxpayer acknowledges only that the Minister has assessed a tax debt to exist, which the Minister deems to be a valid debt. In my view, the fact that the Minister deems the debt to be valid does not mean that the taxpayer acknowledges liability for that debt. The very purpose of filing the appeal is to challenge the validity of that assessment, in whole or in part. In the absence of an acknowledgment by the taxpayer that the disputed portion of the assessed debt exists and is valid, or put otherwise, when the appeal denies the validity of and therefore liability for the assessed debt, the filing of the appeal is not an "acknowledgment" of the debt.

[91] This view gains support from the two other subsections of s 222(6), s 222(6)(a) and s. 222(6)(c). Section 222(6)(a) states that a taxpayer acknowledges a debt if they promise in writing

to pay the debt. In that case, by agreeing to pay the debt, the taxpayer acknowledges that the debt (liability) exists and does not challenge or deny its validity. Thus, the new promise to pay estops the taxpayer from asserting that the original limitation period continues to run, the promise to pay restarts the limitation period. The same is true of s 222(6)(c) which addresses the circumstance where the taxpayer makes a payment that is dishonoured. Viewed in this context, an acknowledgment pursuant to s 222(6)(b) requires something more from the taxpayer than simply filing an appeal challenging the assessed tax debt – it requires an admission or confirmation by the taxpayer that the debt liability not only exists, but that it is validly owed. As the Applicant submits, this is also in keeping with the policy underpinnings of limitation periods.

[92] Put otherwise, even if, as the Respondent submits s 152(3) and (8) deem the tax debt to be valid and binding until varied or vacated, s 222(6)(b) and s 222(6)(c) do not support the assertion that an acknowledgement under s 222(6)(a) does not require and admission of liability. An acknowledgment of the debt by the taxpayer must confirm and concede the amount of the tax debt that is owing in order to restart the limitation period. The mere filing of an appeal with the Tax Court is not automatically an acknowledgement as defined by s 222(6). The content of the appeal must be scrutinized.

[93] Accordingly, I conclude that the Minister unreasonably interpreted the ITA in determining that the filing of an appeal with the Tax Court is an automatic acknowledgment of a tax debt which restarts the limitation period.

[94] This finding leads to the question of whether the content of the Notice of Appeal filed in this case was a written acknowledgment of the 1988 Debt. The Decision states that the Notice of Appeal acknowledged both the First Reassessment and the Second Reassessment. The Applicant submits that in the Appeal she did not admit any liability under either the First or the Second Reassessment. In fact, the Appeal expressly denied the existence of any liability for the 1988 taxation year. She states that, unlike the defendant in *Belanger v Gilbert* (1984), 8 DLR (4th) 92, 52 BCLR 197 (BCSC), aff'd (1984), 14 DLR (4th) 428, 58 BCLR 191 (BCCA), she did not contemplate settlement or otherwise implicitly acknowledge any of the 1988 Debt. Rather, she specifically requested that the Second Assessment be vacated by the Tax Court in its entirety. The Notice of Appeal did not expressly or impliedly acknowledge that there was a valid debt owing and expressly denied any liability for the assessed debt (referencing *Allen v Bapco Paint Limited* (1982) 34 BCLR 242, 12 ACWS (2d) 505, (BCSC).

[95] I have reviewed the Notice of Appeal. It put in issue whether the identified claims, including the 1988 Deductions, were deductible in computing income and whether the disallowances of the 1988 Trinity Denton NCL, the 1988 Trinity Denton Capitol Loss and 1988 Bank Interest were statute barred. The Applicant disputed the disallowances and stated that claims for the expenses were validly made. Amongst other things, she stated that the Second Reassessment was improper and ought to be vacated and that the amounts in issue represent reasonable expenditures and are deductible as claimed. The requested remedies include that the Second Reassessment be vacated or, alternatively, be referred back to the Minister for reconsideration.

[96] In my view, the Appeal does not admit or confirm that the 1988 Debt is validly owed or "confirm and concede" the amount of the tax debt. Indeed, it disputes the validity of the amounts assessed. Accordingly, the Minister's finding that the Appeal is a written acknowledgement of the 1988 Debt, as defined in s 222(6)(b), and that the filing of the Appeal restarted the imitation period pursuant to s 222(5)(a), was made without justification and is unreasonable.

[97] In conclusion, for the reasons I have set out in paragraphs 60 to 67 above, I have found that the Minister's general conclusionary statement, that filing an appeal with the Tax Court is an acknowledgement of debt thereby restarting the limitation period, is not justified and is unreasonable. I further conclude that the Minister also unreasonably interpreted the ITA in determining that the filing of an appeal with the Tax Court is an automatic acknowledgment of a tax debt which, without regard to the content of the appeal, restarts the limitation period. In this case, the Notice of Appeal did not acknowledge the Applicant's 1998 Debt.

Issue 2: Did the Applicant's filing of her Appeal to the Tax Court, on January 4, 2011, extend the existing CLP?

[98] The relevant provisions of the ITA are s 222(8)(a) and 225.1(2) and (3):

> **222(8)** In computing the day on which a limitation period ends, there shall be added the number of days on which one or more of the following is the case:
>
> > **(a)** the Minister may not, because of any of subsections 225.1(2) to (5), take any of the actions described in subsection 225.1(1) in respect of the tax debt;
>
> …..
>
> **225.1(2)** If a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy,

> take any of the actions described in paragraphs (1)(a) to (g) until after the day that is 90 days after the day on which notice is sent to the taxpayer that the Minister has confirmed or varied the assessment.
>
> **(3)** Where a taxpayer has appealed from an assessment of an amount payable under this Act to the Tax Court of Canada, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) before the day of mailing of a copy of the decision of the Court to the taxpayer or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

[99] In the Decision, the Minister stated that the CLP was restarted and simultaneously extended when the Appeal, made in respect of both the First Reassessment and the Second Reassessment, was filed meaning that the CLP did not run during the appeal.

Applicant's position

[100] The Applicant submits that while s 225.1(3) of the ITA bars the Minister from taking collection action while an alleged tax debt is under appeal to the Tax Court, it is critical to note that this section only prevents collection of the "amount in controversy" in the appeal. It does not prevent collection of all amounts owing in respect of the relevant taxation years.

[101] In this case, the issuance of the Second Confirmation on October 7, 2010 does not constitute an "action" to collect the 1988 Debt within the meaning of s 222(1) of the ITA. This is because, prior to filing the Appeal, the Applicant had waived her right to appeal the issue of the Trinity Denton Partnership Losses to the Tax Court under the Settlement Agreement. Therefore, by the Appeal the Applicant could not have validly disputed the amounts disallowed in respect of Trinity Denton by the Second Reassessment, which was in fact the position taken by the Minister

in the Minister's Reply to the Appeal. Because the 1988 Debt in respect of the Trinity Denton Partnership Losses was not validly in issue in the Appeal, it was not an "amount in controversy", its collection was therefore not barred by s 225.1(3) of the ITA, and the limitation period for its collection was not extended by s 222(8).

[102] Thus, while the Appeal may have had the effect of extending the limitation period in respect of the amount owing in relation to the Sierra Trinity deductions disallowed by the Second Reassessment, it had no effect on the limitation period in respect of the 1988 Debt arising from the Trinity Denton Partnership Loses under the First Reassessment.

Respondent's position

[103] The Minister disagrees with the Applicant's view that the Appeal did not suspend the running of the limitation period in relation to the entirety of the 1988 tax debt on the basis that portions of the tax debt raised in the Appeal were not validly an "amount in controversy" before the Tax Court. The Minister asserts that the Appeal unambiguously put into issue components of the Applicant's 1988 taxation year that impact the actual net tax owing that would be collectible, expenses and disallowed losses.

[104] The Minister submits that the Applicant misunderstands the meaning of "amount in controversy" in s 225.1(3) and that the amount in controversy is the assessment. The Minister could not collect a portion of what was owing for the tax year until all issues bearing on net liability were resolved. Where Parliament wanted to allow collection of only a portion of the

amount assessed it does so in clear language. This is demonstrated by a comparison of the language in s 225.1(3) with the language is 225.1(4).

Analysis

[105] As a starting point I note that it is correct that the Notice of Appeal filed on January 4, 2011 did explicitly raise as issues whether the 1988 Deductions were deductible in computing income and whether the disallowance of the 1988 Trinity Denton NCL and 1988 Trinity Denton Capital Loan (and 1988 Bank Interest) were statute barred.

[106] However, when the Appeal was filed the Minister disputed the propriety of this. The Reply filed on behalf of the Minister asserted that specified paragraphs of the Notice of Appeal were improperly pleaded and should be struck out because the issue of the losses arising from the Applicant's participation in Trinity Denton (incorrectly referenced as Sierra Denton Limited Partnerships) were not properly before the Court due to the June 13, 1994 Settlement Agreement and which agreement, by its terms, barred any appeal in connection with those matters. The position of the Minister was clearly stated in the grounds relied on and relief sought section of the Reply:

> **23**. The issue of the Minister's disallowance of the Limited Partnership Losses is not properly before the court, as the Appellant is barred by virtue of the Settlement Agreement and subsection 169(2.2) of the Act from appealing the Minister's reassessment dated December 29, 1992 [the Second Reassessment] which relates to those losses. Moreover, the Minister's reassessment dated December 29, 1992 was not appealed within the time limit set out in subsection 169(1)(a) of the Act.
>
> **24**. By virtue of the Settlement Agreement, which finally and conclusively settled the matter of the disallowance of the Limited Partnership Losses and barred the Appellant from filing an appeal

> in respect of the disallowance of the Limited Partnership Losses or to contest the validity of the Settlement Agreement, the Appellant is estopped from contesting the disallowance of the Limited Partnership Losses. Moreover, the time allowed by subsection 169 of the Act for appealing the December 29, 1992 reassessment to this court expired in 1995 and the Appellant did not ask for an extension of time to appeal that reassessment.

[107] The Settlement Agreement pertains to Trinity Denton and agreed to the issuance of an assessment or reassessment to disallow the Trinity Denton Partnership Losses. In that regard, the subsequently issued March 30, 1995 First Confirmation confirmed that previously disallowed losses with respect to Trinity Denton were confirmed as per the Settlement Agreement. There is no evidence before me indicating that, subsequent to the Reply, the Trinity Denton Partnership Losses were pursued in the Appeal. While the Third Reassessment refers to adjustments made according to the consent judgment, the consent judgement issued by the Tax Court is not in record. Further, the September 20, 2016 letter from counsel for the Applicant to the Minister explains that the new counsel who prepared the Notice of Appeal had not been aware of the Settlement Agreement, which was why the Notice of Appeal included the Trinity Denton Partnership Losses and referenced the First Reassessment which made adjustments to the Applicant's participation in Trinity Denton. The letter also states that the Applicant did not dispute the assertions in the Minister's Reply.

[108] In my view, as a result of the Settlement Agreement, which agreement and the First Confirmation both predate the filing of the Appeal, the Trinity Denton Partnership Losses were not properly raised and therefore were not in controversy when the Appeal was filed. They were improperly included in the Appeal as recognized by the Minister at that time. In the Reply, the

Minister correctly took the position that the Trinity Denton matters were not validly subject to appeal pursuant to the terms of the Settlement Agreement.

[109] Thus, although the Respondent now argues that the Appeal put into issue components of the Applicant's 1988 taxation year that impacted actual net tax owing that would be collectible, in fact, the Trinity Denton Partnership Losses were set by the Settlement Agreement. Not only could the Appeal not properly raise them, the amounts agreed by the Settlement Agreement could not change. Those amounts therefore could not vary the Applicant's net liability for 1988 ultimately resolved by the Appeal. The Applicant points out that the Second Reassessment increased the net federal tax from $107,999.00 to $163,622.30 and the net British Columbia tax from $54,935.70 to $ 82,747.30. The Third Reassessment reversed this increase returning the amounts to those in the Second Reassessment. The Applicant states that these amounts pertain only to Sierra Trinity and did not involve Trinity Denton because the Trinity Denton Losses had already been settled. This is not contested by the Respondent, possibly as specifics of the settlement have been lost in the mists of time.

[110] In the result, based on the particular facts of this case, because the 1988 Debt in respect of the Trinity Denton Partnership Losses was not validly in issue in the Appeal, as recognized by the Minister in the Reply, it was not an "amount in controversy". Its collection was therefore not barred by s 225.1(3) of the ITA and the limitation period for its collection was not extended by s 222(8).

[111] As to Respondent's submission that the phrase "amount in controversy" is tied to the prior wording of s 225.1(3) with the effect that the amount in controversy is the entire assessment amount, the Respondent offers no jurisprudence or ITA provisions in support of this interpretation. Further, s 225.1(3) states that where a taxpayer "has appealed *from an assessment of an amount payable* under this Act to the Tax Court of Canada, the Minister shall not, *for the purpose of collecting the amount in controversy*, take any of the actions described…". Presumably, if Parliament had intended that the Minister was precluded from collecting the entirety of the assessed tax debt for that year it would have said that rather than limiting the collection restriction to "the amount in controversy".

[112] In any event, even if "an amount in controversy" does in the normal course, as the Respondent submits, entail the entire reassessment, or the net amount of taxes owing over the entirety of a taxation year, in light of the Settlement Agreement barring any future appeals over matters pertaining to the Trinity Denton Partnership Losses, in my view, an amount in controversy in this particular context can mean only those matters to which the Applicant still had a valid right of appeal under the ITA – the Sierra Trinity disallowed losses.

[113] Two final points on this issue. First, in the Decision, the CRA states that the Appeal acknowledged both the First Assessment and the Second Assessment. This suggests that the content of the Appeal was relevant. Second, the Decision does not acknowledge the position taken by the Minister in the Reply contesting the references in the Appeal to the First Assessment because of the existence of the Settlement Agreement. It is impossible to ascertain

from the reasons if the CRA considered the Reply and the impact of the Settlement Agreement in reaching the Decision. The Decision lacks transparency in this regard.

Issue 3: Did the issuance of the Third Reassessment on December 19, 2014 operate as a new reassessment, initiating a new CLP, in respect of the Applicant's 1988 tax liability?

[114] The third ground on which the Decision is based is that the Applicant's 1988 tax year was reassessed on December 19, 2014, by the Third Reassessment, which again restarted the CLP, 90 days from that date, on March 20, 2015. It would therefore not expire until 10 years from that date, March 20, 2025.

Applicant's position

[115] The Applicant submits that if the limitation period was not earlier restarted or extended on the basis of the two other grounds identified by the Minister, being the acknowledgment of the debt by the Applicant (ITA s 222(5)(a) and 222(6)) or the extending of the limitation period by the Appeal to the Tax Court (s 222(8)(a)), then the third ground cannot operate on a stand alone basis to further extend the limitation period. More specifically, once the limitation period has expired, no action taken beyond that period can operate to further extend the limitation period. Here, because neither of the first two grounds operated to extend or restart the limitation period, the Third Reassessment, undertaken on December 19, 2014, fell outside the March 4, 2014 limitation period expiry and therefore cannot extend or restart the limitation period.

Respondent's position

[116] The Respondent submits that a new CLP of ten years arose when the Minister issued the Third Reassessment. The ITA's definition of an "assessment" includes a "reassessment" and a subsequent reassessment nullifies a prior assessment or reassessment issued in respect of the same taxation year if the subsequent reassessment fixes the taxpayer's total tax for the year (*TransCanada Pipelines Ltd v R*, 2001 FCA 314 at para 12; *Lornport Investments Ltd v R.* [1992] 2 FC 293 (FCA) at para 6). Here the Third Reassessment fixed the Applicant's net tax and nullified and replaced the Second Reassessment. Pursuant to s. 222(4) of the ITA, the limitation period for the 1988 tax debts restarted on December 19, 2014, and the date the Third Reassessment was sent to the Applicant. Accordingly, it was reasonable for the Minister to refuse the Applicant's request for a refund.

Analysis

[117] In this matter it is not disputed that the limitation period initially began to run on March 4, 2004 pursuant to s 222(4)(a)(ii) of the ITA. Thus, unless it was extended or restarted, it would expire 10 years later, on March 4, 2014.

[118] A limitation period can be restarted in the three circumstances described in s 222(5)(a), (b) and (c). I have found above that the limitation period was not restarted by the filing of the Appeal. This is because the filing of the Appeal was not a written acknowledgement of the tax debt as set out in s 222(5)(a) and 222(6). The reasons for the Decision are brief and do not indicate that the Minister commenced an action to collect the tax debt and thereby restarted the limitation period pursuant to s 222(5)(b), or that s 222(5)(c) has application. That is, the reasons do not indicate that such actions exist or grounded the refusal to issue the requested refund. Thus,

the initial limitation period was not restarted prior to its expiry on March 4, 2014 or prior to the Third Reassessment. I have also found that the limitation period was not extended by the filing of the Appeal pursuant to s 225.1(3) and 222(8)(a).

[119] In the result, based on the record before me, I cannot conclude that the initial limitation period was restarted or extended prior to its expiry on March 4, 2014 or prior to the Third Reassessment. The Applicant submits that once the limitation period has expired, no action taken beyond that period can operate to further extend the limitation period. The Respondent does not dispute this. In that event, the Third Reassessment, undertaken on December 19, 2014, fell outside the March 4, 2014 limitation period expiry and could not extend, restart or revive the exhausted limitation period. Accordingly, the Decision unreasonably found that the Third Reassessment restarted the limitation period.

[120] The Respondent submits that while an assessment, which by definition includes a reassessment, does not create the debt, and at most it is a confirmation of its existence (*R v Simard-Beaudry Inc.*, [1971] FC 396, [1971] FCJ No 33 at para 20), that the limitation period associated with any particular tax debt is "tied to" the assessment and confirms the existence of that tax debt. Thus, to determine if the limitation period has passed the Court must determine when it was assessed. Because the Second Reassessment fixed the Applicant's net tax at $163,622.30 and the Third Reassessment fixed the Applicant's net tax at $107,999.00, the Third Reassessment nullified and replaced the Second Assessment (*TransCanada Pipelines Ltd v R*, 2001 FCA 314 at para 12), meaning that the limitation period for the 1988 tax debt started on the date of the Third Assessment, December 19, 2014.

[121] However, even if this is so, as I have noted above, once the limitation period expired it could not be revived by the Third Reassessment.

[122] The Respondent also asserts that by way of s 169(3), when there is an appeal, the Minister may, with the consent in writing of the taxpayer, reassess amounts payable under the ITA, which in this case was done by way of a consent judgement. In this way, the Third Reassessment was tied to the 1988 tax debt – including the Trinity Denton Partnership Losses determined ten years earlier by the Settlement Agreement.

[123] However, as noted above, the consent judgement pertaining to the Tax Court Appeal is not in the record. Moreover, given that the Trinity Denton Partnership Losses were, as seen from the Reply, not subject to appeal, it is difficult to see how the consent judgement could have had the effect of the Applicant agreeing to the reassessment of those amounts and, therefore, "tying" those losses to the Third Reassessment.

[124] The Respondent also submits that the Settlement Agreement does not matter, all that matters is that there was some change to the 1988 tax year, as demonstrated by the Third Assessment, which therefore revived the Applicant's liability. Based on the facts of this matter, the record before me, and considering that the Respondent does not dispute the Applicant's claim that the Third Assessment dealt exclusively with amounts related to Sierra Trinity, and in that regard that the Third Assessment simply reversed and reduced the net taxes that had been increased by the Second Reassessment back to the original assessment, I am unable to agree with the Respondent's argument.

[125] As stated by the Supreme Court in *Markevich*: “a limitation period encourages the Minister to act diligently in pursuing the collection of tax debts. In light of the significant effect that collection of tax debts has upon the financial security of Canadian citizens, it is contrary to the public interest for the department to sleep on its rights in enforcing collection. It is evident that the rationales which justify the existence of limitation periods apply to the collection of tax debts” (at para 20). Here the Minister entered into the Settlement Agreement on June 13, 1994. The amount of the Applicant’s tax liability for the 1988 Debt was acknowledged and resolved by that agreement and it was no longer in controversy. It was open to the Minister to seek to collect the agreed amounts prior to the expiration of the limitation period.

[126] In conclusion, for the reasons above, I conclude that the Decision was not justified in relation to the relevant factual and legal constraints that bear on it (*Vavilov* at paras 14, 15, 86, 95, 99-101, 105, 120-121) and therefore was unreasonable.

JUDGMENT IN T-868-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.

2. The decision of the Assistant Director, Revenue Collection, Canada Revenue Agency, on behalf of the Minister of National Revenue, dated April 26, 2019 is quashed and the matter is remitted back to the Minister for redetermination, taking these reasons into consideration;

3. The Applicant shall have her costs in the all inclusive lump sum amount of $2000 payable by the Respondent.

"Cecily Y. Strickland"
Judge

ANNEX A

Section 152 of the *Income Tax Act* states:

Liability not dependent on assessment	Responsabilité indépendante de l'avis
(3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.	(3) Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente partie.
…	…
Assessment deemed valid and binding	Présomption de validité de la cotisation
(8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.	(8) Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

Section 222 of the *Income Tax Act* states:

Definitions

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

action means an action to collect a tax debt of a taxpayer and includes a proceeding in a court and anything done by the Minister under subsection 129(2), 131(3), 132(2) or 164(2), section 203 or any provision of this Part. (action)

tax debt means any amount payable by a taxpayer under this Act. (dette fiscale)

…

Limitation period

(4) The limitation period for the collection of a tax debt of a taxpayer

(a) begins

(i) if a notice of assessment, or a notice referred to in subsection 226(1), in respect of the tax debt is sent to or served on the taxpayer, after March 3, 2004, on the day that is 90 days after the day on which the last one of those notices is sent or served, and

Définitions

222 (1) Les définitions qui suivent s'appliquent au présent article.

action Toute action en recouvrement d'une dette fiscale d'un contribuable, y compris les procédures judiciaires et toute mesure prise par le ministre en vertu des paragraphes 129(2), 131(3), 132(2) ou 164(2), de l'article 203 ou d'une disposition de la présente partie. (action)

dette fiscale Toute somme payable par un contribuable sous le régime de la présente loi. (tax debt)

…

Délai de prescription

(4) Le délai de prescription pour le recouvrement d'une dette fiscale d'un contribuable :

a) commence à courir :

(i) si un avis de cotisation, ou un avis visé au paragraphe 226(1), concernant la dette est envoyé ou signifié au contribuable après le 3 mars 2004, le quatre-vingt-dixième jour suivant le jour où le

(ii) if subparagraph (i) does not apply and the tax debt was payable on March 4, 2004, or would have been payable on that date but for a limitation period that otherwise applied to the collection of the tax debt, on March 4, 2004; and

(b) ends, subject to subsection (8), on the day that is 10 years after the day on which it begins.

Limitation period restarted

(5) The limitation period described in subsection (4) for the collection of a tax debt of a taxpayer restarts (and ends, subject to subsection (8), on the day that is 10 years after the day on which it restarts) on any day, before it would otherwise end, on which

(a) the taxpayer acknowledges the tax debt in accordance with subsection (6);

(b) the Minister commences an action to collect the tax debt; or

(c) the Minister, under subsection 159(3) or 160(2) or paragraph 227(10)(a), assesses any person in respect of the tax debt.

Acknowledgement of tax debts

dernier de ces avis est envoyé ou signifié,

(ii) si le sous-alinéa (i) ne s'applique pas et que la dette était exigible le 4 mars 2004, ou l'aurait été en l'absence de tout délai de prescription qui s'est appliqué par ailleurs au recouvrement de la dette, le 4 mars 2004;

b) prend fin, sous réserve du paragraphe (8), dix ans après le jour de son début.

Reprise du délai de prescription

(5) Le délai de prescription pour le recouvrement d'une dette fiscale d'un contribuable recommence à courir — et prend fin, sous réserve du paragraphe (8), dix ans plus tard — le jour, antérieur à celui où il prendrait fin par ailleurs, où, selon le cas :

a) le contribuable reconnaît la dette conformément au paragraphe (6);

b) le ministre entreprend une action en recouvrement de la dette;

c) le ministre établit, en vertu des paragraphes 159(3) ou 160(2) ou de l'alinéa 227(10)a), une cotisation à l'égard d'une personne concernant la dette.

(6) A taxpayer acknowledges a tax debt if the taxpayer

(a) promises, in writing, to pay the tax debt;

(b) makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

(c) makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

Agent or legal representative

(7) For the purposes of this section, an acknowledgement made by a taxpayer's agent or legal representative has the same effect as if it were made by the taxpayer.

Extension of limitation period

(8) In computing the day on which a limitation period ends, there shall be added the number of days on which one or more of the following is the case:

(a) the Minister may not, because of any of subsections 225.1(2) to (5), take any of the actions described in subsection

Reconnaissance de dette fiscale

(6) Se reconnaît débiteur d'une dette fiscale le contribuable qui, selon le cas :

a) promet, par écrit, de régler la dette;

b) reconnaît la dette par écrit, que cette reconnaissance soit ou non rédigée en des termes qui permettent de déduire une promesse de règlement et renferme ou non un refus de payer;

c) fait un paiement au titre de la dette, y compris un prétendu paiement fait au moyen d'un titre négociable qui fait l'objet d'un refus de paiement.

Mandataire ou représentant légal

(7) Pour l'application du présent article, la reconnaissance faite par le mandataire ou le représentant légal d'un contribuable a la même valeur que si elle était faite par le contribuable.

Prorogation du délai de prescription

(8) Le nombre de jours où au moins un des faits suivants se vérifie prolonge d'autant la durée du délai de prescription :

225.1(1) in respect of the tax debt;

(b) the Minister has accepted and holds security in lieu of payment of the tax debt;

(c) if the taxpayer was resident in Canada on the applicable date described in paragraph (4)(a) in respect of the tax debt, the taxpayer is non-resident; or

(d) an action that the Minister may otherwise take in respect of the tax debt is restricted or not permitted under any provision of the Bankruptcy and Insolvency Act, of the Companies' Creditors Arrangement Act or of the Farm Debt Mediation Act.

…

a) en raison de l'un des paragraphes 225.1(2) à (5), le ministre n'est pas en mesure d'exercer les actions visées au paragraphe 225.1(1) relativement à la dette fiscale;

b) le ministre a accepté et détient une garantie pour le paiement de la dette fiscale;

c) la personne, qui résidait au Canada à la date applicable visée à l'alinéa (4)a) relativement à la dette fiscale, est un non-résident;

d) l'une des actions que le ministre peut exercer par ailleurs relativement à la dette fiscale est limitée ou interdite en vertu d'une disposition quelconque de la Loi sur la faillite et l'insolvabilité, de la Loi sur les arrangements avec les créanciers des compagnies ou de la Loi sur la médiation en matière d'endettement agricole.

…

Section 225.1 of the *Income Tax Act* states:

Collection restrictions

225.1 (1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the

Restrictions au recouvrement

225.1 (1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2),

Minister shall not, until after the collection-commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

(a) commence legal proceedings in a court,

(b) certify the amount under section 223,

(c) require a person to make a payment under subsection 224(1),

(d) require an institution or a person to make a payment under subsection 224(1.1),

(e) [Repealed, 2006, c. 4, s. 166]

(f) require a person to turn over moneys under subsection 224.3(1), or

(g) give a notice, issue a certificate or make a direction under subsection 225(1).

[…]

No action by Minister

(2) If a taxpayer has served a notice of objection under this Act to an assessment of an amount payable under this Act, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions

169(3) et 220(3.1), le ministre, pour recouvrer le montant impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes :

a) entamer une poursuite devant un tribunal;

b) attester le montant, conformément à l'article 223;

c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);

d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;

e) [Abrogé, 2006, ch. 4, art. 166]

f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);

g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

[…]

Restriction

(2) Dans le cas où un contribuable signifie en vertu de la présente loi un avis d'opposition à une cotisation pour un montant

described in paragraphs (1)(a) to (g) until after the day that is 90 days after the day on which notice is sent to the taxpayer that the Minister has confirmed or varied the assessment.

Idem

(3) Where a taxpayer has appealed from an assessment of an amount payable under this Act to the Tax Court of Canada, the Minister shall not, for the purpose of collecting the amount in controversy, take any of the actions described in paragraphs (1)(a) to (g) before the day of mailing of a copy of the decision of the Court to the taxpayer or the day on which the taxpayer discontinues the appeal, whichever is the earlier.

payable en vertu de cette loi, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant le quatre-vingt-onzième jour suivant la date d'envoi d'un avis au contribuable où il confirme ou modifie la cotisation.

Idem

(3) Dans le cas où un contribuable en appelle d'une cotisation pour un montant payable en vertu de la présente loi, auprès de la Cour canadienne de l'impôt, le ministre, pour recouvrer la somme en litige, ne peut prendre aucune des mesures visées aux alinéas (1)a) à g) avant la date de mise à la poste au contribuable d'une copie de la décision de la cour ou la date où le contribuable se désiste de l'appel si celle-ci est antérieure.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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