Federal Court Cour fédérale

**Date: 20260108**

**Docket: T-3709-25**

**Citation: 2026 FC 22**

**Edmonton, Alberta, January 8, 2026**

**PRESENT: Madam Associate Judge Catherine A. Coughlan**

**BETWEEN:**

**CHRIS HUGHES**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] In June 2018, the Canadian Human Rights Tribunal (CHRT) issued an order granting the Applicant, Chris Hughes, an award (CHRT Award) for lost wages and interest. In September 2024, the Applicant requested the Minister of National Revenue (Minister) reassess his 2019 tax year to include the CHRT Award. In August 2025, the Minister issued a reassessment finding the Applicant had a taxable income and issued a tax bill. However, one month later, the Minister

reversed the reassessment and issued a notice of no tax owing, that is, a nil assessment. The Applicant challenges the nil return.

[2] On September 23, 2025, the Applicant filed a Notice of Application (NOA) in this Court to quash the nil return and direct the Minister to make an assessment that matches the Award issued by the CHRT.

[3] The Respondent, the Attorney General of Canada (AGC), moves to strike the NOA without leave to amend asserting that this Court lacks jurisdiction to grant the relief, and therefore the NOA is bereft of any chance of success. He argues that the Tax Court has exclusive jurisdiction over the correctness of assessments under section 12 of the *Tax Court of Canada Act*, RSC 1985, c T-2 [the *Tax Court of Canada Act*]; that section 18.5 of the *Federal Courts Act*, RSC 1985, c F-7 [the Act] bars this proceeding; that the application is in substance a challenge to the correctness of the September 18, 2025 assessment; and that the Tax Court's lack of jurisdiction over nil assessments does not transfer jurisdiction to this Court.

[4] The Applicant acknowledges that the Tax Court has no jurisdiction over a nil assessment but argues that the NOA should stand because the Minister's conduct undermines a Tribunal Order thus engaging the Federal Court's enforcement jurisdiction.

[5] For the reasons set out below, I am satisfied that the Federal Court lacks jurisdiction and the motion to strike must be granted.

## II. Background

[6] Consistent with this Court's practice, neither party filed an affidavit on this motion. The facts set out below are taken exclusively from the NOA. I note, however, that the NOA and Applicant's written and oral arguments rely on several documents that are not before the Court. Nor were the contents of the documents relied on disclosed in the NOA. In the result, there was little factual material before the Court. At the hearing of the motion, I advised the parties of the limitations of the factual record and indicated that for the purposes of my decision, I would only consider material that was properly before me.

[7] In June 2018, the CHRT issued an order under subsection 53(2) of the *Canadian Human Rights Act*, RSC 1985, c H-6, awarding the Applicant lost wages and interest as against Transport Canada (Tribunal Order) (NOA at page 3, para 3).

[8] In February 2019, the Applicant received payment of the CHRT Award under the Tribunal Order and a spreadsheet that listed statutory deductions, including union dues, income tax, pension contributions, and employment insurance contributions (NOA at page 3, para 8).

[9] In September 2024, the Applicant requested the Minister of National Revenue (Minister) to reassess his 2019 tax year to include the payment of the CHRT Award as taxable income. The Minister issued a reassessment in August 2025 acknowledging the amounts as taxable income. The Applicant subsequently received a tax bill for $308,000.00 (NOA at page 3, paras 2-3).

[10] On September 18, 2025, by letter from Assistant Commissioner Marc Lemieux, the Minister issued a new reassessment replacing the August 2025 reassessment with a nil assessment, determining that no taxes were payable for 2019 (NOA at page 3-4, paras 4 and 15).

[11] The Applicant now seeks an order quashing the nil return assessment for the 2019 tax year and directing that the Canada Revenue Agency (CRA) make an assessment that matches the Tribunal Order and the detailed Department of Justice spreadsheet from January 2019 (NOA at page 3, para 1).

## III. Relevant Legal Principles

[12] While there is no Rule providing for the striking of a notice of application, the Court, relying on its plenary jurisdiction to prevent abuse of its processes, has jurisdiction to strike a notice of application. The threshold for striking is high and the moving party bears a heavy onus to establish that the notice of application is "so clearly improper as to be bereft of any possibility of success": *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 at 600 (FCA). The moving party must demonstrate an obvious or fatal flaw that strikes at the root of the Court's power to entertain the application: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paras 47-48 [*JP Morgan*].

[13] On a motion to strike, the Court must accept the facts pleaded in the notice of application as true. That requirement, however, does not extend to speculative or legal conclusions of law. Moreover, the pleading should be read generously, allowing for minor drafting flaws. Crucially, the Court should look for the real essence and essential character of the pleading: *Wenham v*

*Canada (Attorney General*), 2018 FCA 199 at paras 33-34. In other words, the Court must look beyond the words used in the pleading to gain a true appreciation of the actual relief sought.

[14] Subsection 18(1) of the Act grants the Federal Court exclusive original jurisdiction to issue remedies against federal boards, commissions, or other tribunals:

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| 18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction<br><br>(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal;<br><br>[…] | 18 (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :<br><br>a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;<br><br>[…] |

[15] Section 18.5 of the Act operates to limit this jurisdiction where an express statutory appeal exists:

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| 18.5 Despite sections 18 and 18.1, if an Act of Parliament expressly provides for an appeal to the Federal Court, the Federal Court of Appeal, the Supreme Court of Canada, the Court Martial Appeal Court, the Tax Court of Canada, the Governor in Council or the Treasury Board from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or | 18.5 Par dérogation aux articles 18 et 18.1, lorsqu'une loi fédérale prévoit expressément qu'il peut être interjeté appel, devant la Cour fédérale, la Cour d'appel fédérale, la Cour suprême du Canada, la Cour d'appel de la cour martiale, la Cour canadienne de l'impôt, le gouverneur en conseil ou le Conseil du Trésor, d'une décision ou d'une ordonnance d'un office fédéral, rendue à tout stade |

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| tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act. | des procédures, cette décision ou cette ordonnance ne peut, dans la mesure où elle est susceptible d'un tel appel, faire l'objet de contrôle, de restriction, de prohibition, d'évocation, d'annulation ni d'aucune autre intervention, sauf en conformité avec cette loi. |

[16] The critical requirement is that the appeal be "expressly provided" by statute. This phrase is determinative of whether the Federal Court's supervisory jurisdiction is ousted: *Dow Chemical Canada ULC v Canada*, 2024 SCC 23 at para 101 [*Dow*].

[17] Subsection 165(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) [*ITA*] establishes the objection mechanism:

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| 165 (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,<br><br>[…] | 165 (1) Le contribuable qui s'oppose à une cotisation prévue par la présente partie peut signifier au ministre, par écrit, un avis d'opposition exposant les motifs de son opposition et tous les faits pertinents, dans les délais suivants :<br><br>[…] |

[18] Subsection 169(1) of the *ITA* provides the express statutory right of appeal to the Tax Court:

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| 169 (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal | 169 (1) Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut |

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| to the Tax Court of Canada to have the assessment vacated or varied after either | interjeter appel auprès de la Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation : |
| (a) the Minister has confirmed the assessment or reassessed, or | a) après que le ministre a ratifié la cotisation ou procédé à une nouvelle cotisation; |
| (b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed, | b) après l'expiration des 90 jours qui suivent la signification de l'avis d'opposition sans que le ministre ait notifié au contribuable le fait qu'il a annulé ou ratifié la cotisation ou procédé à une nouvelle cotisation; |
| […] | […] |

[19] Subsection 171(1) of the *ITA* prescribes the Tax Court's remedial powers on appeal:

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| 171 (1) The Tax Court of Canada may dispose of an appeal by | 171 (1) La Cour canadienne de l'impôt peut statuer sur un appel : |
| (a) dismissing it; or | a) en le rejetant; |
| (b) allowing it and | b) en l'admettant et en : |
| (i) vacating the assessment, | (i) annulant la cotisation, |
| (ii) varying the assessment, or | (ii) modifiant la cotisation, |
| (iii) referring the assessment back to the Minister for reconsideration and reassessment. | (iii) déférant la cotisation au ministre pour nouvel examen et nouvelle cotisation. |

[20] These remedial powers are expressly limited to dealing with "the assessment" itself. Of note, the Tax Court cannot quash ministerial decisions or compel the Minister to issue an assessment where none exists: *Dow* at para 105.

[21] Subsection 152(3) of the *ITA* confirms that liability for tax exists independently of any assessment:

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| (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. |

[22] This provision underscores that an assessment is merely the Minister's determination of what is owing. It is not constitutive of the liability itself: *Dow* at para 43.

[23] Subsection 12(1) of the *Tax Court of Canada Act* establishes the Tax Court's exclusive jurisdiction:

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| 12(1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under [...] the Income Tax Act [...] when references or appeals to the Court are provided for in those Acts. | 12 (1) La Cour a compétence exclusive pour entendre les renvois et les appels portés devant elle sur les questions découlant de […] Loi de l'impôt sur le revenu […] dans la mesure où ces lois prévoient un droit de renvoi ou d'appel devant elle. |

[24] The Tax Court's jurisdiction is statutory and limited. It exists only to the extent that references or appeals to the Court are provided for in the relevant statute. Where no express appeal mechanism exists, the Tax Court has no jurisdiction: *Dow* at para 153.

## IV. Issue

(a) The sole issue for the Court is whether the NOA should be struck because the Federal Court lacks jurisdiction to hear the application.

## V. Position of the Parties

### A. *Respondent's position*

[25] The Respondent advances several arguments in favour of striking the NOA, principally that the Federal Court lacks jurisdiction to grant the relief sought. First, the Respondent says that pursuant to section 12 of the *Tax Court of Canada Act*, the Tax Court has exclusive jurisdiction over the correctness of tax assessments arising under the *ITA* and neither the Federal Court nor the Tax Court have inherent jurisdiction to hear matters that are not explicitly provided by statute: *Dow* at para 193. Second, section 18.5 of the Act bars this Court from hearing the application. Third, the essence of the NOA is a challenge to the correctness of the Minister's non-discretionary assessing decision of September 18, 2025, to reassess the Applicant and issue a notice of no tax owing. Lastly, the Tax Court's lack of jurisdiction over nil assessments does not confer jurisdiction on the Federal Court. In that regard, the Respondent argues that nil assessments are not subject to appeal in any court.

**B.** ***Applicant's position***

[26] While acknowledging that the Tax Court lacks jurisdiction over a nil assessment, the Applicant resists the motion to strike arguing:

(a) the CRA's actions amount to an abuse of power because the underlying issue is an attack on a Tribunal Order and involves matters of enforcement of that Tribunal Order which must be brought in the Federal Court pursuant to Rule 424 of the *Federal Courts Rules*, SOR/98-106 (*Chrysler Canada v Canada*, 2008 FC 727) or as a motion for third party contempt of court;

(b) none of the authorities cited by the Respondent involve an underlying "Tribunal/Court Order";

(c) the principle of primacy of human rights legislation should apply such that the Tribunal's decision would prevail over the assessment as found in *Canada (Attorney General ) v Uzoaba*, [1995] 2 FC 569 (TD);

(d) the CRA is interfering and enfeebling the CHRT Award; and

(e) "the letter of Marc Lemieux from January 2022 is not legally binding as it was an unwarranted opinion that does not rise to the level of an advance tax ruling."

## VI. Discussion

### A. *Jurisdiction of the Tax Court and the Federal Court*

[27] As a starting point, it must be observed that Parliament has "intentionally divided jurisdiction over tax matters between the Federal Court and the Tax Court": *Dow* at para 110. The Tax Court has exclusive jurisdiction to review the correctness of assessments by determining whether the amount of tax assessed is correct: *Dow* at paras 43, 159 and section 12 of the *Tax Court of Canada Act*. The Minister does not exercise any discretion in preparing an assessment but applies a fixed statutory formula to determine taxable income: *Dow* at para 45. Rather, and as explained by Mr. Justice Stratas in *JP Morgan* at para 77, "[w]here the facts and the law demonstrate liability for tax, the Minister must issue an assessment."

[28] Furthermore, as the Supreme Court of Canada recently observed in *Iris Technologies Inc v Canada*, 2024 SCC 24 at para 52, citing Rennie J.A. in *Canada (Attorney General) v Iris Technologies Inc*, 2022 FCA 101 at para 17, "[t]here is no use in trying to separate the 'motivation behind a decision to assess from the correctness of the assessment itself. It is a meaningless exercise, since the assessments themselves are not discretionary.'" To put this otherwise, there is no utility in trying to assert an improper motive or purpose on the part of the Minister when the Minister is simply exercising a statutory duty to assess in accordance with the facts and the law under the *ITA*.

[29] In *JP Morgan* at para 93, the Federal Court of Appeal instructs that in the tax context, the Federal Court is not permitted to vary, set aside or vacate assessments: *Redeemer Foundation*

*v Canada (National Revenue)*, 2008 SCC 46 at paras 28 and 58, [2008] 2 SCR 643; *Optical Recording Corp v Canada*, [1991] 1 FC 309 at 320 and 321 (TD) [*Optical Recording Corp*]; *Rusnak v Canada*, 2011 FCA 181 at paras 2-3. Rather, under subsection 152(8) of the *ITA*, an assessment is deemed by subsection 152(8) to be valid, subject only to a reassessment or variation or vacation by a successful objection or by a successful appeal of the assessment brought to the Tax Court pursuant to section 169. The assessment stands until varied or vacated by the Tax Court: *Optical Recording Corp* at 320 and 321.

[30] This non-discretionary conduct by the Minister in issuing assessments must be contrasted with the Federal Court's jurisdiction to review discretionary decisions of the Minister through judicial review: *Dow* at para 111. The jurisprudence of this Court and the Federal Court of Appeal confirms that "the Federal Court retains exclusive jurisdiction over the Minister's decisions that are not subject to an appeal to the Tax Court": *Dow* at para 112. For example, when the Minister makes discretionary decisions guided by policy considerations, that is a very different task than preparing an assessment: *Dow* at para 46. Reviews of discretionary ministerial conduct proceed by way of judicial review before the Federal Court, not the Tax Court: *Dow* at para 57.

**B. *What is the Essential Character of the NOA?***

[31] Guided by that background, the next step in assessing the Federal Court's jurisdiction to entertain the NOA, is to determine the essential character of the relief sought. If the "essential character" involves the setting aside or vacating of an assessment, the NOA must be struck: *JP*

*Morgan* at para 93. As noted above, that relief lies within the exclusive jurisdiction of the Tax Court to grant and section 18.5 of the Act ousts the Federal Court.

[32] A review of the NOA, reveals that the Applicant seeks "an order to quash a nil return reassessment for the 2019 tax year and a directed verdict that CRA make an assessment that matches the Tribunal Order and the detailed Department of Justice spreadsheet from January 2019." At the hearing before me, the Applicant advised that he would amend his NOA to seek only an order quashing the September 2025 nil assessment and would drop his request for a directed verdict.

[33] In my view, that concession does not assist the Applicant. Indeed, I agree with the Respondent that the essential nature of the application remains a challenge to the correctness of the Minister's non-discretionary decision to reassess and to issue a notice of no tax owing of the Applicant's 2019 taxation year. The fact that the Applicant no longer seeks a directed verdict does not alter the essential relief of quashing a non-discretionary decision; relief that the Federal Court cannot grant.

[34] While the Applicant asserts that the nil assessment is inconsistent with the Tribunal Order because the CHRT Award was taxable income, I note that the Tribunal Order was not before me. Even if it had been, that would not change the essential character of the relief sought. Regardless of what the Tribunal Order asserts, it is the operation of the *ITA* and its basic rules that determine whether amounts received by a taxpayer are taxable. That determination necessarily engages the

Minister's non-discretionary application of the *ITA* and concerns about the correctness of the reassessment are within the exclusive jurisdiction of the Tax Court.

### C. *Does an appeal lie from a nil assessment?*

[35] The last step in this analysis requires a consideration of the implications of a nil assessment. The parties agree that no appeal lies to the Tax Court from a nil assessment. As courts have repeatedly held, a nil assessment is not technically an assessment, because "an assessment which assesses no tax is not an assessment": *Canada v Interior Savings Credit Union*, 2007 FCA 151 at para 17. In the result, a nil assessment does not trigger the statutory right of objection under sections 165 and 169 of the *ITA*. In *Dow* at para 44, citing *Okalta Oils Ltd v Minister of National Revenue*, 1955 SCR 824 at 826 [*Okalta Oils*], the Supreme Court confirmed that under these provisions, there is no assessment if there is no tax claimed. The *Okalta Oils* principle was later reaffirmed in *Canada v Consumers' Gas Co*, 1987 2 FC 60 [*Consumers' Gas*], where the Federal Court of Appeal concluded that a taxpayer can neither object to nor appeal from a nil assessment: *Dow* at para 174, citing *Consumers' Gas* at 67.

[36] The Respondent argues that the Tax Court's lack of jurisdiction over nil assessments does not confer jurisdiction on the Federal Court. I agree. The only authority cited in support of that proposition is *Verdicchio v Canada*, 2010 FC 117 at para 30. In that case, the taxpayer plaintiff sought to have his claim to a tax credit adjudicated in this Court by way of an action following the quashing of his appeal by the Tax Court. The Federal Court concluded that the Tax Court's lack of jurisdiction over a nil assessment did not confer jurisdiction to the Federal Court. To find otherwise, the Court posited, would allow the plaintiff to circumvent a long line of authority

holding that nil assessments are not subject to appeal. Although the Court questioned that conclusion from a policy perspective, it nonetheless found that it was a matter for Parliament and not for the Court.

[37] In my view, that result is entirely consonant with the Supreme Court's decision in *Canada v Addison & Leyen Ltd*, 2007 SCC 33 at para 11, [2007] 2 SCR 793, where the Court cautioned courts against authorizing judicial reviews as forms of incidental litigation designed to circumvent the system of tax appeals established by Parliament and the jurisdiction of the Tax Court.

[38] In coming to this conclusion, I reject the Applicant's argument that the decision in *Glatt v Canada (National Revenue)*, 2019 FC 738 stands for the proposition that a nil assessment may be challenged in the Federal Court. In that case, the issue before the Court was the Minister's decision not to pay interest on a refund of an advanced payment. Mr. Justice Diner determined that the refund payable by the Minister was not an assessed amount because no tax was claimed and thus, there was no right to appeal to the Tax Court. The case is distinguishable from the present matter because it dealt with a discretionary decision of the Minister to decline to pay interest. In contrast, the NOA seeks to quash a non-discretionary decision assessing no tax owing.

**D.** ***Does the NOA raise a cognizable administrative law claim?***

[39] The foregoing is sufficient to determine this motion. However, in the hearing before me, the Respondent argued that the NOA fails to raise a cognizable administrative law claim that can

be brought in the Federal Court. While it would have been appropriate to have raised this argument in the Notice of Motion and Written Representations, I will nonetheless deal with it now as it responds to the Applicant's abuse of power argument and is a central element to this Court's jurisdiction to entertain a judicial review application.

[40] As Mr. Justice Stratas teaches in *JP Morgan* at para 69, a cognizable administrative law claim must satisfy two requirements. First, judicial review must be available under sections 18 and 18.1 of the Act. Generally, instances where judicial review is available include, among other matters, where the Minister is making discretionary decisions. Second, the application must state a ground of review that is known to administrative law. Those can be categorized into three broad groupings including lack of *vires*, that is, where the administrative action is not authorized; procedural unacceptability, that is, where the administrative action has been taken in a procedurally unfair manner; and substantive unacceptability, that is, where the outcome is not reasonable.

[41] In his NOA, the Applicant claims that the Minister's actions in issuing a nil assessment amounted to an abuse of power because he was interfering with the Tribunal's Order. At the hearing before me, the Applicant claimed that the Tribunal Order ought to have primacy over the Minister's assessment. In making that argument, the Applicant acknowledged that if the case proceeds to hearing on the merits, it will be the first case to decide whether the Tribunal Order has primacy over the Minister's assessment. In my view, this novel argument does not raise a cognizable administrative law claim. It simply evinces dissatisfaction with the nil assessment and the lack of an appeal to the Tax Court.

[42] The Applicant further argues that as he has no other remedy available to him, his application must be allowed to continue to permit him a remedy. To the extent that the Applicant asserts that deductions were made from the Tribunal Order for taxes, Employment Insurance and Canada Pension Plan and those deductions remain unaccounted for, (an argument raised orally before me) his remedies lie elsewhere. Clearly, the Minister did not make those deductions, and the Applicant does not assert otherwise.

## VII. Conclusion

[43] I am satisfied that the Respondent has met its burden to show that the application is so clearly improper as to be bereft of any possibility of success.

## VIII. Costs

[44] Both parties seek their costs of the motion. As the successful party, the Respondent shall have costs fixed at $700.00, inclusive of taxes and disbursements.

**JUDGMENT in T-3709-25**

**THIS COURT'S JUDGMENT is that:**

1. The motion is allowed.

2. The Notice of Application is struck without leave to amend.

3. The Respondent shall have costs fixed at $700.00, inclusive of taxes and disbursements.

"Catherine A. Coughlan"
Associate Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-3709-25 |
| **STYLE OF CAUSE:** | CHRIS HUGHES v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | VIDEOCONFERENCE |
| **DATE OF HEARING:** | NOVEMBER 25, 2025 |
| **JUDGMENT AND REASONS:** | COUGHLAN A.J. |
| **DATED:** | JANUARY 8, 2026 |

**APPEARANCES:**

| | |
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| Chris Hughes | FOR THE APPLICANT (ON HIS OWN BEHALF) |
| Rory Smith | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Vancouver, British Columbia | FOR THE RESPONDENT |