Federal Court  Cour fédérale

Date: 20210412

Dockets: T-1333-18
T-1334-18
T-1335-18

Citation: 2021 FC 295

Ottawa, Ontario, April 12, 2021

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

CRAIG LEVETT AND NATHALIE BENSMIHAN
OFER BAAZOV AND CATHY BENSMIHAN
9179-3786 QUÉBEC INC.

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

THE CANADA REVENUE AGENCY

Federal Board

JUDGMENT AND REASONS

I. Introduction

[1] These three Applications for judicial review [the Application(s)] concern three Requests for Specific Exchange of Information [the Requests for Information] addressed by the Canada Revenue Agency [the CRA], to the Swiss Federal Tax Administration [the Swiss authorities] pursuant to the *Convention between Canada and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital* done at Berne on May 5, 1997, as amended to include the *Interpretative Protocol* done on October 22, 2010 and the *Supplementary Convention* done on July 23, 2012 [the Convention].

[2] More precisely, (1) Mr. Craig Levett and Mrs. Nathalie Bensmihan, husband and wife, challenge the Request for Information dated October 20, 2017, in which they are jointly named (Court file T-1333-18); (2) Mr. Ofer Baazov and Mrs. Cathy Bensmihan, husband and wife, challenge the Request for Information dated October 20, 2017, in which they are jointly named (Court file T-1334-18); and (3) 9179-3786 Québec Inc. [the 9179 company], a Quebec-registered numbered company, owned by Mr. Levett, challenges the Request for Information dated April 19, 2018 (Court file T-1335-18). The term "Applicants" will refer hereinafter to the four physical persons and the 9179 company collectively.

[3] As remedies, the Applicants ask the Court to (1) quash the Requests for Information; (2) order the CRA, the Minister of National Revenue [the Minister], and their officers, employees and agents to send a letter to the Swiss authorities informing them that the Requests for

Information have been quashed, and requesting that they cease all activity related to the Requests for Information; (3) prohibit the CRA, the Minister, and their officers, employees and agents from using and relying on any information provided in response to the Requests for Information, and any information derived therefrom; (4) prohibit the CRA, the Minister, their officers and their employees and agents from sending further requests to the government of Switzerland – or any other foreign country – that concern the Applicants and are similar to the Requests for Information until the CRA, the Minister, and their officers, employees and agents have exhausted all domestic means of audit regarding the information and documents sought by the Requests for Information; and (5) the whole with costs.

[4] On August 29, 2018, Madam Prothonotary Steele ordered, *inter alia*, that the three Applications (Court files T-1333-18, T-1334-18 and T-1335-18) be consolidated pursuant to Rule 105(a) of the *Federal Courts Rules*, SOR/98-106 [the Rules]. Madam Prothonotary Steele also identified Court file T-1333-18 as the lead Application for the purposes of proceedings management and of the hearing on the merits, indicated that a copy of any judgment rendered in file T-1333-18 would also be placed in the other two files, and outlined the proper style of cause.

[5] For the reasons exposed hereafter, the Applications will be dismissed.

II. Brief Procedural History

[6] On July 11, 2018, the Applicants filed their three Notices of Application. The Applicants essentially asserted that the Requests for Information were irremediably vitiated, and unreasonable, because the CRA (a) acted beyond its jurisdiction; (b**)** did not comply with the

provisions of the Convention and the applicable rules of law; (c) acted based on allegations of fact which were false and which it knew to be false; and (d) failed to provide full, frank, and honest disclosure to the Swiss authorities. The grounds for review then set out by the Applicants were that the Requests for Information are invalid because the CRA did not exhaust all domestic avenues of compliance and did not provide full and frank disclosure to the Swiss authorities.

[7] In each of their Notices of Application, the Applicants included a request pursuant to Rule 317 of the Rules for an itemized list of relevant material in the possession of the CRA, and not in the possession of the Applicants, including the "CRA auditor's records of conversations T2020."

[8] The CRA provided responses though separate certificates under Rule 318 of the Rules. Hence, on August 9, 2018, the CRA provide its first three Rule 318 certificates, one for each of the court files – which had not yet been consolidated. Among the material included were "Memos for File (T2020) in bundle," which included redacted long and short Memos for file (T2020) for the files regarding applicants Craig Levett, Ofer Baazov and the 9179 company.

[9] On August 27, 2018, the Applicants served an affidavit sworn by Mtre Charles Leibovich, one of the Applicants' representatives in the CRA audits described below. Mtre Leibovich attached 18 exhibits (some of which include more than one document).

[10] On October 11, 2018, the Applicants received the affidavit sworn by Ms. Danielle Asselin, tax auditor for the CRA [the First Asselin Affidavit]. Ms. Asselin, *inter alia*, affirms that

the Requests for Information were presented to the Swiss authorities as part of Messrs. Levett and Baazov's audits, and that their wives were mentioned in order to verify if they had been used as nominees (prête-noms) to open bank accounts or hold assets outside of Canada. Along with her affidavit, Ms. Asselin introduces exhibits, including, as exhibit 5, the Memo for file (T2020) in each Mmes. Cathy Bensmihan and Nathalie Bensmihan's audit file. In addition, Ms. Asselin includes, as exhibit 6, seven (7) documents that should have been filed in the Rule 318 certificates.

[11] On June 28, 2019, Madam Prothonotary Molgat ordered that an un-redacted version of the short Memos for file (T2020) for the files concerning applicants Craig Levett, Ofer Baazov, and 9179 company, be provided to the Applicants. On July 4, 2019, the un-redacted versions were provided.

[12] On August 19, 2019, the Applicants served an additional affidavit sworn by Mtre Leibovich, introducing 11 exhibits. The filing of the affidavit is opposed by the Respondent, the Attorney General of Canada [the AGC], as detailed below.

[13] On October 2, 2019, the Applicants filed a Motion to Amend their Notices of Application and to accept Mtre Leibovich's August 19, 2019 affidavit for filing [the Motion to Amend] under Rule 369 of the Rules. The AGC opposed the Motion to Amend.

[14] On January 20, 2020, the CRA provided an Addendum to the Rule 318 certificates in response to the filing of the Amended Notices of Application. 16 documents were then provided, including letters between the CRA and the Toronto-Dominion Bank [TD Bank].

[15] On January 20, 2020, Madame Justice Walker decided, *inter alia*, that the Motion to Amend would be heard together with the merits of the Applications. She noted that the parties had agreed on a procedural timeline and procedural steps on the basis of the draft Amended Notices of Application, under reserve of the AGC's contestation of the proposed amendments.

[16] On February 4, 2020, the AGC filed an additional affidavit from Ms. Asselin [the Second Asselin Affidavit], and on February 24 and 25, 2020, Ms. Asselin was cross-examined by counsel for the Applicants. The Applicants have submitted both Ms. Asselin's affidavits and the transcript of her cross-examination as part of their Application Record.

[17] On January 20 and 21, 2021, the Court heard the parties' submissions on the merits of the Applications. At the onset of the hearing, the parties confirmed to the Court that the Motion to Amend was filed under Rule 369 of the Rules, that no hearing was necessary, and that they relied on their written submissions.

III. Motion to Amend the Notices of Application and to Accept the Affidavit for Filing

A. *Amended Notices of Application*

[18] Having had the benefit of consulting the First Asselin Affidavit and its exhibits, the Rule 318 documents transmitted by the CRA, and the un-redacted versions of the short Memos for file (T2020), the Applicants ask the Court to grant them leave to amend their Notices of Application and add five grounds for the Applications, as outlined in subsections (C), (D), (E), (G) and (H) of their Amended Notices of Application. The Applicants rely on Rule 75 of the Rules, which provides that the Court may, at any time, allow a party to amend a document. They notably cite *Canderel Ltd v Canada*, [1994] 1 FC 3 (CA), which states that amendments should be allowed in order to ensure that the proper issues are before the Court, provided that such amendments can be made without causing injustice that could not be remedied with costs.

[19] The Applicants submit that the amendments they propose should be allowed, as they clarify the questions in controversy between the parties, will not unduly delay the outcome of the files, will not result in a new issue or cause of action, and will not cause prejudice to the Respondent.

[20] The AGC opposes the proposed amendments, except those outlined at paragraph 14 of his Written Representations. He submits that the test is whether it is “more consonant with the interests of justice that the […] amendment be permitted or that it be denied” and lists some factors the Court may take into account. He essentially submits that the remaining amendments

should not be allowed, as they constitute new grounds for judicial review, are devoid of factual basis, and are untimely.

[21] The Applicants have satisfied me that the interest of justice weighs in favour of granting the Motion to Amend and allowing the Applicants to amend their Notices of Application.

[22] The AGC suffered no prejudice, having had the opportunity to respond fully to the new arguments raised. The AGC confirmed as much at the hearing.

B. *Filing of the additional affidavit*

[23] The Applicants also make their Motion pursuant to Rule 312 of the Rules, which provides that the Court may allow a party to file an additional affidavit, in this case the affidavit sworn by Mtre Charles Leibovich on August 19, 2019. Mtre Leibovich affirms, "I have knowledge of the facts and matters […], except for the facts that were told to me or that I read, which I verily believe to be true." He introduces as exhibits correspondence between the CRA and Mtre David Assor, the CRA and Mtre Steve Levy, and the CRA and each Mmes. Cathy and Nathalie Bensmihan. He also introduces two letters he sent to the CRA. Finally, he attaches a correspondence from Québec's Autorité des Marchés Financiers [AMF] to various attorneys regarding an investigation and Memos for file (T2020) regarding the Applicants.

[24] The Applicants first submit the affidavit is not an *additional* affidavit per Rule 312 of the Rules, as it was served and filed within the time period provided in and authorised by the Order of the Court dated June 28, 2019 (per Madam Prothonotary Molgat) [the Order]. If, however, the

affidavit does constitute an additional affidavit, the Applicants submit that the Order has already granted them leave to file it. In the alternative, the Applicants seek leave to file the affidavit under Rule 312 of the Rules, on the basis that the facts are relevant to the arguments raised in the Amended Notices of Application

[25] The AGC cites Rule 312(a) of the Rules, which provides that a party may be allowed to file an additional affidavit if the evidence is admissible and relevant. If this threshold is met, the Applicants must convince the Court to exercise its discretion in favour of granting leave based on a number of factors. They include the availability of the evidence when the affidavit was filed, the Applicants' due diligence in obtaining it, the assistance the evidence may provide to the Court, and the possibility of substantial or serious prejudice to the other party.

[26] The AGC submits that, for the most part, Mtre Leibovich's proposed additional affidavit dated August 19, 2019 is inadmissible, as he does not have personal knowledge of the matters he deposes of. The AGC adds that, in an application for judicial review, an affiant cannot depose of information he *believes to be true* without violating the prohibition against hearsay evidence (under Rule 81(1) of the Rules and *Moldeveanu v Canada (Minister of Citizenship and Immigration)*, [1999] 235 NR 192 (FCA)). The AGC adds that Mtre Leibovich is not a party to the letters he attaches as Exhibits A, B, C, E, F, G and I, and did not personally receive the Memos for file (T2020) he attaches as Exhibit K; the whole as described at paragraph 44 of the AGC's Written Representations.

[27] The AGC adds that, if Mtre Leibovich's affidavit is admitted as evidence, only exhibits D and H and paragraphs 11 and 15 are admissible. However, the AGC argues that these paragraphs refer to letters (Exhibits D and H) dated March 13, 2017 and April 19, 2017, which were accessible to the Applicants. The AGC argues that the Applicants did not explain or file evidence as to why they were not filed earlier.

[28] I am satisfied that the Applicants can file the affidavit. However, I agree with the AGC that only exhibits D and H and paragraphs 11 and 15 are admissible.

[29] Under Rule 81(1) of the Rules, affidavits are "confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial." As such, in an Application, the affiant, Mtre Leibovich, could only depose of information within his personal knowledge.

[30] As the Federal Court of Appeal found in *Éthier v Canada (RCMP Commr)* [1993] 2 FC 659 (CA), Rule 81 is not an absolute prohibition on the admission of hearsay evidence. However, the prohibition against information based on belief is rooted in the common law rules against hearsay evidence. Indeed, our Court states in *Bressette v Kettle & Stony Point First Nations Band Council*, [1997] 137 FTR 189:

> This Rule embodies the common law rule of hearsay which prohibits the admission of statements made by someone not called as a witness, except when such statements are tendered for a purpose other than to establish their truthfulness. The rationale for these two tenets is that the evidence contained in an affidavit must be able to be tested during a cross-examination of the affiant (at para 3).

[31] The Applicants have presented no justification for their decision to ask Mtre Leibovich to attest to facts and documents that are not within his personal knowledge. Likewise, they have presented no indication that the proper fact witnesses – the parties to the letters and documents Mtre Leibovich attaches to his affidavit – were unavailable. The Applicants have not explained why these documents are admissible as attachments to Mtre Leibovich's affidavit – either in the affidavit itself or their submissions.

[32] I am satisfied it is in the interest of justice to strike from the record paragraphs 6, 7, 8 (as it pertains to Mtre Levy), 9, 10 (as it pertains to Mtre Levy), 12, 13, 14, 16 and 18 of Mtre Leibovich's affidavit, and to strike from the record the exhibits referred to in these paragraphs, i.e. Exhibits A, B, C, E, F, G, I, J and K.

[33] Paragraphs 11 and 15 and exhibits D and H of Mtre Leibovich's August 2019 affidavit will not be struck.

[34] At paragraph 11 of his affidavit, Mtre Leibovich affirms having sent a copy of Mtre David Assor's trust account ledger, and a copy of the bank statement for his trust account for the relevant period, to the CRA, as appears from his letter to the CRA dated March 13, 2017, attached to his affidavit as Exhibit D. Per the text of the letter, the documents are sent in further response to the CRA's "question 16." Me Leibovich adds that he had not received the consent of his client, Mrs. Nathalie Bensmihan, to the transmission of these documents to the CRA.

[35] At paragraph 15, Mtre Leibovich affirms having advised the CRA that the requested copies of supporting documents from TD Bank (of electronic fund transfers) were not available to him and his client, Mrs. Nathalie Bensmihan, as appears from the letter he sent to the CRA on April 19, 2017, in response to the CRA's letter of March 21, 2017, and attached to his affidavit as exhibit H.

[36] As further detailed below, the other exhibits attached to Mtre Leibovich's affidavit, if admitted, would not have affected my conclusion on the merits of the Applications.

IV. Context

A. *CRA audits of Messrs. Levett and Baazov*

[37] Ms. Danielle Asselin, an auditor for the CRA, was assigned to Mr. Levett and Mr. Baazov' audits from their inception. Per the information she provided in her affidavit, Ms. Asselin received information from a partner country ("pays partenaire") in regards to Zhapa Holdings, a British Virgin Islands corporation. She also gathered information regarding Messrs. Baazov and Levett on online discussion forums. This information led her to believe that Messrs. Levett and Baazov could have unreported foreign assets.

[38] By letter dated June 30, 2015, the CRA advised Mr. Levett that he was selected for an audit pursuant to section 231.1 of the *Income Tax Act* (RSC 1985, c 1 (5th Supp)) [the *Income Tax Act*] for the 2011 to 2013 taxation years. By letter also dated June 30, 2015, the CRA advised Mr. Baazov that he was selected for an audit for the 2010 to 2013 taxation years.

[39] In these June 2015 letters, the CRA individually informed Messrs. Levett and Baazov that it possessed information that led it to determine that they may have offshore holdings that they have failed to disclose for Canadian taxation purposes, as required by the *Income Tax Act.* The CRA attached questionnaires Messrs. Levett and Baazov were required to complete pursuant to section 231.1 of the *Income Tax Act.* A copy of these questionnaires is in the record, from which we see a number of questions to the taxpayer regarding whether he or his family members own residences, property, banks accounts, or investments accounts outside of Canada, and whether he or his family members have been involved with companies, trusts, and other entities outside of Canada.

[40] It is not disputed that for the years under audit, Messrs. Levett and Baazov have not declared foreign assets valued at more than CAD 100,000, as they did not complete T1134 or T1135 taxation forms for these years.

[41] On September 8, 2015, Messrs. Levett and Baazov returned their completed questionnaires, and documents in support thereof, to the CRA. Messrs. Levett and Baazov answered no to all questions pertaining to their or their family members' involvement with entities and ownership of assets outside of Canada.

[42] On March 8, 2016, Ms. Asselin questioned both Messrs. Levett and Baazov pursuant to the audits and, per their representations (at paragraph 17 of the Applicants' Memorandum of Fact and Law [the Applicants' Memorandum]), Messrs. Levett and Baazov undertook to provide additional information and documents related to their affiliation with and connections to

Canadian entities. Messrs. Levett and Baazov were questioned on a number of entities, including Zhapa Holdings and Kilworthy Limited, and confirmed they were not involved with and did not know about them (pages 639 and 650 of the Applicants' Record).

[43] On March 15, 2016, Ms. Asselin sent each of Messrs. Levett and Baazov a letter to ask for more information in regards to the corporate entities they had discussed. Ms. Asselin also asked them for information regarding their wives and, among other things, their wives' disposal of shares in 2011.

[44] Some of the documents sought by Ms. Asselin were not available to Messrs. Levett and Baazov. Indeed, during the same period, Messrs. Levett and Baazov were the subject of an investigation by the AMF. In the context of that investigation, the AMF had seized all of the documents relating to their dealings in the securities of a Canadian publicly traded company. Therefore, Messrs. Baazov and Levett could not provide the CRA with some of the documents it sought.

[45] On April 6, 2016, Ms. Asselin unsuccessfully tried to reach her liaison at the AMF. She did not mention the taxpayers in her voice message (pages 2261 and 2264 of the Applicants Record).

[46] In April and May 2016, the AMF remitted Messrs. Levett and Baazov certain documents, none pertaining to foreign entities, and Messrs. Levett and Baazov in turn provided documents to the CRA.

[47] On August 19, 2016, Ms. Asselin again contacted the AMF liaison to enquire into whether the taxpayers could receive a copy of the seized documents, and to obtain information on the proper procedure in this regard, reporting to Messrs. Levett and Baazov's then counsel the same day.

[48] In August 2016 and March 2017, Messrs. Levett and Baazov remitted yet more documents to the CRA.

[49] Per their own submissions (Applicants' Memorandum at para 21), nothing in the information or documents provided by Messrs. Levett and Baazov gave any indication to the CRA that they were involved with foreign entities or held investments, bank accounts, or other assets offshore.

[50] On April 27, 2017, Ms. Asselin contacted the investigative director of the AMF in order to obtain information about the investigation, particularly to ask whether the investigation would be concluded soon. The director responded that no information could be provided, as the investigation was ongoing, but he sent Ms. Asselin a decision from the Tribunal administratif des marchés financiers [the AMF Tribunal Decision and the AMF Tribunal] (bearing the reference *Autorité des marches financiers c Baazov*, 2017 QCTMF 32). In its decision, the AMF Tribunal reproduces allegations raised by the AMF, notably regarding the potential existence of two bank accounts in Switzerland, one held by Kilworthy Limited with Hyposwiss Private Bank Ltd. [Hyposwiss] and the other held by Optivilla Holding, a British Virgin Island corporation, with Union Bancaire Privée [UBP].

[51] On May 12, June 7, June 8, and June 21, 2017, the CRA sent requirements to various financial institutions for information regarding bank accounts and credit cards of Applicant Craig Levett. It also requested a list of shareholders of Amaya Inc. from a stock transfer company, as well as list of transactions performed by various persons and entities, including Messrs. Levett and Baazov, Optivilla Holding, Kilworthy Limited, and Zhapa Holdings.

[52] On May 12, 2017, the CRA sent similar requirements to TD Bank for information regarding bank accounts and credit cards of Applicant Ofer Baazov.

B. *CRA audits of Mmes. Cathy and Nathalie Bensmihan*

[53] The Court's decision on the inadmissibility of part of Mtre Leibovich's August 29, 2019 affidavit and some exhibits he sought to enter into evidence impacts the evidence adduced in regards to Mmes. Cathy and Nathalie Bensmihan's files the most.

[54] Essentially, there thus remain, in regard to Mmes Cathy and Nathalie Bensmihan, the information contained in the First Asselin Affidavit and its exhibit 5, Memos for file (T2020); the information contained in Mtre Leibovich's August 2019 affidavit and its exhibits D and H; and the documents remitted as part of the Addendum to the Rule 318 Certificates in January 2020.

[55] The evidence reveals that the CRA questioned each of Messrs. Baazov and Levett on their wives' sale of the shares in 2011, and that on November 2016, the CRA contacted each of Mmes. Cathy and Nathalie Bensmihan to inform them that an audit had been commenced for

their 2008 to 2013 taxation years. The CRA was interested in the sale of shares in 9191-1982 Québec Inc. to a Spanish company in November 2011 (see paragraphs 46-48 of the First Asselin Affidavit). As mentioned earlier, this information was sought in the questionnaires the CRA sent to Messrs. Levett and Baazov as part of their audits, following the March 2016 meeting.

[56] Mr. François Bergeron was the CRA auditor in charge of the audits of Mmes. Cathy and Nathalie Bensmihan until August 2018, when Ms. Asselin replaced him as auditor in charge of these audits (First Asselin Affidavit at para 49). The record shows (per Mrs. Cathy Bensmihan's Memos for file (T2020)) that Mr. Bergeron contacted Ms. Asselin on November 16, 2016 in order to ask her if she had Mrs. Cathy Bensmihan's personal bank accounts information in her file. Per the record, Ms. Asselin responded that she did not have them, but did have Mrs. Bensmihan and her husband's joint accounts information and could see a deposit for the amount Mr. Bergeron was looking for.

[57] Again, per the Memos for file (T2020), in November 2016, Mtre Shlomi Steve Levy, counsel for Mrs. Cathy Bensmihan, and Mtre Charles Leibovich, counsel for Mrs. Nathalie Bensmihan, individually requested that their clients be provided with questions to be answered in writing in lieu of an in-person interview. Mr. Bergeron's supervisor assented to that request on November 21, 2016 (pages 688-89 and 695-96 of the Applicants' Record). Mr. Bergeron's questionnaires were finalised, approved by his supervisor, and sent to the taxpayers in January 2017.

[58] Regarding Mrs. Cathy Bensmihan, the record shows Mtre Levy responded with the completed questionnaire on February 10, 2017 (Memo for file (T2020) at page 696 of the Applicants' Record). On February 17, 2017, Mr. Bergeron followed up with Mtre Levy regarding when he would receive a lawyer's trust account statement – the lawyer is not named. Mtre Levy subsequently confirmed having requested said statement (pages 696-97 of the Applicants' Record).

[59] Regarding Mrs. Nathalie Bensmihan, on March 14, 2017, Mr. Bergeron received a copy of Mtre David Assor's trust account statement (page 689 of the Applicants' Record). This entry is contemporary to the March 13, 2017 letter Mtre Charles Leibovich addressed to the CRA and attached as Exhibit D to his 2019 affidavit (page 532 of the Applicants' Record). In the letter, Mtre Leibovich states that he attaches a copy of Mtre Assor's trust ledger, as well as the corresponding bank statement. In the same letter to the CRA, Mtre Leibovich also mentions that these documents are provided "in response to question 16," presumably of the CRA's questionnaire addressed to his client, Mrs. Nathalie Bensmihan.

[60] On March 20, 2017, Mr. Bergeron asked his Department of Justice [DOJ] contact for advice regarding whether he could request information from a bank. The DOJ contact informed him that he should wait for counsel's opinion and continue to request such information directly from the taxpayers, as *Canada (Attorney General) v Chambre des notaires du Québec*, 2016 SCC 20 [*Chambre des notaires*] involved requesting information through the back door ("par en arrière"), without asking the taxpayers to waive privilege (the full name and reference of the case are not stated in Mr. Bergeron's notes).

[61] Also on March 20, 2017, Mr. Bergeron met with his supervisor. They agreed that he would request the information directly from the taxpayers. They would also make a request from the bank regarding *another account* (not the lawyer's account), which would not raise the concerns of counsel.

[62] For obvious reasons, the opinion Mr. Bergeron may have eventually obtained from counsel is not in the record.

[63] On March 22, 2017, Mtre Leibovich contacted Mr. Bergeron to mention that he would prefer that the letter addressed to his client (Mrs. Nathalie Bensmihan) have been sent to him. This appears to confirm that Mr. Bergeron did in fact request the information directly from the taxpayers.

[64] On March 23, 2017, the CRA sent TD Bank a requirement for supporting documents for two wire transfers of approximately $425,000, in the context of its verification of Mrs. Nathalie Bensmihan.

[65] On April 20 and July 4, 2017, TD Bank sent the information to the CRA.

[66] In August 2018, Ms. Asselin, the CRA auditor in charge of Messrs. Levett and Baazov's audit, was put in charge of Mmes. Cathy and Nathalie Bensmihan's audits.

[67] On cross-examination, Ms. Asselin confirmed that the requests for Mtre Assor's trust ledger account was sent directly to each of Mmes. Cathy and Nathalie Bensmihan, and that the documents were provided to the CRA at least twice, including by both of Mmes. Cathy and Nathalie Bensmihan's counsel.

[68] Also on cross-examination, Ms. Asselin confirmed that, in October 2017, she had not yet been assigned to Mmes. Cathy and Nathalie Bensmihan's audits. She stated that she was unaware of what was being done in their audit files prior to the reassignment (page 1513 of the Applicants' Record). She testified that the spouses were named in the Requests for Information as part of their husbands' audits (pages 1507 and following of the Applicants' Record). She pointed to the questionnaires sent to Messrs. Levett and Baazov in June 2015 and March 2016 which contained queries about each taxpayer's wife and family assets and activities, and referred to unexplained deposits and sales of shares.

[69] Finally, on cross-examination, Ms. Asselin described the process leading to the Requests for Information and confirmed the fact that the competent authority signing the requests relied solely on the auditor's information (pages 1371-75, 1380, 1385, 1390, 1437-38, 1513, 1526-7 and 1559 of the Applicants' Record). Ms. Asselin confirmed that the competent authority, which issues Requests for Information, is a separate team of CRA employees located in Ottawa.

C. *CRA audit of the 9179 Company*

[70] In December 2016, the CRA also conducted an audit of the 9179 company, which is owned by Mr. Levett, for its 2012 to 2014 taxation years. This was prompted by the CRA

obtaining information from the Agence du revenu du Québec, around February 2016, to the effect that the 9179 company had received a loan of some 1.3 million dollars from a Swiss entity, Socimbal AG [Socimbal], in 2007.

[71] Ms. Asselin was also in charge of this audit. Her examination of the company's financial records showed that the 9179 company had never repaid either capital or interest to Socimbal since 2007 (then a 10-year period).

[72] On November 21, 2017, Ms. Asselin sent questions to Mtre Leibovich, counsel to the 9179 company. On January 22, 2018, he (1) responded that the taxpayer (the 9179 company) was introduced to Socimbal by a Montreal lawyer, providing the name and telephone number of a contact at Socimbal (abroad); (2) indicated that no capital or interest has yet been reimbursed, "as lender satisfied with loan"; and (3) provided the disbursement document from the company, as well as and the loan agreement (page 130 and following of the Applicants' Record).

[73] On February 1, 2018, Ms. Asselin met with the 9179 company representative to obtain precisions and was again informed that Socimbal was satisfied with the loan.

[74] On April 19, 2018, the CRA issued the Requests for Information under review.

V. The Requests for Information under Review

A. *Mr. Levett and Mrs. Nathalie Bensmihan / Mr. Baazov and Mrs. Cathy Bensmihan*

[75] On October 31, 2017, the two couples, Mr. Craig Levett and Mrs. Nathalie Bensmihan and Mr. Ofer Baazov and Mrs. Cathy Bensmihan, were each the subject of a CRA Request for Information to the Swiss authorities (pages 59-62 of the Applicants' Record).

[76] The two Requests for Information are introduced by a letter from a Director of the International, Large Business and Investigations Branch of the Competent Authority Services Division of the CRA, who informs the Swiss authorities that the CRA is conducting two related audits and that the information requested in the two requests, although identical, must be requested under two separate requests.

[77] The Request for Information form contains 7 sections: (1) Canadian Taxpayer; (2) Spouse's Information; (3) Person in possession of the Information Requested; (4) Other Related Information (where 2011 to 2015 are indicated as the years under audit); (5) Background; (6) Nexus (Reasons to Request the Info); and (7) Information Requested.

[78] The Background section indicates, *inter alia*, that (a) the CRA is conducting an audit of the taxpayers and their spouses; (b) the AMF seized all of the documents from the taxpayers, and given this ongoing investigation in Canada, it was impossible for the CRA to obtain the requested information; (c) the CRA's suspicion in part arises from an April 2017 decision of the AMF Tribunal, attached to the Requests for Information, and certain elements of which are

outlined in the Requests for Information; and (d) the CRA's concern regarding Mrs. Nathalie Bensmihan's taxable income and unexplained deposits.

[79] The CRA requests information from Hyposwiss Private Bank for the period of January 1, 2012 to December 31, 2015 regarding accounts held by the taxpayers, Zhappa Holdings, or Kilworthy Limited. The CRA also request information from UBP in regards to accounts held by the taxpayers or Optivilla Holding.

B. *The 9179 Company*

[80] On April 19, 2018, the 9179 company was the subject of a Request for Information from the CRA to the Swiss Federal Tax Administration (pages 100-103 of the Applicants' Record). Mr. Levett is a shareholder of the 9179 company.

[81] The Request for Information is again introduced by a letter from the Director of the International, Large Business and Investigations Branch of the Competent Authority Services Division of the CRA, who outlines that the Request for Information relates to an audit of the taxpayer for the 2012 to 2014 taxation years.

[82] The Request for Information contains 6 sections (the sections mentioned above, except "Spouse's Information"), and the CRA essentially asks the Swiss authorities to request from Socimbal its list of shareholders, documentation for the loan, and an explanation as to why it was not repaid.

[83] It appears that the Applicants unsuccessfully challenged the Requests for Information before the Swiss courts in 2019. Indeed, the Respondent submits as part of his record a decision bearing the reference *A et al v Swiss Federal Tax Administration (ESTV),* A-223/2019 [the Swiss Court's decision].

VI. Legislative Framework

[84] Per the AGC's Memorandum of Fact and Law [the ACG Memorandum], the exchange of information process between Canada and Switzerland was first included in Article 25 of the *Canada-Switzerland Income Tax Convention* of 1976, implemented into Canadian law by the *Canada-Switzerland Income Tax Convention Act, 1976* (SC 1976-77, c 29).

[85] As mentioned above, Article 25 was modified by the *Convention between Canada and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital* done at Berne on May 5, 1997, as amended to include the *Interpretative Protocol* done on October 22, 2010 (through article XI of the *Protocol Amending the Convention Between the Government of Canada and the Swiss Federal Council for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital*, done at Berne on May 5, 1997) [the *Interpretative Protocol*]. The amendment was destined to bring Article 25 more in line with Article 26 (entitled Exchange of Information) of the *OECD's Model Convention with Respect to Taxes on Income and on Capital* [the OECD Model Convention].

[86] The current version of Article 25 reads as follows (Applicants' Record page 2424):

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration, assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to income or capital taxes. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the requested State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

> (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
>
> (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
>
> (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such

> information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
>
> 5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.

[87] Section 25 must be interpreted in accordance with the *Income Tax Conventions Interpretation Act* (RSC 1985, c I-4) [the *Interpretation Act*], the Supplementary Convention of 2012 implemented as Part 6 of the *Tax Conventions Implementation Act, 2013*, SC 2013, c 27, the *Interpretative Protocol* appended to the Convention, the commentaries to the OECD's *Model Tax Convention* (per *Pacific Network Services Ltd v Canada (Minister of National Revenue)*, 2002 FCT 1158 [*Pacific Network*]; *Blue Bridge Trust Company Inc v Canada (National Revenue)*, 2020 FC 893 [*Blue Bridge*] at para 20), and the Manual on the Implementation of Exchange of Information Provisions for Tax Purposes (Paris: OECD, 2006), [the OECD Manual].

[88] Article 2 of the *Interpretative Protocol* appended to the Convention reads as follows:

> 2. Regarding Article 25:
>
> (a) It is understood that an exchange of information will only be requested once the requesting Contracting State has pursued all

reasonable means available under its internal taxation procedure to obtain the information.

(b) It is understood that the competent authority of the requesting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 25 of the Convention:

(i) name and, to the extent known, other information, such as address, account number or date of birth, in order to identify the person(s) under examination or investigation;

(ii) the period of time for which the information is requested;

(iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

(iv) the tax purpose for which the information is sought;

(v) the name and, to the extent known, the address of any person believed to be in possession of the requested information.

(c) It is understood that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While subsection 2(b) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of subsection 2(b) nevertheless are to be interpreted in order not to frustrate effective exchange of information.

(d) Although Article 25 of the Convention does not restrict the possible methods for exchanging information, it shall not commit the Contracting States to exchange information on an automatic or a spontaneous basis.

(e) It is understood that in the case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is exchanged with the requesting

> Contracting State. It is further understood that this provision intends to provide the taxpayer a fair procedure and not to prevent or unduly delay the exchange of information process.

[89] Pursuant to these authorities, the Convention must be interpreted in a broad and liberal manner, to give effect to its provisions (see for instance OEDC Manual at pages 9-11).

[90] I am therefore satisfied that the CRA had some leeway in the information it could request under the Convention to ensure that Canadian taxpayers pay their taxes pursuant to the *Income Tax Act*.

[91] Pursuant to section 14 of the *Tax Conventions Implementation Act, 2013*, the Convention supersedes domestic laws to the extent of their inconsistency with the Convention.

[92] Under paragraph 1 of Article 25 of the Convention, the standard to apply is whether the information requested is "foreseeably relevant" to the requesting country's enforcement of its own laws.

[93] The purpose of the "foreseeably relevant" standard is to maximise the extent of the information that can be exchanged. Our Court recently interpreted this standard in *Blue Bridge*:

> [90 [..] Consequently, the courts must merely verify that the information order is based on a sufficiently reasoned request by the requesting authority concerning information that is not — manifestly — devoid of any foreseeable relevance having regard, on the one hand, to the taxpayer concerned and to any third party who is being asked to provide the information and, on the other hand, to the tax purpose being pursued.

> [91] Accepting Blue Bridge's interpretation would be contrary to the primary objective of Article 26 of the Convention, which, to reiterate, is to promote the exchange of information to the maximum extent possible. Article 26 specifies that the competent authorities of the contracting States shall exchange "foreseeably relevant" information in applying the provisions of the Convention.
>
> [92] In the circumstances, it was entirely appropriate for the Minister to focus the analysis on the foreseeable relevance of the information required by France, as set out in Article 26, paragraph 1, of the Convention and in accordance with the principles derived from the work of the OECD and the Global Forum.

[94] Per subsection 2(a) of the *Interpretative Protocol*, cited above, before submitting an exchange of information request, Canada must exhaust reasonable means available under its internal taxation procedure to obtain the information. Per its subsection (2)(b), the competent authority of the requesting State shall provide certain information to the competent authority of the requested State. The information is treated as secret and can only be used for the purpose which justified the request.

[95] Under Canadian law, section 241 of the *Income Tax Act* safeguards the confidentiality of taxpayer information:

> Provision of information
>
> 241 (1) Except as authorized by this section, no official or other representative of a government entity shall
>
> > (a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;
> >
> > (b) knowingly allow any person to have access to any taxpayer information; or

> (c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the Canada Pension Plan, the Unemployment Insurance Act or the Employment Insurance Act or for the purpose for which it was provided under this section.

[96] However, subparagraph 241(4)(e)(xii) of the *Income Tax Act* creates an exception for information provided pursuant to "a provision contained in a tax treaty with another country or in a listed international agreement."

VII. Issues before the Court

[97] The Court must determine the appropriate standard of review, and examine the eight arguments raised by the Applicants as per their Amended Notices of Application, i.e.:

1. The CRA illegally sought and obtained from the AMF confidential information concerning Messrs. Levett and Baazov;

2. The CRA acted based on mere undocumented suspicions by the AMF;

3. The CRA illegally sought and obtained privileged and confidential information concerning Mmes. Cathy and Nathalie Bensmihan, in violation of their rights to professional secrecy, to attorney-client privilege and to be secure against unreasonable search and seizure;

4. The CRA acted based on irrelevant allegations of facts;

5. The Requests for Information are invalid because the CRA did not exhaust domestic avenues;

6. The CRA acted based on allegations of facts which were false and which it knew to be false;

7. The Requests for Information are invalid because the CRA illegally disclosed confidential taxpayer information;

8. CRA did not provide full and frank disclosure to the Swiss authorities.

VIII. Parties' Submissions and Analysis

A. *Standard of review*

[98] The Applicants agree that the presumptive standard of review under *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] is reasonableness. They submit that reasonableness applies to all issues, except the issue of attorney-client privilege concerning Mmes. Cathy and Nathalie Bensmihan.

[99] However, in regards to the reasonableness, the Applicants add that two different frameworks of analysis apply, depending on the issue. They submit that the reasonableness framework set out in *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*], applies to the issues of confidential information allegedly obtained by the CRA from the AMF and to the alleged disclosure of taxpayer information to the Swiss authorities, while the *Vavilov* framework applies to all other issues.

[100] The AGC responds that, although a Requests for Information "is not a decision," the presumptive standard of reasonableness applies (AGC Memorandum at para 15). The AGC adds that the Requests for Information warrant "very considerable deference," as the CRA's investigatory powers are discharged pursuant to its mandate to protect the Canadian tax base (citing *Schreiber v Canada (Attorney General)*, [2000] 1 FC 427 at para 39).

[101] The AGC disagrees that the standard of correctness applies to some of the Applicants' arguments. The AGC submits that the mere fact that the Requests for Information touch upon their rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [the Charter] does not warrant the application of the standard of correctness (under *Doré* and *Vavilov*). The AGC argues that the power to issue a Request for Information is discretionary, and its impact on Charter rights is just one factor involved in its exercise.

[102] As such, the AGC submits that all issues are reviewable on a standard of reasonableness.

[103] As detailed below, the Applicants have not convinced me that section 7 and section 8 of the Charter are engaged or that the allegation of solicitor-client privilege violations is relevant to this Application. Consequently, the applicable standard for all issues is that of reasonableness as set out in *Vavilov*.

[104] I agree with the AGC that the decision to issue a Request for Information will be reasonable if the CRA had the authority to issue it and complied with statutory requirements. The Requests for Information must be reviewed with considerable deference. They are reviewed globally, by considering the relevant factual and legal constraints bearing upon the decision-maker (*Vavilov* at paras 85, 99-101).

B. *Argument 1: The CRA illegally sought and obtained from the AMF confidential information concerning Messrs. Levett and Baazov*

(1) Parties' Submissions

[105] The Applicants submit that the CRA took unlawful shortcuts to issue its Requests for Information in regards to Messrs. Levett and Baazov. They argue that the CRA requested information from the AMF regarding an ongoing insider trading investigation, while it knew or should have known that the communication of such information was prohibited by applicable law, and then based its Requests for Information solely on the unconfirmed information contained in the AMF Tribunal Decision it received from the AMF. The Applicants point in particular to the information concerning a bank account allegedly controlled by Kilworthy Limited with Hyposwiss Private Bank and a bank account allegedly controlled by Optivilla Holding with Union Bancaire Privée (UBP).

[106] The Applicants submit that any information obtained by the AMF in the course of an investigation is confidential pursuant to section 15.2 of the *Act respecting the Autorité des marchés financiers*, CQLR, c A-33.2 [the AMF Act], (renamed in 2018 the *Act respecting the regulation of the financial sector*, CQLR, c E-6.1) and section 297 of the *Securities Act*, CQLR, c V-1.1 [the SA]. They add that there was no provision in the AMF Act, the SA, or the regulations enacted thereunder which would have allowed the AMF to communicate any information or documents to the CRA.

[107] The Applicants stress that the CRA not only relied on the illegally obtained decision of the AMF Tribunal, but also inappropriately misrepresented the reliability of the information found in the decision in its Requests for Information, by presenting mere suspicions as facts and attempting to discredit Messrs. Baazov and Levett; all while the AMF, once it completed its thorough investigation, simply closed the file without prosecuting Messrs. Levett and Baazov.

[108] The Applicants argue the CRA's conduct violated their right to liberty and security of the person and their right not to be deprived thereof except in accordance with the principles of fundamental justice, as guaranteed by section 7 of the Charter, as well as their right to be secure against unreasonable search or seizure as guaranteed by section 8 of the Charter.

[109] The Applicants submit that the Requests for Information, the affidavits of Ms. Asselin, and the transmitted documents show no consideration of the objectives of the statute, the confidential nature of the information the CRA sought from the AMF, Messrs. Baazov and Levett's rights under sections 7 and 8 of the Charter, how Charter values would be best protected, or any attempt by the CRA to balance these under the *Doré* framework.

[110] As a result, the Applicants submit that the Requests for Information are unreasonable and should be quashed under article 24 of the Charter, to remedy the alleged Charter breaches.

[111] The AGC responds that (1) the information obtained from the AMF was not confidential, as the AMF Tribunal Decision was a public document pursuant to sections 15.1, 16 and 107 of the AMF Act; (2) the CRA auditor was aware that no documentary evidence from a financial

institution or foreign regulator concerning the Kilworthy Limited and Optivilla Holding bank accounts was before the AMF Tribunal (page 452 of the Respondent's Record), and cannot be faulted for presenting unconfirmed information to the Swiss authorities or trying to discredit Messrs. Levett and Baazov; (3) the wording used in the Requests for Information shows that the information before the AMF Tribunal was not taken at face value and was not presented as fact; (4) in any event, the AMF Tribunal Decision was attached to the Requests for Information; and (5) the Requests for Information are not solely based on the information found in the AMF Tribunal's decision, as the auditor received information from a partner country and gathered further information on discussion forums. Her suspicion was also caused by significant deposits and investments unexplained by the Applicants' taxable income.

(2) Decision

[112] Section 15.2 of the AMF Act states:

> Despite any other provision of this Act or of an Act referred to in section 7, information or a document obtained under section 15.1 is confidential and may not be used or communicated otherwise than in accordance with sections 15.3 to 15.7. The disclosure of such information or such a document, and its use or communication pursuant to any of sections 15.3 to 15.7, may not operate to otherwise affect the right to professional secrecy.

[113] Section 107 of the AMF Act states that the "decision of the [AMF] Tribunal shall be published in the bulletin provided for in section 34".

[114] The Applicants correctly submit that the CRA auditor contacted the AMF during its investigation, and the AGC confirms as much. However, I have not been convinced that the CRA

illegally sought, and illegally obtained, from the AMF confidential information concerning Messrs. Levett and Baazov.

[115] I find that:

1. The Applicants have not demonstrated that, per the wording of the AMF Act, it is illegal for the CRA to *seek* information from the AMF, even confidential information;

2. In any event, the Applicants have not established that the CRA did seek *confidential information* from the AMF, as the evidence shows it sought information on the procedure available to the taxpayers to retrieve copies of seized documents and on the status of the investigation (essentially information as to whether the investigation had concluded or not);

3. The CRA did not obtain *confidential information*, as the only document it obtained is the AMF Tribunal Decision, which is not confidential per sections 15.1 and 107 of the AMF Act;

4. In any event, the record shows that the CRA did not *solely* rely on the information contained in the AMF Tribunal Decision to issue the Requests for Information pertaining to Messrs. Levett and Baazov. On cross-examination (and as mentioned above), Ms. Danielle Asselin stated that the CRA's suspicion that the Applicants had unreported foreign assets was also based on unexplained transactions given the Applicants' Canadian assets and income, and information retrieved from the Internet, most notably on German forums;

5. It does not appear the CRA presented mere suspicions as facts, and, in any event, the CRA attached the AMF Tribunal Decision to the Requests for Information. The decision was therefore available to the Swiss authorities, which could appreciate the nature and reliability of the allegations; and

6. The Applicants have not demonstrated how sections 7 and 8 of the Charter are engaged. The Applicants have submitted no authorities to suggest that the protection of confidential information under the AMF Act has been

> accepted as a principle of fundamental justice or that seeking or obtaining the information, were it confidential, amounts to an unreasonable search or seizure.

[116] In addition, the Applicants have not explained how certain of the concepts and principles impact the validity or legality of the Requests for Information. For instance, they state that the CRA's reliance on the administrative decision was "inappropriate" (Applicants' Memorandum at para 80) and that the CRA sought, in the Requests for Information, to "discredit" the Applicants (Applicants' Memorandum at para 82). The Applicants have not detailed how these amounts to legal concepts, nor have they cited authorities to that effect. Even if their submissions were substantiated, they have not shown how these general assertions would have any bearing on these Applications.

[117] The Applicants have not convinced me that it was illegal for the CRA to seek the information it sought from the AMF, nor that it was illegal for the CRA to obtain a copy of the AMF Tribunal Decision. As the Applicants have not convinced me that the Charter was even engaged, there is no need to consider the *Doré* framework as suggested by the Applicants.

C. *Argument 2: The CRA acted based on mere undocumented suspicions by the AMF*

(1) Parties' Submissions

[118] The Applicants submit that certain allegations made by the CRA in the "Background" section of the Requests for Information pertaining to Messrs. Levett and Baazov, regarding a bank account allegedly controlled by an entity known as Kilworthy Limited with Hyposwiss and

another known as Optivilla Holding with Union Bancaire Privée, were based on the AMF's suspicions as detailed in the AMF Tribunal Decision.

[119] As mentioned above, the AGC submits that the CRA auditor cannot be faulted for presenting unconfirmed information, as she would otherwise find herself in a catch-22 situation, being neither able to verify the information nor to use it to assess taxes owing of the Applicants because the information is unconfirmed.

(2) Decision

[120] The Applicants have not convinced me that this argument can succeed for the reasons the AGC outlined.

[121] As mentioned, I find that the AMF's suspicions were not presented as more reliable than they were and that, in any event, the CRA attached the AMF Tribunal Decision to the Requests for Information for the Swiss authorities to assess the reliability of the information. The Applicants have also not convinced me that these suspicions constituted "the core" of the Levett and Baazov Requests for Information (Applicants' Memorandum at para 90).

[122] I further find that nothing prevented the CRA auditor from faithfully presenting unconfirmed information or suspicions.

[123] As a result, the Applicants' second argument fails to convince me that it was unreasonable for the CRA to present the information as it did, nor that sais presentation viciate fatally the Requests for Information. .

D. *Argument 3: The CRA illegally sought and obtained privileged and confidential information concerning Mmes. Cathy and Nathalie Bensmihan, in violation of their rights to professional secrecy, to attorney-client privilege and to be secure against unreasonable search and seizure*

(1) Parties' Submissions

[124] The Applicants submit that the CRA breached Mmes. Cathy and Nathalie Bensmihan's constitutional rights to professional secrecy, to the protection of attorney-client privilege, and to be secure against unreasonable search and seizure when it illegally sought and obtained privileged and confidential information in violation of the law and of its own internal guidelines concerning attorney-client privilege.

[125] They cite *Chambre des notaires* and submit that the CRA was fully aware of the privileged nature of Mtre Assor's trust ledger account and of the bank records regarding his bank account and the corresponding transactions in Mmes. Cathy and Nathalie Bensmihan's accounts. It adds that the CRA nevertheless went against Department of Justice counsel's advice and issued a requirement under section 231.2 of the *Income Tax Act*.

[126] The Applicants add that the information obtained by the CRA as the result of these violations was gathered prior to the issuance of the Requests for Information in regards to Messrs. Levett and Baazov, that it formed part of the record available to the CRA at the time of

issuance of the Requests for Information, and that it constituted the basis on which the CRA made a number of statements concerning Mmes. Cathy and Nathalie Bensmihan's alleged undisclosed offshore bank assets or income. They point to three instances in the background section of the two Requests for Information that refer to bank deposits and investments which the CRA believes cannot be explained by Mmes. Cathy and Nathalie Bensmihan's Canadian income and assets.

[127] The Applicants stress, in this regard, that the CRA's Rule 318 response included the information on Mmes. Cathy and Nathalie Bensmihan and that the Memos for file (T2020) pertaining to Mmes. Bensmihan's audits indicate that Ms. Asselin discussed the file with Mr. Bergeron on November 16, 2016 (page 695 of the Applicants' Record). Hence, they argue, as Mmes. Bensmihan's audits were part of the record used to prepare and send the Requests for Information, a Charter violation in the audits irremediably impairs the Request for Information themselves.

[128] The Applicants argue that the decisions are incorrect, applying the standard of correctness set out in *Vavilov* for issues of attorney-client privilege (which is a question of central importance to the legal system as a whole, per paras 59-60).

[129] The Applicants add that since the CRA did not consider the purported Charter violations when issuing the Requests for Information, the decisions should be quashed (under *Vavilov*). In the alternative, the Applicants again submit that the decisions should be quashed under section 24 of the Charter.

[130] The AGC responds that the CRA did not obtain information in breach of solicitor-client privilege.

[131] The AGC first submits that the Applicants' argument is not relevant to the Requests for Information, as Mtre Assor's trust account ledger and the corresponding bank records were obtained solely as part of Mmes. Cathy and Nathalie Bensmihan's audits, which, at the time, were carried out by another auditor (Mr. Bergeron). Ms. Asselin was assigned to their audits in 2018 – after the Requests for Information were issued. At the time of issuance, she was unaware of this information regarding Mmes. Cathy and Nathalie Bensmihan.

[132] The AGC further submits that the Minister did not violate the Applicants' right to the protection of solicitor-client privilege. He cites the definition of "solicitor-client privilege" provided at section 232 of the *Income Tax Act* and submits that a trust account is not, in itself, always covered by solicitor-client privilege. Instead, the underlying transactions reflected therein can be privileged, and here, the transactions do not objectively appear to be related to the Applicants seeking or receiving legal advice.

[133] The AGC submits that, in any event, the ledger was remitted to the CRA by Mtre Charles Leibovich and subsequently by Mtre Steve Levy (counsel to Mmes. Bensmihan) voluntarily and without claiming privilege. In addition, the AGC responds that the subsequent requirement for information under the *Income Tax Act* issued to TD Bank arose from the source documents voluntarily provided by Mmes. Bensmihan's representatives.

(2) Decision

[134] The Applicants have not convinced me that their argument can succeed as: (1) they have not demonstrated that all the criteria required to establish solicitor-client privilege were met; (2) in any event, the trust account ledger was requested from the taxpayers themselves, and importantly, was remitted voluntarily to the CRA by their lawyers, while the subsequent requirement for information issued to TD Bank arose from the source documents; and (3) the trust account ledger and the corresponding bank records were obtained solely as part of Mmes. Cathy and Nathalie Bensmihan's audits, which are unrelated to the audits that led to the issuance of the Requests for Information.

[135] First, the Applicants have not outlined how the relevant information is covered by the privilege. They have confirmed that Mtre Assor was Mmes. Bensmihan's solicitor, but have not detailed how the trust account documents relate to seeking or giving of legal advice (*Pritchard v Ontario (Human Rights Commission)*, 2004 SCC 31 at para 15).

[136] Second, if they were privileged information, I understand that, under *Chambre des notaires* and *R v McKinlay Transport Ltd*, [1990] 1 SCR 627, the Charter may be engaged on issues of solicitor-client privilege (1) under section 7, as the privilege has been recognised as a principle of fundamental justice; and (2) under section 8, as requirements issued under section 231 of the *Income Tax Act* may constitute a seizure, which will generally be labelled unreasonable if executed in violation of solicitor-client privilege.

[137] In regards to the privilege, the evidence shows that the CRA received the documents twice, from Mmes. Cathy and Nathalie Bensmihan's respective counsel, authorised to communicate with the CRA (pages 688 and 696 of the Applicants' Record).

[138] Furthermore, the Memo for file (T2020) regarding Mrs. Nathalie Bensmihan indicates that the auditor decided to send his requests directly to the taxpayers, i.e. to Mmes. Cathy and Nathalie Bensmihan, to address the concerns raised in *Chambre des Notaire*s. As mentioned, Ms. Asselin confirmed on cross-examination that the requests were sent to the taxpayers, and the Applicants have not argued otherwise. The taxpayers were thus clearly informed of the CRA's requests, and there is no indication that they, as holder of the privilege, have not waived it.

[139] The determinative concern raised by the Supreme Court in *Chambre des notaires*, the absence of a system to ensure that the taxpayer was aware of the requirement issued to his lawyer, is not in play here. In framing their issue, the Applicants try to align the facts with those of *Chambre des notaires.* The case stands for the principle that the CRA generally cannot issue a coercive request (a demande péremptoire or "requirement" under section 231.2 of the *Income Tax Act*) to a third party for information that is or may be privileged. As the Applicants suggest, the CRA auditor appears to have been advised by counsel, at the time he requested the information, that he should ask the taxpayer for the information, not obtain it through a third party, which would engage *Chambre des notaires.*

[140] Two things happened here. Neither engages *Chambre des notaires.*

[141] First, the CRA requested the information directly from the taxpayers, and the taxpayers' representatives remitted the requested information to the CRA. *Chambre des notaires* prohibits requests to third-party lawyers when they are coercive and (unlike here) in the absence of a system that ensure the taxpayer is informed. Neither of these two requirements is met here.

[142] Given the facts entered into evidence in these proceedings, when it obtained the documents pertaining to Mtre Assor's trust account , the CRA could reasonably conclude, either that (1) privilege did not apply, as the trust account documents contained no information pertaining to legal advice, especially given that trust account ledgers are not always privileged; or (2) that Mmes. Cathy and Nathalie Bensmihan, having received the request directly, had waived privilege, which they hold, and allowed their representatives to share the document with the CRA.

[143] Second, *after* obtaining the ledger and the information regarding the transfers in 2017, the CRA sought to confirm (again in 2017) the transactions with TD Bank (pages 2300 and following of the Applicants' Record). The CRA had obtained the underlying information from counsel for the Applicants, who provided it voluntarily. Then, it confirmed the information with the bank, as it generally does pursuant to its policy. Since the information was initially disclosed voluntarily, it was reasonable to assume that *Chambre des notaires* did not apply.

[144] Third, and in any event, even if the information had been transmitted by the taxpayers' lawyers to the CRA in violation of the solicitor-client privilege, I am satisfied that the evidence

in the record establishes that this information was not used to make or support the decision to issue the Requests for Information.

[145] The evidence shows that Mmes. Cathy and Nathalie Bensmihan were mentioned in the Requests for Information in order to verify whether their husbands had used them as nominees to open offshore bank accounts or to hold offshore assets. This is reflected in the questionnaires the CRA sent to Messrs. Levett and Baazov in June 2015 and March 2016 as part of their audits.

[146] Ms. Asselin, the auditor who prepared the report for the competent authority, which formally issued the Requests for Information, was not involved in Mmes. Cathy and Nathalie Bensmihan's audits when the Requests for Information were issued, and affirmed that she had no knowledge of what was happening in their file.

[147] The fact that she answered some questions and provided information to Mr. Bergeron in November 2016 does not displace or contradict this evidence or her testimony. The information reflected in the lawyer's trust account ledger and the TD Bank account statements was therefore unknown to the auditor who prepared the Requests for Information, and the competent authority relied solely on the auditor's report to issue the Requests for Information. The Applicants have not established that the information in Mmes. Bensmihan's audit files, even if it had been obtained in breach of the solicitor-client privilege, played any role in the issuance of the Requests for Information.

[148] Finally, it appears the information relating to the lawyer's trust account ledger was not filed with the certificates under Rule 318, but was attached to the First Asselin Affidavit as exhibits.

[149] The only evidence suggesting otherwise is found in the exhibits to Mtre Leibovich's second affidavit, which I have struck from the record. The Applicants chose not to submit an affidavit from Mmes. Cathy and Nathalie Bensmihan or Mtre Assor, and did not offer an explanation as to why these witnesses were unavailable. As mentioned above, even with the evidence I found inadmissible, the Applicants' allegation of violation of solicitor-client privilege would not succeed.

E. *Argument 4: The CRA acted based on irrelevant allegations of facts*

(1) Parties' Submissions

[150] The Applicants submit that the CRA improperly acted based on irrelevant allegations of facts concerning Messrs. Levett and Baazov and Mmes. Cathy and Nathalie Bensmihan.

[151] In regards to Messrs. Levett and Baazov, the Applicants cite as irrelevant the fact that documents were seized by the AMF, as these documents pertained to Canadian corporations and assets, and the fact that Messrs. Levett and Baazov were suspected by the AMF of violating securities laws, which was not relevant for the purposes of the Requests for Information.

[152] In regards to Mmes. Cathy and Nathalie Bensmihan, the Applicants submit that the Requests for Information contain six specific statements concerning them that are irrelevant.

[153] The AGC responds that the Requests for Information are not based on irrelevant additions of information. He submits that the addition of contextual information to the Requests for Information does not affect their validity. While subsection 2(b) of the *Interpretative Protocol* enumerates the information to be provided to the competent authority, the AGC submits that the allegedly irrelevant elements were provided for the purpose of giving global context to the Requests for Information. The AGC adds that the Court cannot rule on the reasonableness of the Requests for Information on the basis of a perception of the anticipated effects or influence that these elements might have on the Swiss authorities.

(2) Decision

[154] The Applicants have not convinced me that the information is irrelevant and that, in any event, providing irrelevant information to the Swiss authorities affects the reasonableness of the Requests for Information. I further address below (under the Applicants' seventh argument) why a restrictive interpretation of the Convention is inappropriate.

F. *Argument 5: The Requests for Information are invalid because the CRA did not exhaust domestic avenues*

(1) The Baazov and Levett Requests for Information

(a) *Parties' Submissions*

[155] Both parties agree that, under the subsection 2(a) of *the Interpretative Protocol*, before sending a request for exchange of information pursuant to article 25 of the Convention, the CRA must have pursued "all reasonable means available under its internal taxation procedure to obtain the information."

[156] The Applicants submit that the CRA did not. The AGC responds that it did.

[157] In regards to the Baazov and Levett Requests for Information and audits, the Applicants submit that the CRA could have (1) made a written request for the information to the Applicants; (2) used its audit powers under section 231.1 of the *Income Tax Act* to inspect, audit or examine their books or records in an attempt to locate the information; (3) used its compliance powers under section 231.2 of the *Income Tax Act* to issue a requirement for information; and (4) sought a compliance order under section 231.7 of the *Income Tax Act* to compel them to provide the information or documents sought by the Requests for Information.

[158] The Applicants add that the CRA has never asked them for information pertaining to the 2014 and 2015 taxation years, which are not covered by the CRA audit but are covered by the Requests for Information.

[159] The AGC responds that the Minister exhausted all reasonable domestic avenues available. In regards to the Baazov and Levett audits, the AGC stresses that the CRA did try to obtain more information from Messrs. Levett and Baazov, who, while afforded many opportunities to disclose any foreign interests they might have, always denied having any.

[160] Finally, the AGC submits that the Swiss Court's decision (mentioned above and bearing the reference *A et al v Swiss Federal Tax Administration (ESTV)*, A-223/2019) supports the finding that the Minister has exhausted all reasonable means to obtain the information.

(b) *Decision on the Baazov and Levett Requests for Information*

[161] I agree that the CRA has no obligation to pursue *all* available domestic means. Instead, per subsection 2(a) of the *Interpretative Protocol*, the CRA needed to pursue "all reasonable means available under its internal taxation procedure to obtain the information" [emphasis added]. The Applicants' interpretation is not consistent with the wording of the Convention (see also *Update to Article 26 of the OECD Model Tax Convention and Its Commentary* (Paris: OECD, 2012); as mentioned, the Model Tax Convention and its commentaries are relevant per *Pacific Network* and *Blue Bridge* at para 20).

[162] Here, I am satisfied that the CRA pursued all *reasonable* domestic means available, given that:

1. As the information relating to the Swiss bank accounts was held by foreign corporations, the CRA could not request information from them directly pursuant to section 231.2 of the *Income Tax Act*;

2. As Messrs. Levett and Baazov claimed they had no relationship with Zhapa Holdings or Kilworthy Limited, the auditor could not request information from them pursuant to sections 231.1 and 231.2 of the *Income Tax Act*;

3. As Messrs. Levett and Baazov had answered the questionnaires sent pursuant to section 231.1 of the *Income Tax Act*, the auditor could not allege that they were in default and therefore could not seek a compliance order under section 231.7 of the *Income Tax Act*;

4. Although the questionnaires were not specific about the Hyposwiss and Union Bancaire Privée bank accounts, they contained questions on *any* bank accounts or investments held outside of Canada, in response to which the Applicants indicated that they had none;

5. The auditor could not use her audit power under section 231.6 of the *Income Tax Act*, since she had no indication that a *Canadian* taxpayer could provide the requested information regarding foreign entities;

6. The auditor could not make requests to the AMF to obtain documents or information pertaining to the indicia derived from the AMF Tribunal Decision because the AMF's investigation was ongoing;

7. The Minister could include information on tax years not covered by the audit, as there is no prohibition thereupon. That is especially so given the circumstances, i.e. the fact that the alleged bank account had been closed in 2016, that the Applicants had confirmed knowing nothing about the corporations named in the Requests for Information, and that the Applicants did not disclose any foreign interests in their 2014 and 2015 taxation filings – except for total foreign income of $3,467 declared by Mr. Levett in 2015, which is not relevant here;

8. The addition of the 2014 and 2015 taxation years does not change the nature of the information requested or meaningfully expand the scope of the Requests for Information . Furthermore, at the hearing, the AGC confirmed that that the Swiss authorities were aware that the two taxation years were not the subject of a CRA *audit*;

9. It would have evidently been preferable for the CRA to use the correct terms in its Requests for Information. However, the CRA explained that the use of the term "audit" in the Requests for Information referred to the request presented to the Swiss authorities and the enquiry rather than to an actual domestic tax audit under the *Income Tax Act*. In the circumstances and in light of the record, this explanation is not unreasonable.

(2) The 9179 Company Request for Information

(a) *Parties' Submissions*

[163] In regards to the 9179 company, the Applicants take issue with the fact that the CRA requested the name and information of a Socimbal contact person, which was provided, but who the CRA never contacted. They also note that the CRA did not ask the 9179 company for further information.

[164] The AGC responds that the information provided did not explain how a non-arm's length corporation would lend such a significant sum of money without asking for payment of interest or repayment of capital for approximately 10 years, and that the auditor had no other reasonable means available to obtain the information domestically.

[165] Finally, the AGC submits that the Swiss Court's decision supports the finding that the Minister has exhausted all reasonable means to obtain the information.

(b) *Decision on the 9179 Company Request for Information*

[166] Again, I agree with the AGC that the CRA exhausted reasonable means available in order to obtain the information domestically, given that:

1. As the information sought was in possession of Socimbal, a foreign corporation, the CRA could not request that information pursuant to its powers under sections 231.1 or 231.2 of the *Income Tax Act*; neither could the auditor resort to section 231.6 of the *Income Tax Act*: she had no

indication that a *Canadian* taxpayer could provide the requested information;

2. The auditor had no legal authority to require information from the contact person at Socimbal, as he was not a Canadian resident or a person carrying on business in Canada;

3. Regardless, the Applicants have not convinced me that the CRA had a legal obligation to contact the person abroad simply because it was provided with the contact information. Particularly in light of the laconic explanation repeatedly provided by the 9179 company that "lender satisfied with loan", it was not unreasonable for the CRA to resort to the Requests for Information process without contacting the Socimbal contact. Furthermore, it would have been reasonable for the CRA to conclude, in the circumstances, that the contact would either (1) not provide the information requested, or (2) provide insufficient or unreliable information to explain the suspicious loan.

[167] I therefore find that neither of the Applicants' statements withstand scrutiny. It is crucial to evaluate all of the Applicants' statements in light of the fact that the Applicants have declared no assets, revenues, or activities abroad, except for total foreign income of $3,467 declared by Mr. Levett in 2015. The Applicants have specifically denied having any foreign assets or relationships.

G. *Argument 6: The CRA acted based on allegations of facts which were false and which it knew to be false*

(1) Parties' Submissions

[168] The Applicants allege that the CRA made false representations to the Swiss authorities and that, applying the standard of reasonableness mandated by *Vavilov* for this issue, it follows

that the Requests for Information are invalid. They stress that the Requests for Information would be based on allegations of fact that were false and which the CRA knew to be false and would therefore be untenable in light of the relevant factual and legal constraints bearing upon the decision-maker – making them unreasonable (*Vavilov* at paras 85, 99-101).

[169] They cite as false (1) the impossibility to obtain the documents seized by the AMF; (2) the failure of Messrs. Levett and Baazov to provide information for the taxation years 2014 and 2015; and (3) the exhaustion of all domestic avenues to obtain the information by the CRA.

[170] The AGC responds that the Applicants' claim that the CRA request relied on inaccurate information is not only taken out of context but also fragmented. On the first point, the AGC notes that the auditor acknowledged that she received some of the documents seized by the AMF from the Applicants' representatives, but added that these documents only concerned domestic corporations. The AGC adds that, on the whole of the Requests for Information, it is clear that the statement, "Given this ongoing investigation in Canada, it was impossible for the CRA to obtain the *requested documents*" [emphasis added] refers to the documents *requested* by the CRA in its Requests for Information.

(2) Decision

[171] I acknowledged that the CRA's choice of word could have been more accurate. However, nothing in the allegations raised here by the Applicants serves, as suggested, to fatally vitiate the Requests for Information. Indeed, there is no indication that (1) the documents remitted by the AMF to the taxpayers related to foreign activities; (2) as mentioned previously, the Swiss

authorities were aware that Messrs. Levett and Baazov had not been audited domestically by the CRA for the years 2014 and 2015; (3) it is not false that the CRA exhausted reasonable domestic means available to obtain the information.

H. *Argument 7: The decisions are invalid because the CRA illegally disclosed confidential taxpayer information*

(1) Parties' Submissions

[172] The Applicants submit that the CRA went beyond the scope of what could be communicated to the Swiss authorities under the Convention. The Applicants refer to subsection 2(b) of the *Interpretative Protocol*, which lists the information that must be provided by the CRA to the Swiss authorities, and to subsection 241(1) of the *Income Tax Act*, which, as mentioned above, safeguards the confidentiality of taxpayer information. The definition of taxpayer information provided at subsection 241(10) does not include information that does not directly or indirectly reveal the identity of the taxpayer to whom it relates.

[173] The Applicants acknowledge the exception to the prohibition against disclosure of taxpayer information provided at subparagraph 241(4)(e)(xii) of the *Income Tax Act*, which permits disclosure of information under a provision of a tax treaty, but argue that it is restricted by the list of information of subsection 2(b) of the *Interpretative Protocol*.

[174] In essence, the Applicants submit that subsection 2(b) of the *Interpretative Protocol* exhaustively and limitatively lists the information that can be divulged (in their submission, they use the word "plafond," i.e. upper limit). The information actually disclosed by the CRA to the

Swiss authorities goes beyond what is required by the *Interpretative Protocol* and is therefore not covered by the exception of subparagraph 241(4)(e)(xii). As such, they submit that the information was provided in contravention of subsection 241(1) of the *Income Tax Act*.

[175] The Applicants argue that the CRA did not consider the factors provided in *Doré* and that the Requests for Information are therefore unreasonable. They argue that the Requests for Information should be quashed under both *Doré* and section 24 of the Charter.

[176] The AGC responds that the CRA did not violate section 241 of the *Income Tax Act* because section 241 does not apply to the Convention by virtue of the exception contained in subparagraph 241(4)(e)(xii), which permits disclosure of information otherwise protected by section 241 pursuant to a tax treaty.

[177] The AGC stresses that the information listed in subsection 2(b) of the *Interpretative Protocol* is a threshold rather than a maximum and that the Convention supersedes section 241. Our Court's decision in *Rémillard v Canada (National Revenue)*, 2020 FC 1061 does not apply to these circumstances.

(2) Decision

[178] The Applicants have not convinced me that the clear and specific exception of subparagraph 241(4)(e)(xii) of the *Income Tax Act* does not cover all information disclosed by the CRA to the Swiss authorities. As mentioned above, I conclude that the articles of the Convention should be given a broad and liberal interpretation. This approach is consistent with

the interpretive guidance on international conventions (see for instance OECD Manual at 9-11) and best effects the Convention's purpose.

[179] I am therefore satisfied that the list of information that is provided in the *Interpretative Protocol* is not limitative, and did not prevent the CRA from sharing additional information. I am equally satisfied that the exception of subparagraph 241(4)(e)(xii) of the *Income Tax Act* applied to such information.

[180] Finally, I note that Article 25 of the Convention (under which information is exchanged) specifically provides a safeguard for the confidentiality of the information exchanged. It states that "any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes covered by the Convention."

[181] The Applicants have not convinced me that the CRA illegally disclosed confidential taxpayer information.

I. *Argument 8: The CRA did not provide full and frank disclosure to the Swiss authorities*

(1) Parties' Submissions

[182] The Applicants initially submitted in their Memorandum that the Requests for Information were *ex parte* proceedings, which triggered a duty of full and frank disclosure, and that the CRA did not meet its duty because it disclosed only part of the information and context

of its audit procedures, and did so in a misleading and unfair manner. However, at the hearing, the Applicants abandoned this argument and raised a new one, absent from their memorandum.

[183] They argued that there exists a good faith principle in taxation matters that precludes the CRA from making false statements or raising irrelevant facts.

[184] The AGC initially responded that the Requests for Information are not *ex parte* proceedings. They are requests for *information*, information upon which the CRA may subsequently decide to act or not. Regardless, the CRA argues, all relevant information was disclosed fully and frankly.

(2) Decision

[185] I need not address the Applicants' initial argument, as they abandoned it. As for the argument they raised at the hearing, it remained unsubstantiated and unconvincing as a basis to vitiate the Requests for Information.

[186] Furthermore, for the reasons stated above, I have not been convinced that the information in the Requests for Information is either false, incomplete, or misleading.

IX. Conclusion

[187] For the reasons set out above, the Applicants have not convinced me that the CRA decision to issue the Requests for Information was unreasonable or incorrect. The Applicants have not demonstrated that the CRA failed to comply with the statutory requirements.

[188] The Applications for judicial review will therefore be dismissed, with costs on the ordinary scale.

JUDGMENT in T-1333-18, T-1334-18, T-1335-18

THIS COURT'S JUDGMENT is that :

1. The Motion to Amend the Notice of Application is granted;
2. The affidavit sworn by Mtre Charles Leibovich on August 19, 2019 is accepted for filing;
3. However, paragraphs 6, 7, 8 (as it pertains to Mtre Levy), 9, 10 (as it pertains to Mtre Levy), 12, 13, 14, 16 and 18 of Mtre Leibovich's August 19, 2019 affidavit, and the exhibits referred to in these paragraphs, i.e. Exhibits A, B, C, E, F, G, I, J and K are struck from the record;
4. The Applications for judicial review are dismissed;
5. Costs on an ordinary scale are granted in favor of the Respondent;
6. The Registry shall place in each of the related files, a copy of this judgment.

"Martine St-Louis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1333-18, T-1334-18 AND T-1335-18
STYLE OF CAUSE:	CRAIG LEVETT AND NATHALIE BENSMIHAN OFER BAAZOV AND CATHY BENSMIHAN 9179-3786 QUÉBEC INC. v. THE ATTORNEY GENERAL OF CANADA AND THE CANADA REVENUE AGENCY
PLACE OF HEARING:	MONTRÉAL (BY VIDEOCONFERENCE)
DATE OF HEARING:	JANUARY 20, 2021
JUDGMENT AND REASONS:	ST-LOUIS J.
DATED:	APRIL 12, 2021

APPEARANCES:

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Me Ian Demers Me Dominique Castagne Me Justine Allaire-Rondeau	FOR THE RESPONDENT

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