Date: 20240909

Docket: T-1758-18

Citation: 2024 FC 1405

Toronto, Ontario, September 9, 2024

PRESENT: Madam Justice Go

BETWEEN:

MILGRAM FOUNDATION

Applicant

and

ATTORNEY GENERAL OF CANADA
and
MINISTER OF NATIONAL REVENUE

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Milgram Foundation, was established in 1964 as a non-resident entity in Liechtenstein and did not file tax returns in Canada before 2015. In 2015, the Applicant submitted a disclosure application under the Voluntary Disclosure Program [VDP] of the Canada Revenue Agency [CRA], after it considered it might be deemed a Canadian resident for income

tax purposes under the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.)) [*ITA*]. The disclosure concerned the Applicant's taxation years 2003 to 2014 based on available financial records; the Applicant also disclosed that it was established in 1964 [Disclosure].

[2] By a letter dated December 18, 2015, the Minister of National Revenue [Minister], via a VDP officer, notified the Applicant that it accepted the Disclosure for the period from 2003 to 2014, but it reserved the right to audit or verify these years [First Acceptance Letter]. The Minister then issued notices of assessment for 2003 to 2014, and the Applicant paid the amount owing accordingly. On September 14, 2016, the Minister issued a revised assessment for the taxation year 2003 with a refund to the Applicant. In July 2016, the Minister initiated a second audit which lasted for two years and did not detect any error in the tax returns filed by the Applicant for 2003 to 2014.

[3] By a letter dated September 5, 2018 [Proposal Letter], the Minister informed the Applicant that upon its review of the Applicant's filings, undisclosed investment income was discovered. The Minister proposed to reassess the Applicant for the 1998 to 2002 taxation years [Decision]. The Minister stated the reassessment came about due to "misrepresentation" attributable to "neglect, carelessness or wilful default," and that the Minister "has information showing that Milgram was established in 1964." The Minister's proposed adjustments required the Applicant to pay additional tax, and a penalty.

[4] The Applicant seeks to judicially review the Decision. The Applicant asks the Court to consider whether the Decision breached the Applicant's legitimate expectations, amounted to an

abuse of process, and was unreasonable. The Respondents submit that the Proposal Letter is not reviewable and the application is barred by section 18.5 of the *Federal Courts Act* (R.S.C., 1985, c. F-7), arguing that the Court has no jurisdiction to hear the matter.

[5] I find this Court has jurisdiction to hear the application. I also find that in reversing her own decision to accept the Disclosure as voluntary and complete without justification, the Minister's Decision amounts to an abuse of power. I therefore grant the application.

II. Issues and Standard of Review

[6] The Applicant raises several arguments grounded in administrative law to challenge the Decision. The Applicant submits that the Minister's acceptance of their Disclosure gave rise to a binding agreement and the Minister's decision to pursue a further audit was a breach of that agreement. The Applicant also submits the Decision amounts to an abuse of process, is unreasonable, and violates the Applicant's legitimate expectations as it departs, without any justification, from the standard practices under the VDP.

[7] The Respondents, on the other hand, maintain that the Federal Court should not consider the application on jurisdictional grounds. The Respondents submit that the Proposal Letter is not a reviewable decision within the scope of section 2 of the *Federal Courts Act*, since it does not determine any of the taxpayers' rights, substantive or procedural. The Respondents cite, in support, *Prince v Canada (National Revenue)*, 2020 FCA 32 [*Prince FCA*] at para 21 and *Chekosky v Canada (Revenue Agency)*, 2019 FC 841 [*Chekosky*] at para 26. The Respondents

also submit that the application is a collateral attack on a tax assessment that the Minister has an obligation to issue and the Applicant has access to adequate and effective recourse elsewhere.

[8] Prior to the hearing, I invited the parties to make further submissions on two recent Supreme Court of Canada [SCC] decisions concerning the jurisdictional boundaries between the Federal Court and the Tax Court of Canada: *Dow Chemical ULC v Canada*, 2024 SCC 23 [*Dow Chemical*] and *Iris Technologies Inc. v Canada*, 2024 SCC 24 [*Iris Technologies*]. I thank counsel for making timely and helpful submissions within the short timeframe between the release of the SCC decisions and the hearing of this application.

[9] Having considered the parties' submissions, I believe the most logical way to proceed is to address the various issues raised by the parties in the following order:

a. What is the "decision" or "matter" under review in this application, and in this context, whether the "decision" in question is the Proposal Letter and whether it is a reviewable decision?
b. Is the application a collateral attack on a tax assessment?

Only if the Applicant overcomes the jurisdictional hurdles presented in the above two questions will I address the other issues the Applicant raised as follows:

c. Did the Minister's acceptance of the Applicant's Disclosure under the VDP result in a binding agreement?
d. Is the Decision an abuse of process?
e. Is the Decision unreasonable because it was made without justification, departed from the VDP practices and violated the Applicant's legitimate expectations?
f. What relief should the Court issue, if any?

[10] The Applicant suggests that on the issue of whether the Decision is reasonable, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at paras 10, 25. I agree. The Court should assess whether the Decision bears the requisite hallmarks of justification, transparency and intelligibility: *Vavilov* at para 99. The Applicant bears the onus of demonstrating that the Decision is unreasonable: *Vavilov* at para 100.

[11] I find that the Applicant's arguments on legitimate expectations and abuse of process are issues of procedural fairness, for which the standard of review is functionally a standard of correctness and no deference is owed to the decision-maker. The Court must ask itself whether the process was fair and just, taking into consideration the particular circumstances of the case: *Caron v Canada (Attorney General)*, 2022 FCA 196 at para 5; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; and *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56.

[12] The Applicant further submits no standard of review applies to whether the Minister's acceptance of the Disclosure gave rise to a binding agreement, although the Court may be called upon in its analysis to consider the reasonableness of the Minister's actions: *Rosenberg v Canada (National Revenue)*, 2016 FC 1376 [*Rosenberg 2016*] paras 32 and 38.

[13] I disagree. The Court in *Rosenberg 2016* did not make a definitive finding on the standard of review. I find instead that the presumptive reasonableness standard applies in determining whether the acceptance of the Disclosure resulted in a binding agreement.

III. Analysis

A. *Relevant Legislative Framework and Overview of the VDP*

[14] It is well-established that the Minister has a duty to administer and enforce the *ITA*, a duty that cannot be overridden or estopped: subsection 220(1) of the *ITA*; *Canada (Attorney General) v Collins Family Trust*, 2022 SCC 26 at paras 25-26; and *JP Morgan Asset Management (Canada) Inc. v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*] at paras 75, 77-79.

[15] In the exercise of this duty, the Minister has some administrative and discretionary powers, such as those set out in subsection 220(3.1) of the *ITA* which allows the Minister to "waive or cancel all or any portion of any penalty or interest otherwise payable" under the *ITA* for a period of ten years.

[16] Subsection 220(3.1) does not prescribe the specific conditions for which the Minister may waive or cancel penalties and interest. Instead, the Minister, through the CRA, issues various guidelines and information circulars, such as the *Information Circular IC00-1R4—Voluntary Disclosure Program* [*VDP Information Circular*] and the *Voluntary Disclosures Program (VDP) Operations Manual (v. 2.0)* [*VDP Operations Manual*] for the exercise of her discretion. Both the *VDP Information Circular* and the *VDP Operations Manual* were in effect at the time the Applicant filed its disclosure to the CRA.

[17] The VDP is set up as a relief mechanism that allows the Minister to use her discretion to waive or cancel some or all penalties or interests that would otherwise be payable under the *ITA*, where a taxpayer voluntarily reports any errors or omissions in their dealings with the CRA: *Canada (National Revenue) v Sifto Canada Corp*., 2014 FCA 140 [*Sifto*] at para 5. The VDP, therefore, serves as a tool to promote compliance with Canada's tax laws. Importantly, the VDP is not intended to serve as a loophole through which taxpayers evade their tax obligations: see *VDP Information Circular* at paras 8-9.

[18] According to the *VDP Information Circular*, to be considered valid, a taxpayer's VDP disclosure must be, among other things, voluntary, meaning, it must not be initiated in response of, for instance, a CRA enforcement action, and it must include information that is complete and accurate.

[19] If the Minister, through a delegated VDP officer, finds that the disclosure meets the VDP conditions, it will be considered a valid and complete disclosure and the taxpayer will be required to pay taxes or charges plus interest, but will not be charged penalties or prosecuted with respect to the disclosure: *VDP Information Circular* at para 11. The Minister may also grant partial relief in respect of the interest arising for the years preceding the three most recent years of returns required to be filed: *VDP Information Circular* at para 12.

[20] In summary, the VDP enables the Minister to reduce a taxpayer's tax burden if the taxpayer voluntarily acknowledges their past failures to comply with Canadian tax obligations

and agrees to rectify their noncompliance according to the program's guidelines and requirements.

[21] The relevant sections of the *ITA* are set out in Appendix A.

B. *What is the "decision" or "matter" under review?*

[22] As noted above, the Respondents refer to the Federal Court of Appeal [FCA]'s decision in *Prince FCA* and this Court's decision in *Chekosky* to argue that the Proposal Letter is not a reviewable decision. The Respondents submit that the Proposal Letter did nothing more than foreshadow the Minister's intention to reassess the Applicant for the 1998 to 2002 taxation years and, since it was not a final decision, invited the Applicant to provide additional information and submissions.

[23] The Applicant submits, in response, that the *Federal Courts Act* allows this Court to review a "matter" which is more than a "decision." The Applicant points to *Rosenberg v Canada (National Revenue)*, 2015 FC 549 [*Rosenberg 2015*] in which the Court stated that "the decision to undertake an audit and to request documents and information in the context of that audit constitutes a 'matter' within the meaning of subsection 18.1(1) of the [*Federal Courts Act*], in respect of which an application for judicial review may be made:" *Rosenberg 2015* at para 56.

[24] The Applicant also references Associate Judge [AJ] Steele's following observation in her April 13, 2022 order dismissing the Respondents' motion to strike the Applicant's judicial review application:

> [40] While *Rosenberg 2015/2016*, as well as other cases cited by Milgram (eg: *Sifto*; *Canada v CBS Canada Holdings Co*., 2020 FCA 4), are factually different, this does not, in my view, preclude the application of the broader principle that the Federal Court has jurisdiction to entertain matters relating to the existence, scope and legality of an agreement between the Minister and a taxpayer.

[25] I come to the same conclusion as AJ Steele, albeit on different grounds. I find that because the Applicant is challenging the Minister's conduct or process that led to the proposed reassessment, and not the proposed reassessment itself, the Applicant is raising a matter that falls within subsection 18.1(1) of the *Federal Courts Act*. I also find that the FCA's decision in *Prince FCA* does not stand for the proposition that all proposal letters are non-reviewable decisions. Instead, whether or not there is a reviewable matter arising from a proposal letter must be determined in the context of that case.

[26] I elaborate on my reasons below.

[27] First, in arguing that the Minister should not have reassessed the Applicant's tax liability after accepting the Disclosure, the Applicant is challenging the Minister's "conduct" or the process the Minister undertook, as opposed to the reassessment itself, a point I will return to later in my decision. The Applicant's focus on the Minister's conduct is evident by their arguments alleging breach of an agreement, abuse of process and the violation of legitimate expectations.

[28] Second, I adopt the reasons as set out in *Rosenberg 2015* at para 57, and find that the Applicant raises "grounds for judicial review known to administrative law that involve the

Minister's exercise of her audit powers and the scope of the discretion that was available to her to proceed with an audit of" the Applicant.

[29] Third, I do not read the FCA's decision in *Prince FCA* to suggest all proposal letters are by definition non-reviewable decisions. Further, the facts in *Prince FCA* differ significantly from the case at hand.

[30] In *Prince FCA*, the CRA initiated an audit of the applicant before the applicant attempted to file an application under the VDP. When the CRA decided to proceed with the reassessment and determined the applicant's VDP application was not voluntary, the applicant came to this Court to seek judicial review of the CRA's rejection of his VDP application. The applicant also sought an interlocutory relief to enjoin the Minister from proceeding to implement the proposed reassessments, while at the same time pursued an internal review of the Minister's decision. The Court dismissed the applicant's interlocutory request on the basis that the proposal to reassess was not "evidence of a 'decision'" within the meaning of subsection 18.1(3) of the *Federal Courts Act*: *Prince v Canada (Minister of National Revenue)* 2019 FC 348 [*Prince 2019*] at para 21.

[31] In dismissing the applicant's appeal of *Prince 2019*, the FCA set out three specific reasons. First, the FCA noted the Minister had stated that if the VDP application was granted or set aside following the judicial review application, the CRA would issue a new reassessment taking relevant matters into account. Second, the FCA found that acceding to the applicant's argument would effectively nullify or override the power granted to the Minister under

subsection 152(4) of the *ITA* to reassess "at any time." Third, the Court rejected the applicant's assertion of harm arising from the Minister's resort to enforcement powers. It was after considering these reasons that the FCA concluded the proposal letter, "in this context," was not a reviewable decision or order: *Prince FCA* at paras 16-18, 21.

[32] I note that while two of the three reasons the FCA offered may have some relevance to the case at hand, the first reason decidedly does not. The Minister in the herein matter is seeking to stop this Court from judicially reviewing her decision concerning the Applicant's VDP application, instead of offering the judicial review of the VDP matter as the reason why the Court need not review the proposal letter, as in the case of *Prince FCA*.

[33] There are other facts in *Prince FCA* that differ from the case at hand. For instance, in the facts before me, the Minister accepted the Applicant's Disclosure as voluntary and complete, and waited three years to reverse course and issue the Proposal Letter. The Applicant's Disclosure was not triggered by a CRA audit. Additionally, the Applicant is not seeking to enjoin the Minister's reassessment but is challenging the Minister's conduct in deciding to reassess.

[34] Even if *Prince FCA* does stand for the proposition that proposal letters are not reviewable because they represent the Minister's intention to reassess and are not final decisions, that rationale is less applicable when an applicant is seeking to challenge the process or conduct of the Minister underlying her decision to reassess.

[35] Fourth, I find *Chekosky* distinguishable on the facts. In *Chekosky*, the applicant, who was self-represented, was challenging the accuracy of the reassessment in the proposal letter, and seeking a reimbursement based on the original assessment, a relief that clearly did not fall within this Court's jurisdiction: *Chekosky* at paras 24, 46.

[36] Finally, I note that this Court has jurisdiction to review the Minister's decision rejecting a VDP, see for example: *Amour International Mines d'Or Ltée v Canada (Attorney General),* 2010 FC 1070; *4053893 Canada Inc. v Canada (National Revenue),* 2019 FC 51; and *4053893 Canada Inc. v Canada (National Revenue)*, 2021 FC 218 [*4053893 Canada Inc.*]. In those instances, the Court assessed the reasonableness of the Minister's determination that the disclosure in question was not voluntary or complete, or otherwise failed to meet the VDP requirements.

[37] I find it a tad incongruous that had the Minister, from day one, refused to accept to the Applicant's Disclosure as voluntary and complete, that decision would have been subject to judicial review. Yet, since the Minister decided to reverse her own decision three years down the road, she now argues the matter lies outside of this Court's jurisdiction.

[38] In conclusion, I find the Applicant's challenge to the Minister's conduct in deciding to reassess the Applicant after accepting the Applicant's Disclosure constitutes a "matter" within the meaning of subsection 18.1(1) of the *Federal Courts Act*.

C. *Is the application a collateral attack on a tax assessment?*

[39] The Respondents submit that this application is barred by section 18.5 of the *Federal Courts Act*. The Respondents contend that a holistic reading of the Applicant's Amended Notice of Application reveals that the essential character of the application is an attack on the legal validity of the tax assessments: *JP Morgan* at paras 50, 102. Given that the Tax Court of Canada has exclusive jurisdiction over tax assessments, the Respondents submit the Applicant cannot bring forth a judicial review of this tax dispute to the Federal Court.

[40] For the reasons set out below, I reject the Respondents' position that the Applicant is launching a collateral attack on a tax assessment.

Argument 1: Tax assessment falls under the Minister's non-discretionary statutory duty

[41] The Respondents' first argument is that contrary to the Applicant's suggestion, the Minister does not have the discretion to grant the Applicant tax amnesty for the 1998 to 2002 taxation years. As confirmed in both *Dow Chemical* and *Iris Technologies*, a tax assessment falls under the Minister's non-discretionary statutory duty. Additionally, the Respondents submit that the *VDP Information Circular* and subsection 220(3.1) indicate that VDP relief is only limited to penalty and tax relief. The Respondents therefore contend that the Applicant's claims to the contrary are without merit.

[42] While I agree with the Respondents that the SCC confirmed in *Dow Chemical* and *Iris Technologies* that a challenge to a tax assessment falls within the Tax Court's exclusive

jurisdiction, I disagree with the Respondents' characterization of the essence of the Applicant's application.

[43] As the SCC confirmed in *Dow Chemical*, the well-settled meaning of a tax assessment under the *ITA* is "a purely non-discretionary determination by the Minister of the taxpayer's tax liability for a particular taxation year:" *Dow Chemical* at para 43. The SCC also explained that "[t]he amount of tax owing – the product of the process of determining a taxpayer's tax liability for the relevant taxation year – 'flows from the *Income Tax Act* itself':" *Dow Chemical* at para 43, citing *The Queen v. Wesbrook Management Ltd.*, 96 DTC 6590 (F.C.A.), at p. 6591.

[44] However, the SCC clarified the jurisprudence does not hold that "anything at all that is 'ultimately related to an amount claimed' is part of an assessment," instead, "an assessment is the amount of tax at issue, not the process that resulted in the determination of that amount:" *Dow Chemicals* at para 44 citing *Okalta Oils Ltd. v. Minister of National Revenue*, [1955] S.C.R. 824, at p. 826.

[45] The SCC explained that "[i]n preparing an assessment, the Minister's role is simply to determine what the law requires the taxpayer to pay 'by applying a fixed statutory formula to the amount of the person's taxable income for that year, and the amount of a person's taxable income is a function of the events that occurred before the end of that year':" *Dow Chemical* at para 45. By contrast, when the Minister exercises discretion under the *ITA*, "these discretionary decisions are not assessments nor are they part of assessments:" *Dow Chemical* at para 46. As the SCC made clear: "When the Minister makes discretionary decisions, she provides her

opinion, guided by policy considerations. This is a task that is fundamentally different than the non-discretionary act of preparing an assessment:" *Dow Chemical* at para 46.

[46] To summarize, in *Dow Chemical*, the SCC distinguished between the "product" and "process" of assessing one's tax liability. The appropriate forum for appealing the tax assessment itself, the amount of taxes owing or the product, is before the Tax Court. Whereas to challenge the Minister's discretionary decision—her conduct, or process leading up to the tax assessment—the taxpayer should seek judicial review at the Federal Court.

[47] In *Dow Chemical,* the SCC determined that the powers of the Minister under subsection 247(10) of the *ITA* to grant or deny a taxpayer's request for a downward transfer pricing adjustment is a discretionary power fundamentally different from her non-discretionary role in making an assessment. This is because subsection 247(10) does not require the Minister to apply the facts and the law in exactly the same way to every taxpayer; her decision is based on policy considerations rather than the strict application of the law to the facts: *Dow Chemical* at para 50. I find the same can be said about the Minister's discretion to grant or refuse an applicant's disclosure application under the VDP.

[48] To start, subsection 220(3.1) of the *ITA* states that the Minister ***may*** waive or cancel all or any portion of penalty or interest otherwise payable under the *ITA*, making it clear that the decision to do so lies within the Minister's discretion. As well, the *VDP Operations Manual* under which the Minister exercises her discretion pursuant to subsection 220(3.1), emphasizes VDP officers' discretion to determine, among other things, whether certain activities would

invalidate a disclosure, what constitutes a "substantial error" that may disqualify a disclosure, and when a disclosure is considered to be "complete."

[49] In the context of this case, the VDP officer who accepted the Applicant's Disclosure and the VDP officer who conducted the second audit in 2016 exercised their discretion and determined that the Applicant's Disclosure was both voluntary and complete. By 2018, based on the same Disclosure the Applicant provided, the Minister came to a different conclusion. In arriving at this new determination, the Minister was presumably guided by the same provision of the *ITA* and the same policy consideration as set out in the *VDP Operations Manual*. While ultimately the Minister decided to propose a tax assessment, the process through which the Minister undertook to make that determination was a policy decision, based on the discretionary power granted to her under subsection 220(3.1) of the *ITA*.

[50] For these reasons, I reject the Respondents' argument that the application concerns the tax assessment that falls under the Minister's non-discretionary statutory duty.

Argument 2: The Minister has no jurisdiction to waive or cancel a tax liability

[51] The Respondents also emphasize that according to para 51 of the *VDP Information Circular*, VDP relief is limited to the amounts included in the disclosure and only in respect of interest and penalties. And so, neither subsection 220(3.1) nor the VDP scheme grant the Minister jurisdiction to waive or cancel a taxpayer's tax liability, as confirmed in *Prince FCA* at para 17.

[52] I reject this argument for three reasons.

[53] First, as the Applicant points out, the SCC in *Dow Chemical* included "the discretion to waive tax" as among the examples of the Minister's discretionary decisions that fall within the jurisdiction of this Court:

> [97] …In many contexts in which the Minister exercises discretion – which, in addition to s. 247(10), includes the discretion to waive tax, interest or penalties – it can be said that her discretion will have an impact on the amount of tax owing. If, for example, the Minister decides to waive a tax, the taxpayer's tax liability will change….
>
> [Emphasis added]

[54] I read the above-quoted passage to mean that the SCC signalled there may be situations where the Minister may exercise her discretion to waive a tax liability, and not just interests or penalties. As such, the fact that the Applicant's dispute involves a tax liability does not *per se* mean the Minister is exercising a non-discretionary duty.

[55] Second, in the Proposal Letter, the Minister did not justify her decision to reassess based on a lack of discretion to grant tax amnesty. Rather, the Minister noted the Applicant's "misrepresentation" that the Minister alleged was "attributable to neglect, carelessness or wilful default" as the justification for the reassessment. At the hearing, the Respondents essentially asked me to ignore the justification provided in the Proposal Letter as it is neither relevant nor necessary. With respect, I cannot do so. The Proposal Letter is the only document before me that offers some insight into the Minister's reasons behind her decision to reassess. I cannot disregard

what the Proposal Letter says simply because its contents appear to be inconsistent with what is purportedly the Minister's legislative non-discretionary duty to assess tax liability.

[56] Third, I acknowledge that based on the jurisprudence, the only form of relief under the VDP is relief from penalty or interest where a taxpayer discloses past omissions or errors with its dealings with the CRA. Further, as this is a tax dispute under the *ITA*, the *ITA* provision that grants the Minister its authority in the VDP scheme is subsection 220(3.1). See for example the following decisions: *Sifto* at para 5; *Klopak v Canada (Attorney General)*, 2019 FC 235 at para 43; *Grewal v Canada (Attorney General)*, 2022 FCA 114 at para 2; *4053893 Canada Inc.* at para 1; *Christen v Canada (Revenue Agency)*, 2021 FC 1440 at paras 15-16. However, the evidence the Applicant submitted appears to contradict, or at the very least, calls into question, the Respondents' submission that the Minister lacks discretion to grant tax amnesty under subsection 220(3.1) and the VDP. Under what the Applicant describes as "VDP Administrative Practices," the Applicant's evidence suggests that the prevalent practice of the VDP during the relevant time period is that an accepted voluntary disclosure settles all past omissions preceding the voluntary disclosure, provided that the taxpayer has endeavoured to submit all the relevant information in its possession.

[57] Specifically, the Applicant filed eight affidavits from tax lawyers who have esubmitted VDP disclosures on behalf of their clients and who confirmed the Applicant's description of the VDP practices. These lawyers also affirmed that they have not been involved in any cases where the CRA decided, after accepting the voluntary disclosure, to re-open the case and assess older years, on an estimated basis.

[58] The Respondents chose not to file any evidence of their own, and elected not to cross-examine the Applicant's affiants. The Respondents' motion to strike the Applicant's affidavits was rejected by my colleague Justice Tsimberis: *Milgram Foundation v Canada (Attorney General)*, 2023 FC 1499. At the hearing, the Respondents asked the Court not to give the lawyers' affidavits any weight, arguing that several of the lawyers came from the same law firms as Applicant's counsel.

[59] While I may not assign the same weight to all the affidavits given the relationship of some of the affiants with the Applicant, I cannot discard the uncontested evidence before me concerning the VDP practices. If nothing else, the evidence suggests that notwithstanding the language of the *ITA*, when it comes to the VDP, the Minister somehow retains some discretion under subsection 220(3.1) to limit a taxpayer's tax liability, beyond the waiver of penalty and interests.

[60] I acknowledge that this conclusion may appear to be inconsistent with the *ITA* and the Minister's non-discretionary duty to assess tax liability. The Applicant points to several cases where this Court found it acceptable for the Minister to decide not to assess, in the absence of sufficient information: *Abakhan & Associates Inc. v Canada (Attorney General)*, 2007 FC 1327 [*Abakhan*] and *Amdocs Canadian Managed Services Inc. v. Canada (National Revenue)*, 2021 FC 707. While I do not find these cases directly on point, and *Abakhan* was decided before *JP Morgan*, I agree that the decisions support the Applicant's position that despite *JP Morgan*, there is an acknowledgement from the Court that the Minister may reasonably decide not to assess tax liability in the face of insufficient information.

[61] Further, the Applicant submits, and I agree, that the legal landscape concerning administrative practices has shifted since *JP Morgan*. In *Vavilov*, the SCC highlighted an administrative body's past decisions and practices as a constraint that the reviewing court should consider when determining whether an administrative decision is reasonable, and where a decision-maker departs from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons: *Vavilov* at para 130. Citing *Vavilov*, the FCA in *Canada (Attorney General) v Honey Fashions Ltd*., 2020 FCA 64, also looked to the longstanding practices of the decision-maker when assessing the reasonableness of the decision in question.

[62] Although the factual context was different, I also note the Court in *Rosenberg 2016* rejected the Minister's argument that an agreement with the taxpayer not to proceed with tax assessments was null and void as it was unable to waive the obligation to enforce the *ITA*. The Court found that while section 220 of the *ITA* required that the Minister administer and enforce the *ITA*, it did not mandate how the statute was required to be administered and enforced, and how the powers were to be used:

> [72] I am afraid this argument cannot prevail. There is no doubt that the word "shall" conveys the notion that it is imperative (s 11, *Interpretation Act*, RSC, 1985, c I-21). However, the context in which the word is used is essential to understand what Parliament meant. This is the kind of provision that is seen in numerous pieces of federal legislation. It is Parliament vesting the executive branch with powers, duties and functions. Parliament uses the imperative to give a minister the duty, the responsibility, over a segment of the public service for particular purposes. Actually, subsection 220(2) provides that "[s]uch officers, clerks and employees as are necessary to administer and enforce this Act shall be appointed or employed in the manner authorized by law." Parliament also uses "may", which is permissive (s 11, *Interpretation Act*), when dealing with the use of powers: <u>the Minister must enforce the *Act*, as it is a duty</u>

> given by Parliament, but she may decide on the use that is to be made of the powers she has under the *Act*.
>
> [Emphasis added]

[63] I find the Court's observation in *Rosenberg 2016* with respect to the Minister's duty under section 220 was not restricted to cases where there is an agreement between the Minister and the taxpayer. I adopt the same reasoning to reject the argument advanced in *Rosenberg 2016* regarding the Minister's inability to waive the obligation to enforce the *ITA*.

Argument 3: The Applicant has not alleged or proved improper purposes for the tax assessments

[64] Next, drawing a comparison to *Iris Technologies*, the Respondents submit that the Applicant did not allege nor prove that the tax assessments were issued for improper purposes. The SCC in *Iris Technologies* found that the taxpayer's third declaratory relief sought—that the tax assessments were issued for the improper purpose of barring the Federal Court's jurisdiction—can be brought before this Court. However, the SCC found that no such facts were alleged or supported in the matter before it. Similarly, the Respondents submit the Applicant does not allege facts in this application that would support such a claim as the Applicant has not pointed to evidence of motive or conduct of the Minister, other than alleging that the tax assessments were in breach of a purported agreement and supposed VDP practice.

[65] I reject this argument for the following reasons.

[66] First, I have already determined that the "matter" before me is not the tax assessment itself, but the Minister's conduct when exercising her discretion to reassess the Applicant's

Disclosure, and that the Minister is exercising her discretion in reassessing the Applicant's Disclosure. This case is therefore distinguishable from that of *Iris Technologies* where the SCC found the Minister's assessment was not an exercise of discretion: *Iris Technologies* at para 47.

[67] Second, to the extent that the Applicant is required to make allegations about the Minister's conduct to bring their application within this Court's jurisdiction, the Applicant has done just that. In addition to alleging breach of an agreement, the Applicant also alleges abuse of power and violation of legitimate expectations.

[68] I find support for my conclusion in *Dow Chemical*, where the SCC quoted the observation of Justice Stratas of the FCA in *JP Morgan* that the "'[t]he Tax Court does not have jurisdiction on an appeal to set aside an assessment on the basis of reprehensible conduct by the Minister leading up to the assessment, such as abuse of power or unfairness', therefore in such a circumstance, 'the bar in section 18.5 of the *Federal Courts Act* against judicial review in the Federal Court does not apply':" *Dow Chemical* at para 48. The SCC added that Justice Stratas' view is reflected in *Canada v Addison & Leyen Ltd.*, 2007 SCC 33 at para 8:

> It is not disputed that the Minister belongs to the class of persons and entities that fall within the Federal Court's jurisdiction under s. 18.5. Judicial review is available, provided the matter is not otherwise appealable. It is also available to control abuses of power, including abusive delay. Fact-specific remedies may be crafted to address the wrongs or problems raised by a particular case.
>
> [Emphasis added by SCC]

[69] Indeed, when the process or the conduct of the Minister has a role in the issuance of an assessment, the SCC affirmed that it might be necessary for a taxpayer to pursue two recourses: a

judicial review before the Federal Court in respect of the Minister's conduct, and an appeal against the tax assessment before the Tax Court: *Dow Chemical* at para 91.

[70] Whether the Applicant has proven its allegations against the Minister is an issue that I will address later in my decision. For now, it is suffice to say that I find the Applicant has properly raised allegations of unfairness against the Minister, thus bringing this application within this Court's jurisdiction.

Argument 4: The declarations the Applicant seeks have no practical utility

[71] Last, the Respondents submit that the declarations the Applicant seeks are of no practical utility given that there is no live controversy between the parties. The Respondents argue that the Applicant's suggestion that the declarations may assist in further recourse are of no moment as they are vague hypotheticals. The Respondents analogize to *Iris Technologies* at paras 57-58.

[72] I am not persuaded by the Respondents' submission. Instead, I agree with the Applicant; there is a live controversy dealing with the VDP and the Minister's administration of the program, unlike the case in *Iris Technologies.* As the SCC confirmed, while the Court cannot invalidate a tax assessment, it can grant a declaration based on administrative law principles that the Minister acted unreasonably: *Dow Chemical* at paras 106-107.

[73] In addition, prior to the hearing, I granted the Applicant's leave to further amend the Amended Notice of Application to add another relief, namely, an order "[q]uashing the Decision and directing the Minister to reconsider, in accordance with the above declarations and to take

such actions as are necessary to give effect to the reconsidered decision." Without repeating my comments above, the relief the Applicant seeks is within this Court's jurisdiction to grant. The relief is not without practical utility, even if it becomes necessary for the Applicant to appeal the tax assessment before the Tax Court.

D. *Did the Minister's acceptance of the Applicant's Disclosure under the VDP result in a binding agreement?*

[74] Recounting the facts, and relying on its evidence (*VDP Information Circular*, *VDP Operations Manual*, and affidavits), the Applicant submits that the Minister's initial acceptance of the Disclosure gave rise to a contract, and as such, the Minister's subsequent decision to proceed with an audit of the Applicant's 1998 to 2002 taxation years was a breach of this binding agreement.

[75] In support, the Applicant points the Court to the *Civil Code of Quebec* (CQLR c. CCQ-1991) [*CCQ*] articles 1386, 1387, 1426, and 1434. By way of summary, the *CCQ* articles the Applicant relies on cover the basic tenants of contract law—the acceptance of an offer to contract and the binding nature of a contract.

[76] The Applicant also cites various cases, including *Bank of Montreal v Attorney General (Quebec)*, 1978 CanLII 173 (SCC), [1979] 1 SCR 565, which held that the Crown is bound by contractual obligations it enters into in the same manner as an individual and that the rights and prerogatives of the Crown cannot be invoked to limit or alter the terms of a contract. By that same principle, the Applicant submits that while the Minister has a legal duty to administer and

enforce the *ITA*, in fulfilling this duty, the Minister may reach an agreement that she is to be bound by, citing *Rosenberg 2015* at para 39; *CIBC World Markets Inc. v Canada*, 2012 FCA 3 [*CIBC World Markets Inc.*] at paras 22-25; *Canada v CBS Canada Holdings Co.*, 2020 FCA 4; and *JP Morgan* at para 79.

[77] Last, the Applicant analogizes to the matter in *Rosenberg 2015* and *Rosenberg 2016* to emphasize that the Minister's acceptance of the VDP disclosure confirmed and sealed a valid and binding agreement between the Applicant and Minister that the Minister was obliged to respect and follow.

[78] I reject the Applicant's submission that there was a binding agreement arising from the Minister's acceptance of the Disclosure under the VDP.

[79] I agree with the Respondents that unlike the facts in the case law the Applicant relies on, there is no evidence of a detailed agreement entered into between the Applicant and the Minister. Instead, the Minister's acceptance of the Disclosure was an exercise of the Minister's administrative powers under subsection 220(3.1) of the *ITA*.

[80] All the cases the Applicant relies on involved some type of settlement or agreement that was entered into with the Minister. The Court in these decisions looked at *Galway v Minister of National Revenue*, 1974 CanLII 2465 (FCA), [1974] 1 FC 600 [*Galway*], which remains settled law on agreements in the income tax context. This principle was summarized in *CIBC World Markets Inc.* where the FCA noted that "the Minister of National Revenue is limited to making

decisions based solely on considerations arising from the [*ITA*] itself" and "cannot agree to an assessment that is indefensible on the facts and the law:" *CIBC World Markets Inc.* at paras 23, 24.

[81] The *Galway* principle aside, what is missing in the Applicant's assertion that a contract arose out of the Minister's First Acceptance Letter is a mutuality that lies at the root of any legally enforceable agreement—*consensus ad idem*, or a meeting of the minds of the parties on all essential matters relating to the purported contract. The courts' application of *consensus ad idem* is, generally, the "objective reasonable man test," articulated in *Saint John Tug Boat Co. v Irving Refinery Ltd.*, [1964] SCR 614, [1964] SCJ No 38 (QL):

> If, whatever a man's real intention may be he so conducts himself that a reasonable man would believe that he was consenting to the terms proposed by the other party and that other party upon that belief enters into a contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

[82] Therefore, a contract will not exist until there has been a definite offer and an unqualified and unconditional acceptance of the offer communicated by the offeror. To be binding, the parties must come to the same determination, whether written, oral, or by some sign of intention.

[83] As the Respondents point out, the *VDP Information Circular* and the First Acceptance Letter outline that the Minister accepted the disclosure for the years 2003 to 2014 inclusively, and reserved the right to reassess those years. The parties' dispute before me arises in part from their different interpretation of this statement. From the Applicant's perspective, this statement

meant that the Minister would not reassess all prior years' taxation, while the Respondents assert it intended the Minister only accepted the Disclosure as it pertained to the years 2003 to 2014.

[84] In light of the First Acceptance Letter's wording and the qualifiers contained within, I find the Applicant has provided insufficient evidence to show that the Minister accepted the Applicant's Disclosure unconditionally and without qualifications. I also find there is insufficient evidence to demonstrate there was a meeting of minds between the Applicant and the Minister as to the effect of the Minister's acceptance of the Disclosure.

E. *Is the Decision an abuse of process?*

[85] The Applicant argues that the Minister's decision to "resile the Agreement" amounted to an abuse of process, as the Minister, and her delegates, must ensure her decisions are consistent with past practice and administrative adjudications, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*].

[86] The Applicant also cites the SCC's decision in *Toronto (City) v Canadian Union of Public Employees (C.U.P.E.)*, Local 79, [2003] 3 S.C.R. 77 [*Toronto C.U.P.E.*] for a summary of the doctrine of abuse of process:

> [35] Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616), and as "oppressive treatment" (*R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007:

> ... abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice.

[87] The Applicant submits that the doctrine of "abuse of process" is flexible and can be used to protect the integrity of any adjudicative process and is used in a variety of legal contexts: *Toronto C.U.P.E.* at paras 36 and 44.

[88] Other than stating that the Applicant does not raise any allegation of improper purpose for the Minister's reassessment, the Respondents make no submission on the issue of abuse of process.

[89] I have no difficulties finding the doctrine of abuse of process applies in the context of a judicial review of the Minister's exercise of her discretionary powers: *Dow Chemical* at 48.

[90] The question before me is whether the Minister's decision to reassess the Applicant amounts to an abuse of process.

[91] While I disagree with the Applicant that the Minister's acceptance of their Disclosure amounted to a binding agreement, I find that in reneging on her own prior decision by impugning, without any justifications, misrepresentation on the Applicant, the Minister's conduct violates a sense of fair play and the Decision amounts to an abuse of process.

[92] I observe that while *Blencoe*, para 153, the SCC analogized the doctrine of abuse of process to a breach of contract, the SCC also emphasized that the application of the doctrine is not limited to cases involving a breach of contract. It also applies to administrative proceedings that are "unfair to the point that they are contrary to the interests of justice" and where "conduct is equally oppressive:" *Blencoe* at para 120.

[93] Further, as *Toronto C.U.P.E.* made clear, the doctrine engages the inherent power of the court to prevent the misuse of its procedure, in a way that would bring the administration of justice into disrepute. The doctrine has been applied to preclude relitigation in circumstances where the strict requirements of issue estoppel are not met, but where allowing litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.

[94] Further, I note that doctrine of abuse of process is broad, flexible, and applies in various legal contexts, including in administrative proceedings, where abuse of process is a question of procedural fairness and is engaged to prevent abusive decision-making: *Toronto C.U.P.E.* at para 36 and *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*] at paras 34-35, 38. Central to the doctrine of abuse of process is the administration of justice and ensuring fairness: *Abrametz* at para 36. Additionally, the flexibility that characterizes abuse of process is important in the administrative law context, given the wide variety of circumstances in which delegated authority is exercised: *Abrametz* at para 35.

[95] To apply these principles of abuse of process to this tax dispute, it is helpful to revisit the Minister's decision to accept the disclosure in 2015, and then the decision to audit the Applicant in 2018.

[96] In the First Acceptance Letter, a VDP officer informed the Applicant that its voluntary disclosure was accepted, meaning that the VDP conditions of being voluntary and complete were determined to have been met. The VDP officer noted that the CRA would not consider 2003 to 2004 for the penalty period because the period "falls outside of the program's ten-year limitation period." The VDP officer also noted that the CRA's acceptance of the disclosure "covers the 2003 to 2014 taxation years." Additionally, the First Acceptance Letter indicated that the CRA would reserve the right to reopen the disclosure years of 2003 to 2014 for audit or verification, because "the VDP has not verified the accuracy of the information" the Applicant has provided in the Disclosure.

[97] Within a year after the First Acceptance Letter, the CRA conducted a second audit and found no errors with the Applicant's tax returns.

[98] However, three years after the Applicant's Disclosure was accepted, another officer from the CRA's Offshore Compliance Specialized Team issued the Proposal Letter to inform the Applicant that the Disclosure was in fact incomplete. According to the Proposal Letter, "certain investment accounts were not included in the voluntary disclosure submission" prior to 2003, and that "these accounts should have been disclosed and the investment income reported by the

taxpayer." The Proposal Letter went on to state that the CRA considered the unreported investment income earned prior to 2003 material.

[99] Attached to the Proposal Letter was "Appendix 2" that provided further explanations for the proposed adjustments. The relevant portion of explanations is reproduced below:

> The Milgram foundation ("Milgram") filed a voluntary disclosure on January 12, 2015, for taxation years 2003 to 2014. We do not propose to reassess the income of Milgram for the years included in its voluntary disclosure.
>
> However, we have information showing that Milgram was established in 1964. We propose to adjust the investment income of Milgram from 1998, although we know that its foreign bank accounts have been opened well before that.
>
> This proposal will correct the fiscal situation of Milgram from its creation to December 31, 2014.
>
> The bank statements of Milgram are not available from 1998 to 2002. Therefore, we compared the rate of return generated by the total investments of Milgram, from 2003 to 2014, with the historical long term interest rate of Switzerland computed by the Organisation for Economic, Co-operation and Development ("OECD") for the same period…..

[100] Read together with Appendix 2, I see three issues with the Proposal Letter. First, it suggests that the Minister decided to reassess the Applicant because of the information showing that the Applicant was established in 1964. Since the Applicant disclosed this information when it first applied to the VDP, this information was therefore not new to the Minister. Second, it suggests that the Minister was aware that the Applicant's accounts "have been opened well before 1998" and that the Applicant's bank statements "are not available from 1998 to 2002." Yet the Minister alleged that the Applicant "should have disclosed" investment earned on bank accounts prior to 2003 without stating what those accounts were. Third, while the Minister

asserted that there was “misrepresentation” in tax returns filed for the taxation years 1998 to 2002, no returns were filed by the Applicant in its Disclosure under the VDP.

[101] While, as noted above, I do not find a binding agreement between the Minister and the Applicant arising from the First Acceptance Letter, there is no dispute that the Minister has, through the VDP, accepted the Applicant’s Disclosure as complete and voluntary. The Minister decided on her own to change course and reassessed the Applicant. In so doing, the Minister tried to justify her decision by alleging misrepresentation on the part of the Applicant. Yet, in leveling this allegation, the Minister was relying on the same information that the Applicant already disclosed to the Minister, and that the Minister previously assessed as complete.

[102] In other words, the Minister attempted to pin her decision to reassess on an alleged misrepresentation based on information that was in fact disclosed by the Applicant at the time of the Disclosure. Devoid of any justification, the Decision is arbitrary; it violates the community’s sense of fair play, as well as the principles of judicial economy, consistency, finality and the integrity of the administration of justice. It therefore amounts to an abuse of power.

[103] I pause here to note a curious point about the Proposal Letter, namely the Minister’s statement in Appendix 2 that “this proposal will correct the fiscal situation of [the Applicant] ***from its creation*** to December 31, 2014” [emphasis added]. At the hearing, I asked the Respondents to comment on how the Minister’s decision to reassess dating back only to 1998 comports with their argument with respect to the non-discretionary nature of tax liability. If the Minister has no discretion to waive tax liability, then the proposed reassessment would not have

corrected the Applicant's fiscal situation from its creation. In reply, the Respondents agreed with my observation but asserted instead that the Minister could re-open the matter and issue further tax assessments against the Applicant at some point in the future.

[104] With respect, the Respondents' position reinforces the Applicant's argument about the arbitrariness of the Decision, and the lack of finality to the process, as the Minister may simply choose to re-open the application without any reason at any moment.

[105] For these reasons, I find the Applicant has established abuse of process on the part of the Minister, warranting this Court's intervention.

F. *Other Arguments the Applicant raises*

[106] As I find the Minister's conduct amounts to an abuse of process, it is not necessary for me to address the Applicant's remaining arguments.

G. *What relief should the Court issue?*

[107] As noted above, the Applicant sought a further amendment to their Amended Notice of Application and asks the Court to quash the Minister's decision to reassess, in addition to seeking declaratory relief.

[108] The Applicant submits that while the Court cannot invalidate the Minister's tax assessment, the Court may nevertheless grant declaratory relief based on administrative law

principles given the Minister's conduct. The Applicant refers to *Sifto* at para 25 in support, where the FCA noted that while the Court cannot review a tax assessment, it is open for it to grant a declaration based on administrative law principles that the Minister's conduct was unreasonable and it can grant remedies by issuing an order precluding the Minister from enforcing the penalty assessment or collecting resulting tax debt.

[109] The Applicant points to AJ Steele's order and contends that declaratory relief can assist in determining whether other recourse is available to the parties and may also bring the parties together to resolve outstanding issues before them such as the notices of objection, damages, or a potential judicial review of interest and penalty relief relating to the additional assessments.

[110] Disagreeing with the Applicant, the Respondents argue that absent exceptional circumstances, parties must pursue adequate and effective alternative recourses available to them before seeking judicial review. The Respondents submit that the Applicant itself suggests that there are a number of available remedies available to it. Further, the Respondents submit that the Applicant can appeal the 1998 to 2002 notices of assessment at the Tax Court of Canada should it wish to do so. The Respondents argue that since none of these recourses have been foreclosed or deemed ineffective or inadequate, this judicial review is premature: *JP Morgan* at para 84.

[111] I accept the Applicant's arguments and reject the Respondents' position.

[112] I note that, in *Dow Chemical* at para 106, the SCC confirmed this Court has the power to "quash the Minister's discretionary decision, which would require her to reconsider it."

[113] The SCC further noted that "[w]hile 'the Federal Court is not allowed to vary, set aside or vacate assessments' (*JP Morgan*, at para. 93), it has access to administrative law remedies that are appropriate for discretionary decisions by the Minister:" *Dow Chemical* at para 106. The SCC also cited *Sifto* at para 25 to note that "'while it is true that the Federal Court cannot invalidate an assessment ... the Federal Court may grant a declaration based on administrative law principles" in tax matters:" *Dow Chemical* at para 106.

[114] According to the SCC, if this Court decides to quash a decision on administrative law grounds, and the Minister issues a new decision that affects the amount of taxes owing, the assessment will be incorrect if it does not accurately reflect the new opinion. The Tax Court may intervene, "but only after the Federal Court has quashed the Minister's decision, after the Minister made a new decision, after that new decision results in a change in the taxpayer's tax liability, and if the Minister fails to issue a reassessment to reflect a change in tax liability:" *Dow Chemical* at para 106.

[115] I pause here to note that, while this litigation was underway, on February 3, 2021, the Minister issued notices of assessments for the taxation years of 1998 to 2002. The Applicant confirms that it filed notices of objection against these notices of assessments on April 30, 2021. However, these notices of objection have not been adjudicated. In light of these circumstances, quashing the Minister's decision to reassess may therefore have the practical effect of ordering the Minister to reconsider her decision.

[116] Given my finding that the Minister's decision to reassess the Applicant is an abuse of process, I find the appropriate order in this case is to quash the Minister's decision to reassess, and to grant the Applicant declaratory relief in accordance with my findings.

IV. Conclusion

[117] The application for judicial review is granted with costs. The Court directs parties to provide additional submissions on the matter of costs as set forth in the Judgment below.

JUDGMENT in T-1758-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted with costs.
2. The Court declares that the Minister's decision to reassess the Applicant's tax liability, after the Minister's acceptance of the voluntary disclosure filed by the Applicant constitutes an abuse of process.
3. The Minister's decision to reassess the Applicant is quashed. The Minister is to consider the Court's declaration and to take such actions as are necessary to give effect to the reconsidered decision.
4. The Court directs further submissions on costs. The Applicant will serve and file its submissions on costs by October 9, 2024. The Respondents will serve and file their submissions on costs by November 9, 2024. The submissions will not exceed 15 pages.

"Avvy Yao-Yao Go"
Judge

APPENDIX A

***Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.))**
***Loi de l'impôt sur le revenu* (L.R.C. (1985), ch. 1 (5e suppl.))**

Minister's Duty	**Fonctions due ministre**
220 (1) The Minister shall administer and enforce this Act and the Commissioner of Revenue may exercise all the powers and perform the duties of the Minister under this Act.	**220 (1)** Le ministre assure l'application et l'exécution de la présente loi. Le commissaire du revenu peut exercer les pouvoirs et fonctions conférés au ministre en vertu de la présente loi.
[…]	[…]
Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
220 (3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.	**220 (3.1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

FEDERAL COURT

SOLICITORS OF RECORD

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