Dockets: 2021-994(IT)G
2021-2721(IT)G
2025-1787(IT)G

BETWEEN:

INGREDION CANADA CORPORATION,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on November 20, 2025 at Toronto, Ontario, and December 2, 2025 at Ottawa, Ontario

Before: The Honourable Justice John A. Sorensen

Participants:

Counsel for the Appellant:	Olivier Fournier Samuel Julien Lara Bujold
Counsel for the Respondent:	Pascal Tétrault Dina Elleithy

ORDER

The Respondent's motion to amend the Amended Replies in Court files 2021-994(IT)G & 2021-2721(IT)G is dismissed without prejudice;

Paragraphs 14, 15(b) and 18 are struck from the Reply in Court file 2025-1787(IT)G, with leave to amend;

The Appellant's motion to stay proceedings in Court file 2025-1787(IT)G is dismissed;

The Appellant may file and serve an Answer in Court file 2025-1787(IT)G on or before February 9, 2026, and may make a written request for an extension of time to file the Answer, as necessary and prior to February 9, 2026, to accommodate any further steps in these matters that may arise in the meantime; and,

There will be no order as to costs.

Signed this 7th day of January 2026.

"John Sorensen"

Sorensen J.

Citation: 2026 TCC 3
Date: 20260107
Dockets: 2021-994(IT)G
2021-2721(IT)G
2025-1787(IT)G

BETWEEN:

INGREDION CANADA CORPORATION,

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HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Sorensen J.

I. Overview

[1] The Respondent[1] moved for leave to file Amended Amended Replies under Rule 54 of the *Tax Court of Canada Rules* (*General Procedure*)[2] (the "Rules") in Court files 2021-994(IT)G ("2012 Appeal") and 2021-2721(IT)G ("2013 Appeal"). In both matters, the assessments relied on the recharacterization rule in s. 247(2)(b) and (d) of the *Income Tax Act* (Canada)[3] to deny deductions of amounts described as interest. The Respondent seeks to add a new factual conclusion, issue and alternative argument based on the re-pricing rule in s. 247(2)(a) and (c) with the same effect.[4] The Appellant opposes the amendments on various bases.

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[1] I will refer to the Crown as the Respondent and the taxpayer as Appellant regardless of who is the moving party in either motion.
[2] SOR 90-688a.
[3] RSC 1985, c. 1 (5th Supp.) (the "Act"). All statutory references are to the Act unless otherwise noted.
[4] The Respondent also proposed to correct two minor typographical errors.

[2] The Appellant initially moved for a temporary stay of proceedings in Court file 2025-1787(IT)G ("2014/15 Appeal"),[5] pending a judicial review in the Federal Court under matter T-1973-25 (the "Judicial Review"). The Federal Court struck the Judicial Review and dismissed a motion to amend the notice of application, by order dated November 19, 2025. At the December 2, 2025, resumption of the hearing before this Court, the Appellant's counsel advised that the Judicial Review matter would be appealed, and that appeal was commenced on December 19, 2025.[6] Therefore, the Appellant's motion for a temporary stay of proceedings would extend to account for the timing of that appeal.

[3] The re-pricing factual conclusion, issue and argument that the Respondent proposes to add to the 2012 Appeal and 2013 Appeal were also set out in the Reply in the 2014/15 Appeal, and the Appellant also asked to have them struck or alternatively that the Court direct that a motion to strike be filed separately.

[4] At a high level, the appeals obviously concern transactions between the Canadian-resident Appellant and non-arm's length non-residents. The assessments were based on the argument that the subject cross-border inter-company loan was part of a Series of Transactions[7] (described as the "Hybrid Instruments" and the transactions that resulted from that series) that, on the whole, should be recharacterized as an equity investment in the Appellant. Part I Reassessments were followed by Part XIII Assessments and transfer pricing penalties.

[5] The Respondent's motion to amend the Amended Replies in the 2012 Appeal and 2013 Appeal is dismissed, without prejudice to file an amended motion with revised proposed amendments. Further, paragraphs 14, 15(b) and 18 of the 2014/15 Appeal Reply are struck, with leave to amend. Further procedural steps arising from this motion are reasonably anticipated, and by order of the Chief Justice dated December 15, 2025, a case management judge was appointed to referee going forward.

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[5] On November 6, 2025, the Respondent filed its reply in the 2014/15 Appeal, including the alternative argument based on s. 247(2)(a) and (c).

[6] See Court File A-437-25.

[7] Capitalized terms not defined in these reasons are based on definitions in the pleadings.

[6] The Appellant's motion for a stay of proceedings in the 2014/15 Appeal is also dismissed.

II. Motion to Further Amend the Amended Replies

a. Background

[7] The 2012 Appeal and 2013 Appeal were filed in 2021. The Appellant filed Amended Notices of Appeal in both matters on consent on December 1, 2023. Amended Replies followed on January 15, 2024. These matters were well-advanced at the time of these motions: the parties are currently dealing with follow-up questions arising from answers to undertakings. Document disclosure proceeded under Rule 82 (full disclosure).

[8] The 2014/15 Appeal was commenced in 2025, and the Reply included the s. 247(2)(a) and (c) argument, as noted.

[9] The Canada Revenue Agency generated retrospective valuation reports "as of" October 28, 2010 (the date of the subject transactions),[8] which opined on the reasonableness of the interest rate on intercompany debt between the Appellant and its owner, Corn Products Development, Inc. (a United States based, wholly owned subsidiary of Ingredion Incorporated, formerly Corn Products International Inc.). However, the Canada Revenue Agency's valuations work did not form part of the preparation of the Replies in any of these appeals. Rather, the Respondent's motions materials disclosed that the strategy to add repricing arose through counsel's interactions with experts.[9]

[10] The Respondent's counsel confirmed that these experts were not Canada Revenue Agency officers, but rather "outside experts".[10] Consequently, even if the Appellant were tempted to seek to ascertain from the Canada Revenue Agency files an underlying bases for the Respondent's late decision to plead repricing, there would be no point, since the initiative to plead repricing came from outside the Canada Revenue Agency. One might reasonably

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[8] Affidavit of Saxxon Geist-Deschamps, affirmed November 17, 2025 ("Geist-Deschamps Affidavit"), at Exhibits D and J.
[9] Affidavit of Marell Herrera, affirmed November 6, 2025 ("Herrera Affidavit"), at Exhibit F.
[10] Transcript of the November 20, 2025, hearing, page 29 from line 12 to page 30 at line 2.

assume that if the Canada Revenue Agency analysis had merit, it would have factored into a proper pleading in the first place, or a timely approach to amendment.[11]

b. Proposed Amendments to the Amended Replies

[11] The Respondent's proposed amendments (the paragraph numbering varies between the two Amended Replies) read as follows:

New factual conclusion at paragraph 8.1 or 13.1 as the case may be:

The AGC further states the following additional fact in support of the assessments under appeal:

a) in the alternative, and to the extent that parties dealing at arm's length would have entered into the Series of Transactions, which the AGC denies, at all times, the arm's length interest rate for the money Casco borrowed from CPD as part of the Series of Transactions was 0%.

New issue at paragraph 9(a.1) or 14(a.1) as the case may be:

a.1) in the alternative, to the extent that parties dealing at arm's length would have entered into the Series of Transactions, the terms and conditions made or imposed, in respect of the Series of Transactions, between Casco and CPD differed from those that would have been made between persons dealing at arm's length, pursuant to s. 247(2)(a) of the Act, such that the arm's length interest rate on the money Casco borrowed from CPD was 0%, pursuant to s. 247(2)(c) of the Act;

New argument at paragraph 11.1 or 16.1 as the case may be:

[11] At the December 2, 2025, hearing of this matter, the Respondent's counsel intimated that the Respondent does not necessarily have access to the whole of the Canada Revenue Agency's files when the Respondent drafts pleadings. While I find that proposition odd, I note that on December 18, 2022, MacPhee J granted the Respondent's motion for full disclosure under Rule 82 at which time, at the very latest, the entire file including Canada Revenue Agency valuations was to be made available to *both* parties.

In the alternative, to the extent that parties dealing at arm's length would have entered into the Series of Transactions, the terms and conditions made or imposed between Casco and CPD in respect of the Series of Transactions differed from those that would have been made between persons dealing at arm's length within the meaning of s. 247(2)(a) of the Act. Had Casco and CPD been dealing at arm's length, the arm's length interest rate for the money Casco borrowed from CPD would have been 0%, pursuant to s. 247(2)(c) of the Act.

c. Analysis and Discussion

i. Recent case law concerning amendments to add repricing

[12] At the hearing, the parties referred to an unrelated decision, *Redpath Sugar*.[12] That matter was a motion to amend to add a repricing argument, heard days before this one. The *Redpath Sugar* reasons summarized the test relied on as follows:

> [15] The parties agree that the test to be applied is that an amendment to a pleading should be allowed at any stage of a proceeding if it (a) assists the Court in determining the real questions in controversy, (b) does not result in an injustice to the other party that cannot be compensated by costs, and (c) serves the interests of justice.

[13] Although *Redpath Sugar* was a recent motion to amend to add a repricing argument, I respectfully decline to adopt its outcome. This motion turns on an argument not addressed in the *Redpath Sugar* reasons, namely, that the proposed amendments would not survive a motion to strike.

[14] Judgments from the same level of court are persuasive but not binding, and judicial comity recommends that courts and judges generally seek to respect and defer to one another's decisions. Judicial comity is a soft form of *stare decisis* with the same underlying policy bases, namely, certainty, predictability and uniformity in the development of the law.[13] However, this case and *Redpath Sugar* are different in terms of arguments and bases for the decision. Consequently, I can respectfully and safely decline to follow its outcome.

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[12] *Redpath Sugar Ltd v The King*, 2025 TCC 179 ("*Redpath Sugar*"). Under appeal: A-416-25.
[13] *R v Sullivan*, 2022 SCC 19, at paragraphs 65 and 66.

ii. Legal principles

[15] Rule 54 reads as follows:

> 54. A pleading may be amended by the party filing it, at any time before the close of pleadings, and thereafter either on filing the consent of all other parties, or with leave of the Court, and the Court in granting leave may impose such terms as are just.

[16] Whether to allow amendments is at the Court's discretion, reviewable on a deferential standard, absent an error on a question of law or extricable legal principle.[14]

[17] Motions to amend and to strike are two sides of the same coin. As with motions to strike, on a motion to amend the Court assumes the correctness of proposed new facts and, on that basis, determines whether it is plain and obvious that the claim discloses no reasonable prospect of success.[15] Proposed amendments must have some prospect of success, otherwise they would merely complicate and pointlessly delay an outcome.[16] The rules are housekeeping measures meant to unclutter proceedings, weed out unmeritorious claims, and ensure efficient litigation conduct. The bar (plain and obvious) is high, and striking allegations must be approached cautiously, since novel claims may succeed.[17]

[18] Although factual allegations are to be taken as true on a motion, that rule is not absolute. As the Supreme Court of Canada wrote in *Operation Dismantle Inc.*:

> The rule that the material facts in a statement of claim must be taken as true for the purpose of determining whether it discloses a reasonable cause of action does not require that allegations based on assumptions and speculations be taken as true. The very nature of such an allegation is that it cannot be proven to be true by the adduction of evidence. It would, therefore, be improper to accept that such an

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[14] *Polarsat Inc v The King,* 2023 FCA 247 ("*Polarsat*"), at paragraph 4.
[15] *Romanuk v R*, 2013 FCA 133, at paragraph 5. See also *Baffinland Iron Mines Corporation v The King,* 2025 TCC 33, at paragraph 71, referring to *Bauer Hockey Corp v Sport Maska Inc (Reebok-CCM Hockey),* 2014 FCA 158.
[16] *Teva Canada Ltd v Gilead Sciences Inc,* 2016 FCA 176, at paragraph 28.
[17] *Knight v Imperial Tobacco Canada Ltd*, 2011 SCC 42 ("*Imperial Tobacco*"), at paragraph 21.

> allegation is true. No violence is done to the rule where allegations, incapable of proof, are not taken as proven."[18]

[19] In *Imperial Tobacco*, the Supreme Court of Canada cited *Operation Dismantle* for the proposition that "[a] motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven".[19]

[20] If proposed amendments pass the first stage of the analysis set out above, the following three criteria[20] may be considered. Would allowing the proposed amendments:

(i) assist in determining the real questions in controversy;

(ii) result in an injustice to the other party not compensable by costs; and

(iii) serve the interests of justice?[21]

iii. Proposed amendments would not survive a motion to strike

[21] Argument: The Appellant argued that pleading a factual zero percent interest rate discloses no reasonable grounds for success, since arm's length lenders do not make large interest-free loans. The Respondent argued that the zero percent interest

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[18] *Operation Dismantle Inc v R*, [1985] 1 SCR 441 ("*Operation Dismantle*"), at paragraph 27. *Operation Dismantle* remains good law, and is referred to by this Court from time to time (see *Lark Investments Inc v The King*, 2024 TCC 30, at paragraph 25) and the Federal Court of Appeal (see *Ebert v Canada*, 2024 FCA 27, at paragraph 10).

[19] *Imperial Tobacco*, at paragraph 22.

[20] *Canderel v R*, 93 DTC 5357 (FCA) ("*Canderel*"), at paragraph 10: "…while it is impossible to enumerate all the factors that a judge must take into consideration in determining whether it is just, in a given case, to authorize an amendment, the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties. Provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice."

[21] More recently, see *Polarsat*, at paragraph 3, referencing *El Ad Ontario Trust v Canada*, 2023 FCA 231, and *Canada v Pomeroy Acquireco Ltd*, 2021 FCA 187.

rate reflected the risk-free nature of the debt, viewed in light of the Series of Transactions.

[22] Conclusion: The repricing factual conclusion and argument cannot succeed. This conclusion with respect to the 2012 Appeal and 2013 Appeal applies equally to the 2014/15 Appeal: Rule 53(1)(d) allows the Court on its own initiative to strike some or all of a pleading with leave to amend, where the pleading (in whole or in part) does not disclose a reasonable cause of action. Therefore, each of these appeals will be dealt with symmetrically, and the repricing fact, issue and argument paragraphs are either denied or struck as the case may be.

[23] Reasons: Arm's length parties act in their own interests and the *sine qua non* of a business is pursuit of profit, which courts evaluate against the real world of typical, ordinary commercial relationships. Zero percent financing may be a retail marketing lure for consumer items or payday loans, may be an employment incentive, or may be offered through government assistance or charities to help individuals. However, in an environment in which annual inflation is greater than zero and Treasury Bills offer even negligible yields, the idea of handing $300M to an arm's length party in a business-to-business transaction with nil interest is untenable. It is conceivable that a demand loan viewed in a wider commercial relationship may potentially feature an off-market interest rate. However, even the foregoing sentence presupposes a further fact that may justify an off-market rate (i.e. a demand loan). Baldly pleading an untenable fact does not meet the threshold for amending a pleading.

[24] To the extent that the Respondent relies on the allegedly low risk profile of the Series of Transactions as a whole, over the term of the loan, to justify a nil interest rate, that argument does not hold water. Arm's length parties to a substantial business loan would not engage in the Series of Transactions without some financial upside to the lender – and it is trite to say that the price of borrowing is described as interest. And if the Respondent has a theory that some other financial incentive, not described as interest, would attract arm's length parties to the Series of Transactions, the Respondent must so expressly plead.

[25] Along the same lines, to the extent that the Respondent's position is that the intercompany debt was zero risk, that would still not result in a zero percent interest rate. The concept of risk-free debt is a construct: in reality, even the most secure

debt, such as sovereign debt, is not entirely risk-free. Even the most secure debt arrangement should still carry with it some positive interest rate.

[26] The Respondent attempted to justify the bald pleading of a nil interest rate by relying on *Preston*.[22] However, the portion of *Preston* that was relied upon involved whether a Ministerial assumption concerning fair market value was an impermissible mixed question of fact and law, for which no facts were alleged. The Federal Court of Appeal concluded that fair market value is predominately factual even though it has a legal definition. And the assumed fair market value in *Preston* was certainly not nil. The problem with the proposed amendments to the Amended Replies in the instant case is not a problem of impermissible assumptions or mixed questions: the problem is that a zero percent interest rate is a chimera.

[27] Whether proposed amendments disclose a cause of action is a gating question, and these proposed amendments do not pass as the sole fact cannot be proven. Consequently, there is no need to consider s. 152(9) or any of the further criteria for amending pleadings. However, the Appellant raised further arguments with which these reasons must deal.

iv. Proposed amendments state conclusions without underlying factual allegations

[28] Argument: The Appellant argued that the new factual assertion in the proposed Amended Amended Replies should be particularized. The Appellant asked that the motion to amend be dismissed with leave to amend to cure deficiencies in the motion materials and the Amended Amended Replies, or that the motion be adjourned for the same purpose. This issue needs to be dealt with, to inform any future motion to amend.

[29] Conclusion: If the Respondent proposes further amendments to the Amended Replies in the 2012 Appeal and the 2013 Appeal, the factual allegations upon which a repricing argument rely must be particularized. The same logic applies to the 2014/15 Appeal.

[30] The Respondent argued at the hearing that only one of the terms and conditions must change to support the repricing argument, being the interest rate on

[22] *Canada v Preston*, 2023 FCA 178.

the loan. This was described as the "crucial term", "the only one that matters" and that it reflects "the arm's length principle". However, if there are no further facts pled to support the Respondent's repricing argument, and no terms and conditions engaged beyond the alleged nil interest rate, an amended and refiled motion cannot succeed. Further thought should be given to how a repricing argument might be validly framed.

[31] In any future proposed amendments, the Respondent should set out, for all of the terms and conditions of each agreement that relate directly or indirectly to the Respondent's repricing argument:

- the terms and conditions that differ from arm's length terms and conditions;
- what the Respondent submits *are* arm's length terms and conditions; and,
- each of the risks that were eliminated, and the pricing adjustments for each alleged risk, to support an alleged "risk free" interest rate on the intercompany debt.

[32] Reasons: The Appellant is entitled to know the case it has to meet based on the pleadings and should not have to chart its course by a pale, flickering light. As the Federal Court of Appeal affirmed in one of the Cameco matters:

> No authority need be given for the proposition that in an income tax appeal, the taxpayer like the Crown is entitled to know the facts on which the other party's positions rest. In order to invoke a provision of the Act or a jurisprudential theory in support of an assessment, the Crown must assume or have knowledge of facts which, if proven, are capable of giving rise to their application.[23]

[33] And in a more recent Cameco matter:

> If the Minister assumes that the transfer prices differed from those that would have been made between persons dealing at arm's length, then the taxpayer is entitled to know exactly how they differed.[24]

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[23] *Cameco Corporation v Canada*, 2015 FCA 143, at paragraph 40.
[24] *Cameco Corporation v The King*, 2025 TCC 23, at paragraph 23.

> [and]
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> On or before June 30, 2025, the respondent is ordered, as part of their response to the demand for particulars, to provide the following:
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> d. the arm's length price the respondent relies upon which would have been agreed to between arm's length parties for the purposes of paragraphs 247(2)(a) and (c) of the Act, set out in dollars per pound for each of the 12 agreements listed in Appendix 1 of the 2007-2013 Reply, dated June 6, 2023. The equivalent information for the 2014 Reply and 2015 Reply shall also be provided;
>
> e. the terms and conditions for each of the 12 agreements listed in Appendix 1 of the 2007-2013 Reply, dated June 6, 2023, that differ from those that would have been made between arm's length parties, and the equivalent information for the 2014 Reply and 2015 Reply;[25]

v. Motion based on expert opinion, but without detail or supporting evidence

[34] Argument: The Appellant argued that, insofar as the proposed amendments arose from "undisclosed and possibly untestable expert opinion and analysis", a future amended motion should particularize the experts' methodology with an affidavit or "will-say".

[35] Conclusion: This argument must fail.

[36] Reasons: The reasons why facts, issues and arguments were not included in a pleading, and the events leading to a motion to amend, *should* both be relevant factors. More's the pity, but the current case law does not allow these factors to be considered when determining whether to allow amendments.

[37] I acknowledge the argument that the Respondent may have possibly waived privilege by referring to interactions with experts (Exhibit F to the Herrera Affidavit, and submissions at the hearing). However, waiver is a sideshow. Whether the Respondent's counsel interacted with experts, or had an independent flash of inspiration in the shower is not relevant to the analysis. Further, there is a tension between the Appellant's request and the rules governing expert evidence. The

[25] *Ibid* at paragraph 40 (the subparagraphs in the excerpt should have begun with the letter "a", not "d", a gap no doubt attributable to a Word formatting glitch).

content, timing and administration of expert evidence is governed by Rule 145 and the Appellant's request for information concerning discussions with experts at this juncture is not only irrelevant, but premature and possibly an end-run around the Rules.

[38] Finally, particulars, whatever they may be, should be sufficient information for the Appellant's purposes, without overreaching into the methodology and opinions of experts at this stage in the litigation.

vi. Repricing and recharacterization not mutually exclusive

[39] Argument: The Appellant argued that the Respondent may not rely on both s. 247(2)(b) and (d) and also (a) and (c), as they are mutually exclusive. Therefore, if the motion to amend is granted then the facts, issues and reasons concerning recharacterization must be struck. In the Appellant's opinion, pleading s. 247(2)(a) and (c) as an alternative argument negates and resiles from its initial position taken under s. 247(2)(b) and (d), and they argue that if a transaction is priceable then there is no room for recharacterization.

[40] Conclusion: In light of the dismissal of the motion to amend, the question of whether repricing and recharacterization may be pled together does not have to be resolved. However, if/when the Respondent regroups and comes back with new amendments, the mutual exclusivity argument may be revived. Consequently, I offer the following comments.

[41] Comments: At paragraph 44 of *Cameco (2020)*,[26] the Federal Court of Appeal stated:

> Subparagraph 247(2)(b)(i) of the Act applies when no arm's length persons would have entered into the transaction or the series of transactions in question, under any terms and conditions. If persons dealing at arm's length would have entered into the particular transaction or series of transactions in question, but on different terms and conditions, then paragraphs 247(2)(a) and (c) of the Act would be applicable.

[42] The Appellant relied on the above-noted statement as well as further statements in *Cameco (2020)*, including that the recharacterization rule may be relied upon when the transaction structure impedes the determination of an appropriate

[26] *Canada v Cameco Corporation*, 2020 FCA 112 ("*Cameco (2020)*").

transfer price.[27] This reasoning grounds the argument that if a transaction is priceable, there is no room for recharacterization. Further, *Cameco (2020)* stated as follows at paragraph 82:

> Paragraphs 247(2)(b) and (d) of the Act apply only where a taxpayer and non-arm's length non-resident have entered into a transaction or a series of transactions that would not have been entered into between any two (or more) persons dealing at arm's length, under any terms or conditions.[28]

[43] The Federal Court of Appeal's statements can be harmonized with pleading paragraphs (a) and (c) in the alternative. In the instant case, the Respondent's main position is recharacterization under paragraphs (b) and (d): no arm's-length parties would have entered into the transaction or series on any terms and conditions. However, the Respondent also seeks to plead in the alternative that, if arm's-length parties *would have* entered into the series on different terms and conditions, then repricing under paragraphs (a) and (c) may apply. It is uncontroversial that parties can plead in the alternative, even if the arguments involve inconsistent allegations.[29] The Respondent is not advancing a cumulative or novel application of paragraphs (a) and (c) together with (b) and (d). Paragraphs (b) and (d) are the primary argument, and only if that position fails does the alternative repricing argument under paragraphs (a) and (c) arise. This approach respects, rather than undermines, the mutual exclusivity of the two analyses, and is allowable.

vii. Striking portions of proposed amendments

[44] The Appellant's requested relief to delete the phrase "which the AGC denied"[30] from the proposed amended fact paragraphs (8.1 and 13.1, as the case may be) was tethered to the broader argument that the proposed amendments were deficient. The same complaint would extend to paragraph 14(a) of the 2014/15 Appeal Reply.

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[27] *Ibid* at paragraph 69.
[28] See also paragraph 77 of *Cameco (2020).*
[29] Rule 51(2).
[30] I note in passing that the Appellant misquotes the Respondent: the actual language is "which the AGC denies".

[45] In light of the outcome of this motion, there is no basis to strike this phrase. In any case, the impugned language was part of the connective tissue between the main and alternative arguments and, as such, was not problematic.

viii. Allegedly unpled assumptions

[46] The Appellant's written submissions included complaints that information gleaned from the Respondent's nominee at examinations for discovery confirmed that certain factual assumptions were made but not pled. These complaints were not responsive to the Respondent's motion and would have to have been advanced by way of a cross-motion in order to be considered, with fair warning to the Respondent.

III. Motion for a Stay of Proceedings

a. Background

[47] In 2022, the Minister reassessed the Appellant's 2014 and 2015 taxation years on the same basis as the 2012 Appeal and 2013 Appeal. Withholding tax assessments were issued and notices of objection filed in due course.

[48] On January 22, 2024, the Minister agreed to hold in abeyance the notices of objection against the assessments that are now contested by the 2014/15 Appeal. According to the Appellant, holding down the objections for the 2014 and 2015 taxation years was in the interest of efficiency and to avoid inconsistent outcomes from parallel proceedings.

[49] The Minister advised the Appellant in May 2025 that he did not feel bound to hold the matters in abeyance and would proceed with issuing notices of confirmation. On June 9, 2025, the Appellant brought the Federal Court application to seek to enforce the agreement,[31] and shortly thereafter, the Minister issued notices of confirmation.

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[31] More specifically, the Appellant sought the following relief in the Federal Court application: (i) set aside the confirmation of the 2014 and 2015 assessments and send the matter back for determination in accordance with the Alleged Abeyance Agreement; (ii) quash the Notice of Confirmation; (iii) declare the parties bound by the Alleged Abeyance Agreement; (iv) declare that the Minister's resumption of the processing of the objections and the subsequent confirmation of

[50] On September 8, 2025, the Appellant appealed to this Court, thus commencing the 2014/15 Appeal. The Appellant then moved in this Court to have the 2014/15 Appeal stayed pending the outcome of the Judicial Review.

[51] The Attorney General of Canada brought a motion in the Federal Court to strike the Judicial Review, which was heard on October 23, 2025, and decided on November 19, 2025.[32] The Judicial Review application was struck, and that decision was appealed to the Federal Court of Appeal on December 19, 2025. While not a fact *per se*, the Appellant's counsel estimated that it would likely be at least a year before that appeal would be heard.

b. Analysis and Discussion

i. Legal principles

[52] This Court has held that "[t]o stay a proceeding is an extraordinary discretionary remedy and it must be based upon compelling reasons",[33] and that the "overriding concern" in deciding whether to grant a stay of proceedings is how to best serve the interests of justice.[34]

[53] Where a party seeks a stay while another litigation matter is in progress, there must be a sufficient, direct nexus between the proceedings.[35] As I see it, direct nexus means that two matters have some common issues of fact and law, and the disposition of an issue in one could resolve that issue for the other.

[54] Where there is a sufficient nexus, three further criteria must be met, as set out in *Obonsawin*:

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the 2014 and 2015 assessments were made in contravention of the terms of the Alleged Abeyance Agreement; (v) declare the Notice of Confirmation in violation of the Alleged Abeyance Agreement; and (vi) stay the proceedings before the TCC…" See paragraph 52 of *Ingredion Canada Corporation v Canada (Attorney General),* 2025 FC 1842.

[32] *Ibid*.

[33] *Imperial Oil Ltd v R,* 2003 TCC 46, at paragraph 50.

[34] *Obonsawin v R*, 2004 TCC 3 ("*Obonsawin*"), at paragraph 17.

[35] *Astrazeneca Canada Inc v Mylan Pharmaceuticals ULC*, 2011 FCA 312 ("*Mylan Pharmaceuticals*"), at paragraphs 19 and 20. See also *Elbaz v The Queen*, 2017 TCC 177, at paragraph 31.

> Firstly, would the continuance of the action be oppressive, vexatious or harmful to the Appellant, or an abuse of the Court's process? This first condition must always be met, or no stay should be granted.
>
> Second, if there is harm to the Appellant in proceeding, is there prejudice to the Respondent by not proceeding?
>
> Third, if there is harm or prejudice to the Respondent as well, then the Court must balance the respective injuries in determining how justice is best served. In this final analysis, it is appropriate to consider factors such as convenience, expense, the law of the transaction, parties' location and any special circumstances of the particular case.[36]

[55] A further criterion is whether the party seeking a stay has other options.[37]

ii. Nexus between proceedings

[56] Regarding any nexus between the appeal of the Judicial Review and the proceedings in this Court, the Respondent's argument was that even if the confirmation were rescinded, the Appellant still filed a valid notice of appeal in the Tax Court, thus our Court's process is engaged, and the Judicial Review is therefore meaningless. The Respondent's argument finds support in the Federal Court's reasons dismissing the Judicial Review at paragraph 63, where Furlanetto J wrote that the "proverbial horse has already left the barn" as the abeyance agreement arose at the objections stage and, now that a Tax Court appeal has been filed, there is no point to reinstating the abeyance. Furlanetto J further noted that declaratory relief would serve no purpose now that a Tax Court appeal is underway and such relief must not be given unless it has a practical effect (paragraph 68).

[57] The Appellant pointed to paragraph 65 of *JP Morgan* in support of its position that the Judicial Review appeal was meaningful:[38]

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[36] *Ibid* at paragraph 20.
[37] *Mylan Pharmaceuticals,* supra note 33 at paragraphs 24 and 25.
[38] *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue),* 2013 FCA 250 ("*JP Morgan*").

> If a motion to strike fails, the judicial review proceeds according to rules 306–319. The judicial review does not necessarily stop the Minister's pre-assessment or post-assessment processes or the Tax Court's appeal processes. The Minister and the Tax Court may continue with their respective processes unless the Federal Court issues a stay under the test in RJR — MacDonald …
>
> [emphasis added]

[58] The Appellant argued that insofar as the Federal Court or the Federal Court of Appeal could stay proceedings in the Tax Court (per *JP Morgan*), a nexus between the proceedings is clear, since success in the Federal Court of Appeal would mean that the matter resumes the status of an objection in abeyance, thus erasing the notice of confirmation and staying the appeal to this Court.

[59] While there are some similarities between the 2014/15 Appeal and the appeal of the Judicial Review, the matters do not concern common questions of fact and law. It is trite to say that this Court would determine the correctness of the impugned assessments, while the Judicial Review concerns an agreement to not confirm assessments, and the material facts underlying each matter are different. Moreover, a disposition of the Judicial Review appeal would not likely impact the resolution of the 2014/15 Appeal in this Court, as discussed immediately below. Additionally, the Respondent argued that any dispute over the breached abeyance agreement should be framed as a civil action for damages – which would constitute an alternative avenue for relief, as also explained in Furlanetto J's reasons.

[60] I am unable to accept the proposition that the Federal Courts have authority to stay assessment litigation in the Tax Court. *JP Morgan* was not concerned with Tax Court appeals *per se* and an appellate conclusion that the Federal Courts can shut down the Tax Court in an assessment dispute would have to be framed in more express and unambiguous language.

[61] The Federal Court and the Federal Court of Appeal have the power to stay proceedings under s. 50 of the *Federal Courts Act*,[39] which encompasses proceedings in those Courts and before administrative bodies.[40] Paragraph 65 of *JP Morgan* appears to equate the Minister's processes with Tax Court proceedings, which was likely not a considered opinion of the Federal Court of Appeal. It should

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[39] RSC 1985, c. F-7.

[40] *Canadian National Railway Company v BNSF Railway Company*, 2016 FCA 284.

not be contentious to assert that the Tax Court, a superior court of record with exclusive, original jurisdiction over income tax assessment disputes (among other things), is not an administrative body. Much stronger authority than Federal Court of Appeal *obiter*, which does not appear to have been considered guidance, would be required for this Court to acknowledge any procedural subjugation to the Federal Courts.

[62] Whether there is a nexus between the appeal in the Judicial Review and the 2014/15 Appeal before this Court is, on the whole, dubious since the outcome of the Judicial Review appeal is unlikely to have any practical effect on these Tax Court proceedings. However, since I am not well positioned to predict the outcome of the Judicial Review appeal or the resulting remedy, I will review and consider the three criteria set out in *Obonsawin.*

iii. Would continuing the 2014/15 Appeal cause harm or abuse Court processes?

[63] There may be some additional work required of the parties to align the 2012 Appeal and 2013 Appeal with the 2014/15 Appeal, but I do not view any further steps, including document disclosure, discovery, undertakings or preparing for a trial involving all four taxation years, to be extensive, onerous or harmful to the Appellant.

[64] Crown counsel argued that they would be entitled to document disclosure and discovery in the 2014/15 Appeal but also acknowledged that they should not repeat the same questions as already asked in the 2012 Appeal and 2013 Appeal discoveries.

[65] Since all of the appeals from 2012 through 2015 involve the same Series of Transactions, and since document disclosure and discovery examinations are well advanced for the 2012 Appeal and 2013 Appeal, there is some scope for further disclosure and discovery in the 2014/15 Appeal, but it must be focussed and limited. While there may be discovery regarding any future, allowable amendments to the Amended Replies, that is not relevant to the motion for a stay of proceedings.

[66] Further, the progress of these matters will be case managed and if, perchance, the scope of pre-trial steps in relation to the 2014/15 Appeal expands beyond

reasonable limits, the Court will intercede at either party's instance. Both parties would be well-advised to be circumspect in their approach going forward.

[67] The Appellant's concerns about the burden on the Tax Court's docket and interference with its processes are noted. However, to be fair, the weight of the 2014/15 Appeal will not break the Court's back, and behaviours by the Minister in confirming an assessment do not truly interfere with the Court's business, insofar as they occur outside the Court's purview. Along the same lines, the Court's processes cannot be abused or interfered with until they are engaged, and that starts with the filing of a notice of appeal and not before.

iv. If risk of harm exists for one party, is there prejudice to the other party by not proceeding?

[68] While there is unlikely to be harm to the Appellant, there is prejudice to the Respondent if the 2014/15 Appeal is stayed. According to the Respondent, the central issue in all of the appeals concerns the application of the arm's length principle with respect to the same Series of Transactions, and transfer pricing analysis is facilitated by multi-year data. Crown counsel argued that, in particular, the Respondent's arguments as to "circularity" would necessarily involve putting all years before the Court, including 2015 (when the structure was wound up). More specifically, the Respondent emphasized its theory that the Hybrid Instruments were in the nature of an equity investment in the Appellant, and that instead of the Series of Transactions including the subject loan, arm's length parties would have proceeded with an equity investment in the Appellant. According to the Respondent's argument, in 2014 and 2015, the flow of funds into the Appellant and the payment of interest in shares of the Appellant look like an equity transaction, which would support its theory of the case.

[69] The Appellant argued that the 2014 and 2015 taxation years are in scope in the 2012 Appeal and 2013 Appeal and that the 2014 and 2015 years were canvassed at discovery. However, respectfully, the references in the 2012 Appeal and 2013 Appeal pleadings to 2014 and 2015, and the discovery questions and answers within the motion materials, were limited, and it is reasonable to conclude that as the 2014/15 Appeal proceeds there would be scope for discovery.

[70] The extent to which the Respondent's case may be enhanced or facilitated by proceeding with all of the subject taxation years together is plausible, and the

Respondent may be prejudiced if the 2014/15 Appeal were stayed. Consequently, each of the 2012 Appeal, 2013 Appeal and the 2014/15 Appeal should go to a trial judge *en masse*.

v. How is justice best served?

[71] Again, I do not view the outcome here as resulting in harm to the Appellant. However, to the extent that there is any, it does not outweigh the stronger interest in having all matters proceed together. According to the Respondent, staying one of the component appeals while proceeding with others could unduly limit the record before the Court, and result in inconsistent findings which would not serve the interests of justice, which I believe is a fair perspective.

[72] Staying proceedings is a discretionary decision that may be made if there are compelling reasons, and the overriding goal is serving the interests of justice. On the whole, the threshold of "compelling reasons" was not met and as noted immediately above, the interests of justice militate towards all matters proceeding together.

vi. Further comments

[73] The Appellant argued that the Minister and Respondent first said that the 2014 and 2015 assessments had to be confirmed because the facts were different, but the 2014/15 Appeal Reply did not raise any new facts, which the Appellant said amounted to false pretenses. I disagree. Yes, the facts are substantially the same, but the Respondent highlighted differences, including the different bases for paying accrued interest and also that the structure wound up in 2015.

[74] Denying the Appellant's motion to stay the 2014/15 Appeal has consequences for the timelines to complete next steps. For example, the Appellant may wish to file an Answer. To ensure that the Rules are applied fairly, the Appellant may serve and file an Answer to the 2014/15 Appeal Reply on or before February 9, 2026 (extendable if necessary). Finally, to the extent that there are any procedural issues or "loose ends" that were not discussed by the parties or anticipated by the Court, they can be dealt with through case management, including consolidation, any further motions and future amendments to timetables.

IV. Costs

[75] While the exercise of awarding costs is discretionary, it must also be principled. In these motions, the criteria set out in Rule 147(3) do not militate towards a cost award in one of that would exceed costs in the other. There was mixed success, the "amounts in issue" are on the whole obviously the same, the volume and complexity of the work in each motion does not appear to be materially different, the conduct of these matters by the parties was professional and no one did anything to unnecessarily lengthen the proceedings' duration.

[76] There will be no order as to costs.

Signed this 7th day of January 2026.

"John Sorensen"

Sorensen J.

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