

BETWEEN:

RF SECURITIES CLEARING LP,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion heard on January 27, 2025 at Toronto, Ontario

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Caitlin Woodford  
Nando De Luca  
Glenn Ernst

Counsel for the Respondent: Lindsay Tohn  
Andrée-Anne Lavoie  
Haleigh Johns

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**ORDER**

HAVING considered the oral and written representations of the parties;

AND in accordance with the attached Reasons for Order;

THE COURT HEREBY ORDERS AS FOLLOWS:

1. **Question 9(g)** – The Appellant shall respond by indicating who prepared the engagement letters for all clients, save and except the Excluded Clients, stating that the document was or was not prepared by the Appellant or, in the further alternative, that it cannot so confirm. It will also provide all available documents with respect to the remaining clients or, alternatively, a

representative sample of the documents with an explanation of how many documents were omitted, and how it chose which documents to omit.

2. **Question 10(c), 11(b), 12(c), 14(b), 15(a), 16(b), 17(b), 18(c), 19(b), 20(c), 21(e), 22(b), 24(a), 25(a)** – The Appellant must answer these questions by providing the factual basis for the position taken, save and except questions 19(b) and 21(e), that relate to the Excluded Clients;
3. **Question 13(b)** – The Appellant must answer this question by making further enquiries of employees, past or present, as required by Rule 95(2).
4. **Question 14(a)** – The Appellant must answer this question by making further enquiries of former employees, past or present. As undertaken, the Appellant must also provide any relevant, non-privileged information and/or documents in connection with this question.
5. **Question 16(a)** – The Appellant must provide a further and better response describing the “financial and strategic advisory services” provided to this client.
6. **Question 18(a)(i)** – The Appellant must provide a further and better response describing the “financial and strategic advisory services” provided to this client.
7. **Question 21(a)** – This question relates to Whitecap Resources, one of the Excluded Clients, and thus, there is no need to respond.
8. **Question 27(d)** – The Appellant needs to make further and better enquiries and provide a proper response to this question, save and except if it directly relates to one of the Excluded Clients;
9. **Question 29(b)** – the Appellant needs to make additional enquiries and explain what it did, the services rendered and how factually, it was involved in the transaction relating to this client.
10. **Questions 29(c), 30(b), 31(b), 32(b), 33(c), 34(c), 36(b), 37(b), 38(c)** – There is no need to provide a further response to these questions.
11. **Questions 30(a), 31(a), 32(a), 33(b), 34(b), 35(a), 36(a), 37(a), 38(b)** – There is no need to provide a further response to these questions.

12. **Question 35(b)** – This question relates to Whitecap Resources, one of the Excluded Clients. There is no need to provide a response.
13. The Appellant shall answer any proper follow-up question(s) arising from answers given pursuant to this Order.
14. The Respondent is entitled to costs in accordance with the Tariff.

Signed at Ottawa, Ontario, this 24<sup>th</sup> day of June 2026.

“Guy R. Smith”

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Smith J.

BETWEEN:

RF SECURITIES CLEARING LP,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

**REASONS FOR ORDER**

Smith J.

**I. Introduction**

[1] This matter involves a Motion made by the Respondent to compel RF Securities Clearing LP, the Appellant herein, to provide complete, further and better answers to written examination for discovery questions and follow-up questions.

[2] The Respondent relies on sections 95, 107 and 116 of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”) and seeks an Order:

1. Compelling the Appellant to answer, or to provide complete, further and better answers, in respect of the written examination for discovery questions listed in Schedule A to the Notice of Motion; and
2. Compelling the Appellant to answer all proper follow-up questions arising from answers given pursuant to such an Order.

[3] The underlying appeal involves the application of Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the “Act”) and the proper characterization of certain services rendered by the Appellant. At issue is whether those services were a “taxable supply” or an “exempt supply” of a financial service, as defined.

[4] More specifically, the Appellant appeals from reassessments made by the Minister of National Revenue (the “Minister”) in respect of the monthly reporting periods beginning January 1<sup>st</sup>, 2014, and ending December 31<sup>st</sup>, 2016. The Minister increased the Appellant’s net tax on the basis that it was required to collect GST/HST in respect of certain services. The reassessments can be summarized as follows:

| <b>Year</b> | <b>Fees Received</b> | <b>GST/HST Collected</b> | <b>Reassessed GST/HST</b> |
|-------------|----------------------|--------------------------|---------------------------|
| <b>2014</b> | \$15,886,631         | \$0.00                   | \$1,183,781               |
| <b>2015</b> | \$7,923,450          | \$0.00                   | \$414,373                 |
| <b>2016</b> | \$726,000            | \$0.00                   | \$36,300                  |

[5] The quantum of the fees received is not in dispute. It is also not disputed that the fees relate to 19 different clients. The amount charged per client is also not in dispute.

[6] The Appellant, formerly known as GMP Securities LP, claims that it provided “investment banking, equity research and sales and trading services” and assisted clients in “selling, purchasing, issuing, redeeming or otherwise transacting in securities” and that the services provided “included some or all of the” services listed in paragraphs 11(a) to (k) of the Notice of Appeal. It charged “completion or success fees” that were only payable if a client “successfully bought, sold, issued or otherwise transacted in securities it sought to buy, sell or issue.”

[7] It takes the position that it was not required to collect GST/HST because the services constituted an “exempt supply of a financial service.”

[8] The Minister’s position is that the services rendered by the Appellant constitute a “taxable supply” and not an “exempt supply of a financial service” because, as set out in the assumptions, the Appellant “acted as a financial advisor and provided financial and strategic advisory services (...) to certain clients” and “had no direct involvement in the issuance, sale or purchase of securities.” In other words, it is the Minister’s position that the services rendered do not fall within paragraphs (a) to (m) of the definition of a “financial service” in section 123 of the Act. The Minister claims that the fees were consideration for the provision of an advisory service captured by the exclusionary language in paragraph (p) of the definition. As such, the Minister contends that there was a “taxable supply” and that GST/HST should have been collected as set out in the reassessments.

[9] Whether the Appellant can convince the Court on a balance of probabilities that it provided the services described in paragraphs 11(a) to (k) of the Notice of Appeal and that those services constituted an exempt supply of a financial service, are matters that will have to be addressed by the trial judge in due course. In the meantime, those issues assist the Court in addressing the matters raised in the Motion.

[10] The parties conducted examinations for discovery in writing as follows:

1. The Respondent served its written questions on December 15, 2023 (the “written questions”), and the Appellant provided answers on March 26, 2024 (the “Round One”).
2. The Respondent served follow-up questions on April 30, 2024 (the “follow-up questions”) and the Appellant provided answers on July 5, 2024 (the “Round Two”).
3. On consent, the Respondent served further follow-up questions on August 2, 2024 (the “further follow-up questions”) and the Appellant provided answers on September 23, 2024 (the “Round Three”).

## **II. Positions of the Parties**

[11] The Respondent takes the position that the Notice of Appeal does not include particulars of the transactions at issue including the identity of the client, nature of the transaction, how it was arranged or the facts giving rise to the fees charged.

[12] In the conduct of the examination for discovery, the Respondent’s contends that it asked factual questions to (i) understand what exactly the Appellant did, or provided, to each individual client; (ii) ascertain what transaction the Appellant arranged in respect of each client and the details of what was done; and (iii) which documents included in the Appellant’s production were created by the Appellant in the course of providing those services. In essence, the Respondent claims that it sought the factual basis for the Appellant’s claim that it “arranged for the issuance, sale, purchase, redemption or other transaction” relating to the “selling, purchasing, issuing, redeeming or otherwise transacting in securities.” It argues that the responses provided were “vague and general to the point of being non-responsive” as it was told to review the entirety of the Appellant’s discovery answers and

documentary productions. It argues that the Appellant ignored the specific context and the wording of the question.

[13] The Appellant claims broadly that the discovery questions at issue are: (i) impermissible discovery questions (ii) disproportionate given the complexity of the litigation and the amounts at stake; (iii) of only marginal relevance to the matters at issue on the appeal; (iv) seek the work product and legal opinion of counsel; or (v) seek the Appellant's legal argument and evidence it intends to rely on.

[14] In its written representations, the Appellant argues that the parties agreed to partial disclosure in accordance with Rule 81, meaning that it was only required to disclose documents of which it had knowledge at that time that might be used in evidence.

[15] The Appellant claims that it did so and that it "has made best efforts to enquire into and to respond to almost all of the Respondent's discovery questions despite that [...] there were [no longer any] employees [...] with the Appellant who were part of the business unit that was responsible for providing the supply of service(s) at issue in the appeal." The Appellant takes the position that it has provided "all responsive, non-privileged documents and information in its power, possession, or control, as was known to it at the time of discoveries."

[16] Moreover, the Appellant indicates that it informed the Respondent that it would not pursue certain portions of the appeal that relate to 7 clients where the fees vary from \$500 to \$2,000. It argues that the amounts at issue are materially different from the cases where relevance has been found to trump proportionality in similar disputes.

[17] The Appellant argues that the services described in paragraphs 11(a) to (k) of the Notice of Appeal were provided to clients "with certain guiding parameters as set out in retainer letters" and that it produced 15 of such letters it could locate, including 12 relating to the remaining 12 clients, as part of its disclosure of documents.

[18] It also produced lead sheets (the "Lead Sheets") described by the Appellant as summary documents showing, at a high level, the nature of the transaction relating to each client, as set out in Schedule A of the affidavit of Kevin Massicotte.

[19] There are other important details that come out of the written representations that include a reference to Elizabeth Velez, who worked for GMP from 2010-2019, including as VP Tax from 2015-2019. Her affidavit contained the responses to the so-called “First Round Answers.” Secondly, the affidavit of in-house legal counsel Kevin Massicotte explains that the business division that carried out the activities that are the subject matter of the appeal was sold in December 2019 and as a result, none of the employees who were engaged in providing the service or services remained employed at the time of the discovery herein and that the Appellant “was not presently aware of any additional employees or former employees that might reasonably be expected to have knowledge of the transaction or occurrences at issue in the appeal.” Moreover, subject to certain documents that are referred to in footnotes 2 and 11 of the written submissions as the “Discrepancy Subset” in Mr. Massicotte’s affidavit, he explains that the Appellant has produced between 450-500 documents through the Book of Documents and the First, Second and Third Rounds of Answers.

[20] The Appellant points out that the parties have agreed to partial disclosure of documents in accordance with Rule 81. It relies on *3488063 Canada Inc. v. The Queen*, 2016 FCA 233 (“*3488063 Canada Inc.*”), where the Federal Court of Appeal (“FCA”) explained that under Rule 81, a party is only obligated to “‘file and serve on every other party a list of the documents of which the party has knowledge at that time that might be used in evidence, (a) to establish or to assist in establishing any allegation of fact in any pleading filed by that party, or (b) to rebut or to assist in rebutting any allegation of fact in any pleading filed by any other party’.” The FCA concluded that contrary to Rule 82, there is no obligation under Rule 81 to provide a list of all documents that may have been in a party’s “possession or control” (para 43).

[21] As further clarified by this Court in *Coopers Park Real Estate Development Corporation v. The King*, 2024 TCC 122, at para 39 (“*Coopers Park*”), disclosure under Rule 81 is limited to documents that may have been in a party’s possession or control, despite the fact that Form 81 uses the words “possession, control or power.”

[22] In the end, the Appellant argues that it should not be put to the disproportionate effort and expense of attempting to track down more information and documents than it already has when it has no reason to believe that most of such information and documents are accessible or even exist.

[23] The Appellant asks that the Respondent's motion be dismissed with costs.

### III. Guiding Principles

[24] I now turn to the guiding principles. Rule 95(1) delineates the scope of examination and provides that a person examined is required to answer, to the best of that person's knowledge, information and belief, any proper question relevant to any matter in issue in the proceeding. Rule 95(2) provides that prior to the examination for discovery, the person to be examined shall make all reasonable enquiries regarding the matters in issue from all of the party's officers, servants, agents and employees, **past or present** (my emphasis), either within or outside Canada and if necessary, the person being examined may be required to become better informed and for that purpose the examination may be adjourned.

[25] As to the selection of the person to be examined, Rule 93(2) provides that a party to be examined shall select a knowledgeable current or former officer, director, member or employee, to be examined on behalf of that party.

[26] I do not propose to describe all the principles established by the evolving case law on examinations for discovery but will start by reviewing some of the leading cases.

[27] In *Burlington Resources Finance Co. v. The Queen*, 2015 TCC 71, Justice Campbell made the following broad comments on examinations for discovery:

11. [...] The core of discovery principles is that its scope should be wide, with relevancy construed liberally, without, however, allowing it to enter the realm of a fishing expedition. These basic principles are essential because the purpose of discovery is to enable parties to know the case they have to meet at trial, to know the facts upon which the opposing party relies, to narrow or eliminate issues, to obtain admissions that will facilitate the proof of matters in issue and, finally, to avoid surprise at trial.

[28] In that decision, Justice Campbell adopted the general summary of the principles described by Justice Miller in *Kossow v. the Queen*, 2008 TCC 422

(“Kossow”), and in *Burlington Resources Finance Company v. The Queen*, 2017 TCC 144, Justice D’Auray reiterated those principles that I paraphrase as follows:

1. Relevancy is extremely broad and should be liberally construed, but it must not be used as a fishing expedition;
2. Everything is relevant that may directly or indirectly aid the party conducting the discovery to maintain its case or damage that of its adversary;
3. The examining party is entitled to any information, and production of any documents, that may fairly lead to a train of inquiry that may directly or indirectly advance his case, or damage that of the opposing party;
4. Proportionality is not something to be used as a shield and should not be the primary focus in determining whether a disputed question should be answered. Instead, relevancy should be the key driver;
5. A motion judge should not second-guess the discretion of counsel by examining minutely each question;
6. A motion judge should not seek to impose his or her view of relevancy for questions that a trial judge might find relevant;
7. The discovery process is the most significant stage of the litigation in allowing a party to prepare for trial. It allows the parties to prepare their respective cases and prepare full answers to their opponent’s case. Full and open discovery gives parties the complete picture;

[29] And finally:

8. Discovery fails when the parties engage in obfuscation. The purpose is no longer disclosure but how to avoid disclosure. When that occurs, the purposes of examination for discovery are no longer being served, and neither is the administration of justice. Every effort should therefore be made to allow for full and proper disclosure, and courts must be guided by the well-established discovery principles and the low threshold for

relevancy described by Justice Bowman in *Baxter v. The Queen*, 2004 TCC 636.

[30] The issue of proportionality was addressed in some detail by Justice D’Auray in the context of “a complex transfer pricing dispute involving a large amount of disputed tax.” She emphasized “the importance of taking into account the nature and complexity of the litigation” (paras 21 & 23). In particular, she considered the decision of *Hryniak v. Mauldin*, 2014 SCC 7, where, citing *Szeto v. Dwyer*, 2010 NLCA 36, at paragraph 53, Justice Karakatsanis considered the principle of proportionality and stressed the importance of taking into account “the appropriateness of the procedure, its cost and impact on the litigation, and its timeliness, given the nature and complexity of the litigation” (para 31).

[31] In *Kossow*, Justice Miller also addressed the issue of reliance questions, noting that “it is proper to ask for the facts underlying an allegation, as that is limited to fact-gathering. However, it is not proper to ask a witness for the evidence that he has to support an allegation.” Citing *Sandia Mountain Holdings Inc. v. The Queen*, [2005] 2 CTC 2297, at paragraph 19(iii), she stressed that it was necessary to distinguish “between improperly asking what evidence a witness has to support an allegation, and properly asking what facts were within the witness’s knowledge to underlie a particular allegation.” She indicated that “asking for facts underlying an allegation is limited solely to fact-gathering and is proper” adding that “questions aimed at getting a witness to confirm that certain facts are proof of certain allegations” are not permissible, while “questions” that seek to get “the witness to divulge relevant facts in connection with an allegation” are permissible (para 52).

[32] More recently, in *Sloan v. The King*, 2022 TCC 121 (“*Sloan*”), Justice Biringer (now at the FCA) indicates under Item #13:

There is no doubt that a party is entitled, on discovery, to obtain the facts relied on by the other party. Fact-gathering lies at the heart of the discovery process. However, a critical distinction, drawn repeatedly by this Court, is between “properly” asking a witness on discovery what facts there are to support an allegation and “improperly” asking what evidence a witness has to support an allegation.

[33] Justice Biringer adds the following:

Paragraph 95(1)(a) of the Rules, when read in light of these cases, must be taken to preclude an objection on discovery when the fact revealed might also be evidence. For example, if a discovery nominee is asked what facts underlie the allegation that X loaned funds to Y, and, specifically if there is a loan document, the existence of a loan agreement must be revealed even though that loan agreement may ultimately be relied on at trial as evidence of the loan from X to Y. Stated differently, the specific information sought (the loan agreement) is (potentially) evidence, but consistent with the purpose and scope of discovery, the question as to whether there is a loan document cannot be refused.

[34] In *Contractor v. The Queen*, 2021 TCC 46, Justice Owen conducted an extensive review of the applicable case law on examination for discovery. In particular, he addressed the requirement in Rule 95(1) that a question must be proper and relevant to any matter in the proceeding. He explained that the expression “proper question” should be read as a reference to a question that is both proper and relevant. He later quoted from the FCA decision of *Madison Pacific Properties Inc. v. The Queen*, 2019 FCA 19, where the Court held that the correct legal test for relevance on discovery is that the question must give rise to a “reasonable likelihood that it might lead to a train of inquiry that may advance a party’s case or damage that of its opponent” (para 27).

[35] On the issue of documentary production, as noted by the Appellant above, and summarized in *3488063 Canada Inc.*, there is no obligation under Rule 81 to provide a list of all documents that may have been in a party’s possession or control. That said, I find that this does not necessarily limit the Appellant’s obligation during the course of the examinations, whether oral or written, to only produce documents that have been so listed. Limiting production to documents that appear in the List of Documents would unduly defeat the purpose of examinations.

[36] Although not directly relevant, Rule 85(3) provides that the examined party shall produce all documents listed that are not privileged, but Rule 105(2) adds that the examined party may have to produce additional documents if that person admits that he or she has possession or control of or power over any other document that relates to a matter at issue in the proceeding. This was addressed in *Coopers Park Real Estate Development Corporation v. The Queen*, 2022 TCC 82 (paras 45-47).

[37] To be clear, the requirement that a party list documents in its “possession or control” does not mean that permissible questions must relate only to those documents. Consistent with Rule 95(2), as reviewed above, the person to be examined must still make all reasonable enquiries regarding the matters in issue from all of the party’s officers, servants, agents and employees, past or present, either within or outside Canada and if necessary, the person being examined may be required to become better informed and for that purpose the examination may be adjourned. This is particularly critical in this instance where the relevant business division has been sold, and all employees have since departed. In *Coopers Park*, Justice Hill clarified that “[t]here is no free-standing, independent” requirement that a party make enquiries for documents from third-party advisors.

[38] In the end, the overriding considerations are relevancy and proportionality.

[39] In this instance, both parties have submitted a Book of Authorities, and I will refer to those decisions, as needed, as I review and address the Questions below.

#### IV. Analysis

[40] There are 41 questions before the Court and, broadly speaking, they have been divided into 12 groups by the parties.

##### **Question 9(g)**

[41] In question 9(g), the Respondent sought the production of documentation relating to the services the Appellant provided to its clients, including “any notes, reports, opinions, communications, memoranda, or other documents relating to the services provided by the Appellant to each client.”

[42] In response to this question, the Appellant provided “engagement letters” and Lead Sheets for several of the clients, stating that this was a “proportionate response.”

[43] The Respondent followed up by asking the Appellant to quantify the number of documents that would respond to Question 9(g), and to provide either all of them or a representative sample thereof. If the Appellant elected to provide a representative sample, the Respondent wanted it to provide an explanation of how

many documents were omitted, and how the Appellant chose which documents to omit.

[44] Additionally, the Respondent asked the Appellant to identify which of several documents were created by the Appellant while providing services to its client(s).

[45] The Appellant responded by quantifying the number of documents (ranging from 3 to 2,000 depending on the client) but did not provide any of them. The Appellant also failed to identify which documents it had created, stating, *inter alia*: “[t]he identity of these documents is readily apparent from a review of the documents.”

[46] The Respondent’s position is that it is entitled to know which documents the Appellant says it prepared in the course of providing the services.

[47] At the outset, the Appellant has stated that it intends to withdraw the portion of its appeal as it relates to 7 clients. This includes: (i) Concordia Healthcare Corp.; (ii) Fortress Minerals; (iii) Jameson Bank; (iv) New Look Eyewear; (v) Novus Energy; (vi) Petroamerica Oil Corp.; and (vii) Whitecap Resources Inc. Copies of the respective engagement letters have been produced. I will refer to these as the Excluded Clients.

[48] Counsel for the Appellant has confirmed in its letter to the Respondent, dated January 21, 2025, produced at the hearing of the motion, that the Appellant will not be challenging the assessments with respect to the Excluded Clients. Applying the concept of proportionality, I find this can be viewed as an ordinary concession, and there is no need to amend the Notice of Appeal. The matter can be brought to the attention of the trial judge at the commencement of the hearing.

[49] Based on the Appellant’s concession with respect to the Excluded Clients, I agree that there is no need to provide further documentation or answers with respect to the Excluded Clients, nor to indicate who might have prepared the engagement letter. I find that this is supported by *The Queen v. ExxonMobil Canada Hibernia Company Ltd.*, 2014 FCA 168, where Justice Stratas indicated it was a matter for the Court’s discretion.

[50] With respect to the preparation of the retainer letters for the 12 remaining clients, I find that the Respondent is entitled to a proper response as to who might

have prepared them. While I do not see the response as particularly relevant or as having any probative weight in the context of this appeal, I am not prepared to second guess counsel for the Respondent and will order that the Appellant provide a proper response indicating, on a best efforts basis, who prepared the engagement letters without requiring the Respondent to assume anything on the basis of the letterhead or alternatively, stating that the document was not prepared by the Appellant or, in the further alternative, that it cannot so confirm.

[51] The Appellant must also produce the remaining documents or a representative sample of the remaining documents with an explanation of how many documents were omitted, and how the Appellant chose which documents to omit.

[52] If the Appellant feels that this involves the segregation of documents or work of legal counsel, the simple solution is to produce the bulk of the available documents for the 12 remaining clients.

**Questions 10(c), 11(b), 12(c), 14(b), 15(a), 16(b), 17(b), 18(c), 19(b), 20(c), 21(e), 22(b), 24(a), 25(a)**

[53] In this group of questions, the Respondent sought a statement of the Appellant's legal position with respect to 13 different clients, as to whether the Appellant had made a single supply of a service to the client under the agreement and (i) if so – to provide the Appellant's position in respect of the predominant element of the single supply and all the facts relied on in support of this position and further (ii) if not, to provide the Appellant's position in respect of the multiple supplies provided and the predominant element of each supply, along with the facts relied on in support of this position.

[54] It is the Respondent's position that the Appellant did not provide adequate responses.

[55] For each client at issue, the Appellant's initial response was that "the predominant nature of this single supply was the arranging for the Offering or Transaction," and "the Appellant's alternative position is that the service for which it received the success fees in issue constituted a separate supply of the service of arranging for a securities transaction."

[56] I agree with the Respondent that the answer provided was overly broad and non-responsive because it failed to provide a factual basis for the assertion made.

[57] The Appellant provided a response for Question 10(c) and then repeated that response for every other question in this group but referred to the specific client. Its position is that the questions are improper because (i) they seek the work product and/or legal opinion of counsel by requesting a segregation of documents; (ii) they seek information about the Appellant's legal arguments by requiring the Appellant to identify the documents that it will rely on; (iii) the Appellant already answered the questions by providing the best information available to it following reasonable and proportionate searches; and (iv) the questions are disproportionate with respect to some clients.

[58] I do not agree with the position taken by the Appellant. The Respondent is entitled to understand the Appellant's legal position with respect to each client and the factual basis for that position. These are essentially reliance questions. As explained by Justice Miller in *Kossow*, asking for facts underlying an allegation is limited solely to fact-gathering and is proper and further questions that seek to get the witness to divulge relevant facts in connection with an allegation" are permissible.

[59] In *Sloan*, Justice Biringer said substantially the same thing, indicating that "[t]here is no doubt that a party is *entitled*, on discovery to obtain the facts relied on by the other party. Fact-gathering lies at the heart of the discovery process" but this is to be distinguished from "improperly" asking what evidence a witness has to support an allegation" (my emphasis).

[60] In this instance, the Respondent has not asked for evidence.

[61] Excluding Questions 19(b) and 21(e) that relate to two of the Excluded Clients, as reviewed above, I feel that these questions are proper and relevant. The Appellant must articulate the factual basis for the position taken with respect to each client.

### **Question 13(b)**

[62] The Respondent referenced an addendum agreement and asked the Appellant to describe the services it provided to one of its clients under the agreement and, in

a follow-up question, asked the Appellant to describe the services of “effecting” the Acquisition Financing as set out in a paragraph referred to by the Appellant.

[63] The Appellant responded by indicating that “given the passage of time and the sale of the relevant business unit, the Appellant is not able to provide specifics as to every service that was provided to the Client in respect of each retainer.”

[64] The Appellant argues that the question is improper because (i) the Appellant already answered the question by providing the best information available to it following reasonable and proportionate searches; (ii) it seeks the work product and/or legal opinion of counsel by requiring the segregation of documents; and (iii) it seeks information about the documents on which the Appellant will rely at trial.

[65] I do not agree. The nature of the services rendered to clients goes to the core of the appeal. On balance, I find that the question is relevant and proper.

[66] The Respondent seeks facts that may help its case, not the work product or legal opinion of counsel. I would order the Appellant to answer it properly by making enquiries of employees, past or present, as required by Rule 95(2).

#### **Question 14(a)**

[67] The Respondent asked the Appellant to (i) explain what appear to be terms found in an engagement letter provided by the Appellant; (ii) provide factual information about whether certain things contemplated in the engagement letter occurred; and (3) if the things contemplated in the letter had indeed occurred, to provide certain related documents. The Appellant responded: “See the documents attached at 9 g.”

[68] The Respondent’s position is that the Appellant did not properly answer the question. The Appellant’s position is that it “does not refuse this question” and will “make reasonably diligent inquiries into this request and to provide any relevant, non-privileged information and/or documents available to it, with a view to proportionality.”

[69] Once again, the Appellant has an obligation to make diligent enquiries of former employees. I will order that the Appellant respond and provide any relevant, non-privileged information and/or documents in connection with this question.

### **Question 16(a)**

[70] The Respondent referenced a document produced by the Appellant and asked the Appellant to describe, in detail, all “financial and strategic advisory services” provided by the Appellant to its client under this agreement. The Appellant responded: “See the documents attached at 9 g.” The Appellant then directed the Respondent to other documents, stating that it could not provide specifics.

[71] The Respondent’s position is that the Appellant’s answers were non-responsive, insufficient, vague, and abusive.

[72] The Appellant’s position is that the questions were improper because (i) the Appellant already answered the question by providing the best information available to it following reasonable and proportionate searches; (ii) it seeks the work product and/or legal opinion of counsel by requiring the segregation of documents; and (iii) it seeks information about the documents on which the Appellant will rely at trial.

[73] I do not agree with the Appellant’s position. Question 16(a) is relevant and proper and the Appellant must provide a further and better response describing the “financial and strategic advisory services” provided to this client.

### **Question 18(a)(i)**

[74] The Respondent referred to a document produced by the Appellant and asked it to describe all “financial and strategic advice services” that it provided pursuant to this agreement. Once again, the Appellant replied: “See the documents attached at 9 g” and then directed the Respondent to other documents, stating that it could not provide specifics.

[75] The Respondent’s position is that the Appellant’s answers are non-responsive, insufficient, vague, and abusive.

[76] The Appellant’s position is that the questions were improper because (i) the Appellant already answered the question by providing the best information available to it following reasonable and proportionate searches; (ii) it seeks the work product and/or legal opinion of counsel by requiring the segregation of documents; (iii) it seeks information about the documents on which the Appellant will rely at trial; and

(iv) the question is disproportionate with respect to one of the implicated clients in light of the amount at issue.

[77] Once again, I do not agree with the Appellant's position. It has an obligation to make diligent enquiries of employees, past or present. The services provided to the clients go to the core issue in this appeal.

[78] This question seeks factual information that could foreseeably help the Respondent's case or damage the Appellant's case. It is relevant and proper, and I will order that the Appellant provide a further and better response describing the "financial and strategic advisory services" provided to this client.

### **Question 21(a)**

[79] This question relates to Whitecap Resources, one of the 7 Excluded Clients. For reasons set out above, there is no need to respond.

### **Question 27(d)**

[80] This question relates to Lead Sheets included in Tabs 17-26 of the Appellant's Book of Documents. The Respondent requested "all facts and documents relied on by the person or persons who completed or reviewed the Lead Sheets in so completing or reviewing." The Appellant responded in general terms, indicating that the employee "would assess the work that was performed by him or her and other employees in order to get the deal completed." No other answer was provided.

[81] The Appellant's position is that the question is improper because (i) the Appellant already answered the question by providing the best information and documents available to it following reasonable and proportionate searches; and (ii) it is disproportionate with respect to three of the Appellant's clients.

[82] I find that the answer is eminently proper because it seeks the facts relied upon by individuals required to complete the Lead Sheets. Once again, this goes to the core of the issues in this appeal. I find that the answer provided is vague and unresponsive.

[83] The Appellant cannot sit on its laurels and say it has provided "the best information and information available following reasonable and proportionate

searches.” Once again, it needs to make further and better enquiries. If existing employees are unavailable, the Appellant must make diligent enquiries of former employees.

[84] For reasons set out above, the Appellant is not required to provide a further or better response in connection with the Excluded Clients.

### **Question 29(b)**

[85] The Respondent referred to the Lead Sheet for Rio Alto and asked the Appellant to confirm “its position that it was involved in the purchase & sale of shares (...) and to detail its involvement and provide all facts relied upon in support of this position.”

[86] The Appellant simply stated “confirmed” and referred the Respondent to a news release. The Respondent argues that the answer is non-responsive.

[87] The Appellant’s position is that the question is improper because (i) the Appellant already answered the question by providing the best information and documents available to it following reasonable and proportionate searches; (ii) it seeks the work product and/or legal opinion of counsel by requiring the segregation of documents; and (iii) it seeks information about the documents on which the Appellant will rely at trial.

[88] I agree with the Respondent that this question is proper and relevant and that the answer is unresponsive. The question seeks the factual basis for the assertion, not information about documents, the work product or legal opinion of legal counsel.

[89] The question goes to the core of the appeal and the nature of the service provided. This is a fact-driven enquiry, and the Appellant needs to make additional enquiries in order to explain what it did, the services rendered and how factually it was involved in the transaction relating to this client.

### **Questions 29(c), 30(b), 31(b), 32(b), 33(c), 34(c), 36(b), 37(b), 38(c)**

[90] In this group of questions, the Respondent referred to the “Success Fee” and requested a detailed description of the facts underlying the Appellant’s involvement in the activities for 8 different clients.

[91] The Appellant responded by referring the Respondent to certain productions and to a news release issued in connection with the client in question, adding that “the Appellant’s predominant efforts to conclude the deal was the result of the items identified in the lead sheet.” The Appellant responded to Question 29(c) relating to Rio Alto and basically repeated and relied on that response for the 7 other clients.

[92] The Appellant argues that a previous answer identified as Item 6 of the Appellant’s follow-up answers included a breakdown of its business as it related to the Clients with respect to (i) the commencement of its engagements with the Clients, (ii) the Retainer letters and (iii) the provision of the services in question.

[93] I agree with the Appellant that these questions have already been substantially answered and that the questions are unnecessarily repetitive since the Respondent has already asked for the factual basis for the Appellant’s position. The Respondent now seeks to do so again but under the heading of “Success Fee,” but the fee necessarily relates to the same activities. This is repetitive.

[94] There is no need to provide a further response to these questions.

**Questions 30(a), 31(a), 32(a), 33(b), 34(b), 35(a), 36(a), 37(a), 38(b)**

[95] Question 30(a) relates to the Lead Sheet for Hudbay Minerals and asks the Appellant to confirm whether its position is that it was involved in the purchase or sale of shares in respect to this agreement, and if so, to detail the Appellant’s involvement and provide all facts relied upon in support of this position.

[96] The remaining questions in this group simply relate to another client.

[97] The Appellant initially simply answered “Confirmed” and then, as with the previous group of questions, referred the Respondent to the answers in “item 6”, adding that given the passage of time and the sale of the relevant business unit, it is not able to provide specifics as to every service provided to the Client in respect of each retainer.

[98] Once again, the Appellant adds that the question is improper because (i) the Appellant has already answered the question by providing the best information and documents available to it following reasonable and proportionate searches; (ii) it seeks the work product and/or legal opinion of counsel by requiring the segregation

of documents; and (iii) it seeks information about the documents on which the Appellant will rely at trial.

[99] The Respondent argues that the answer provided is overly broad and unresponsive.

[100] As with the previous group of questions, I agree with the Appellant that these questions have already been substantially answered and that the questions are unnecessarily repetitive since the Respondent has already been asked for the factual basis for its position and to describe the activities and services provided to each and every client. The Respondent now seeks to do so again but under the heading of “Lead Sheets” but the activities or services rendered necessarily relate to the retainer or engagement letters that are the subject matter of prior questions.

[101] There is no need to provide a further response to these questions.

### **Question 35(b)**

[102] The Respondent asked the Appellant why it did not charge or collect GST/HST in respect of this transaction, despite having concluded that the success fee was in respect of a taxable supply. The Appellant replied that: “[i]nquiries are ongoing with respect to an explanation” but nothing further was provided. Moreover, since this involved one of the [Excluded Clients], it argues that the question is no longer relevant.

[103] The Respondent’s position is that no answer has been provided.

[104] This question relates to Whitecap Resources, one of the Excluded Clients that was charged a success fee of \$10,000.00. Since the Appellant no longer disputes the assessment of GST/HST on that amount, the question is no longer relevant and thus there is no need to provide a response.

### **V. CONCLUSION**

[105] The Appellant has stated on numerous occasions in its responses that if the documentation and information provided are insufficient for the Appellant to establish its stated legal position at trial, that will be a matter for the trial judge dealing with the matter on its merits. Indeed, it is uncontroversial that the Appellant

will be called upon to establish its case at the hearing of the appeal, and, given the nature of tax litigation, it will be required to adduce evidence to demolish the Minister's assumptions. But that is quite another kettle of fish and has little bearing on the discovery process where the threshold for relevance has been described as "low" and where each party is entitled to ask questions to better understand the factual basis of the other party's case. Opposing counsel should not be left scratching their heads at the commencement of the hearing and left wondering what the opponent's case will be. The purpose of examination for discovery is to ensure that neither party is "ambushed" or surprised at trial.

[106] The case law noted above indicates that the discovery process is critical and goes to the heart of the litigation process. Although many questions may seem tedious, pointless or repetitive, most often they are not. An examined party needs to be prepared, and for that purpose, the person being examined "may be required to become better informed" as stated in Rule 95(2).

[107] To summarize, an Order will issue as follows:

1. **Question 9(g)** - The Appellant shall respond by indicating who prepared the engagement letters for all clients, save and except the Excluded Clients, stating that the document was or was not prepared by the Appellant or, in the further alternative, that it cannot so confirm. It will also provide all available documents with respect to the remaining clients or, alternatively, a representative sample of the documents with an explanation of how many documents were omitted, and how it chose which documents to omit.
2. **Question 10(c), 11(b), 12(c), 14(b), 15(a), 16(b), 17(b), 18(c), 19(b), 20(c), 21(e), 22(b), 24(a), 25(a)** – The Appellant must answer these questions by providing the factual basis for the position taken, save and except Questions 19(b) and 21(e), that relate to the Excluded Clients.
3. **Question 13(b)** – The Appellant must answer this question by making further enquiries of employees, past or present, as required by Rule 95(2).
4. **Question 14(a)** – The Appellant must answer this question by making further enquiries of former employees, past or present. As undertaken, the Appellant must also provide any relevant, non-privileged information and/or documents in connection with this question.

5. **Question 16(a)** – The Appellant must provide a further and better response describing the “financial and strategic advisory services” provided to this client.
6. **Question 18(a)(i)** – The Appellant must provide a further and better response describing the “financial and strategic advisory services” provided to this client.
7. **Question 21(a)** – This question relates to Whitecap Resources, one of the 7 Excluded Clients and thus there is no need to respond.
8. **Question 27(d)** – The Appellant needs to make further and better enquiries and provide a proper response to this question, save and except if it directly relates to one of the Excluded Clients.
9. **Question 29(b)** – The Appellant needs to make additional enquiries and explain what it did, the services rendered and how factually, it was involved in the transaction relating to this client.
10. **Questions 29(c), 30(b), 31(b), 32(b), 33(c), 34(c), 36(b), 37(b), 38(c)** – There is no need to provide a further response to these questions.
11. **Questions 30(a), 31(a), 32(a), 33(b), 34(b), 35(a), 36(a), 37(a), 38(b)** – There is no need to provide a further response to these questions.
12. **Question 35(b)** – This question relates to Whitecap Resources, one of the Excluded Clients. There is no need to provide a response.

[108] Additionally, I will order that the Appellant properly answer any proper follow-up questions arising from its answers given pursuant to this Order.

[109] The Respondent is entitled to its costs according to the applicable Tariff.

Signed at Ottawa, Ontario, this 24<sup>th</sup> day of June 2026.

“Guy R. Smith”

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Smith J.

CITATION: 2026 TCC 120

COURT FILE NO.: 2022-3168(GST)G

STYLE OF CAUSE: RF SECURITIES CLEARING LP v. HIS  
MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 27, 2025

REASONS FOR ORDER BY: The Honourable Justice Guy R. Smith

DATE OF ORDER: June 24, 2026

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