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PRESENT: The Honourable Mr. Justice Régimbald**BETWEEN:****FRONTIER LITHIUM INC.****Applicant****and****THE ATTORNEY GENERAL OF CANADA****Respondent****REASONS AND JUDGMENT****Table of Contents**

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I. Overview

[1] The Applicant, Frontier Lithium Inc. [Frontier], is a company developing a lithium resources exploration project in Ontario. To be able to raise funds for its project, and because it is a pre-revenue corporation, Frontier relies on the flow-through share financing program [flow-through program] pursuant to section 66 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA]. The flow-through program enables Frontier to renounce Canadian Exploration Expenses [CEE] to its investors, under specific conditions.

[2] In 2021, Frontier entered into subscription agreements with 40 investors under the flow-through program, in which it committed to incur CEE in an amount of \$12M in 2022. As a result of the application of subsection 66(12.66) of the *ITA*, a rule exists deeming the CEE actually incurred in 2022 to have been made in 2021 [the “look-back” rule], allowing the investors to deduct the amount in their respective 2021 fiscal year, even if the CEE were incurred in 2022.

[3] However, because of unexpected exploration delays, Frontier was unable to incur the entire amount of CEE by December 31, 2022. Out of a total amount of \$12M, Frontier was only able to renounce approximately \$7M in CEE to its investors for the 2021 fiscal year under the

“look-back” rule, with Frontier incurring the remainder of the CEE in 2023. As a result, Frontier did not renounce to the entire \$12M in CEE in favour of its investors for their 2021 fiscal year, thereby failing to comply with the subscription agreements.

[4] Since the “look-back” rule deeming the expenditures to have been made in 2021 could not apply, Frontier sought permission from the Minister of National Revenue [Minister] pursuant to subsections 66(12.6) and 66(12.741) of the *ITA* — in these reasons any reference to the Canada Revenue Agency [CRA] includes the Minister, as the CRA was acting on behalf of the Minister — to make a second renunciation of CEE in an amount of about \$5M, in favour of its investors for their 2023 fiscal year.

[5] Frontier’s request to make a second renunciation for the 2023 fiscal year, under subsections 66(12.6) and 66(12.741), was refused by the Minister for the following main reasons: 1) the subscription agreements between Frontier and its investors did not contemplate any renunciation of CEE for the 2023 fiscal year and a second renunciation was not technically feasible under subsection 66(12.6); 2) Frontier was out of time to make the second renunciation and it would not be “just and equitable” to authorize Frontier to do so under subsection 66(12.741) of the *ITA* [Decision].

[6] Frontier seeks judicial review of that Decision. For the reasons that follow, the application for judicial review is granted. The CRA failed to sufficiently grapple with Frontier’s main argument relating to the interpretation of the *ITA*, to engage in a “genuine, non-tendentious, explicit or implicit analysis of the text, context and purpose behind a legislative provision when

interpreting it” and to properly justify its interpretation of subsections 66(12.6) and 66(15) of the *ITA*, in finding that Frontier’s request to make a second renunciation was not technically feasible under the provisions (*Jennings-Clyde (Vivatas, Inc.) v Canada (Attorney General)*, 2025 FCA 225 at paras 7-8, 11 [*Jennings-Clyde*] citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 119-123 [*Vavilov*]; *Canadian Nuclear Laboratories Ltd. v Canada (Attorney General)*, 2026 FCA 106 at paras 38, 44 [*Canadian Nuclear Laboratories*]). Moreover, had the CRA applied the principles of statutory interpretation in its analysis of subsections 66(12.6) and 66(15) of the *ITA* — which in theory could have led to a different conclusion — the CRA’s Decision on Frontier’s request for discretionary relief under subsection 66(12.741) of the *ITA* and as to whether it would be “just and equitable” to authorize the late renunciation, and how the CRA weighed Frontier’s submissions, may have been different.

II. Facts

A. *Frontier and its use of the fund-raising provisions of the ITA*

[7] Frontier is a pre-revenue, emerging lithium mineral and salts company focused on the development of a lithium project in Ontario.

[8] As a pre-revenue company, Frontier is reliant on the flow-through program pursuant to section 66 of the *ITA* allowing it to raise sufficient funding to pursue its development project. The flow-through program is a taxation fiction that encourages investment in the Canadian energy and natural resources sector, by allowing eligible Canadian corporations to renounce their eligible CEE to their investors. Since these Canadian corporations have not yet generated a

revenue against which to deduct the CEE, the program enables investors to deduct the amounts of CEE on their own income tax returns, in lieu of the Canadian corporations.

[9] On December 14, 2021, Frontier entered into subscription agreements [Subscription Agreements] with 40 different investors [Subscribers]. In the Subscription Agreements, Frontier raised about \$12M. Frontier promised to incur the CEE before December 31, 2022, and renounce the CEE to the Subscribers using the “look-back” rule under subsection 66(12.66) of the *ITA* [first renunciation], so that the CEE could be deducted by the Subscribers in their income tax return for the year 2021.

[10] The Subscription Agreements included, *inter alia*, the following clauses:

- a) Pursuant to subsections 3(l), 3(r), 3(qq), 6(d) and 6(e), Frontier agreed to incur CEE such that it could renounce the CEE to its Subscribers under the “look-back” rule in accordance with the *ITA*, with an effective date of no later than December 31, 2021;
- b) Pursuant to subsection 6(g), Frontier agreed that if it did not incur the required amount of eligible CEE by December 31, 2022, and renounce the CEE to each Subscriber, Frontier would indemnify the Subscribers and pay the amount of tax owing by the Subscribers as a consequence of that failure; and
- c) In section 14, the parties agree that the Subscription Agreements cannot be modified or amended except by an instrument in writing by the party against whom any modification, or amendment is sought.

[11] Notably, there is no specific provision in the Subscription Agreements permitting Frontier to incur any CEE that will be renounced in favour of the Subscribers after December 31, 2022.

[12] On February 7, 2022, pursuant to the Subscription Agreements, Frontier renounced the CEE valued at \$12M to its Subscribers as permitted under subsection 66(12.66) of the *ITA*, even if, at that time, Frontier had not yet incurred the expenditures.

[13] Due to circumstances that Frontier submits were out of its control, it did not incur the entire \$12M of CEE by December 31, 2022. Frontier explained in an Executive Summary dated January 13, 2025 [Executive Summary] that delays in obtaining the necessary permits to allow the work to be completed in the 2022 calendar year could not be obtained in time. The delays were due to additional consultations required with a First Nation and a significant house fire tragedy in a First Nation community (Certified Tribunal Record [CTR] at pp 430-437).

[14] As a result, Frontier could not renounce the entire amount of CEE to the Subscribers for deduction in their 2021 taxation year. The amount of CEE that was renounced by Frontier to the Subscribers had to be reviewed and reduced from \$12M to \$7M, resulting in tax consequences for the Subscribers who could no longer deduct the entire amount in their respective 2021 taxation year.

B. *Frontier sought the Minister's authorization to make a new renunciation of CEE for the year 2023, under subsection 66(12.6) and subsection 66(12.741) of the ITA*

[15] Following the discovery of the situation during an audit by the CRA which began in October 2023 and ended late in 2024, Frontier informed the CRA on January 28, 2025, that it intended to make a second renunciation for the CEE incurred in 2023 [second renunciation], pursuant to subsection 66(12.6) of the *ITA*. Frontier reiterated its intention in writing on February

28, 2025, as well as on April 24, 2025, and then filed a formal request in writing on May 16, 2025 (Application Record [AR] at p 2173, CTR pp 455, 582-583, 589-601, 1244-1247).

[16] Unlike the “look-back” rule under subsection 66(12.66) which deems CEE to have been incurred the year prior, subsection 66(12.6) of the *ITA* allows a renunciation of CEE incurred within 24 months after the end of the month in which the subscription agreement was made [the “general rule period”]. In this case, since the Subscription Agreements are dated December 15, 2021, Frontier submitted that it was entitled to renounce CEE incurred up to December 31, 2023. Moreover, Frontier’s deadline to make the second renunciation was February 29, 2024, under subsection 66(12.6) of the *ITA*, being “before March of the first calendar year that begins after the period” which in this case ended December 31, 2023.

[17] In a letter dated February 28, 2025, Frontier advised that it intended to seek the Minister’s approval to make a late renunciation under subsection 66(12.741) of the *ITA* for its second renunciation available under subsection 66(12.6) (CTR at pp 454-455, 1244). Subsection 66(12.741) of the *ITA* provides that a late renunciation may be authorized in two circumstances: (i) within 90 days after the end of the period in which the corporation was entitled to renounce the amount (inapplicable in this case since that deadline would have been around the end of May 2024); and (ii) more than 90 days after the end of that period, where, in the opinion of the Minister, the circumstances are such that it would be “just and equitable” that the amount be renounced.

[18] Due to Frontier's inability to incur the CEE by December 31, 2022, a late authorization to make the second renunciation would have enabled Frontier to renounce the additional \$5M in CEE to its Subscribers for the year 2023 because it was not able to renounce those CEE under the "look-back" rule for the year 2021. As a result, if Frontier is authorized to make the late second renunciation, its contractual liability to indemnify the Subscribers for any additional amount of tax they owe as a result of the unavailability of the "look-back" rule, as prescribed in the Subscription Agreements, will be reduced.

[19] Between Frontier's initial indication on January 28, 2025, that it intended to make a second renunciation and seek ministerial authorization to do so, and its formal written request on May 16, 2025, the CRA indicated in informal communications that it was not technically feasible for Frontier to make a second renunciation under subsection 66(12.6) of the *ITA* (CTR at pp 582-583, 1244-1246).

[20] Frontier sought a written response confirming the CRA's oral conclusion that it was not technically feasible for Frontier to make a second renunciation under subsection 66(12.6).

C. *CRA's written response on the technical feasibility to make a second renunciation under subsection 66(12.6) of the ITA*

[21] On April 25, 2025, the CRA provided its written response ["Position Letter"]. The CRA explained that "[i]n the [Subscription Agreements], the term "Expenditure Period" means the period commencing on the Closing Date (December 15, 2021) and ending on the earlier of: (i) the date which the Gross Proceeds have been fully expended in accordance with the terms of this

Subscription Agreement; and (ii) the Termination Date. The [Subscription Agreements] defines that the “Termination Date” means December 31, 2022. Since the Gross Proceeds were not fully expended before December 31, 2022, this date marks the end of the Expenditure Period”. The CRA also noted that Clause 14 of the Subscription Agreements provided that its terms would not “be modified, amended, changed, waived, discharged or terminated” except in writing signed by the party against whom the change is sought (CTR at p 586).

[22] The CRA opined that Frontier’s request to make a late second renunciation under subsection 66(12.741) “would require submitting amended T101 slips to the subscribers at a date later than December 31, 2022, thereby modifying the effective date of renunciation. This retrospective tax planning is made in order to avoid a reduction of the investors”. Moreover, “[s]ubsection 66(12.741) provides for late renunciation, but does not allow the company to amend and modify a renunciation that has already been effective”. In addition, “[u]nder the [Subscription Agreements], the renounced qualifying expenses must be incurred no later than December 31, 2022. Allowing such amendments would be inconsistent with the intended purpose of the Act.” Finally, the CRA stated that it had no information as to whether Frontier “has an instrument in writing signed by the investors against whom the change was sought. Even if they had written a new agreement or amended the initial agreement, it would have been considered as a “rectification” and CRA does not allow it. *Ref: 2016/07/08 — (BCSC) Capstone Power Corporation v 1177719 Alberta Ltd. et al.*” (CTR at p 587).

[23] In its conclusion, the CRA ruled that in its view, “s. 66(12.741) does not apply and [Frontier’s] request to modify the initial renunciation by using the general rule period (24

months) instead of the [“look-back”] rule as initially renounced under the Flow-Through Share agreement, cannot be accepted” (CTR at p 588).

D. *Frontier’s formal request in writing for late authorization to make a late second renunciation*

[24] On May 16, 2025, Frontier responded to the CRA’s Position Letter and made a formal request in writing to obtain the Minister’s authorization to make a late second renunciation under subsections 66(12.6) and 66(12.741) of the *ITA*.

[25] Frontier responded to the CRA’s Position Letter of April 25, 2025, and submitted that:

- a) Frontier was not seeking to modify, rectify or amend the renunciation made under the Subscription Agreements but is seeking to make a new renunciation of CEE incurred in 2023 that was never previously renounced (CTR pp 594-595).
- b) the CRA’s reasoning that the renunciation must be made strictly in accordance with the Subscription Agreements and otherwise it cannot be made under the *ITA* is erroneous. Rather, a renunciation is valid if it follows two rules: (1) a person gave consideration under an agreement for the issue of flow-through shares; (2) the corporation incurred CEE in a 24-month period. Those two rules were met in this case (CTR p 594).
- c) the fact that a subscription agreement may provide that the CEE must be incurred in a shorter period than the 24-month general rule period to comply with the “look-back” rule is an issue between the parties that cannot affect the application of the *ITA*. The terms of a contract do not affect a corporation’s ability to renounce CEE incurred within the 24-month period if the other conditions of the *ITA* are met (CTR p 594).

[26] Frontier also submitted that an authorization would be “just and equitable” under subsection 66(12.741) because:

- a. its project was delayed as a result of permitting delays that were out of its control (CTR at p 590, citing the Executive Summary submitted by Frontier on January

13, 2025, that can be found in the CTR at pp 430-437). The Executive Summary notes that the project is situated in Northwestern Ontario in a remote area that is only accessible by ground using winter roads during approximately 8 to 10 weeks per year, required to mobilize drill rigs (CTR at pp 435-436). Unfortunately, while it submitted its permits applications in due course, in June and October 2021, the issuance of the permits was delayed because of additional consultations required and because of a significant tragedy in a First Nation community (CTR at pp 430-437, 590). As a result, the exploration and related spending were incurred in 2023.

- b. Frontier was not able to make the second renunciation by the deadline of February 29, 2024, under subsection 66(12.6) of the *ITA*, because the CRA audit was not completed by that time – and the final amounts needed to be confirmed prior to the reduction of CEE under the “look-back” rule as well as the second renunciation to be made (CTR at pp 590-591, 593).
- c. the Subscribers are entirely blameless in this situation and should not be unfairly prejudiced by losing \$5M out of their \$12M of CEE deductions (CTR at p 593).
- d. Frontier would be devastated if the request for a second renunciation is not authorized because it would have to compensate its Subscribers and would likely be unable to do so which could result in the discontinuance or scaling down of its operations (CTR at p 593).
- e. an authorization to make the second renunciation for 2023 would be consistent with the purpose of the *ITA* and the flow-through program, which is to incentivize investments made for funding exploration activities in Canada (CTR at p 592).
- f. on April 24, 2025, Frontier conveyed its understanding that CRA does not dispute that it would be “just and equitable”, within subparagraph 66(12.741)(a)(ii) that CEE could be renounced and to “let us know if [CRA] had any concern in this regard”. Since CRA’s Position Letter of April 25, 2025, indicates that its only concern is the technical possibility to make a late second renunciation under subsection 66(12.6), CRA has not indicated any concern that it is just and equitable that the amounts be renounced (CTR at p 595).

E. *CRA's Decision denying Frontier's request for authorization to make the late second renunciation*

[27] On June 18, 2025, the CRA denied Frontier's request for authorization to make the late second renunciation.

[28] First, the CRA restated the facts and ruling set-out in the Position Letter relating to the technical impossibility for Frontier to make a second renunciation under subsection 66(12.6) of the *ITA* (CTR at pp 585-588, 983-986).

[29] Second, the CRA addressed Frontier's submissions made on May 16, 2025. The CRA noted that Frontier "would like to use the 24-month period to incur the eligible CEE, as stated under subsection 66(12.6) of the *ITA*, by using the general rule period. If the general rule period were applied, the termination date under the subscription agreement would shift from the agreed-upon December 31, 2022, to December 31, 2023. [...] Under the [Subscription Agreements], the Company is not allowed to use the look-back rule for the initial renunciation and then, if insufficient eligible expenses are incurred after the end of year 2, rely on the 24-month general rule period to complete the financing" (CTR at p 986).

[30] Specifically in response to Frontier's submission that subsection 66(12.6) did not include any prohibition to incur CEE within a 24-month period (CTR p 594), the CRA ruled that "[t]he Company argued that nothing in subsection 66(12.6) or any other provision requires, as a prerequisite to a renunciation, that the terms of the agreement between the Company and the subscribers have been observed. This is incorrect, there must not only be an agreement in place,

but the agreement must be one which allows for the renunciation to occur. Here, the [Subscription Agreements] does not permit the Company to renounce expenses incurred after December 31, 2022. If the intention of the *ITA* were to allow the Company the flexibility to maneuver and circumvent the agreement at its discretion, then there would be no point in requiring such an agreement in the first place. Furthermore, the request to make an additional renunciation under the general rule period would not have been allowed at any time, regardless of whether the request would have been made before the deadline of February 29, 2024, or through 66(12.741) for a late renunciation, because it does not follow the terms of the [Subscription Agreements]” (CTR at p 987).

[31] Third, the CRA disagreed with Frontier’s specific submissions that it would be “just and equitable” to be authorized to make the late second renunciation. The CRA explained that Frontier made no attempt to amend the Subscription Agreements so that the CRA could “know the subscriber’s views on the potential renunciation. If it had been the Company and subscriber’s intention to have the full two years allowable under the *ITA* to incur the expenses, one would have expected the Company to have taken action on this issue sooner” (CTR at p 988).

[32] The CRA then dismissed Frontier’s argument that it would be financially devastated if it could not renounce the additional CEE because the harm suffered is a “direct consequence from a lack of forethought in the decisions taken regarding the flow-through share financing” and that accepting Frontier’s request would shift the responsibility for indemnifying its Subscribers to the Canadian taxpayers (CTR at p 988).

[33] Finally, the CRA opined that while Frontier's failure to incur CEE in 2022 was a result of permitting delays and a house fire tragedy in a First Nation community, it remained the company's responsibility to ensure that all necessary permits were obtained to carry out the exploration work in 2022 before deciding to go forward with a flow-through financing scheme using the "look-back" rule with a termination date of December 31, 2022 (CTR at p 989).

III. Issues and Standards of Review

[34] There are two issues in this case:

- a) Whether the CRA's Decision that the Subscription Agreements precluded any second renunciation for the year 2023 under subsection 66(12.6) is reasonable;
- b) If the CRA's decision regarding Frontier's intended second renunciation for the year 2023 is unreasonable, whether the CRA's Decision that it was not "just and equitable" to authorize a late second renunciation was unreasonable or whether it breached Frontier's right to procedural fairness by failing to allow it to make fulsome arguments on its hardship.

[35] On the procedural fairness issue, the parties agree that the standard of review is a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56; *Canada (Public Safety and Emergency Preparedness) v Rodas Tejeda*, 2026 FCA 115 at paras 38-46 [*Tejeda*] citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). As reiterated in *Tejeda* at paragraph 38: "the ultimate question is whether the individual had a meaningful opportunity to know and meet the case and had a full and fair chance to respond" (*Tejeda* at para 38). A court's intervention on an issue of procedural fairness is an essential part of safeguarding the fairness of the administrative process and holding administrative decision makers to account (*Vavilov* at para 13).

[36] On the issue of the Minister's discretion to authorize the late second renunciation for the year 2023 under subsection 66(12.741), both parties agree that the standard of reasonableness applies. I agree.

[37] However, Frontier submits that the standard of correctness should apply to the CRA's interpretation of subsection 66(12.6) of the *ITA* and its Decision that no additional renunciation for the year 2023 was technically feasible due to the terms of the Subscription Agreements.

[38] Frontier argues that this issue is one of statutory interpretation and the interaction between the statutory regime and contractual obligations and as a result, constitutes a question of law of central importance to the legal system as a whole (*Vavilov* at para 17; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 41 [*Mason*]; *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 35 [*Pepa*]).

[39] Frontier also argues that correctness should apply under the additional category established by the Supreme Court of Canada [SCC] in *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30 at paras 27-32 [*Society of Composers*]). Because a refusal to allow a renunciation under subsection 66(12.6) in a notice of assessment would normally be subject to appeal under section 169 of the *ITA* and would be determined by the Tax Court of Canada [TCC] on *de novo* review, a correct interpretation is required by the Minister under their discretionary power pursuant to subsection 66(12.741) to avoid inconsistent judicial interpretations between one administrative decision maker (the Minister) and one court (the TCC) because both have concurrent first instance

jurisdiction over the legal issue (*ITA*, s. 169; *Dow Chemical Canada ULC v Canada*, 2024 SCC 23 at para 79 [*Dow Chemical*]; see also *Mason* at para 43; *Pepa* at para 36).

[40] The Respondent submits that the standard of review is reasonableness on all issues. The determination by the CRA of whether the *ITA* allows for a renunciation of CEE incurred outside of the expenditure period set out in the Subscription Agreements does not fall under any of the exceptions to the reasonableness standard set out in *Vavilov*. Moreover, the standard of reasonableness applies in cases in which decision makers interpret their home statutes and this Court has previously found that the interpretation of the *ITA* by the CRA is reviewable on a reasonableness standard (*Vavilov* at para 25; *Masson v Canada (Attorney General)*, 2019 FC 887 at para 18; *Onex Corporation v Canada (Attorney General)*, 2024 FC 1247 [*Onex*]). Further, contractual interpretation does not fall within the exceptions to the reasonableness standard.

[41] I disagree with Frontier that the standard of correctness applies under the additional category established in *Society of Composers*. In that case, the SCC held that the correctness standard applies when courts and administrative bodies share concurrent first instance jurisdiction and may make a final ruling on the same provision. That is not the case here. While the CRA may have to contemplate the meaning of subsection 66(12.6), it does not make a conclusive determination in the context of an assessment, which would be within the jurisdiction of the TCC. Likewise, the TCC cannot review the Minister's exercise of discretion under subsection 66(12.741), which is the issue in this case. As a result, the TCC and the Minister do not share concurrent jurisdiction over the meaning of subsection 66(12.6) and inconsistent

decisions relating to the application of subsection 66(12.741) is unlikely to arise (*Society of Composers* at paras 35-39).

[42] As stated by the SCC in *Dow Chemical*, there are major differences between an appeal of a tax assessment and an application for judicial review of the exercise of discretion by the Minister. In that case, the SCC explained that subsection 247(2) of the *ITA* provides for a non-discretionary upward adjustment of the taxpayer's income when the conditions are met (see *Dow Chemical* at para 52; see also *Iris Technologies Inc. v Canada (Attorney General)*, 2024 SCC 24 at para 45). However, the Minister has discretion under subsection 247(10) to decide whether “the circumstances are such that it would be appropriate” to make a downward transfer pricing adjustment, and that discretion could be exercised before or after an assessment is issued. Therefore, if relief is granted before an assessment is issued, the Minister must have come to their own conclusion on the application of the non-discretionary conditions set out in subsection 247(2) resulting in an upward adjustment of the taxpayer's income. Nevertheless, and even if the Minister must come to their own interpretation and application of subsection 247(2) of the *ITA*, the Minister's interpretation and exercise of discretion under the relief provision set out under subsection 247(10) remains subject to reasonableness review (*Dow Chemical* at paras 79-80).

[43] As a result, in my view, even if the discretionary decision of the Minister under subsection 66(12.741) of the *ITA* to provide relief necessarily contemplates a certain interpretation of the underlying provision of the *ITA* for which relief is sought, in this case subsection 66(12.6), the standard of reasonableness continues to apply. To determine whether it is “just and equitable” to grant relief under subsection 66(12.741), like the determination that a

downward transfer pricing adjustment is “appropriate” under subsection 247(10) as in *Dow Chemical*, the Minister must necessarily contemplate and evaluate the legislative scheme leading to the application of the *ITA*.

[44] Consequently, and as held by the SCC in *Dow Chemical* at paragraph 90: “Parliament did not provide any basis in the *ITA* to depart from the presumptive standard of reasonableness (*Vavilov*, at para 25), because discretionary decisions are not assessments nor part of assessments. As I have said, assessments are to be reviewed by the Tax Court *de novo* in accordance with the settled nature of a tax appeal. In this case, holding that any standard other than reasonableness applies to exercises of the Minister’s discretion under s. 247(10) would undercut the certainty and predictability that *Vavilov* brought to this Court’s jurisprudence on the standard of review” (*Dow Chemical* at para 90, see also paras 11, 91). That conclusion is apposite in this case.

[45] In any event, even if different interpretations could arise, that on its own does not engage the rule of law. As held by the SCC in *Pepa*, “whether the possibility of multiple interpretations of the same provision being available gives rise to a correctness standard [was] answered in the negative” (*Pepa* at para 39) and “[r]ecognizing a new correctness category here would conflict with *Vavilov*’s goal of simplifying the standard of review framework and making it more predictable by providing only limited exceptions to reasonableness review” (*Pepa* at para 41, citing *Mason* at para 53). These conclusions apply in this case as well.

[46] The conclusion that the standard of reasonableness applies to the CRA's interpretation of subsection 66(12.6) also applies to the CRA's interpretation of the Subscription Agreements. In *Canadian Broadcasting Corp. v SODRAC 2003 Inc.*, 2015 SCC 57 [SODRAC], the SCC held that "[c]ontractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix [...]. Accordingly, a standard of reasonableness applies when reviewing the Board's determination regarding what may be implied from the relevant synchronization licences" (SODRAC at para 36 citing *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633 at para 50). The Subscription Agreements in this case fall under that principle and the CRA's interpretation is also owed deference.

[47] Finally, contrary to what Frontier has submitted, the issue at hand is also not a general question of law of central importance to the legal system as a whole. In *Vavilov*, the SCC describes a general question of law of central importance to the legal system as a whole as a question of "“fundamental importance and broad applicability,” with significant legal consequences for the justice system as a whole or for other institutions of government" (*Vavilov* at para 59). Questions that simply address a general issue of "wider public concern," or that touch on an important issue when framed in a general or abstract sense, are not general questions of law of central importance to the legal system as a whole and are not subject to the correctness standard of review. As a result, I am not persuaded that the issue pertaining to the interpretation of subsections 66(12.6) and 66(12.741) of the *ITA*, and the Subscription Agreements, is a general question of law of central importance to the legal system as a whole. It is rather a narrower question of law applicable in matters of taxation that, while important, does not have

implications that “impact on the administration of justice as a whole” (*Vavilov* at paras 17, 59-61; *Mason* at paras 41, 47; *Pepa* at paras 35, 38; see also *Onex* at paras 32-35).

[48] Therefore, on a standard of reasonableness and to withstand judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99).

[49] As *Pepa* instructs, reasonableness review begins from a posture of judicial restraint, by examining the reasons provided and “seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion” (*Pepa* at para 46). Assessing the reasonableness of a decision begins with a “reasons-first” approach and seeks to understand the reasoning that led to the decision, and whether it was “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker” (*Vavilov* at paras 84-85; *Canadian Nuclear Laboratories Ltd. v Canada (Attorney General)*, 2026 FCA 106 at paras 37, 38, 44 [*Canadian Nuclear Laboratories*]). Moreover, the SCC reiterates the need to “develop and strengthen a culture of justification” (*Mason* at paras 8, 58–60, 63; *Vavilov* at paras 14, 81, 84, 86). The decision must be read holistically and contextually, in light of the evidence, the submissions and the context in which it was rendered (*Pepa* at para 47; *Vavilov* at paras 94, 97).

[50] In addition, a “reasons first” approach must not be assessed against a standard of perfection. The decision maker is presumed to have considered all the evidence, does not need to discuss and rule on every single argument, statutory provision, case law, or argument raised by

the parties, and is not required to make an explicit finding on each constituent element leading to its final conclusion (*Vavilov* at paras 84, 91, 128; *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, at para 16 [*Newfoundland Nurses*]; *Mason* at paras 27, 61, 79; *Pepa* at para 47; *Canada (Attorney General) v Responsible Plastic Use Coalition*, 2026 FCA 17 at para 9 [*Responsible Plastic*]).

[51] However, a decision may be unreasonable if the reviewing court identifies a fundamental flaw, either because of a lack of internal logic in the reasoning or because of a lack of justification given the factual and legal constraints affecting the decision (*Mason* at para 64; *Vavilov* at paras 125–126). Reasonableness review is a robust form of review, not a “rubber-stamping” exercise, but it is also not a “treasure hunt for error” (*Pepa* at para 48; *Mason* at paras 8, 63; *Vavilov*, at paras 13, 15, 24, 75, 83, 103; *Responsible Plastic* at para 8). That said, the reviewing Court must refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Vavilov* at para 125) and the reviewing Court must not create its “own yardstick” and use it to measure what the decision maker did (*Pepa* at para 48; *Vavilov* at para 83, and *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at para 40 [*Canada Post Corp.*]; *Canadian Nuclear Laboratories* at para 37). The focus must be on “the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker’s place” (*Vavilov* at paras 15, 24, 84–85, 99, 105, 133–135; *Pepa* at paras 11, 46–49, 64, 115–119; *Canada Post Corp.* at para 40; *Mason* at paras 8, 66, 69, 76; *Responsible Plastic* at para 6).

[52] The SCC identified a series of factual and legal constraints that the decision maker must examine and justify, depending on the applicable context, in order for the decision to be sufficiently justified within the meaning of *Vavilov*. The burden of justification varies, but the decision maker must be “aware” of the essential elements, “sensitive to the issue before [them]” and “meaningfully grapple with key issues or central arguments raised by the parties” (*Mason* at paras 61, 74, 97; *Pepa* at para 47; *Vavilov* at paras 94, 103, 128). The decision maker must give reasons as to why particular arguments were accepted or dismissed, and the evidence that was accepted or rejected in the decision-making process (*Mason* at paras 73–74; *Vavilov* at paras 126–128). Moreover, an exercise of discretion may be unreasonable when the decision maker “considered irrelevant factors, failed to consider relevant factors, or reached an unreasonable conclusion” (*Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 at para 41 [*Yatar*]).

[53] The burden rests with an applicant who must demonstrate that there are flaws that are “sufficiently central or significant to render the decision unreasonable” by establishing a failure of rationality internal to the reasoning process or a failure of justification given the legal and factual constraints bearing on the decision. In the end, the ultimate question is whether “the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker” (*Vavilov* at paras 100-101, 106, 119, 120, 122-123; *Pepa* at paras 49, 62, 86-87; *Mason* at para 69; *Onex* at paras 36-43)

[54] On an issue of statutory interpretation, as in this case, administrative decision makers hold the “interpretative upper hand” (*Pepa* at para 46 citing *Canada Post Corp.*, at para 40, quoting *McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895,

at para 40). Moreover, where the statutory provisions at play have not been previously interpreted and explained by a court or in previous precedents of the decision maker, the decision maker must specifically turn its mind to the principles of statutory interpretation (*Canadian Nuclear Laboratories* at para 38, citing *Pepa* at para 64 and *Canadian National Railway Company v Canada (Transportation Agency)*, 2025 FCA 184 at paras 44-47). The decision maker must demonstrate in their reasons that they were alive to the essential elements of the modern principles of statutory interpretation, and “show a genuine, non-tendentious, explicit or implicit analysis of the text, context and purpose behind a legislative provision when interpreting it” (*Jennings-Clyde* at para 11, citing *Vavilov* at paras 119-123).

[55] However, this does not mean that the decision maker must engage in a formalistic statutory interpretation exercise like a court would do, nor specifically cite case law and doctrine discussing the applicable principles or give detailed reasons on every argument, legislative provision or detail raised by the parties (*Mason* at paras 61, 69-70; *Vavilov* at paras 91, 118-119; *Newfoundland Nurses* at para 16; *Rodriguez Anzola v Canada (Citizenship and Immigration)*, 2026 FCA 90 at para 100 [*Rodriguez Anzola*]). A decision would meet the reasonableness standard if the reasons offered on the interpretation of a statutory provision is consistent with the text, context, and purpose of the provision (*Canadian Nuclear Laboratories* at para 38 citing *Pepa* at para 63; *Vavilov* at para 120); and the omission of a minor aspect is unlikely to undermine the decision as a whole or constitute a stand-alone ground for judicial intervention.

[56] Nevertheless, the task of the reviewing court is to ensure that the statutory provision is interpreted in accordance with the “modern principles” of statutory interpretation, which focus

on the overall context of the statute, following the ordinary and grammatical meaning of the words chosen by Parliament, and harmonizing with the spirit of the statute, its purpose, the context, and Parliament’s intention (*Pepa* at para 87; *Mason* at paras 67, 69–70, 83; *Vavilov* at paras 110, 115–124; *Canada Post Corp.* at para 42; *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21 [*Rizzo & Rizzo*], 1998 CanLII 837 (SCC); *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26 [*Bell ExpressVu*]; *Dow Chemical* at para 101; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at paras 20, 36 [*Alexion*]; *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66 at para 16; Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87). An interpretation that involves a “results-oriented analysis” and is done in an expeditious manner is unreasonable (*Alexion* at para 37, citing *Vavilov* at paras 120–121; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 42; *Onex* at paras 40, 44).

[57] This approach “focusses on the text, context, and purpose of the statutory provision” (*Mason* at para 69; *Piekut v Canada (National Revenue)*, 2025 SCC 13 at para 45 [*Piekut*]). In relation to the “text” of the enabling statute, while the object and purpose of a provision is important, the text of the statute remains the anchor of the interpretative exercise (*Piekut* at para 45 citing *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 24 [*CISSS A*]; *Hunt v Canada*, 2026 FCA 88 at paras 10–11, 13 [*Hunt*]). In relation to the “purpose” of the statute, the SCC held that legislative purpose alone cannot justify a departure from the express language of a provision and that attributing weight to legislative purpose may vary, particularly when it is at

odds with the text itself (*Dow Chemical* at para 101 citing Professors Pierre-André Côté and Mathieu Devinat, *Interprétation des lois* (5th ed. 2021), at pp 1345, 1366; see also *Placer Dome Canada Ltd. v Ontario (Minister of Finance)*, 2006 SCC 20 at para 23 [*Placer Dome*]; *TELUS Communications Inc. v Wellman*, 2019 SCC 19 at para 79 [*TELUS*]; *Piekut* at para 45, *CISSS A* at para 24; *Hunt* at para 13).

[58] Moreover, the principles of statutory interpretation “require, when possible, the preference for a remedial interpretation that best ensures the attainment of the statutory provision’s object”, in accordance with section 12 of the *Interpretation Act*, RSC 1985, c I-21 [*Interpretation Act*] (*Piekut* at para 46; *Bell ExpressVu* at para 26; *Onex* at para 52).

[59] The more serious the impact of the decision on the rights and interests of a party, the more the reasons must reflect these issues and “the decision maker must explain why its decision best reflects the legislature’s intention”. Consequently, a decision may be unreasonable simply because the decision maker does not consider or address, in their reasons, the particularly harsh consequences for the affected individuals (*Pepa* at paras 11, 64, 115-119; *Mason* at paras 69, 76; *Vavilov* at paras 133–135; *Onex* at para 46).

[60] Finally, the modern principles of statutory interpretation apply to the *ITA* and require that the words of the *ITA* be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *ITA* (*Stubart Investments Ltd v The Queen*, 1984 CanLII 20 (SCC), [1984] 1 SCR 536, citing Elmer Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87); *Rizzo & Rizzo* at paras 21–22; *Bell ExpressVu* at para 26; *Piekut* at

paras 42–49; *Telus Communications Inc v Federation of Canadian Municipalities*, 2025 SCC 15 at paras 30, 43, 53, 104).

[61] This remains the case even if “the particular nature of tax statutes and the peculiarities of their often complex structures” impose a heightened emphasis on the actual words of the *ITA*, such that “[broad] considerations of statutory purpose should not be allowed to displace the specific language used by Parliament” (*Imperial Oil Ltd v Canada*, 2006 SCC 46 at paras 24–29, citing *Ludco Enterprises Ltd v Canada*, 2001 SCC 62 at para 36; *Canada (National Revenue) v Shopify Inc.*, 2025 FC 968 at para 55 [*Shopify*]). Especially in the tax context, and considering that the text of the statute remains the anchor of the interpretative exercise (*Piekut* at para 45; *CISSS A* at para 24; *Hunt* at para 11), “[w]here the words of a statute are ‘precise and unequivocal’, their ordinary meaning will play a dominant role” and legislative purpose alone cannot justify a departure from the express language of a provision (*Dow Chemical* at para 101 citing *Canada v Loblaw Financial Holdings Inc.*, 2021 SCC 51 at para 41, citing *Trustco Mortgage Co. v Canada*, 2005 SCC 54, [2005] 2 SCR 601 at para 10; *Placer Dome* at para 23; *TELUS* at para 79; *Piekut* at para 45, *CISSS A* at para 24; *Hunt* at para 13).

[62] Just as with any other federal statute, the *ITA* must also be read in view of section 12 of the *Interpretation Act*, such that subsections 66(15), 66(12.6) and 66(12.741) must be given a “fair, large and liberal construction and interpretation as best ensures the attainment of [their] objects” (*Piekut* at paras 46; *Onex* at para 50 citing *Canada (National Revenue) v ConocoPhillips Canada Resources Corp*, 2017 FCA 243 at para 36; *Shopify* at para 57).

[63] In the context of the Subscription Agreements and their importance in the interpretation exercise, it is trite law that, in the taxation context, any person or entity “is entitled if [they] can to order [their] affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be” (*Commissioners of Inland Revenue v Duke of Westminster*, [1936] AC 1 (HL) at p 19, most recently cited by the SCC in *Deans Knight Income Corp. v Canada*, 2023 SCC 16 at para 46). Moreover, another fundamental principle of taxation law teaches that “tax consequences flow from the legal relationships or transactions established by taxpayers” (*Jean Coutu Group (PJC) Inc. v Canada (Attorney General)*, 2016 SCC 55 at para 41 [*Jean Coutu*]) and that “[t]ax consequences, including those which follow an assessment by the CRA, flow from freely chosen legal arrangements, not from the intended or unintended effects of those arrangements” (*Canada (Attorney General) v Fairmont Hotels Inc.*, 2016 SCC 56 at para 24 [*Fairmont Hotels*]; see also *Canada (Attorney General) v Collins Family Trust*, 2022 SCC 26 at paras 14, 16).

IV. Analysis

A. *The Flow-Through Program*

[64] Under the flow-through share provisions of the *ITA*, a qualified corporation may, when certain statutory criteria are met, renounce CEE that it could otherwise claim against its own revenues for deduction by its investors, by means of flow-through shares.

[65] In order to do so, pursuant to subsection 66(15) of the *ITA*, a share must be issued under an “agreement in writing” between a person and the corporation. Pursuant to that “agreement in

writing”, the corporation must agree to incur, in the period that begins on the day on which the agreement was made and ends 24 months after the month that includes that day, CEE in an amount not less than the consideration for the shares. The corporation must also consent to renounce to that person an amount in respect of the CEE incurred by the corporation, that is not exceeding the consideration received by the shares.

[66] Subsection 66(12.6) of the *ITA* then provides that a corporation may renounce CEE if it was incurred within 24 months after the end of the month in which the agreement was made (the “general rule period”).

[67] Moreover, subsection 66(12.66) of the *ITA* allows CEE incurred in a calendar year to be deemed to have been incurred on December 31 of the prior year (the “look-back” rule). To use the “look-back” rule, the “agreement” and consideration must have been made in a calendar year prior to the CEE being incurred, and the CEE had to be incurred within 12 months after the date of December 31 of the year in which the agreement was made. In effect, the “look-back” rule allows for the retroactive renunciation of CEE that the corporation expects to incur during the year.

B. *The CRA’s interpretation of subsection 66(12.6) and of the Subscription Agreements is unreasonable because it lacks sufficient reasoning*

[68] Applying the principles of judicial review discussed above, the Court must proceed with an analysis of the reasons of the CRA. Relating to a decision maker’s interpretation of its own

enabling statute, in *Canadian Nuclear Laboratories*, the Federal Court of Appeal recently explained that:

Where a statutory provision has not been previously interpreted and explained by a decision maker or a court, as was the case here, the decision maker must turn its own mind to the principles of statutory interpretation: *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21 at para. 64 [*Pepa*]; see also *Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 FCA 184 at paras. 44-47. The decision maker need not engage in a formalistic interpretative exercise- “administrative justice” will not always resemble “judicial justice”: *Vavilov* at para. 92. However, the decision maker’s interpretation of the statutory provision must be consistent with the text, context and purpose of the provision: *Pepa* at para. 63, citing *Vavilov* at para. 120.

(*Canadian Nuclear Laboratories* at para 38)

[69] In this case, the parties have not brought to the attention of the Court any precedent in which a court or the CRA interpreted and applied the impugned subsections of the *ITA* together. There is no specific precedent existing from this Court, the TCC or the CRA as to the interpretation and interaction of subsections 66(15), 66(12.6), 66(12.66) and 66(12.741) (the parties referred to *Canada v JES Investments Ltd.*, 2007 FCA 337 and *Tusk Explorations Ltd. v HMTQ*, 2016 TCC 238 [*Tusk Explorations*], but these cases do not offer a complete analysis of the proper interpretation of these subsections in the context applicable to this application; and these cases were not referred to by the CRA in the Decision). The Minister therefore had to turn their mind to the principles of statutory interpretation and provide reasons detailing their interpretation and why it was consistent with the text, context and purpose of the provisions. The Minister failed to do adequately so.

[70] The disagreement between Frontier’s proposed interpretation in its submissions of May 16, 2025, and that of the CRA in its Decision, is limpid and turns on the use of the word “agreement”, the distinctions between subsection 66(15) which defines the term “flow-through share”, the requirement of an “agreement in writing” under subsection 66(15), and subsection 66(12.6) which refers to an “agreement” and allows the renunciation of CEE. The subsections provide:

66(15) flow-through share means a share (other than a prescribed share) of the capital stock of a principal-business corporation, or a right (other than a prescribed right) to acquire a share of the capital stock of a principal-business corporation, issued to a person under an agreement in writing made between the person and the corporation under which the corporation, for consideration that does not include property to be exchanged or transferred by the person under the agreement in circumstances to which any of sections 51, 85, 85.1, 86 and 87 applies, agrees (a) to incur, in the period that begins on the day on which the agreement was made and ends 24 months after the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share or right is to be issued, and (b) to renounce, in prescribed	66(15) action accréditive Action du capital-actions d’une société exploitant une entreprise principale, à l’exclusion d’une action visée par règlement, ou droit d’acquérir une action du capital-actions d’une telle société, à l’exclusion d’un droit visé par règlement, émis à une personne conformément à une convention écrite conclue entre cette personne et la société et par laquelle la société s’oblige, pour une contrepartie qui ne comprend pas un bien que la personne doit échanger ou transférer aux termes de la convention dans des circonstances où les articles 51, 85, 85.1, 86 ou 87 s’appliquent : a) d’une part, à engager, au cours de la période commençant à la date de conclusion de la convention et se terminant 24 mois après le mois qui comprend cette date, des frais d’exploration au Canada ou des frais d’aménagement au Canada pour un montant total au moins égal au paiement prévu pour l’action ou le droit; b) d’autre part, à renoncer en ce
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form and before March of the first calendar year that begins after that period, to the person in respect of the share or right, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share or right; (action accréditive)	qui concerne l'action ou le droit en faveur de cette personne, avant mars de la première année civile commençant après cette période, sur le formulaire prescrit, à un montant au titre des frais ainsi engagés qui ne dépasse pas le paiement reçu par la société pour l'action ou le droit. (flow-through share)
66(12.6) If a person gave consideration under an agreement to a corporation for the issue of a flow-through share of the corporation and, in the period that begins on the day on which the agreement was made and ends 24 months after the end of the month that includes that day, the corporation incurred Canadian exploration expenses (other than an expense deemed by subsection 66.1(9) to be a Canadian exploration expense of the corporation), the corporation may, after it complies with subsection (12.68) in respect of the share and before March of the first calendar year that begins after the period, renounce, effective on the day on which the renunciation is made or on an earlier day set out in the form prescribed for the purpose of subsection (12.7), to the person in respect of the share the amount, if any, by which the portion of those expenses that was incurred on or before the effective date of the renunciation (which portion is in	66(12.6) Si, conformément à une convention, une personne paie une action accréditive à la société qui l'émet en sa faveur et que la société engage des frais d'exploration au Canada (sauf des frais réputés par le paragraphe 66.1(9) être des frais d'exploration au Canada de la société) au cours de la période commençant à la date de conclusion de la convention et se terminant 24 mois après la fin du mois qui comprend cette date, la société peut, en ce qui concerne cette action, après s'être conformée au paragraphe (12.68), renoncer en faveur de cette personne, avant mars de la première année civile commençant après cette période, à l'excédent de la partie de ces frais (appelée « frais déterminés » au présent paragraphe) qui a été engagée au plus tard à la date où la renonciation prend effet — à savoir le jour où la renonciation est faite ou, s'il est antérieur, le jour de prise d'effet précisé dans le formulaire requis par le paragraphe (12.7) — sur le total

this subsection referred to as the “specified expenses”) exceeds the total of (a) the assistance that the corporation has received, is entitled to receive or can reasonably be expected to receive at any time, and that can reasonably be related to the specified expenses or to Canadian exploration activities to which the specified expenses relate (other than assistance that can reasonably be related to expenses referred to in any of paragraphs (b) to (b.2)), (b) all specified expenses that are prescribed Canadian exploration and development overhead expenses of the corporation, (b.1) all specified expenses each of which is a cost of, or for the use of, seismic data (i) that had been acquired (otherwise than as a consequence of performing work that resulted in the creation of the data) by any other person before the cost was incurred, (ii) in respect of which a right to use had been acquired by any other person before the cost was incurred, or (iii) all or substantially all of which resulted from work performed more than one year before the cost was incurred, (b.2) if the agreement is made	des montants suivants : a) tout montant à titre d’aide que la société a reçu, est en droit de recevoir ou peut raisonnablement s’attendre à recevoir à un moment donné et qu’il est raisonnable de rattacher aux frais déterminés ou à des activités d’exploration au Canada s’y rapportant, à l’exclusion des montants à titre d’aide qu’il est raisonnable de rattacher aux frais visés aux alinéas b) à b.2); b) ceux des frais déterminés qui constituent des frais généraux d’exploration et d’aménagement au Canada de la société visés par règlement; b.1) ceux des frais déterminés qui représentent le coût ou le coût d’utilisation de données sismiques, selon le cas : (i) qui ont été acquises, autrement que par suite de l’exécution de travaux qui les ont créées, par une autre personne avant que le coût soit engagé, (ii) relativement auxquelles un droit d’utilisation avait été acquis par une autre personne avant que le coût soit engagé, (iii) qui découlent, en totalité, ou presque, de travaux exécutés plus d’un an avant que le coût soit engagé; b.2) si la convention est conclue après le mois de mars 2023, ceux des frais déterminés qui ne sont pas visés aux alinéas b) ou b.1) et qui constitueraient des frais
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after March 2023, all specified expenses that are not described in paragraph (b) or (b.1) and that would be Canadian exploration expenses if (i) the definition Canadian exploration expense in subsection 66.1(6) were read without reference to its paragraph (g.1), and (ii) the definition mineral resource in subsection 248(1) were read without reference to its paragraphs (a) and (d), and (c) the total of amounts that are renounced on or before the date on which the renunciation is made by any other renunciation under this subsection in respect of those expenses, but not in any case (d) exceeding the amount, if any, by which the consideration for the share exceeds the total of other amounts renounced under this subsection or subsection 66(12.601) or 66(12.62) in respect of the share on or before the day on which the renunciation is made, or (e) exceeding the amount, if any, by which the cumulative Canadian exploration expense of the corporation on the effective date of the renunciation computed before taking into account any amounts renounced under this subsection on the date on which the renunciation is made, exceeds the total of all amounts	d'exploration au Canada si, à la fois : (i) la définition de frais d'exploration au Canada au paragraphe 66.1(6) s'appliquait compte non tenu de son alinéa g.1), (ii) la définition de matières minérales au paragraphe 248(1) s'appliquait compte non tenu de ses alinéas a) et d); c) les montants au titre de ces frais auxquels, au plus tard le jour où la renonciation est faite, il est par ailleurs renoncé en vertu du présent paragraphe. Cet excédent ne peut toutefois ni dépasser l'excédent éventuel du montant payé pour l'action sur le total des autres montants concernant l'action auxquels la société a renoncé en vertu du présent paragraphe ou des paragraphes (12.601) ou (12.62) au plus tard le jour où la renonciation est faite, ni dépasser l'excédent éventuel du montant des frais cumulatifs d'exploration au Canada de la société à la date où la renonciation prend effet — calculé compte non tenu des montants auxquels il a été renoncé en vertu du présent paragraphe le jour où la renonciation est faite — sur le total des montants auxquels il a été renoncé en vertu du présent paragraphe en ce qui concerne d'autres actions, d'une part, le jour où la renonciation est faite et, d'autre part, avec effet au plus tard à la date où la renonciation
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renounced under this subsection in respect of any other share (i) on the date on which the renunciation is made, and (ii) effective on or before the effective date of the renunciation.	prend effet.
(12.66) Where (a) a corporation that issues a flow-through share to a person under an agreement incurs, in a particular calendar year, Canadian exploration expenses or Canadian development expenses, (a.1) the agreement was made in the preceding calendar year, (b) the expenses (i) are described in paragraph (a), (d), (f) or (g.1) of the definition Canadian exploration expense in subsection 66.1(6) or paragraph (a) or (b) of the definition Canadian development expense in subsection 66.2(5), (ii) would be described in paragraph (h) of the definition Canadian exploration expense in subsection 66.1(6) if the reference to “paragraphs (a) to (d) and (f) to (g.4)” in that paragraph were read as “paragraphs (a), (d), (f) and (g.1)”, or (iii) would be described in paragraph (f) of the definition Canadian development expense in subsection 66.2(5) if the	(12.66) Pour l’application du paragraphe (12.6) et pour l’application du paragraphe (12.601) et de l’alinéa (12.602)b), la société qui émet une action accréditive à une personne conformément à une convention est réputée avoir engagé des frais d’exploration au Canada ou des frais d’aménagement au Canada le dernier jour de l’année civile précédant une année civile donnée si les conditions ci-après sont réunies : a) la société engage les frais au cours de l’année donnée; a.1) la convention a été conclue au cours de l’année précédente; b) les frais, selon le cas : (i) sont des dépenses visées aux alinéas a), d), f) ou g.1) de la définition de frais d’exploration au Canada au paragraphe 66.1(6) ou aux alinéas a) ou b) de la définition de frais d’aménagement au Canada au paragraphe 66.2(5), (ii) seraient des dépenses visées à l’alinéa h) de la définition de frais d’exploration au Canada au paragraphe 66.1(6) si le passage « alinéas a) à d) et f) à g.4) » à cet

words “any of paragraphs 66(12.66)(a) to (e)” were read as “paragraph 66(12.66)(a) or (b)”, (c) before the end of that preceding year the person paid the consideration in money for the share to be issued, (d) the corporation and the person deal with each other at arm’s length throughout the particular year, and (e) in January, February or March of the particular year, the corporation renounces an amount in respect of the expenses to the person in respect of the share in accordance with subsection 66(12.6) or 66(12.601) and the effective date of the renunciation is the last day of that preceding year, the corporation is, for the purpose of subsection (12.6), or of subsection (12.601) and paragraph (12.602)(b), as the case may be, deemed to have incurred the expenses on the last day of that preceding year.	alinéa était remplacé par « alinéas a), d), f) et g.1) », (iii) seraient des dépenses visées à l’alinéa f) de la définition de frais d’aménagement au Canada au paragraphe 66.2(5) si le passage « à l’un des alinéas a) à e) » était remplacé par « aux alinéas a) ou b) »; c) la personne a payé l’action à émettre en argent avant la fin de l’année précédente; d) la société et la personne n’ont entre elles aucun lien de dépendance tout au long de l’année donnée; e) en janvier, février ou mars de l’année donnée, la société renonce à un montant au titre de ces frais, en ce qui concerne l’action, en faveur de la personne, conformément aux paragraphes (12.6) ou (12.601) et la renonciation prend effet le dernier jour de l’année précédente.
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[71] Of particular importance in this case, in its May 16, 2025 letter, Frontier specifically made representations to the CRA on the texts of subsections 66(15) and 66(12.6) and the purpose of the flow-through program. Frontier explained that the requirement that the “agreement” must specifically provide for a timeline for the CEE renunciation, as opined by the CRA, is nowhere found in either the text of subsection 66(15) qualifying the shares as “flow-through shares” or the text of subsection 66(12.6), which both only require that the corporation “agrees” to incur CEE

during the general rule period (see *Tusk Explorations* at paras 23-24, affirmed *Tusk Exploration Ltd. v Canada*, 2018 FCA 121).

[72] In supports of its submission, Frontier argued that the text of subsection 66(12.6) does not require, as a prerequisite to a renunciation, that the terms of an agreement be strictly observed. A textual interpretation of the provisions requires, first, that the shares qualify as “flow-through shares” under subsection 66(15), which requires an “agreement in writing” under which an investor pays consideration for the issuance of shares for which the corporation “agrees” to spend the funds in CEE within 24 months. Then, if the CEE are incurred within that period, the corporation may renounce the CEE to the investor pursuant to subsection 66(12.6). If those two conditions are met, then the shares meet the definition of “flow-through shares” under subsection 66(15) and the CEE may be renounced under subsection 66(12.6). Neither the texts of subsection 66(15) nor subsection 66(12.6) require that the “agreement” provide a specific “period” within which the CEE must be incurred or must specifically allow the corporation to incur the CEE within the general rule period of 24 months. Moreover, to the extent that the requirements are met, the “look-back” rule may be available under subsection 66(12.66). There are no other requirements (CTR at p 594). Frontier also argued that their proposed interpretation better reflected Parliament’s intention to “incentiviz[e] investments that fund expeditious exploration activities” (CTR at pp 592-593) and that it would be financially devastated if it is not authorized to make the second renunciation. Frontier further submitted that “[t]his would not further the goals of the flow-through share program” (CTR at p 593).

[73] On the purpose of the flow-through program, Frontier now adds before the Court on judicial review that the CRA failed to analyze any legal precedent that explains the flow-through program's purpose and that contradicts its position. For example, in *Mickleborough v The Queen*, [1998] 4 CTC 2584 at paragraph 52, the TCC held that the "resource mining industry in Canada is accorded special treatment in order to give recognition to the high risk and sizeable capital requirements of the industry. The issue of "flow-through shares" provides, through CEE deductions, a means for Canadian resource companies to raise capital for exploration and development". In *Esplen v R*, [1996] 1 CTC 2044 at page 2051, the TCC also held that the purpose of the flow-through program is to "encourag[e] investment in the exploration and development of mineral resources". The purpose of the flow-through program is therefore to encourage investments aimed at financing exploration and development activities. Frontier submitted to the CRA that Parliament's purpose was achieved in this case – the full \$12M was intended to be spent on CEE, and it was spent on CEE within the 24-month period under the general rule period (the fact that Frontier did incur the remaining CEE in 2023 is not contested).

[74] Therefore, on the interpretation proposed by Frontier in its May 16, 2025 submissions to the CRA, there is nothing in the *ITA* prohibiting a second renunciation (except the timeline to do so under subsections 66(12.6) and 66(12.741)). The "agreement in writing" provided under subsection 66(15) of the *ITA* is to qualify the shares as "flow-through shares". That "agreement", however, does not need to include a specific provision requiring CEE to be incurred within a specific period, except that the corporation must "agree" that the CEE will be incurred within 24 months. On that basis, any other period provided for within the "agreement in writing" constitutes an additional and independent obligation between the parties but does not impact the

statutory period of 24 months within which, under subsection 66(12.6) of the *ITA*, the corporation must incur the CEE and may then renounce them to the Subscribers (CTR at p 594). In other words, the plain meaning of the text of subsections 66(15) and 66(12.6) does not support the CRA's conclusion that the "agreement" must specifically permit the renunciation.

[75] While the purpose of the flow-through program may shed greater light on the text of subsections 66(15) and 66(12.6), Frontier also argues that the provisions must be interpreted broadly to ensure that they attain the objective of encouraging investment in the exploration and development of mineral resources, an interpretation consistent with section 12 of the *Interpretation Act*. The CRA's interpretation precluding a second renunciation would frustrate that purpose.

[76] Finally, Frontier argues that the CRA's Decision interpreting subsection 66(12.6) as requiring that the "agreement" specifically permits the renunciation in the period within which it is made is undermined by a contextual interpretation of the *ITA*. During COVID-19, Parliament enacted subsection 66(12.6001) that unilaterally modified the general rule period of 24 months provided under subsection 66(12.6) within which a corporation could incur and renounce CEE and increased that period by 12 months to a total of 36 months. In doing so, however, subsection 66(12.6001) did not specifically amend any "agreement" between the parties, nor did it extend by 12 months any period set forth in such "agreement". This meant that a corporation could renounce CEE after the general rule period, despite the "agreement in writing" providing for a period no longer than 24 months as required by subsection 66(15) to qualify as "flow-through shares" not equally being rectified and extended. Frontier submits that this is an indication that

the period agreed upon under any “agreement” is irrelevant to a corporation’s ability to incur and renounce CEE within the statutory general rule period of 24 months. If the period agreed upon in an “agreement” prevailed over the statutory general rule period, then Parliament’s amendment granting an additional 12 months to incur and renounce the CEE would be ineffective, since no period set forth in any “agreement” was the subject of a similar statutory amendment extending by 12 months the period to renounce CEE. Thus, subsection 66(12.6) must be intended to allow CEE to be incurred and renounced within the general rule period regardless of whether the Subscription Agreements provide for a different (and shorter) period. As such, the terms of a contract cannot amend a statutory criterion.

[77] The Respondent argues that subsections 66(15) and 66(12.6) do not prohibit the parties from agreeing that the CEE will be incurred within a shorter period than the 24-month general rule period (see *Tusk Explorations* at paras 23-24). To qualify as “flow-through shares” under subsection 66(15), an “agreement in writing” is required in which consideration is given to a corporation and the corporation agrees to incur CEE within a 24-month period. However, subsection 66(12.6) refers back to the “agreement” that has enabled the shares to qualify as “flow-through shares” and therefore refers to the term of that “agreement” (the Subscription Agreements in this case) to determine whether the renunciation that is intended by Frontier was agreed upon by the parties. Since the Subscription Agreements did not provide that Frontier could renounce CEE within 24 months, and rather limited the renunciation to the “look-back” rule under subsection 66(12.66), the second renunciation under subsection 66(12.6) using the general rule period is not possible, as the Subscription Agreements do not contemplate a renunciation of CEE after December 31, 2022.

[78] For subsection 66(12.6001) and the new provision enacted by Parliament during COVID-19 extending the time to incur CEE to 36 months under subsection 66(12.6), the Respondent argues that the provision was adopted in the context of a national emergency and while not perfect, it does not suggest that the general rule period always applies for CEE renunciation regardless of any lesser period agreed to in an “agreement”.

[79] Finally, the Respondent submits that the CRA’s interpretation of subsections 66(15), 66(12.6) and 66(12.741) is the only one that allows a consistent reading as well as application of the *ITA* and the terms of the Subscription Agreements. If Frontier’s argument is accepted, then the Termination Date, indemnity clause and clause providing that the Subscription Agreements cannot be amended without the consent of the Subscribers would become redundant.

[80] In this application for judicial review, applying a “reasons first” approach, especially in the case of *ITA* provisions that have never been conclusively interpreted by this Court, the TCC or the CRA, the CRA had to analyze the texts of subsections 66(15), 66(12.6) and 66(12.741) as well as the purpose of the flow-through program, and determine whether its interpretation was consistent with the intent of Parliament. In doing so, the CRA had to rely on the existing principles noted above, but also rely on other legal constraints such as legal precedents, to the extent that they existed and were relevant. As stated above, the CRA relied on *Capstone*. However, the Minister failed to articulate how the principles of statutory interpretation influenced its interpretation or mention any guideline or distinguish other legal sources, in support of its ultimate conclusion.

[81] In its Position Letter, the CRA offered no analysis of the texts of subsections 66(15), 66(12.6) and 66(12.741) of the *ITA*, justifying its initial conclusion that subsection 66(12.741) permits a late renunciation, but does not allow a company to amend a renunciation that has become effective because doing so would be inconsistent with the intended purpose of the *ITA* and amount to a “rectification” of the Subscription Agreements, which the CRA would not allow (relying on *Capstone*) (CTR at p 587).

[82] In the Decision, the CRA also did not provide a wholesome analysis of the text, context and purpose of the provisions to justify its conclusion that subsection 66(12.741) provides for a late authorization but does not allow a corporation to amend and modify a renunciation that has already been effective (CTR at p 986); and that even if Frontier had been within the time prescribed to make the second renunciation under subsection 66(12.6) or through 66(12.741), the CRA would not have accepted it because an agreement is required to allow a renunciation to occur and the terms of the Subscription Agreements must be followed (CTR at pp 987, 989).

[83] With respect, the Minister’s Decision does not substantively address and respond to Frontier’s arguments made to the CRA on May 16, 2025 that the text, context and purpose of subsections 66(15) and 66(12.6) do not require that the terms of the “agreement” be strictly observed in order for CEE renunciation to occur under subsection 66(12.6) or that the “agreement” must specifically provide a specific date or period within which the CEE must be incurred. The CRA provided no substantive response to Frontier’s argument that the only requirement under the text of the provisions is that (1) the shares qualify as “flow-through shares” under subsection 66(15) which only requires an “agreement in writing” with

consideration given to a corporation that “agrees” to incur CEE within the general rule period; and (2) under subsection 66(12.6), the CEE is indeed incurred within the general rule period (CTR at p 594). The Decision does not set out why the text, context and purpose of subsections 66(15) and 66(12.6) are more restrictive, as the CRA opines, and why Frontier’s arguments must be dismissed.

[84] The CRA reasons also do not address Frontier’s argument that a shorter timeline existing in a subscription agreement is solely for the use of the parties in their own commercial relationship. The reasons do not engage with the argument that a shorter timeline provided in a contract has no impact on the qualification of the shares as “flow-through shares” under subsection 66(15) if the corporation continues to “agree” that the CEE will be incurred within the general rule period and that CEE is indeed incurred within the general rule period set out under subsection 66(12.6). No explanation is provided as to why the interpretation proposed by Frontier does not comply with the text, context and purpose of the provisions (*Canadian Nuclear Laboratories* at paras 38, 44) and why the CRA’s more restrictive interpretation better reflects the intent of Parliament (*Mason* at paras 69, 76; *Vavilov* at paras 133–135, 191–192; *Pepa* at paras 11, 64, 115–119; *Alexion* at para 21; *Onex* at paras 46, 54, 137, 141, 144). The CRA also does not respond to the argument raised by Frontier that in this case, it does not seek to circumvent the Subscription Agreements but rather intends to comply with them (CTR at p 594).

[85] As a result, I find that the CRA did not make a “genuine, non-tendentious, explicit or implicit analysis of the text, context and purpose behind a legislative provision when interpreting it” (*Jennings-Clyde* at para 11). Had it done so, the CRA would have applied the applicable legal

constraints, including the principles of statutory interpretation and other principles applicable to taxation law. As held by the Federal Court of Appeal in *Jennings-Clyde* at paragraph 10: “[...] Parliament expresses itself in words [...]”. Do subsections 66(15) and 66(12.6) provide that an “agreement in writing” made under subsection 66(15) may not be amended? Do they provide that a “new” agreement made to supplant an earlier one and allow the renunciation of CEE under the general rule period constitutes an impermissible “rectification”? Do they provide that the “agreement” must specifically allow for the renunciation to occur within a specific period and cannot be amended to modify a renunciation that has already been effective? Do they provide that a corporation is prohibited from renouncing CEE under the general rule period so as to reduce its exposure on contractual liability if the parties, in their own private commercial dealings, agreed that the corporation would renounce under the “look-back” rule and indemnify the investors for any additional tax owing it failed to do so? Again, as held in *Jennings-Clyde* at paragraph 10 and to paraphrase: “[...] So where did Parliament make it clear? Is it the context of the words in subsection [66(15) or ss. 66(12.6)] when seen alongside other provisions of the Act? Is it the purpose of [ss. 66(15) or ss. 66(12.6)]? The purpose of other provisions? Some recognized canon or maxim of statutory construction? Some earlier judicial or administrative authority?” (*Jennings-Clyde* at para 10).

[86] Frontier’s arguments noted above are sufficiently strong and require a proper analysis and response. Unfortunately, in addition to failing to apply the principles of statutory interpretation previously mentioned, the CRA provided no explanation as to why its interpretation prevailed over Frontier’s arguments and better complied with the text of the provisions or purpose of the flow-through program and the intent of Parliament, and why the *Capstone* case continued to

apply even if Frontier did not intend to “rectify” or “amend” the Subscription Agreements. The CRA’s analysis and reasoning are not present in these regards (*Jennings-Clyde* at paras 7-8; *Canadian Nuclear Laboratories* at paras 38, 44).

[87] With respect, I also disagree with the Respondent’s argument that the CRA’s interpretation of the *ITA* and the Subscription Agreements is consistent and that if the second renunciation proposed by Frontier is authorized, the Termination Date, the indemnity clause and the amendment clause in the Subscription Agreements will become redundant.

[88] The CRA’s reasoning relies in part on *Capstone* (as set out in the Position Letter) and the Respondent hints that the end result is that Frontier intends to retroactively arrange its affairs and modify or amend the Subscription Agreements, which cannot be accepted (Respondent’s Memorandum of Fact and Law at paras 45, 68). In *Capstone*, as in the present matter, CEE needed to be incurred until a specific termination date (December 31, 2013) set under subscription agreements permitting the renunciation of CEE under the “look-back” rule. As in this case, CEE proved impossible to be incurred completely and *Capstone* was required to reduce the renunciation to its subscribers under subsection 66(12.73) of the *ITA* and to indemnify its subscribers an amount equal to the additional tax payable as a result. Therefore, *Capstone* requested from the CRA that relief be granted to “administratively allow Capstone to renounce the \$2.3 million of Expenses incurred in the first three months of 2014 to the Subscribers, with an effective renunciation date of December 31, 2012” (*Capstone* at para 15), so that the “look-back” rule could apply under subsection 66(12.66) and thereby comply with the subscription agreements. The CRA refused *Capstone*’s request and ruled that it could not provide the

“administrative relief” sought because the renunciation was not in accordance with the subscription agreements and suggested that *Capstone* seek a rectification of the subscription agreements, if an error had been made (*Capstone* at para 16).

[89] *Capstone* therefore sought an order of the court to rectify the subscription agreements and change the termination date to March 31, 2014 (*Capstone* at para 21). Although that amendment would not have necessarily enabled *Capstone* to renounce the CEE for the year 2012 as intended under the subscription agreements, it would likely have permitted *Capstone* to use the general rule period. The court held, as the Respondent argues in this case, that *Capstone* was essentially seeking to amend the subscription agreements and change the termination date to December 31, 2014 (without the consent of or the participation of the subscribers in the petition) (*Capstone* at paras 23-30). The court also opined that under the *ITA*, parties are entitled to make a termination date under an “agreement” that is shorter than the general rule period and the CEE is not eligible to be renounced thereafter (*Capstone* at paras 18-19). The court then dismissed the petition because *Capstone* had not established that a mistake was made in relation to the termination date. The intention of the parties was that *Capstone* would incur a specific amount of CEE and renounce that amount to the subscribers so that they could claim a full deduction in their tax returns by the termination date, and not within the full two-year general rule period under subsection 66(12.6) of the *ITA* (*Capstone* at para 56).

[90] Frontier argued to the CRA that the context in this case is different. While in *Capstone* the company mainly intended to “rectify” the agreements so that it would not be in breach, Frontier submitted in its May 16, 2025 letter that it accepts liability and does not want to modify,

rectify or amend the Subscription Agreements as requested in *Capstone*. The only issue is whether Frontier can make a second renunciation under subsection 66(12.6) of the *ITA* which will have an impact on the amount of the indemnity owed to the Subscribers. Frontier argues that this particular question was not at issue in *Capstone*. The *Capstone* decision therefore does not provide a conclusive answer and is of limited value according to Frontier.

[91] Frontier understands that the Subscribers will not have the full benefit of the “look-back” rule. The question is how much Frontier must indemnify the Subscribers according to the workings of the *ITA*. If the second renunciation is refused, then Frontier must indemnify to the full extent of the tax consequences of the Subscribers losing the tax deduction entirely, including potential interest, as a result of the re-assessment of the Subscribers due to the reduction of the first renunciation for the year 2021. If the late second renunciation is accepted, the Subscribers lose less. Under the law of contracts and damages, the Subscribers will have to mitigate their loss (*Southcott Estates Inc. v Toronto Catholic District School Board*, 2012 SCC 51, [2012] 2 SCR 675 at paras 23-25) and claim a deduction for the year 2023. They will also potentially incur interests on the reassessment for the year 2021. They will then potentially incur an extra tax burden for having deducted CEE renounced in two different taxation years instead of only for the year 2021. Frontier, unlike *Capstone*, is not trying to escape its contractual liability altogether. It is simply trying to assess the extent of its contractual liability under the available tools existing under the *ITA* and then will indemnify its Subscribers accordingly.

[92] I agree with Frontier on the limited value of *Capstone*. That decision related to an attempt to rectify the contract so that the company would not be in breach of the subscription

agreements. While in *Capstone* the court did rule that the CEE is not eligible to be renounced after the termination date, the court made a finding of fact in relation to the law of contracts and not under the *ITA*. The court was not asked, as was requested here of the CRA by Frontier, to undertake a fulsome analysis of the text, context and purpose of subsections 66(15) and 66(12.6) of the *ITA* and determine whether a second renunciation is technically feasible regardless of a shorter termination date existing in the Subscription Agreements (as compared with the general rule period); with the contractual obligations continuing to apply and result in Frontier having to indemnify the Subscribers for any additional amount of tax owed as a result, if any.

[93] There was also no request in *Capstone* to consider the issue as to whether subsections 66(12.6) and 66(12.741) could permit a new agreement or an amendment, even if the CRA cited *Capstone* in its Position Letter (the CRA did not specifically refer to *Capstone* in the Decision) and established a legal principle that “[e]ven if they had written a new agreement or amended the initial agreement, it would have been considered as a “rectification” and CRA does not allow it” (CTR at p 587). The CRA did not explain what was supporting this conclusion in the Position Letter or in its Decision (CTR at pp 986-987) — and with respect, the *Capstone* decision does not appear to conclusively rule out that the parties can amend an agreement for flow-through shares and allow for a second renunciation of CEE under the general rule period when the “look-back” rule is no longer available but the general rule period remains open (and that the subscription agreement contemplates a procedure for its amendment).

[94] As a result, as discussed above and contrary to the Respondent’s argument, a broad interpretation of subsections 66(15) and 66(12.6) as proposed by Frontier may be consistent with

the *ITA* and the Subscription Agreements. Frontier's argument may permit a broad interpretation that continues to qualify Frontier's shares as "flow-through shares" under subsection 66(15) since an "agreement in writing" exists, consideration was paid, and the corporation "agrees" to incur CEE within 24 months. Furthermore, this interpretation may be consistent with subsection 66(12.6) since consideration was given under an "agreement" for the issue of flow-through shares, the corporation did incur CEE within 24 months and the purpose of the flow-through program which consist of encouraging investment in the exploration and development of mineral resources, is promoted. The interpretation may also be consistent with the Subscription Agreements since: (a) the Termination Date remains the same; (b) the indemnity clause applies because Frontier is liable to indemnify the Subscribers for all amounts of additional tax owed as a result of its failure to incur the entire amount of CEE by the Termination Date of December 31, 2022; and (c) the Subscription Agreements are not amended without the agreement of the Subscribers. Under Frontier's proposed interpretation, none of the provisions of the Subscription Agreements become redundant.

[95] I would add that Frontier's proposed interpretation may also be consistent with subsection 66(12.6001) of the *ITA* adopted during the COVID-19 period. As noted by Frontier, if the "agreement" between the parties must specifically provide for a period of not more than 24 months to comply with subsection 66(15) and be defined as "flow-through shares" (but may be shorter as in this case), and that the "agreement" must specifically allow CEE to be renounced only within that (potentially shorter) period under subsection 66(12.6) (as argued by the CRA), then subsection 66(12.6001) may become meaningless since that subsection only increased the term of "24 months" in subsections 66(12.6) and 66(12.62) to "36 months" but did not likewise

extend any (and potentially shorter) period under any “agreement” by 12 months. The intent of Parliament may therefore be thwarted by the interpretation of the CRA and subsection 66(12.6001) may become redundant. The Respondent’s argument that subsection 66(12.6001) was enacted in an emergency situation during COVID-19 and therefore cannot inform a proper interpretation of subsections 66(15) and 66(12.6), is also unpersuasive. Parliament is deemed to be an expert and have knowledge of its laws and complete statute book, and presumed to have intended every word of a statute to serve a purpose, and to use language in a consistent and careful manner (Sullivan, Ruth, *The Construction of Statutes*, 7th ed. Toronto: LexisNexis, 2022 at §8.02-8.03, at pp 205-220).

[96] On the contrary, if Frontier’s argument is upheld and the “agreement” referred to in subsections 66(15) and 66(12.6) does not limit or need to include a specific condition that the renunciation must be “strictly” made in accordance with the period provided under the “agreement” (as argued by Frontier, CTR at p 594), then the purpose of subsection 66(12.6001) may be achieved. Under that argument, the “agreement in writing” under subsection 66(15) requires that the corporation “agrees” to incur CEE within the general rule period notwithstanding any other shorter period agreed upon by the parties in their “agreement” and their own commercial dealings. Once the general rule period is increased under subsection 66(12.6001) by 12 months, this has no impact on any period agreed upon between the parties in the “agreement”, including shorter periods. The extended longer general rule period remains available to the corporation to renounce CEE if for any reason it cannot comply with its obligations provided in the contract; even if the corporation may be liable for a breach of

contract for having failed to incur the CEE under the shorter period as agreed upon by the parties.

[97] Frontier’s proposed interpretation may allow subsection 66(12.6001) to be consistent with the principle of statutory interpretation, including that the legislature avoids superfluous or meaningless words, that every word is presumed to have a specific role in advancing legislative purpose, and that courts avoid adopting interpretations that would render any portion of a statute or of a contract redundant or meaningless (*R v Proulx*, 2000 SCC 5 at para 28; *McDiarmid Lumber Ltd v God’s Lake First Nation*, 2006 SCC 58 at para 36; *Shopify* at para 225).

[98] I also disagree with the Respondent’s argument at paragraphs 46 and 47 of its Memorandum of Fact and Law. The Respondent argues that the terms “in the period” in subsections 66(15) and 66(12.6) must have the same meaning and that subsection 66(15) allows for “agreements” to limit the general rule period to a shorter one; and therefore subsection 66(12.6) must also allow the same. However, contrary to the argument of the Respondent, subsection 66(15) does not specifically allow for a shorter period. The phrase used in both subsection 66(15) and subsection 66(12.6) is exactly the same: “in the period that begins on the day on which the agreement was made and ends 24 months after the end of the month that includes that day”. In both subsections, an “agreement” is required to qualify the shares as “flow-through shares” which requires consideration by the investor and that the corporation “agrees” to incur the CEE within the general rule period. Neither subsection 66(15) nor subsection 66(12.6) specifically authorize, or prohibit, parties to agree among themselves, in their own commercial dealings, to require the expenditure of the CEE in a shorter period, nor specifically provide that a

shorter period of time agreed upon by the parties precludes a corporation from renouncing CEE within the general rule period if circumstances change — notwithstanding a breach of contract.

[99] I would also add that the “look-back” rule does not appear to require that the “agreement” strictly provides that the parties must have agreed that the renunciation occurs within a shorter period under subsection 66(12.66) and not under the general rule period under subsection 66(12.6). Subsection 66(12.66) does not specifically require that the parties agree in the “agreement” that the “look-back” rule would be used (as argued by Frontier in its May 16, 2025 letter (CTR p 594)). To the contrary, subsection 66(12.66) simply provides, *inter alia*, that if flow-through shares are issued under an “agreement” made the preceding calendar year, that consideration in money was also made that preceding year, and CEE are intended to be incurred in the following calendar year, then the corporation may renounce the CEE in January, February or March of the following calendar year and the CEE may be deemed to have been made on the last day of the preceding year. In other words, the “agreement in writing” under subsection 66(15) could potentially always mention that the corporation “agrees” to incur CEE within the general rule period, leaving it to the corporation to renounce the CEE using the “look-back” rule or not, when available. For obvious tax reasons, an investor and a corporation may decide to create different obligations between them, requiring the use of the “look-back” rule and agree to a shorter period, as was done in this case, along with an indemnity if the corporation has not been able to incur the entire amount of CEE in due course.

[100] As stated at paragraphs 60-63 above, the modern principles of statutory interpretation apply to the *ITA* and require that the words of the *ITA* be read in their entire context and in their

grammatical and ordinary sense harmoniously with the scheme of the Act. I am also mindful of Justice Stratas' cautionary words in *Bonnybrook Park Industrial Development Co. Ltd. v Canada (National Revenue)*, 2018 FCA 136 [*Bonnybrook*], that it is not for this Court to determine which of Frontier's or the CRA's interpretations is more appropriate – that is the Minister's duty (*Bonnybrook* at para 67; see also *Canadian Nuclear Laboratories* at para 52; *Onex* at para 107). However, and using a “reasons first” approach, Frontier's proposed interpretation appears to be plausible, yet the Minister did not provide sufficient reasons explaining why it had to be dismissed in favour of its more restrictive interpretation.

[101] As a result, I find that the CRA's reasons do not sufficiently “grapple” with Frontier's main arguments made in its May 16, 2025 submissions in support of its request for authorization to make a late second renunciation and that the reasons are not sufficiently transparent, intelligible and justified to provide an outcome that is reasonable (*Vavilov* at para 15). Particularly, the CRA's reasons failed to “show a genuine, non-tendentious, explicit or implicit analysis of the text, context and purpose behind a legislative provision when interpreting it” (*Jennings-Clyde* at para 11 citing *Vavilov* at paras 119-123) and to provide adequate reasons as to why its restrictive interpretation of subsections 66(15) and 66(12.6) better reflects the intent of Parliament given the particularly harsh consequences facing Frontier (*Mason* at paras 69, 76; *Vavilov* at paras 133–135, 191–192; *Pepa* at paras 11, 64, 115-119; *Alexion* at para 21; *Onex* at paras 46, 54, 137, 141, 144).

[102] Notwithstanding that the CRA did discuss the intent of the parties and that according to the CRA's interpretation of the Subscription Agreements, the intent was not to have the full two

years allowable under the *ITA* to incur the CEE (and its reasons need not be as formalistic as a court and mention case law that would support that finding such as *Jean Coutu* at para 41 and *Fairmont Hotels* at para 24 discussed above (see *Mason* at paras 61, 69-70; *Vavilov* at paras 91, 118-119; *Newfoundland Nurses* at para 16; *Rodriguez Anzola* at para 100)), the CRA's failure to provide adequate reasons on its interpretation and interaction of subsections 66(15), 66(12.6) and 66(12.741) including their text, context and purpose and why it rejected the arguments of Frontier, causes this Court to lose confidence in the outcome reached (*Pepa* at para 63; *Mason* at para 69; *Vavilov* at para 119-123; *Jennings-Clyde* at para 11; *Canadian Nuclear Laboratories* at para 38). The CRA's silence on these important issues constitutes a "failure of justification in light of the legal and factual constraints bearing on the decision", undermines the level of confidence in the outcome reached and the CRA's Decision fails to bear the hallmarks of reasonableness (*Mason* at para 66; *Rodriguez Anzola* at paras 128 citing *Mason* at para 69; *Vavilov* at para 122).

C. *The CRA's discretionary Decision not to authorize Frontier's request for a late second renunciation did not breach procedural fairness*

[103] There are no specific rules of procedural fairness set out in the *ITA* prescribing the exercise of ministerial discretion relating to applications for relief brought pursuant to the *ITA* (*Costabile v CCRA*, 2008 FC 943 at para 37; *1680169 Ontario Limited v Canada (Attorney General)*, 2019 FC 562 at para 26 [*1680169 Ontario*]).

[104] In some situations, for example in the context of discretionary relief under subsection 220(3.1) providing the Minister with discretion to grant relief of all or any portion of a penalty or

interest in the context of the Voluntary Disclosure Program [VDP], this Court has ruled that the content of procedural fairness is generally minimal (*1680169 Ontario* at paras 26-29; *Williams v Canada (National Revenue)*, 2011 FC 766 at para 31; also *Créations Guimel Inc. v Canada (National Revenue)*, 2025 FC 814 at paras 63-65, 103). Indeed, “it is the responsibility of the Applicant to put its best foot forward while applying for discretionary tax relief” and “[t]his Court has previously determined that taxpayers who make VDP disclosures have minimal procedural rights because of the expansive discretion under subsection 220(3.1) of the ITA” (*Melflor Investments Ltd. v Canada (Attorney General)*, 2026 FC 331 at paras 34-35 citing *Klopak v Canada (Attorney General)*, 2019 FC 235 at para 59; *Building Products of Canada Corp v Canada (Attorney General)*, 2020 FC 784 at para 33). As held by Justice Rennie, as he then was, in *Williams v Canada (National Revenue)*, 2011 FC 766 at paragraph 31:

[31] [...]he degree of procedural fairness and the robustness by which the principle is implemented varies with the nature of the interests or rights engaged and with the nature of the discretion. The VDP is a highly discretionary program which, as its object, encourages compliance with important mandatory statutory requirements. Put more bluntly, it is designed to encourage taxpayers to do that which they were required by law to have done in the first place. As such, the criteria governing the exercise of discretion are strict and narrow and the rights involved are minimal.

(see also *1680169 Ontario* at para 26)

[105] Moreover, the Court examined the content of procedural fairness owed in the context of subsection 96(5.1) of the *ITA*, which grants discretion to the Minister to permit an election for a rollover under subsection 97(2) of the *ITA*. Importantly, the criteria permitting the Minister to grant the permission in that context is the same as for subsection 66(12.741) in this case. The Minister may permit the election under subsection 96(5.1) if “in the opinion of the Minister, the

circumstances of a case are such that it would be just and equitable” [emphasis added]. In *R & S Industries Inc. v Canada (National Revenue)*, 2016 FC 275 at paragraph 49 [R & S], Justice Diner (now Chief Justice) held that:

[49] The case law involving analogous exercises of ministerial discretion under the Act suggest that the Respondent must accept submissions and remain communicative, but flatly refuses a more onerous procedural right to comment on a decision before it is made. For example, in *Sherry v Canada (National Revenue)*, 2011 FC 1208 at para 18, this Court held that the “Applicant was afforded ample opportunity to provide all necessary information to CRA when she submitted her request for review. The rules of procedural fairness did not entitle her to further comment before the Decision was made”. In *Costabile v CCRA*, 2008 FC 943 at paras 37-38, the applicant took issue with the fact that there was no opportunity to discuss the outcome or the reviewing of the fairness order. Justice Russell rejected the applicant’s complaint, holding that “[t]he Applicant was given the opportunity to submit information and documents when he submitted his fairness request. I do not find that the Minister was required to seek further information, documents, or submissions from the Applicant in this case”. I find that the rationale of these decisions applies equally in the context of subsection 96(5.1) of the Act.

[106] In other programs administered by the CRA, such as under the *Canada Emergency Response Benefit Act*, SC 2020, c 5 or the *Canada Recovery Benefits Act*, SC 2020, c 12, procedural fairness was ruled to be on the “low end of the spectrum”, requiring only that the applicant receive notice of the case to meet and an opportunity to respond by providing information to substantiate their claim (*Phipps v Canada (Attorney General)*, 2025 FC 421 at para 37; *Farahnak v Canada (Attorney General)*, 2026 FC 379 at para 64 citing *Sriskanda v Canada (Attorney General)*, 2026 FC 131 at para 24; *Javed v Canada (Attorney General)*, 2025 FC 1535 at para 33 citing *Komleva v Canada (Attorney General)*, 2024 FC 1562 at para 29, citing *Moncada v Canada (Attorney General)*, 2024 FC 117 at para 32; *Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 17; *Ramanathan v Canada (Attorney General)*, 2023

FC 1029 at para 46). I note that in the context of these cases, while the amounts at issue may be more modest than in this case, they remain critical for the taxpayers at issue and may lead to their bankruptcy. Still, and even if the importance and impact of the decision on an applicant is very high, the content of procedural fairness has been held to be low (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 25).

[107] As a result, in my view, the content of the duty of fairness owed to Frontier in relation to the Minister's discretionary power to authorize the late second renunciation under subsection 66(12.741) is low. The procedure followed by the Minister must have permitted Frontier to understand the case it had to meet and have been offered an opportunity to provide information to substantiate their claim.

[108] Frontier argues that the CRA breached its right to procedural fairness by failing to provide it with a full and fair opportunity to know and respond to the CRA's position. Frontier submits that before its ultimate Decision, the CRA said that the context was irrelevant and that its only concern was whether the second renunciation was technically feasible. Moreover, Frontier states that at all times, it was given the impression by the CRA that only the technical feasibility of the second renunciation under subsection 66(12.6) was questioned, but not whether it would be "just and equitable" for the Minister to authorize a late renunciation. For example, in its letter of April 24, 2025, Frontier states that it "understands that CRA does not dispute that it would be "just and equitable", within the meaning of subparagraph 66(12.741)(a)(ii), that CEE amounts be renounced, but if CRA has any concerns in this regard, please let us know so that the point can be addressed in the s. 66(12.741) request" (CTR at p 583). Moreover, on May 16,

2025, Frontier made its formal subsection 66(12.741) request in writing for authorization to make a late second renunciation in which it reiterated its statement first made on April 24, 2025, that in its understanding, the CRA did not dispute that it would be “just and equitable” to be authorized to make the late second renunciation. Frontier also noted that in its Position Letter of April 25, 2025, the technical possibility to make the second renunciation under subsection 66(12.6) appeared to be the CRA’s only concern (CTR at p 595). Frontier therefore pleads that the Decision breached its right to procedural fairness, which required the CRA to provide Frontier with an opportunity to address the CRA’s specific concerns as to whether an authorization for a late second renunciation would be “just and equitable”.

[109] The Respondent submits that the duty of procedural fairness owed to Frontier was minimal and that Frontier was aware of the case to meet. The CRA was not required to request further submissions from Frontier as to why the late second renunciation would be “just and equitable” (*1680169 Ontario* at paras 26-29; *Sherry v Canada (National Revenue)*, 2011 FC 1208 at paras 17-18; *R & S* 2016 FC 275 at para 49); and there is no right to review the exercise of ministerial discretion before it occurs (*R & S* at paras 48-49; *1680169 Ontario* at para 29).

[110] The Respondent also submits that the CRA never advised Frontier that it could provide its position piecemeal and the Applicant had no legitimate reason to expect that it could do so (*C.U.P.E. v Ontario (Minister of Labour)*, 2003 SCC 29 at para 131; *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41 at para 29). Prior to, and following the CRA’s Position Letter, Frontier had ample opportunity to provide its submissions.

[111] In post-hearing submissions, Frontier brought to the attention of the Court a recent decision, *Ji v Canada (Attorney General)*, 2026 FC 696 [*Ji*], that would support its allegation of breach of procedural fairness because the “case to meet” had changed between the CRA’s Position Letter and its Decision of June 18, 2025. The Respondent disagrees and submits that Frontier was always aware of the criteria to meet, that is whether an authorization was “just and equitable” in the circumstances to allow the late renunciation of the CEE. Indeed, Frontier made fulsome submissions on the issue in its May 16, 2025 letter, those submissions on the delay in incurring the CEE were accepted by the CRA in the Decision, and the CRA did not create a new threshold in doing so.

[112] I agree with the Respondent that there was no breach of procedural fairness in this application.

[113] First, the CRA did mention to Frontier that the “context was not relevant”, but that statement was made on January 21, 2025, and was in relation to Frontier’s explanation as to why the CEE was not incurred before December 31, 2022, and eligible for renunciation for the year 2021 (CTR at p 1243). The CRA never stated that the context was irrelevant to Frontier’s request for authorization to make a late second renunciation under subsection 66(12.741), which was first articulated on January 28, 2025, and then in writing on February 28, 2025, after Frontier obtained legal advice (CTR at pp 455, 1243-1244).

[114] Second, while Frontier did send two letters in which it stated that, from its standpoint, the CRA never disputed its assertions that it would be “just and equitable” to be authorized to make

the late second renunciation, there is no evidence, by way of letter or notes of communications, as to the CRA's position regarding whether it would be "just and equitable" to authorize Frontier to make the late second renunciation (see for example Memo for File, CTR pp 1238-1248).

[115] In my view, the fact that Frontier did make detailed substantive submissions, on May 16, 2025, on the specific issue of whether it would be "just and equitable" to obtain authorization to make the late second renunciation is indicative that the CRA never made any representations, or gave any legitimate expectation, that it had already taken a favourable view of Frontier's request (CTR pp 589-601). It is also indicative that Frontier was aware of, and the CRA did not change, the "case to meet" so as to constitute a breach of procedural fairness (see *Ji*).

[116] As for CRA's Position Letter dated April 25, 2025, it was not a response to Frontier's letter of the day before, on April 24, 2025, in which Frontier argued that the CRA "does not dispute that it would be "just and equitable" [...], that CEE amounts be renounced" (CTR at p 583). Rather, the CRA's Position Letter was in response to a request made by Frontier during a telephone call on April 22, 2025, in which Frontier requested for a written response as to why the CRA believed that a second renunciation was not technically feasible under subsection 66(12.6) (CTR at p 1246). It is therefore normal for the Position Letter not to address the issue as to whether it would be "just and equitable" to authorize the late second renunciation because, at that time, that issue had not yet been formally addressed — the parties were still trying to determine whether subsection 66(12.6) was applicable.

[117] As a result, the CRA never indicated to Frontier that it did not dispute that it would be “just and equitable” for Frontier to be authorized to make the late second renunciation. I also reject Frontier’s arguments that the CRA breached its right to procedural fairness in failing to “let [Frontier] know” so that it can then address the issues in its substantive request for relief under subsection 66(12.741).

[118] Clearly, Frontier was aware of the case to meet and was able to put its best foot forward. It first filed with the CRA an Executive Summary of the Exploration Program for the 2021 flow-through program financing (CTR at p 430) that explained the hardship that was incurred. Frontier then filed its formal request along with its submissions on May 16, 2025. In that request, Frontier refers to the Executive Summary and included seven (7) other grounds that would justify the authorization, which were never articulated before (CTR at pp 589-601).

[119] The only additional material evidence relied upon by Frontier in oral argument and that was adduced on judicial review is a letter dated January 17, 2025, in which Frontier asked the CRA for a meeting (AR at p 0814). While that letter is not in the CTR, that letter was attached to the Executive Summary explaining the hardship and reasons for the delay, which is in the CTR (CTR at pp 430-437 – and that Executive Summary is cited by Frontier in its formal request dated May 16, 2025, CTR p 590). However, that letter of January 17, 2025 was before Frontier’s notification that it intended to seek authorization to make the late second renunciation. Therefore, even if the record does not disclose whether that meeting was held or not, the meeting sought was not to seek authorization for a late second renunciation under subsection 66(12.741). It was rather to discuss with the CRA the issues relating to the first renunciation for the year

2021 and to conclusively determine whether that first renunciation had to be reduced. Therefore, any failure to accept a meeting did not result in a breach of procedural fairness in relation to Frontier's request for authorization to make the late second renunciation under subsection 66(12.741).

[120] Finally, I have analyzed the affidavits filed by Frontier on judicial review, to determine whether the information conveyed could establish a breach of procedural fairness. The evidence establishes that Frontier was not able to make the CEE expenditures by December 31, 2022, as a result of permitting delays that were out of Frontier's control, because of additional consultation required and a house fire tragedy that occurred in a First Nation community. These reasons had been previously explained in the Executive Summary sent to the CRA (CTR pp 430-437) and were accepted by the CRA in its Decision (CTR at p 989). Nevertheless, the CRA found that Frontier still had the responsibility to ensure that the necessary permits and agreements were obtained given the short period in which it had agreed to incur the CEE. I therefore agree with the CRA that the information conveyed in the affidavits do not provide additional substantive information to demonstrate a breach of procedural fairness in this case. The information provided in the affidavits was, for the most part, already in the possession of the CRA and accepted, and does not substantially add anything that bolsters Frontier's case on the issue of breach of procedural fairness.

[121] As a final note, the Respondent argues that the affidavits adduced by Frontier should be disregarded in their entirety and/or partially struck, as they contain evidence that was not before the CRA. In the alternative, the portions of the affidavits containing improper evidence should

not be considered. I agree. As a general rule, the evidentiary record before a court on judicial review is restricted to the record that was before the administrative decision maker. With the exception of evidence that is necessary to bring the Court's attention to a procedural defect that cannot be found in the evidentiary record (and that the Court has considered in this application regarding Frontier's argument on an alleged breach of procedural fairness but which I have ultimately dismissed), the Court has not considered the content of the affidavit evidence to assess the reasonableness of the CRA's decision on the other grounds raised by Frontier (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-22).

D. *The CRA's Decision to refuse Frontier's request for authorization to make a late second renunciation is unreasonable*

[122] The CRA ruled that it would not be "just and equitable" to authorize Frontier to make the late second renunciation. In the CRA's view, Frontier did not take any action "sooner" including to reduce the renunciation for 2021 under the "look-back" rule until the audit was completed in late 2024. It also took no action to remedy the situation, including to amend the Subscription Agreements, even if it was aware by March 2023 that about \$4M in CEE had not been incurred on time (CTR at p 988).

[123] The CRA then dismissed Frontier's argument that it would be financially devastated if it could not renounce the additional CEE because the harm suffered is a "direct consequence from a lack of forethought in the decisions taken regarding the flow-through share financing" and that

accepting Frontier's request would shift the responsibility for indemnifying its Subscribers to the Canadian taxpayers (CTR at p 988).

[124] Finally, the CRA opined that while Frontier's failure to incur the CEE in 2022 was a result of permitting delays and a house fire tragedy in a First Nation community, it remained the company's responsibility to ensure that all necessary permits were obtained to carry out the exploration work in 2022 before deciding to go forward with a flow-through financing scheme using the "look-back" rule with a termination date of December 31, 2022 (CTR at p 989).

[125] Frontier argues that the CRA's Decision is unreasonable on five substantive grounds : the CRA (i) failed to consider the harsh consequences that it will suffer; (ii) assumed that Frontier and the Subscribers voluntarily assumed the risk of the flow-through program; (iii) assumed that a junior exploration company has an obligation to have certainty that it will be able to incur the CEE before renouncing it using the "look-back" rule, when Parliament intended to encourage such renunciations despite inevitable uncertainty; (iv) ignored Frontier's explanation as to why it did not reduce the first renunciation (under the Subscription Agreements) in 2023; and (v) wrongly asserted that the request amounted to an indemnification of the Subscribers by the taxpayers of Canada.

[126] The Respondent submits that the onus is on Frontier to explain why it would be "just and equitable" for the Minister to grant authorization to make the late second renunciation (relying on *Glenogle Energy Inc. v Canada (Attorney General)*, 2022 FC 198 at para 42 [*Glenogle*]). The CRA carefully weighed all the arguments and evidence put forward by Frontier, specifically

referenced each letter sent by Frontier, and analyzed the evidence in a transparent and intelligible manner. The CRA's findings are specifically responsive to Frontier's May 16, 2025 letter and should be read with that context.

[127] The Respondent also argues that to reduce its liability under the Subscription Agreements, Frontier is attempting to retroactively arrange its affairs, contrary to its intention as noted in the Subscription Agreements, including the intentions of its Subscribers. In a similar context, the court in *Capstone* refused such remedy (citing *Capstone* at paras 54, 56-58, 61 and 75).

[128] The Respondent also argues that Frontier's attempt to change the consequences of the Subscription Agreements is contrary to the basic principles of tax law restated by the SCC most recently in *Fairmont Hotels*, in which the SCC held that "[t]ax consequences [...] flow from freely chosen legal arrangements, not from the intended or unintended effects of those arrangements." The SCC found that the proper inquiry should be what the taxpayer agreed to do (*Fairmont Hotels* at para 24; see also *Jean Coutu* at para 41). Here, Frontier agreed to limit the period in which it would incur and renounce CEE to December 31, 2022. The CRA should not be on the hook to compensate a party that incurs a loss as a reason of their own contractual arrangements.

[129] As sated above, like in other ministerial discretionary powers under the *ITA* to grant relief when it is "just and equitable" to do so, no criteria has been set under the *ITA* pursuant to

subsection 66(12.741) providing specific requirements that must be taken into account, or disregarded, in assessing the request (see *Glenogle* at para 34).

[130] Similarly to the reasonableness of the CRA's finding relating to the technical feasibility for Frontier to make the second renunciation, and using a "reasons first" approach, I find that the CRA's reasons regarding the exercise of the Minister's discretion to authorize a late renunciation are not sufficiently transparent and intelligible to justify its conclusion. The CRA had to consider the information obtained and, in the exercise of discretion, also grapple with the particularly severe or harsh consequences for Frontier and explain "why [their] decision best reflect the legislature's intention" (*Mason* at paras 69, 76; *Vavilov* at paras 133–135, 191–192; *Pepa* at paras 11, 64, 115–119; *Alexion* at para 21; *Onex* at paras 46, 54, 137, 141, 144).

[131] While the CRA did respond and address most of Frontier's arguments, it failed to meaningfully address Frontier's argument that, as a pre-revenue corporation, it would be financially devastated if it attempted to compensate its Subscribers for their loss without being able to make the second renunciation to mitigate its liability. Frontier added that it would likely have to discontinue or scale-down its operations. The CRA's reasons do not substantively engage with this issue and rather dismiss it summarily by ruling that the prejudice "is a direct consequence from a lack of forethought in the decisions taken regarding the flow-through share financing" (CTR at p 988) and that Frontier operates in a very risky business and in effect ought to face the consequences.

[132] In doing so, the CRA failed to consider that one of the purposes of the ministerial power to authorize a late renunciation under subsection 66(12.741) is in part to address errors and omissions made by a taxpayer. The issue is not whether or not an error was made — a request for discretionary relief often follows a mistake — but whether if in the circumstances, it would be “just and equitable” to grant relief.

[133] Financial hardship is a relevant ground in assessing whether ministerial discretion should be granted in favour of a taxpayer; and failure to consider a relevant ground may on its own render a decision unreasonable (*Forbes Painting and Decorating Ltd. v Canada (Attorney General)*, 2019 FC 160 at paras 26-32; *Yatar* at para 41). The scaling down or the cessation of corporate activities is not consistent with the purpose of the flow-through program under the *ITA*. In this case, the CRA did not dismiss Frontier’s allegation that it may have to discontinue or scale-down its operations. It made no comment on whether it accepted this ground or not. Instead, the CRA opined that regardless, it was still not “just and equitable” to grant the authorization to make the late second renunciation because of Frontier’s “lack of forethought”.

[134] In my view, that reasoning does not sufficiently “grapple” with the issue as submitted by Frontier and is unreasonable. The reasoning is lacking especially since the flow-through program exists under section 66 of the *ITA* to allow junior resource corporations to be able to raise sufficient funding to pursue their development projects. Section 66 recognizes that eligible junior resource corporations are often in a non-taxable position and therefore do not operate with a substantial revenue stream. The fact that a junior resource corporation does not have revenue is not an overriding factor on its own in assessing whether an authorization to make a late

renunciation is “just and equitable” under subsection 66(12.741) — otherwise it would always have to be granted — but the CRA must properly assess the situation, which it failed to do in this case.

[135] If the CRA disagreed with Frontier’s allegation that it will face hardship and might have to discontinue or scale-down its operations, perhaps because it is already in possession of Frontier’s annual tax returns and because it had just completed an audit, it was incumbent on the CRA to note its finding and explain why. Otherwise, if the CRA hypothesized that Frontier was financially stable or disagreed that it would be in a dire state if the late second renunciation was not authorized, it could have sought additional representations on that basis before coming to its conclusion (*Onex* at para 143).

[136] On the issue of Frontier’s financial hardship, I note that the Respondent argues that Frontier is not without recourse if it is not permitted to renounce the CEE, because the CEE can be added to Frontier’s Cumulative Canadian Exploration Expenses (CCEE) balance and carried forward to be deducted once a mine comes into production. With respect, this argument presumes that Frontier will survive as a corporation, which is contrary to the allegation made in its submissions, but moreover, that rationale is nowhere found in the CRA’s reasons. However, just like it is not open for a reviewing Court to do, the Respondent also cannot “bootstrap” or “fashion its own reasons in order to buttress the administrative decision”, because this undermines the duty of the decision maker to adequately justify its administrative decision (*Vavilov* at para 96; *Canadian Nuclear Laboratories* at para 43 citing *Westjet v Lareau*, 2024 FCA 77 at para 17; *Stemijon Investments Ltd. v Canada (Attorney General)*, 2011 FCA 299 at

paras 41-42; *Vavilov* at para 83; *Ontario (Energy Board) v Ontario Power Generation Inc.*, 2015 SCC 44 at paras 64-65; *Sellathurai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 255 at paras 46-47).

[137] As a result, the CRA's reasoning in response to one of Frontier's main arguments is a sufficient shortcoming that causes this Court to lose confidence in the outcome reached (*Vavilov* at para 122). In making this conclusion, I do not opine on whether Frontier's argument of financial hardship is convincing, as this would require the Court to re-weigh the evidence adduced and create its "own yardstick", and then use it to measure what the decision maker did (*Pepa* at para 48; *Vavilov* at paras 83, 125; *Canada Post Corp.* at para 40; *Canadian Nuclear Laboratories* at para 37). However, I am not satisfied that the CRA properly assessed and responded to this argument.

[138] There are other and independent reasons that cumulatively explain why the Court has lost confidence in the outcome of the CRA's Decision on the exercise of the Minister's discretion. The CRA's reasons to deny Frontier's request for authorization to make the late second renunciation under subsection 66(12.741) of the *ITA* are heavily influenced by its decision relating to the technical impossibility to make the second renunciation under subsection 66(12.6), which I have found above not to have been sufficiently reasoned and therefore unreasonable. That conclusion has coloured many of the CRA's findings in its assessment of Frontier's submissions as to whether it would be "just and equitable" to grant Frontier's request.

[139] On several occasions in its Decision, including in its conclusion, the CRA made statements regarding subsections 66(12.6) and 66(12.741) such that it prohibits the company from amending and modifying a renunciation once it has become effective, and that CRA would not allow it (CTR at pp 986-989). While some of these findings are made in the technical aspect of the Decision, the CRA also relied in part on the same rationale in assessing whether the request for authorization to make the late second renunciation under subsection 66(12.741) would be “just and equitable” or not. The technical aspect of the Decision relating to the feasibility to make the late second renunciation colours the CRA’s assessments of Frontier’s submissions (CTR at pp 988-989).

[140] For example, in the “discretionary” and “just and equitable” part of its reasons, the CRA opined that Frontier did not attempt to amend the expenditure period in the Subscription Agreements and that if Frontier and its Subscribers intended to have the full two years allowable under the *ITA* to incur the CEE, one would have expected Frontier to act “sooner” (CTR at p 988).

[141] In making that statement, however, the CRA failed to properly understand and analyze Frontier’s submission that its proposed interpretation of subsection 66(12.6) entitled it to make the second renunciation since the CEE was incurred within the general rule period and therefore, Frontier had no intention of amending the Subscription Agreements. As such, no “sooner” action was required to amend the Subscription Agreements.

[142] Moreover, the CRA's conclusion on the Minister's exercise of discretion under subsection 66(12.741) appears to be an alternative conclusion to its ruling that it was not technically feasible to make the second renunciation under subsection 66(12.6), in part because it would require an amendment to the Subscription Agreements which the CRA would not allow. Indeed, the Respondent submits that this application for judicial review ought to be dismissed if the CRA's Decision is reasonable on either of these two independent grounds: (a) on the technical impossibility to make the second renunciation under subsection 66(12.6), as discussed above; or (b) if Frontier is right that a second renunciation was technically feasible, the Minister's conclusion that it was not "just and equitable" to grant the authorization in the circumstances under subsection 66(12.741) is reasonable (Respondent's Memorandum of Fact and Law at para 30).

[143] Therefore, in order to justify its alternative conclusion under subsection 66(12.741), the CRA ought to have analyzed Frontier's request for authorization under subsection 66(12.741) from the perspective that it was technically feasible to renounce the CEE for the year 2023 under subsection 66(12.6) as Frontier had submitted, *without* any amendment to the Subscription Agreements. But the CRA appears not to have done so. Rather, the CRA still refused Frontier's request and again relied in part on its finding that Frontier has not "taken action on this issue sooner" and attempt to amend the Subscription Agreements, in order to assess whether it would be "just and equitable" to grant the authorization (and even if the CRA had already ruled out that opportunity under subsection 66(12.6)) (CTR at p 988).

[144] As a result, the CRA's reasons on the Minister's discretion to grant authorization to make a late renunciation when it is "just and equitable" harkens back to the issue of whether the second renunciation was technically feasible pursuant to subsection 66(12.6) and under the Subscription Agreements. The CRA reasons do not provide a sufficiently substantive analysis of Frontier's submissions and explain why, if a second renunciation is indeed feasible, it would still not be "just and equitable" for Frontier to be authorized to do so. In other words, the CRA's reasons appear to rely at least in part on circular reasoning and its conclusion on the technical aspect of the Decision colours its analysis of Frontier's arguments on the exercise of the Minister's discretion under subsection 66(12.741) of the *ITA* (*Vavilov* at para 104).

[145] The CRA's conclusion on Frontier's failure to seek an amendment to the Subscription Agreements "sooner" (CTR at p 988) may therefore be irrelevant to the exercise of the Minister's discretion under subsection 66(12.741), if Frontier is within its rights to make a second renunciation for the year 2023 under subsection 66(12.6) since it incurred the CEE before December 31, 2023 (without amending the Subscription Agreements — and if it had been within the timeline to do so and did not need the requested authorization under subsection 66(12.741)); which is in theory a conclusion that the CRA could make on its re-examination of the text, context and purpose of the subsections as stated above.

[146] Finally, if a second renunciation is technically feasible for the year 2023 under subsection 66(12.6) following a review, which again is in theory a possible conclusion for the CRA when it undertakes its re-examination, then the "lack of forethought" in Frontier's failure to obtain the necessary permits before executing the Subscription Agreements and use the flow-through

program may become much less important in determining whether it would be “just and equitable” to authorize the late second renunciation: Frontier incurred the CEE before December 31, 2023 and had until March 2024 to make the second renunciation for the year 2023 under subsection 66(12.6). Thus, the delay in obtaining the permits had no impact, in Frontier’s submission, on the eligibility to make the second renunciation pursuant to subsection 66(12.6) under the general rule period up to March 2024. The “lack of forethought” in the context of a risky undertaking, as noted by the CRA to rule that an authorization to make a late renunciation was not “just and equitable” in the circumstances (CTR at pp 988-989), may become less relevant. As argued by Frontier, that “lack of forethought” or responsibility to obtain the permits before going forward with the flow-through program would become consequential between the parties only and under the Subscription Agreements since it precluded the use of the “look-back” rule, but perhaps less on the issue as to whether it would be “just and equitable” to authorize a late second renunciation, as the CEE was incurred before December 31, 2023 within the general rule period, and the second renunciation was available until March 2024.

[147] As a result, I am not satisfied that if the CRA had concluded differently in relation to the technical feasibility to make the second renunciation under subsection 66(12.6), after having properly considered the interpretation proposed by Frontier and analyzed the text, context and purpose of subsections 66(15), 66(12.6) and 66(12.741) of the *ITA*, which is in theory a possibility, that the CRA’s conclusion on Frontier’s request for authorization to make the late second renunciation under subsection 66(12.741) would have necessarily been the same.

[148] In my view, the weight attributed to Frontier's arguments made on May 16, 2025, on the request for authorization under subsection 66(12.741), may have been different had the CRA ruled differently, as is theoretically possible, on the technical feasibility for Frontier to make the second renunciation for the year 2023.

[149] Consequently, I am not satisfied that the CRA's Decision relating to the technical feasibility of the second renunciation for the year 2023 under subsection 66(12.6) did not colour its Decision in relation to Frontier's request for authorization to make the late second renunciation under subsection 66(12.741), and that the two elements of the Decision are mutually exclusive.

V. Conclusion

[150] In my view, the CRA's reasons are not sufficiently intelligible to allow the Court to conclude that it properly grappled with Frontier's main arguments and the shortcomings noted above in relation to both elements of the Decision are sufficient for the Court to lose confidence in the outcome reached as a whole (*Vavilov* at paras 122, 128, 194).

[151] The application for judicial review is granted. The Minister's decision is set aside. The matter is remitted back to the Minister for their reconsideration in accordance with the principles set out in these reasons.

[152] As agreed to by the parties, Frontier is entitled to its costs in a lump sum of \$7,500 plus disbursements.

JUDGMENT in T-1719-25 and T-2224-25

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted.
2. The decision is set aside and remitted back for reconsideration in accordance with these reasons.
3. The Applicant is entitled to a lump sum of \$7,500 in costs, plus disbursements.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-2224-25 and T-1719-25

STYLE OF CAUSE: FRONTIER LITHIUM INC. v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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REASONS AND JUDGMENT: RÉGIMBALD J.

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