

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260902

Docket: A-260-23

Citation: 2026 FCA 147

**CORAM: WEBB J.A.
RENNIE J.A.
BIRINGER J.A.**

BETWEEN:

THE MINISTER OF NATIONAL REVENUE

Appellant

and

ZEIFMANS LLP

Respondent

Heard at Toronto, Ontario, on December 18, 2024.

Judgment delivered at Ottawa, Ontario, on September 2, 2026.

REASONS FOR JUDGMENT BY:

BIRINGER J.A.

CONCURRED IN BY:

**WEBB J.A.
RENNIE J.A.**

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REASONS FOR JUDGMENT

BIRINGER J.A.

[1] The Minister of National Revenue appeals a decision of the Federal Court (*per* Pallotta J.) declining to issue a compliance order for a requirement issued to Zeifmans LLP under section 231.2 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA): 2023 FC 1000 (FC Reasons).

[2] Under section 231.2, the Minister may require any person to provide information or documents for any purpose related to the administration or enforcement of the ITA. Where the information or documents relate to one or more unnamed persons and the requirement is issued to verify their compliance under the ITA, prior judicial authorization must be obtained.

[3] Zeifmans is a tax and accounting firm. The requirement sought documents and information relating to both named clients of Zeifmans and unnamed persons. The Minister took the position that prior judicial authorization was not needed. Zeifmans disagreed.

[4] Zeifmans applied for judicial review of the requirement. The Federal Court (*per* Walker J., as she then was) dismissed the application, finding that the Minister's decision to issue the requirement without prior judicial authorization was reasonable. The Federal Court's judgment was upheld on appeal: *Zeifmans LLP v. Canada (National Revenue)*, 2021 FC 363 [*Zeifmans JR (FC)*], *aff'd* 2022 FCA 160 [*Zeifmans JR (FCA)*] (collectively, the JR Proceedings).

[5] Zeifmans did not produce the material and the Minister applied for an order in the Federal Court to compel compliance (the Compliance Proceedings). Under section 231.7 of the ITA, a judge may issue a compliance order if satisfied that a person "was required" under section 231.2 to provide any information or document sought by the Minister and has failed to do so.

[6] The Federal Court dismissed the Minister's application. The Federal Court determined that its task on the compliance order application was to determine whether the Minister's decision to issue the requirement without prior judicial authorization was correct, not whether it

was reasonable. The Federal Court also concluded that the record before it was “materially different” from the record in the JR Proceedings. Therefore, even though Zeifmans had been unsuccessful in the JR Proceedings, they were not precluded from challenging the validity of the requirement again in the Compliance Proceedings.

[7] Applying the law on prior judicial authorization, including this Court’s decision in *Canada (Customs and Revenue Agency) v. Artistic Ideas Inc.*, 2005 FCA 68 [*Artistic Ideas*], the Federal Court concluded, based on the record before it, that prior judicial authorization had been required and not obtained. A compliance order was not issued.

[8] For the reasons that follow, I would allow the appeal. I find that the Federal Court erred in assessing the relevant facts and applying the law on prior judicial authorization, requiring our intervention. These errors also resulted in the Federal Court mistakenly concluding that Zeifmans’ challenge to the validity of the requirement in the Compliance Proceedings was not an abuse of process. Rendering the judgment that the Federal Court should have, I would order Zeifmans to comply with the requirement.

I. Background Facts

[9] Zeifmans is the authorized representative with the Canada Revenue Agency (CRA) for Marc and Diana Vaturi. Nader Ghermezian is Diana Vaturi’s father and Marc Vaturi’s father-in-law.

[10] During the Minister's audit of the Vaturis and Nader Ghermezian, the Minister issued a requirement under subsection 231.2(1) of the ITA to Zeifmans for certain information and documents. Zeifmans itself was not under audit. According to the Minister, repeated failures by the Vaturis and Nader Ghermezian to respond to requests for information necessitated the issuance of a requirement to a third party, Zeifmans.

[11] The requirement was issued on January 30, 2019 (Requirement) and provides:

Subject: Requirement to provide information regarding Marc Vaturi, Diana Vaturi (also known as Diana Ghermezian), and Nader Ghermezian

For purposes related to the administration or enforcement of the *Income Tax Act* (the "**Act**"), Zeifmans LLP ("**Zeifmans**") is required to provide within **thirty (30) days** from the date of this notice of requirement, pursuant to the provisions of subsection 231.2(1) of the Act, the following information and documents pertaining to the period of **January 1, 2012 to December 31, 2017**.

For the above-named individuals, whether solely or jointly, and entities owned, operated, controlled or otherwise connected to the above-mentioned individuals, please provide:

1. All correspondence including emails and records in a chain of communications including attachments, between Zeifmans and the above-mentioned individuals and connected entities;
2. All records of communications made with other domestic and/or international accounting firms, registry offices, provincial bodies, and other government bodies (not including audit queries and responses issued between Zeifmans and Canada Revenue Agency) on behalf of the above individuals and connected entities;
3. All correspondence items mentioning or identifying Dalia Ghermezian, James Ghermezian, and Michael Ghermezian in any manner, jointly or severally, whatsoever;
4. All accounting records, director and shareholder resolutions, share certificates, registry documents, property assessments and bank statements provided to Zeifmans by the above individuals or connected entities (or provided to Zeifmans by third parties on behalf of the above individuals or connected entities);

5. Accounting records including working papers, adjusting journal entries, and trial balances;
6. Step memorandums, tax planning letters, letters of engagement;
7. Memo to files, client profiles;
8. Loan documents, including signed agreements, and grid loan records;
9. Emails including draft versions of loan agreements and grid loan working papers/calculations;
10. Records authorizing decisions relating to tax planning and/or accounting services; and
11. All other correspondence, letters, instructions, opinion letters or reports, minutes of meetings, records of discussions and telephone conversations, notes, jottings, or other written/recorded communication discussing, planning, or otherwise relevant to the information requested.

The above list is not exhaustive and we may request additional information required for our audit at a later time. For any one or more individuals that the request applies to, please provide the information either jointly, if it applies to multiple individuals, or individually, if it only applies to a single person.

(Appeal Book, Volume I, Tab 5, Affidavit of Ismail Choulli, Exhibit A, p. 120 [boldface in original, underlining added].)

[12] In these reasons, Marc Vaturi, Diana Vaturi and Nader Ghermezian are referred to as the “Named Persons”. “[E]ntities owned, operated, controlled or otherwise connected to the above-mentioned individuals” are referred to as the “Unnamed Persons” or “Connected Entities”.

[13] Prior to these proceedings, the Minister issued requirements to Marc Vaturi, Nader Ghermezian, other members of the Ghermezian family, and corporate entities related to the Ghermezian family. The reasonableness of the Minister’s decision to issue those requirements was affirmed on judicial review: *Ghermezian v. Canada (Attorney General)*, 2020 FC 1137 [*Ghermezian JR*]. The Minister then obtained compliance orders enforcing the requirements: see

Canada (National Revenue) v. Ghermezian, 2022 FC 236 [*Ghermezian Compliance (FC)*] (supplemental reasons 2022 FC 1010); *Ghermezian v. Canada (National Revenue)*, 2023 FCA 183 [*Ghermezian Compliance (FCA)*]; *Canada (National Revenue) v. Ghermezian*, 2024 FC 463 (collectively, the Ghermezian Compliance Proceedings).

II. Judicial History

A. *The JR Proceedings*

[14] On judicial review, Zeifmans alleged that the Requirement was invalid because the Minister was required but failed to seek prior judicial authorization under subsection 231.2(3) of the ITA, as documents and information relating to the Unnamed Persons were sought. Zeifmans also alleged that the Requirement was invalid because Zeifmans was a partnership, and so the Requirement was not imposed on a “person” as specified in section 231.2. Zeifmans also submitted that the Requirement was invalid for being ambiguous or vague.

[15] In *Zeifmans JR (FC)*, the Federal Court dismissed the application for judicial review. The Federal Court concluded that although the Requirement contemplated the production of material relating to unnamed persons, it was reasonable for the Minister to have issued the Requirement without first seeking judicial authorization.

[16] The Federal Court relied on the interpretation of section 231.2 in *Artistic Ideas* according to which the Minister is required to obtain prior judicial authorization if the requirement seeks

information or documents relating to ascertainable unnamed persons for the purpose of verifying compliance with their obligations under the ITA: *Zeifmans JR (FC)* at para. 32. On the record before it, the Federal Court found no evidence that the Unnamed Persons were a current investigation target of the CRA: *Zeifmans JR (FC)* at para. 64. The Federal Court also concluded that service upon the Zeifmans partnership was valid and effective, and that the Requirement was not unduly vague: *Zeifmans JR (FC)* at paras. 72-73, 81.

[17] This Court dismissed Zeifmans' appeal, confirming that the Minister's decision to issue the Requirement was reasonable, in substantial agreement with the Federal Court's reasons: *Zeifmans JR (FCA)* at para. 14.

B. *The Compliance Proceedings*

[18] Notwithstanding the result in the JR Proceedings, Zeifmans refused to produce the requested material and the Minister initiated the Compliance Proceedings in the Federal Court. Zeifmans submitted that the statutory conditions in section 231.7 of the ITA for issuing a compliance order for the Requirement were not met, including because the Minister had failed to obtain prior judicial authorization.

[19] The Minister's position was that Zeifmans' arguments should not be entertained because they were an attempt to challenge the validity of the Requirement, which had already been determined in the JR Proceedings. The Minister alleged that Zeifmans' submissions were either

an improper collateral attack on the Requirement or an abuse of process. Alternatively, the Minister submitted that the statutory conditions in section 231.7 of the ITA had been met.

[20] The Federal Court dismissed the compliance application. The Federal Court concluded that neither the doctrine of collateral attack nor the doctrine of abuse of process applied, and that the Compliance Proceedings were an appropriate forum to challenge the validity of the Requirement: FC Reasons at paras. 50, 87, 106. Further, the Federal Court determined that the record in the JR Proceedings was “materially different” than in the Compliance Proceedings, justifying re-litigation: FC Reasons at para. 65.

[21] The Federal Court determined that prior judicial authorization is required where the evidence establishes that unnamed persons are an investigation target. Finding sufficient evidence on the record before it that Unnamed Persons were under audit when the Requirement was issued and that a purpose of the Requirement was to further those audits, the Federal Court concluded that prior judicial authorization had been required and not obtained. Accordingly, the Federal Court declined to grant the compliance order: FC Reasons at paras. 125, 127, 131.

III. Statutory Provisions – Section 231.2 and Section 231.7

[22] Section 231.2 of the ITA confers broad powers on the Minister to obtain information or documents. It provides that the Minister may issue a requirement to any person to provide information or documents for any purpose related to the administration or enforcement of the ITA, tax treaties and listed international agreements. Subsection 231.2(1) is expressly subject to

subsection 231.2(2), which provides that the Minister must obtain prior judicial authorization under subsection 231.2(3) when the requirement relates to one or more “unnamed persons”.

[23] At the relevant time, section 231.2 of the ITA read as follows:

Requirement to provide documents or information

231.2 (1) Notwithstanding any other provision of this Act, the Minister may, subject to subsection (2), for any purpose related to the administration or enforcement of this Act (including the collection of any amount payable under this Act by any person), of a listed international agreement or, for greater certainty, of a tax treaty with another country, by notice served personally or by registered or certified mail, require that any person provide, within such reasonable time as is stipulated in the notice,

(a) any information or additional information, including a return of income or a supplementary return; or

(b) any document.

Unnamed persons

(2) The Minister shall not impose on any person (in this section referred to as a “third party”) a requirement under subsection 231.2(1) to provide information or any document relating to one or more unnamed persons unless the Minister first obtains the authorization of a judge under

Production de documents ou fourniture de renseignements

231.2 (1) Malgré les autres dispositions de la présente loi, le ministre peut, sous réserve du paragraphe (2) et, pour l’application ou l’exécution de la présente loi (y compris la perception d’un montant payable par une personne en vertu de la présente loi), d’un accord international désigné ou d’un traité fiscal conclu avec un autre pays, par avis signifié à personne ou envoyé par courrier recommandé ou certifié, exiger d’une personne, dans le délai raisonnable que précise l’avis :

a) qu’elle fournisse tout renseignement ou tout renseignement supplémentaire, y compris une déclaration de revenu ou une déclaration supplémentaire;

b) qu’elle produise des documents.

Personnes non désignées nommément

(2) Le ministre ne peut exiger de quiconque — appelé « tiers » au présent article — la fourniture de renseignements ou production de documents prévue au paragraphe (1) concernant une ou plusieurs personnes non désignées nommément, sans y être au préalable autorisé par un juge

subsection 231.2(3).

Judicial authorization

(3) A judge of the Federal Court may, on application by the Minister and subject to any conditions that the judge considers appropriate, authorize the Minister to impose on a third party a requirement under subsection (1) relating to an unnamed person or more than one unnamed person (in this section referred to as the “group”) if the judge is satisfied by information on oath that

(a) the person or group is ascertainable; and

(b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under this Act.

en vertu du paragraphe (3).

Autorisation judiciaire

(3) Sur requête du ministre, un juge de la Cour fédérale peut, aux conditions qu’il estime indiquées, autoriser le ministre à exiger d’un tiers la fourniture de renseignements ou la production de documents prévues au paragraphe (1) concernant une personne non désignée nommément ou plus d’une personne non désignée nommément — appelée « groupe » au présent article —, s’il est convaincu, sur dénonciation sous serment, de ce qui suit :

a) cette personne ou ce groupe est identifiable;

b) la fourniture ou la production est exigée pour vérifier si cette personne ou les personnes de ce groupe ont respecté quelque devoir ou obligation prévu par la présente loi.

[24] A requirement issued under section 231.2 is enforceable under subsection 238(1), which makes failure to comply with any of sections 230 to 232 (among other provisions) an offence. Violations of section 238 are prosecuted before a court of criminal jurisdiction after laying an information or complaint and must be proven beyond a reasonable doubt: *Guindon v. Canada*, 2015 SCC 41 at para. 67; *R. v. Sedhu*, 2015 BCCA 92 at para. 37; *Ghermezian Compliance (FCA)* at paras. 49-51. Section 231.7 was enacted to provide an alternative means of enforcing compliance, without having to go through the quasi-criminal enforcement procedures under section 238: Hon. Paul Martin, *Explanatory Notes Relating to Income Tax* (Ottawa: Department of Finance, 2001) at p. 574; *Income Tax Amendments Act, 2000*, S.C. 2001, c. 17, s. 183.

[25] Section 231.7, applicable to demands or requirements issued under section 231.1 and section 231.2, provides that, on summary application by the Minister, “if the judge is satisfied” that a person “was required” under section 231.1 or 231.2 to provide any access, assistance, information or document sought by the Minister and failed to do so, the judge may issue a compliance order.

[26] At the relevant time, section 231.7 read as follows:

Compliance order

231.7 (1) On summary application by the Minister, a judge may, notwithstanding subsection 238(2), order a person to provide any access, assistance, information or document sought by the Minister under section 231.1 or 231.2 if the judge is satisfied that

(a) the person was required under section 231.1 or 231.2 to provide the access, assistance, information or document and did not do so; and

(b) in the case of information or a document, the information or document is not protected from disclosure by solicitor-client privilege (within the meaning of subsection 232(1)).

Ordonnance

231.7 (1) Sur demande sommaire du ministre, un juge peut, malgré le paragraphe 238(2), ordonner à une personne de fournir l'accès, l'aide, les renseignements ou les documents que le ministre cherche à obtenir en vertu des articles 231.1 ou 231.2 s'il est convaincu de ce qui suit :

a) la personne n'a pas fourni l'accès, l'aide, les renseignements ou les documents bien qu'elle en soit tenue par les articles 231.1 ou 231.2;

b) s'agissant de renseignements ou de documents, le privilège des communications entre client et avocat, au sens du paragraphe 232(1), ne peut être invoqué à leur égard.

IV. Standard of Review

[27] Appellate standards of review apply to the Federal Court's decision not to grant the compliance order: *Miller v. Canada (National Revenue)*, 2022 FCA 183 at para. 23 [*Miller*]; *Ghermezian Compliance (FCA)* at para. 13; *Friedman v. Canada (Minister of National Revenue)*, 2021 FCA 101 at para. 26 [*Friedman*]. Questions of law are reviewable on a standard of correctness. Questions of fact and questions of mixed fact and law, absent an extricable question of law, are reviewable on the standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33 [*Housen*].

V. Analysis

A. *Issues*

[28] For a compliance order to be issued under section 231.7, the application judge must be "satisfied" that: (i) the person against whom the order is made was "required under section 231.1 or 231.2" to provide the access, assistance, information or document that is the subject of the order; (ii) the person failed to do so; and (iii) in the case of information or a document, it must not be subject to solicitor-client privilege: *Miller* at paras. 15, 19, 25-27; *Canada (National Revenue) v. Lee*, 2016 FCA 53 at para. 6 [*Lee*].

[29] Here, there is no dispute that the respondent failed to produce the information and documents set out in the Requirement, and there was no claim of solicitor-client privilege. The

sole issue considered by the Federal Court was whether the respondent “was required” under section 231.2 to provide the information and documents listed in the Requirement.

[30] I begin by considering whether the Federal Court erred, on the merits of the case, in declining to issue the compliance order sought by the Minister. The following issues are addressed:

- Did the Federal Court err in interpreting the law on when prior judicial authorization is required?
- Did the Federal Court err in determining the facts relevant to whether prior judicial authorization was needed for the issuance of the Requirement or applying the law to the facts?
- Was the Requirement invalid for vagueness or because it was issued to a partnership?
- Should residual discretion be exercised to decline to issue a compliance order?

[31] After addressing the substantive arguments raised by the parties, I consider:

- Did the Federal Court err in finding that it was not an abuse of process for Zeifmans to challenge the validity of the Requirement in the Compliance Proceedings?

I address this issue last because the factual and legal determinations by the Federal Court on the merits are relevant to determining whether the Federal Court erred in finding no abuse of process.

B. *Did the Federal Court err in interpreting the law on when prior judicial authorization is required?*

[32] Subsection 231.2(2) provides that a requirement issued to a person under subsection 231.2(1) to provide any information or document relating to unnamed persons—colloquially known as an unnamed persons requirement—needs prior judicial authorization under subsection 231.2(3).

[33] Subsection 231.2(2) must be read in conjunction with subsection 231.2(3), which sets out the necessary conditions for prior judicial authorization of an unnamed persons requirement. Subsection 231.2(3) provides that, on application by the Minister, a Federal Court judge may grant authorization provided the judge is satisfied that the unnamed person or group of unnamed persons is ascertainable, and that the requirement is made “to verify compliance by the person or persons in the group with any duty or obligation under [the ITA]”.

[34] The need for prior judicial authorization has its roots in a desire to limit “fishing expeditions”: *James Richardson & Sons v. M.N.R.*, [1984] 1 S.C.R. 614 (S.C.C.); *M.N.R. v. Sand Exploration Ltd.*, [1995] 3 F.C. 44 at p. 52 (F.C.) (*per* Rothstein J., as he then was); *Artistic Ideas* at para. 9; *M.N.R. v. Greater Montréal Real Estate Board*, 2007 FCA 346 at para. 45

[*GMREB*], leave to appeal ref'd 2008 CanLII 18937 (S.C.C.); *Roofmart Ontario Inc. v. Canada (National Revenue)*, 2020 FCA 85 at para. 45 [*Roofmart*].

[35] An unnamed persons requirement may be sought when, for example, the Minister wishes to verify tax compliance by a group of similarly situated taxpayers in a sector-wide audit but is unaware of their identities. The requirement is issued to a person who may be able to identify the unnamed persons and provide information about them. Examples of these types of unnamed persons from the case law include customers of a building materials supplier (*Roofmart*); purchasers of a life insurance product (*Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50 [*RBC*]), real estate agents in a region of Quebec (*GMREB*), and, recently, merchants served by Shopify (*Minister of National Revenue v. Shopify*, 2025 FC 968 & 2025 FC 969, under appeal, A-240-25 & A-241-25 (F.C.A.)).

[36] This case does not involve that kind of unnamed persons requirement. The issue of prior judicial authorization arises because the Requirement issued to Zeifmans regarding the Vaturis and Nader Ghermezian also requested information and documents regarding unnamed persons. Not all the Unnamed Persons were unknown to the Minister. As the Minister explained to the Federal Court, these parties were not named because it would have been an “overly complicated” requirement, and they were not certain of all the relationships: FC Reasons at para. 132. Had the Minister named the Connected Entities (or, it would seem, even just those under audit, as addressed below), prior judicial authorization would not be in issue.

(1) *Redeemer Did Not Overtake Artistic Ideas*

[37] Both parties rely on *Artistic Ideas* and *Redeemer Foundation v. Minister of National Revenue*, 2008 SCC 46 [*Redeemer*] as authority for their opposing positions.

[38] In *Artistic Ideas*, the Minister commenced an audit of Artistic Ideas Inc. (Artistic Ideas), a company that arranged the sale of artwork to individual Canadian taxpayers who in turn donated the artwork to registered charities and claimed a tax credit regarding the donation. During the audit, the Minister served Artistic Ideas with a requirement under subsection 231.2(1), seeking the names of the donors and the charities.

[39] This Court (*per* Rothstein J.A., as he then was) held that that prior judicial authorization was required to obtain the names of the charities, but not the names of the donors. This was because “subsection 231.2(2) only pertains to those unnamed persons in respect of whom the Minister may obtain an authorization of a judge under subsection 231.2(3)”, namely, persons whom the Minister is investigating to verify their compliance under the ITA: *Artistic Ideas* at para. 11. Therefore, if a requirement requests information relating to unnamed persons to verify their compliance under the ITA, judicial authorization is required. However, if the requirement asks for information relating to unnamed persons only to verify the named persons’ compliance under the ITA, judicial authorization is not required: *Artistic Ideas* at paras. 10-12; see also *eBay Canada Ltd. v. M.N.R.*, 2008 FCA 348 at para. 23 [*eBay*], citing *Bernick v. The Queen*, 2002 D.T.C. 7167 at para. 10, 2002 CanLII 49657 (Ont. S.C.J.).

[40] The test in *Artistic Ideas* has been upheld in decisions of this Court. In *Zeifmans JR (FCA)*, this Court found that the Minister's interpretation of section 231.2 of the ITA was "consistent at a conceptual level" with binding decisions of this Court in *Artistic Ideas* and *eBay* and numerous Federal Court decisions that have followed *Artistic Ideas*, and that *Artistic Ideas* and its progeny correctly interpret section 231.2: *Zeifmans JR (FCA)* at paras. 5-6; see also *Ghermezian Compliance (FCA)* at para. 59.

[41] The appellant submits that *Redeemer* has overtaken *Artistic Ideas* and subsequent binding decisions of this Court that have followed *Artistic Ideas*.

[42] In *Redeemer*, at issue was a request for documents under section 231.1 from a taxpayer under audit. The Redeemer Foundation was under audit for issuing questionable charitable receipts and the CRA requested a list of donors. As the donors were "unnamed persons", one of the issues was whether prior judicial authorization was required, notwithstanding that the request was pursuant to section 231.1, and not section 231.2. A majority of the Supreme Court concluded that, on the facts, the CRA needed the donor list to investigate the Foundation's status as a registered charity, and any reassessment of the donors would simply be a logical consequence of the Foundation being found not to be a valid charity. The Court found that the Minister was entitled to the documents under section 231.1 (and paragraph 230(2)(a)) and did not have to rely on section 231.2.

[43] Section 231.1 does not have an analogue to subsection 231.2(2) requiring prior judicial authorization, and one of the issues addressed by the Court was whether the Minister could avoid

the need for prior judicial authorization by relying on section 231.1 and not section 231.2 for the requested information. *Artistic Ideas* was not considered by the Supreme Court.

[44] In the passage of *Redeemer* relied on by the appellant, and often cited in cases considering subsection 231.2(2), the majority stated (at para. 22):

The s. 231.2(2) requirement should not apply to situations in which the requested information is required in order to verify the compliance of the taxpayer being audited. Regardless of whether or not there is a possibility or a probability that the audit will lead to the investigation of other unnamed taxpayers, the CRA should be able to obtain information it would otherwise have the ability to see in the course of an audit.

[45] It is essential to remember that *Redeemer* was about the Minister's power to obtain documents regarding unnamed persons under section 231.1 (and paragraph 230(2)(a)), not under subsection 231.2(2). It is why this passage is often referred to as *obiter* regarding subsection 231.2(2).

[46] The appellant submits that *Redeemer* confirms that prior judicial authorization is not necessary if the "primary purpose" of issuing a requirement is the audit or investigation of the named persons. On their theory, this would hold even if unnamed persons were investigative targets and one of the purposes of the requirement, albeit a secondary purpose, was to verify the unnamed persons' compliance under the ITA.

[47] *Redeemer* does not support this position. When paragraph 22 is read in the context of the rest of the majority's reasons and the arguments raised by the parties, it can be interpreted as a

comment that prior judicial authorization under subsection 231.2(2) “should not apply” when “the requested information is required in order to verify the compliance of the taxpayer being audited” because, in that circumstance, the Minister could rely on section 231.1. Nothing more.

[48] At most, paragraph 22 of *Redeemer* relates to the scope of subsection 231.2(2) but is *obiter*. Even so, it is conceptually consistent with the purpose test articulated in *Artistic Ideas*. Prior judicial authorization is not needed where the requested information, including regarding unnamed persons, is sought to verify the compliance under the ITA of the taxpayer being audited (i.e., a named person). Prior judicial authorization is needed where the information is sought to verify the compliance of unnamed persons.

[49] I agree with the Federal Court that *Redeemer* did not establish a “primary purpose” test and thus overtake the test in *Artistic Ideas*. Nor did any other decision interpreting subsection 231.2(2) that is binding on this Court establish a “primary purpose” test. The appellant relies on various passages from *Zeifmans JR (FC)*, *Zeifmans JR (FCA)*, *Ghermezian JR (FC)*, *Ghermezian Compliance (FC)* and *Ghermezian Compliance (FCA)*, but these do not support its position. These cases, although they considered *Redeemer*, confirmed that the relevant comments are *obiter*, “consistent at a conceptual level” with *Artistic Ideas* and post-*Redeemer* jurisprudence from this Court: *Zeifmans JR (FCA)* at para. 5; *Ghermezian Compliance (FCA)* at para. 59; see also *Zeifmans JR (FC)* at para. 44; *Ghermezian JR (FC)* at para. 39.

[50] While the Federal Court in the *Ghermezian Compliance* Proceedings relied on a notion of “primary purpose” (i.e., judicial authorization is not required if the requirement is issued to seek

information *primarily* for the purposes of verifying the compliance of named persons), that approach was not endorsed by this Court on appeal, which instead formulated the test in accordance with *Artistic Ideas*: see *Ghermezian Compliance (FC)* at paras. 253-59, 326, 332; *Ghermezian Compliance (FCA)* at paras. 54-60.

[51] Accordingly, I reject the appellant's argument that a "primary purpose" of verifying named persons' tax compliance obviates the need for prior judicial authorization. I find that the notions of "primary" and "secondary" purpose confuse more than clarify. In my view, if a purpose of a requirement is to seek information and documentation regarding unnamed persons in order to verify their compliance with the ITA, prior judicial authorization is needed. As explored further below, I conclude that was not the case here.

(2) Purpose, Not Audit Status, Is the Focus of the *Artistic Ideas* Test

[52] The appellant says that the Federal Court erred in interpreting subsection 231.2(2) by focusing on the audit status of the Unnamed Persons instead of the Minister's purpose in issuing the Requirement, contrary to the text of subsections 231.2(2) and (3) and the decisions in *Redeemer* and *Artistic Ideas*. The appellant says that while some of the Unnamed Persons were under audit, the Requirement was issued for the purpose of the Named Persons' audits, and accordingly, prior judicial authorization was not needed.

[53] The respondent submits that the Federal Court correctly interpreted section 231.2, considered both the audit status of Unnamed Persons and the Minister's purpose and found that judicial authorization was required.

[54] I agree with the appellant that the test in *Artistic Ideas* looks to the Minister's purpose, meaning the intended use of the information or documents sought in a requirement.

[55] The Federal Court considered the Minister's purpose in issuing the Requirement and applied the test in *Artistic Ideas*. However, having found that the Requirement was issued for the purpose of furthering the audits of Unnamed Persons, the Federal Court concluded that prior judicial authorization was required. The Federal Court's factual error on the Minister's purpose is addressed below.

[56] The Federal Court also focused on the audit status of Connected Entities. Evidence of the audit status of Connected Entities was not before the Courts in the JR Proceedings and yet played a central part in the Federal Court's reasons in the Compliance Proceedings. The Federal Court concluded that since Unnamed Persons were and continued to be an investigation target or under audit, the Minister was required to obtain prior judicial authorization: FC Reasons at paras. 125, 131. While the Federal Court's reasons are not entirely clear, its conclusion appears to have been based at least in part on a misinterpretation of *Artistic Ideas* and subsequent cases discussing the relevance of the investigative or audit status of unnamed persons to the need for prior judicial authorization. The reasoning appears to be that whenever unnamed persons are under audit, a

requirement seeking information about those unnamed persons automatically requires prior judicial authorization under *Artistic Ideas*. That is a legal error.

[57] In *Artistic Ideas*, the Court clarified that if the Minister seeks to identify unnamed persons who are not themselves “under investigation” or “intended to be the subject of an investigation” as to their tax compliance, prior judicial authorization is not required because, “[p]resumably”, the names of unnamed persons (and by extension any other information and documents relating to those unnamed persons) are necessary solely for the Minister’s investigation of the named persons. In contrast, where the unnamed persons “are intended to be the subject of investigations by the Minister [...] [t]hey are precisely the persons to whom subsections 231.2(2) and (3) apply”: *Artistic Ideas* at paras. 10-11.

[58] These passages of *Artistic Ideas* confirm the critical importance of the Minister’s purpose in seeking the information or documents. I have concerns with the test in *Artistic Ideas* being framed as whether an unnamed person is simply “under audit” or an “investigative target”: see e.g. FC Reasons at paras. 125, 131 without further analysis of the Minister’s purpose as, for example, reflected in an information sheet. In my view, active audit or investigative status may well be relevant, but only if it reflects the Minister’s purpose for issuing the requirement.

[59] *Artistic Ideas* does not say that where an unnamed person is under investigation or audit, a requirement seeking information or documents relating to that unnamed person is necessarily sought for the purpose of that investigation or audit, or that the need for prior judicial authorization automatically follows. The question is always “Whose compliance under the ITA

is the Minister seeking to verify?” If the requirement seeks information regarding only unnamed persons, that may be a simpler inquiry than if the requirement seeks information regarding both named and unnamed persons. In the latter case, if the information requested regarding the unnamed persons is sought to investigate their compliance, prior judicial authorization is required. If the information is requested to investigate named persons’ compliance, and it is purely coincidental or incidental that the unnamed persons are under audit, prior judicial authorization is not required.

[60] Next, I turn to the Federal Court’s determination of the relevant facts and application of the law to those facts.

C. *Did the Federal Court err in determining the facts relevant to whether prior judicial authorization was needed for the issuance of the Requirement or applying the law to those facts?*

[61] In the Compliance Proceedings, the Federal Court concluded that new evidence justified re-litigating the determination in the JR Proceedings that prior judicial authorization was not required. The Federal Court found, based on this new evidence, that a purpose of the Requirement was to investigate Unnamed Persons and also that new evidence about the Unnamed Persons’ audit status was relevant to the issue before it. The Federal Court concluded that prior judicial authorization had been required, rendering the Requirement invalid: FC Reasons at paras. 105, 141-49.

[62] The Federal Court’s assessment of the evidence and application of the law to the facts established by that evidence are not to be disturbed unless there is a palpable and overriding error. “Palpable” means that the error is obvious; “overriding” means that the error affected the core of the outcome of the case: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38, citing *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46 [*South Yukon*]. A palpable and overriding error does not arise just because an appellate court would have drawn different conclusions from the evidence than the lower court: *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at para. 70; *H.L. v. Canada (Attorney General)*, 2005 SCC 25 at para. 74.

[63] As explored below, I conclude that the Federal Court made two errors in determining whether prior judicial authorization was required. First, the audit status of the Unnamed Persons did not necessarily lead to a conclusion that prior judicial authorization was required. Second, the Federal Court made palpable and overriding errors in its interpretation and assessment of the evidence. Correcting for those errors, prior judicial authorization was not required.

(1) What Is the Significance of Unnamed Persons Being Under Audit?

[64] The Federal Court concluded that the evidentiary record in the Compliance Proceedings was “materially different” from that in the JR Proceedings: FC Reasons at paras. 8, 9, 14, 65, 104. The Federal Court also concluded that the record in the Compliance Proceedings contained evidence that was “contrary” to a factual premise underlying the findings of the JR Proceedings: FC Reasons at paras. 98, 105.

[65] The record in the JR Proceedings was a 15-page certified tribunal record including a draft copy of the Requirement, a 9-page redacted “Information Sheet for a Requirement to Provide Information” (Information Sheet) listing the Minister’s reasons for requiring the information and documents, and an affidavit of one of Zeifmans’ partners. The Minister did not file affidavit evidence: FC Reasons at paras. 16, 83, 105; see also *Zeifmans JR (FC)* at para. 8.

[66] In the JR Proceedings, the Federal Court found no evidence that Unnamed Persons were an investigation target or that the Requirement was for any purpose other than the audit of Mr. Ghermezian and the Vaturis: *Zeifmans JR (FC)* at paras. 24, 64, 67, 76. This would have been based on the Requirement and the Information Sheet. On appeal, this Court found no error with the Federal Court’s finding of fact that the CRA had not targeted the Unnamed Persons for investigation: *Zeifmans JR (FCA)* at para. 7.

[67] In the Compliance Proceedings, the Minister filed supporting affidavits and there was cross-examination testimony: FC Reasons at paras. 14-20, 65, 83. The Federal Court determined that key evidence was revealed in the cross-examination of Mr. Andrew Bowe, an affiant for the Minister, and the lead case manager at the CRA for the Ghermezian Group audits that were underway when the Requirement was issued: FC Reasons at paras. 65, 101.

[68] Based on Mr. Bowe’s cross-examination testimony, the Federal Court concluded that Unnamed Persons were under audit when the Requirement was issued: FC Reasons at paras. 8, 98, 125, 133, 134, 136. There was no evidence that any Unnamed Persons were otherwise “investigation targets”: Transcript of the Cross-Examination of Andrew Bowe on November 18,

2022, Appeal Book, Volume I, Tab 8, Questions 120, 121, 138, 152, 242, 243 [Bowe Cross-Examination]. The audit status evidence was not before the Federal Court in the JR Proceedings.

[69] The appellant does not contest the Federal Court's finding that Unnamed Persons were under audit but strongly disputes the significance of this finding.

[70] As noted earlier, the Federal Court's reasons are unclear on the implications of some Unnamed Persons being under audit. To the extent that the Federal Court reasoned that, whenever unnamed persons are under audit, a requirement seeking information about those unnamed persons automatically requires prior judicial authorization under *Artistic Ideas*, that was a legal error.

[71] To the extent that the Federal Court relied on the audit status of certain Unnamed Persons and the possible future use of the requested information as supporting a factual conclusion that the Minister's purpose in issuing the Requirement was to further those audits, that was also an error. The audit status was not, on the evidence, indicative of the Minister's purpose in issuing the Requirement. The evidence was that the material sought in the Requirement "might", in the future, be used for the audit of some of the Unnamed Persons, but that any such future use was speculative.

[72] As I will discuss next, the evidence demonstrated that the purpose of the Requirement was to further the audit of the Named Persons. In my view, to constitute a purpose that would trigger the need for prior judicial authorization, the evidence that the materials will be used for

the investigation of unnamed persons must be more than a future possibility or “we cannot rule it out”, which was the evidence here.

(2) What Was the Purpose of the Requirement?

[73] The main dispute over the evidence relates to the purpose of the Requirement and the intended use of the material sought. The appellant submits that Mr. Bowe’s evidence was that the purpose of the Requirement was to further the audit of Nader Ghermezian and the Vaturis, not to verify the compliance of Unnamed Persons, although the information and documents relating to Unnamed Persons “might be subsequently used” for audits of those persons. The appellant says that the Federal Court erred in finding to the contrary.

[74] The respondent submits that the Federal Court made several findings of fact regarding the purpose of the Requirement, including that a purpose was to further the audit of Unnamed Persons. It says that these findings of fact must stand as there was no palpable and overriding error.

[75] It is helpful to refer to the relevant portions of the Requirement (set out above, at para. 11) and the Minister’s stated purposes for issuing the Requirement, which were to verify the compliance of the Named Persons with the ITA. The Information Sheet provided to Zeifmans explained that the purposes of the Requirement were:

- To further verify the nature of the EFT payments directed to Diana Vaturi and indirectly to Marc Vaturi in 2016, 2017, and beyond

- To determine if the funds were used or transferred to any other person or entity and to test if it is part of a series of loans or transactions and payments
- To verify if offshore entities are managed and controlled from Canada (by the Canadian individuals named above) [remainder of bullet redacted]
- To verify the income reported by the individuals named above for the tax years under consideration
- To verify that the taxpayers under review have been compliant with foreign reporting requirements under the ITA

(Appeal Book, Volume I, Tab 7, Affidavit of Tomer Shenhav, Exhibit C, pp. 249-50.)

[76] Despite this evidence, the Federal Court concluded that a purpose of the Requirement was to further audits of the Unnamed Persons, triggering the need to obtain prior judicial authorization: FC Reasons at para. 141. The Federal Court drew this conclusion for two reasons. First, even though the Federal Court did not make an adverse credibility finding against Mr. Bowe, it found that his “evidence about the purpose of the Requirement is not clear” and, at best, “equivocal”: FC Reasons at para. 144. Second, the Federal Court found that the record did not “clearly explain” how the information and documents sought would advance the audits of the Named Persons, including because the Requirement did not mention electronic fund transfers (EFTs) (explained below) or ask for information about the relationship between the paying entities and the Named Persons: FC Reasons at paras. 143, 145-47.

[77] Both findings, and the Federal Court’s resulting conclusion that a purpose of the Requirement was to further audits of the Unnamed Persons, were tainted by palpable and overriding error.

[78] First, Mr. Bowe's evidence was clear and unequivocal. The Federal Court read in ambiguity where none existed.

[79] Mr. Bowe stated categorically, consistently and repeatedly in his affidavit and on cross-examination that the only purpose of the Requirement was to investigate compliance by the Named Persons: Affidavit of Andrew Bowe affirmed November 1, 2022, Appeal Book, Volume I, Tab 4 at paras. 16, 18, 23 [Bowe Affidavit]; Bowe Cross-Examination, Questions 170-74, 186-87, 194-95, 200, 203, 256, 259.

[80] This was stated in both positive and negative terms: that the purpose of the Requirement was to investigate compliance under the ITA by the Named Persons; and that the purpose of the Requirement was not to further the audit of any of the Connected Entities. The following excerpts are illustrative:

A. [...] This requirement was issued for the purpose of obtaining information about Taxpayers under audit that were named on the Requirement and in the Information Sheet.

[...]

Q. Right, but in terms of the connected entities, your position is that you were not seeking the information in the Zeifmans RPI letter to verify the compliance of those connected entities.

A. That's correct.

(Bowe Cross-Examination, Questions 256, 259.)

These statements are consistent with the purposes listed in the Information Sheet.

[81] The Federal Court did not have to blindly accept the Minister's stated purpose for issuing the Requirement. It was appropriate to consider further evidence on how the information and documents sought logically related to the audits of the Named Persons and the audits of Unnamed Persons. However, in my view, the Federal Court disregarded the Minister's clear evidence on stated purpose and relied on a flawed approach to the legal test in assessing the importance or relevance of other parts of Mr. Bowe's testimony. Contrary to the Federal Court's findings, I conclude that the purpose stated by Mr. Bowe for issuing the Requirement is consistent with his other testimony.

[82] Mr. Bowe's affidavit evidence was that the Requirement was issued "as part of the Audits and to verify the [Named Persons'] compliance" with the ITA: Bowe Affidavit at para. 16. On cross-examination, Mr. Bowe confirmed that this defined term "Audits" meant audits of the Ghermezian Group as a whole, which would include both the Named Persons and the Connected Entities: Bowe Cross-Examination, Questions 155-57.

[83] The Federal Court concluded that this was, in effect, an admission that a purpose of the Requirement was to further the audits of Unnamed Persons. With respect, this interpretation of one word in Mr. Bowe's affidavit was strained, unsupported and ran contrary to Mr. Bowe's evidence that the only purpose in issuing the Requirement was to investigate the compliance of Named Persons. Named Persons were also covered by the defined term "Audits".

[84] Further, although Mr. Bowe's evidence was that he could not foreclose the possibility that the Minister "might" use the documents for the audits of the Connected Entities "at some

point in time”, he called it “speculation”: Bowe Cross-Examination, Questions 185, 190, 198-99, 204-05. In my view, this hypothetical future use of the material sought was not enough to establish that a purpose of the Requirement was to verify compliance of Unnamed Persons requiring prior judicial authorization. The Federal Court erred in relying on this evidence to conclude that Mr. Bowe’s testimony on purpose was unclear or equivocal.

[85] The Federal Court found it difficult to make sense of Mr. Bowe’s testimony that the Unnamed Persons under audit were “not necessarily” the same entities about which Zeifmans was expected to possess documents: FC Reasons at para. 134; Bowe Cross-Examination, Questions 183-84, 196, 200. Mr. Bowe’s further testimony was that because Zeifmans only represented some of the Connected Entities, it was unlikely that they would have substantial records about the other Canadian entities under audit. This corroborates Mr. Bowe’s statements that the information sought from Zeifmans was to confirm compliance by Named Persons.

[86] Second, the materials sought by the Requirement were relevant to the audits of the Named Persons.

[87] Mr. Bowe stated that the Requirement was issued for the purpose of obtaining information to determine the Named Persons’ worldwide income, including information or documents regarding EFTs from offshore companies, and to determine compliance with foreign reporting requirements. One of the issues (also described in the first and second bullet points of the Information Sheet) was whether the funds transferred electronically were loans included in income under subsection 15(2) of the ITA and subject to possible deduction under paragraph

20(1)(j) on repayment. That required a determination of which entities sent wire transfers to the Named Persons and the relationship of those payers to the Named Persons, including whether by “control” or “connected with” status, and whether the amounts had been repaid: *Bowe Cross-Examination*, Questions 164, 182, 191-92, 207-14, 229-38.

[88] The Federal Court was “not satisfied” with Mr. Bowe’s explanation as the Requirement did not mention the EFTs or ask for information about the relationship between the paying entities and the Named Persons: *FC Reasons* at para. 147.

[89] The Federal Court erred in drawing this conclusion. Mr. Bowe’s testimony explained, in detail, the specific concern relating to possible loans from offshore entities and the need to determine whether they were subject to inclusion under subsection 15(2) and possible deduction under paragraph 20(1)(j).

[90] It is irrelevant that the Requirement does not specifically mention EFTs. The Requirement asks broadly for various emails, accounting records, bank statements, tax planning documents, and loan documents, all of which could evidence loans or other transfers of funds. These materials could also speak to the relationship between the Named Persons and the payer, although it is worth noting that the Requirement already establishes a relationship, describing the Connected Entities as “owned, [...] controlled or otherwise connected to [the Named Persons]”.

[91] The Federal Court implied that because the scope of material requested regarding Unnamed Persons was as broad as it was for the Named Persons, a purpose of the Requirement

was to further the audits of the Unnamed Persons. Without more, this was an improper inference, as there may be many good reasons for the broad scope of the Requirement. The Minister has broad powers under section 231.2 to compel the production of information or documents: *Lee* at paras. 5, 7; *GMREB* at para. 47; *Tower v. M.N.R.*, 2003 FCA 307 at para. 29; *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at p. 648 (S.C.C.). The scope of a request for information or documents is up to the Minister, provided the information may be relevant to the administration and enforcement of the ITA: *Lee* at para. 7; *Canada (National Revenue) v. Cameco Corporation*, 2019 FCA 67 at paras. 42-43 [*Cameco*]. The Minister need not particularize how information or documents will be used, as they will often not know precisely how until the material is examined.

[92] Further, as the fourth and fifth bullets in the Information Sheet reflect, the Minister sought to investigate more generally whether the Named Persons had accurately reported their worldwide income and complied with their foreign reporting obligations under the ITA: see also *Bowe Cross-Examination*, Questions 215-19. By failing to consider the Minister's more general purposes of the Requirement relating to the Named Persons, the Federal Court missed a critical explanation for the Requirement's broad scope regarding Connected Entities. While Mr. Bowe's evidence only touches briefly on these other concerns, they could well include, for example, other payments potentially giving rise to income that had not yet been identified, the inclusion into income of foreign accrual property income earned by controlled foreign affiliates (see, for an explanation, *Canada v. Loblaw Financial Holdings Inc.*, 2021 SCC 51 at paras. 28-32), and failure to adhere to the plethora of foreign reporting obligations in sections 233.1 to 233.6, such as reporting transactions with non-arm's-length non-resident entities.

[93] Lastly, the Federal Court did not mention the third bullet point in the Information Sheet and did not address how the information described might inform the purpose of the Requirement: FC Reasons at para. 146. Mr. Bowe's testimony was that the information would have been relevant to the subsection 15(2) analysis, and that management and control of a Connected Entity could indicate that the Named Persons had access to relevant information. Mr. Bowe acknowledged that management and control from Canada could render an entity taxable in Canada but maintained that the purpose of the Requirement was not to determine whether these offshore entities were taxable in Canada on that basis or otherwise: Bowe Cross-Examination, Questions 160-74, 228-38, 288-91. While not considered by the Federal Court, I find this evidence consistent with Mr. Bowe's testimony that the Requirement's purpose was to verify the compliance of the Named Persons under the ITA.

[94] I conclude that the Federal Court made a palpable and overriding error by not giving effect to Mr. Bowe's consistent and repeated testimony that the only purpose of the Requirement was to further the audits of Mr. Ghermezian and the Vaturis. The Federal Court similarly erred in finding that the record did not clearly explain how the information and documents sought in the Requirement would advance those audits. Each conclusion of the Federal Court arose from "a failure to consider evidence relevant to a material issue, a mistake as to the substance of the evidence, or a failure to give proper effect to the evidence": *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at p. 538, 1995 CanLII 3498 (Ont. C.A.); see also *Housen* at para. 39, quoting *Van de Perre v. Edwards*, 2001 SCC 60 at para. 15. These misapprehensions of the evidence were obvious and critical to the central issue of whether prior judicial authorization was needed and require this Court's intervention: *South Yukon* at para. 46.

[95] In these circumstances, and subject to the discussion that follows regarding other challenges to the validity of the Requirement raised by the respondent, this Court may give the judgment that the Federal Court should have given or remit the matter back to the Federal Court for redetermination.

[96] In assessing whether to decide the matter instead of remitting it back to the Federal Court, the factors to be considered include “whether the matter is factually voluminous and complex, whether it involves oral or documentary evidence, whether it involves the assessment of credibility, whether the result is uncertain or factually suffused, whether the parties have had the opportunity to make specific submissions on the issues that remain to be decided, and whether the additional delay caused by sending the matter back would be contrary to the interests of justice”: *Ghermezian Compliance (FCA)* at para. 62; *Sandhu Singh Hamdard Trust v. Navsun Holdings Ltd.*, 2019 FCA 295 at paras. 59-60; *Canada v. Piot*, 2019 FCA 53 at paras. 113-15, 124-28; and *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 at paras. 175-78, 182.

[97] Here, there is only a paper record, the parties have had an opportunity to make extensive submissions on this issue before the Federal Court and before this Court, and over seven years have passed since the Requirement was issued. In my view it is appropriate for this Court to decide the issue and find that the Minister’s purpose in issuing the Requirement was to further the audit of the Named Persons. Applying the test in *Artistic Ideas*, prior judicial authorization was not required.

[98] Next, I turn to other challenges to the validity of the Requirement raised by the respondent.

D. *Was the Requirement invalid for vagueness or because it was issued to a partnership?*

[99] As the Federal Court decided not to grant a compliance order because prior judicial authorization had not been obtained, it did not address Zeifmans' submissions that the Requirement was invalid because it was impermissibly vague and because it was issued to a partnership.

[100] In the JR Proceedings, the Federal Court found that the Minister had not made a reviewable error by issuing the Requirement to a partnership for two reasons. First, the Federal Court concluded that the effect of subsection 244(20) is to treat the Requirement as addressed to each partner. Second, the Federal Court concluded that the failure to direct the Requirement to an individual partner was immaterial because it had been directed to Zeifmans' place of business. The Federal Court also found that the Requirement was worded with sufficient precision in describing the Connected Entities and the information required. It was not vague. The Minister had acted reasonably in issuing the Requirement: *Zeifmans FC (JR)* at paras. 68-73, 77-81. On appeal, this Court reached the same conclusions, substantially for the reasons given by the Federal Court: *Zeifmans JR (FCA)* at paras. 13-14.

[101] In the Compliance Proceedings, the parties made written and oral submissions to the Federal Court on these very same issues, a point that I will return to later. On this appeal, neither

party addressed the issues in its memorandum of fact and law, and both only touched on them briefly in oral argument. The appellant relied on its submissions in the JR Proceedings and at the Federal Court in the Compliance Proceedings as well as the decisions of the Courts in the JR Proceedings. The appellant asked that we determine the issues. The respondent reiterated arguments made at the Federal Court in the Compliance Proceedings but submitted that the issues relating to the scope of the Requirement and the addressee should be sent back to the Federal Court for determination.

[102] Given the full submissions of the parties at the Federal Court in the Compliance Proceedings and the nature of these two discrete issues, this Court has what it needs to render a decision, and it is in the interests of justice to do so. We also have the benefit of the parties' submissions on these issues in the JR Proceedings as well as the Courts' decisions.

[103] The question of whether the Requirement is vaguely worded, while a factual determination, can be examined by reading the Requirement in context, which includes the Information Sheet. The issue of whether the Requirement is void because it was issued to a partnership is a pure question of law.

[104] I note that the record before the Federal Court on these issues in the Compliance Proceedings was essentially the same as was before the Courts in the JR Proceedings, except for minor, marginally relevant passages in Mr. Bowe's cross-examination testimony touching on the interpretation of the Requirement, but which I consider immaterial to the task at hand.

[105] The respondent submits that the Requirement was unclear, most notably in the definition of Unnamed Persons that includes “entities owned, operated, controlled or otherwise connected” with the Named Persons. The respondent says that the words “otherwise connected” are inherently ambiguous and that the meaning of “operated” is also unclear. It says that these defects in the Requirement render it invalid. I disagree.

[106] As the Federal Court stated in *Zeifmans JR (FC)* (at para. 78, citing *Nadler (Estate) v. Canada (Attorney General)*, 2005 FC 935 at para. 9), a requirement for information must be worded with sufficient precision to enable meaningful compliance by the recipient. The Requirement meets this standard.

[107] As the Federal Court concluded in *Zeifmans JR (FC)* (at para. 80):

Entities that are “otherwise connected” to and “operated by” the Named Persons are not as easily defined as those controlled by the Named Persons. However, the knowledge of the group’s business structure and the genesis of the offshore income that is a focal point of the CRA’s audit lies with the Named Persons and Zeifmans. The Minister knows only that the Named Persons operate through offshore entities and trusts. The Information Sheet sets out the Minister’s concerns regarding the Named Persons’ operating structure and history and provides context for the references to the Unnamed Persons.

[108] That context includes specific concerns regarding subsection 15(2) of the ITA, which refers in paragraph (b) to “connected” status, defined in subsection 15(2.1).

[109] When the Requirement is read alongside the Information Sheet, it sufficiently describes the entities that fall within the group of Unnamed Persons. Even if certain terms used in a

requirement may be subject to interpretation, that does not render the requirement void for vagueness. It is not the job of this Court to parse words in the Requirement, particularly when, if the respondent had been genuinely stumped, clarification could have been sought from the Minister. There is no indication that the respondent did that.

[110] The respondent also submits that subsection 231.2(1) provides that a requirement must be issued to a “person”, and since a “person” does not include a partnership, the Requirement issued to Zeifmans was invalid. The respondent says that while subsection 244(20) deems a reference to Zeifmans LLP in the Requirement to be read as a reference to all its partners, it does not “substantively” convert Zeifmans into a person for the purposes of subsection 231.2(1). It submits that a requirement must be issued to a specific “person” who can be clearly identified and ascertained. Again, I disagree.

[111] Subsection 244(20) deems each member of a partnership to have been provided with any notice or other document if that notice or document was mailed to, served on or otherwise sent to the partnership either at its latest known address or place of business, or at the latest known address of any of its members (in the case of a limited partnership, at the latest known address of any of its members whose liability is not limited). It is a deeming provision and applies for all purposes of the ITA. Its purpose, according to the Department of Finance Explanatory Notes, is to provide for greater efficiency in the administration and enforcement of the ITA: Hon. Don Mazankowski, *Explanatory Notes to Legislation Relating to Income Tax* (Ottawa: Department of Finance, 1991) at p. 371; *Income Tax Amendments Revision Act*, S.C. 1994, c. 7, Sch. II (S.C. 1991, c. 49), s. 191. I have no difficulty concluding that the issuance of the Requirement in the

name of the Zeifmans partnership (and not its individual members or a particular member) does not invalidate the Requirement.

[112] For these reasons, I conclude that the Requirement is not invalid on account of vagueness or because it was issued to a partnership.

[113] The respondent also raises concerns over whether any compliance order to be issued would be enforceable against the partners of Zeifmans LLP as of the date the Requirement was issued or the date a compliance order was issued but makes no further submissions on the point. As already noted, a requirement becomes enforceable as a result of a compliance application, by virtue of the order issued. Should there be a failure to comply with an order issued by this Court to Zeifmans LLP, the Minister may seek further enforcement action and the judge hearing that proceeding can determine the liability issues for Zeifmans LLP and its partners in the relevant circumstances of the failure to comply.

[114] For the foregoing reasons, the Federal Court erred in concluding that the conditions of section 231.7 had not been satisfied. Zeifmans was required under section 231.2 to comply with the Requirement.

E. *Should residual discretion be exercised to decline to issue a compliance order?*

[115] Next, I address the respondent's alternative argument that the Court should exercise its residual discretion to refuse to issue the compliance order.

[116] Under section 231.7, even if the statutory conditions to issuing a compliance order are satisfied, the application judge “may”, but need not, issue a compliance order. This discretion ensures that compliance orders respect the privacy interests of respondents under section 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (Charter): *Minister of National Revenue v. Carriero*, [2017] 5 C.T.C. 95 at para. 12, 2016 CarswellNat 9902 (F.C.) [*Carriero*], citing *M.N.R. v. Derakhshani*, 2009 FCA 190 at para. 19 and *Baron v. Canada*, [1993] 1 S.C.R. 416 at p. 443 (S.C.C.).

[117] Before the Federal Court, the respondent cited several factors in support of this argument, including its obligations to clients and regulatory bodies, the fact that it itself was not under audit, and the allegedly vague wording of the Requirement: FC Reasons at para. 38.

[118] The Federal Court found that the Minister failed to demonstrate that the Court should issue a compliance order “in the exercise of judicial discretion”: FC Reasons at para. 10. The Federal Court explained that there was no basis to modify the Requirement so that a compliance order could be issued. This was because the record was insufficient to determine which aspects of the Requirement were enforceable in light of the finding that prior judicial authorization had been needed: see FC Reasons at paras. 150-57.

[119] The respondent says that the Federal Court’s exercise of discretion under section 231.7 is entitled to deference and that this Court should not overturn the exercise of discretion unless it was exercised in an “abusive, unreasonable or non-judicial manner”, citing *Cameco* at para. 59.

It submits that this Court should decline to issue the compliance order for the same reasons put to the Federal Court. I disagree.

[120] First, I do not find the Federal Court to have exercised its overriding discretion under section 231.7—which is a discretion to refuse a compliance order even if the statutory preconditions are satisfied. The Federal Court, having concluded that the statutory preconditions under section 231.7 were not satisfied, did not consider alternative grounds to refuse granting a compliance order. Although the Federal Court referred to exercising discretion in its reasons (at paras. 153-56), this related to whether the Requirement could be modified so that it met the statutory requirements in section 231.2 and a compliance order could be issued.

[121] Second, even if the Federal Court’s decision could be interpreted as an exercise of discretion under section 231.7, this finding would not be entitled to deference because no supporting reasons were provided. Any review on appeal must be *de novo*, without deference to the Federal Court: *Canada (Attorney General) v. Larkman*, 2012 FCA 204 at para. 60.

[122] Having decided that the statutory preconditions in section 231.7 are satisfied, this Court has the power to exercise the residual discretion under section 231.7 not to grant a compliance order or remit the matter to the Federal Court for determination: *Jakutavicius v. Canada (Attorney General)*, 2004 FCA 289 at para. 24. I conclude that we should decide the issue. This Court has what it needs, and it would not be in the interests of justice to remit the issue to the Federal Court.

[123] Statutory discretion does not afford free rein to advance considerations extraneous to the text, context and purpose of the legislation: *Roofmart* at para. 27; *Canada (Commissioner of Competition) v. Amazon.com.ca, ULC*, 2026 FCA 64 at para. 25. The purpose of the residual discretion under section 231.7 is to protect privacy interests under section 8 of the Charter and prevent abuse of the court's process: see also *RBC* at paras. 22-38. The concerns raised by the respondent are not responsive to these purposes but resurrect arguments regarding the validity of the Requirement.

[124] I would not exercise the Court's residual discretion under section 231.7 to refuse to issue the compliance order.

F. *Did the Federal Court err in finding that it was not an abuse of process for Zeifmans to challenge the validity of the Requirement in the Compliance Proceedings?*

[125] Finally, I consider whether the Federal Court erred by holding that Zeifmans' re-litigation of the validity of the Requirement in the Compliance Proceedings was not an abuse of process. Given my conclusion that the appeal should be allowed on the merits, it is unnecessary for me to address this issue. However, I do so because this ground of appeal raises important questions and was the focus of the submissions before this Court.

[126] Determining whether re-litigation is an abuse of process is a question of law, subject to correctness review on appeal: see e.g. *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4 at paras. 31-32 [*Métis Nation*], citing *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at para. 30 [*Abrametz*]; *Resler v. Anglin*, 2026 SCC 23 at para. 25;

Canadian Energy Services L.P. v. Secure Energy (Drilling Services) Inc., 2025 FCA 76 at para. 42. However, findings of fact and mixed fact and law relevant to deciding whether an abuse of process has occurred are reviewable on the deferential standard of palpable and overriding error: *Abrametz* at para. 105. As explained above, applying appellate standards of review to the Federal Court's conclusions on the merits of the case, the Court's reasons were tainted by legal error and by palpable and overriding factual error.

[127] Challenges to requirements made in the context of a compliance order application under section 231.7 have involved a myriad of issues relating to enforcement, including: whether the requirement was properly directed towards a party; whether the requirement was related to the administration or enforcement of the ITA; whether the predominant purpose of the requirement was a criminal investigation and prosecution; whether prior judicial authorization was required; or whether the requirement made unreasonable demands, such as requests for documents that do not exist or are not in the hands of the respondent: see e.g. *Canada (Minister of National Revenue) v. SML Operations (Canada) Ltd.*, 2003 FC 868 at paras. 14-16, 20; *Canada (Minister of National Revenue) v. Toronto Dominion Bank*, 2004 FC 169 at paras. 18-33; *Carriero* at para. 12; *Beima v. Minister of National Revenue*, 2017 FCA 85 at paras. 8-10; *Canada (National Revenue) v. Stankovic*, 2018 FC 462 at paras. 44-59; *Canada (National Revenue) v. BMO Nesbitt Burns Inc.*, 2022 FC 157 at paras. 119-33, *aff'd* 2023 FCA 43; *Canada (National Revenue) v. Dominelli*, 2022 FC 1418 at paras. 31-37; *Canada (National Revenue) v. Schreiber*, 2024 FC 729 at paras. 161-66; *Canada (National Revenue) v. Cohen*, 2025 FC 2012 at paras. 44-49. None of these challenges occurred in the shadow of a previous judicial review.

[128] The context of this compliance order application is quite different. The gating issue considered by the Federal Court was whether, given the Courts' decisions in the JR Proceedings, the respondent was precluded from challenging the validity of the Requirement again, in the Compliance Proceedings. I note that while in the Ghermezian Compliance Proceedings this Court considered arguments challenging the validity of a requirement that had been raised and rejected in a prior judicial review proceeding, *res judicata* and abuse of process were not raised or addressed.

[129] Abuse of process is a flexible doctrine which prevents misuse of the court's procedure which would generate unfairness to a party or bring the administration of justice into disrepute: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37 [*C.U.P.E.*]; *Canada (Public Safety and Emergency Preparedness) v. Rodas Tejeda*, 2026 FCA 115 at para. 50.

[130] The doctrine can be relied on by the court, in its discretion, to preclude re-litigation and protect the integrity of the adjudicative process: *C.U.P.E.* at paras. 43-44; *Patrick Street Holdings Ltd. v. 11368 NL Inc.*, 2026 SCC 15 at paras. 42-43; *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at para. 40, leave to appeal ref'd 2016 CanLII 41042 (S.C.C.).

[131] Abuse of process by re-litigation shares many underlying principles with issue estoppel. The same factors that guide the court's residual discretion to prevent issue estoppel from applying in an unfair way are equally applicable to prevent the doctrine of abuse of process from achieving a similarly unjust result: *C.U.P.E.* at para. 53; *Danyluk v. Ainsworth Technologies Inc.*,

2001 SCC 44 at paras. 62-81 [*Danyluk*]. The analysis is guided by the facts and circumstances of the case, the issues at stake in the two proceedings, and the procedural differences between the two proceedings: *Intact Insurance Company v. Federated Insurance Company of Canada*, 2017 ONCA 73 at paras. 28-30 [*Intact Insurance*], leave to appeal ref'd 2017 CanLII 54651 (S.C.C.); *W.H. v. H.C.A.*, 2006 CanLII 27865 at paras. 31-32 (Ont. C.A.); *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at paras. 42-48.

[132] Ultimately, the court must balance competing interests—what is fair to the litigant seeking to challenge the original finding; the need to preserve the finality and consistency of judicial decisions, the scarcity of judicial resources and the integrity of the administration of justice: *Apotex Inc. v. Merck & Co.*, 2002 FCA 210 at para. 30; *Morel v. Canada*, 2008 FCA 53 at para. 42, citing *C.U.P.E.* at para. 15; *Canada v. Csak*, 2025 FCA 60 at para. 23, leave to appeal ref'd 2025 CanLII 116180 (S.C.C.); *Intact Insurance* at paras. 28-30. Given the importance of preventing duplicative proceedings, re-litigation should be avoided unless it is necessary to enhance the credibility and the effectiveness of the adjudicative process or fairness dictates that the original result should not be binding: *C.U.P.E.* at paras. 52-55; *Métis Nation* at paras. 39-40; *Dundurn Street Loffts Inc. v. Canada*, 2011 FCA 288 at para. 23; *Procter & Gamble Pharmaceuticals Canada, Inc. v. Canada (Minister of Health)*, 2003 FCA 467 at paras. 29-30. For example, a lack of a robust process or unfairness in the first proceeding or the discovery of new evidence may justify re-litigation: *C.U.P.E.* at para. 53, citing *Franco v. White*, 2001 CanLII 24020 at paras. 55-56 (Ont. C.A.).

[133] The Minister's position at the Federal Court was that the JR Proceedings had adjudicated whether the Minister had been required to seek prior judicial authorization, whether the Requirement was excessively vague and ambiguous and whether the Requirement was unenforceable because it had been issued to a partnership. In the Minister's view, Zeifmans' challenge to the validity of the Requirement in the Compliance Proceedings on the same grounds amounted to re-litigation of decided issues and abused the Court's process. The Minister also argued that the respondent's arguments were a prohibited collateral attack on a binding administrative decision: FC Reasons at paras. 40-41. Issue estoppel was not argued.

[134] The Federal Court rejected the Minister's arguments, finding that section 231.7 expressly requires an application judge to examine the validity of the underlying requirement and confirm that the statutory conditions of section 231.2 are met. According to the Federal Court, this was a different task than was before the Courts in the JR Proceedings, which had been to determine whether the Minister's decision to issue the Requirement was reasonable: FC Reasons at paras 94-98. The Federal Court also determined that a second review was warranted due to the "materially different" evidentiary record in the Compliance Proceedings: FC Reasons at paras. 65, 99-101, 105. The Federal Court noted that the Minister had not volunteered the information that Unnamed Persons were under audit, a fact that was revealed in cross-examination testimony. Further, the Federal Court found that it was not an abuse of process to re-litigate the validity of issuing the Requirement to a partnership because, as the Federal Court suggested in the JR Proceedings, Zeifmans' concerns regarding enforcement would be addressed in a future compliance action: FC Reasons at para. 103, citing *Zeifmans JR (FC)* at para. 73.

[135] In this Court, the appellant maintains its position on abuse of process but no longer relies on the doctrine of collateral attack. The appellant focused its abuse of process submissions on the issue of prior judicial authorization and did not provide any submissions on its position that re-litigation of the issues of vagueness and enforceability against a partnership should be precluded. The appellant says that in both the JR Proceedings and the Compliance Proceedings the Courts interpreted and applied section 231.2 and considered whether prior judicial authorization was required. The appellant also submits that the key evidence was consistent between the two proceedings, and in any event, the new evidence in the Compliance Proceedings does not provide a basis to revisit the determinations made in the JR Proceedings.

[136] The respondent contends that the “reasonableness” determinations in the JR Proceedings did not bind the Federal Court’s determination in the Compliance Proceedings of whether the respondent was “required” to comply with the Requirement. The respondent also submits that the Federal Court made several findings of fact, reflecting “materially different” evidence, supporting a different conclusion on the need for prior judicial authorization. Like the appellant, the respondent made no submissions in this Court on its position that revisiting the issues of vagueness and enforceability against a partnership should be allowed.

[137] When considering whether abuse of process by re-litigation occurred, it was appropriate for the Federal Court to consider whether there would be a meaningful difference between the reasonableness review conducted in the JR Proceedings and a potential re-review in the Compliance Proceedings. It was also appropriate for the Federal Court to consider whether new

evidence in the Compliance Proceedings undermined the conclusions of the JR Proceedings.

However, the Federal Court erred in its application of these principles, for two reasons.

[138] First, the procedural differences between the JR Proceedings and the Compliance Proceedings were not, in the circumstances, sufficient to warrant re-litigation of the validity of the Requirement.

[139] I agree with the Federal Court that judicial review of the Minister's decision to issue a requirement is a different process with different purposes and consequences than a compliance proceeding to enforce the requirement. These differences may be relevant to whether re-litigation should be precluded as an abuse of process.

[140] A section 231.7 application is a proceeding *de novo*: *Friedman* at para. 26. The application judge need not defer to the Minister's interpretation of the relevant law or findings of fact, and the burden of proof is on the Minister to demonstrate that the order should be granted on a balance of probabilities: *Blue Bridge Trust Company Inc. v. Canada (National Revenue)*, 2021 FCA 62 at para. 50. By contrast, on judicial review, the court considers whether the Minister's decision is reasonable, in light of the relevant factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 99 [*Vavilov*]; *Zeifmans JR (FC)* at paras. 12, 14; *Zeifmans JR (FCA)* at para. 14. The court reviews and defers to the Minister's reasoning, and the burden to establish the unreasonableness of the requirement is on the challenging party: *Vavilov* at paras. 83, 100.

[141] The evidence available to the court in the proceedings may also differ. On judicial review, because the focus is on reviewing the administrative decision, the court is restricted in the evidence it may consider, generally limited to the evidentiary record that was before the administrative decision-maker: see *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency*, 2012 FCA 22 at para. 19; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 at paras. 22-23. Because a compliance order application is a proceeding *de novo*, these restrictions do not apply.

[142] Moreover, serious consequences may flow from the failure to obey a compliance order issued under section 231.7, including a finding of contempt, punishable by fines or imprisonment: ITA, s. 231.7(4); *Federal Courts Rules*, S.O.R./98-106, r. 466; see e.g. *Canada (National Revenue) v. Money Stop Ltd.*, 2013 FC 133. In contrast, failure to respond to a requirement has no immediate penal consequences, which arise only when the Minister pursues enforcement under section 238 or section 231.7.

[143] Procedural differences between judicial review and a subsequent proceeding involving the same parties will not however always justify re-litigation. Courts have applied issue estoppel and abuse of process to prevent re-litigating findings of applications for judicial review in other contexts: see e.g. *Sanofi-Aventis Canada Inc. v. Novopharm Ltd.*, 2007 FCA 163 at paras. 36, 49, leave to appeal ref'd 2007 CanLII 45677 (S.C.C.); *Mohl v. The University of British Columbia*, 2006 BCCA 70 at paras. 29-30; *Skypower CL 1 LP and Others v. Ontario Power & HMQ*, 2014 ONSC 6950 at paras. 35-40, aff'd 2015 ONCA 427. Similarly, the differences in process

between judicial review and a compliance proceeding do not provide a clear path for a second challenge of issues on a compliance application.

[144] Although there is an important conceptual difference from the *de novo* analysis conducted on a compliance order application, reasonableness review mandates “robust” supervision of the legality, fairness and rationality of administrative decisions: *Vavilov* at paras. 12-13; *Auer v. Auer*, 2024 SCC 36 at para. 46 [*Auer*]. In determining whether there is an abuse of process, the court must in each case determine whether the principles of fairness, finality and judicial economy weigh in favour of permitting or precluding re-litigation. The court should consider the nature of the review of the issues in the first proceeding and the impact of any new evidence brought forward on the second proceeding: see e.g. *Apotex Inc. v. Pfizer Ireland Pharmaceuticals*, 2011 FCA 77 at paras. 24-26. There may be other considerations as this is a discretionary matter: *C.U.P.E.* at para. 43; *Danyluk* at para. 62.

[145] In the JR Proceedings, with no reasons supporting the Minister’s decision to issue the Requirement, the reviewing courts focused on the outcome of the decision-making process and considered whether the conclusion reached by the administrative body was consistent with the applicable factual and legal constraints, especially the governing statutory scheme: *Vavilov* at paras. 137-38; *Auer* at paras. 54, 59-60; *Prince Edward Island Potato Board v. Canada (Agriculture and Agri-Food)*, 2024 FCA 180 at para. 58. The Federal Court looked to the record to understand the decision and its rationale (*Zeifmans JR (FC)* at paras. 23, 65-67) and considered the text, context and purpose of subsection 231.2(2) as relevant legal constraints (at paras. 44-49). The Federal Court then conducted a reasonableness review of the Minister’s

application of the law to the facts: *Zeifmans JR (FC)* at paras. 71-76. This approach was affirmed on appeal, with this Court finding that the Minister was alive to the key issues, including the interpretation of subsection 231.2(2): *Zeifmans JR (FCA)* at paras. 10-14.

[146] Here, there is a very thin, if not invisible, line between reasonableness and correctness review of the issue: whether the Requirement was issued without lawful authority. The Federal Court erred in concluding that the task before the Federal Court in the Compliance Proceedings was meaningfully different from the task completed by the Courts in the JR Proceedings.

[147] The second error in the Federal Court's abuse of process analysis resulted from the Court's review and assessment of the new evidence in the Compliance Proceedings. As I have explained above, the Federal Court made palpable and overriding errors of fact regarding the Minister's purpose in issuing the Requirement and misconstrued the significance of its discovery that certain Unnamed Persons were under audit. Considered in its proper light, the new evidence in the Compliance Proceedings did not affect whether prior judicial authorization was required.

[148] For these reasons, I would find that Zeifmans abused the court's process by re-litigating whether prior judicial authorization was required. In the circumstances, allowing the respondent a second kick at the can in the compliance application proceeding after having failed in its attempt to quash the Requirement in the JR Proceedings would frustrate enforcement of the ITA and bring the administration of justice into disrepute.

[149] We have limited submissions on whether it was an abuse of process to re-litigate whether the Requirement was invalid because it was excessively vague or because it had been issued to a partnership and need not decide the issue. However, in my view, many of the same reasons for why re-litigating the prior judicial authorization issue should be precluded also apply to these issues, including the lack of meaningful difference between the reasonableness review conducted by the Federal Court in the JR Proceedings and a review of these issues on a *de novo* basis and absence of new relevant evidence in the Compliance Proceedings. Although the Federal Court in the JR Proceedings left the issue of enforceability against specific partners for another day, the JR Proceedings did squarely address Zeifmans' argument that the Requirement was facially invalid because it had been issued to a partnership: *Zeifmans JR (FC)* at paras. 71-73; *Zeifmans JR (FCA)* at para. 13.

VI. Disposition

[150] For the foregoing reasons, I would allow the appeal and, rendering the judgment that the Federal Court should have given, would order Zeifmans LLP to comply with the Requirement.

[151] As the parties agreed on the amount of costs for the appeal to be awarded to the successful party and I find the amount to be appropriate, I would award costs to the appellant for the appeal in the all-inclusive agreed amount of \$5,000.

[152] In the judgment which was appealed to this Court, the Federal Court awarded costs to the respondent with the amount to be determined. In a separate judgment, the Federal Court

quantified the costs award at \$19,053.60, all-inclusive: 2023 FC 1734 (unreported). Based on the outcome of this appeal, the appellant asks that the Federal Court's award be set aside, the amount of \$19,053.60 be refunded and that the appellant be awarded costs in the Federal Court proceeding. The appellant did not appeal the Federal Court's separate costs order.

[153] While I would set aside the Federal Court's order awarding costs to the respondent, I cannot set aside the Federal Court's separate order quantifying those costs as that decision was not appealed: *Eli Lilly Canada Inc. v. Novopharm Limited*, 2010 FCA 219 at paras. 13(d)-(e). Also, we have no submissions on the appellant's costs in the Federal Court.

[154] Accordingly, subject to any agreement between the parties and notice of such agreement to the Court, I would ask for submissions on costs in the Federal Court proceedings on a schedule that will be set by the Court in a separate order.

[155] The submissions should address the amount of costs refundable to and payable to the appellant regarding the Federal Court proceedings and include the grounds on which this Court may grant such an order considering that the Federal Court's order quantifying costs has not been appealed.

“Monica Biringer”

J.A.

“I agree.

Wyman W. Webb J.A.”

“I agree.

Donald J. Rennie J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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