

CANADA / JUDGMENT

Malik v. The King

2025 TCC 193

COURT

Tax Court of Canada

DECIDED

22 December 2025

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Malik v. The King Court (s) Database Tax Court of Canada Judgments Date 2025-12-22 Neutral citation 2025 TCC 193 File numbers 2024-2063(GST)G, 2024-2064(GST)G Judges and Taxing Officers Jenna Clark Subjects Part IX of the Excise Tax Act (GST) Decision Content Docket:

2024-2063(GST)G BETWEEN: NEELU MALIK, Appellant, and HIS MAJESTY THE KING,

Respondent. Motion heard on November 25, 2025 at Toronto, Ontario Before: The Honourable

Justice Jenna Clark Appearances: For the Appellant: The Appellant herself Counsel for the

Respondent: Daniel Powell ORDER WHEREAS the Respondent brought a motion to compel the

Appellant to answer written questions arising from undertakings, pursuant to section 96 of the

Tax Court of Canada Rules (General Procedure); AND WHEREAS the Court received written

submissions and affidavit evidence from the Respondent and oral submissions from both the

Respondent and Appellant on the motion and on costs of the motion; IN ACCORDANCE with the

attached Reasons for Order, it is ordered that the Respondent's motion is allowed with costs fixed

at \$500, payable forthwith by the Appellant on or before January 30, 2026 and that: (a)the

Appellant, Neela Malik, shall answer the Further Questions on Undertakings for Neela Malik

dated September 25, 2025, with the exceptions of withdrawn questions 11b(i), 13(a), 13(b), 13(c),

13(3)(i)(2), 13(e)(i)(1) and 13(d)(i)(2), on or before January 30, 2026; and (b)the parties shall

communicate with the Hearings Coordinator to advise if the matter will settle or proceed to

hearing, on or before March 2, 2026. Signed this 22nd day of December 2025. "Jenna Clark" Clark

J. Docket: 2024-2064(GST)G BETWEEN: SUBODH MALIK, Appellant, and HIS MAJESTY THE

KING, Respondent. Motion heard on November 25, 2025 at Toronto, Ontario Before: The

Honourable Justice Jenna Clark Appearances: For the Appellant: The Appellant himself Counsel

for the Respondent: Daniel Powell ORDER WHEREAS the Respondent brought a motion to

compel the Appellant to answer written questions arising from undertakings, pursuant to section

96 of the Tax Court of Canada Rules (General Procedure); AND WHEREAS the Court received

written submissions and affidavit evidence from the Respondent and oral submissions from both

the Respondent and the Appellant on the motion and on costs of the motion; IN ACCORDANCE

with the attached Reasons for Order, it is ordered that the Respondent's motion is allowed with

costs fixed at \$500, payable forthwith by the Appellant on or before January 30, 2026, and that:

a)the Appellant, Subodh Malik, shall answer each of the Further Questions on Undertakings for

Subodh Malik dated September 25, 2025, with the exception of withdrawn question 1(b), on or

before January 30, 2026; and b)the parties shall communicate with the Hearings Coordinator to

advise if the matter will settle or proceed to hearing, on or before March 2, 2026. Signed this 22nd day of December 2025. “Jenna Clark” Clark J. Citation: 2025 TCC 193 Date: 20251222 Docket: 2024-2063(GST)G BETWEEN: NEELU MALIK, Appellant, and HIS MAJESTY THE KING, Respondent; Docket: 2024-2064(GST)G AND BETWEEN: SUBODH MALIK, Appellant, and HIS MAJESTY THE KING, Respondent. REASONS FOR ORDER Clark J. I. Background [1] The Respondent brought a motion to compel answers to questions arising from undertakings made at the examinations for discovery of each of the two Appellants.

- [2] The Appellants, spouses, purchased a house at 1359 Applewood Road, Mississauga, Ontario, in 2012. The Appellants rented the house out for several years before they severed the lot and created a second address, 1355 Applewood Road, Mississauga, Ontario. New homes were built on each lot. It is the second lot, 1355 Applewood Road, that is the subject of these appeals.
- [3] The underlying appeals concern the Minister of National Revenue’s calculation of GST/HST. The appeals raise three issues: a) whether the Appellants were “builders” for the purposes of the Excise Tax Act, b) whether the subject property was not an exempt supply as a primary place of residence, and c) whether the subject property was a self-supply.
- [4] These appeals are fact driven. The Notices of Appeal assert that the Appellants purchased 1359 Applewood Road with the primary intention of building a house for their family. The Notices of Appeal detail the history of the houses and properties as well as the Appellants’ family and financial circumstances. The Replies to the Notices of Appeal contain 50 statements of assumed facts.
- [5] The Appellants were examined for discovery at oral examinations held in June 2025. Several undertakings were made at those examinations for discovery. Neelu Malik provided answers to 29 undertakings, and Subodh Malik provided answers to 2 undertakings. Most of the undertakings were to produce documentation. The Respondent served each Appellant with a list of follow-up questions in writing, each dated September 25, 2025. Those lists are appended as Appendix A and Appendix B, respectively. Most of the follow-up questions asked for information relating to produced documents.
- [6] The follow-up questions were numbered in relation to the undertakings. The Respondent stated in its motion record that it was withdrawing questions 11(b)(i), 13(a), 13(b), 13(c), 13(3)(i)(2), 13(e)(i)(1), 13(d)(i)(2) put to Neelu Malik. At the hearing of the motion counsel advised that the Respondent was withdrawing question 1(b) put to Subodh Malik.
- [7] These matters could not be grouped by reason for refusal, as the Appellants provided one omnibus statement in repose to each question. Consequently, the parties and the Court reviewed each question at the hearing of the motion, grouped by undertaking. The Respondent detailed the connection between the questions and the matters in issue, and the Appellants stated the reason(s) for their refusals. II. Law [8] Subsection 95(1) of the Tax Court of Canada Rules (General Procedure) (Rules) provides that a person examined for discovery shall answer, to the best of that person’s knowledge, information and belief, any

proper question relevant to any matter in issue in the proceeding.

- [9] Disputes as to the propriety of questions asked during the examination for discovery process are common, and as a result there is a great deal of jurisprudence detailing the principles to be considered when a party moves for an order compelling answers to disputed questions.
- [10] The test for relevance for a question asked at examination for discovery is whether the question might reasonably enable a party to advance its case, or damage the opposing party's case, or might fairly lead to a train of inquiry that may do either of those things (*Canada v Lehigh Cement Limited*, 2011 FCA 120).
- [11] The scope of discovery should be wide, and relevancy should be construed liberally without allowing it to enter the realm of a fishing expedition. The purpose of discovery is to allow parties to know the case to be met at trial, as well as to know the facts relied on by their opponent, narrow or eliminate issues, obtain admissions and avoid surprise at trial (*Burlington Resources Finance Company v The Queen*, 2015 TCC 71 at para 11; see also *Kossow v The Queen*, 2008 TCC 422, *aff'd* 2009 FCA 83).
- [12] A question is relevant where there is a reasonable likelihood that it might elicit information which may directly or indirectly enable the party seeking the answer to advance its case or to damage the case of its adversary, or which fairly might lead to a train of inquiry that may either advance the questioning of a party's case or damage the case of its adversary (*Lehigh* at para 34).
- [13] Although relevancy is the primary consideration when determining the propriety of a question, the Court maintains residual discretion to disallow questions if they are not proportionate, or materially ambiguous, vague, imprecise, misleading, scandalous, vexatious, seeks privileged information, seeks work product of counsel, seeks the disclosure of evidence rather than fact or seeks opinion (*Stack v The King*, 2024 TCC 164 at para 36; *Contractor v The Queen*, 2021 TCC 46 at para 22).
- [14] The purpose of discovery is to enable parties to know the case they must meet at trial, know the facts that the opposing party relies on, narrow or eliminate issues, obtain admissions and avoid surprises at trial. On a motion, the threshold for relevance is low, and when in doubt, the judge hearing the motion should err on the side of allowing the question (*Stack* at paras 30 and 31).
- [15] Justice Dawson of the Federal Court of Appeal in *Lehigh* at paragraph 30 sets out the importance of an effective examination for discovery process to the litigation process: The general purpose of examination for discovery is to render the trial process fairer and more efficient by allowing each party to inform itself fully prior to trial of the precise nature of all other parties' positions so as to define fully the issues between them. It is in the interest of justice that each party should be as well informed as possible about the positions of the other parties and should not be put at a disadvantage by being taken by surprise at trial. It is sound policy for the Court to adopt a liberal approach to the scope of questioning on

discovery since any error on the side of allowing questions may always be corrected by the trial judge who retains the ultimate mastery over all matters relating to admissibility of evidence; on the other hand any error which unduly restricts the scope of discovery may lead to serious problems or even injustice at trial.

- [16] Proportionality is a consideration when determining if a disputed question should be answered, however it should not be the primary focus (*Canadian Imperial Bank of Commerce v The Queen*, 2015 TCC 280; *Burlington Resources Finance Company v The Queen*, 2017 TCC 144). I considered that these are Class B appeals involving self-represented appellants, and also that they are fact-driven matters that involve a large number of disputed facts. III. Analysis A. Omnibus Refusal Statement [17] The Appellant refused every question with the same written statement: The appellant objects to answering this question on the basis that the Appellant has already pled all material facts relied on, or it invites legal argument and either asks the Appellant which evidence the Appellant intends to rely on, or seeks the Appellant's legal position, or is irrelevant to the correctness of the assessment.
- [18] This statement was so broad as to be meaningless. It gives five alternative reasons for the refusal. The omnibus statement makes it impossible for the questioner to know the actual basis for the refusal. It also makes it difficult for this Court to determine the precise basis for the refusal.
- [19] Use of a template omnibus refusal phrase amounts to nothing more than a slammed door in the face of the questioner. The Appellants' omnibus statement renders it difficult or impossible for the parties to resolve the impasse without court intervention. Indeed, section 107 of the Rules requires an objector to briefly state the reason for the objection and requires that reason to be recorded together with the question. A party refusing to answer a question at examination for discovery should state the reason for the refusal in such a way as to clearly communicate the foundation for the refusal.
- [20] Court intervention in the discovery process should be reserved for the rare occasion when there is a genuine difference of opinion between the parties. The Court should not be asked to intervene in situations where one party simply refuses to engage in a meaningful discussion as to why the question was refused.
- [21] Examinations for discovery are an important part of the litigation process. Discoveries enable the parties to explore disputed facts and to clarify the matters in dispute. They present an opportunity for the parties to refine the issues and proceed to the hearing fully prepared.
- [22] The first portion of the Appellant's omnibus statement asserts that they have already pled all material facts relied on. This is not a basis to refuse answering a question posed during the discovery process. Pleading a material fact does not preclude another party from asking questions relating to that material fact, or asking questions arising from their own statement of material facts. Section 95 of the Rules states that: A person examined for discovery shall answer, to the best of that person's knowledge, information and belief, any proper question

relevant to any matter in issue in the proceeding ...

- [23] Each party is entitled to ask questions about the facts in issue asserted by the opposing party, as well as facts that it has asserted and that remain in issue.
- [24] The second portion of the omnibus statement is that the question invites legal argument, and the fourth portion of the statement states the question seeks a legal position. I reviewed each of the questions in issue in the motion, and I am satisfied that none of them seek disclosure of legal argument. The questions seek clarification or additional information arising from information provided in answer to an undertaking.
- [25] The third portion of the omnibus statement states that the question asks the Appellant what evidence will be relied on. My review of the questions indicates that they seek information that could potentially be used as evidence, but do not ask the Appellant what evidence he or she will rely on. Each party is entitled to know the case that will be presented. One of the purposes of examination for discovery is to avoid “trial by ambush”. Each party is entitled to explore the allegations of fact made by the opposing party in their pleading.
- [26] The fifth portion of the omnibus statement states that the question is irrelevant to the correctness of the assessment. I disagree. All the questions relate to facts asserted by the parties in support of their position concerning the correctness of the assessment. I have also considered proportionality, and I am mindful of the fact that the Appellants are self-represented and wish to proceed to hearing as quickly as possible. There was nothing before me to suggest the questions would create an undue burden on either Appellant. The questions arise from undertakings made at examination for discovery. It is appropriate to have a limited opportunity to seek follow up information in response to undertakings. B. Additional Reasons for Refusal [27] The Appellants advised at hearing that they wished to add reasons for their refusals to their omnibus statement. The Appellants referred to these additional reasons as “privacy” and “duplication”. I will deal with each new reason for refusal in turn.
- [28] The Appellants asserted “privacy” as a reason for their refusals made to requests for the telephone numbers of various contractors the Appellants hired while building the subject properties. The Appellants were unable to articulate precisely why this was a basis for an objection.
- [29] Subsection 95(4) of the Rules provides that a party may obtain names and addresses of persons who might reasonably be expected to have knowledge of the transactions or occurrences in issue in the proceeding. This can also extend to production of telephone numbers (*C C Gold Inc. v The Queen*, 2018 TCC 155). I do not accept that privacy is a reason why the questions should not be answered.

- [30] The Appellants also raised at the hearing of the motion a new reason for refusing to answer follow-up questions, called “duplication”. The Appellants referenced the book of documents used by the parties at the examination for discovery. Mr. Malik stated that the information sought by the Respondent could be found in the documents contained in those books.
- [31] At the hearing of the motion, the Appellants were asked to direct the Court to where the requested information had already been produced (for example, answers to follow up question 2 asked of Neelu Malik). The Appellants were not able to identify a document. This leads me to doubt that the requested information had indeed already been produced.
- [32] The Appellants also objected to some questions on the basis they had previously produced information to the Canada Revenue Agency (CRA) as part of their Objection. I was not presented with any evidence of this.
- [33] The Appellants asserted that some of the follow-up questions had already been answered at examination for discovery. This was not stated in their refusal and therefore the Respondent was not given notice that this was a reason for the refusal. I did not have evidence before me indicating that the requested information had already been produced at the examination for discovery.
- [34] The Appellants also stated in their oral submissions that some information was simply not available. This was not noted in the Appellants’ refusals. A litigant is expected to give their best efforts to obtain requested information. If despite their best efforts they cannot obtain the information, they must so advise. IV. Conclusion [35] I find that the follow-up questions in issue in this motion are proper questions. They relate to factual allegations set out in the pleadings. They are proportionate given the factual matters in dispute. They are not otherwise improper.
- [36] The Appellants raised a concern about the length of the pre-hearing process and in particular the fact that this motion has caused additional delay. The Appellants are the authors of this delay. Refusing to provide information while also refusing to provide a precise reason for the refusal only serves to draw out the pre-hearing process. Indeed, the hearing of the motion itself was prolonged by the Appellants’ refusal to group refused questions according to the refusal reason. V. Costs [37] The Respondent sought enhanced costs of between \$3,000 to \$4,000 pursuant to subsection 147(3) of the Rules. Counsel’s submissions on this point were that the Appellants’ conduct unnecessarily lengthened the duration of proceedings or was improper, vexatious or unnecessary.
- [38] The Appellants’ conduct has unnecessarily lengthened the duration of these proceedings. However, the Appellants are self-represented individuals, and they have not missed any court ordered deadlines or caused any other delay. As such, I am giving them the benefit of the doubt as to the motivation driving their refusals. This cost award is compensatory and not punitive.

[39] The Respondent produced a great volume of material in support of their motion. The motion record and book of authorities each surpassed 300 pages. An entire day of court time was required to address this motion. In these circumstances, an appropriate compensatory award is \$500 from each Appellant to be paid to the Respondent on or before January 30, 2026. Signed this 22nd day of December 2025. “Jenna Clark” Clark J. APPENDIX A APPENDIX B CITATION: 2025 TCC 193 COURT FILE Nos.: 2024-2063(GST)G 2024-2064(GST)G STYLES OF CAUSE: NEELU MALIK AND HIS MAJESTY THE KING SUBODH MALIK AND HIS MAJESTY THE KING PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: November 25, 2025 REASONS FOR ORDER BY: The Honourable Justice Jenna Clark DATE OF ORDER: December 22, 2025 APPEARANCES: For the Appellants: The Appellants themselves Counsel for the Respondent: Daniel Powell COUNSEL OF RECORD: For the Appellants: Name: N/A Firm: N/A For the Respondent: Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Ontario

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Prepared on 28 October 2026 · Esheria