

CANADA / JUDGMENT

# Oldcastle Building Products Canada Inc. v. The King

2025 TCC 107

COURT

Tax Court of Canada

DECIDED

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Oldcastle Building Products Canada Inc. v. The King Court (s) Database Tax Court of Canada Judgments Date 2025-08-06 Neutral citation 2025 TCC 107 File numbers 2020-1513(IT)G Judges and Taxing Officers John Yuan Subjects Income Tax Act Decision Content Docket: 2020-1513(IT)G BETWEEN: OLDCASTLE BUILDING PRODUCTS CANADA INC., Appellant, and HIS MAJESTY THE KING, Respondent. Motion heard on April 17, 2025, at Toronto, Ontario Before: The Honourable Justice John C. Yuan Appearances: Counsel for the Appellant: Geneviève Léveillé Rémi Danylo Steven Huryn Counsel for the Respondent: Dany Leduc Sara Jahanbakhsh Caroline Berthelet AMENDED ORDER The Respondent's motion for an order allowing an amended pleading to be filed pursuant to section 54 of the Tax Court of Canada Rules (General Procedure) is allowed. The Respondent's amended pleading shall be titled "Second Amended Reply" and contain the content of the proposed Reamended Reply but will also include the Respondent's concession that the timing of the \$52 million equity injection occurred on March 28, 2013 (which requires a modification to the content of paragraph 27.1(e) and possibly paragraphs 29(c) and 50 of the proposed Reamended Reply). The Respondent shall have until October 24, 2025 to file and serve the Second Amended Reply. Should the Appellant wish to file an Answer to the Second Amended Reply, the Appellant shall have until 30 days after the later of (i) service of the Second Amended Reply, and (ii) the date of final disposition or the parties' discontinuance of the appeal to the Federal Court of Appeal from this amended order to file and serve its Answer in response to the amendments reflected in the Second Amended Reply. Costs will be in the cause. This Amended Order is issued in substitution of the Order dated August 6, 2025. Signed this 3rd day of October 2025. "John C. Yuan" Yuan J. Citation: 2025 TCC 107 Date: 20251003 Docket: 2020-1513(IT)G BETWEEN: OLDCASTLE BUILDING PRODUCTS CANADA INC., Appellant, and HIS MAJESTY THE KING, Respondent. AMENDED REASONS FOR ORDER Yuan J.

- [1] This is a motion made by the Respondent for an order pursuant to section 54 of the Tax Court of Canada Rules (General Procedure) allowing an amended pleading to be filed. BACKGROUND Pleadings History [2] On April 27, 2020, the present appeal was filed as one that joined (i) an appeal of an assessment by the Minister of National Revenue for failure to withhold and remit non-resident tax under Part XIII of the Income Tax Act ("Act") in the

2012 calendar year by notice of assessment dated March 14, 2018 (“Part XIII Assessment”), and (ii) an appeal of a determination made by the Minister pursuant to the general anti-avoidance rule (under subsections 245(8) and 152(1.11) of the Act) concerning the paid-up capital of the Appellant’s common shares as at September 12, 2012 by notice of determination dated March 28, 2018 (“GAAR Determination”).

- [3] The Part XIII Assessment and the GAAR Determination were assessing actions that the Minister took after applying the general anti-avoidance rule to a series of transactions that occurred between July 28, 2011 and September 13, 2012 (“Series of Transactions”).
- [4] On March 2, 2021, the Appellant expanded the scope of the appeal by filing an amended notice of appeal to join appeals of reassessments issued by the Minister under Part I of the Act for the 2012 taxation year, by notice of reassessment dated July 24, 2020, and the 2013 and 2014 taxation years, by notices of reassessment dated October 15, 2020 (collectively, “Part I Reassessments”). The Part I Reassessments disallowed the Appellant’s deduction of interest expense on debt obligations that the Appellant inherited or incurred concurrently with the Series of Transactions.
- [5] On May 10, 2021, the Respondent filed its Reply.
- [6] On August 23, 2022, the Respondent filed an Amended Reply with the consent of the Appellant to make two minor amendments that are not relevant to the matters at issue in this motion. The Part I Reassessments – Interest Deductibility [7] As pled in the Amended Reply, the Part I Reassessments reflected an increase to the Appellant’s income as a consequence of the Minister’s disallowance of interest expense that the Minister regarded as being attributable to borrowed money that was not used by the Appellant for the purpose of earning income from property or a business for purposes of paragraph 20(1)(c) of the Act.
- [8] More particularly, the Minister issued the Part I Reassessment on the basis that \$300,000,000 of the Appellant’s outstanding borrowings during the 2012, 2013, and 2014 taxation years was used for the purpose of funding a \$300,000,000 return of capital on the Appellant’s common shares on September 13, 2012, which was an ineligible purpose in the Appellant’s circumstances, according to the Minister.
- [9] In 2022, the Appellant conducted examination for discovery of the Respondent’s representative by written questions and, at the time, the Respondent’s position on interest deductibility was the one expressed in the Amended Reply.
- [10] By January 2023, the parties had completed the discovery steps in the Court-ordered litigation timetable for the appeal. RESPONDENT’S PROPOSED AMENDMENT TO THE AMENDED REPLY [11] Sometime in the first half of 2024, the Respondent sought the Appellant’s consent to further amend its Amended Reply to plead the thin capitalization rules in subsections 18(4) and (5) of the Act as an alternative basis for supporting the disallowance of interest expense under the Part I Reassessments (“Thin Cap Amendments”).

- [12] Having failed to secure the Appellant's consent to permit the filing of the further amended pleading, on July 31, 2024, the Respondent filed its notice of motion for leave from this Court to do so. The amended pleading that the Respondent seeks leave from this Court to file is the Reamended Reply attached to these reasons as Appendix A.
- [13] While the Thin Cap Amendments do identify the thin capitalization rules as an alternative legal basis for disallowing the Appellant's interest expense, they also identify the Minister's reliance on the general anti-avoidance rule to adjust the paid-up capital in the Appellant's common shares to nil pursuant to the GAAR Determination as part of the factual context to which the Minister would apply the thin capitalization rules in the Appellant's circumstances.[1] Consequently, the Respondent's alternative argument for disallowing interest expense does not just rely on the thin capitalization rules in the Act but also the application of the general anti-avoidance rule to adjust the tax attributes of the Appellant's common shares for purposes of the numerical computations required under the thin capitalization rules. PARTIES' POSITIONS [14] The Respondent's position in support of its motion is that (i) subsection 152(9) of the Act allows the Minister to rely on the thin capitalization rules as an alternative argument or basis to support the denial of interest expense on \$300,000,000 of borrowings that is already in issue in the appeal, and (ii) the applicable jurisprudence allows a party to amend its pleadings at any stage of proceedings if it (a) assists the tribunal in determining the real questions in controversy, (b) does not result in injustice to the other party not compensable by costs, and (c) serves the interest of justice. [2]
- [15] The Appellant's position in resisting the proposed amendment is that the Thin Cap Amendments should not be allowed because (i) notwithstanding subsection 152(9) of the Act and the permissive tenor of the jurisprudence towards allowing a party to amend its pleadings at any stage of proceedings, the relevant jurisprudence prohibits the Minister from amending its pleadings to advance the positions reflected in the Thin Cap Amendments, and (ii) the Appellant would suffer prejudice that would not be compensable by costs. DISCUSSION Interest Deductibility and The Thin Capitalization Rules [16] Where a taxpayer has borrowed money while carrying on a business, interest paid on the borrowing is deductible in computing income pursuant to paragraph 20(1)(c) of the Act, provided that the requirements of that provision are met. Among the requirements in paragraph 20(1)(c) is that the borrowing be used for the purpose of earning income from a business or property. As noted earlier, the Amended Reply pleads the Respondent's position that the Appellant's use of \$300,000,000 of borrowed money on September 13, 2012 was for an ineligible purpose.
- [17] Section 18 of the Act enumerates various limitations on the claiming of deductions when computing income from a business or property, including limitations on the deduction of interest expense pursuant to the thin capitalization rules in subsections 18(4) to (8).
- [18] The thin capitalization rules are designed to address the fact that, when a non-resident shareholder capitalizes a Canadian subsidiary with both equity and interest-bearing debt, there is significantly less combined Canadian Part I and Part XIII income tax imposed on

corporate earnings that are distributed to the non-resident as interest on the shareholder debt when compared to an after-tax distribution of those earnings as a dividend on the non-resident's shares.[3] To discourage a non-resident shareholder from capitalizing a Canadian corporation with interest-bearing debt that exceeds the amount that Parliament considers to be reasonable in relation to the equity that the non-resident shareholder directly or indirectly holds in the Canadian corporation, the thin capitalization rules operate to deny the Canadian corporation's deduction for interest expense on any portion of its aggregate debt to the non-resident shareholder (or non-resident persons who do not deal at arm's length with the non-resident shareholder) that exceeds the permitted debt-to-equity ratio under the thin capitalization rules. Currently, the permitted debt-to-equity ratio is 1.5 to 1 (i.e., 60% debt and 40% equity).

[19] Subsection 18(4) of the Act contains the main charging provision for disallowing interest expense under the thin capitalization rules. As noted above, a taxpayer's interest expense on debt to certain non-residents is disallowed to the extent such interest is attributable to a portion of the debt that exceeds 1.5 times shareholder equity in the taxpayer corporation for the year. However, subsections 18(4) to (8) contain various definitions and formulae that need to be applied and evaluated to determine whether, and the extent to which, the thin capitalization rules operate to deny interest expense in any given taxpayer situation. Is the Minister's Reliance on the Thin Capitalization Rules a Permissible Alternative Basis or Argument under Subsection 152(9) of the Act? [20] Subsection 152(9) of the Act provides as follows:

- (9) At any time after the normal reassessment period, the Minister may advance an alternative basis or argument – including that all or any portion of the income to which an amount relates was from a different source – in support of all or any portion of the total amount determined on assessment to be payable or remittable by a taxpayer under this Act unless, on an appeal under this Act
  - (a) there is relevant evidence that the taxpayer is no longer able to adduce without leave of the court; and
  - (b) it is not appropriate in the circumstances for the court to consider that the evidence be adduced.

[21] This version of subsection 152(9) came into force December 15, 2016 and applies to appeals that were instituted after the coming-into-force date, such as the present appeal.

[22] The Department of Finance Technical Notes issued concurrently with the release of the current version of subsection 152(9)[4] indicate that the 2016 amendments were made to address a then recent decision of the Federal Court of Appeal in Last[5] and ensure that, on a court appeal of the Minister's reassessment under the Act, the Minister is entitled to support the reassessment using any new bases or arguments, provided that the total amount assessed as being payable by the taxpayer under the new basis or argument does not increase.

- [23] In *Last*, the taxpayer was appealing both income tax and GST/HST reassessments in connection with his activities over several years. On the income tax side, the taxpayer was appealing the Minister's reassessments to include additional income from (i) the operation of a car-related business, (ii) short-term rental of his personal residence property, and (iii) the disposition of shares of a technology company. The Minister had assessed the share disposition on the basis that the gain was a capital gain but the Tax Court found that the gain arose from the taxpayer's business of dealing in those shares; the taxpayer was seeking to have the gain treated as business income to facilitate the deduction of certain items as expenses incurred in the course of operating that business.
- [24] The *Last* case is a meaningful one for the interpretation of the previous version of subsection 152(9) because of how the Tax Court and the Federal Court of Appeal each addressed the Minister's position that, in light of the Tax Court's finding that the taxpayer was carrying on a business of trading in the company shares, the portion of the gain that was previously regarded as the non-taxable portion of a capital gain should instead be treated as additional business income for the year. In taking this position, the Minister was not seeking to increase the total tax payable in the reassessment under appeal but was instead looking to offset the additional deductions that the Tax Court was planning to allow in connection with the taxpayer's car business and the short-term rental of his personal residence.
- [25] The wording of subsection 152(9) applicable to the *Last* case was the same as it was when the provision was introduced into the Act in 1999, as follows:
- (9) The Minister may advance an alternative argument in support of an assessment at any time after the normal reassessment period unless, on an appeal under this Act
- (a) there is relevant evidence that the taxpayer is no longer able to adduce without leave of the court; and
- (b) it is not appropriate in the circumstances for the court to consider that the evidence be adduced.
- [26] The Tax Court in *Last* found that, notwithstanding the language in former subsection 152(9) of the Act, the Federal Court of Appeal decisions in *Pedwell*[6] and *Loewen*[7] applied to prevent the Tax Court from ordering the Minister to reassess to increase the taxpayer's income attributable to the share disposition. The Federal Court of Appeal upheld the Tax Court's conclusion on the point, finding that, although the issue in an appeal of a reassessment is the correctness of the amount assessed, the jurisprudence had also established that a taxpayer cannot be liable for more tax than the amount assessed in the reassessment under appeal and that the question of whether more tax would result must be evaluated on a source-by-source basis.[8] The Federal Court of Appeal found that, notwithstanding the permissive language in subsection 152(9), the guiding principle is that there can be no increase to the amount of the assessment under the alternative argument and, since the Federal Court of Appeal determined that the question had to be examined on

a source-by-source basis, the Minister's alternative argument that the full gain from the share disposition was business income offended that rule, since that position would have caused the income from dealing in the shares to go from \$301,565 to \$601,135.

- [27] When one compares the current version of subsection 152(9) to that of its predecessor, it becomes readily apparent that the 2016 amendment was intended to legislatively overrule the source-by-source approach applied in the Last appeal and give the Minister the ability to rely on subsection 152(9) to advance an alternative argument to support a reassessment, even if the alternative argument pertains to a different source from the one that caused the Minister to issue the reassessment under appeal.
- [28] The 2016 amendment introduced two other changes. First, the 2016 amendment changed the wording of the scope of subsection 152(9) from an "alternative argument" to an "alternative basis or argument". The 2016 amendment did not include any guidance for distinguishing between an alternative argument and an alternative basis and this aspect of the amendment is not referenced in the Department of Finance Technical Notes. One can only assume that the Department of Finance was concerned that the phrase "alternative argument" could be (or was being) judicially restricted to new assessing positions that supported an increase of tax in connection with the same set of facts that led the Minister to determine the amount of tax originally assessed. Second, seemingly to underscore that the focus of the Minister's right under subsection 152(9) is in relation to the amount assessed under an assessment, the 2016 amendment replaced "in support of an assessment" with "in support of all or any portion of the total amount determined on an assessment to be payable or remittable by a taxpayer under this Act".
- [29] The Technical Notes make it clear to me that, aside from overriding the holding from Last that the Minister cannot rely on subsection 152(9) of the Act to make alternative arguments that involve different sources of income, the changes to subsection 152(9) were also made to reflect the government's view that the issue in an appeal of an assessment is the dollar amount assessed, and to allow the Minister to support a reassessment using the broadest range of possible alternative approaches, subject to the express limitations set out in paragraphs 152(9)(a) and (b), provided that the amount payable under the reassessment does not increase.
- [30] As previously noted, under the Part I Reassessments, the Minister reassessed the Appellant to disallow interest expense on \$300,000,000 of borrowing on the basis that the purpose test in paragraph 20(1)(c) of the Act was not met. It is clear to me the Respondent's assertion that subsection 18(4) of the Act could also apply to disallow the Appellant's deduction of some or all of that same interest expense is an alternative argument to support that very adjustment.
- [31] I find that the Respondent's proposed amendment to the Amended Reply to include the Thin Cap Amendments reflects an alternative basis or argument that is allowed by current subsection 152(9) of the Act, particularly when subsection 152(9) is interpreted with an understanding of how and why that provision was amended in 2016, as discussed above.

- [32] Before leaving the discussion under this heading, I want to address the Appellant's submission that, if the full effect of the thin capitalization rules are applied to the entirety (and not just \$300,000,000) of the Appellant borrowings in the manner contemplated by the Thin Cap Amendments, the Appellant's deductible interest expense should be reduced beyond the amount disallowed in the Part I reassessment for the 2012 taxation year by a further \$753,436.[9] However, in paragraphs 29(c) and 50 of the Respondent's proposed Reamended Reply, the Respondent pleads that it relies on the thin capitalization rules to support only the amount of interest expense that was already disallowed under the Part I reassessments for the 2012 and 2013 taxation years and all but \$1,400,000 of the amount that was already disallowed for the 2014 taxation year. Therefore, even though the thin capitalization rules could theoretically apply to increase the amount of interest expense disallowed for the 2012 taxation year from the amount reflected in the Part I reassessment of the Appellant for 2012, the Respondent is not relying on the Thin Cap Amendments to increase the amount of Part I tax that is payable from the amount assessed under any of the Part I Reassessments. Do the Thin Cap Amendments Reflect an Assessment of Tax for a Different Transaction? ... And Would It Matter If That Was the Case? [33] A considerable portion of the Appellant's written and oral submissions were directed at trying to demonstrate to the Court that the denial of interest expense on a borrowing on the basis of the thin capitalization rules would be an assessment of a different transaction from the one that was assessed under the Part I Reassessments to disallow interest expense on the Appellant's borrowings.
- [34] The Appellant did so because it relies on the Federal Court of Appeal's decision in TPine Leasing Capital Corporation,[10] which canvassed the previous jurisprudence of that court concerning the amendment of pleadings by the Minister to raise new arguments and then stated that "[t]his Court has not allowed the Minister to raise a new argument based on a transaction that did not form the basis on which a taxpayer was assessed."[11]
- [35] However, while the current version of subsection 152(9) of the Act is the one that applied to the taxpayer's appeal in the TPine Leasing case, the Federal Court of Appeal in that case addressed the question of whether the Minister was entitled to amend its pleading on the basis of the pre-2016 version of subsection 152(9). The Federal Court of Appeal's rationale for doing so was, as follows:
- [39] Since there are a number of decisions that address the prior version of subsection 152(9) of the Act, the starting point will be to determine if the proposed amendment to the Minister's reply would have been allowed under the prior version of subsection 152(9) of the Act. If so, then since the amended version of subsection 152(9) does not impose any further restrictions on what alternative argument may be raised, there would be no need to consider what additional argument or basis would be permitted based on the amended version of subsection 152(9) of the Act.

- [36] The Federal Court of Appeal thus found that, since the previous version of subsection 152(9) would have allowed the Minister to raise the alternative argument that it was seeking to make through the amendment of its pleading, it did not need to go on to consider what the analysis would have been under the amended version of subsection 152(9) because the 2016 amendments broadened the Minister's rights to rely on alternative basis or argument for assessment.
- [37] With respect to the concept from the earlier jurisprudence that an alternative argument would have to reflect the tax consequences from the same transaction as the original argument, the Federal Court of Appeal in *TPine Leasing* stated, as follows [underlining added]:
- [90] To what extent the amendments to subsection 152(9) of the Act would allow the Minister to advance an alternative basis or argument will be decided on a case-by-case basis. The principles that the Minister cannot appeal an assessment and the Minister cannot reassess beyond the normal reassessment period are still valid principles that would need to be taken into account in determining what alternative basis or argument the Minister may advance. In interpreting and applying the previous version of the Act, this Court has also limited an alternative argument to the same transaction that is in dispute. It is not clear how the amendments [to subsection 152(9)] would alter this principle.
- [38] From the foregoing excerpt, it is clear that the Federal Court of Appeal did not take a position on whether the 2016 amendments to subsection 152(9) overrode the concept that the alternative argument must relate to the same transaction.
- [39] I find that the 2016 amendments were effective to override any prior limitation that had developed in the case law about alternative arguments being limited to the same transaction. If, as discussed earlier, Parliament expressly states that the Minister is allowed to construct an alternative argument pursuant to subsection 152(9) based on facts that relate to a entirely different source of income from the one that was the original basis for the assessment, in my view, it is not possible thereafter to maintain an interpretation of subsection 152(9) that requires an alternative argument to be built around the same transaction on which the Minister originally relied to issue the reassessment under appeal.
- [40] However, should I be incorrect in finding that the 2016 amendment to subsection 152(9) overrode the requirement from prior case law that the tax under the alternative argument had to be derived from the same transaction that produced the originally assessed tax, I have no difficulty concluding that the transaction that creates the additional Part I tax payable for the Appellant under the argument outlined in the Thin Cap Amendments is the same transaction that produced the additional Part I tax payable under the Part I Reassessments; in each case, the relevant transaction is the outstanding borrowing of \$300 million incurred in the course of carrying on a business, which carried with it the legal obligation to pay interest for the use of that borrowed money.

- [41] Of course, when one is considering whether interest expense meets the requirements of the purpose test in paragraph 20(1)(c) of the Act, on one hand, and the thin capitalization rules, on the other hand, the set of facts that are relevant for evaluating the requirements in each instance are not the same. For example, among the facts that are relevant to an argument based on the thin capitalization rules are certain tax or tax-related attributes – such as paid-up capital of the Appellant’s common shares or the portion of the Appellant’s outstanding debts to specified non-residents – that are derived from transactions that are not relevant to the paragraph 20(1)(c) purpose test. But, under both arguments, the transaction that is the subject of the assessment disallowing the interest expense remains the same, which is the borrowing that established the Appellant’s obligation to pay the interest expense in the first place.
- [42] I understood the Appellant to be arguing that an assessment disallowing interest expense based on the thin capitalization rules involves a different transaction because there are several transactions that must be taken into account when computing the relevant tax attributes for applying the thin capitalization rules and those other transactions were never contemplated by the Minister as part of the examination of the taxpayer’s purpose for the borrowing. However, this would be akin to arguing that, where the Minister reassessed a taxpayer to increase the capital gain on the disposition of capital property on the basis of underreported proceeds, a new argument based on the cost for the property being lower than reported would somehow involve the assessment of a different transaction because the transactions that are relevant for establishing the taxpayer’s cost for the property were not part of the Minister’s process of quantifying the amount of the proceeds from the sale. That would be an untenable argument to make in that situation and the Appellant’s assertion that disallowance on interest expense based on the thin capitalization rules involves the assessment of a different transaction in the context of the Part I Reassessments in this motion is equally untenable. Would Allowing the Thin Cap Amendments Result in Prejudice to the Appellant? [43] I accept that the Appellant has the onus of proving that it would suffer prejudice from allowing the amendment to the Respondent’s pleading that is not compensable by costs.
- [44] The only potential prejudice that the Appellant has identified was the fact that the Appellant no longer has possession of the corporate minute books at the present time to demonstrate that a \$52 million subscription for equity in the Appellant was made in March 2013.
- [45] However, in its oral and written submissions, the Respondent stated that it was prepared to concede that the equity injection occurred on March 28, 2013,[12] respectively. In light of the Respondent’s concession, there will be no prejudice to the Appellant arising from the fact that the Appellant does not have access to the relevant minute books to use as evidence at the hearing of the appeal.
- [46] Since there are no other instances of potential prejudice that the Appellant has sought to prove in connection with the Thin Cap Amendments, this cannot be a basis for denying the Respondent’s filing of the proposed amendments to the Amended Reply. DISPOSITION [47]

For the reasons outlined above, the Respondent's motion is allowed and the Respondent will be permitted to file the proposed Reamended Reply as an amended pleading, but shall reflect the Respondent's concession that the timing of the \$52 million equity injection occurred on March 28, 2013 (which requires a modification to the content of paragraph 27.1(e) and possibly paragraphs 29(c) and 50 of the Reamended Reply).

- [48] To ensure that the Respondent's amended pleading conforms with the requirements of subsection 55(1) of the Tax Court of Canada Rules (General Procedure), the Respondent shall file its amended pleading with the title "Second Amended Reply".
- [49] The Respondent shall have until October 24, 2025 to file and serve the Second Amended Reply.
- [50] If the Appellant wishes to file a pleading in response to the Second Amended Reply, the appropriate pleading would be an Answer. Should the Appellant wish to do so, the Appellant shall have until 30 days after service of the Second Amended Reply or the resolution of an appeal to the Federal Court of Appeal of the order disposing of the Respondent's motion to file and serve its Answer in response to the amendments reflected in the Second Amended Reply.
- [51] Costs of the motion will be in the cause. These Amended Reasons for Order are issued in substitution for the Reasons for Order dated August 6, 2025, in order to correct the words and dates underscored in paragraphs 45, 47, 49 and 50 hereof. Signed this 3rd day of October 2025. "John C. Yuan" Yuan J. APPENDIX A – REAMENDED REPLY CITATION: 2025 TCC 107 COURT FILE NO.: 2020-1513(IT)G STYLE OF CAUSE: OLDCASTLE BUILDING PRODUCTS CANADA INC. AND HIS MAJESTY THE KING PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: April 17, 2025 AMENDED REASONS FOR ORDER BY: The Honourable Justice John C. Yuan AMENDED DATE OF ORDER: October 3, 2025 APPEARANCES: Counsel for the Appellant: Geneviève Léveillé Rémi Danylo Steven Huryn Counsel for the Respondent: Dany Leduc Sara Jahanbakhsh Caroline Berthelet COUNSEL OF RECORD: For the Appellant: Name: Geneviève Léveillé, Rémi Danylo, Steven Huryn Firm: PWC LAW LLP For the Respondent: Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada
- [1] See the first bullet point of paragraph 49 of the proposed Reamended Reply.
- [2] The Respondent relies on the Federal Court of Appeal decisions in *Canderel Ltd.*, [1994] 1 FC 3, and *Polarsat Inc.*, 2023 FCA 247.
- [3] The thin capitalization rules were extended in 2012 and 2013 to apply to Canadian partnerships and Canadian-resident trusts, respectively.
- [4] Department of Finance Technical Notes for Amendments to subsection 152(9) of the Income Tax Act (October 21, 2016).
- [5] 2014 FCA 129.

- [6] [2000] 4 FC 616 (FCA).
- [7] 2004 FCA 146.
- [8] Supra, note 5, para. 31.
- [9] See paragraph 87 of the Appellant's Written Submissions.
- [10] 2024 FCA 83.
- [11] Ibid., at paragraph 85.
- [12] Paragraph 77 of the Respondent's Written Submissions.
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