

BETWEEN:

ABDIWELI MOHAMED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion decided on the basis of written representations, without an oral hearing.

Before: The Honourable Justice Michael U. Ezri

Appearances:

|                             |                           |
|-----------------------------|---------------------------|
| For the Appellant:          | The Appellant himself     |
| Counsel for the Respondent: | Alanah Smith, Aidan Geary |

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**ORDER**

[1] The appellant's notice of constitutional question (NCQ) filed October 6, 2025 is struck but with leave to amend on the following terms and conditions:

- a. The amended NCQ must specify the enumerated or analogous grounds of discrimination in section 15 of the *Charter* upon which he intends to rely, including if he wishes, a reference to immigration status.
- b. The amended NCQ must specify the provisions of Treaty 5 upon which he wishes to rely.
- c. The amended NCQ must specify the provisions of the *Indian Act* upon which he wishes to rely.

[2] The appellant's document dated October 30, 2025 and entitled, "motion for leave to include sections 25 and to clarify sections 15 and 35 of the previous notice of constitutional question" is accepted for filing.

[3] The appellant's 12 page document October 31, 2025 entitled "submission of the appellant" is accepted for filing.

[4] The remaining documents sent to this Court by the Appellant between October 30 and November 1, 2025 and referenced in the reasons for order, herein, are not accepted for filing and are to be returned to the appellant.

Signed this 10<sup>th</sup> day of November 2025.

\_\_\_\_\_  
"Michael Ezri"

Ezri J.

Citation: 2025-TCC-168

Date: 10-11-2025

Docket: 2025-1242(IT)I

BETWEEN:

ABDIWELI MOHAMED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR ORDER**

Ezri J.

[1] The issue under appeal is whether the appellant was improperly denied child tax benefit credits under s. 122.6 of the *Income Tax Act* (ITA). The appellant raises constitutional and aboriginal treaty rights in response to the denial.

[2] I am issuing this Order in the hopes of:

- a) Stemming the avalanche of material being sent to this Court primarily by the appellant and contrary to an Order of this Court; and
- b) Giving the appellant a chance to file a further amended Notice of Constitutional Question as soon as possible given that the trial is fast approaching as is the deadline to file and serve any such amended notice of constitutional question.

[3] There have been two trial management conferences (September 4, 2025 and October 28, 2025), and two trial management Orders issued in respect of this matter, one dated September 10, 2025 (Order #1) and a second one dated October 3, 2025 (Order #2).

[4] The appellant had ostensibly filed a notice of constitutional question (NCQ), prior to September 4, 2025 call, but there was some doubt as to what documents constituted that notice and what documents had been served as required by section

19.2 of the *Tax Court of Canada Act*. Order # 1 granted the appellant until September 19, 2025 to so amend but required that the amended notice include:

- a) A very concise summary of the material facts that relate to the constitutional question;
- b) A statement of the legal basis for the question including which provisions of the *Charter of Rights and Freedoms* are invoked by the appellant; and
- c) A statement of which Aboriginal or Treaty Rights are invoked by the appellant;

[5] The appellant filed a revised NCQ on September 4, 2025 even before Order #1 came out.

[6] In the weeks following the September 4, conference call, this Court was inundated with filings from the appellant which were detailed in Order #2.

[7] Parties are not free to simply send submissions and correspondence to this Court. The documents sent for filing must be those prescribed by the Rules of this Court or those requested by the Court such as when it seeks the position of a party in response to a request for an adjournment or a request to amend pleadings. Put simply, a person planning to send a document to this Court in the Informal Procedure needs to first ask himself a simple question: “What step in the court process is being addressed or advanced by my proposed filing?” A notice of appeal, a reply, a notice of constitutional question, a request for an interpreter, an expert report, or some other document contemplated by the rules can be sent for filing. Documents in the nature of unsolicited submissions about the merits of the appeal should not be sent to the Court except perhaps a single set of written submissions and a list of authorities which can be useful filed before trial. That is particularly so in this Court’s Informal Procedure which is intended to move cases to trial with a minimum of pre-trial procedure and filings.

[8] One of the few documents sent by the appellant after Order #1 came out, that was appropriately sent, was a request dated September 22, 2025 to further amend his NCQ to raise s. 25 of the *Charter*. The respondent provided a long responding submission and on October 3, 2025, Order #2 was issued. That Order denied the appellant leave to file the proposed amended NCQ based on deficiencies identified

by the respondent, but it did provide that the appellant could seek leave to file an amended NCQ on the following terms:

[15] The appellant is free to seek leave to file an amended NCQ that invokes s. 25 of the *Charter* but only to the extent that the proposed amended NCQ specifies the precise Aboriginal right that is in issue including the statute, treaty or other document that creates the right and the sections of that statute, treaty or other document that are relied upon by the appellant

[9] On October 6, 2025, the appellant filed an amended NCQ. That was the third iteration of the NCQ, the first being the one that circulated before, Sept. 4, the second being the September 4, document, which itself appears to have been filed more than once, and then the October 6, 2025 NCQ.

[10] Order #2 also made it clear to the appellant that he was not free to simply send correspondence to this Court at his discretion. Order #2 provided that:

16. Unless leave is given, the appellant is not to file, and the Registry of this Court is not to accept for filing any evidence or any further legal arguments or submissions from the appellant, except for:

- a. The proposed amended NCQ that conforms to the terms of this Order;
- b. a document that is explicitly permitted to be filed under the Tax Court of Canada Act or this Court's Informal Procedure Rules; or
- c. A document or submission that is requested by this Court.

[11] During the second conference call on October 28, 2025, the respondent took issue with the October 6 NCQ and was invited to formally object to it. The respondent did so by a letter dated October 30, 2025. That letter also sought an adjournment of the hearing given that there are pending appeals are likely to impact the outcome of this case and which I reproduce here for convenience:

- a) *Quebec (AG) v Kanyinda* (SCC docket 41210, currently under reserve); and
- b) *Yao v R*, 2024 TCC 19, now under appeal in Federal Court of Appeal as *Zhang v R* Court File A-104-24;

[12] The request for adjournment has now been denied in a separate decision of this Court.

[13] The appellant responded to the respondent's letter with a further deluge of correspondence of his own, namely:

- a) "Motion for Leave to Include Section 25 and Clarify Sections 15 and 35 in the Notice of Constitutional Question" (the "Motion");
- b) "Submission of the Appellant" a 12 page document describing the appellant's financial and other circumstances followed by a mixture of facts and arguments along with reasons for opposing the respondent's adjournment request;
- c) "Submission of the Appellant" a four page document relating to the appellant's immigration status and a mixture of arguments about the legal status of the appellant's children;
- d) "Supplemental submission-Humanitarian, Legal and Constitutional Context" a four page document that again contains a mixture of facts and arguments about the appellant's legal status and the status of his children;
- e) "Reasons for Decision..." this 16 page document appears to be an immigration related decision from 2023;
- f) An untitled one page document prepared by the appellant regarding his immigration status; and
- g) "Supplemental Clarification of Legal Status", a two page document regarding the appellant's legal status.

[14] Only the first two documents are acceptable for filing with this Court. The first document a response to the respondent's objections to the October 6, NCQ. The second document though it contains submissions on the merits did address the adjournment request and so it can be filed. All the other correspondence is to be returned to the appellant as having been send to this Court contrary to Order #2.

[15] I turn then to the question of what should be done with the October 6, 2025 NCQ. I think further clarifications are required. I say that having regard to three pressing concerns:

- a) The respondent is entitled to know the case that he has to meet;

- b) The procedural burden created by an NCQ should not be so high as to present an insurmountable obstacle to a self-represented litigant; and
- c) The appellant is almost out of time to file and serve on this Court and on the Attorneys General of Canada and of all the Provinces a fourth iteration of the NCQ.

[16] I also take into account that in the appellant's Motion, he wished to amend the NCQ in a way that he at least thought was responsive to the concerns of the appellant.

[17] Set out below in table form are the parts of the NCQ objected to by the respondent, the reasons raised by the respondent for the objection and the appellant's position in his Motion. I have edited and paraphrased for brevity:

| <b>The Current amended NCQ</b>                                                                                                                                                                                                                                                                                               | <b>The Objections</b>                                                                                                                                                            | <b>Appellant's response per his "Motion"</b>                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The denial of the CCB on the basis of immigration status deprives his children of essential financial support for their health, development and cultural welfare. This denial:</p> <p>Discriminates against the children contrary to section 15 of the <i>Charter</i> by treating them unequally to other children...</p> | <p>Underlined portion of the NCQ is unclear about grounds of discrimination. If discrimination based on immigration status then strike and replace the underlined provision.</p> | <p>Section 15 is invoked to protect his children from discrimination based on the Appellant's immigration status.</p> <p>Section 15 protects the Appellant's children from discrimination, ensuring equality with other Canadian children, including indirect discrimination arising from the Appellant's immigration status.</p> |
| <p>...This denial:...</p> <p>Diminishes protection of their Indian Act and Treaty 5 rights contrary to section 25 and 35;</p>                                                                                                                                                                                                | <p>Section 25 is not a rights conferring provision; appellant has not identified an irreconcilable conflict between a right protected</p>                                        | <p>Section 25 acts as a protective shield, ensuring that Section 15 is applied without diminishing the Aboriginal and treaty</p>                                                                                                                                                                                                  |

|                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                               | <p>by s. 25 of the <i>Charter</i> and any other <i>Charter</i> right.</p> <p>Appellant's NCQ does not satisfy this Court's Oct 3 Order that Appellant specify the precise Aboriginal right that is in issue including the statute, treaty or other documentation that creates the right and the section of that statute, treaty or other document that are relied upon by the appellant.</p>                                                                                                     | <p>rights recognized under Section 35. In this way, Section 25 safeguards both the equality rights of the children and the constitutional and treaty rights under Section 35.</p>                                                    |
| <p>...This denial:...</p> <p>Diminishes protection of their Indian Act and Treaty 5 rights contrary to section 25 and 35;</p> | <p>...the NCQ does not identify the precise rights or provisions under Treaty 5 that are allegedly infringed by s. 122.6 of the ITA.</p> <p>...An aboriginal right protected by s. 35 is an activity that forms an element of a practice, custom or tradition that is integral to the distinctive culture of the Aboriginal group claim the right. S. 87 of the <i>Indian Act</i>...protects the personal property of Indian...which is situated on a reserve from taxation...s. 87...cannot</p> | <p>Section 35 recognizes and affirms the Indigenous and Treaty rights of the Appellant's children; the denial of CCB constitutes a direct infringement of these rights, affecting welfare, sustenance, and cultural development.</p> |

|  |                                                                    |  |
|--|--------------------------------------------------------------------|--|
|  | form the basis of an aboriginal right within the meaning of s. 35. |  |
|--|--------------------------------------------------------------------|--|

## Section 15

[18] The appellant has failed to identify the relevant enumerated and/or analogous grounds that upon which he wishes to rely.

[19] Section 15 of the *Charter* sets out certain specific enumerated grounds of discrimination such race, religion, ethnic origin etc. In addition, s. 15 has been understood to protect everyone from types of discrimination that are not expressly set out in s. 15 but that are analogous such as sexual orientation.

[20] The Supreme Court has described s. 15 as, “the most conceptually difficult provision”<sup>1</sup> of the *Charter*. It is therefore important to have a tolerably clear statement in the NCQ as to the particular ground of discrimination, rather than simply a statement that s. 122.6 discriminates between the appellant’s children and other children. Many tax provisions, indeed most provisions of any law make distinctions between persons. It is only the distinctions that are based on enumerated or analogous grounds either on their face, or their impact that engage a s. 15 *Charter* analysis.

[21] The NCQ as it now stands does not set out the grounds of discrimination. In his Motion, the appellant refers to immigration status as the basis of the claim, but I prefer that this statement be included in the NCQ rather than being contained in a separate document. Any other enumerated or analogous grounds relied on by the appellant must also be identified.

[22] I want to be clear that just because the appellant can raise the issue of immigration status as an analogous ground in the NCQ does not mean that I agree that immigration status is an analogous ground. That matter is to be determined based upon the facts and the law.

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<sup>1</sup> This statement was recently repeated by the Supreme Court in *Sharma v R*, 2022 SCC 39, at para 34.

## Section 25

[23] My Order #2 required the appellant to specify the sections of any treaties or statutes relied upon.

[24] The NCQ as framed invokes Treaty #5 but without specifying the relevant language or provision of the Treaty that is relied upon. The appellant must file an NCQ that specifies the Treaty provisions that are infringed by s. 122.6 of the ITA.

[25] The appellant can, if he wishes, also amend his reference to s. 25 of the *Charter* in accordance with the wording of his Motion.

[26] The respondent's other concern that s. 25 is not a rights conferring provision, shades into an argument on the merits of the appellant's position and is best addressed at trial rather than through the NCQ process.

## Section 35 and the *Indian Act*

[27] The NCQ as framed invokes the *Indian Act*, but without specifying the relevant provision of that Act. The appellant must specify the provisions of the *Indian Act* upon which he relies.

[28] The respondent refers to s. 87, but it is not clear to me whether s. 87 is the relevant provision relied on by the appellant. I make no comment on the respondent's assertion that s. 87 cannot form the basis of a s. 35 claim. This is also a matter that goes to the merits of the case.

[29] The appellant can, if he wishes, also amend his reference to s. 35 NCQ in accordance with the wording of his Motion.

## Next steps

[30] In order to give effect to these reasons, I must strike the current NCQ filed on October 6. The appellant will have to file his amended version of the NCQ and serve it on the respondent and the Attorney's General of Canada quickly so that he does not run afoul of the 10 day rule set out in s. 19.2 of the *Tax Court of Canada Act*.

Signed this 10<sup>th</sup> day of November 2025.

“Michael Ezri”

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Ezri J.

CITATION: 2025-TCC-168

COURT FILE NO.: 2025-1242(IT)I

STYLE OF CAUSE: ABDIWELI MOHAMED AND HIS  
MAJESTY THE KING

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: Written submissions only

REASONS FOR ORDER BY: The Honourable Justice Michael U. Ezri

DATE OF ORDER: November 10, 2025

APPEARANCES:

|                             |                           |
|-----------------------------|---------------------------|
| For the Appellant:          | The Appellant himself     |
| Counsel for the Respondent: | Alanah Smith, Aidan Geary |

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

|                     |                                                                                |
|---------------------|--------------------------------------------------------------------------------|
| For the Respondent: | Shalene Curtis-Micallef<br>Deputy Attorney General of Canada<br>Ottawa, Canada |
|---------------------|--------------------------------------------------------------------------------|