Federal Court  Cour fédérale

Date: 20210630

Docket: T-1367-19
T-1368-19

Citation: 2021 FC 693

Ottawa, Ontario, June 30, 2021

PRESENT: The Honourable Madam Justice Elliott

Docket: T-1367-19

BETWEEN:

NICK LIBICZ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1368-19

AND BETWEEN:

AARON VAAGE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. **Overview**

[1] This application for judicial review concerns a January 29, 2019 decision by the Canada Revenue Agency (CRA) to temporarily withdraw, as opposed to permanently renounce, two certificates that it filed in this Court for the purposes of taking collection action against Mr. Nick Libicz and Mr. Aaron Vaage (the Applicants) in their capacities as Directors of Artisan Homes Inc. (Artisan) for arrears of Goods and Services Tax (GST) owing by Artisan.

[2] The Applicants' primary argument is that the CRA action was unreasonable because it contravened the National Collections Manual *(*2015-01*)* ("the 2015 Manual") that was in effect at the time they submitted their notices of objection of the CRA's notice of assessment on April 20, 2016 made pursuant to s.301(1.1) of the *Excise Tax Act*, RSC 1985, c E-15 (*ETA*).

[3] The CRA, represented by the Attorney General of Canada, says that the 2015 Manual was superseded in November 2016 by an InfoZone communication from the Director of CRA's Collections Enforcement Division ("the 2016 Directive") and the Applicants are relying on out of date information.

[4] These and other arguments made by the parties are addressed further below. Relevant legislation referred to can be found in the attached Annex.

[5] By Order of Prothonotary Ring dated October 2, 2020, in her capacity as Case Management Judge, these applications were ordered to be heard together. As each application

contains essentially the same certified tribunal record and nearly identical memoranda, I elected to hear them both at the same time.

[6] For the reasons that follow, the applications are dismissed.

II. **Jurisdiction**

[7] When considering matters arising under the *ETA* it is important to confirm the jurisdiction of this Court since the TCC generally has jurisdiction over tax matters.

[8] I find that this Court has jurisdiction in this matter as the decision being challenged concerns the legality of collection measures taken by the Minister to collect taxes allegedly due: *Walker v Canada*, 2005 FCA 393, para 15.

III. **Relevant Facts**

[9] The facts are not in dispute. The timeline of several keys events are important facts.

[10] On February 17, 2016, pursuant to subsection 323(l) of the *ETA*, the CRA issued notices of assessment (Memo Assessments) against the Applicants for arrears of goods and services tax owing by Artisan in the amount of $550,000.

A. *The Objections*

[11] On April 20, 2016, the Applicants, who were self-represented at the time, faxed to the CRA two Notices of Objection (“Objections”) disputing the assessments.

[12] The Applicants also filed Objections under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*] for those assessments, and appealed the assessments to the Tax Court of Canada.

[13] At the time of the hearing of this matter, the appeals had not been heard.

[14] On January 31, 2018, a CRA collections officer emailed an appeals officer concerning the appeal status of the Applicants' accounts. The goal of the collections officer was "to confirm that the Objection for the related RT account was also confirmed without agreement so that I may continue with legal action on that account".

[15] The appeals officer replied shortly thereafter that there was no memo assessment on the RT account when the taxpayers' names were run through the system; "the only objections that were filed and completed were for the RP account memos." (my emphasis)

[16] An RP account refers to payroll deductions under the *ITA*. An RT account refers to GST/HST payments under the *ETA*. The only Objections on file were for the *ITA* assessments.

[17] At some time in March 2018, the Applicants retained counsel (counsel) to deal with the Objections.

[18] On March 12, 2018, the Minister certified under subsection 316(1) of the *ETA* that each of the Applicants, and Artisan, were indebted for taxes under the Memo Assessments. At that time, the debt was $616,502.43 including interest.

[19] On March 21, 2018, counsel telephoned the collections officer and advised them that Objections had been filed with the CRA in April 2016.

[20] On March 28, 2018, counsel sent a follow-up letter, directed to the attention of the relevant Chief of Appeals advising that Objections had been filed on April 20, 2016. Counsel requested confirmation of same and enclosed copies of the original Objections. Counsel also requested that the Objections be "retroactively re-opened".

[21] Copies of the Objections for the RP and RT accounts are not in the underlying record.

B. *Certificates are Registered, Removal is Demanded*

[22] The Recorded Entries for the Court show that on April 6, 2018 the certificates were registered as being filed and a writ of search and seizure was electronically issued to a Sheriff.

[23] Under subsection 316(2) of the *ETA*, the certificates, once registered, have the same effect as a judgment of this Court against the debtor for the amount certified. The certificates can then be enforced under the *Federal Courts Rules*, SOR/98-106.

[24] On April 24, 2018, the CRA Chief of Appeals, in a form letter sent to each Applicant, confirmed receipt of the Objections and provided generic information as to next steps. Counsel was copied on the letters.

[25] On September 12, 2018, counsel wrote to the Team Leader, Collections Division, after being advised by the collections officer earlier that day that the certificates were being

withdrawn. Citing directly from the 2015 Manual, counsel indicated that as the debt was certified in error CRA "must release the certificate". Counsel demanded "the immediate cancellation and removal" of the certificates registered against the Applicants and that copies of the Renunciation certificates be provided.

C. *Certificates are Withdrawn, Renunciation is Refused*

[26] On September 13, 2018, an appeals officer responded to an email dated September 12, 2018 from the collections officer inquiring about the effective date of the Applicant's appeals. The appeals officer indicated that the original Objections were on the ITA payroll form and did not refer to GST/HST. One of the forms also had the incorrect assessment number. The officer indicated that on March 28, 2018 counsel sent copies of the original Objections and had noted that the Objections were not processed. The officer's conclusion was that "[s]ince the Objections were received on April 20, 2016 and the aging date is April 20, 2016, we should use that date for the collection restrictions."

[27] ACSES computer notes dated the same day also show that a collections officer verbally advised counsel that the Objections had been backdated, and were effective April 20, 2016. Counsel was told that CRA would be withdrawing the certificate and writ for both Applicants "as the debt is now considered to be certified in error."

[28] On January 29, 2019, withdrawals of the certificates against the Applicants were filed with the Court. According to ACSES notes, the certificates were withdrawn on February 6, 2019. There is no record that this fact was communicated by CRA to counsel at the time.

[29] On February 12, 2019, counsel contacted the CRA to say that the writs were not removed as discussed and as set out in the procedures. They were withdrawn, not renounced or satisfied. Counsel was advised by CRA that those procedures were outdated and withdrawal was the correct course of action. ACSES notes for that conversation show that the officer informed counsel that "those procedures are outdated and as per CVB-2016-103 withdrawal was the correct course of action." (Note - CVB-2016-103 is the CRA document "Return and Release of Federal Court Documents".)

[30] On July 4, 2019, having received no written response to the September 12, 2018 letter demanding cancellation and release of the Certificates, counsel wrote to the Team Leader, Collections Division requesting a response. The letter advised that if no response was received by July 31, 2019, it would be interpreted as a denial of the request to release the certificates and an application would be made to this court to address the matter. ACES notes the letter was reviewed and that an answer had been provided verbally in October, 2018. (Note - an October 4, 2018 ACSES note confirms this conversation took place between counsel and an officer.)

IV. **The Decision under Review**

[31] The Decision under Review is a July 25, 2019 letter which stated that the position of the Applicants that "CRA must "release" the certificates is incorrect and is based on a misapprehension of the applicable law and on a CRA policy that was not in effect at any time relevant to this matter." (the Decision) It stated that CRA had withdrawn both certificates, but would not renounce them.

[32] The Decision stated that no objection or appeal was in place when the writs were filed on April 6, 2018. However, they were withdrawn when the subsequently allowed Objections were retroactively dated to a time before the filing of the writs.

[33] The Decision indicated that under the policy that replaced the 2015 Manual, renunciation of certificates is only provided for in certain situations, none of which aligned with the Applicants' circumstances. The Decision also noted that the 2015 Manual was no longer in effect when the CRA allowed the Applicants' Objections on April 17, 2018. Accordingly, the Decision concluded that the CRA properly followed its policy in withdrawing the certificates rather than renouncing them.

[34] The Decision observed that the 2015 Manual is internal policy and it was not the law.

[35] The Decision went on to explain that the Minister was under no legal obligation to stay the collection of a debt for directors' liability assessments under subsection 323(1) of the *ETA*. While section 225.1 of the *ITA* restricts the Minister from collecting on amounts assessed under the *ITA* for 90 days following the issuance of a notice of assessment or while an objection or appeal is outstanding, there is no equivalent provision under the *ETA*. CRA was not prohibited from certifying the assessed tax debts of the directors under section 323 of the *ETA* or requesting writs of seizure and sale pursuant to the filed certificates.

[36] Relying on *Alessandro v Canada*, 2006 FC 895 [*Alessandro*], the Decision said that it was not required to renounce certificates that were otherwise lawfully filed.

[37] The Decision reiterated that Part IX of the *ETA* contained no provision equivalent to section 225.1 of the *ITA*. It states that the CRA was not required to withdraw the certificates and it cannot be compelled to renounce them.

[38] The Decision concluded by noting that CRA had withdrawn the certificates against the Applicants on January 29, 2019 and "[a]s such the CRA will not "release" or renounce the certificates."

V. **Issues**

[39] The Applicants raise two issues: (1) was the Decision reasonable; (2) was the Decision procedurally unfair in that it failed to meet the Applicants' legitimate expectations?

[40] The essence of the dispute between the parties is whether the release of the certificates should be governed by the 2015 Manual (renunciation) or the 2016 Directive (withdrawal) that updated it.

VI. **Standard of Review**

A. *Presumptive Reasonableness Review*

[41] Judicial review of an administrative decision begins with a presumption that the applicable standard of review for all aspects of that decision is to be reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25. There are limited exceptions to this presumption, none of which apply in this case.

[42] Reasonableness review starts with the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision-makers. However, it is not a rubber-stamping process or a means of sheltering administrative decision makers from accountability. It is a robust form of review: *Vavilov* at para 13.

[43] A decision is considered reasonable where it is justified in relation to the facts and law constraining the decision-maker and is based on an internally coherent and rational chain of analysis. Where this is the case, "the reasonableness standard requires a reviewing court to defer to such a decision": *Vavilov* at para 85 (my emphasis).

[44] *Vavilov* also confirmed, citing *Dunsmuir v New Brunswick,* 2008 SCC 9, that a reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it. To set a decision aside, a reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency: *Vavilov* at para 100.

[45] A decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis. A reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up": *Vavilov* at paras 103 and 104.

[46] A reviewing court should refrain from reweighing or reassessing the evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances: *Vavilov* at para 125.

B. *Procedural Fairness Review*

[47] The question of whether the Decision was unfair because the Applicant had a legitimate expectation that was not met raises an issue of procedural fairness.

[48] The presumption of reasonableness does not apply to an issue involving a breach of natural justice or the duty of procedural fairness: *Vavilov* at para 23.

[49] On the other hand, review of a discretionary decision made by the Minister and interpretation of their home statute attracts the standard of reasonableness: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 (*Agraira*) at para 50.

[50] In fact, whether the duty of procedural fairness has been met does not require a standard of review analysis, although it is often referred to as a correctness review. The ultimate question to be answered by a reviewing Court is whether the Applicant knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at para 56.

[51] Keeping in mind the foregoing principles and the related jurisprudence, my analysis of the issues follows.

VII. **Was the Decision Reasonable?**

A. *Is the Decision Internally Incoherent?*

[52] The primary ground put forward by the Applicants to support the unreasonableness of the Decision is that, as set out in *Vavilov*, the Decision follows an internally incoherent chain of reasoning that cannot be justified in light of the relevant legal and factual constraints.

[53] In support of this submission the Applicants state in their respective memorandums that the CRA was at fault for not properly registering the Objections:

> This application would not have been necessary if the CRA had diligently processed the Applicant's Notice of Objection when filed by the Applicant on April 20, 2016. The Minister acknowledges its omission and has confirmed that the Applicant's Notice of Objection was in fact filed on April 20, 2016 and that it should be this date that the CRA should use for collection restrictions.
>
> Had the Appeals Division properly registered the Applicant's Notice of Objection, a collections freeze would have been noted on the file and the Certificate would never have been issued.

[54] The Applicants put forward a number of other factors, discussed below, each of which lead them to conclude that the Decision is unjustified and irrational.

[55] Overall, the Applicants blame the CRA for mishandling the Objections at several points in the process.

B. *The Minister's Power to Collect and to Postpone Collection*

[56] The Applicants state that under subsection 315(3) of the *ETA* the Minister may postpone collection against any persons in respect of all or any part of an amount in dispute between the Minster and such persons.

[57] Subsection 315(3) stipulates that any postponement may be made "subject to such terms and conditions as the Minister may stipulate." While the Minister has the power to postpone collection, there is no evidence in the record that the Applicants sought such a postponement. Even if a postponement had been sought, there is no guarantee one would have been granted or that any terms imposed would have been acceptable to the Applicants.

[58] Subsection 315(2) of the *ETA* states that if a notice of assessment is sent to a person, any amount that remains unpaid is "payable forthwith". This has been held to apply even while appeals are pending.

[59] In *Mason v Canada (Attorney General)*, 2015 FC 926 [*Mason*] Madam Justice Strickland found as follows:

> . . . it is clear that the Minister of National Revenue is entitled under sub-section 315(2) of the *Excise Tax Act*, R.S.C., 1985, c. E-15, to enforce GST assessments while appeals are pending as was confirmed in *Hoffman v Attorney General of Canada*, 2009 FC 832, 180 ACWS (3d) 176 at paragraph 28 and *Leroux v Canada Revenue Agency*, 2014 BCSC 720, 242 ACWS (3d) 987 at paragraph 376.

[60] *Mason* was not appealed. *Leroux* was only appealed on the issue of whether leave was required to cross-appeal on costs. Both cases involved collection proceedings under the *ETA*.

[61] I am satisfied, given the provisions of sub-section 315(2) of the *ETA* and the jurisprudence referred to above, that there is no legally mandated stay of collection proceedings following issuance of an assessment for outstanding GST. The Minister was not legally constrained, she was legally entitled to enforce the assessments at the time the certificates were filed and writs were subsequently registered.

[62] Keeping in mind as well that the Applicants did not seek a Ministerial stay of collection under subsection 315(3) I conclude that the Decision reasonably found that while an objection or appeal is outstanding under the *ETA*, the CRA was not prohibited from certifying the assessed tax debts of the directors under section 323 of the *ETA* or requesting writs of seizure and sale pursuant to the filed certificates.

[63] Flowing from the foregoing, I find that there was no legal impediment to the actions of the collections officer in pursuing collection by filing certificates and registering writs. Those actions were legally supported and provided for in the *ETA*. Contrary to the allegations of the Applicants, once the certificates were lawfully registered and as long as they remained so, it was not unreasonable for the CRA to have sought writs to realize collection of the debt.

C. *The Imposition of Collection Restrictions and Withdrawal of the Certificates*

[64] The CRA did not determine until September 13, 2018 that April 20, 2016 was the date to be used for “collection restrictions”.

[65] The CRA was not legally required under the *ETA* to withdraw the certificates on January 29, 2019. This voluntary administrative action by the CRA to impose collection restrictions when none were legally required is a fact that occurred approximately six months after the collection activities had begun. It does not support a finding that the Decision is incoherent or is otherwise unreasonable regarding the filing of certificates or the subsequent withdrawal, rather than the renunciation of, the certificates.

[66] The relevant legal provisions in the *ETA* are empowering, not constraining. They are found both in section 315 and 316. The former provides that following issuance of an assessment any outstanding amounts are payable forthwith and the latter provides that unpaid taxes may be certified as an amount payable and, when registered with the Court, may be enforced the same as a judgment of the Court. Together these provisions of the *ETA* legally justify and support the collection activities that were undertaken and the withdrawal of the certificates.

[67] The Applicants argue that on April 6, 2018, when the certificates were registered, no collection action could be taken as they were filed after April 20, 2016, which CRA determined was the effective date of the Objections.

[68] The Applicants state that in the context of a collection freeze it is difficult to follow the reasoning of the Decision. By way of elaboration, the Applicants strenuously dispute the statement in the Decision that “the writs were filed on April 6, 2018, when no objection or appeal was in place”. They say that it is “illogical, irrational and unjustified to think that the Minister can somehow benefit from its own negligent errors and omissions to justify and defend the Decision in such a way.”

[69] Factually, the certificates were submitted on March 12, 2018 and filed by the Court on April 6, 2018. The writs were immediately issued and sent to a Sheriff. At that time there was no collection freeze under the provisions of the *ETA* or under any CRA policy.

[70] The Applicants use the retroactive filing date of April 20, 2016 as the lens through which they view the actions of the officers and find them to be irrational, illogical and unjustified.

[71] At the time collection activities began on March 12, 2018, the officers could not foresee that on September 13, 2018 the Objections would be backdated to April 20, 2016 and the Minister would administratively determine there would be an *ETA* collections freeze as of that date.

[72] On those facts, it was not an illogical, irrational or unjustified statement to say in the Decision that as of April 6, 2018 there was no Objection in place. Up until September 13, 2018 that was a factually true statement. It was entirely reasonable as of March 12, 2018 and April 6, 2018 for the officers to rely on the known information when undertaking their collection activities.

[73] I do not accept that the CRA officers were negligent or that errors and omissions appear on the face of the record.

[74] Prior to certifying the debts, the officers double-checked the CRA computer system for any objections under the *ETA*. As stated above, the result communicated was that the Objections were only recorded in the *ITA* records and not in the *ETA* records.

[75] The ACSES notes and emails in the record show that the officers double checked the facts, received and noted the information in the records system and acted on it accordingly. That is not evidence of errors or negligence or any omissions. To the contrary, it is evidence of verifying information in the system before acting on it.

[76] When the Objections were backdated and the landscape changed, the CRA, without any legal requirement, withdrew the certificates of its own volition.

[77] I find that the two officers reasonably relied on the information on file in the records system when they processed the collection activities; they acted diligently and were not negligent in so doing.

[78] The Applicants also state in their memorandums that "[f]or reasons unknown to the Applicant, the Canada Revenue Agency Appeals Division failed to open a file for the Notice of Objection [. . .] and failed to "code" the Notice of Objection in the Canada Revenue Agency computer database."

[79] The reasons were not unknown.

[80] Counsel for the Applicants submitted copies of the Objections to the CRA on March 28, 2018. At that time, counsel pointed out the errors of the wrong form being used and the same assessment number being shown on both forms.

[81] The Objections were initially only recorded in the RP account. That is consistent with the Objections being submitted with the form used for *ITA* objections.

[82] In these circumstances, considering the factual matrix in the record, I do not accept that the Applicants can lay the blame at the feet of the CRA for not opening an *ETA* file for the Objections. CRA coded the Objections in the *ITA* records which is the correct database for the forms that were submitted.

[83] Next, the Applicants submit that it was unreasonable that the CRA Collections Officer obtained the certificates after being verbally informed by Counsel that the Applicants had in fact filed an Objection and were in the process of having that confirmed by the CRA Appeals Division. They say that if the certificates and writs were "pursued" on March 12, 2018 and not issued until April 6, 2018, the officer had the opportunity (after being informed of the existence of an Objection on March 21, 2018) to pull the certificates from the queue. They allege the officer's omission, in this regard, was unreasonable.

[84] I disagree.

[85] The certificates had already been filed for 9 days when counsel verbally advised the Officer that the Objections had been sent to CRA Appeals. The appeals determination on the Objections was almost six months away.

[86] The fact that the Officer was advised by counsel that Objections existed but that Appeals had not yet made a decision on them does not provide a sufficient basis for the officer to retrieve the certificates from the Court process.

[87] The Applicants bear the onus of proving their arguments on a balance of probabilities. For all the reasons noted above, I do not agree with the Applicants that the Decision followed an internally inconsistent chain of reasoning that cannot be justified in light of the relevant legal and factual constraints. To the contrary, the provisions of the ETA and the related jurisprudence fully support the Decision.

VIII. **Does the 2015 Manual or the 2016 Directive Apply on these Facts?**

[88] The Applicants agree there is no statutory collection restriction for tax liability for GST/HST amounts assessed under Part IX of the *ETA*.

[89] They state however that, as individual directors are not directly responsible for payment of a corporation's GST debt, the Minister developed administrative policies and guidelines setting out limiting factors on collection of such amounts. The Applicants claim that those limitations effectively prevent the Minister from initiating collection action when a director files an Objection.

[90] The Applicants submit that administratively the Minister is required to follow the collections policy in the 2015 Manual and to renounce the certificates already filed because when the Objections were accepted, the effective date of April 20, 2016 was within the 90 day time period for submitting Objections.

[91] As will be discussed shortly, the 2016 Directive was issued to clarify the 2015 Manual.

[92] The relevant part of the 2015 Manual provides that “a Renunciation of certificate is issued when the debt: is certified while it is still under collection restriction; has been certified twice in error; [. . .]”.

[93] The 2016 Directive states it was issued on November 7, 2016. It is found in InfoZone Communication CVB-2016-206 which is entitled “Withdrawing certificates and recertifying debts versus renunciation of certificates - Federal Court”.

[94] The 2016 Directive indicates under the heading “Type” that it is “Policy and procedure” while the “Topic” is “Certificates”.

[95] The 2016 Directive describes a narrow purpose: “[t]he purpose of this communication is to clarify when a certificate, obtained from the Federal Court of Canada, can be withdrawn and recertified; and when it can be renounced.” (my emphasis)

[96] It goes on to state: “[a] withdrawal of a certificate is requested when a certificate is returned to the Legal Documents Processing Unit (LDPU) as a “debt certified in error” for the following reasons:”.

[97] Four different reasons are then set out in the communication. The first is the one present in this matter:

> An assessed amount was certified during a time when the amounts were subject to collection restrictions. Since the certification of the debt was made contrary to the law, the certificate is void and has

[98] The 2016 Directive indicates that renunciation of a certificate relinquishes the right of the Minister to the amounts certified. It applies in only two circumstances: (1) debt certified in error - same debt certified twice; (2) debt reassessed to nil.

[99] Neither of these two circumstances arise on the facts of this matter.

[100] The Applicants say that the 2015 Manual should apply because the Objections were filed on April 20, 2016, which is before the 2016 Directive was issued.

[101] CRA says that the portion of the 2015 Manual relied upon by the Applicants was superseded by the 2016 Directive and, a manual does not have the force of binding law.

[102] The Applicants are correct that the 2016 Directive was not in effect on April 20, 2016 when the Objections were initially filed. It was however in effect on April 24, 2018 when the Objections were accepted by CRA Appeals and backdated.

[103] I disagree with the Applicants that CRA was required to follow the 2015 Manual and renounce the certificates.

[104] The 2015 Manual is an administrative policy. It reflects CRA policy at a point in time. Eighteen months after the 2016 Directive was issued the decision to backdate the Objections was

made by CRA. The Applicants have provided no authority to support their claim that the original 2015 Manual ought to govern the process used to release the certificates rather than the process in existence at the time the decision was made to retroactively date the Objections.

[105] I find that CRA was not required to follow the procedures in the 2015 Manual or in the 2016 Directive given the provisions of the *ETA* and the following jurisprudence governing the use of manuals and guidelines.

[106] Policy guidelines and manuals are what is referred to as "soft law". As such, a policy that is relied on by decision-makers in the day-to-day administration of their governing legislation, cannot supersede the authority provided under the legislation: *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at paras 45 and 53.

[107] In tax law, specifically collections under the *ETA*, the Applicants' argument that CRA was required to follow the original 2015 Manual has been found wanting:

> [108] The Plaintiffs rely on the fact that CRA officials did not follow each and every step outlined in the Manual used by collection officers. It is trite law that manuals of this sort are not binding in law as regards third parties, nor are they binding on the employees themselves. The Plaintiffs' attempt to treat the Manual as if it was subordinate legislation is misplaced.
>
> *Humby v Canada*. 2013 FC 1136, affd 2015 FCA 266, leave to appeal denied, SCC file #232015, April 20, 2017 (*Humby*).

[108] Notwithstanding the foregoing and the provisions of subsection 315(2) of the *ETA*, after the Objections were accepted, CRA voluntarily applied collection restrictions. They then withdrew the certificates.

[109] The record does not show whether the withdrawal decision was based on the 2016 Directive. Certainly the decision to withdraw is consistent with it.

[110] What the record does show is that once the decision was made to backdate the Objections and apply collection restrictions, there was a collective determination made to withdraw the certificates and writs. This is evidenced by the ACSES note for September 19, 2018:

> Reviewed and concur with T312 for registration at LTO and PPR (icV120)
>
> Reviewed & concur. KXT158/TL
>
> Concur with withdrawing certificate. Appeals backdated appeal so certificate no longer valid.
>
> CERTIFICATE SHOULD NOT BE SATISFIED as underlying debt is still valid but is under collections restrictions due to an appeal.
>
> (emphasis in original)

[111] I see nothing wrong with that decision by CRA on the facts of this case.

[112] The 2015 Manual is not binding law and, as originally written, the part the Applicants wish to rely upon has been replaced; it is out of date. I find that CRA reasonably determined to withdraw the certificates as the underlying debt was not satisfied.

[113] In the end, whether or not withdrawal of the documents was based on the 2016 Directive is immaterial since neither the 2015 Manual nor the 2016 Directive were binding.

[114] The Applicants also argued that there was an ambiguity between the 2015 Manual and the 2016 Directive. They say that in such a case, the decision by Justice Brown in *Haymour v Canada (National Revenue)*, 2014 FC 1045 should be followed and the ambiguity resolved in favour of the Applicants as, to quote *Haymour*, their rights are being trampled.

[115] In addition to the non-binding nature of the manual, the problem with this argument is that there is no ambiguity between the 2015 Manual and the 2016 Directive. The reason for issuing the 2016 Directive was to clarify the process to be followed. In doing so, if there was any ambiguity in the 2015 Manual, it was resolved.

IX. **Was there a Legitimate Expectation that the Certificate would be released?**

[116] A legitimate expectation arises under specific circumstances.

[117] The Applicants say that CRA consistently applies and upholds a) the policy of restricting collection action against third party directors who file timely Notices of Objection to director liability assessments relating to a corporate GST debt; and b) the policies and procedures set out in the 2015 Manual.

[118] Since the CRA voluntarily restricted collection action, I will only address the Applicants' assertion that there was a legitimate expectation that CRA would follow their own policies and procedures as set out in the 2015 Manual.

[119] There is no evidence that the policies are so consistently applied by CRA that a legitimate expectation would arise.

[120] A legitimate expectation arises when a government official makes "clear, unambiguous and unqualified" representations within the scope of their authority to an individual about an administrative process that the government will follow: *Canada (Attorney General) v Mavi*, 2011 SCC 30 [*Mavi*] at para 68.

[121] Such representations will be considered sufficiently precise for purposes of the doctrine of legitimate expectations if, had they been made in the context of a private law contract, they would be sufficiently certain to be capable of enforcement: *Mavi* at para 69.

[122] I agree with CRA that an internal policy that was rescinded at the time that the certificates were filed is not a representation that is sufficiently precise to constitute a binding contractual obligation. As such, a legitimate expectation did not arise.

[123] Even if a legitimate expectation did exist, an important limit on the doctrine is that it cannot give rise to substantive rights. The Court may only grant appropriate procedural remedies to respond to a legitimate expectation: *Agraira* at para 97, (emphasis in original).

X. **Mandamus**

[124] The Applicants sought an order in the nature of *mandamus* requiring the Minister to file a Renunciation of Certificate. Given the findings I have made, no such order is required.

[125] Even if I had determined otherwise, *mandamus* could not issue as the CRA has no duty toward a taxpayer other than to act in accordance with the statute for the purposes of the statute:

Humby at para 122, followed in *Sailsman v Canada (National Revenue)*, 2014 FC 1033, at para 41.

XI. **Conclusion**

[126] For all the foregoing reasons, I find that the Decision is reasonable and it was not procedurally unfair.

[127] The applications are dismissed.

[128] Both parties asked for costs. The Respondent has succeeded and is entitled to its assessable costs plus disbursements under Column III of Tariff B of the *Federal Courts Rules* (*Rules*).

JUDGMENT in T-1368-19 and T-1367-19

THIS COURT'S JUDGMENT is that:

1. The applications are dismissed.

2. Costs to the Respondent under Column III of Tariff B of the *Rules*.

"E. Susan Elliott"
Judge

APPENDIX

***Excise Tax Act*, RSC 1985, c E-15**	***Loi sur la taxe d'accise*, LRC 1985, c E-15**
Objection to assessment	Opposition à la cotisation
301 (1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.	301 (1.1) La personne qui fait opposition à la cotisation établie à son égard peut, dans les 90 jours suivant le jour où l'avis de cotisation lui est envoyé, présenter au ministre un avis d'opposition, en la forme et selon les modalités déterminées par celui-ci, exposant les motifs de son opposition et tous les faits pertinents.
Assessment before collection	Cotisation avant recouvrement
315 (1) The Minister may not take any collection action under sections 316 to 321 in respect of any amount payable or remittable by a person that may be assessed under this Part, other than interest, unless the amount has been assessed.	315 (1) Le ministre ne peut, outre exiger des intérêts, prendre des mesures de recouvrement aux termes des articles 316 à 321 relativement à un montant susceptible de cotisation selon la présente partie que si le montant a fait l'objet d'une cotisation.
Payment of remainder	Paiement du solde
315 (2) If the Minister sends a notice of assessment to a person, any amount assessed then remaining unpaid is payable forthwith by the person to the Receiver General.	315 (2) La partie impayée d'une cotisation visée par un avis de cotisation est payable immédiatement au receveur général.
Minister may postpone collection	Report des mesures de recouvrement
315 (3) The Minister may, subject to such terms and conditions as the Minister may stipulate, postpone collection action against a person in respect of all or any part of any amount assessed that is the subject of a dispute between the Minister and the person.	315 (3) Sous réserve des modalités qu'il fixe, le ministre peut reporter les mesures de recouvrement concernant tout ou partie du montant d'une cotisation qui fait l'objet d'un litige.
Certificates	Certificat
316 (1) Any tax, net tax, penalty, interest or other amount payable or remittable by a person (in this section referred to as the "debtor") under this Part, or any part of any such amount, that has not been paid or	316 (1) Tout ou partie des taxes, taxes nettes, pénalités, intérêts ou autres montants à payer ou à verser par une personne — appelée « débiteur » au présent article — aux termes de la présente partie qui ne l'ont pas été selon les

remitted as and when required under this Part may be certified by the Minister as an amount payable by the debtor.

Registration in court

316 (2) On production to the Federal Court, a certificate made under subsection (1) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest and penalty thereon as provided under this Part to the day of payment and, for the purposes of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty and enforceable as such.

Liability of directors

323 (1) If a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) or to pay an amount as required under section 230.1 that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, as the case may be, the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.

***Income Tax Act*, RSC 1985, c 1 (5th Supp)**

Collection restrictions

225.1 (1) If a taxpayer is liable for the payment of an amount assessed under this Act, other than an amount assessed under subsection 152(4.2), 169(3) or 220(3.1), the Minister shall not, until after the collection-

modalités de temps ou autres prévues par cette partie peuvent, par certificat du ministre, être déclarés payables par le débiteur.

Enregistrement à la cour

316 (2) Sur production à la Cour fédérale, le certificat fait à l'égard d'un débiteur y est enregistré. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts et pénalités courus comme le prévoit la présente partie jusqu'au jour du paiement, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Aux fins de ces procédures, le certificat est réputé être un jugement exécutoire de la Cour contre le débiteur pour une créance de Sa Majesté.

Responsabilité des administrateurs

323 (1) Les administrateurs d'une personne morale au moment où elle était tenue de verser, comme l'exigent les paragraphes 228(2) ou (2.3), un montant de taxe nette ou, comme l'exige l'article 230.1, un montant au titre d'un remboursement de taxe nette qui lui a été payé ou qui a été déduit d'une somme dont elle est redevable, sont, en cas de défaut par la personne morale, solidairement tenus, avec cette dernière, de payer le montant ainsi que les intérêts et pénalités afférents.

***Loi de l'impôt sur le revenu*, LRC 1985, c 1 (5e suppl)**

Restrictions au recouvrement

225.1 (1) Si un contribuable est redevable du montant d'une cotisation établie en vertu des dispositions de la présente loi, exception faite des paragraphes 152(4.2), 169(3) et 220(3.1), le ministre, pour recouvrer le montant

commencement day in respect of the amount, do any of the following for the purpose of collecting the amount:

(a) commence legal proceedings in a court,

(b) certify the amount under section 223,

[. . .]

(c) require a person to make a payment under subsection 224(1),

(d) require an institution or a person to make a payment under subsection 224(1.1),

(e) [Repealed, 2006, c. 4, s. 166]

(f) require a person to turn over moneys under subsection 224.3(1), or

(g) give a notice, issue a certificate or make a direction under subsection 225(1).

impayé, ne peut, avant le lendemain du jour du début du recouvrement du montant, prendre les mesures suivantes :

a) entamer une poursuite devant un tribunal;

b) attester le montant, conformément à l’article 223;

[. . .]

c) obliger une personne à faire un paiement, conformément au paragraphe 224(1);

d) obliger une institution ou une personne visée au paragraphe 224(1.1) à faire un paiement, conformément à ce paragraphe;

e) [Abrogé, 2006, ch. 4, art. 166]

f) obliger une personne à remettre des fonds, conformément au paragraphe 224.3(1);

g) donner un avis, délivrer un certificat ou donner un ordre, conformément au paragraphe 225(1).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1367-19
STYLE OF CAUSE:	NICK LIBICZ v ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-1368-19
STYLE OF CAUSE	AARON VAAGE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 7, 2020
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	JUNE 30, 2021

APPEARANCES:

Neil Mather	FOR THE APPLICANTS
George Body	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Neil T. Mather Professional Corporation Barrister and Solicitor Edmonton, Alberta	FOR THE APPLICANTS
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT