Federal Court Cour fédérale

Date: 20221031

Docket: T-1015-21

Citation: 2022 FC 1488

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 31, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

LYSE BÉLANGER

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] Lyse Bélanger, the applicant, is seeking judicial review of a decision denying her the remedy sought, namely remission of her tax debt. The application for judicial review is brought pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[2] In essence, Ms. Bélanger's tax debt for the 1984, 1985 and 1986 tax years rose from $2,124.43 to $19,750.06 in July 2019 because of accrued interest. She was granted interest relief,

bringing the balance to $11,721.79. Ms. Bélanger then made a request for the remission of her remaining tax debt, which was denied. This latter decision is the subject of the application for judicial review.

I. Facts

[3] It appears that Ms. Bélanger was reassessed for the 1984 and 1985 tax years. There are no details as to the reasons for the reassessments, which resulted in amounts owing of $595.15 and $1,339.33, respectively. In addition, the applicant's tax return for the 1986 tax year was filed late. The amount owing was $189.95, which included a $22.60 penalty. The total amount owing was therefore $2,124.43. It is not disputed that the applicant had no objection to the reassessments.

[4] The sum of $2,124.43 grew to $19,045.50 as a result of interest calculated as of November 15, 2018. The applicant was informed about this in a letter from the Canada Revenue Agency (Agency or CRA) on November 21, 2018. Ms. Bélanger stated that she was surprised by the letter. Two months later, on January 21, 2019, Ms. Bélanger wrote in a one-page handwritten letter that she had not been informed previously of an outstanding balance; she said she knew neither the reason for the amount owing, nor its source or history.

[5] By May 15, 2019, the outstanding balance had grown to $19,569.10, and the Agency stated that it had withheld $47.91, the tax recovery amount to which Ms. Bélanger would have been entitled. Interest on arrears continued to accrue.

[6] The CRA therefore sent a follow-up letter to its letter of May 15, 2019. As of July 18, 2019, the amount owing had increased to $19,750.06. Attached to the July 18 letter were five pages of tables, described as [TRANSLATION] “detailed income for your account”, showing a balance of $19,750.06.

[7] Ms. Bélanger submitted a request for relief on August 6, 2019. An acknowledgment of receipt dated August 23, 2019, was sent back to her.

[8] The request for relief was for interest on arrears that had accrued over the years. On January 15, 2020, the CRA granted relief to the extent permitted by the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA]. Subsection 220(3.1) reads as follows:

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to	**(3.1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l’année d’imposition d’un contribuable ou de l’exercice d’une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d’un montant de pénalité ou d’intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d’imposition ou cet exercice, ou l’annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant

take into account the cancellation of the penalty or interest.	les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[9] Interest relief was requested for the 1984, 1985, 1986 and 2001 tax years. The taxpayer claimed that no collection action had been taken. The CRA stated that collection actions were suspended on October 17, 1989. From December 1986 to July 1987, the CRA claims to have sent Ms. Bélanger [TRANSLATION] “collection letters” that she claims she did not receive.

[10] The record before the Court does not include the reasons for which relief was granted. However, on January 15, 2020, the CRA informed Ms. Bélanger of the relief granted as follows:

> [TRANSLATION]
> Arrears interest for the 1985, 1986 and 2001 tax years will be cancelled from January 1, 2009, until November 21, 2018, on the basis of the facts presented.

This is, of course, the 10-year period referred to in subsection 220(3.1) of the ITA. Another letter, dated February 27, 2020, which was no clearer than the January 15 letter, notes that there is an information circular entitled “Taxpayer Relief Provisions” but fails to explain how the calculation was made. In any event, the parties state that the relief granted reduced the tax debt from $19,045.50 to $11,721.79.

[11] There is also no dispute that, after 1986, the applicant continued to file tax returns. Each time a tax refund could have been paid to Ms. Bélanger, it was withheld to offset the tax debt, which continued to grow as interest accrued. The first refund was withheld to offset the 1987 tax

year (the withholding therefore occurred in 1988, when the tax return was processed). Refunds for the years 1999, 2000, 2002, 2003, 2004, 2007, 2010, 2011, 2017 and 2018 suffered the same fate. More than $2,600 in refunds over the years was applied against the initial $2,124.43 and accrued interest, leaving an outstanding balance of $11,721.79 (after relief).

[12] This brings us to the subject of the judicial review that is being sought. The applicant addressed the Minister of National Revenue directly on June 3, 2020. In a detailed letter of more than five pages, Ms. Bélanger requested that the Minister go [TRANSLATION] "beyond relief".

[13] This request was to be treated as a request for remission under the *Financial Administration Act*, RSC 1985, c F-11. A letter from an assistant commissioner of the Agency, the date of which is unknown, described the required process:

> [TRANSLATION]
> A request for remission requires a full and thorough review of the facts and circumstances of the situation in question and may therefore take a number of months to complete. Each request is examined according to specific guidelines to determine whether the applicant is experiencing extreme financial hardship, whether Agency officials have taken action or given advice that was incorrect, whether exceptional circumstances have given rise to financial difficulties, or whether legislation has given rise to unintended results. The Agency may also consider other factors in assessing whether the collection of a tax or enforcement of a penalty, if any, is unreasonable or unjust, or whether it is otherwise in the public interest to remit the tax or penalty. If the Governor in Council grants a remission order, the order will be published in Part II of the Canada Gazette and will include the name of the taxpayer, the amount of the remission and a brief explanation.

Ultimately, a decision was made regarding the request for remission. That is the decision for which Ms. Bélanger is seeking judicial review.

II. Decision under review

[14] The *Financial Administration Act* provides for the remission of taxes, penalties or interest. The text of the provision, namely subsection 23(2) of that Act, reads as follows:

Remission of taxes and penalties	**Remise de taxes ou de pénalités**
(2) The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.	**(2)** Sur recommandation du ministre compétent, le gouverneur en conseil peut faire remise de toutes taxes ou pénalités, ainsi que des intérêts afférents, s'il estime que leur perception ou leur exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise.

[15] On April 16, 2021, the Minister decided not to make the recommendation referred to in subsection 23(2).

[16] The letter containing the decision summarizes the facts of the case. It highlights the total unpaid amount ($2,124.43), the Agency's claim that [TRANSLATION] "several" collection letters between December 1986 and July 1987 went unanswered, and the suspension of collection actions starting on October 1989.

[17] The decision acknowledges that $2,648 was offset between 1988 and 2019, this amount having been applied against the initial amount owing, plus interest. In short, on at least

11 occasions, the Agency did not send the applicant the refund that would otherwise have been due. The decision dated April 16, 2021, states that the notices of assessment contained one of the following notes:

> [TRANSLATION]
> • We have used your refund to reduce a past debt that is not shown in the "Summary" of this notice. We will send you the balance of the refund, if any.
>
> • We must hold your refund while we update your accounts. We will send you the balance of the refund, if any.

Given the size of the accumulated tax debt, there was never any balance to send.

[18] The letter dated April 16, 2021, containing the decision denying the request for remission points out that the outstanding balance in July 2019 was $19,750 and that relief from interest and penalties had already been granted.

[19] The decision maker then reviewed the request for remission under subsection 23(2) of the *Financial Administration Act*.

[20] First, the decision maker starts by noting the rare and extraordinary nature of remission of taxes, penalties and interest. The decision maker states that a general consideration with respect to the public interest is [TRANSLATION] "maintaining the integrity of the objection and appeal processes provided for in the ITA, the nature of self-assessment in Canada's tax system, the responsibility of taxpayers to understand and meet their tax obligations, and fairness to other Canadians" (Decision at 2 of 5). The decision also states that remission and relief are granted

through separate mechanisms; therefore, remission is only considered in rare and extraordinary circumstances. What are these circumstances?

[21] The decision notes that one such circumstance may be incorrect action or advice by an Agency official. The decision states that there is none. The assessments at the source of the tax debt date back to 1984, 1985 and 1986; they were therefore not objected to or appealed. These assessments are therefore valid (reference is made to subsection 152(8) of the ITA).

[22] Ms. Bélanger alleged that the CRA had failed to notify her of her tax debt. She claimed to have tried to obtain information from the local CRA office but was unclear about the time and contents of the conversations. She mentioned only two meetings, in summer 1988 or 1989, and in 1990 or 1991, during which she was told that there was no amount owing. Ms. Bélanger also claimed to have communicated by telephone between 1998 and 2004 about refunds she had not received. She stated that she did not receive a satisfactory response. The applicant then allegedly dropped her inquiries until 2019.

[23] The remission of tax debt is not granted on this basis or in the absence of verifiable evidence to support Ms. Bélanger's vague statements. No details were given of the meetings or calls, whether written notes, names of officials, dates of communications or even the specific subjects discussed. The decision states that the accuracy of verbal advice can only be [TRANSLATION] "based on the accuracy and completeness of the information provided by the taxpayer seeking clarification on a tax matter and, for this reason, undocumented verbal advice is not binding on the Agency" (Decision at 3 of 5).

[24] Moreover, the reasons for decision state that the applicant must have known that what she was told, namely that no amount was owing, was incorrect because 11 refunds had been withheld, and the notices of assessment confirmed it. The taxpayer ought to have taken more formal steps to confirm the tax debt. Instead, the applicant ignored the assessments for 1984 to 1986, as well as two collection letters in 1986 and 1987. She also ignored the 11 denied refunds, which should also have prompted her to seek information. As the Agency put it, [TRANSLATION] "For remission purposes, it is clear that the Agency has notified you, in writing, on a number of occasions over the years about your outstanding debt and that you have not provided any information or justification that would support remission on the basis of incorrect actions or advice from the Agency" (Decision at 4 of 5).

[25] Another possible reason to grant remission of taxes, penalties or interest might be the extremely difficult financial situation into which the taxpayer might have been plunged by paying the tax debt remaining after the relief had been granted.

[26] In this regard, the Decision states that family income was considered (in relation to the low-income cut-offs defined by Statistics Canada). The hardship had to be of such severity that current and anticipated personal resources did not allow her to repay the debt. A review of Ms. Bélanger's financial situation showed that she was able to settle her debt. The decision states, "You have neither identified any financial burden that could worsen your situation nor provided any evidence to that effect" (Decision at 4 of 5).

[27] Ultimately, the decision refuses the request for remission. It states that it is neither unreasonable nor unjust to collect taxes, penalties and interest that have been assessed correctly. The taxpayer ought to have fulfilled her tax obligations and acted in a timely manner, unless there were extenuating circumstances preventing her from doing so. This was not the case.

III. Arguments and analysis

A. *Positions of the parties*

[28] The applicant appeared before the Court without counsel, but was accompanied by her spouse, who was permitted to intervene at certain times given her state of health (*Neyedly v Canada (Attorney General)*, 2020 FC 678 at paras 14, 15).

[29] In her memorandum of fact and law, and at the hearing, the applicant sought what she identified as a [TRANSLATION] "discretionary decision-making capacity" (Memorandum of Fact and Law at 2 of 5). Ms. Bélanger does not claim to be in an extremely difficult financial situation (although she is of modest means). Instead, she says that the thrust of her argument is based on the validity of the challenge. She says that "the goal of all my dealings with the CRA was to understand the source and validity of this 'so-called' debt. The answers I received never met this need" (Memorandum of Fact and Law at 4 of 5, para 14). It is clear that the debt originated in the 1984, 1985 and 1986 assessments.

[30] Ms. Bélanger states that she visited the local CRA office twice in order to understand the reasons for the assessments and whether they were justified. She states that officials were unable

to confirm that her account status was in arrears. Ms. Bélanger has not provided any details about these meetings, describing them as having taken place [TRANSLATION] “in the late 1980s and early 1990s”. Ultimately, the applicant’s dispute centres on interest relief for the period before 2009. As mentioned, the relief provided for by the ITA can be valid only for 10 years and therefore cannot cover a period before 2009. Alleging an administrative imbroglio, Ms. Bélanger is requesting [TRANSLATION] “additional relief” to allow full remission for the period before January 1, 2019. She further argues that the original amount ($2,147.43) was fully repaid through unpaid tax refunds ($2,648).

[31] To the Attorney General, the decision to refuse remission under the *Financial Administration Act* is perfectly reasonable. Indeed, that is the standard of review that is required. However, decisions under subsection 23(2) of the *Financial Administration Act* are exceptional and discretionary.

[32] It follows, according to the Attorney General, that the onus is on those seeking judicial review, meaning that an applicant must demonstrate that a decision does not bear the hallmarks of reasonableness—justification, transparency and intelligibility. The reviewing court is therefore not to substitute its assessment of the merits by re-examining the evidence and thereby substitute itself for the administrative decision maker.

[33] The decision is reasonable given that the decision maker considered the case on the basis of the guidelines in the Remissions Manual for Canada Revenue Agency employees. Four characteristics are listed:

extreme hardship;

financial setback coupled with extenuating factors;

incorrect action or advice on the part of CRA officials; and

unintended results of the legislation.

In this case, only extreme hardship and incorrect advice may apply. Before this Court, the applicant has not invoked extreme hardship.

[34] As for incorrect advice, the Attorney General argues that the record shows that the applicant received information over the years about the amount owing and that her refund was withheld 11 times to reduce it. Moreover, if she wanted to challenge the assessments, she never availed herself of the objection and appeal mechanisms. In the respondent's view, there was nothing unreasonable or unjust in collecting the taxes; it is not in the public interest to remit tax debts in the circumstances.

B. *Analysis*

[35] One has to feel a little sorry for Ms. Bélanger, who saw a tax debt of $2,147.43 grow to more than $19,500 in May 2019. But the role of a reviewing court on judicial review is not to replace the administrative tribunal responsible for administering a given plan (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3).

[36] There can be no doubt that judicial review of the exercise of discretion conferred by subsection 23(2) of the *Financial Administration Act* is on a standard of reasonableness (*Fink v*

Canada (Attorney General), 2019 FCA 276 [*Fink*] at para 4; *Escape Trailer Industries Inc. v Canada (Attorney General)*, 2020 FCA 54 [*Escape Trailer*] at para 13; *Rahman v Canada (Attorney General)*, 2022 FC 806). This has implications.

[37] The Supreme Court of Canada refocused the analytical framework in these matters in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*]. Thus, judicial intervention in administrative matters is allowed only if it is necessary to safeguard the legality, rationality and fairness of the administrative process. This means judicial restraint (at para 13). Administrative decision makers are recognized as being legitimate and authoritative in their field, which means that the reviewing court must adopt an appropriate posture of respect (at para 14). Ultimately, the reviewing court must defer to an internally coherent and rational decision that is justified in relation to the facts and law that constrain the decision maker (at para 85).

[38] The Supreme Court in *Vavilov* stated that only serious shortcomings could justify intervention on judicial review (at para 100). Serious shortcomings will come from a failure of rationality internal to the reasoning process or from a decision that is in some respects untenable. In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, the Supreme Court provides a useful summary of what constitutes a reasonable decision, at paragraphs 31, 32 and 33:

> [31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons

> provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: ". . . what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100). In this case, that burden lies with the Union.

[39] It must be acknowledged, without reproach, that the applicant not only refrained from embarking on a line-by-line treasure hunt for error, but also made no attempt to demonstrate the kind of serious shortcomings that might constitute a basis for the remedy sought. She is requesting that the relief already granted for 10 years be extended to cover the remainder of the tax debt.

[40] Notwithstanding the applicant's failure to demonstrate the unreasonableness of the decision under review, which was the onus on the applicant, I have examined the decision to see whether it bears the hallmarks of a reasonable decision—justification, transparency and intelligibility—and whether it is justified in relation to the factual and legal constraints.

[41] As the Federal Court of Appeal pointed out in *Fink* and *Escape Trailer*, remission is an exceptional measure. Its discretionary nature, of which there can be no serious doubt, is limited. Ultimately, the decision maker may grant remission if the collection of taxes, penalties and interest is unreasonable or unjust or if it is otherwise in the public interest. But the exercise of discretion cannot be capricious; rather, it must accord with its purpose (*Roncarelli v Duplessis*, [1959] SCR 121). As noted by the Federal Court of Appeal in *Escape Trailer*, the Minister has adopted guidelines on the exercise of discretion. Although not binding or comprehensive, they provide a framework for the exercise of discretion (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 at para 60). They appear at paragraph 33 of these reasons. These guidelines are reminiscent of circumstances where tax remission has been granted for reasons involving (1) compassion, for example for financial reversals of fortune, (2) fairness, for example to rectify administrative errors or differential treatment of taxpayers in similar circumstances; and (3) rectification of anomalies or unintended consequences. These factors are relevant and reasonable in applying subsection 23(2). In fact, the applicant has not invoked any other factors that could be considered.

[42] Here, the decision is not arbitrary. It may be seen that the applicant claimed to have been misinformed by the officials. But the applicant does not provide any details that could give some substance to her claims. I fail to see how the decision maker could be criticized for stating that the quality of verbal advice provided by authorized officials, if it is given, will always depend on the accuracy and completeness of the information provided. It is altogether impossible for the decision maker to go very far with the information provided by Ms. Bélanger. This is particularly true since, over the years, 11 tax refunds have been withheld from her because there was an

amount owing. The evidence provided by the applicant was that she had tried to find out the reason for the assessments from 1984 to 1986 and whether there was an amount owing. It seems to me that these considerations could be somewhat contradictory, since a person trying to find out the reason for an assessment should know that there is an amount owing. However, as noted in the decision, the appeals planned in order to challenge the assessments were not initiated, and 11 refunds were withheld. It was rather obvious that, according to the Agency, there had to be an amount owing. The decision notes that, if the applicant had been told that she had no amount owing, "it should have been obvious that this was incorrect, since a number of tax refunds were withheld, and [her] notices of assessment confirmed in writing that [she] had a debt" (Decision at 3 of 5).

[43] With respect, the decision does not show any inconsistency or lack of internal logic, in my opinion. It is also justified on the basis of the facts that have come to light. Moreover, the decision cannot be criticized for lacking justification: it is easy to understand the line of reasoning, and the analysis is inherently reasonable.

IV. Conclusion

[44] In her memorandum of fact and law and at the hearing before this Court, the applicant did not challenge the decision on the grounds that it was unreasonable, as is required on judicial review. Instead, she argued that she should benefit from a system with the ability to make discretionary decisions while claiming that she did not receive adequate information from CRA officials. I do not accept these vague and unsubstantiated allegations, especially as the evidence showed that she had been warned numerous times that there was an amount owing.

[45] The role of a reviewing court is not to seek to exercise discretion that lies elsewhere. Rather, it is to verify the legitimacy, rationality and fairness of the administrative process. In this case, the decision bears the hallmarks of a reasonable decision: it is justified, it is transparent, and it is intelligible.

[46] Accordingly, the application for judicial review must be dismissed. The respondent had initially requested costs. This initial position was subsequently revised so that costs are not being requested.

JUDGMENT in T-1015-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Yvan Roy"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1015-21
STYLE OF CAUSE:	LYSE BÉLANGER v MINISTER OF NATIONAL REVENUE
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 24, 2022
JUDGMENT AND REASONS:	ROY J.
DATED:	OCTOBER 31, 2022

APPEARANCES:

Lyse Bélanger Ghislain Valade	FOR THE APPLICANT (SELF-REPRESENTED)
Justine Allaire-Rondeau	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT