Federal Court Cour fédérale

Date: 20221115

Docket: T-888-22

Citation: 2022 FC 1544

Ottawa, Ontario, November 15, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MA. MARIBEL ACEVEDO VIRGEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision [the Decision], conveyed to the Applicant by a letter dated March 31, 2022, under the name of the Chief of Appeals of the Toronto North Tax Services Office [Chief of Appeals], on behalf of the Minister of National Revenue [Minister]. The Decision confirmed an earlier decision, made under subsection 150.1(2) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act], to suspend the Applicant's participation in the EFILE system of the Canada Revenue Agency [CRA].

[2] As explained in greater detail below, this application is allowed, because the Decision is not intelligible and transparent in relying on a conclusion that the Applicant had engaged in fraud, dishonesty, breach of trust or other conduct of a disreputable nature.

II. **Background**

[3] The CRA's EFILE program allows participants to file certain tax returns electronically. The Applicant, Maribel Acevedo Virgen, was a participant in the EFILE program and was initially assigned EFILE account number Q9080.

[4] As part of the EFILE program, the CRA conducts a monitoring process to ensure that participants in the program are complying with the conditions of the program. This monitoring process can include requesting that participants provide copies of the document, identified as a T183 form, that the participants employ when filing a tax return on behalf of another person.

[5] By letter dated November 19, 2019, the CRA notified the Applicant that it was monitoring her account and asked that she provide copies of specific T183 forms. On December 18, 2019, the Applicant provided the requested forms. On January 8, 2020, CRA sent the Applicant an email requesting an explanation for errors it had identified in the T183 forms. By letter dated February 5, 2020, the CRA noted that the Applicant had failed to respond to this request and advised that it had suspended her electronic filing privileges. The Applicant subsequently responded to CRA's request on February 25, 2020.

[6] On March 11, 2020, the CRA sent the Applicant another letter, which referenced its previous letter dated November 19, 2019, related to errors in the T183 forms, and the Applicant's response to a request for an explanation, and asked that she review her current and future practices for an item described as follows:

> The taxpayer's address in Part A of the T183 form matches that of the electronic filer. The address in Part A of the T183 form must be that of the taxpayer.

[7] On March 11, 202, CRA also sent the Applicant a second letter, which identified a new EFILE account number, V7197, and explained that CRA had conditionally accepted the Applicant's application to participate in the EFILE program, even though she had failed to provide an explanation (or timely explanation) for the errors identified in the T183 forms CRA had reviewed [V7197 Letter]. This letter also stated the following:

> Also take note of the information regarding "Exclusions from electronic filing (EFILE)". While most taxpayers will qualify to have their returns filed using EFILE, certain situations may exclude a taxpayer from EFILE. For a list of these Exclusions, go to the EFILE website at canada.ca/efile and click the following links: "Overview", then "File returns" and then select "Exclusions" for a full list of exclusions. Please take special note of the first two Exclusions on the list as shown below:
>
> - Foreign workers employed in Canada under the Seasonal Agricultural Workers Program who are non-residents or deemed non-residents. Refer to the guide RC4004, Seasonal Agricultural Workers Program.
>
> - The taxpayer is a deemed resident (not subject to provincial or territorial tax).

[8] The Certified Tribunal Record [CTR] also contains references to a March 9, 2020 telephone conversation, in which a CRA representative advised the Applicant that filing returns

for persons excluded from the EFILE program would result in a suspension from the program for a minimum of five years. This conversation appears to relate to CRA having determined during its review that the Applicant had been filing tax returns for non-residents or deemed non-residents of Canada who were participants in the Seasonal Agricultural Workers Program [SWAP].

[9] By letter dated May 6, 2021, the CRA notified the Applicant that it was conducting a further review of the T183 forms filed by the Applicant and requested copies of those forms related to specific individuals. Internal email correspondence identifies that, through this review, the CRA found that the Applicant continued to file for non-residents of Canada who were part of the SWAP by using the "care of" address option in the EFILE software.

[10] By letter dated October 27, 2021 [Suspension Letter], the CRA informed the Applicant that her EFILE privileges were suspended effective October 25, 2021. The Suspension Letter referenced the V7179 Letter, including the exclusions from the EFILE program explained therein, as well as the March 9, 2020 telephone conversation between her and CRA.

[11] In a letter dated January 25, 2022 (and received by the CRA on January 28, 2022), the Applicant sought administrative review of the Suspension Letter. Between March 17 and March 28, 2022, the CRA attempted to call the Applicant five times regarding her request for administrative review. On three of these occasions, the CRA left a message on the Applicant's voicemail requesting a callback. Having received no response, CRA completed the

administrative review, and on March 31, 2022, the Applicant was sent a letter conveying the Decision that gives rise to this application for judicial review.

III. **Decision under Review**

[12] The Decision confirmed the Suspension Letter and upheld the suspension of the Applicant's participation in the EFILE program.

[13] As previously noted, the Decision was conveyed to the Applicant in a letter dated March 31, 2022, issued under the name of the Chief of Appeals [Decision Letter]. The Decision Letter observed that the privilege of using the EFILE program was subject to suitability screening and monitoring performed by the EFILE Helpdesk on behalf of the Minister. It further noted that the authorization for the performance of screening and monitoring is contained in subsection 150.1(2) of the Act. The Decision Letter stated that an applicant must meet and continue to meet certain criteria to participate in the EFILE program and that applicants do not meet the criteria if they file a return electronically for excluded individuals.

[14] The Decision Letter stated that foreign workers employed in Canada under the SWAP who are non-residents or deemed non-residents are excluded individuals and that the CRA's review indicated that the Applicant continued to file for excluded taxpayers, after being warned of the exclusions verbally and in writing in March 2020. Based thereon, the Decision Letter confirmed the Applicant's suspension from the EFILE program.

IV. **Issues and Standard of Review**

[15] Based on the parties' submissions, I would identify the following three preliminary issues and one substantive issue to be addressed by the Court:

A. Who is the proper Respondent?

B. What is the appropriate record before the Court?

C. Should the Court allow the filing of an Addendum dated October 31, 2022, prepared by the Applicant?

D. Is the Decision reasonable?

[16] As suggested by the above articulation of the one substantive issue, the parties agree (and I concur) that the Decision is reviewable on the reasonableness standard (see *Paterson v Canada (Revenue Agency)*, 2010 FC 644 at para 12 [*Paterson*], aff'd 2011 FCA 12). In conducting reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 15).

V. **Analysis**

A. *Who is the proper Respondent?*

[17] As a preliminary procedural and uncontroversial matter, the Respondent's counsel submits that, while the Applicant has named CRA as the Respondent in this application, the

proper Respondent is the Attorney General of Canada [AGC]. The Applicant did not take a position on this submission.

[18] I agree with the Respondent's position. Rule 303 of the *Federal Courts Rules*, SOR/98-106, provides that, where there are no persons directly affected by the order sought in an application for judicial review, other than the tribunal in respect of which the application is brought, the applicant shall name the AGC as a respondent. This is such a situation, and my Judgment will therefore provide for the change in the name of the Respondent.

[19] At the hearing of this application, the Respondent's counsel helpfully confirmed that he serves as counsel for both CRA and the AGC.

B. *What is the appropriate record before the Court?*

[20] More substantively, the Respondent also takes the position that, in considering the reasonableness of the Decision, the Court should disregard the exhibits attached to the Applicant's affidavit that were not before the decision-maker at the time of the Decision. The Respondent relies on the principle explained in *Association of Universities and Colleges of Canada v The Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 19, that the evidentiary record before a court on judicial review is restricted to that which was before the tribunal whose decision is under review. As noted in *Access Copyright*, there are a few recognized exceptions to this general rule, including general background information that might assist the court in understanding the issues relevant to the judicial review (at para 20).

[21] At the hearing, the Respondent's counsel identified two exhibits to the Applicant's affidavit that he conceded fell within the general background exception. These are a guide bearing the title "Seasonal Agricultural Workers Program" and referenced as RC 4004(E) Rev 2, attached as Exhibit 11 [SWAP Guide] and excerpts from a CRA policy (apparently published on the CRA website) that refer to CRA's monitoring of the activities of electronic filers and circumstances in which CRA may revoke a filer's authorization to participate in the EFILE program, attached as Exhibit 27 [the Monitoring Policy].

[22] While the Respondent has not asked that evidence be formally struck from the record, it takes the position that the Court should disregard the Applicant's exhibits, other than the two identified above, because they offend the principle described in *Access Copyright.* The Applicant has not taken a position on this request. I agree with the Respondent's position that there does not appear to be a basis to conclude either that the impugned exhibits were before the decision-maker or that they fall within a recognized exception to the *Access Copyright* principle. I will therefore disregard these exhibits in analysing the merits of this application for judicial review.

C. *Should the Court allow the filing of an Addendum dated October 31, 2022, prepared by the Applicant?*

[23] This last preliminary issue relates to a document titled Addendum and dated October 31, 2022, which the Applicant sought to file approximately a week before the hearing of this application. The Addendum is a two-page document, which I interpret as an effort to supplement the Applicant's Memorandum of Argument dated August 29, 2022. The Addendum cites

additional jurisprudence and seeks to advance arguments under sections 7, 11, 15, 24 and 36 of the *Canadian Charter of Rights and Freedoms* [Charter].

[24] The Respondent objects to the filing of the Addendum and the Applicant advancing arguments based thereon, because these arguments were not set out in the Notice of Application issued May 2, 2022. The Respondent submits that it has been prejudiced by being deprived of the opportunity to adduce evidence relevant to the Charter arguments, noting that Charter arguments are not to be advanced in a factual vacuum (see *MacKay v Manitoba*, [1989] 2 SCR 357 at pp 361-362). The Respondent further submits that the Charter arguments are without merit, both because they were not raised before the decision-maker and because they do not apply to the administrative (rather than criminal) decision at issue in this matter.

[25] The Applicant did not provide any compelling response to these submissions. I accept the Respondent's position and decline to accept the Addendum for filing or to consider the arguments advanced therein.

D. *Is the Decision reasonable?*

[26] Turning to the merits of this application, I note that the self-represented Applicant has advanced a number of arguments, related to interactions between her and CRA, which do not particularly assist the Court in assessing the reasonableness of the Decision. However, I need not address all these arguments in any detail, as I find determinative the Applicant's argument surrounding the transparency and intelligibility of the Decision's reliance on a conclusion that

she had engaged in fraud, dishonesty, breach of trust or other conduct of a disreputable nature. To explain my finding, it is helpful to review the steps leading to the Decision under review.

[27] The Decision represents the final administrative step in a process that commenced with CRA initiating a review of the Applicant's electronic filing practices by letter dated May 6, 2021. That letter informed the Applicant that CRA was reviewing her completed T183 forms for the 2019 taxation year and requested that she provide copies of such forms for each individual whose name appeared on an attached list.

[28] This review resulted in CRA issuing the Suspension Letter on October 27, 2021, informing the Applicant that her EFILE privileges were being suspended. The letter referred to the Applicant having previously been advised, both through the V7197 Letter dated March 11, 2022, and in a March 9, 2020 telephone conversation, that certain categories of taxpayers were excluded from electronic filing. These categories are: (a) foreign workers employed in Canada under the SWAP who are non-residents or deemed non-residents; and (b) taxpayers who are deemed residents (not subject to provincial or territorial tax) [together, Excluded Taxpayers].

[29] While it is not expressly stated in the Suspension Letter, I interpret the letter as conveying that the Applicant's EFILE privileges were being suspended because, notwithstanding the advice she had previously received, she continued to file tax returns electronically for Excluded Taxpayers.

[30] By letter dated January 25, 2022, the Applicant initiated an administrative review of the Suspension Letter. In particular, she took issue with CRA's assertion that she had been previously warned in March 2020, both by letter and over the phone, about the exclusions from EFILE applicable to Excluded Taxpayers.

[31] The record before the Court demonstrates that the administrative review process in this matter commenced with the work of an Appeals Officer. The Appeals Officer swore an affidavit explaining the steps in the review process and attaching as an exhibit a Memo for File identifying such steps [Memo]. Those steps included the Appeals Officer preparing a document entitled Report on Administrative Review dated March 28, 2022 [Report], also attached as an exhibit to the affidavit. The CRA officer assigned to make the final decision in the review, bearing the title Team Leader, reviewed the Report and other material assembled by the Appeals Officer. While the Team Leader made the final decision, it was conveyed to the Applicant in the Decision Letter dated March 31, 2022 and issued under the name of the Chief of Appeals.

[32] While the Report is not signed by any of the individuals involved, it bears the March 28, 2022 date next to the names of each of the Appeals Officer, Team Leader, and Chief of Appeals. The Memo also reflects that the file was completed and sent to the Team Leader for review on March 28, 2022, and that the Team Leader provided approval on the same date.

[33] Both the Memo and the Report provide insight on the reasoning resulting in the suspension that was issued through the Suspension Letter. Factually, that decision resulted from the Applicant having continued to perform electronic tax filings for Excluded Taxpayers,

notwithstanding that she had been advised verbally and in writing in March 2020 that she should not do so. This documentation also indicates that the suspension decision was based on what the Memo refers to as "criteria number 13" related to having engaged in fraud, dishonesty, breach of trust, or other conduct of a disreputable nature. Similarly, in explaining the basis for the original suspension, the Report quotes this criterion as follows [Criterion 13]:

> *According to The criteria – 4032.(12)74:*
>
> *An applicant **must meet and continue to meet** the criteria to participate in the EFILE program.*
>
> *Applicants do **not** meet the criteria if they:*
>
> *[…]*
>
> *13. have engaged in fraud, dishonesty, breach of trust or other conduct of a disreputable nature.*
>
> [emphasis in original]

[34] Counsel confirmed at the hearing that the document from which this quotation is taken is not in the record before the Court. However, it appears that this document and Criterion 13 were the subject of this Court's decision in *Paterson,* in which Justice Martineau explained the following (at paras 3-4):

> 3. Prior to examining the particular facts of this case, section 150.1 of the Act makes it clear that there is no right to file a tax return electronically. Rather, subsection 150.1(2) specifies that "a person who meets the criteria in writing by the Minister of National Revenue (the Minister) may file a return of income for a taxation year by way of electronic filing" (my emphasis). Based on the wording of the provision, it is clear that the Minister has full discretion to grant, or revoke, the privilege of electronic filing. Relevant factors governing the exercise of the ministerial discretion are listed in the "Suitability screening" form posted on the CRA's website.

> 4. Relevant factors include *inter alia*, that the existing or prospective participant in the EFILE program not have been convicted under the Act or any income tax act of any province, not failed to comply with the requirement to pay, collect or remit taxes as required under the Act (among other pieces of legislation), not made any misrepresentations on their application or renewal of their electronic filing privileges, and most importantly for the case at bar, the existing or prospective participant must not have been engaged "in fraud, dishonesty, breach of trust, or other conduct of a disreputable nature" … .
>
> [emphasis in original]

[35] After identifying the basis for the Applicant's suspension, the Report next identifies the Applicant's position, as asserted in her January 25, 2022 letter, that there was no mention of the Excluded Taxpayers in the letter sent to her on March 11, 2020. The Report then refers to unsuccessful efforts to reach the Applicants by telephone to discuss her request for administrative review.

[36] Finally, the Report sets out the analysis underlying its conclusion that the Applicant's suspension should be confirmed. The Report notes that the Appeals Officer had confirmed that correspondence sent to the Applicant on March 11, 2020, did indeed advise as to the categories of Excluded Taxpayers. The Appeals Officer states that the Applicant's January 25, 2022 appeal submission attached only two pages of a four-page letter. More accurately, it is clear from the record that the Applicant was sent two different letters of two pages each on March 11, 2020, and that her appeal submission attached only one of the letters. However, I agree with the Respondent's submission that nothing turns on this distinction.

[37] Based on this correspondence, the March 2020 verbal discussion between CRA and the Applicant, and the fact that the list of Excluded Taxpayers was available online, the Appeals Officer concluded that the Applicant was aware or should have been aware of the exclusions. The Appeals Officer also noted the means by which the Applicant had continued to file electronic returns for the Excluded Taxpayers – by using what is described as the "care of" option in the EFILE software to bypass the identity of the taxpayers. The Report states that the decision is to confirm the Applicant's suspension, because she was aware of the list of exclusions but continued to file electronic returns for these taxpayers. The Report concludes by again referencing and quoting from Criterion 13, including a quotation to the effect that the usual suspension for this criterion is for at least five years.

[38] The final document generated in this process was the Decision Letter. Because of its significance to the intelligibly concern that underlies my decisions, I will quote in full the substantive component of the letter:

> This letter is in response to your correspondence dated January 25, 2022.
>
> You were advised in the correspondence from the Electronic Filing (EFILE) Helpdesk dated October 27, 2021, that your application to participate in the electronic filing program was suspended because you continued to do electronic filings for excluded individuals.
>
> The privilege to utilize the EFILE and the System for Electronic Notification of Debts (SEND) programs for T1 individual income tax returns is subject to suitability screening and monitoring that is performed by the EFILE Helpdesk on behalf of the Minister. The object of the screening and monitoring is to safeguard the EFILE system, maintain a high level of public confidence in EFILE and to ensure that all participants in the program adhere to the highest professional and ethical standards. The authorization for the performance of the screening and monitoring is contained in subsection 150.1(2) of the Income Tax Act (ITA), subject to an administrative review by the Chief of Appeals.

> We have performed your request for an EFILE administrative review.
>
> An applicant must meet and continue to meet the criteria to participate in the EFILE program. Applicants do not meet the criteria if they file returns electronically for excluded individuals. Applicants cannot file a return electronically for:
>
> - Foreign workers employed in Canada under the Seasonal Agricultural Workers Program who are non-residents or deemed non-residents
>
> - Taxpayers who are deemed residents (not subject to provincial or territorial tax).
>
> Our review indicates that you continued electronic filings for excluded taxpayers after been advised by the EFILE Helpdesk of these exclusions both verbally and in writing in the month of March 2020. This list of exclusions is also available online at "EFILE for electronic filers" and "Electronic Filers Manual RC4018".
>
> Based on the reason stated above, we regret to inform you that we are confirming the decision of the EFILE Helpdesk to suspend your participation in the CRA's electronic filing programs.

[39] It is clear from the Decision Letter and the record leading up to it that, factually, the Decision is based on the fact that the Applicant continued to file electronic returns for Excluded Taxpayers notwithstanding that CRA had previously informed her of the exclusions. The Applicant challenges the reasonableness of this aspect of the Decision, including arguing that CRA caused her confusion by sending two letters both dated March 11, 2022, and bearing different EFILE participant numbers. I find no merit to this argument, as there is nothing in the record inconsistent with the conclusion, in particular in reliance on the V7197 Letter, that the Applicant was clearly advised of the exclusions.

[40] The Applicant also disputes that the particular taxpayers whose returns resulted in her suspension, who I understand are seasonal agricultural workers who normally reside in Mexico, fall within the categories of Excluded Taxpayers. The Applicant has referred the Court to portions the SWAP Guide, which identify the circumstances in which a seasonal worker is considered a resident, non-resident, or deemed non-resident of Canada for tax purposes. It is common ground between the parties that there is a tax treaty between Canada and Mexico, a point that is also reflected in the SWAP Guide. It appears clear from the SWAP Guide that, regardless of the number of days a seasonal worker from a treaty country has been in Canada, they are either a non-resident or a deemed non-resident and therefore fall within the categories of Excluded Taxpayers. Again, I find nothing in the record to support a conclusion that this aspect of the reasoning underlying the Decision is unreasonable.

[41] However, *Vavilov* explains that reasonableness review is concerned with identifying an internally consistent and rational chain of analysis that is justified in relation to both the facts and the law that constrains the decision-maker (at para 85). It is in the arena of the law constraining the decision-maker that I find the lack of intelligibility and transparency in the Decision.

[42] The legal constraints are derived from subsection 150.1(2) of the Act which, as explained in *Paterson* (at para 3), provides that a person who meets the criteria specified in writing by the Minister may filed returns electronically. *Paterson* also explains that Criterion 13 is one of these criteria that has been specified in writing by the Minister and is found on a portion of CRA's website referred to as "suitability screening". As reflected in *Paterson*, Criterion 13 is only one of such criteria that have legal effect by virtue of subsection 150.1(2). However, the

intelligibility concern that arises in connection with the Decision in the case at hand relates to uncertainty whether, and if so how, Criterion 13 figures in the reasoning underlying the Decision.

[43] In both its written and oral submissions, the Respondent takes the position that the Decision does not turn on the application of Criterion 13. The Respondent points out that the Decision Letter does not mention this criterion. In the Respondent's submission, the legal content of the Decision is derived from the list of Excluded Taxpayers as published on CRA's website. In other words, the Respondent argues that the exclusions represent criteria prescribed by the Minister in writing for purpose of subsection 150.1(2).

[44] The Respondent submits that the references to Criterion 13 in the Report and other portions of the record leading to the Decision relate to the manner in which the Applicant was able to perform the impugned electronic filings, i.e. through the "care of" options in the EFILE program, but are ancillary to the reasoning underlying the Decision.

[45] At the hearing of this application, I raised with the Respondent's counsel whether it was sound to regard the published list of exclusions as subsection 150.1(2) criteria. Counsel pointed out that, if the Applicant had such a concern, it was incumbent on her to raise it when seeking administrative review of the Decision. The Decision could then have addressed that point, and the parties and the Court would have the benefit of the administrative decision-maker's reasoning in conducting judicial review. I take that point and therefore will provide no further comment on that question.

[46] Rather, I conclude that the Decision is unreasonable, because I am unable to accept the Respondent's submission that that the Decision does not turn on the application of Criterion 13. As explained in *Saber & Sone Group v Canada (National Revenue)*, 2014 FC 1119 at paragraph 23, a report or recommendation leading to an administrative decision can be regarded as informing the reasons for the decision when the decision itself contains no reasons or brief reasons (see also *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paras 37-38). In the case at hand, the Decision Letter does set out some reasoning, and it might be debated whether these reasons are comprehensive enough to displace this principle. Ultimately, this is a case-by-case exercise that must be performed on individual facts. Consistent with the Respondent's counsel's submission in oral argument, the Decision Letter and Report must be analyzed holistically in conjunction with the record before the Court as an organic whole.

[47] In my view, the record leading to the Decision Letter, and the Report in particular, significantly inform an understanding of the reasoning underlying the Decision. The analysis underlying the Suspension Letter clearly relied on Criterion 13 and therefore a conclusion that, in continuing to file electronic returns for Excluded Taxpayers, the Applicant had engaged in fraud, dishonesty, breach of trust or other conduct of a disreputable nature. Both because of that context and because the conclusion of the Report again cites Criterion 13 and references the five-year default suspension period that appears linked to that criterion, it is also clear to me that the analysis in the Report relied on Criterion 13.

[48] The Decision Letter relied on the same facts, surrounding the Applicant filing electronic turns for Excluded Taxpayers, as did the Report. It is therefore difficult to interpret the Decision

Letter as based on a different analysis than that in the Report. Moreover, the Decision Letter refers to the privilege to utilize the EFILE system as subject to suitability screening and monitoring.

[49] It would have been preferable if the parties had included in the record in this application a copy of the document published by CRA that includes Criterion 13. The Monitoring Policy included in the Applicant's Record states that CRA reserves the right to revoke authorization to participate in electronic filing if any of a list of conditions exist. This list includes failure to meet the suitability screening criteria and appears to include an electronic link to these criteria. The criteria themselves are not included. However, as noted earlier in these Reasons, *Paterson* explains that Criterion 13 is one of the criteria that has been specified in writing by the Minister and is found on a portion of CRA's website identifying "suitability screening". In my view, the reference in the Decision Letter to suitability screening supports a conclusion that the analysis underlying the Decision includes reliance on Criterion 13.

[50] The fact that the Respondent takes the position that the Decision should be interpreted differently itself raises concerns about the intelligibility and transparency of the Decision. More significantly, the Decision does not disclose an analysis as to how the decision-maker concluded that the Applicant's activity in filing electronic returns for Excluded Taxpayers represented fraud, dishonesty, breach of trust, or other conduct of a disreputable nature. The categories of conduct set out in Criterion 13 potentially have varied meanings, and it is not clear which of those categories the decision-maker was relying upon in concluding that the requirements of Criterion 13 were satisfied. The Decision lacks the clarity demonstrated by the decision that was

found to be reasonable in *Paterson*, in which the letter from the Chief of Appeals expressly stated a conclusion that the applicant had engaged in conduct that was disreputable in nature and explained the reason for characterizing the Applicant's conduct in that manner (at para 11).

[51] For these reasons, I conclude that the Decision does not disclose the justification that *Vavilov* demands and that the Applicant's application for judicial review should be allowed.

VI. **Remedies**

[52] The Applicant seeks a number remedies, including that the Court reinstate her EFILE that privileges and order compensation for damages resulting from the suspension of those privileges.

[53] The award of damages is not a form of relief available on judicial review. As for the request that the Court order privileges reinstated, *Vavilov* explains that the appropriate remedy when granting judicial review is typically to remit the matter to the decision-maker to have the decision reconsidered, with the benefit of the Court's reasons. There are limited scenarios in which remitting a matter for reconsideration would stymie its timely and effective resolution or would serve no useful purpose, because a particular outcome is inevitable (at paras 141-142). This is not such a situation. The appropriate remedy is the usual remedy – that the Decision be set aside and the matter returned to a similarly situated but different decision-maker for redetermination. My Judgment will so provide.

VII. **Costs**

[54] Neither party made submissions on costs at the hearing of this application. Consistent with the reasoning in Justice Go's recent decision in *Virani v. Canada (Attorney General)*, 2022 FC 1480 at para 23, the Applicant has not demonstrated that she incurred an opportunity cost by forgoing remunerative activity in preparing for this case. Indeed, her arguments on the merits of the application emphasized the reduction in the volume of work available to her as a result of her suspension from her participation in the EFILE system. My Judgment will make no order as to costs.

JUDGMENT IN T-888-22

THIS COURT'S JUDGMENT is that:

1. The style of cause in this matter is changed to read as set out above, with the Attorney General of Canada as the Respondent.

2. This application for judicial review is allowed, the Decision is set aside, and the matter is returned to a similarly situated but different decision-maker for redetermination.

3. There is no order as to costs.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-888-22
STYLE OF CAUSE:	MA. MARIBEL ACEVEDO VIRGEN V. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HEARD VIA VIDEOCONFERENCE
DATE OF HEARING:	NOVEMBER 8, 2022
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	NOVEMBER 15, 2022

APPEARANCES:

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Jesse Epp-Fransen	FOR THE RESPONDENT

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