

**Date: 20090505**

**Docket: T-854-08**

**Citation: 2009 FC 459**

**OTTAWA, ONTARIO, MAY 5, 2009**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**PINO GUERRA**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is an application for judicial review, brought pursuant to subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, of a decision rendered by the Director of the Ottawa Tax Services Office on behalf of the Minister of National Revenue, dismissing partially the applicant's request for a waiver of interest and penalties associated with arrears relating to Goods and Services Tax (GST) payments owed by the applicant under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "Act").

## **BACKGROUND**

[2] The applicant was the director of De Medici Fashions Inc., a high-end clothing store located in Ottawa, Ontario. The store was broken into and robbed four times in a six month period, from August to December of 1991. These thefts aggravated the already fragile financial situation of the business, depleting much of its inventory and making it impossible to benefit from the holiday season of the end of that year. The applicant further alleged that the insurer's refusal to settle his theft claims affected his cash flow, which in turn forced the business to close in 1993.

[3] The applicant did not file GST returns for the tax periods of March 1, 1991 to March 31, 1993, until July 29, 1997. At that time, the applicant had a GST balance of \$3,596.62, plus penalties and interest. With penalties and interest, this sum eventually escalated to \$13,642.66 at the time the Fairness Report was drawn, in March of 2008.

[4] On February 11, 2004, the applicant applied to the Minister for waiver of interest and penalties with respect to his GST debt for the periods in question. By letter dated April 28, 2004, the applicant was advised that his First Request was denied, essentially because the applicant failed to cooperate with the Canada Revenue Agency in the past and because the business would not be jeopardized as it was not operating any more. The most salient paragraph of that letter reads as follows:

In light of these guidelines [*GST Memorandum No. 500-3-2-1 Cancellation of Waiver of Penalties and Interest*], we determined that your debts arose because you failed to remit any deductions from your employees' payroll and that you failed to remit any GST collected from the operations of your business.

We also determined that the interest accumulated because you failed to make adequate payments on your debt for a substantial period of time and that various legal actions had to be undertaken in order to contact you and to attempt to collect your outstanding debts. Our records also indicate that despite several requests to provide the CRA with financial disclosure and a meaningful payment arrangement, none has been provided thus far. CRA has also determined that as the business related to the above accounts is no longer operating, there is no financial hardship with respect to jeopardizing the continued employment of employees. In reviewing your personal income tax account [...], it was discovered that you have not filed your personal income tax returns for 1998, 1999, 2000, 2001 and 2002 taxation years. Our records also indicate that despite your previous and current business debts, you are involved in yet another business enterprise for which you have not listed any assets. Accordingly, no relief can be granted in the present circumstance.

[5] Marilena Guerra, sister and representative for the applicant, provided additional information to CRA by letter dated March 23, 2007. It is in that letter that the break-ins that occurred in August and December of 1991 were first mentioned. The applicant then made a Second Request for cancellation of penalties and interest, by letter dated November 26, 2007.

[6] Irene Châteauvert, a CRA officer, reviewed the Second Request and prepared a report on March, 17, 2008 (the Second Report). Since the applicant had entered into an agreement with CRA whereby he remitted \$1,000.00 per month that was applied to the balance owed by the applicant for his other businesses, financial hardship was not considered. On the other hand, it was found that extraordinary circumstances had been established for the 1991 tax periods. The report was approved by David Klimas, Manager, on March 18, 2008. On March 27 and April 11, 2008

respectively, the Taxpayer Relief Provisions Committee approved the recommendation found in the Second Report to grant partial relief to the applicant. On April 17, 2008, Ms. Lucie Bergevin, Director of the Ottawa Tax Services Office, wrote a letter to the Applicant advising him of her decision to follow the recommendation of the Taxpayer Relief Provisions Committee to partially grant the applicant's Second Request. She cancelled the penalties and interest for the periods in 1991 due to the additional information he provided, which amounted to approximately \$3,000.00.

[7] The applicant is now seeking an order from this Court directing the respondent to process the applicant's request for the waiver of all interest and penalties including the tax periods from January 1<sup>st</sup>, 1992 to June 30, 1993.

### **RELEVANT LEGISLATIVE PROVISIONS**

[8] The discretionary decision of the Minister to waive or cancel penalties and interest is founded on section 281.1 of the *Excise Tax Act*, which reads as follows:

#### **Waiving or cancelling interest**

**281.1** (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel interest payable by the person under section 280 on an amount that is required to be remitted or paid by the person under this Part in respect of the reporting period.

#### **Renonciation ou annulation - intérêts**

**281.1** (1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler les intérêts payables par la personne en application de l'article 280 sur tout montant qu'elle est tenue de verser ou de payer en vertu de la

**Waiving or cancelling penalties**

(2) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel all or any portion of any

(a) penalty that became payable by the person under section 280 before April 1, 2007, in respect of the reporting period; and

(b) penalty payable by the person under section 280.1 in respect of a return for the reporting period.

présente partie relativement à la période de déclaration, ou y renoncer.

**Renonciation ou annulation - pénalité pour production tardive**

(2) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler tout ou partie des pénalités ci-après, ou y renoncer :

a) toute pénalité devenue payable par la personne en application de l'article 280 avant le 1<sup>er</sup> avril 2007 relativement à la période de déclaration;

b) toute pénalité payable par la personne en application de l'article 280.1 relativement à une déclaration pour la période de déclaration.

[9] The broad discretionary authority vested in the Minister under section 281.1 of the Act is supplemented by GST Memorandum 500-3-3-1, dated March 14, 1994, and entitled "*Cancellation or Waiver of Penalties and Interests*" (the "*GST Memorandum*"). Sections 4, 5, 6, 8 and 9 of that Memorandum read as follows:

#### CANCELLATION OR WAIVER OF PENALTIES AND INTEREST

4. It is recognized that, despite a person's best efforts, there may be occasions where, as a result of extraordinary circumstances beyond a person's control, a person may be prevented from complying with the requirements of the Act and may, therefore, incur penalties and interest imposed under section 280. In such situations, the Department may consider it appropriate to exercise discretion in the application of penalties and interest.

5. The Department will consider separately the decisions as to whether or not it should waive or cancel either or both penalties and interest applicable in a particular situation. In all circumstances where the Department is considering such decisions, it retains the right to either cancel or waive only a portion of the penalties and interest or all or a portion of one or the other.

#### EXTRAORDINARY CIRCUMSTANCES

6. Penalties and interest may be cancelled or waived where

#### RENONCIATION OU ANNULATION - PÉNALITÉS ET INTÉRÊTS

4. Il est reconnu que, malgré les meilleurs efforts d'une personne, il peut y avoir des cas où, en raison de circonstances extraordinaires indépendantes de la volonté de la personne, celle-ci n'a pu se conformer aux exigences de la Loi et peut donc être passible des pénalités et des intérêts imposés en application de l'article 280. Dans de tels cas, le Ministère peut considérer qu'il convient d'exercer le pouvoir discrétionnaire dans l'imposition des pénalités et des intérêts.

5. Le Ministère considérera séparément les décisions à savoir si, dans une situation donnée, il devrait annuler les pénalités ou les intérêts, ou les deux, ou y renoncer. Dans tous les cas où le Ministère envisage une telle décision, il conserve le droit d'annuler soit seulement une partie des pénalités et des intérêts, soit l'ensemble ou une partie des pénalités ou des intérêts, ou d'y renoncer.

#### CIRCONSTANCES EXTRAORDINAIRES

6. Des pénalités et des intérêts peuvent être annulés, ou on peut y renoncer, lorsqu'ils

they resulted from an extraordinary circumstance beyond the person's control, which prevented the person from complying with the Act. For example, one of the following extraordinary circumstances may have prevented a person from making a payment when due, or otherwise complying with the Act:

(a) natural or human-made disasters, such as flood or fire;

(b) civil disturbances or disruptions in services, such as a postal strike;

(c) a serious illness or accident; or

(d) serious emotional or mental distress, such as death in the immediate family.

7. The cancellation or waiver of penalties and interest may also be appropriate in some circumstances if the penalties and interest were incurred primarily because of the actions of the Department. For example:

(a) processing delays that resulted in the person not being informed within a reasonable amount of time that an amount was owing;

résultent de circonstances extraordinaires indépendantes de la volonté de la personne et ayant empêché celle-ci de se conformer à la Loi. Voici des exemples de circonstances extraordinaires qui pourraient empêcher une personne de faire un paiement dans les délais exigés ou de se conformer à la Loi :

*a)* une calamité naturelle ou une catastrophe provoquée par l'homme, comme une inondation ou un incendie;

*b)* des troubles civils ou l'interruption de services, comme une grève des postes;

*c)* une maladie grave ou un accident grave;

*d)* des troubles émotifs sérieux ou une souffrance morale grave comme un décès dans la famille immédiate.

7. L'annulation des pénalités et des intérêts ou la renonciation à ceux-ci peuvent également être indiquées dans certains cas où ces pénalités et intérêts découlent principalement d'actions attribuables au Ministère, par exemple :

*a)* des retards de traitement ayant eu pour effet que la personne n'a pas été informée, dans un délai raisonnable, de l'existence d'une somme en souffrance;

(b) errors in departmental publications, which led the person to file returns or make payments based on incorrect information;

(c) incorrect written information provided in an interpretation or notice given to a specific person by the Department;

(d) departmental errors in the processing of GST returns or information; or

(e) delays in providing information necessary for the person to comply with the Act.

**8.** It may be appropriate for the Department, in circumstances where there is an inability on the part of the person to pay amounts owing, to consider cancelling or waiving penalties and interest in whole or in part to facilitate collection. For example:

(a) when collection has been suspended due to an inability to pay;

(b) when a person is unable to conclude a reasonable payment arrangement because the penalty and interest charges represent a significant portion of the payments. In such cases, consideration may be given to

*b)* des erreurs dans les publications ministérielles, ce qui a amené la personne à produire des déclarations ou à verser des paiements en se fondant sur des renseignements erronés;

*c)* des renseignements écrits inexacts fournis à une personne donnée dans une interprétation ou un avis du Ministère;

*d)* des erreurs ministérielles dans le traitement des déclarations de TPS ou des renseignements;

*e)* des retards quant à la fourniture de renseignements nécessaires pour que la personne puisse se conformer à la Loi.

**8.** Dans les situations où il y a incapacité de la part de la personne de verser les montants dus, il peut être indiqué pour le Ministère d'examiner la possibilité d'annuler la totalité ou une partie des pénalités et des intérêts, ou d'y renoncer, afin d'en faciliter le recouvrement, par exemple dans l'un des cas suivants :

*a)* lorsque les mesures de recouvrement ont été suspendues à cause de l'incapacité de payer;



waiving penalties and interest in whole or in part for the period beginning on the first payment due date under the payment arrangement until the amounts owing are paid, provided the agreed payments are made on time.

### FACTORS

9. Where an extraordinary circumstance beyond the person's control has prevented the person from complying with the Act, the following factors will be considered by the Department to determine whether or not penalties and interest will be cancelled or waived:

(a) Does the person have a satisfactory history of voluntary compliance (i.e., have previous GST returns been filed and payments made on time)?

(b) Has the person knowingly allowed an outstanding balance to exist upon which the penalties and interest have accrued?

(c) Has the person acted quickly to remedy the omission or the delay in compliance, which originally resulted in penalties and interest being charged?

(d) Is there evidence that the person exercised reasonable

*b) lorsqu'une personne ne peut conclure une entente de paiement qui serait raisonnable parce que les pénalités et les frais d'intérêts représentent une partie considérable des versements; dans un tel cas, il y a lieu de penser à renoncer à la totalité ou à une partie des pénalités et des intérêts pour la période allant de la date d'échéance du premier paiement en vertu de l'entente de paiement jusqu'au moment où les montants dus sont payés, pourvu que les versements convenus soient effectués à temps.*

### FACTEURS

9. Lorsque des circonstances extraordinaires indépendantes de la volonté d'une personne ont empêché celle-ci de se conformer à la Loi, les facteurs suivants seront pris en considération par le Ministère pour déterminer s'il doit annuler les pénalités et les intérêts ou y renoncer :

*a) La personne a-t-elle des antécédents satisfaisants d'observation volontaire (c.-à-d. les déclarations de TPS précédentes ont-elles été produites et les paiements ont-ils été versés à temps)?*

*b) La personne a-t-elle, en connaissance de cause, laissé subsister un solde en*

care and diligence (e.g., planned for anticipated disruptions) and was not negligent or careless in the conduct of its affairs? The onus is on the registrant to keep abreast of any new developments in the administration of the GST so as to ensure continuing compliance.

souffrance sur lequel se sont accumulés les pénalités et les intérêts?

c) La personne a-t-elle agi avec diligence pour remédier à tout retard ou à toute omission en matière d'observation qui a donné lieu à l'imposition initiale des pénalités et des intérêts?

d) Y a-t-il des preuves selon lesquelles la personne a fait preuve de prudence et de diligence (p. ex. a pris des précautions en vue de troubles prévus) et n'a pas fait preuve de négligence ni d'imprudence dans la conduite de ses affaires? Il revient à l'inscrit de se tenir au courant de tout changement apporté à l'administration de la TPS de manière à assurer qu'il continue à observer la Loi.

## **THE IMPUGNED DECISION**

[10] In making her decision to grant partial relief pursuant to the applicant's Second Request,

Lucie Bergevin, Director of the Ottawa Tax Services Office, considered the following information:

- the applicant First Request, dated February 11, 2004 and the reasons therein;
- CRA's First Report prepared by T. Daniel and approved by Angelique Pambrun;
- CRA's letter from Angelique Pambrun, Team Leader, dated April 28, 2004, denying the applicant's First Request and the reasons therein;
- letter from Marilena Guerra, representative for the applicant, dated March 23, 2007;
- letter from Michelle Zidek, CRA's officer, dated July 17, 2007;
- the applicant's Second Request dated November 26, 2007 and the reasons therein;
- CRA's Second Report recommended by Irene Châteauvert on March 23, 2008, and approved by David Klimas on March 18, 2008;

- CRA's Taxpayer Relief Provisions Committee's Second Request Recommendation recommended by Janet de Kergommeaux, CRA officer, dated March 27, 2008 and which she approved on April 11, 2008.

[11] On account of that information, and of the fact that the applicant was involved in a few business ventures since 1993, the Taxpayer Relief Provisions Committee recommended not to consider a review under financial hardship and determined that instead relief should be given only for the tax periods of 1991, on the basis that extraordinary circumstances had been established following the thefts that took place during that year. It was further determined that there was no justification for providing relief for the tax periods of 1992 and 1993, as the applicant had waited four years before filing his GST returns and that no payments had been forthcoming. This recommendation was approved by Ms. Lucie Bergevin.

[12] In her letter to the applicant, she appraised him of her decision to cancel the penalties and interest for the periods in 1991. It was further mentioned in the letter that the decision should in no way be considered as a precedent and that under normal circumstances, any penalty and/or interest that is assessed under the provisions of the *Act* is due and payable in full. As a result of that decision, the balance owing on the applicant's GST file was in the range of \$10,000.00, consisting of the original \$3,000.00 (more or less) unpaid GST and of the penalties and interest for 1992 and the first quarter of 1993.

## **ISSUES**

[13] There is no dispute between the parties as to the applicable standard of review in the case at bar being that of reasonableness.

[14] The only issue to be determined is whether the CRA, acting as the Minister's delegate, exercised its discretion unreasonably in granting only partial relief of the applicant's request for waiver of penalties and interests.

### **ANALYSIS**

[15] The applicant seeks to have that decision set aside on the grounds that the CRA failed to consider relevant facts in the exercise of its discretion, and argued that the decision granting relief only for the year of 1991 was unreasonable. Although the applicant was self-represented, his submissions to the court were nonetheless well articulated, convincing and very compelling.

[16] On the other hand, the respondent argued equally forcefully that the decision to waive or cancel penalties and interest being essentially a discretionary decision of the Minister and his delegates, there was no obligation on his part to reach any given conclusion. Therefore, he submitted, the court should review such decisions with considerable deference and refrain from substituting its own conclusions.

[17] Paragraph 280(1) of the *Excise Tax Act* imposes a liability for penalties and interest on amounts owed to the Receiver General as required under the Act. However, taxpayers may make a request to be relieved from this liability by soliciting the Minister to exercise its discretion under the "Fairness Provisions", namely s. 281.1 of the *Excise Tax Act*, under which a broad discretionary power was vested in the Minister and his delegates, the CRA and its officers, to waive or cancel penalties or interest payments when they are due.

[18] As already mentioned, the Act and its regulations are silent as to what criteria are to be used in exercising this discretion. In these circumstances, CRA officers may use any criteria they choose. Considering that the exercise of statutory discretion can not be absolute, the extent of the obligation of the decision maker has been set out in *Edwards v. Canada*, [2002] F.C.J. No. 841 as follows:

[14] A discretionary power of this nature must be exercised in good faith, in accordance with the principles of natural justice, taking into account all relevant considerations and without regard to irrelevant or extraneous ones.

[19] To assist in the exercise of that discretion, and to ensure consistency, fairness and transparency, guidelines have been created in the form of the GST Memorandum, outlining the kinds of circumstances that CRA officers should take into consideration when exercising their discretion. It is clear, however, that the discretion bestowed upon the Minister by the Act cannot be fettered by policy guidelines: *Maple Lodge Farms Limited v. Government of Canada*, [1982] 2 S.C.R. 2., at p. 6.

[20] I agree with the respondent that a discretionary decision made pursuant to statutory authority should not be interfered with simply because the Court might have exercised the discretion in a different manner. Called upon to review the exercise of a discretionary power such as the one in question here, Justice McIntyre (for the Court) stated:

In construing statutes such as those under consideration in this appeal, which provide for far-reaching and frequently complicated administrative schemes, the judicial approach should be to endeavour within the scope of the legislation to give effect to its provisions so that the administrative agencies created may function effectively, as the

legislation intended. In my view, in dealing with legislation of this nature, the courts should, wherever possible, avoid a narrow, technical construction, and endeavour to make effective the legislative intent as applied to the administrative scheme involved. It is, as well, a clearly-established rule that courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

*Maple Lodge Farms Limited v. Government of Canada, ibid.*, at p. 7.

[21] Indeed, the Federal Court of Appeal ruled in *Lanno v. Canada (Customs and Revenue Agency)*, 2005 CAF 153, that a discretionary decision made under the fairness provisions of the *Income Tax Act* should be subject to the standard of reasonableness. Applying the pragmatic and functional approach, the Court considered the following factors in coming to its conclusion:

[6] (1) The fairness package was enacted because Parliament recognized the need for relief from certain provisions of the *Income Tax Act* that can result in undue hardship because of the complexity of the tax laws and the procedural issues entailed in challenging tax assessments. The granting of relief is discretionary, and cannot be claimed as of right. This factor would point to a standard of review that is more deferential than correctness.

(2) The decision under review cannot be appealed, but it is subject to judicial review by the Federal Court, and it is not protected by a privative clause. That would point to a reasonableness standard.

(3) The decision under review combines fact finding with a consideration of the policy of tax

administration, and sometimes questions of law. The expertise of the decision maker is undoubtedly higher than that of the courts in relation to matters of the policy of tax administration. However, the expertise of the decision maker is not higher than that of the courts in relation to questions of law or findings of fact. That would point to a reasonableness standard.

[22] As noted by my colleague Justice Phelan in *Charlottetown Bottle and Metals Ltd. v. Canada (Minister of National Revenue)*, 2005 FC 1626, the relevant provisions of the *Excise Tax Act* relating to fairness relief are essentially the same as those found in the *Excise Tax Act*, so that the standard of review should be the same. The reasonableness standard has been consistently applied by this Court when dealing with the fairness provisions of both the *Income Tax Act* and the *Excise Tax Act*, and the decisions of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 and in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 have confirmed the appropriateness of this reasoning. As a result, this Court will not intervene if the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New-Brunswick*, at par. 47).

[23] The applicant argued that the CRA officer should have waived all penalties and interests, not only for the 1991 fiscal year, when the thefts occurred, but also for 1992 and 1993. Relying on the GST Memorandum provisions, and more particularly on the opening paragraph of section 6, the applicant submitted that the “extraordinary circumstances beyond the person’s control” as a criteria for granting relief should have been given a broader interpretation to include not only the year into which the events generating the “hardship” took place, but also the next fifteen months (that is, up until the business closed). That period was inextricably linked to the thefts, to the extent that it is

during that period that the difficulties created by the thefts materialized (lack of inventory, difficulty to refinance his business, refusal of his insurance company to pay his claims, etc.). The applicant contended that the CRA officer erred in its decision to consider hardship only for 1991 and consequently in granting only a partial relief.

[24] Counsel for the respondent objected to this argument and submitted that relief was given on the basis of “extraordinary circumstances” rather than “financial hardship”. According to the respondent, the event that led or that created the extraordinary circumstances were the thefts; since those took place in the fall of 1991, relief was given for that time period. The respondent further argued that the applicant has already paid 65 000\$ in GST penalties and interest, which shows that he has capacity to pay the amount left owing. As such, the CRA officer did not err in her decision-making process leading to the partial relief.

[25] The criteria to waive or cancel penalties and interests is clearly enunciated in s. 4 of GST Memorandum as being “*extraordinary circumstances beyond a person’s control*”. However the thefts may be qualified, they must undoubtedly be assimilated to an extraordinary circumstance beyond the applicant’s control. They caused substantial losses to the applicant and depleted his business inventory. It is also fair to assume that the impact of those thefts was felt not just (or even mainly) in 1991, but also in the following year. Indeed, counsel for the respondent conceded as much when questioned at the hearing.



[26] As previously mentioned, every case must be decided on its own merit in order that circumstances unique to an individual taxpayer be properly taken into account. Therefore, the CRA officer should have bore in mind the nature of the retail business in assessing the consequences of the thefts incurred by the applicant and of the long delay in resolving his insurance claim. It was unreasonable to take the calendar year wherein the thefts were committed as the only period where the applicant could not comply with the *Excise Act* as a result of exceptional circumstances beyond his control. Considering the timing of the thefts (the most substantial of which appeared to have taken place just before Christmas of 1991) and the nature of the applicant's business, CRA should have taken into consideration the longer term effects of such thefts on the applicant's capacity to operate his business profitably. Accordingly, I am of the view that it was unreasonable for the CRA officer to grant relief only for the tax periods of 1991, without ostensibly looking into the longer term impact of the thefts on the applicant's business.

[27] It was further argued by the applicant that the CRA officer who made the final decision did not have a full picture of his file and ignored relevant factors before coming to her conclusion. Mr. Guerra stressed that he could have gone bankrupt in 1993 but decided instead to get through, operating other businesses that would allow him to pay off all his debts. He also paid more than \$60,000.00 in penalties and interests on other tax debts that he incurred as a result of various business misfortunes, and never even applied for fairness exemption because he felt that these liabilities were not truly beyond his control but resulted from bad investment decisions.

[28] Among the factors to be taken into account by CRA officers when assessing whether there are extraordinary circumstances beyond a taxpayer's control that prevented that person from complying with the Act, section 9 of the GST Memorandum sets out the history of compliance and the diligence of the taxpayer. Having reviewed the material that was before the CRA, especially the affidavit of Lucie Bergevin, I am far from convinced that she was provided with all the information that would have been required to have a fair and fulsome view of the applicant's entire tax files and overall situation. It appears that she was only made aware of the unfavorable parts of the applicant's file before endorsing the Taxpayer Relief Provisions Committee.

[29] As to the applicant's diligence in minimizing the amount of penalties and interests, counsel for the respondent submitted that the applicant consciously failed to file his request for relief at a much earlier occasion. This argument has no merit because it appears the applicant had no choice but to pay off all of his tax debts before being allowed to request a relief with respect to the GST owing on this particular account.

[30] Although not determinative considered separately, those missing factors were most clearly relevant in assessing the applicant's relief request. As a result, I am of the view that the CRA officer could not properly exercise her discretion on behalf of the Minister in the present case, given the misapprehension of the facts in the applicant's file. While it is not for this Court to interfere with a CRA officer's weighing of the various factors mentioned in the GST Memorandum, this Court is certainly warranted to intervene when the decision is based on a misapprehension of the relevant facts.

[31] Finally, the applicant raised an interesting argument relating to his tax assessment. He argued that if the tax assessment had been made correctly, he should have been entitled to a credit for 1991. This credit, in turn, would have had an impact on his GST balance for 1992 and 1993 and would consequently have reduced his GST debts, penalties and interests.

[32] As previously mentioned, s. 281.1 of the *Act* confers upon the Minister the discretion to waive or cancel interest and penalties. However, this section does not give the Minister the discretion to waive the principal amount of tax payable under the Act. Moreover, this Court has limited jurisdiction on application for judicial review as set out in s. 18.1(3) of the *Federal Court Act* and has no jurisdiction to review the applicant tax liability. The correctness of the underlying tax assessments is not the issue before me but could possibly be put before the Tax Court. I therefore refrain from making any comment with respect to this last argument made by the applicant.

[33] For all the foregoing reasons, I am of the view that this application for judicial review must be granted. The CRA officer's decision to partially waive penalties and interests is not reasonable and must be quashed. As a result, her decision is set aside and the matter is remitted for reconsideration.

**ORDER**

**THIS COURT ORDERS that** this applicant for judicial review be granted and the applicant file be remitted back for reconsideration before a different CRA officer.

"Yves de Montigny"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-854-08

**STYLE OF CAUSE:** **PINO GUERRA v. CANADA REVENUE AGENCY**

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** April 15, 2009

**REASONS FOR ORDER  
AND ORDER:** de Montigny, J.

**DATED:** May 5, 2009

**APPEARANCES:**

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ON HIS OWN BEHALF

Mr. Frédéric Morand

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