

Federal Court



Cour fédérale

**Date: 20110228**

**Docket: T-1884-10**

**Citation: 2011 FC 238**

**Vancouver, British Columbia, February 28, 2011**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**VANITHA MOODLEY**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] To err in an administrative decision is human; and, therefore, to reconsider before consequences arise is to correct and begin anew.

[2] To reconsider, a party must be given the opportunity to begin anew by the party that would stand to benefit by reconsideration before consequences would have arisen.

## II. Background

[3] In a motion presented by counsel for the Respondent, the Canada Revenue Agency has conceded that the Applicant's judicial review application should be allowed on the basis that the minister did not properly exercise his discretion in denying the Applicant's fairness request under subsection 220 (3.1) of the *Income Tax Act* (RSC 1985, c 1 (5<sup>th</sup> Supp), ss 220(3.1); and therefore, that the matter be referred to the Minister for reconsideration and redetermination. This is the same result that the Applicant would obtain from the Court if successful.

[4] In addition, the Applicant has expressed concern as to whether the "due diligence defence" will be considered upon reconsideration and redetermination by the Minister. The Respondent also has agreed to the Applicant's request for consideration of the "due diligence defence" by the Minister in the course of the reconsideration and redetermination.

[5] The Applicant consents to the motion if awarded costs.

[6] Therefore, the issue of costs remains the one outstanding issue.

## III. Analysis

[7] The Court agrees with the Respondent that no costs should be awarded to the Applicant as the Applicant made no attempts to resolve this matter. The Respondent brought this motion as the Applicant, despite the Respondent's concession, was prepared to nonetheless proceed with her application.

[8] In responding to a letter of January 14, 2011 of the Respondent, which was not made on a “without prejudice” basis, the Applicant did not seek clarification of the specific error and basis upon which the Minister was conceding, and did not raise this issue as an area of concern. There was also no mention that costs, either for or against the Applicant, were a factor in the Applicant’s decision not to discontinue her application for judicial review. The Respondent was not made aware of these concerns until after the Respondent served the Applicant with its motion materials.

[9] The Respondent is not seeking costs and requests that any costs to which the Applicant may have been entitled be cancelled out by the costs incurred by the Respondent in bringing this motion for an order allowing the judicial review application. The Applicant did not make any settlement offers respecting costs to the Respondent until after the motion materials had already been served and filed.

[10] Recognizing that the issue of costs is solely within the discretion of the Court, the Court has decided that each party will bear its own costs due to the reasons described above.

**ORDER**

**THIS COURT ORDERS that:**

1. The Applicant's application for judicial review be granted and the Minister of National Revenue's (the Minister) October 14, 2010 decision denying a request by the Applicant for a waiver of penalties and interest under subsection 220(3.1) of the *Income Tax Act* be set aside.
2. The Applicant's subsection 220(3.1) request be referred to the Minister for reconsideration and redetermination.
3. In addition, the Court further acknowledges the "due diligence defence", which the Respondent has agreed to consider upon reconsideration and redetermination by the Minister.
4. Each party is to bear its own costs.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1884-10

**STYLE OF CAUSE:** VANITHA MOODLEY  
v. CANADA REVENUE AGENCY

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA,  
PURSUANT TO RULE 369**

**REASONS FOR ORDER  
AND ORDER:** SHORE J.

**DATED:** February 28, 2011

**WRITTEN REPRESENTATIONS BY:**

Gavin Laird FOR THE APPLICANT

Selena Sit FOR THE RESPONDENT

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