

Federal Court



Cour fédérale

Date: 20110329

Docket: T-284-09

Citation: 2011 FC 383

Ottawa, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

KEN WILLIAMSON

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of the Decision of a delegate of the Minister of National Revenue (Minister's Delegate), dated 19 January 2009, which refused the Applicant's request for interest and penalty relief pursuant to subsection 220(3.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)(Act).

BACKGROUND

[2] The Applicant is self-represented. His debt to the Canada Revenue Agency (CRA) includes interest for the 2004, 2005 and 2006 taxation years and a late filing penalty for his 2005 tax return.

[3] In both 2007 and 2008, the Applicant applied for interest and penalty relief pursuant to subsection 220(3.1) of the Act, alleging financial hardship due to medical expenses and associated travel costs and a medical condition that prevented him from filing. The Applicant was injured in September 2004 and suffered a concussion, which, he has stated, affected his memory. Although it appears to have been his practice to prepare his own income tax returns, he reported in 2008 that he had hired an accountant to review his income tax from 2004-07 and to correct any errors and omissions.

The Applicant's First Level Taxpayer Relief Request—2007

[4] The Applicant first applied to the CRA for relief by letter dated 12 July 2007. CRA advised by letter dated 30 July 2007 that it could not consider the Applicant's request without additional information. The Applicant then forwarded to the CRA some financial documentation accompanied by a letter dated 6 August 2007. The CRA replied to the Applicant's First Level Taxpayer Relief Request with a letter of refusal dated 21 August 2007.

The Applicant's Second Level Taxpayer Relief Request—2008-2009

[5] The Applicant applied a second time for relief in a series of letters dated from 6 August 2008 to 22 September 2008. The Minister's Delegate replied with a letter of refusal dated 19 January 2009. She reaffirmed the decision taken in 2007 and stated that, based on the documentation submitted by the Applicant, relief of interest and penalties was not warranted and that interest on the Applicant's debt would continue to accrue until the debt was satisfied in full. This is the Decision under review.

DECISION UNDER REVIEW

[6] As part of the Applicant's Second Level Taxpayer Relief Request, the CRA had asked the Applicant to provide certain documentation for its assessment of his request for relief. The Minister's Delegate reproduced the list of requested documentation in her Decision. It includes:

- a. a certificate or letter from the Applicant's physician explaining how the Applicant's medical condition prevented him from filing his tax returns on time;
- b. a current, fully supported income and expense statement and net worth statement, including information for all family members;
- c. copies of bank statements for the preceding four months for all accounts held by the Applicant alone or jointly with another person;
- d. copies of the Applicant's most current credit card statements;

- e. a copy of the Applicant's mortgage agreement and a statement confirming the outstanding balance; and
- f. copies of current RRSP statements for both the Applicant and his spouse as well as statements for any additional pension income.

[7] The Minister's Delegate recognized that the Applicant and his spouse both had "ongoing medical issues." However, she noted that the documentation submitted by the Applicant was deficient in certain respects. For example, it did not include a physician's letter explaining how the Applicant's medical condition prevented him from filing his tax returns on time. Also, the income and expense statement failed to indicate how much the Applicant required for basic necessities, such as food. The list of assets was similarly incomplete. The Decision states:

You have listed \$6000.00 held by yourself in RRSP investments but have not mentioned the value of the RRSP's presently held in a spousal RRSP. The value of the RRSP deducted on your 2004 Income tax return was \$21,050.00[.] You have also indicated that the funds to purchase the RRSP were obtained from a loan from your spouse. As a result, the information detailing the total family assets is incomplete.

The Minister's Delegate further observed that, in 2006, the Applicant had invested \$7875 in his RRSP without considering his outstanding tax arrears and that he currently had sufficient investments to retire his tax debt immediately, thereby saving additional interest charges.

[8] The Minister's Delegate concluded that the Applicant was at least partly responsible for his tax arrears and that he had failed to substantiate his claim of financial hardship which, according to the CRA, means "financial suffering or lack of what is needed for basic living requirements such as

food, shelter, clothing and reasonable non-essentials.” The Minister’s Delegate found that the Applicant was financially capable of meeting his basic living requirements and still having sufficient funds to pay his tax arrears at the rate of \$600 per month with an anticipated satisfaction of his tax debt within 12 months. In light of the Applicant’s ability to resolve the debt within a reasonable amount of time, the Minister’s Delegate refused his request for interest and penalty relief.

ISSUES

[9] The issues may be summarized as follows:

- i. Whether there are grounds to review this discretionary Decision; and,
- ii. If there are grounds for review, whether the Decision was reasonable.

STATUTORY PROVISIONS

[10] The following provisions of the Act are applicable in these proceedings:

Waiver of penalty or interest

220. (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

Renonciation aux pénalités et aux intérêts

220. (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

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 take into account the cancellation of the penalty or interest.

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 les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[11] The following provisions of the *Federal Courts Act*, R.S.C. 1985 c. F-7 are applicable in these proceedings:

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board,

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la

commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Powers of Federal Court

Pouvoirs de la Cour fédérale

(3) On an application for judicial review, the Federal Court may

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Grounds of review

Motifs

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

(a) acted without jurisdiction,

a) a agi sans compétence,

acted beyond its jurisdiction or refused to exercise its jurisdiction;	outrépassé celle-ci ou refusé de l'exercer;
(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;	b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;
(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;	c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;	d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
(e) acted, or failed to act, by reason of fraud or perjured evidence; or	e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;
(f) acted in any other way that was contrary to law.	f) a agi de toute autre façon contraire à la loi.

STANDARD OF REVIEW

[12] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[13] The Federal Court of Appeal recognized in *Telfer v Canada (Revenue Agency)*, 2009 FCA 23 at paragraph 23, that even though subsection 18.1(4) of the *Federal Courts Act* does not specifically identify the grounds on which the Court may grant an application for judicial review of the exercise of statutory discretion such as that conferred on the Minister by subsection 220(3.1) of the *Income Tax Act*, the grounds of review set out in paragraphs 18.1(4)(c) and (f) are potentially applicable to discretionary administrative action. These grounds include error of law and the residual ground of review, namely “acted in any other way that was contrary to law.”

[14] The Federal Court of Appeal also found in *Telfer*, above, at paragraph 24, and in *Lanno v Canada (Customs and Revenue Agency)*, 2005 FCA 153 at paragraph 7, that reasonableness is the standard of review applicable to the exercise of statutory discretion under subsection 220(3.1) of the *Income Tax Act*.

[15] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at paragraph 47; and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that

it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

ARGUMENTS

The Applicant

[16] The Applicant states that he has provided the CRA with all of the information available to him regarding his finances and medical expenses and that he contacted the CRA numerous times with regard to his taxes but did not always receive a reply.

[17] Both the Applicant and his wife have undergone costly medical treatment, the former due to a workplace accident. His wife’s ongoing medical condition has resulted in travel expenses. The Applicant submits that, in the circumstances, he is entitled to interest and penalty relief.

The Respondent

[18] The Respondent submits that subsection 18.1(4) of the *Federal Courts Act* provides no grounds for review of the Decision because the Minister’s Delegate exercised the discretion in good faith and in accordance with the principles of natural justice and did not rely upon considerations irrelevant or extraneous to the statutory purpose. See *Maple Lodge Farms Ltd. v Canada (1982)*, [1982] 2 SCR 2, [1982] SCJ No 57 (QL).

[19] The Applicant had an opportunity to make representations and to submit relevant documentation, all of which the Minister's Delegate considered.

[20] The Minister's Delegate was guided in her Decision by *Information Circular 07-1 - Taxpayer Relief Provisions* (Circular), which provides a non-exhaustive list of considerations relevant to an exercise of ministerial discretion under subsection 220(3.1) of the Act. These considerations include extraordinary circumstances, actions of the CRA, inability to pay and financial hardship.

[21] Paragraphs 25 and 27 of the Circular elaborate that penalties and interest may be waived or cancelled where they result from circumstances beyond a taxpayer's control, such as natural or man-made disasters, civil disturbances, serious illness or accidents and serious emotional or mental distress. Where there is an inability to pay, the Minister may waive or cancel interest in whole or in part. However, penalties will not generally be cancelled due to inability to pay unless extraordinary circumstances have prevented compliance with the Act.

[22] The Applicant's request for interest and penalty relief was based on financial hardship resulting in part from medical problems. In assessing this request, the Minister's Delegate made the following findings:

- a. the Applicant did not provide a physician's letter explaining how the Applicant's medical condition prevented him from filing his tax returns on time;
- b. the Applicant's income and expense statement was incomplete;

- c. the documentation indicated that the Applicant had sufficient investments to retire his entire tax debt immediately;
- d. the Applicant was able to meet his basic living requirements and purchase investments while paying \$600 per month on his tax arrears; and
- e. as per the Applicant's request, the CRA adjusted his tax returns and downwardly adjusted the interest charged to the Applicant so as to reflect changes in the claim for RRSP deductions.

[23] The Respondent argues that the Decision is reasonable. The documentary evidence supports the finding that the Applicant was at least partly responsible for his tax arrears and that, contrary to his submissions, he possesses the financial means to resolve the debt within a reasonable period of time. The Respondent asserts that the Decision is justified, transparent and intelligible and that it falls within the range of possible and acceptable outcomes defensible in fact and law as defined by *Dunsmuir*, above.

ANALYSIS

[24] Mr. Williamson presented himself at the hearing of this application as an honest and forthright man of 77 years. He is also tenacious and does not think that the CRA should be allowed to deprive him of anything to which he is rightfully entitled. Strictly speaking, he has not raised any specific grounds for review, and he acknowledged at the hearing of this matter before me that the Decision in question just felt wrong to him and that he wanted the Court to take an independent look

at it to make sure that he has been treated appropriately by the CRA with regard to the interest and penalty relief he requested. He concedes that he has found tax matters confusing and now has qualified people handling them for him. Although he says that he has found it difficult to deal with the CRA in the past, he also concedes that CRA personnel have a job to do; he just wants to be sure that they did right by him. Having been allowed to “say his piece” in court, he informed the Court that he would “sleep a lot better.”

[25] I have carefully reviewed the materials filed in this case and, although I can see why Mr. Williamson might feel hard done by, I cannot say that he has been treated unreasonably or unfairly in his attempts to persuade the CRA to grant him interest and penalty relief.

[26] It appears as though he went through a period of some confusion before he was able to put his tax affairs in order. He has now put that right. Although he and his wife have suffered various medical problems in recent years, Mr. Williamson was able to drive himself from Frobisher to Regina on a very cold day and on icy roads to attend the hearing and, notwithstanding an obvious hearing impairment, he was more than able to present his case.

[27] Mr. Williamson asked for interest and penalty relief on the grounds, *inter alia*, that his “head problem” had prevented him from filing in time and that the interest and penalty payments would cause him financial hardship.

[28] In the end, he was unable to establish the causal link between his “head problems” and his inability to meet his tax obligations. The CRA acknowledged his medical condition but asked for medical confirmation from Mr. Williamson’s doctor that the injury he suffered had prevented him from fulfilling his obligations as a taxpayer. Mr. Williamson says that he asked his doctor to provide this confirmation but the doctor was unable to confirm any such link.

[29] The case law is clear that the onus is upon the applicant to show that any alleged medical condition prevented compliance with tax obligations. See *Young v Canada* (1997), 138 FTR 37, [1997] FCJ No. 1680 at paragraph 19; and *Lemerise v Canada (Attorney General)*, 2010 FC 116 at paragraph 23.

[30] There was no clear causal link in this case. Mr. Williamson was told what was required and given every opportunity to make his case. The Respondent has, in my view, correctly stated the applicable law on this matter, which I adopt for the purposes of these reasons. The Decision was neither procedurally unfair nor unreasonable within the meaning of *Dunsmuir*.

[31] As regards financial hardship, it is clear that Mr. Williamson and his wife have had some difficult financial issues to address, particularly with regard to recent illness, but there is no evidence of the kind of hardship required to justify interest and penalty relief. See, for example, *Neilans v Canada (Attorney General)*, 2004 FC 716; and *Cheng v. Canada*, 2001 FCT 1114. In this regard, the Decision is entirely reasonable and within the *Dunsmuir* range. Mr. Williamson has shown that he is quite capable of retiring his tax debts and keeping normal life going.

[32] In the end, Mr. Williamson is simply asking the Court to consider his request for interest and penalty relief *de novo* and to override the Decision of the Minister's Delegate. This is not the role of the Court in judicial review. See *Giles v Canada (Attorney General)*, 2010 FCA 54 at paragraph 6.

[33] As the Decision indicates, the Applicant failed to provide the evidence necessary to make out his claim. He did not provide all of the requisite documentation, and the documentation that he did provide was incomplete. Most importantly, the Applicant's demonstrated ability to purchase basic necessities and to make investments while paying down his tax arrears revealed that he was not facing financial hardship, as defined by the CRA above, at the relevant time.

[34] Although the Applicant and his wife have struggled with health issues and related costs, this in itself does not amount to a level of financial hardship that warrants interest and penalty relief.

[35] The Applicant has not pointed to any instance where the Minister or the Minister's Delegate has failed to act in good faith or in accordance with the principles of natural justice, or where the Decision is unreasonable.

[36] The Applicant's dissatisfaction with the Decision is understandable but is no justification for the Court's intervention. The role of the Court in judicial review is to determine if the Decision is procedurally fair and reasonable, based on the evidence. In my view, it is. The Applicant has put forward no grounds or justification that would allow me to interfere with this Decision.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.
2. No order is made as to costs.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-284-09

STYLE OF CAUSE: **KEN WILLIAMSON**

and

THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: February 24, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT** **Russell J.**

DATED: March 29, 2011

APPEARANCES:

Ken Williamson

FOR THE APPLICANT

(Self-Represented)

Jamie Hammersmith

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Ken Williamson

FOR THE APPLICANT

Myles J. Kirvan
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FOR THE RESPONDENT