Federal Court  Cour fédérale

Date: 20120618

Docket: T-982-11

Citation: 2012 FC 768

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 18, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

LINA GERMAIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] This is an application for judicial review of a decision of the Minister of National Revenue (the Minister), on May 9, 2011, under subsection 23(2) of the *Financial Administration Act*, RSC (1985), c F-11 [the Act], refusing to recommend to the Governor in Council the remission of an

amount representing the interest and penalties owing by Lina Germain (Ms. Germain), for the 1990 taxation year.

[2] For the following reasons, the Court dismisses this application for judicial review by Ms. Germain.

II. Facts

[3] On December 20, 1991, the Canada Revenue Agency (CRA) assessed Ms. Germain for an amount of $1,200.60 for the 1990 taxation year. The assessment consists of $1,011.29 in taxes, $88.28 in interest and $101.12 in penalties for the late filing of her tax return.

[4] On February 3, 1992, the CRA sent Ms. Germain a statement of account which set out an additional amount of $16.36 in accrued interest, bringing the balance owing by Ms. Germain to $1,217.05 for the 1990 taxation year.

[5] On April 28, 1992, the CRA sent a second statement of account to Ms. Germain to inform her of the additional accrued interest of $30.54, bringing the balance owing for the 1990 taxation year to $1,264.40.

[6] On June 16, 1992, the CRA assessed Ms. Germain for the year 1991. The notice indicated an unpaid balance of $1,264.40 for the 1990 taxation year and no tax payable for the year 1991.

[7] On December 14, 1992, the CRA removed Ms. Germain's record from the active files and suspended collection actions until her financial situation improved.

[8] Ms. Germain did not file any tax returns during the period from 1992 to 2006. She did not pay the CRA any amount of money for her account of $1,264.40 which remains outstanding.

[9] On July 13, 2006, Ms. Germain filed her tax return for 2004, following a request by the CRA. She also filed her tax returns for the years 1997 to 2008 (see page 108 of the respondent's record). To date, Ms. Germain has yet to file her income tax returns for the years 1992 to 1996.

[10] On September 22, 2008, the CRA sent Ms. Germain a statement of account detailing the accrual of eligible interest for the period from June 16, 1992, to September 17, 2008, namely, an amount of $3,640.84 on the debt still outstanding of $1,264.40 in respect of the 1990 taxation year. The statement of account also specifies that tax refunds to which Ms. Germain was entitled were applied to the balance of the debt. As a result, the balance of Ms. Germain's debt is $2,649.05.

[11] On October 25, 2008, Ms. Germain submitted a first request for relief to the CRA to cancel the interest and penalties in respect of her tax debt.

[12] On November 6, 2008, the CRA informed Ms. Germain that it could not process that request because following changes in the tax policy, only the earlier past 10 fiscal years can be subject to a request for relief. The year 1990 is therefore excluded from the period covered by Ms. Germain's request.

[13] On January 19, 2009, Ms. Germain filed a complaint with the Office of the Taxpayers' Ombudsman. She lamented the handling of her file by the CRA and reiterated her request that the arrears interest be cancelled. She further indicated that she agreed to pay the principal on the outstanding debt in respect of the 1990 taxation year.

[14] On January 23, 2009, the Taxpayers' Ombudsman informed Ms. Germain that he lacked authority to consider her request as all requests for relief are within the purview of the CRA.

[15] On March 22 mars 2009, Ms. Germain submitted a second request for relief to the CRA. In it, she acknowledged the existence of an outstanding debt for the 1990 taxation year of $1,264.40, an amount she offered to pay conditional to the cancellation of the arrears interest and penalties.

[16] On May 8, 2009, the CRA reiterated to Ms. Germain that it could not process her request for relief in light of the changes to the tax policy. Debts owing for the year 1990 cannot be the subject of relief as more than ten years had elapsed.

[17] On May 24, 2009, Ms. Germain wrote to the Minister. She asked him to intervene in the matter.

[18] On June 10, 2009, Ms. Germain she owed an amount of $1,951.27 in unpaid taxes and interest for the 1990 taxation year.

[19] On June 12, 2009, the CRA informed Ms. Germain of the addition of interest for the period from June 16, 1992, to June 10, 2010, on the principal of her outstanding debt for the taxation year1990. The CRA set off the amount through tax refunds owing to Ms. Germain (see page 109 of the respondent's record).

[20] On July 3, 2009, Ms. Germain sent a cheque in the amount of $1,951.31 payable to the Receiver General for Canada to pay the entire balance of her tax debt for the year 1990.

[21] On September 4, 2009, the Minister responded to Ms. Germain's request. He acknowledged that her file was suspended in 1992 but that the decision did not result in the cancellation of the taxpayer's tax liabilities. He reiterated the CRA's position on the request for relief but nevertheless indicated that an official of the Legislative Policy and Legislative Affairs Branch would assess her file.

[22] On October 29, 2009, the CRA wrote to Ms. Germain. The letter stated that her debt for the year 1990 was paid. The statement of account also mentioned that two GST rebates of $94.50 would be paid to Ms. Germain.

[23] On December 30, 2009, the Tax Services Office in Montréal (local office) recommended that the remission of interest and penalties sought by Ms. Germain be denied.

[24] On April 27, 2010, Ms. Germain's file was assigned to Lynne Laplante of the Remissions and Delegations Section of the Legislative Policy and Regulatory Affairs Branch for an in-depth review of the remission request.

[25] On May 9, 2011, Brian McCauley, Assistant Commissioner of the Legislative Policy and Regulatory Affairs Branch, refused to recommend the remission of interest and penalties imposed on Ms. Germain for the 1990 taxation year.

III. Legislation

[26] Subsection 23(2) of the *Financial Administration Act*, RSC, 1985, c F-11, as well as subsections 222(5) and 222(6) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp.) (ITA), states as follows:

23(2) The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.	23(2) Sur recommandation du ministre compétent, le gouverneur en conseil peut faire remise de toutes taxes ou pénalités, ainsi que des intérêts afférents, s'il estime que leur perception ou leur exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise.
222(5) The limitation period described in subsection (4) for the collection of a tax debt of a taxpayer restarts (and ends, subject to subsection (8), on the day that is 10 years after	222(5) Le limitation period pour le recouvrement d'une dette fiscale d'un contribuable recommence à courir — et prend fin, sous réserve du paragraphe (8), dix ans plus

the day on which it restarts) on any day, before it would otherwise end, on which

(*a*) the taxpayer acknowledges the tax debt in accordance with subsection (6);

(*b*) the Minister commences an action to collect the tax debt; or

(*c*) the Minister, under subsection 159(3) or 160(2) or paragraph 227(10)(*a*), assesses any person in respect of the tax debt.

tard — le jour, antérieur à celui où il prendrait fin par ailleurs, où, selon le cas :

a) le contribuable reconnaît la dette conformément au paragraphe (6);

b) le ministre entreprend une action en recouvrement de la dette;

c) le ministre établit, en vertu des paragraphes 159(3) ou 160(2) ou de l'alinéa 227(10)*a*), une cotisation à l'égard d'une personne concernant la dette.

222(6) A taxpayer acknowledges a tax debt if the taxpayer

(*a*) promises, in writing, to pay the tax debt;

(*b*) makes a written acknowledgement of the tax debt, whether or not a promise to pay can be inferred from the acknowledgement and whether or not it contains a refusal to pay; or

(*c*) makes a payment, including a purported payment by way of a negotiable instrument that is dishonoured, on account of the tax debt.

222(6) Se reconnaît débiteur d'une dette fiscale contribuable qui, selon le cas :

a) promet, par écrit, de régler la dette;

b) reconnaît la dette par écrit, que cette reconnaissance soit ou non rédigée en des termes qui permettent de déduire une promesse de règlement et renferme ou non un refus de payer;

c) fait un paiement au titre de la dette, y compris un prétendu paiement fait au moyen d'un titre négociable qui fait l'objet d'un refus de paiement.

IV. Issue and standard of review

A. Issue

- ***Did the CRA err in denying Ms. Germain's remission request?***

B. Standard of review

[27] In *Première nation Waycobah v Canada (Attorney General)*, 2010 FC 1188 at paragraphs 20 to 23 (*Waycobah*), de Montigny J. wrote as follows:

> [20] The Supreme Court of Canada has directed a two-step approach to determine the appropriate standard of review. First, the Court must consider existing jurisprudence to ascertain whether the standard of review has already been established. If it has not, the court must then undertake a standard of review analysis: see *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, at para. 63.
>
> [21] The only existing decision regarding the refusal to recommend a remission requested pursuant to subsection 23(2) of the Act is that of Justice Noël in *Axa Canada Inc.* v. *Canada (National Revenue)*, 2006 FC 17. In that decision, the Court followed the pragmatic and functional approach (now referred to as the "standard of review analysis") and determined that a review of the decision not to recommend remission called for considerable restraint. In the course of that analysis, the Court noted the following:
>
> > 1) There is no privative clause in the Act;
> >
> > 2) The relative expertise of the decision-maker is a very important factor, which militates for great restraint with respect to the CRA decision. The Court stated that the CRA

> had an undeniable expertise in implementing the "CRA Remission Guide: A Guide for the Remissions of Income Tax, GST/HST, Excise Tax, Excise Duties or FST under the *Financial Administration Act*" (the "CRA Remission Guide"). In particular, the members of the Committee are CRA officials from various sectors of the Department; they have considerable experience taking the public interest into account, as well as knowledge of the facts and of the law applicable to such matters;
>
> 3) The nature of the question in issue is one of mixed fact and law, which requires extensive knowledge of the facts in very complex cases. The Court noted that the CRA must apply the remission guidelines set out in the CRA Remission Guide to the facts while taking into account a number of factors relating to the public interest;
>
> 4) The legislation in question authorizes the Governor General in Council to remit taxes, a penalty, or an interest paid or payable where, in his view, collection of the taxes, penalty, or interest would be unjust, unreasonable, or not "in the public interest". The Court felt that the intent of Parliament (i.e., the purpose of the legislation) also demanded great judicial restraint. Although the disputed decision was administrative in nature, the Court concluded that the purpose of subsection 23(2) of the *Financial Administration Act* was to confer a broad discretion on the Governor General in Council to decide whether an amount paid should be remitted. The Governor General in Council was required to weigh a variety of factors and thus needed to enjoy a broad discretion.

[22] The Court went on to decide that the standard of review was that of patent unreasonableness. It has now been settled by *Dunsmuir*, above, that there are only two standards of review: reasonableness and correctness. Where the question is one of fact, discretion, or policy, or where the legal and factual issues are intertwined and cannot be readily separated, the standard of review is reasonableness.

[23] The argument revolving around the fettering of discretion, on the other hand, raises a question of law. In essence, the Applicant argues that the CRA Assistant Commissioner did not properly apply the test for remission set out in the *Financial Administration Act* and failed to take the public interest into account, and rather chose to elevate the CRA guidelines to the level of law. Such a fettering of discretion, if it is established, would clearly amount to a reviewable

> error of law: see, for ex., *CBC* v. *Canada (Copyright Appeal Board)*; 30 C.P.R.(3d) 269, [1990] F.C.J. No. 500 (F.C.A.). That being said, it is not a question of law that is of "central importance to the legal system...and outside the ...specialized area of expertise" of the administrative decision maker: *Dunsmuir*, above, at para. 55. As such, it must therefore be reviewed against a reasonableness standard.

[28] Since the question raised is one of mixed fact and law and the Governor in Council has discretion whether or not to grant a remission under subsection 23(2) of the *Financial Administration Act*, the Court concluded that the applicable standard of review in the case at bar is that of reasonableness.

[29] The Supreme Court of Canada, at paragraph 47 of *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9, notes that the reasonableness standard "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

V. Position of the parties

A. Position of Ms. Germain

[30] Ms. Germain submits that the Assistant Commissioner wrongly exercised his discretion. Ms. Germain alleges the following regarding the decision of Assistant Commissioner McCauley:

[TRANSLATION]

Decision of Assistant Commissioner McCauley

In awaiting the decision of the Minister and the Commissioner, the due diligence exercised by the applicant was unfavourable to her. In his decision of May 9, 2011, the Assistant Commissioner of the Legislative Policy and Regulatory Affairs Branch relied on, in addition to the acknowledgement of debt by the applicant, non-extreme financial hardship in terms of her ability to pay, as she paid the debt in full.

First, the repayment of a debt by way of tax refund holds on tax returns required—formally—by the CRA. Second, tax refund holds on tax returns filed—voluntarily. Voluntary returns filed owing to the inability to rectify past tax data. Finally, the final debt settlement cheque—with due diligence—from savings from salary. Moreover, at no time did the applicant deny the value of frugality instilled through family values!

However, the outcomes of the tax returns for the years 1997-2003 in terms of GST/HST rebates, ($1,511.95), would not be subject to the Agency's—**enforcement measures**.

Extreme financial hardship

In his decision, the Assistant Commissioner indicates—**normally**—the determination of financial difficulty should exist at the time of the remission request. However, in 2009, the Minister was informed that the applicant was unaware that the debt of 1990 had not been extinguished as the Agency (the CRA) had neither issued a formal request nor began any formal procedures prior to January 2006.

In 1990—and on a number of occasions—the applicant left Canada for Europe. Whether or not she filed tax returns or had an outstanding debt, the government did not, or did not want or could not apply section 226(1) of the *Income Tax Act*. Said section sets out the authority of the Minister where the Minister suspects that a taxpayer has left or is about to leave Canada, the Minister may demand that— the amount of all taxes, interest and penalties be paid—fortwith—by notice served personally or by registered letter—addressed to the taxpayer's latest known address. Where a taxpayer fails to pay, the Minister may direct that the goods and chattels of the taxpayer be seized.

Extreme financial hardship in 1991

In circumstances more extreme than ending up on the street or in a shelter, would an analysis of the situation have spurred a debate? Why not appeal unintended results of the legislation when fighting for consistent cases?

As regards the taxpayers' bill of rights, the applicant submits that formal action by the Agency (CRA) at the very beginning could have resulted in, besides relief agreements before considering a remission request, tax audits by its federal regional officials and those in provincial government departments (T-4/T-5 slips), repayment of Employment Insurance Benefits, reassessments and holds, including the verification of the taxpayer's tax information on the CRA's computer system (you have a tax refund of $5,000.00 in 1991!)?

. . .

Remission and section 23(2) of the *Financial Administration Act*

In his affidavit, Mr. Blair cites sections 23(2) of the *Financial Administration Act* upon which—a remission—may be granted by the Governor in Council, on the recommendation of the appropriate Minister, where the Governor in Council considers that the collection of any tax or the enforcement of any penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.

1- With more than one review, more than one verification and more than one report, the total silence of the Agency (CRA) for fourteen (14) years, by way of suspension of all action or procedure, only to go after the taxpayer again by way of insidious remarks—referring to an outstanding balance—is not only incomprehensible, but also unreasonable and perverse. On June 12, 2009, the debt of December 1992 went from $1,264.40 to $6,990.22.

2- There is so much ministerial accountability and authority that is or can be granted by the Minister of National Revenue that is not being or not wanting to be exercised by authorized persons where the legislation in effect would or could be favourable to the taxpayer. All this talk of relief knowing in advance that—NOTHING or almost NOTHING—would or could apply to the applicant's tax file with the coming into force of the Act as amended in 2005.

> 3- For the Assistant Commissioner there is—NOTHING—that would warrant such a remission. Yet—tendentious—irregularities exist where the Agency (CRA) calls for privacy by not entering on the epass the amount of the applicant's tax debt but sends her—*in error*—the statement of account of another taxpayer from another province after she was subject to the enforcement of holds on tax refunds until the debt is repaid! (Statement of account of "THANH VAN DO.")
>
> Accordingly, the applicant reiterates that the powers of the Minister of National Revenue were not exercised within the full scope of the information provided by her, considering the Minister's connotation at page 167 of his letter dated September 4, 2009 [TRANSLATION]: ". . .However, given the circumstances of your situation. . .she is requesting that her application for judicial review be allowed. (See pages 187 to 189 of the applicant's record.)

[31] According to the applicant, the CRA allegedly applied incorrect methodologies in calculating her income and lacked transparency in the performance of its duties. She also notes that in 1991, she was suffering extreme financial hardship. Although she paid all her taxes for the year 1990, she alleges that she had to dip into her hard-earned savings to pay her debt.

[32] Furthermore, Ms. Germain contends that the CRA failed to mention her tax debt for over fourteen years.

B. Respondent's position

[33] According to the respondent, the decision challenged by Ms. Germain is reasonable because she did not meet the four main remission criteria found in the CRA's guidelines.

[34] First, Ms. Germain failed to establish that she was suffering extreme financial hardship at the time she made her remission request. Lynne Laplante wrote as follows in her recommendation of March 4, 2011:

> [TRANSLATION]
> . . .
>
> In 1990, Ms. Germain's income was significantly above the low-income cut-off (LICO) established by Statistics Canada for a single person living in Montreal, QC. However, in 1991 and between 1997 and 2007 it was below LICO. Her income was marginally above the LICO in 2008 and 2009. See Appendix B for income in each year.
>
> Although Ms. Germain has reported consistently low income levels, she did have the resources available to make a payment of $1,951.31 to extinguish her debt. She was also able to take an overseas trip in 2004. A credit check shows that Ms. Germain has an excellent credit and the report shows no outstanding debts. There is information on file which indicates that Ms. Germain had investments at the time her debt arose, though the total value is unknown. She had the means available to pay her debt and has not argued that this payment caused her any hardship. (See pages 74-75 of the respondent's record.)

[35] The respondent also points out that Ms. Germain failed to prove the existence of extenuating circumstances affecting her financial situation. In her report, Ms. Laplante mentioned that

> Ms. Germain did not provide information about any extenuating circumstances which would have rendered her unable to be aware of the debt at the time it arose or incapable of addressing her debt in the intervening years. She only mentions that she was occupied by several Court cases during this period and that her employment was unstable.
>
> Ms. Germain did not provide sufficient substantiation to be able to conclude that there were any circumstances beyond her control that prevented her from filing her 1990 return on time, of being aware of her debt, or addressing it in a timely fashion. As such, remission cannot be recommended on this basis. (See page 75 of the respondent's record.)

[36] The respondent contends that Ms. Germain was informed on a number of occasions of the outstanding balance on her debt.

[37] The respondent also submits that Ms. Germain did not demonstrate that the CRA erred or that the legislation in force produced unintended harmful results for her.

[38] The respondent alleges, however, that the legislative amendments to the ITA in 2004 in response to *Markevich c Canada*, [2003] SCJ No 8 at paragraph 11, bringing the limitation period to 10 years for the collection of text debt, prevented the prescription of Ms. Germain's debt. Thus, the collection of Ms. Germain's debt started on March 4, 2004, and will end not later than March 3, 2014. However, Ms. Germain acknowledged her debt in writing in a second request for relief, on March 22, 2009. In doing so, the limitation period restarted, as of that date, for a second period spanning over ten years.

[39] Finally, the respondent argues that Ms. Germain failed to adduce evidence questioning the validity of her assessment for the 1990 taxation year. She did not challenge the merits of the assessment.

VI. Analysis

- ***Did the CRA err in denying Ms. Germain's remission request?***

[40] The CRA Remission Guide states the following:

> Section III – Remission Guidelines
>
> Each remission request is considered on its own merits to determine whether collection of the tax or enforcement of the penalty is unreasonable or unjust, or if remission is in the public interest, in accordance with the broad terms set out in section 23 of the *Financial Administration Act*. To assist CRA officials in that assessment, guidelines have been developed, based upon characteristics common to past cases. These are:
>
> - extreme hardship;
> - incorrect action or advice on the part of CRA officials; 10(1)
> - financial setback coupled with extenuating factors; and
> - unintended results of the legislation.

[41] Based on the remission guidelines, Lynne Laplante, Senior Program Specialist, Regulations, Remissions and Delegations, concluded in her report of March 4, 2011, that "[r]emission of neither the penalty nor interests is recommended as none of the criteria apply and there are no other circumstances which would support remission" (see Affidavit of Lynne Laplante of July 29, 2011, Exhibit 1, at page 75 of the respondent's record).

[42] On May 9, 2011, Brian McCauley sent his decision to Ms. Germain. In his decision, he stated the following:

> [TRANSLATION]
> Dear Ms. Germain:
>
> This is further to your remission request dated May 24, 2009, with respect to an outstanding debt for the 1990 taxation year. You are requesting relief from assessed penalties and interest and indicate that for a considerable period of time, you were unaware of the debt.
>
> The purpose of this letter is to inform you that remission cannot be recommended in your case. I can assure you that this issue has been

the subject of special attention and that the information you submitted has been thoroughly reviewed.

The Canada Revenue Agency (CRA) has a Remisson Committee made up of senior officials which reviews tax remission requests and which may advise the Minister of National Revenue to recommend that relief be granted in unusual circumstances where it is believed that this measure would be in the public interest or that collection of the debt would be undue or unreasonable. To guarantee that requests are reviewed in a fair and consistent manner, the Committee relies on guidelines to determine whether the individual has been the victim of unintended results of the legislation, whether an error was made on the part of CRA officials, whether the individual is suffering extreme financial hardship or whether the individual has suffered financial prejudice and that extenuating factors exist.

In determining whether serious harm occurred, hardship should exist at the time the person makes the remission request and should have normally existed from the time the original tax liability arose. The hardship should be of such severity that a person's current and anticipated personal resources do not allow him or her to repay the debt. In your case, the debt was settled in full, and while there was a drop in income in the year since the debt occurred, we note that in the taxation year in which the debt is owing, your income was considerably above the low income cut-off established by Statistics Canada.

Although payment of the debt may be viewed as a hardship, there were no extenuating circumstances beyond your control that would warrant remission. Our records indicate that a number of communications were sent to you following the establishment of the amount you owe for the 1990 taxation year. Moreover, there is nothing to suggest that extraordinary circumstances prevented you from being aware of your debt, or to act more quickly to pay the amount owing and, accordingly, reduce the amount of interest incurred since that time.

There is nothing to suggest that there was an error on the part of CRA officials and the legislation we applied in respect of your case did not produce unintended results.

My decision not to recommend remission in this case was taken after consideration of the circumstances of your case, the relevant information and the Remission Committee's assessment. I trust my comments will assist you in understanding the decision made with

> respect to this issue . . . (see Exhibits 22.1 and 22.2 at pages 93 and 94 of the applicant's record).

[43] To respond to the question in issue, the Court must first ask itself whether the CRA officials properly applied the criteria found in the remission guidelines. It must then determine whether the Assistant Commissioner McCauley erred in the exercise of his discretion.

Did the CRA officials properly apply the criteria of the remission guidelines?

[44] Ms. Germain claims that she met criteria 1 to 3 of the guidelines, namely, that she suffered extreme hardship, that her financial setback was coupled with extenuating factors and that she received incorrect action or advice on the part of the CRA.

[45] The report of the Remission Committee is clear. Ms. Germain was not, at the time of her remission request, suffering extreme financial hardship. Furthermore, the evidence in the record does not allow this Court to reverse this conclusion or to identify extenuating factors resulting from the fact that Ms. Germain owed interest and penalties on her tax debt.

[46] Ms. Germain alleges that the Agency erred in the calculation of her taxes, thereby affecting her tax file. However, Ms. Germain does not have any evidence to support those allegations which could have given rise to the application of the second criterion, namely, the taking of incorrect action or advice on the part of the CRA. Ms. Germain's submissions at the hearing confirm that she expected the CRA to question the information contained in her T-4 slip for the year 1990. However, Ms. Germain never contacted the CRA in that regard. She neither contested the amount of her

assessment for the year 1990 with the CRA nor filed any submissions in that regard. She decided to focus all of her energies on the litigation surrounding her employment situation.

[47] In sum, the Committee properly applied the criteria of the remission guidelines.

[48] However, the debt cannot be prescribed, as the ITA is unequivocal. The limitation period for the collection of a tax debt is 10 years as of March 4, 2004, in the case at bar, pursuant to subsection 222(5) of the ITA. In addition, Ms. Germain acknowledged the existence of her tax debt, on March 22, 2009, pursuant to subsection 222(6) of the ITA.

[49] Ms. Germain does not invoke any other grounds in support of her remission request.

- ***Did Assistant Commissioner McCauley err in the exercise of his discretion?***

[50] Subsection 23(2) of the Act states that "the Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty."

[51] Thus, the delegate of the Minister of National Revenue may recommend to the Governor in Council to remit any tax or penalty, including any interest paid or payable thereon, where the

Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.

[52] Ms. Germain submits that the Assistant Commissioner did not properly exercise his discretion.

[53] The decision of Assistant Commissioner McCauley is based solely on the Committee's recommendation which draws extensively on the analysis of the remission guidelines. Did the Assistant Commissioner exercise his discretion unreasonably?

[54] In *Waycobah*, *supra*, at paragraph 43, de Montigny J. noted the following:

> [43] In other words, a decision-maker's discretion is fettered where a factor that may properly be taken into account in exercising discretion is elevated to the status of a general rule that results in the pursuit of consistency at the expense of the merits of individual cases. The essence of discretion is that it can be exercised differently in different cases. However, the reliance on a policy or guideline to come to a decision will not be objectionable *per se*. Such instruments, sometimes referred to as "soft law", may be quite helpful in ensuring consistency and enabling those governed by statutory provisions to know which factors may affect their claims. It will therefore be perfectly legitimate for an administrative authority to rely on a policy or a guideline in making a decision, so long as that policy or guideline does not remove the decision from the decision-maker or predetermine a matter without an opportunity to address the merits. In *Glaxo Wellcome PLC* v. *Canada (Minister of National Revenue)* [1997] F.C.J. No. 1636; 142 F.T.R. 181 (F.C.), for example, the Court held that the Minister did not fetter his discretion when he followed the guidelines and gave them as a primary reason for disallowing the request of the Applicant: see also *Sebastian* v. *Saskatchewan (Workers' Compensation Board)* [1994] S.J. No. 523; 119 D.L.R.(4th) 528, at 548 (Sask. C.A.).

[55] Although Assistant Commissioner McCauley based his decision on the remisision guidelines, there is nothing to suggest that his decision was pre-determined or that the criteria found in the guidelines negated his discretion. In this case, the criteria was properly applied considering the evidence submitted by Ms. Germain to support her request. Moreover, the report of the CRA officials is well documented and takes into account the personal circumstances of Ms. Germain.

[56] Seeing as the guidelines are used to assist officials in ensuring the transparency of the process as well as some consistency in decision-making, Assistant Commissioner McCauley could reasonably conclude that the collection of the tax and penalty was not unreasonable or unjust in this case.

[57] In assessing the remission requests before him, the Assistant Commissioner must take into account the public interest. Remission remains an exceptional measure.

[58] The Court adopts the words of de Montigny J.:

> "I agree with the Respondent that the concept of "public interest" cannot be viewed merely in terms of the interests of any one group of taxpayers, but rather must also take into consideration the concerns of society generally. Through a remission order, the Applicant is asking for exemption from the application of legislation to which the rest of Canadian society is subject. The granting of a remission order necessarily involves a departure, in the particular case of a taxpayer, not only from the ordinary rules of taxation, but from the principle of equality of treatment. The phrase "public interest" must therefore be viewed in the context of the broad regulatory scheme governing the operation of taxation statutes and with an eye towards the principles animating the *Excise Tax Act* as a whole." (See *Waycobah*, *supra*, at paragraph 31.)

[59] It is well established that all Canadians are subject to the application of the ITA and that the granting of a remission involves, as noted by de Montigny J., a departure from the ordinary rules of taxation. The proper analysis of remission cases is, therefore, of great importance.

[60] In sum, it seems reasonable to us that Assistant Commissioner McCauley based his decision on the recommendations of the Remission Committee. In the case at bar, the Court notes that Ms. Germain did not contact the CRA in 1991 to explain her personal circumstances and the purpose of her numerous actions before the courts following her employment situation. This could have changed the course of the events. Nonetheless, Assistant Commissioner McCauley did not err in the exercise of his discretion.

VII. Conclusion

[61] For these reasons, the Court concludes that the CRA did not err in denying Ms. Germain's remission request. The decision of the Assistant Commissioner as well as the recommendations of the Remission Committee are reasonable and fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9, at paragraph 47).

JUDGMENT

THE COURT DISMISSES the application for judicial review, each party bearing their own costs.

"André F.J. Scott"

Judge

Certified true translation

Daniela Guglietta, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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