Federal Court of Appeal | Cour d'appel fédérale

Date: 20251212

Docket: A-268-24

Citation: 2025 FCA 225

CORAM: **STRATAS J.A.**
BIRINGER J.A.
ROCHESTER J.A.

BETWEEN:

JENNINGS-CLYDE, INC. D/B/A/ VIVATAS, INC.

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard by online videoconference hosted by the Registry on November 24, 2025.

Judgment delivered at Ottawa, Ontario, on December 12, 2025.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: BIRINGER J.A.
ROCHESTER J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The appellant asks us to set aside the judgment of the Federal Court (*per* Turley J., 2024 FC 1141). The Federal Court did not quash the refusal of the Canada Revenue Agency to let the appellant file tax returns late: see subsection 220(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the provision allowing for the exercise of discretion to allow late filings) and subsection

164(1) of the Act (the provision requiring the appellant to file its return within three years of the end of the relevant taxation year to get a refund).

[2] Among other things, the appellant submits that it did not get an adequate explanation for the refusal from the Agency. On this, I agree with the appellant. I would allow the appeal.

[3] As a general principle, we do not allow an administrative decision-maker like the Agency to decide a matter affecting someone's rights or practical interests unless it gives an adequate explanation for its decision, or the explanation is otherwise evident or discernable. See, generally, *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653.

[4] This is no small thing. Through their decisions, administrative decision-makers like the Agency have the power to affect people's lives, sometimes significantly. In our democratic governance, there is a *quid pro quo* for that: public administrative decision-makers must explain their decisions. "L'État, c'est moi" and "trust us, we got it right" have no place in public administrative decision-making: *Canada (Citizenship and Immigration) v. Tennant*, 2018 FCA 132 at para. 23.

[5] And there are good practical reasons why we insist on seeing adequate explanations for administrative decisions:

- Adequate explanations lead often to more thinking, better thinking, and, thus, better decision-making. This is because administrative decision-makers, while they write up adequate explanations for their decisions, often discover gaps or flaws in their reasoning or the need for more submissions.

- Adequate explanations tell affected persons that the administrative decision-maker took on board their key arguments and rejected them for certain reasons: this vindicates the interests served by procedural fairness.

- Adequate explanations further the transparency, legitimacy and accountability of administrative decision-makers to the parties before them, other regulatees, reviewing courts, and the wider public—something needed more than ever in these days of widespread skepticism, cynicism, and mistrust of government.

(See generally *Canadian National Railway Company v. Canada (Transportation Agency)*, 2025 FCA 184 at para. 46 and cases cited therein.)

[6] In this case, the Agency concluded that the relevant taxpayer relief provision, subsection 220(3), didn't apply. Its explanation? The appellant's case was distinguishable from this Court's decision in *Bonnybrook Park Industrial Development Co. Ltd. v. Canada (National Revenue)*, 2018 FCA 136. In that case, this Court held that subsection 220(3) applied to another refund provision in the Act, subsection 129(1).

[7] The grounds for distinguishing *Bonnybrook*? It's pretty much a mystery. The analysis and reasoning in support of whatever grounds the Agency was invoking? Nothing.

[8] The grounds for saying that the reasoning in *Bonnybrook* does not apply to subsection 164(1) of the Act, the relevant section here, a different section from that considered in *Bonnybrook*? Again nothing.

[9] The Canada Revenue Agency did say this to the appellant: "subsection 220(3) may not be relied on by the Minister to exercise discretion to extend the deadline in subsection 164(1) of the Act". Why? That's pretty much a mystery too.

[10] On that point, the Agency offers a little more. It says that by enacting subsection 164(1.5), "Parliament made it clear" that subsection 220(3) was ousted. But Parliament expresses itself in words, and Parliament's words in subsection 164(1.5) do not make that clear. So where did Parliament make it clear? Is it the context of the words in subsection 164(1.5) when seen alongside other provisions of the Act? Is it the purpose of 164(1.5)? The purpose of other provisions? Some recognized canon or maxim of statutory construction? Some earlier judicial or administrative authority? More mystery.

[11] *Vavilov* made it clear (at paras. 119-123) that when administrative decision-makers interpret a legislative provision, they must show a genuine, non-tendentious, explicit or implicit analysis of the text, context and purpose behind a legislative provision when interpreting it. On this, silence.

[12] But there's still more.

[13] The Agency's reasons say that the appellant raised *Bonnybrook* in its request for relief. No, it did not. At least not from anything we can see. According to the written record before us, the Agency in its final decision letter—not the appellant—was the first and only party to mention *Bonnybrook*.

[14] Did the Agency ask the appellant to make submissions on *Bonnybrook* before deciding the matter? It appears not.

[15] If in fact the appellant did raise and make submissions on *Bonnybrook*, for example in a phone call or email, or the Agency asked the appellant to make submissions on *Bonnybrook*, the Agency should have recorded this in a letter or file note and put it in the certified record of the decision-maker filed in this Court. Here, the certified record contains no such thing. Either there was no phone call or email, or the Agency did not put it in the certified record.

[16] What we have here falls below standard, especially given the six-figure amounts at stake for the taxpayer. Alas, on adequacy of reasons in taxpayer relief cases, we are seeing a disappointing recent pattern: *e.g.*, *Osbourne v. Canada (Attorney General)*, 2022 FC 122 at para. 37; *Barrs v. Canada (National Revenue)*, 2022 FCA 147 at para. 38; *Loyer (Succession) v. Canada (Attorney General)*, 2019 FC 1528 at paras. 38-40; *Onex Corporation v. Canada (Attorney General)*, 2024 FC 1247 (albeit currently on appeal, so its placement on this list is provisional).

[17] Reviewing courts understand the pressures on the Agency. It must regulate and serve millions of taxpayers. It has a giant job to do with limited resources. No doubt, a blizzard of requests for discretionary relief and other matters buries the Agency. It has neither the time nor the resources to offer anything close to appellate court level explanations for all its decisions. It has to be fast, efficient and cost-effective.

[18] Thus, reviewing courts are fine with brevity that works. They will connect the dots on the page so to speak, as long as (unlike here) the Agency has put down the dots and it's easy to know how to connect them: *Komolafe v. Canada (Citizenship and Immigration)*, 2013 FC 431 at para. 11. The Agency can cross-reference with precision to explanations in particular portions of cases, key documents or taxpayer's submissions in the record, and Agency documents like recommendation memos, interpretation bulletins, or working group conclusions, so long as those Agency documents are publicly accessible. And lastly, these days, the Agency need only invent good, plain-language reasons on a recurring issue once: they can be cut and pasted in later decisions with just a couple of keystrokes, Ctrl-C and Ctrl-V.

[19] From my own multi-decade experience with administrative decision-makers, I suspect another problem: inadequate resources and funding. If so, the Agency must complain. And those responsible for considering the complaint, including the politicians who oversee and instruct them, had better take note. Ensuring the wheels of justice, both administrative and judicial, turn quickly, adequately and properly is not a luxury, frill, or optional extra; it's one of the most basic things governments owe to those they govern.

[20] On the issue of remedy, the Agency, not this Court, decides whether to allow for late returns under subsection 220(3). Thus, we must reject the appellant's request that we grant it tax relief.

[21] Therefore, I would allow the appeal, set aside the judgment of the Federal Court, and grant the application for judicial review. I would order the Canada Revenue Agency to give the appellant a fair opportunity to make submissions on all relevant issues, to consider those submissions, and to redetermine the matter with adequate reasons. The appellant does not seek its costs and so I would award none.

"David Stratas"
J.A.

"I agree.
Monica Biringer J.A."

"I agree.
Vanessa Rochester J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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