

Federal Court



Cour fédérale

**Date: 20160331**

**Docket: T-1485-15**

**Citation: 2016 FC 362**

**Ottawa, Ontario, March 31, 2016**

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

**BETWEEN:**

**ROBERT MUIR**

**Applicant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act* (RSC 1985, c F-7) challenging a decision of the Taxpayer Relief Centre of Expertise Appeals Branch Officer [the Officer] confirming the Taxpayer Relief Officer's [1<sup>st</sup> level] decision refusing to grant the Applicant interest and penalty relief arising out of his 2005 assessment pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp), [the Act].

[2] The Applicant is seeking an order quashing the decision and having the matter sent back for redetermination. Based on the reasonableness standard, agreed to by the parties, the Court finds no reviewable error requiring its intervention.

[3] The Applicant raises two issues. The first is premised on a factual foundation that the Canadian Revenue Agency [CRA] failed in its decisions to consider its processing errors and mistakes in assessing the Applicant's 2005 income tax return, which he claims were submitted on three different occasions. The Applicant's second submission is that the Officer failed to reasonably assess his financial hardship based on the evidence before him.

I. Alleged Processing Errors by CRA

[4] With respect to the first issue concerning the alleged processing errors and mistakes in assessing the Applicant's 2005 income tax return, the record does not support the factual allegations advanced by the Applicant that form the basis of this submission.

[5] The Applicant alleges that he first filed his 2005 return with his 2004 return in 2006. There is no evidence on the record to support this claim, and indeed the subsequent evidence indicates that he acknowledged that he had not filed his 2005 return as claimed.

[6] The Applicant similarly submitted that he filed his 2005 return in late 2006/2007, after the CRA notified him on three occasions that his 2005 return was outstanding. Again, the record does not support this allegation, and indeed, the Applicant acknowledges as much in his

November 1, 2012 submissions when seeking taxpayer relief. I quote from the submission as follows:

When Mr. Muir examined the notification he received after both returns had ostensibly been sent to the CRA and did not see his 2005 income information included, he realized that his return for 2005 must not have been submitted. Mr. Muir proceeded to instruct his accountant, again, to file his 2005 return, providing her with information about his income in 2005.

The accountant, making an error that calls into question her ability to meet elementary professional standards, submitted the information he supplied her as a T1 adjustment to Mr. Muir's 2004 return, not as a return for 2005.

[My emphasis.]

[7] As a result of submitting this information as a T1 adjustment to his 2004 return, the CRA reassessed his 2004 return. The Applicant received the 2004 reassessment in August 2007. His counsel acknowledged the amounts reflected the Applicant's 2005 income. This "confusion" is only attributable to the Applicant's failure to properly describe his 2005 income amounts. After the Applicant finally filed his 2005 income return in 2011 following the CRA's own assessment, the 2004 return was reassessed by reinserting the original amounts submitted in 2006.

[8] After August 2006, the Applicant took no further steps to file his 2005 return despite receiving assessments for the 2006, 2007, and 2009 years. The CRA ultimately undertook its own assessment of the Applicant's 2005 income pursuant to subsection 152(7) of the Act, which allows the Minister to assess a taxpayer who has not filed a return of income in a given year.

[9] It was upon being provided with the Minister's assessment on January 31, 2011 that the Applicant submitted his 2005 income amounts. The CRA provided the Applicant with the reassessed return reflecting his amounts on July 14, 2011.

[10] Given the foregoing chronology of events, there is no basis for the Applicant to claim that the CRA made processing errors or failed to provide timely notice. The Applicant's several and continuing failures to file his 2005 return before 2011 are his alone. Even if the confusion on his part could be said to be attributable to his accountant, in support of which no corroborative evidence was before the Court, it is difficult to imagine that the Applicant could not have noticed the absence of his 2005 assessment after it had been specifically requested by the CRA on a number of occasions.

[11] It might also be noted that during the hearing it was pointed out to the Court that the 2005 reassessment of July 14, 2011 indicates that the filing date was accepted on June 22, 2007, even though the record demonstrates conclusively that the 2005 return was not filed until 2011. The Respondent's counsel indicated that by accepting the 2007 date for filing the 2005 return rather than 2011, (probably giving him the benefit of the doubt based on his accountant's error), it would appear that the Applicant has already been accorded considerable interest relief, and would not benefit from a reconsideration. However, the Court does not rely on what would be speculation, inasmuch as the Minister could not confirm these facts given that the stated earlier filing date was only raised at the hearing.

II. Alleged Failure to Properly Consider the Applicant's Financial Situation

[12] With respect to the submission that the Officer failed to properly consider his financial situation, once again I find that the facts submitted are contradicted by the documentary evidence.

[13] The Applicant claims that he has a monthly income of \$4,000 and that he is paying \$2,000 of it to the CRA, representing more than half of his monthly income. He claims that with monthly expenses of \$3,190, the amounts are forcing him to choose between paying for lodging and the other necessities of life, and paying the CRA. I reject the submission based on the facts contained in the record.

[14] First of all, the amount being garnished from his salary is only \$720 a month. More importantly, his returns indicate that he has consistently earned over \$100,000 annually, and moreover, had the ability to spend \$9,124.77 on discretionary expenses during the month of August 2012, the one occasion it was requested by the CRA. The Applicant claims that such spending was not discretionary, as these amounts were used for his children's university tuition. The Court can take judicial notice that in many Canadian families, children are expected to finance their own university education as an investment which would be recovered in the future by the benefits of the knowledge and skills acquired by a higher education.

[15] In any event, I agree with the CRA's interpretation that financial hardship for an individual is financial suffering or lack of what is needed for basic living requirements, such as

food, clothing, shelter and reasonable nonessentials. Even if one was to expand on what constitutes financial hardship, the Officer's decision was reasonable in rejecting the Applicant's claim for taxpayer relief under the Act when it appears that the Applicant is quite able to repay outstanding tax arrears without unduly affecting a style of living that represents that of a relatively well-off Canadian taxpayer.

[16] Accordingly, the application is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed with costs awarded to the Respondent in the amount of \$500.

"Peter Annis"

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Judge

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

**DOCKET:** T-1485-15

**STYLE OF CAUSE:** ROBERT MUIR v THE MINISTER OF NATIONAL  
REVENUE

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 7, 2016

**JUDGMENT AND REASONS:** ANNIS J.

**DATED:** MARCH 31, 2016

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