

Federal Court



Cour fédérale

**Date: 20170222**

**Docket: T-846-16**

**Citation: 2017 FC 210**

**Ottawa, Ontario, February 22, 2017**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**DONALD COLEY AND TRADELINK  
STUCCO & CONSTRUCTION INC.**

**Applicant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of a decision of the Team Leader at the Taxpayer Relief Centre of Expertise – Appeals Branch [the Team Leader], denying the Applicant’s request for discretionary taxpayer relief pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] and section 281.1 of the *Excise Tax Act*, RSC 1985, c E-15 [ETA].

[2] For the reasons that follow, the application is dismissed.

I. The Decision Under Review

[3] The Team Leader rendered the decision with respect to the Applicant's request for discretionary taxpayer relief in the form of two letters dated April 22, 2016. The first letter addressed the Applicant's request for relief from penalties and interest for payroll and GST/HST accounts for the 2009-2014 tax years. The second letter addressed the request for relief from penalties and interest related to arrears in income tax for the 2004 and 2005 tax years. Both requests were denied based on the same record and for the same reasons and, in my view, constitute one decision for the separate requests.

[4] The Team Leader's decision notes the purpose of the taxpayer relief provisions which give the Minister or his delegate the discretion to waive or cancel any penalty or interest payable under the ITA or the ETA. Specifically, the decision notes the definition of financial hardship applied by the Canada Revenue Agency [CRA] is where the continuity of business operations or the continued employment of the firm's employees is jeopardized. The decision acknowledges that the Applicant's information does not show a positive financial situation for some tax years, but finds that the Directors did not exercise the reasonable care expected to ensure proper filing and remittances.

[5] The Team Leader refers to the financial information submitted by the Applicant, noting, among other things, that the corporation's overdraft had been reduced, that the corporation's accounts payable had been reduced and that the corporation had reported a net profit for the 2013

and 2015 taxation years. The Team Leader concludes that the corporation was not prevented from meeting its filing obligations due to circumstances beyond its control.

[6] The Team Leader also notes that amounts deducted from employees for payroll deductions and amounts collected for GST/HST should be held in trust and remitted, not used to fund business operations.

[7] The Team Leader's decision is based on the recommendations of the Taxpayer Relief Officer [TRO], Ms. Doucette, which the Team Leader accepted. The TRO reviewed the Applicant's request and financial records and found that there was no conclusive evidence of the Applicant's financial hardship or inability to pay. The TRO's recommendation is part of the record for the purpose of this judicial review. The affidavit of the TRO describes the information she considered and the assessment she conducted.

## II. The Issue

[8] The issue is whether the exercise of discretion by the Team Leader to not grant relief and waive or cancel penalties and interest levied against the Applicant was reasonable.

## III. The Standard of Review

[9] The standard of review of a discretionary decision of the Minister or the Minister's delegate, in this case, the Team Leader, under subsection 220(3.1) of the ITA is reasonableness (*Canada Revenue Agency v Telfer*, 2009 FCA 23 at para 24).

[10] To determine whether a decision is reasonable, the Court looks for “the existence of justification, transparency and intelligibility within the decision-making process” and considers “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[11] The assessment of the reasonableness of the decision is based on the record before the decision-maker and not on any information that may now be available or that may have been available but was not part of the record.

#### IV. The Applicant’s Submissions

[12] The Applicant argues that the financial documents submitted to the CRA demonstrate that the corporation was in a position of financial hardship beyond the Applicant’s control and the decision to refuse taxpayer relief (from payment of arrears interest and late filing penalties from 2004-2015) was an unreasonable exercise of the Minister’s discretion under the ITA and ETA.

[13] The Applicant submits that: first, the TRO and the Team Leader conducted only a bare review of the corporation’s financial documents with little attempt to understand the extent of its financial picture, including its cash flow or the disposition of available funds; and, second, the TRO and the Team Leader did not understand the claim for relief based on financial hardship, which prevented the corporation from paying the arrears owed.

[14] The Applicant notes that the corporation had significant accounts receivable which it could not collect, and was forced to take on work at “slim margins” to keep its employees working. The Applicant adds that the reduction in its accounts payable, relied on by the TRO as showing a more positive financial picture, was the result of paying trade creditors, which was necessary to keep the business in operation. The Applicant also notes the letters he submitted to the CRA and his supplementary request in March 2016, which explained the financial hardship due to the challenges of collecting receivables, among other things. The Applicant submits that this was not fully appreciated by the TRO.

[15] The Applicant submits that the TRO and the Team Leader failed to consider the overall financial picture portrayed by all of the documents and, instead, considered or placed more emphasis on irrelevant information, including the Applicant’s filing and remittance history.

[16] The Applicant adds that if the current CRA records were examined these would reveal more compliance. A more detailed assessment of information now available and the Applicant’s actions to address previous bookkeeping issues should be considered and would support the request for taxpayer relief.

[17] The Applicant submits that the present circumstances are analogous to those in *Lund v Canada (Attorney General)*, 2006 FC 640 [*Lund*], where the Court found that the CRA should have made further inquiries regarding the taxpayer’s financial situation, that the CRA’s assessment was “somewhat cursory, if not perfunctory” and that, if the financial statements had been more thoroughly assessed, the result could have been different. The Applicant submits that

the assessment conducted by the TRO, Ms. Doucette, was not sufficiently thorough. She should have probed the documents provided and also sought additional information or explanations of the financial records from the Applicant.

V. The Respondent's Submissions

[18] The Respondent submits that the Team Leader and the TRO did not misunderstand the Applicant's request, nor did they fail to consider the submissions regarding the Applicant's problems with accounts receivable. Taking everything into account, the TRO and the Team Leader reasonably concluded that there was no conclusive evidence of financial hardship.

[19] The Team Leader accepted the recommendations of the TRO who reviewed all the materials submitted by the Applicant and considered all relevant facts. The Team Leader reasonably concluded that the Applicant's financial information did not demonstrate an inability to pay causing financial hardship. The Respondent adds that the onus is on the taxpayer requesting relief to support the request with all the documents needed for a decision.

[20] The Respondent points to subsection 220(3.1) of the ITA and section 281.1 of the ETA, as well as the guidelines established for the exercise of the discretionary relief under each provision, and submits that these were properly applied.

[21] The Respondent also points to the information reviewed by the TRO, as described in her affidavit, which includes an assessment of all the financial documents submitted by the Applicant, as well as the Applicant's history of late filing and payment of income tax, late filing

and payment of GST/HST and late filing and failed remittances of payroll source deductions from the 2004-2015 tax years. The TRO also noted the verbal and written warnings given to the Applicant, as well as the high outstanding balances on the GST/HST and the payroll accounts. In addition, she described her detailed assessment of the records relating to the Applicant's business operations. The Respondent submits that the conclusion that the Applicant had not demonstrated an inability to pay causing financial hardship is reasonable given that the Applicant had paid down his accounts payable, decreased his overdraft and decreased the amounts due to shareholders. Further, the Applicant had not demonstrated any extraordinary circumstances. The Respondent adds that the Team Leader's decision reflects consideration of all the factors set out in the administrative guidelines, including the Applicant's long history of late filing and failing to pay down his tax debt. The factors considered, whether individually or cumulatively, amply support the decision.

[22] Finally, the explanations now offered by the Applicant were not part of the record before the Team Leader and the TRO.

#### VI. The Decision is Reasonable

[23] The Team Leader's decision that there is no conclusive evidence of financial hardship and no evidence of extraordinary circumstances is reasonable based on the record that was before the TRO and the Team Leader.

[24] I do not agree with the Applicant's submission that the Team Leader conducted only a bare review of the financial documents, failed to understand the basis for the Applicant's request or considered irrelevant information.

[25] The Applicant's initial request for relief asserted that relief should be granted based on the broad grounds of extraordinary circumstances, the actions of the CRA and/or financial hardship, without any particulars. In response to a request for financial documents, the Applicant provided a range of documents and also provided a letter which sought to explain the reason for the request and the financial situation.

[26] In March 2016, the Applicant made a supplementary request with an explanation that financial hardship existed and that extraordinary circumstances had created a situation in which the Applicant was unable to discharge the corporation's tax obligations when due.

[27] The Applicant stated that the corporation could not pay all that was owed while still operating the business, but that if the interest and penalties were waived, it would be able to pay its other debts. The Applicant asserted that its financial situation was due to circumstances beyond its control, citing problems with collecting receivables and a need to take on work that was not profitable to keep employees working.

[28] The assessment conducted by the TRO, Ms. Doucette, was extensive and thorough and reflects more than a bare assessment of the documents provided.



[29] Ms. Doucette reviewed the Applicant's first request, the supplementary request, the financial documents provided, the information on the CRA files, the history of filing and penalties assessed and the guidelines for relief, including the definition of financial hardship. Ms. Doucette considered the Applicant's corporate tax situation, and his GST/HST and payroll accounts, listing all of the documents and records she considered in her affidavit.

[30] The financial records assessed show, among other things, that accounts receivable increased, bank overdraft decreased and accounts payable decreased, which support the conclusion that financial hardship did not prevent payment of the penalties – or at least some effort to reduce the debt. Ms. Doucette's analysis supports her finding that there was no conclusive evidence of financial hardship.

[31] With respect to the Applicant's submission that circumstances beyond his control caused financial hardship, there is nothing on the record to show circumstances beyond the Applicant's control, other than that the corporation faced challenges collecting receivables. The Applicant did not assert the type of circumstances contemplated in the guidelines such as natural or man-made disasters; disruptions of essential services, or illness.

[32] The TRO and the Team Leader, based on the financial information provided, could not conclude that the Applicant experienced extreme financial difficulty to the extent that enforcement of the penalties "would jeopardize the continuity of its operations, the jobs of the employees and the welfare of the community", as contemplated by the guidelines.

[33] The TRO and the Team Leader considered all of the submissions made and the financial documents provided by the Applicant and did not rely on irrelevant considerations. The consideration of the Applicant's history of late filing for his payroll, GST/HST and income tax accounts is a relevant consideration. The guidelines provide that the first step is to consider whether there is financial hardship or circumstances beyond the taxpayer's control. Even if there are such circumstances, the other factors should be considered, including the taxpayer's history.

[34] The CRA's policy guidelines with respect to taxpayer relief are set out in Information Circular 07-1. The CRA guidelines with respect to relief from penalties pursuant to the ETA for GST/ HST and payroll remittances are set out in the GST Memoranda Series, Chapter 16-3. Excerpts of the relevant provisions are found in **Annex A**.

[35] I do not agree that the circumstances are analogous to those in *Lund*. In *Lund*, the Court noted, among other things, "sloppiness and imprecision in CRA's approach" to the requests, and factual and processing errors by the CRA that contributed to the taxpayer's situation.

[36] I accept that the Court's admonishment at paragraphs 12 and 13 was warranted on the facts in *Lund*:

[12] . . . It appears that the CRA's analysis was based on a bare review of financial statements for Mr. Lund's numbered company with little, if any, attempt made to understand the true extent of Mr. Lund's available cash flow or the disposition of the funds he did receive. While it may not be legally incumbent upon CRA to make inquiries of the taxpayer about such missing details, it runs the risk, in a complex case such as this, that a failure to do so will lead to serious and reviewable factual errors.

[13] The approach taken here suggests that CRA's assessment of Mr. Lund's financial situation was somewhat cursory, if not

perfunctory. Whether a more thorough review would have led to a different outcome is not for me to decide, but I do not accept that the denial of relief to Mr. Lund was inevitable had the Company financial statements been thoroughly assessed against Mr. Lund's explanations.

[37] However, the circumstances in the present case differ. The affidavit of Ms. Doucette describes her comprehensive assessment of all the available information and the conclusions she reached based on that information. The onus was on the Applicant to provide all the relevant information. The Applicant does not point to any errors in the documents on the record considered by Ms. Doucette. There was no reason for Ms. Doucette to probe the Applicant for additional explanations.

[38] The Team Leader did not misunderstand the Applicant's request; rather the information provided did not justify the relief.

[39] The Applicant's submissions that explanations would have been available to elaborate on some of the financial information, that the Applicant had taken steps to address problematic bookkeeping, and that his compliance picture has improved, cannot be considered in assessing the reasonableness of the Team Leader's decision which is based on the record before the Team Leader.

[40] The Team Leader's decision falls within the range of possible and acceptable outcomes and she rendered a decision that is transparent, justifiable and intelligible (*Dunsmuir* at para 47).

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

The Application for Judicial Review is dismissed.

There is no order for costs.

"Catherine M. Kane"

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Judge

**ANNEX A*****Income Tax Act (R.S.C., 1985, c. 1 (5th Supp.))*****Waiver of penalty or interest**

**(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 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.

**Renonciation aux pénalités et aux intérêts**

**(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 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.

***Excise Tax Act (R.S.C., 1985, c. E-15)*****Failure to file a return**

**280.1** Every person who fails to file a return for a reporting period as and when required under this Part is liable to pay a penalty equal to the sum of

**Non-production d'une déclaration**

**280.1** Quiconque omet de produire une déclaration pour une période de déclaration selon les modalités et dans le délai prévus par la présente partie est passible d'une pénalité égale à la somme des montants suivants :

- |  |   |
|--|---|
| <p><b>(a)</b> an amount equal to 1% of the total of all amounts each of which is an amount that is required to be remitted or paid for the reporting period and was not remitted or paid, as the case may be, on or before the day on or before which the return was required to be filed, and</p> | <p><b>a)</b> le montant correspondant à 1 % du total des montants représentant chacun un montant qui est à verser ou à payer pour la période de déclaration, mais qui ne l'a pas été au plus tard à la date limite où la déclaration devait être produite;</p>                                  |
| <p><b>(b)</b> the amount obtained when one quarter of the amount determined under paragraph (a) is multiplied by the number of complete months, not exceeding 12, from the day on or before which the return was required to be filed to the day on which the return is filed.</p>                 | <p><b>b)</b> le produit du quart du montant déterminé selon l'alinéa a) par le nombre de mois entiers, jusqu'à concurrence de douze, compris dans la période commençant à la date limite où la déclaration devait être produite et se terminant le jour où elle est effectivement produite.</p> |

### **CRA GST/HST Memorandum – Chapter 16-3**

#### **Cancellation or waiver of penalties and/or interest**

Circumstances beyond a person's control

8. The CRA recognizes that, despite a person's best efforts, there may be occasions where, as a result of extraordinary circumstances beyond the person's control, the person may be prevented from complying with the requirements of the Act, and therefore may incur penalties and/or interest imposed under section 280 or section 280.1. In such situations, the CRA may consider it appropriate to exercise discretion in the application of penalties and/or

#### **Annulation ou renonciation – Pénalités et/ou intérêts**

Situations indépendantes de la volonté d'une personne

8. L'ARC reconnaît que, malgré ses meilleurs efforts, une personne peut se trouver dans l'impossibilité de se conformer à la Loi en raison de situations exceptionnelles indépendantes de sa volonté et être ainsi passible des pénalités et des intérêts imposés en application de l'article 280 ou 280.1. Dans de tels cas, l'ARC peut faire preuve de discernement dans l'application des pénalités et des intérêts.

interest.

...

### **Extraordinary circumstances**

11. Penalties and/or interest may be cancelled or waived where they have resulted from an extraordinary circumstance beyond a person's control, which prevented the person from complying with the Act. For example, one of the following extraordinary circumstances may have prevented a person from making a payment when due, or otherwise complying with the Act:

- natural or human-made disasters such as flood or fire;
- civil disturbances or disruptions in services such as a postal strike;
- a serious illness or accident; or
- serious emotional or mental distress such as that caused by a death in the immediate family.

...

### **Inability to pay or financial hardship**

13. It may be appropriate for the CRA, in circumstances where there is an inability on the part of the person to pay

[...]

### **Circonstances exceptionnelles**

11. L'ARC peut annuler les pénalités et/ou les intérêts qu'une personne doit, ou y renoncer, lorsque cette dernière est dans l'impossibilité de se conformer à la Loi en raison de circonstances exceptionnelles indépendantes de sa volonté. Voici quelques exemples des circonstances qui pourraient empêcher une personne d'effectuer un paiement dans les délais exigés ou de s'acquitter de toute autre obligation que lui impose la Loi :

- une catastrophe naturelle ou d'origine humaine, comme une inondation ou un incendie;
- des troubles publics ou l'interruption de certains services publics, comme dans le cas d'une grève postale;
- une maladie grave ou un accident grave;
- des troubles émotifs sévères ou une souffrance morale grave, comme lors d'un décès dans la famille immédiate.

[...]

### **Incapacité de payer ou difficultés financières**

13. Lorsqu'une personne est incapable de payer les montants qu'elle doit, l'ARC peut examiner la possibilité

amounts owing, to consider cancelling or waiving penalties and/or interest in whole or in part to facilitate collection. For example:

- when collection has been suspended due to an inability to pay, or

- when a person is unable to conclude a reasonable payment arrangement because the penalty and interest charges represent a significant portion of the payments. In such cases, consideration may be given to waiving penalties and/or interest in whole or in part for the period beginning on the first payment due date under the payment arrangement until the amounts owing are paid, provided the agreed payments are made on time.

14. Consideration would not generally be given to cancelling penalties based on an inability to pay or financial hardship unless an extraordinary circumstance has prevented compliance. However, there may be exceptional situations that may give rise to cancelling penalties, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the

d'annuler la totalité ou une partie des pénalités et/ou des intérêts dus, ou d'y renoncer, afin d'en faciliter le recouvrement. Par exemple, dans les cas suivants :

- lorsque les mesures de recouvrement ont été suspendues en raison d'une incapacité de payer;

- lorsqu'une personne ne peut convenir de modalités de versement satisfaisantes parce que les pénalités et les intérêts représentent une partie considérable des versements; dans de tels cas, l'ARC peut considérer la possibilité de renoncer à la totalité ou à une partie des pénalités et/ou des intérêts pour la période allant de la date d'échéance du premier paiement, aux termes de l'entente conclue, jusqu'au moment où les montants dus sont payés, pourvu que les versements convenus soient effectués à temps.

14. En règle générale, l'ARC n'envisagera pas d'annuler les pénalités en raison de difficultés financières ou d'une incapacité de payer, à moins que des circonstances exceptionnelles aient empêché une personne de se conformer à la loi. Cependant, il peut arriver qu'une telle circonstance justifie l'annulation des pénalités, en tout ou en partie. Par exemple, l'ARC peut envisager l'annulation des pénalités lorsqu'une entreprise connaît



continuity of its operations, the jobs of the employees and the welfare of the community, consideration may be given to providing relief of the penalties.

**Factors to be considered when waiving or cancelling penalties and/or interest**

15. Where an extraordinary circumstance beyond the person's control has prevented the person from complying with the Act, the factors listed below will be considered by the CRA in order to determine whether or not penalties and/or interest will be cancelled or waived.

- Does the person have a satisfactory history of voluntary compliance (i.e., have previous GST/HST returns been filed and payments made on time)?
- Has the person knowingly allowed an outstanding balance to exist upon which the penalties and/or interest have accrued?
- Has the person acted quickly to remedy the omission or the delay in compliance, which originally resulted in penalties and/or interest being charged?
- Is there evidence that the

des difficultés financières extrêmes et que l'application des pénalités compromettrait la poursuite de ses activités, des emplois ou le bien-être de la collectivité en général.

**Facteurs à considérer au moment d'annuler les pénalités et/ou les intérêts, ou d'y renoncer**

15. Lorsqu'une personne est dans l'impossibilité de se conformer à la Loi en raison d'une situation exceptionnelle indépendante de sa volonté, l'ARC considérera les facteurs suivants pour déterminer si elle annule les pénalités et/ou les intérêts, ou y renonce :

- la personne a-t-elle un bon dossier d'observation volontaire (c.-à-d. a-t-elle à la fois produit ses déclarations de TPS/TVH précédentes et effectué ses paiements dans les délais prescrits?)
- la personne a-t-elle, en connaissance de cause, laissé subsister un solde en souffrance sur lequel se sont accumulés les pénalités et/ou les intérêts?
- la personne a-t-elle agi avec diligence pour remédier à tout retard ou à toute omission en matière d'observation, qui aurait donné lieu à l'imposition initiale de pénalités et/ou d'intérêts?
- est-il évident que la personne

person exercised reasonable care and diligence (e.g., planned for anticipated disruptions) and was not negligent or careless in the conduct of its affairs? The onus is on the registrant to keep abreast of any new developments in the administration of the GST/HST so as to ensure continuing compliance.

a fait des efforts raisonnables et preuve de diligence (p. ex. elle a pris des précautions en vue de difficultés possibles), sans avoir été négligente, dans l'exécution de ses affaires? Il revient à l'inscrit de se tenir au courant de tout changement apporté à l'administration de la TPS/TVH de manière à s'assurer qu'il continue de se conformer aux exigences de la Loi.

### **Canada Revenue Agency IC07-1 Taxpayer Relief Provisions**

#### **Circumstances Where Relief From Penalty and Interest May Be Warranted**

#### **Situations dans lesquelles un allègement des pénalités et des intérêts peut être justifié**

23. The Minister may grant relief from the application of penalty and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement at issue:

23. Le ministre peut accorder un allègement de l'application des pénalités et des intérêts lorsque les situations suivantes sont présentes et qu'elles justifient l'incapacité du contribuable à s'acquitter de l'obligation ou de l'exigence fiscale en cause :

a. extraordinary circumstances

a. circonstances exceptionnelles;

b. actions of the CRA

b. actions de l'ARC;

c. inability to pay or financial hardship

c. incapacité de payer ou difficultés financières.

24. The Minister may also grant relief if a taxpayer's circumstances do not fall within the situations stated in 23.

24. Le ministre peut également accorder un allègement même si la situation du contribuable ne se trouve pas parmi les situations mentionnées au paragraphe 23.

### **Extraordinary Circumstances**

25. Penalties and interest may be waived or cancelled in whole or in part where they result from circumstances beyond a taxpayer's control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying with an obligation under the Act include, but are not limited to, the following examples:

a. natural or man-made disasters such as, flood or fire;

b. civil disturbances or disruptions in services, such as a postal strike;

c. a serious illness or accident;  
or

d. serious emotional or mental distress, such as death in the immediate family.

...

### **Inability to Pay or Financial Hardship**

27. It may be appropriate, in circumstances where there is a confirmed inability to pay all amounts owing, to consider waiving or cancelling interest in whole or in part to enable

### **Circonstances exceptionnelles**

25. Les pénalités et les intérêts peuvent faire l'objet d'une renonciation ou d'une annulation, en tout ou en partie, lorsqu'ils découlent de circonstances indépendantes de la volonté du contribuable. Les circonstances exceptionnelles qui peuvent avoir empêché un contribuable d'effectuer un paiement lorsqu'il était dû, de produire une déclaration à temps ou de s'acquitter de toute autre obligation que lui impose la Loi sont les suivantes, sans être exhaustives :

a. une catastrophe naturelle ou causée par l'homme, telle qu'une inondation ou un incendie;

b. des troubles publics ou l'interruption de services, tels qu'une grève des postes;

c. une maladie grave ou un accident grave;

d. des troubles émotifs sévères ou une souffrance morale grave, tels qu'un décès dans la famille immédiate.

[...]

### **Incapacité de payer ou difficultés financières**

27. Il peut être approprié, lorsque l'incapacité de payer tous les montants dus est confirmée, de considérer la renonciation ou l'annulation aux intérêts, en tout ou en

taxpayers to pay their account. For example:

a. when collection had been suspended due to an inability to pay and substantial interest has accumulated or will accumulate;

b. when a taxpayer's demonstrated ability to pay requires an extended payment arrangement, consideration may be given to waiving all or part of the interest for the period from when payments start until the amounts owing are paid, as long as the agreed payments are made on time and compliance with the Act is maintained; or

c. when payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical help, transportation, or shelter, consideration may be given to cancelling all or part of the total accumulated interest.

28. Consideration would not generally be given to cancelling a penalty based on an inability to pay or financial hardship unless an extraordinary circumstance, as described in 25 has prevented compliance. However, there

partie, pour permettre au contribuable de régler son compte. Par exemple :

a. lorsque les mesures de recouvrement ont été suspendues à cause de l'incapacité de payer et qu'un montant considérable d'intérêts s'est accumulé ou s'accumulera;

b. lorsque la démonstration de la capacité de payer d'un contribuable exige une prolongation de l'arrangement de paiements, on peut considérer la renonciation aux intérêts, en tout ou en partie, pour la période allant du début des paiements jusqu'à ce que le solde soit acquitté, aussi longtemps que les paiements convenus sont faits à temps et que l'observation des termes de la Loi est maintenue;

c. lorsque le paiement des intérêts accumulés causerait une incapacité prolongée (difficultés financières) à subvenir aux besoins essentiels, tels que la nourriture, les soins médicaux, le transport, ou le logement, on peut considérer l'annulation des intérêts accumulés, en tout ou en partie.

28. De façon générale, on ne considèrera pas l'annulation d'une pénalité en raison d'une incapacité de payer ou de difficultés financières à moins que des circonstances exceptionnelles, telles qu'elles sont décrites au paragraphe 25,

may be exceptional situations that may give rise to cancelling penalties, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole, consideration may be given to providing relief of the penalties.

...

#### **Factors Used in Arriving at the Decision**

33. Where circumstances beyond a taxpayer's control, actions of the CRA, or inability to pay or financial hardship has prevented the taxpayer from complying with the Act, the following factors will be considered when determining whether or not the CRA will cancel or waive penalties and interest:

a. whether or not the taxpayer has a history of compliance with tax obligations;

b. whether or not the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued;

c. whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in

aient empêché l'observation. Cependant, des situations exceptionnelles peuvent donner lieu à l'annulation totale ou partielle des pénalités. Par exemple, lorsqu'une entreprise a des difficultés financières extrêmes et que l'application des pénalités mettrait en danger la continuité de son exploitation, des emplois et du bien-être de la collectivité dans son ensemble, on peut considérer un allègement des pénalités.

[...]

#### **Facteurs utilisés pour arriver à la décision**

33. Lorsque des circonstances indépendantes de la volonté du contribuable, des actions de l'ARC, ou l'incapacité de payer ou les difficultés financières ont empêché le contribuable de respecter la Loi, les facteurs suivants seront considérés pour déterminer si l'ARC annulera ou renoncera aux pénalités et aux intérêts, ou non :

a. le contribuable a respecté, par le passé, ses obligations fiscales;

b. le contribuable a, en connaissance de cause, laissé subsister un solde en souffrance qui a engendré des intérêts sur arriérés;

c. le contribuable a fait des efforts raisonnables et n'a pas été négligent dans la conduite de ses affaires en vertu du

conducting their affairs under  
the self-assessment system;  
and

régime d'autocotisation;

d. whether or not the taxpayer  
has acted quickly to remedy  
any delay or omission.

d. le contribuable a agi avec  
diligence pour remédier à tout  
retard ou à toute omission.

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

**DOCKET:** T-846-16  
**STYLE OF CAUSE:** DONALD COLEY AND TRADELINK STUCCO &  
CONSTRUCTION INC. v THE MINISTER OF  
NATIONAL REVENUE  
**PLACE OF HEARING:** TORONTO, ONTARIO  
**DATE OF HEARING:** FEBRUARY 8, 2017  
**JUDGMENT AND REASONS:** KANE J.  
**DATED:** FEBRUARY 22, 2017

**APPEARANCES:**

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