

Federal Court



Cour fédérale

**Date: 20180102**

**Docket: T-284-17**

**Citation: 2018 FC 1**

**Ottawa, Ontario, January 2, 2018**

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

**BETWEEN:**

**CRAIG NORRIS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is the judicial review of a decision [Decision] by the Canada Revenue Agency to refuse to exercise the discretion provided in s 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp) to cancel or waive the remaining interest and penalties previously assessed.

[2] The Applicant is a self-represented litigant who argues that the Decision recognized but failed to sufficiently consider his medical and financial difficulties in granting only partial relief from interest and penalty charges.

Toward that end, the Applicant submitted some new documents which were not before the decision maker.

[3] The applicable provision of the *Income Tax Act* reads as follows:

**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 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.

**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 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.

II. Background

[4] The Applicant was an emergency medical responder and ambulance attendant for 15 years before becoming a fisherman in 2003. He struggled financially until 2008 when he went shrimping and did not file income tax returns for 2007 to 2011.

[5] In February 2012, the Applicant was involved in the medical response to the workplace death of his co-worker and in the post-death personal arrangements. He was subsequently diagnosed with post-traumatic stress disorder [PTSD] by his psychiatrist, but the Applicant believes that he had been suffering from PTSD for a substantial period prior to this incident.

He went on workers' compensation for six months.

[6] In November 2013, his 23 year old son was killed in a car accident for which there was no insurance. The costs related to his son's death set the Applicant back financially.

[7] In 2014-15 the Applicant was diagnosed with type 2 diabetes, kidney cancer, and heart problems. In 2016, his work fishing for groundfish collapsed, further compromising his financial circumstances.

[8] While 2015 was a good year financially, due to health issues he did not work from July 2015 to February 2016.

[9] In July 2013, the Applicant applied for tax relief – forgiveness of interest and penalties. This was allowed in part under a “1<sup>st</sup> Decision” in respect of penalties on the 2011 return and interest assessed on the 2007 to 2011 returns, which were relieved for certain periods of 2012. The tax relief officer noted the connection between health issues and the ability to pay on time. However, for the 2007-2010 years, the officer found no extraordinary circumstances justifying relief for financial hardship, noting that the Applicant had sufficient funds and assets for a home equity loan which could have been used to address his arrears without undue hardship.

[10] The Applicant then submitted a second relief request regarding penalties and interest for 2007-2011, 2014 and 2015.

[11] In this “2nd Decision” – the subject of this judicial review – the Minister’s Delegate granted partial relief by cancelling penalties for the tax years 2011 and 2015 due to medical circumstances, and cancelling interest for the tax years 2007-2011, 2014, and 2015 for the period of January 1, 2016 to January 23, 2017 due to financial hardship.

[12] However, for 2007-2010 and 2015, the Minister’s Delegate found no causal connection between the Applicant’s medical condition and his inability to attend to his tax obligations. For the period prior to January 1, 2016, the Delegate found that the Applicant earned sufficient income in 2008-2015 to resolve his tax debt in a reasonable time. It was noted that the Applicant was able to take out a home equity loan to do renovations and to lease two vehicles while knowingly allowing the arrears balance to continue.

[13] The Applicant now seeks more relief than what was granted. He also submitted new documents which were not before either decision maker as a basis for this expanded relief.

[14] The issue is not whether the Court would reach a different conclusion as urged by the Applicant, but whether this highly discretionary decision was reasonable.

### III. Analysis

[15] The standard of review has been established as “reasonableness”. The Court in *Easton v Canada (Revenue Agency)*, 2017 FC 113 at para 41, 275 ACWS (3d) 664, sets out the standard of review in this context:

[41] A decision under subsection 220(3.1) of the Act is of a discretionary nature and the Court must thus show deference to the Minister’s Delegate (*Tomaszewski v Canada (Minister of Finance)*, 2010 FC 145 at para 17). Hence, the decision rendered by the Minister’s Delegate under the taxpayer relief provisions must be assessed against the reasonableness standard (*Lanno v Canada (Customs and Revenue Agency)*, 2005 FCA 153; *Amoroso v Canada (Attorney General)*, 2013 FC 157 at para 50; *Christie Estate v Canada (Attorney General)*, 2007 FC 1014 at para 11).

#### A. *New Documents*

[16] The Applicant contends that the Delegate did not consider the following five items:

1. letter from Dr. Paul, dated March 12, 2017;
2. letter from Dr. Leung, dated March 15, 2017;
3. T4 for 2016 taxation year;
4. T4E for 2016 taxation year; and
5. funeral home invoice, service dated November 20, 2013.

[17] If this were accurate and relevant, this Court could grant the judicial review under s 18.1(4)(d) of the *Federal Courts Act*, RSC 1985, c F-7.

**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.

...

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

...

**(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;

**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.

[...]

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

[...]

**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;

[18] However, these documents were not available when the 2<sup>nd</sup> Decision was made in January 2017 and/or the facts stated were already known and considered. The matter of PTSD discussed in the two doctors' letters, which post-date the 2<sup>nd</sup> Decision, was known and had been considered. The letters add no material matters to the file. The death of the Applicant's son was likewise known and considered and had been so in the 1<sup>st</sup> Decision which granted relief on that ground.

The T4 and T4E slips post-dated the 2<sup>nd</sup> Decision.

[19] As the Applicant conceded in his reply submissions, and is readily apparent from the Record, these documents add nothing new to this whole matter.

[20] Therefore, the Court cannot grant judicial review on the basis of new evidence.

B. *Reasonableness*

[21] As to the “reasonableness” of the Decision, that matter is directly linked to the “new evidence”. On that basis alone, the decision should not be disturbed.

[22] Further, there is nothing unreasonable about the Decision. The Delegate took account of the relevant facts, law, and policy, and exercised independent judgment to grant some relief but not all the relief requested. The Delegate took account of the Applicant’s difficult circumstances in certain periods but balanced that consideration with the Applicant’s ability to take out a further loan for renovations and to lease cars – all of which suggests that the PTSD was not so severe that the Applicant was unable to pay his tax debt.

[23] The medical evidence likewise supported a conclusion that the Applicant, described as clinically stable and able to do physical work, could carry out normal daily functions. For the periods when the Applicant’s PTSD was severe, tax relief was granted.

[24] In my view, the decision under attack was reasonable, balanced, and procedurally fair.

IV. Conclusion

[25] Therefore, this judicial review will be dismissed without costs.



**JUDGMENT in T-284-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed  
without costs.

"Michael L. Phelan"

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Judge

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

**DOCKET:** T-284-17

**STYLE OF CAUSE:** CRAIG NORRIS v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** ST. JOHN'S, NEWFOUNDLAND AND LABRADOR

**DATE OF HEARING:** DECEMBER 13, 2017

**JUDGMENT AND REASONS:** PHELAN J.

**DATED:** JANUARY 2, 2018

**APPEARANCES:**

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