

Federal Court



Cour fédérale

Date: 20210623

Docket: T-1676-19

Citation: 2021 FC 658

Ottawa, Ontario, June 23, 2021

PRESENT: Madam Justice Walker

BETWEEN:

JOHN JEFFERSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. John Jefferson, the applicant, requests the Court's review of a September 11, 2019 decision (Decision) made by Mr. Geoff Trueman as delegate of the Minister of National Revenue (Minister). Mr. Trueman, an Assistant Commissioner with the Canada Revenue Agency (CRA), refused to recommend the remission of tax, interest and penalties owing by Mr. Jefferson in respect of unremitted source deductions dating from 2009-2011. Mr. Jefferson had applied for remission of those tax liabilities pursuant to subsection 23(2) of the *Financial Administration Act*, RSC, 1985, c F-11 (FAA).

[2] The remission of tax is an exceptional measure. The Governor in Council may grant remission under subsection 23(2) on recommendation by the Minister when the collection of the tax or enforcement of related penalties and interest would be unreasonable or unjust, or when it would otherwise be in the public interest to remit. Mr. Jefferson was one of three directors of a private corporation that failed to remit payroll deductions. Its failure to comply with its remittance obligations resulted in the assessment of taxes in respect of the unremitted deductions, penalties and interest against Mr. Jefferson in his personal capacity. His request for remission was largely based on a series of contractual arrangements entered into by the corporation and misconduct by the counterparties to those arrangements.

[3] I have considered Mr. Jefferson's detailed submissions carefully and have found that he has not established a reviewable error in the Minister's refusal to recommend remission. For the reasons that follow, the application for judicial review will be dismissed.

[4] By way of preliminary matter and with the consent of the parties, the style of cause in this matter is amended to reflect the proper respondent, the Attorney General of Canada, in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106.

I. Overview

[5] Mr. Jefferson was an initial shareholder and director of Gold Standard Pellet Fuel Ltd. (Gold Standard) along with Mr. Wayne Wiren. In 2002, Mr. Brent Wiren joined the corporation as a shareholder and director.

[6] Gold Standard operated successfully from 1982 to 2005 but experienced serious financial difficulties between 2005 and 2009. In an attempt to shore the corporation's financial position and continue its operations, the three directors liquidated personal assets and loaned Gold Standard over \$2 million in aggregate. Despite the infusion of funds, the corporation's fortunes did not improve and the directors initiated an orderly liquidation of its assets.

[7] Beginning in 2009 and continuing through 2011, Gold Standard decided not to remit payroll deductions to the CRA. The corporation instead used its available funds to make severance payments to departing employees. The directors relied on plans to sell valuable corporate assets and use the proceeds from those sales to satisfy Gold Standard's accruing tax liabilities. The assets identified for sale were a firewood plant in Princeton, British Columbia (the Princeton Asset) and a wood pellet operation in Kamloops, British Columbia (the Kamloops Asset).

[8] During the 2009-2011 period, the CRA, Gold Standard and its directors discussed the outstanding payroll remittances. The following is a simplified explanation of the actions, audits and payments of or made by those parties.

[9] It is useful to first set out the four CRA audits of Gold Standard's source deductions account and the resulting assessments that gave rise to the taxes, interest and penalties in issue:

- (A) January 28, 2010: First CRA audit of the source deductions account for August-December 2009 and assessment of \$244,486, representing \$220,557 in unremitted payroll deductions, plus penalties and accruing interest.

- (B) April 22, 2010: Second CRA audit of the source deductions account for January-April 2010 and assessment of \$126,682 for unremitted payroll deductions.
- (C) September 21, 2010: Third CRA audit of the source deductions account for April-September 2010 and assessment of \$96,948.
- (D) April 27, 2011: Fourth CRA audit of the source deductions account for November 2010-February 2011 and assessment of \$29,785, representing \$24,508 in unremitted payroll deductions, plus penalties and accruing interest.

[10] Immediately prior to the CRA's first audit in January 2010, Gold Standard made a payment of \$124,527 against its outstanding payroll remittances following receipt of a Scientific Research & Experimental Development tax credit for 2008 and 2009.

[11] On April 30, 2010, Gold Standard sold the Princeton Asset for \$1 million and distributed funds to its secured creditors, including \$131,557 to the CRA.

[12] Gold Standard continued its attempts to sell the Kamloops Asset through October 2009-May 2011, during which period the CRA took action to secure the mounting tax liabilities. Included in the CRA's actions were the filing of two writs of seizure and sale with the Court in the amounts of \$278,889.82 and \$29,861.65, and the registration of a lien against the Kamloops Asset in the amount of \$205,025 (the Kamloops Lien). The CRA also cautioned Gold Standard's directors about potential liability assessments based on their personal responsibility for unremitted payroll deductions.

[13] In January 2011, Farm Credit Canada (Farm Credit), the first mortgagee on the Kamloops Asset, began foreclosure proceedings. At that time, there were five secured registrations against the property that ranked ahead of the Kamloops Lien.

[14] On July 27, 2011, Gold Standard entered into an agreement with two arm's length corporations (Purchasers) for the purchase of the Kamloops Asset. As part of the purchase, the Purchasers agreed to satisfy the CRA's outstanding claim of \$188,261.29 for unremitted payroll deductions and a Goods and Services deemed trust amount, and to indemnify the Gold Standard directors. The following day the Purchasers and Gold Standard directors entered into an indemnity agreement (Indemnity Agreement) setting out the Purchasers' obligation to indemnify the directors from all judgments obtained by the CRA and registered against the Kamloops Asset.

[15] After receipt of a copy of the Indemnity Agreement, the CRA issued requirements to pay (RTPs) against the Purchasers as possible sources of funds to satisfy the outstanding tax debt.

[16] The sale of the Kamloops Asset closed in early fall 2011 after receiving approval from the British Columbia Supreme Court (BC Court). Following completion of the sale, Gold Standard's three directors resigned.

[17] On August 16, 2011, while the Farm Credit proceedings and proposed sale of the Kamloops Asset were ongoing, the CRA sent directors' liability warning letters in relation to the payroll deduction debt to Messrs. Jefferson, Wiren and Wiren. On February 21, 2012, the CRA issued assessments against each of the directors in the amount of \$118,931 representing Gold Standard's then current tax, penalties and interest owing for unremitted payroll deductions (the Tax Debt). Mr. Jefferson entered into a payment arrangement with the CRA and made a number of payments towards the assessed amount but did not pay the full amount.

[18] The Purchasers did not honour the Indemnity Agreement and Gold Standard's directors filed a claim with the BC Court. On August 30, 2013, the BC Court ordered the Purchasers to pay all of Gold Standard's remaining outstanding tax liabilities directly to the CRA on or before December 6, 2013 (the BC Order).

[19] The Purchasers failed to comply with the BC Order and the CRA took collection action against the Purchasers and their directors. The CRA issued cascading assessments for the Tax Debt against those parties in 2015 and 2016 in reliance on sections 160, 224 and 227 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA).

[20] In February 2016, the Purchasers' counsel proposed an arrangement to the CRA pursuant to which its directors would pay \$118,502 in respect of the Tax Debt in instalments. The CRA accepted the arrangement but the directors made only one payment of \$20,000 in July 2016.

[21] In June 2016, the Purchasers' directors filed notices of objection against the CRA's memorandum assessments issued pursuant to section 160 of the ITA. The CRA appeals division reviewed the objections and ultimately vacated the directors' assessments. The Purchasers had also objected to their section 224/227 assessments. The CRA reviewed the objections and reduced the Purchasers' assessments to \$113,925 in October 2016.

[22] The Purchasers have since become inactive and appear to the CRA not to be viable sources for recovery of the Tax Debt. In addition, the CRA cannot look to Mr. Jefferson's fellow Gold Standard directors because one has passed away and the other has declared bankruptcy.

II. Procedural history

[23] Following two unsuccessful applications for relief, Gold Standard and Mr. Jefferson made a third request for remission (the Remission Request) of the Tax Debt which then totalled approximately \$93,000 and all amounts collected by the CRA since the date of the BC Order.

The Remission Request was based on the following grounds:

- (1) Extenuating circumstances: The Purchasers' conduct was egregious. Mr. Jefferson stated that the Purchasers' actions in negotiating the sale of the Kamloops Asset through successive letters of intent and agreements all designed to devalue the property, breaching the Indemnity Agreement, and ignoring the BC Order are extenuating circumstances beyond his control;
- (2) Unintended results of the ITA: The inability of the CRA to assess the Purchasers' directors for breach of the Indemnity Agreement under the ITA must be an unintended result of the legislation. Mr. Jefferson argued that he should not suffer the consequences of this deficiency in the ITA; and
- (3) Incorrect action by the CRA: The CRA was careless in lifting the Kamloops Lien without demanding full payout of the Tax Debt. Mr. Jefferson stated that he should not have to pay the \$65,000 of interest that had accrued since the CRA's negligent conduct.

[24] Mr. Jefferson emphasized that he and the other Gold Standard directors continued to make payments to reduce the Tax Debt even though it had been sold and "was legally not his responsibility any longer". Finally, the Remission Request advised the CRA that Mr. Jefferson had been in a serious motorcycle accident earlier in the month (July 2017) and remained in hospital at the date of writing.

III. Decision under review

[25] The Decision contains a detailed summary of the facts underlying the Remission Request and the CRA's attempts to recoup the unremitted payroll remittances from Gold Standard and its

directors, the Kamloops Asset, the Purchasers and their directors. Mr. Trueman explains why the CRA has continued its pursuit of Mr. Jefferson and emphasizes that his personal liability for the Tax Debt flows from the decisions he made as a Gold Standard director. Mr. Trueman states that Mr. Jefferson remains liable for the unremitted payroll deductions, and resulting penalties and interest, regardless of the sale of the Kamloops Asset, the Purchasers' breach of the Indemnity Agreement and their disregard of the BC Order.

[26] Mr. Trueman refused to recommend remission of Mr. Jefferson's Tax Debt for the following reasons:

1. Payroll deductions are funds held in trust and the handling of those funds is subject to stringent rules. Gold Standard collected the deductions in question as agent of the federal government. Instead of remitting the deductions as required under the ITA, the corporation chose to pay severance amounts to its employees, a decision within its control and that of its directors, Mr. Jefferson included. This decision and the corporation's resulting inability to satisfy its obligations to remit payroll deductions were not the result of extenuating factors beyond the directors' control.
2. The failure of the Purchasers to respect the Indemnity Agreement was not a circumstance outside the control of Gold Standard or Mr. Jefferson because the Tax Debt did not arise as a result of the sale of the Kamloops Asset or any action or inaction of the Purchasers. The Tax Debt, which continues to accrue interest, exists due to Gold Standard's decision not to respect its obligation under the ITA

to remit payroll deductions. The Purchasers' breach of the Indemnity Agreement and their failure to respect the BC Order are civil matters only.

3. The CRA did not act incorrectly when it vacated the Kamloops Lien. The CRA followed proper procedure and recovered the full amount possible from the sale of the Kamloops Asset based on the Crown's deemed trust for unremitted payroll deductions (subsection 227(4) of the ITA). Once that amount was recovered, Farm Credit as primary secured creditor was entitled to the remaining balance of the proceeds of the sale. The CRA was required to release the Kamloops Lien upon receipt of the amount secured.
4. Mr. Jefferson's July 2017 motorcycle accident and 2018 heart attack were not relevant extenuating factors for remission because there was no direct correlation between the ill effects suffered by Mr. Jefferson from those occurrences and his inability to satisfy the Tax Debt at the time it arose. Mr. Jefferson's health conditions did not prevent Gold Standard or its directors from remitting payroll deductions as required between 2009 and 2011.
5. Finally, remission was not warranted based on Mr. Jefferson's financial resources. The evidence established that, between 2009 and 2017, his annual household income was consistently in the low six figures, reaching \$250,000 annually. Mr. Trueman concluded that Mr. Jefferson's earnings potential was sufficient to satisfy the Tax Debt.

[27] Mr. Jefferson filed his Notice of Application requesting the Court's review of the Decision on October 11, 2019.

IV. Standard of review

[28] The parties agree that the Decision is subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Mokrycke v Canada (Attorney General)*, 2020 FC 1027 at para 38).

[29] The Supreme Court of Canada (SCC) describes a reasonable decision as one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). The review has two aspects: the reasoning process of the decision maker must be intelligible and logical, and the outcome must be justified.

[30] The justification given by the decision maker must be reviewed against the relevant facts and law in each case (*Vavilov* at paras 105-106). The SCC has stated that “the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision” (*Vavilov* at para 108). In this application, the breadth of the discretion granted to the Minister under subsection 23(2) of the FAA is central to my review. The discretion is policy based and open-ended in light of the words used in the subsection, and is exercised by the Minister “within a decision-making context that may result in the grant of extraordinary relief by the Governor in Council” (*Waycobah First Nation v Canada (Attorney General)*, 2011 FCA 191 at paras 18-19).

V. Analysis

[31] Mr. Jefferson’s Remission Request was made pursuant to subsection 23(2) of the FAA but I begin my review of the Decision with the reminder that the Tax Debt arose due to his and his fellow directors’ decision to delay Gold Standard’s compliance with its obligation to timely remit payroll source deductions held in trust for the Crown in the 2009-2011 period. That decision resulted in joint and several personal liability for the directors pursuant to subsection 227.1(1) of the ITA.

[32] A director’s personal liability for unremitted source deductions is an important facet of the source deduction system that lies “at the heart of the collection procedures for personal income taxation in Canada” (*Pembina on the Red Development Corp. Ltd. v Triman Industries Ltd.* (1991), 85 DLR (4th) 29, cited by the SCC in *Royal Bank of Canada v Sparrow Electric Corp.*, [1997] 1 SCR 411 at para 36). Remission of that liability is an exceptional measure that must be weighed against the public interest in maintaining the security of the stringent collection system for source deduction.

[33] Subsection 23(2) of the FAA establishes the parameters for the Minister’s assessment of a remission request:

Remission of taxes and penalties

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

Remise de taxes ou de pénalités

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

<p>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.</p>	<p>exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise.</p>
--	---

[34] The CRA has prepared a guide to assist its officials in reviewing a request for remission and to promote consistency in the department's responses (the Guide). The Guide is just that, a guide that identifies characteristics common to past cases that form a framework for review but recognizes that each request must be considered on its own merits. The characteristics or factors identified in the Guide are:

1. Extreme hardship;
2. Financial setback coupled with extenuating factors;
3. Incorrect action or advice on the part of CRA officials; and
4. Unintended results of the legislation.

[35] Mr. Trueman framed his analysis in the Decision with reference to these factors, consistent with Mr. Jefferson's Remission Request. Mr. Trueman also stated that he had considered Mr. Jefferson's circumstances "to determine if it is fair, reasonable, or in the public interest to recommend remission".

[36] Mr. Jefferson submits that the Decision is unreasonable for several reasons, each of which question Mr. Trueman's assessment of the circumstances and long history that have resulted in the Tax Debt. He makes a number of submissions that fall within substantially the same categories set out in the Remission Request and recognized in the Guide. In addition and

more generally, Mr. Jefferson argues that the Decision is internally incoherent and lacks justification, transparency and intelligibility. He also argues that Mr. Trueman gave insufficient reasons to support sweeping statements in the Decision about the CRA's conduct in this matter and its inability to pursue the Purchasers, their directors and his fellow Gold Standard directors.

Extenuating circumstances

[37] Mr. Jefferson submits that the Decision falls outside the range of acceptable outcomes in light of extenuating circumstances caused by the Purchasers' misconduct. He states that the CRA blames him for the Tax Debt despite the fact that he prioritized payment of the Debt but was defrauded by the Purchasers. Mr. Jefferson argues that "[t]his egregious misapprehension" by Mr. Trueman is not defensible and that the Decision fails to appreciate the severity of the Purchasers' behaviour. He submits that this failure led to his being deemed liable for the Tax Debt. Winnowing through Mr. Jefferson's submissions, the core of his argument is that Mr. Trueman "did not assign proper weight to the immoral and unethical actions of the [Purchasers]".

[38] The evidence in the record demonstrates that the Purchasers and their directors breached the Indemnity Agreement, failed to comply with the BC Order, and failed to honour their commitments to the CRA to satisfy the Tax Debt. However, Mr. Jefferson's submission that the Decision reflects a misapprehension of these facts and of Gold Standard's original decision to delay remittance of payroll deductions is not persuasive. The Decision does not dismiss the Indemnity Agreement or ignore the BC Order. I find no suggestion of any misapprehension,

misstatement or other reviewable error in the Decision or in the supporting analyses of the CRA officers involved in the review of the Remission Request.

[39] In the Decision, Mr. Trueman stated:

If Gold Standard had instead respected its obligations under the [ITA], or prioritized the payment of its debt, its current obligations to the CRA might have been significantly reduced. The decision to pay severance to its employees was ultimately a business decision within the control of Gold Standard's directors, Mr. Jefferson included, and not the result of extenuating factors beyond their control.

[40] Mr. Jefferson submits that this conclusion is a reviewable error because it presents a false dichotomy. He argues that he and his fellow directors were never faced with this dilemma because, at the time, Gold Standard owned sufficient assets to satisfy its liability for unremitted source deductions.

[41] I find no error in Mr. Trueman's statement. A corporation's remittance obligations arise regardless of its overall financial position. The fact that the corporation owns valuable assets, liquid or otherwise, which it could use to satisfy its obligations is irrelevant. If the corporation fails to timely remit collected source deductions, its directors are jointly and severally liable for payment.

[42] Gold Standard and its directors relied on an unsuccessful business strategy based on potential future asset sales to allow them to pay severance to departing employees immediately and to remit source deductions only upon completion of those sales. The directors were and are

responsible for that business decision. Contrary to Mr. Jefferson's submissions, this is not a case of "deemed liability" but of clear statutory personal liability for Gold Standard's failure to remit.

[43] I agree with the Respondent that Mr. Jefferson's Remission Request itself supports Mr. Trueman's conclusion. The Remission Request states that Gold Standard was very loyal to its employees and decided to lay off their employees rather than cease operations. Further, the payment of severance to departing employees led to the growth of outstanding obligations to the CRA for payroll remittances. Gold Standard "felt justified in using the valuation of the Princeton assets and the purchase price of the Kamloops assets combined to set a strategy" to satisfy its tax liabilities from the proceeds of sales. The Remission Request also states:

At this point the company's shareholders and directors have injected 100% of their available capital into the company in order to have paid out the severance of all of these workers, and relied on the value in its final assets in order to meet its obligations to CRA.

[44] Mr. Jefferson and the other directors took a calculated risk. They did so with good intentions but Mr. Trueman's conclusion that they chose to assume that business risk is not a reviewable error.

[45] Mr. Jefferson submits that the Decision misapprehends the extent and impact of the Purchasers' misconduct. In his view, the misapprehension caused Mr. Trueman to unreasonably conclude that the misconduct does not constitute extenuating circumstances that support remission of the Tax Debt.

[46] In the Decision, Mr. Trueman reviewed the Purchasers' actions in detail, including Mr. Jefferson's assertion that the Purchasers artificially devalued the Kamloops Asset by entering into and intentionally failing to complete successive purchase offers. Mr. Trueman also set out the Purchasers' failure to honour the Indemnity Agreement, the BC Order requiring the Purchasers to pay all of Gold Standard's outstanding liabilities to the CRA, and the RTPs issued by the CRA.

[47] I find that the Decision contains no misunderstanding or mischaracterisation of the Purchasers' conduct. There is no material omission or attempt to minimize their actions. Mr. Trueman's conclusions that (1) the Tax Debt resulted from Gold Standard's original decision not to respect its ITA obligations and (2) the Purchasers' misconduct and breach of the BC Order are private civil matters that do not relieve Mr. Jefferson of his responsibility for the Tax Debt, are both consistent with the evidence. Essentially, Mr. Jefferson asks the Court to reweigh Mr. Trueman's assessment of the Purchasers' actions. In the absence of significant error or omission in the appreciation of the evidence, Mr. Jefferson has not established a basis for the Court to intervene (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36).

[48] Mr. Trueman's analysis in the Decision emphasizes the importance of source deductions in the scheme of the ITA and the personal liability imposed on directors to ensure compliance with a corporation's remittance of those deductions. In my opinion, Mr. Trueman's focus on Gold Standard directors' assumption of personal risk in order to assist their employees is intelligibly explained and justified. The directors took the decision at a time when they had no

assurance of a successful sale of the Kamloops Asset. In fact, Gold Standard's breach of its remittance obligations continued for a period of two years despite the CRA's audits and assessments for source deductions during that period.

[49] The decision to breach the requirement to hold source deductions in trust for the Crown pursuant to subsection 227(4) of the ITA was wholly within the directors' control. I find no reviewable error in Mr. Trueman's conclusion that the Tax Debt arose due to the directors' decision to assume the risks inherent in Gold Standard's business strategy and was not the result of extenuating circumstances sufficient to warrant remission of the Tax Debt.

[50] Mr. Jefferson concludes his submissions regarding extenuating circumstances with the statement that, should I uphold the Decision, such a result would not be in the public interest and would condone the fact that the "CRA does not value or appreciate contractual obligations and furthermore, the CRA disregards rulings rendered by a court of competent jurisdiction".

[51] This statement improperly characterizes the Court's role in judicial review and the CRA's conduct. In my view, it is unnecessary rhetoric. The evidence demonstrates that the CRA made repeated attempts through the years to obtain payment of the Tax Debt from the Purchasers and their directors. Mr. Trueman's conclusions that the Purchasers' actions and agreements with Gold Standard are civil matters and do not negate Mr. Jefferson's personal liability are expressed without any affirmation of misconduct or disrespect of the BC Order. The conclusions are also justified on the evidence and relevant legal framework of subsection 23(2) of the FAA and the source deduction provisions of the ITA.

The CRA's incorrect actions and failures to take timely action

[52] There are two facets to Mr. Jefferson's contention that the CRA's incorrect actions support remission of the Tax Debt. Mr. Jefferson first submits that the CRA did not correctly determine the amount of source deductions that were deemed to be trust amounts by virtue of subsection 227(4) of the ITA and prematurely released the Kamloops Lien. He argues that the proceeds of disposition of the Kamloops Asset were more than enough to fully address Gold Standard's tax liability. Second, Mr. Jefferson submits that the CRA refused without reason to pursue the Purchasers, their directors and shareholders, and the other Gold Standard directors. He states that the CRA's negligence is a contributory reason the Tax Debt continues to exist.

[53] In support of his submissions regarding the inadequate quantum of the Kamloops Lien, Mr. Jefferson points to correspondence among CRA officers that explains the quantum and timing of the Kamloops Lien. I have reviewed the correspondence in question and find that it does not reflect an error by the CRA that impacted its ability to recover the deemed trust amounts or Mr. Trueman's analysis in the Decision.

[54] The CRA officers describe the calculation of the Kamloops Lien and the timing of the April 27, 2011 assessment in the amount of \$29,785. With respect to this latter assessment, an email explaining its relevance states that the CRA certified the debt in this Court but was too late to register another lien. The correspondence also sets out the CRA's recovery of \$220,084.75 from the sale of the Kamloops Asset based on its deemed trust.

[55] The CRA's calculation and registration of the Kamloops Lien were completed in conformity with the then issued assessments against Gold Standard. More critically, the CRA's ability to recover as a first priority creditor against the proceeds of sale of the Kamloops Asset is established under subsection 227(4) of the ITA and not by registration of the Kamloops (or any other) Lien. The Crown's priority derives from the deemed trust provisions of the ITA (*Canada (Attorney General) v National Bank of Canada*, 2004 FCA 92 at para 50):

[50] In this case, Parliament's intention is not hard to decipher, notwithstanding the use of a legal concept from the common law. Parliament evidently wished to confer on the Crown an ongoing interest in the property that is deemed to be held in trust for as long as the tax debtor's default persists, and to subject the secured creditor to the obligation to remit to the Receiver General the proceeds arising from the property held in trust in absolute priority, to the extent of the unpaid debt.

[56] Unremitted source deductions are deemed to be held in trust for the Crown separate and apart from the property of the taxpayer and from property held by any secured creditor. The registration of a lien does not affect the Crown's ability to recoup these amounts. In this case, it was the deemed trust under subsection 227(4) that gave the Crown priority over five prior secured registrations against the Kamloops Asset.

[57] The record also establishes that the CRA recovered to the full extent possible the deemed trust amounts from the sale. It is important to bear in mind that subsection 227(4) only deems amounts deducted or withheld by a taxpayer to be held in trust. Its protection does not extend to the employer portion of Canada Pension Plan and Employment Insurance contributions and interest and penalties assessed on a source deduction debt. Finally, the CRA was required to

discharge the Kamloops Lien upon sale of the property and full recovery of the deemed trust amounts.

[58] Mr. Jefferson's submission that the CRA negligently refused to pursue the Purchasers and their shareholders/directors finds no basis in the evidence. As set out in the Decision, the CRA attempted to recoup funds from the Purchasers over a number of years. The CRA issued RTP letters under section 224 of the ITA, non-compliance assessments against the Purchasers and memorandum assessments against their directors under sections 227 and 160. The department also agreed to a proposed payment plan with the Purchasers but the Purchasers did not honour their payment commitments.

[59] The CRA memo dated June 3, 2019 (the CRA Memo) prepared in support of the Decision explains the CRA's deliberations identifying avenues of recourse against the Purchasers. The CRA Memo describes the Purchasers' and directors' objections to their respective assessments and the CRA's cancellation of the RTPs and director assessments.

[60] Mr. Jefferson argues briefly that the CRA improperly failed to seek payment from the other Gold Standard directors. Again, I am not persuaded by this argument. Mr. Jefferson did not raise this argument in the Remission Request. Nevertheless, the Decision explains why Mr. Jefferson remains solely responsible for payment of the Tax Debt. The record confirms Mr. Trueman's analysis. The CRA assessed each of the three directors for the full amount of the outstanding Tax Debt in February 2012. However, the directors' liability is joint and several. The

CRA is entitled to look to each director to satisfy the full amount of unremitted payroll deductions (without duplication). There is no reviewable error in the Decision in this respect.

[61] Finally, Mr. Jefferson submits that the CRA unduly delayed its efforts to collect the Tax Debt from the Purchasers and the other Gold Standard directors. The record does not support this submission. As described above, the CRA actively attempted to obtain payment of Gold Standard's tax obligations from the Purchasers and their directors. The CRA Memo also explains the department's communications and agreements with Gold Standard's directors in the years since the 2001.

[62] Mr. Jefferson alleges negligence and bald misrepresentation on the part of the CRA but has not established an evidentiary or legal basis for these allegations. I am not persuaded that Mr. Jefferson's opinion of the CRA's conduct requires the Minister's intervention and remission of the Tax Debt in the public interest, or that the contrary conclusion in the Decision is unreasonable.

Mr. Jefferson's financial hardship coupled with extenuating factors

[63] Mr. Jefferson submits that the Minister unreasonably exercised her discretion under subsection 23(2) of the FAA by only considering his current financial position when assessing financial hardship. He argues that Mr. Trueman erred in failing to consider his financial circumstances in the 2009-2011 period and intervening years. Mr. Jefferson states that he had poured all of his available personal assets into Gold Standard "fighting to maintain the

Corporation's profitability and ability to pay tax – a fact utterly ignored by the Minister in the Decision”.

[64] There are a number of issues with Mr. Jefferson's position. First, the Remission Request was not based on financial hardship. It contained no argument similar to that now raised by Mr. Jefferson other than to refer to the directors' injections of capital into Gold Standard in 2009-2011.

[65] Second, Mr. Jefferson argues that he has been unable to satisfy his personal liability for unremitted source deductions in the intervening years because of the earlier contributions to Gold Standard. He states that his inability to pay the Tax Debt is not his fault. I disagree because Mr. Jefferson's argument ignores the fact that he volunteered those contributions based on his desire to save the corporation and protect the employees. Mr. Jefferson was one of three directors who approved Gold Standard's use of unremitted source deductions to pay severance rather than to fulfil its statutory obligations. The directors were the authors of their own personal liability.

[66] Third, Mr. Trueman proactively addressed financial hardship in the Decision. His focus on Mr. Jefferson's physical setbacks and current financial position is consistent with the Guide and Mr. Jefferson's reference to his 2017 motorcycle accident in the Remission Request.

[67] The Guide notes that an argument based on extreme hardship is unlikely to be applied to amounts held in trust for the Crown, such as payroll deductions or amounts deemed to be held in trust. The Guide then indicates that extreme financial hardship should exist at the time a taxpayer

makes a remission request and, normally, will have existed at the time the original tax liability arose.

[68] Mr. Jefferson decided to contribute funds to Gold Standard and to assume the risk of personal liability to prioritize severance payments in 2009-2011. I find these facts fall within the scope of situations where initial financial hardship would not warrant remission. The omission from the Decision of an analysis of Mr. Jefferson's financial position in 2009-2011 is justified.

[69] Further, the Guide states that financial hardship should be such that the taxpayer's current and anticipated resources will not be adequate to meet the tax liability. Mr. Trueman's explanation that Mr. Jefferson's current annual income levels do not demonstrate he would suffer extreme financial hardship in paying the Tax Debt reasonably addresses this guidance.

[70] Finally, Mr. Trueman concluded that the health issues Mr. Jefferson experienced in 2017 and 2018 do not support remission because they did not affect his ability to meet his tax obligations at the time they arose. Mr. Jefferson does not take issue with this conclusion.

Unintended consequences of the legislation/inadequacies in the ITA

[71] The Guide describes this factor as follows:

The application of tax legislation to certain transactions occasionally results in tax consequences that are clearly inequitable to a person and contrary to the intent of the law.

[72] Mr. Jefferson's submissions highlight the importance of the ITA provisions that impose personal liability on corporate directors in certain circumstances. He argues that the omission

from the ITA of a provision enabling the Minister to pursue directors of corporations who default on their contractual obligations in situations similar to those at issue must be an unintended result. Mr. Jefferson states that it is contrary to the spirit and object of the ITA for the Minister to hold him to a higher standard than the directors of the Purchasers.

[73] I find no reviewable error in the Decision. Mr. Jefferson does not dispute the fact that the CRA properly applied the provisions of the ITA in assessing him personally for Gold Standard's unremitted payroll deductions. The extension of responsibility for source deductions to corporate directors in their personal capacity serves two purposes. It reinforces the importance of source deductions as a cornerstone of the ITA and is consistent with the corporate principle that directors are the directing minds of a corporation. Mr. Trueman addressed both purposes in the Decision:

Payroll deductions are funds held in trust and the laws governing the handling of those funds are necessarily strict. Payroll deductions are collected by businesses as agents of the government and are to be held separate and apart from the corporation's funds and cannot be used for any other purpose (e.g., when there are cash flow issues). When Gold Standard was experiencing financial difficulties, it chose to pay severance amounts to its employees rather than remit payroll deductions as required to the CRA. [...] The decision to pay severance to its employees was ultimately a business decision within the control of Gold Standard's directors, Mr. Jefferson included, and not the result of extenuating factors beyond their control.

[74] The extension of personal liability to directors for the contractual defaults of a corporation presents materially different and wide-ranging tax and corporate policy questions. The consequences to Mr. Jefferson of the Purchasers' failure to honour their contractual agreements are unquestionably serious but they are not an unintended consequence of the ITA.

As stated in the Decision, Gold Standard's recourse in a private contractual dispute was a civil matter.

[75] Mr. Jefferson's statements that action against the Purchasers' directors was not possible under the ITA and that the Minister unreasonably delayed and abandoned any available pursuit are inconsistent with the evidence in this application. I have described the CRA's issuance of RTPs and non-compliance assessments against the Purchasers and their directors earlier in this judgment. The Purchasers and directors filed objections against the assessments. The CRA concluded that the objections were well founded and the record does not support Mr. Jefferson's argument that the department's assessment of those objections was negligent or reflects a lack of diligence.

VI. Conclusion

[76] Mr. Jefferson submits that the Decision lacks justification, transparency and intelligibility. He argues that Mr. Trueman gave insufficient reasons to support sweeping statements in the Decision about the CRA's conduct and its inability to pursue the Purchasers, their directors and his fellow Gold Standard directors. Mr. Jefferson states that these deficiencies and the alleged specific errors discussed above require the Court to set aside the Decision.

[77] I find no lack of coherence or transparency in the Decision. Mr. Trueman accurately summarizes the factual background to the Remission Request and, in the course of that summary, provides insight into the CRA's actions in securing Gold Standard's assessed tax, penalties and interest owing against the Kamloops Asset. He explains the status of the Kamloops Lien and the

deemed trust amounts by virtue of subsection 227(4) of the ITA, and the extent to which the CRA was permitted at law to recover funds in the sale of the Kamloops Asset ahead of all other creditors:

You suggest that the CRA should not have lifted the lien on the Kamloops asset unless the full amount of Gold Standard's debt was received from the sale. A review of the file shows that the CRA followed proper procedures in respect of the lien and recovered as much as was possible from the sale of that asset. Once the asset was sold and the amount secured was received, the CRA was required to release the lien.

[78] The Decision also sets out the CRA's attempts to recoup funds from the Purchasers and their directors.

[79] Mr. Trueman's factual summary provides a comprehensive basis for the substance of the Decision. As part of his submissions regarding inadequate transparency and intelligibility in the Decision, Mr. Jefferson argues that sections of the CRA's correspondence and CRA Memo explaining the department's attempts to obtain payment from the Purchasers should have been included in the Decision. I do not agree. An administrative decision maker is not held to perfection in drafting reasons, nor is it reasonable to expect every piece of supporting evidence on which a decision is based to be transcribed in the final decision. The Decision addresses each material issue raised in the Remission Request. Mr. Trueman neither misstated the evidence nor ignored contradictory evidence material to the Remission Request and Decision. I find that Mr. Trueman made no reviewable error in omitting additional detail from the Decision

[80] Mr. Trueman's analysis is consistent with the CRA Memo and is expressed clearly. The Decision must be read in light of the record and, in my opinion, reflects a rational chain of

analysis that is intelligible, transparent and justified (*Vavilov* at para 103; see also, *Wyse v Canada (National Revenue)*, 2007 FC 535 at paras 88-89). The absence from the Decision of, for example, a more detailed description of the CRA's assessment of the notices of objection filed by the Purchasers and their directors and an explanation of the CRA's pursuit of Wayne Wiren, are not significant omissions.

[81] In summary, the Minister's discretion to recommend remission under subsection 23(2) is a broad, policy based discretion (*Twentieth Century Fox Home Entertainment Canada Limited v Canada (Attorney General)*, 2012 FC 823 at para 18, *aff'd* 2013 FCA 25 (*Twentieth Century FCA*)). In the exercise of that discretion, matters of public interest must be considered in the context of the regulatory regime governing the operation of the ITA (*Twentieth Century FCA* at para 9, citing this Court's decision in *Waycobah First Nation v Canada (Attorney General)*, 2010 FC 1188 at para 31).

[82] I find that the Decision, read in its entirety, reflects a reasoned balancing by Mr. Trueman of the public's interest in safeguarding the remittance of source deductions, a central element of the ITA, against Mr. Jefferson's ill-fated business decision and assumption of personal liability. In my opinion, the Decision does not overlook or minimize the conduct of the Purchasers. It reasonably focuses on Gold Standard's decision to breach its remittance obligations over an extended period of time and, subsequently, to voluntarily enter into contractual arrangements with the Purchasers that were marred by successive performance breaches.

[83] For the reasons set out above, Mr. Jefferson's application for judicial review is dismissed.

VII. Costs

[84] At the hearing of this application, the parties agreed to confer regarding costs. By way of letters dated November 30, 2020, the parties informed the Court that they had been unable to agree on the costs payable to the successful party. The parties proposed a schedule for the provision of costs submissions to the Court following the issuance of this judgment which I have accepted.

JUDGMENT IN T-1676-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended to reflect the Attorney General of Canada as the respondent.
3. The parties will make costs submissions to the Court in accordance with the following schedule:
 - (a) within 10 days of the date of this judgment, the respondent will deliver to the Court written submissions regarding costs, such submissions to be no longer than three (3) pages excluding any schedules, exhibits and authorities;
 - (b) within 10 days of the date of filing of the respondent's costs submissions, the applicant, Mr. Jefferson, will deliver to the Court written submissions regarding costs, such submissions to be no longer than three (3) pages excluding any schedules, exhibits and authorities; and
 - (c) within five (5) days of the date of filing of the applicant's costs submissions, the respondent may deliver to the Court written reply costs submissions, such submissions to be no longer than two (2) pages in total.

"Elizabeth Walker"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1676-19

STYLE OF CAUSE: JOHN JEFFERSON v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 16, 2020

JUDGMENT AND REASONS: WALKER J.

DATED: JUNE 23, 2021

APPEARANCES:

Jason C. Rosen FOR THE APPLICANT
Arad Moslehi

Nancy Arnold FOR THE RESPONDENT
Angela Shen

SOLICITORS OF RECORD:

Rosen Kirshen Tax Law FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario