Federal Court  Cour fédérale

**Date: 20211223**

**Docket: T-1552-20**

**Citation: 2021 FC 1451**

**Toronto, Ontario, December 23, 2021**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**TRUDY ARONSON**

**Applicant**

**And**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

# AMENDED JUDGMENT AND REASONS

## I. Overview

[1] Ms. Trudy Aronson [Applicant] is a talent agent. She has a long history of non-compliance with her income tax filing, which she attributes to her ongoing mental health challenges. In 2016, through counsel, the Applicant filed an application to the Canada Revenue Agency [CRA] for taxpayer relief from penalties and interests on her personal taxes on the basis

of financial hardship, under subsection 220(3.1) of the *Income Tax Act* [*ITA*]. In December 2016, CRA granted her the relief as permitted by subsection 220(3.1).

[2] In December 2017, the Applicant filed a further request to the CRA to grant her a full remission of all tax balances owing on her personal and GST/HST accounts, including tax principal, and late filing penalties and interest, as applicable. The request was made pursuant to subsection 19(1) of the *Financial Administration Act* of British Columbia on the grounds that "great injustice or great hardship to a person has occurred or is likely to occur".

[3] The CRA considered the Applicant's request under section 23(3) of the *Financial Administration Act*, RSC 1985, c. F-11 [*FAA*]. By a decision dated November 25, 2020, Mr. Randy Hewlett, in his position as Director General of the Legislative Policy Directorate, Legislative Policy and Regulatory Affairs Branch of the CRA [Director General], denied the Applicant's request [Decision]. At the time of the Decision, the Applicant's tax liability balance was $132,051.63 for the 2018 and 2019 years.

[4] The Applicant seeks a judicial review of the Decision under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Applicant argues that the CRA erred by failing to give adequate regard to relevant medical evidence, and that the CRA breached procedural fairness due to the delay in rendering its decision. The Respondent submits that the CRA's decision was reasonable and that procedural fairness was not breached.

[5] For the reasons set out below, I find the Decision reasonable and dismiss this application.

## II. **Background**

### *A. Factual Context*

#### (a) *The Applicant's Medical History*

[6] The Applicant submits that since childhood she has suffered from a series of extenuating factors beyond her control, including multiple sexual assaults, depression, serious anxiety, suicidal ideation, anorexia, and bulimia. The Applicant claims she suffers financial hardship and the burden of paying her taxes compromises her ability to provide the necessities of life.

#### (b) *Past non-compliance and past remission decisions*

[7] Since approximately 1994, the Applicant has not been in compliance with her income tax filing. The Applicant's compliance history for the taxation years between 1994 and 2013 is summarized below:

| **Taxation Year(s)** | **Tax Filing, Assessment and Collection** |
|---|---|
| 1994 | Income tax balance of $5,786.69 collected by garnishment in December 1995 |
| 1997 | Outstanding tax unpaid but removed from active collection by CRA in 2003, at which point the debt amounted to $1,096.50 |
| 2000, 2001 and 2002 | Filed income tax returns late |
| 1998, 2001 and 2002 | Reported a total income of $1 |
| 2003-2013 | Did not file income tax returns at all.<br><br>CRA issued an estimative assessment pursuant to subsection 152(7) of the *ITA*. These assessments recognized an outstanding tax debt of $215,531.43 consisting of net tax, penalties and interest.<br><br>The CRA garnished the Applicant's bank account in May 2015 and recovered $218,234.83 |

[8] In 2015, counsel for the Applicant filed the Applicant's outstanding income tax returns from 2003 to 2013, as well as her 2014 return. In February 2016, the CRA issued reassessments and the Applicant settled her remaining debt of $6,100 in April 2016 in full.

[9] In June 2016, counsel for the Applicant submitted a request for taxpayer relief for the 1993 to 2015 taxation years. By that point, all of the Applicant's outstanding tax debts had been acquitted. She later filed a return for the 2016 tax year self-reporting a net income of $168,519.

[10] In December 2016, the CRA granted the Applicant's request for penalty relief subject only to the extent that subsection 220(3.1) of the *ITA* does not confer power to grant relief of penalties and interests more than 10 years after the end of a taxation year. The Applicant received $65,252.79 in relief in January and March 2017, and a further $8,944.56 in relief in July 2017.

[11] The Applicant's income tax returns for the 2015, 2016 and 2017 tax years were filed late and without payment. Tax payable for these years amounted to $26,673.97 for 2015, $57,022.20 for 2016, and $76,633.19 for 2017. In 2018 and 2019, the Applicant made voluntary payments totalling $141,022.91 to pay her outstanding liability. The CRA had previously pursued a formal payment arrangement with the Applicant in respect of this debt, but such an arrangement was never achieved because she did not disclose requested financial information.

[12] With respect to the GST/HST compliance history of the Applicant's sole proprietorship, the Applicant did not file GST/HST returns for 2008-2014 until 2015, resulting in a debt of $46,436.25. In 2016 and 2019, the Applicant paid the balance owing for 2010-2018.

(c) *Amounts outstanding as of the time of the Decision*

[13] For the tax years of 2018 and 2019, the Applicant filed her income tax returns on time but without payment. Tax payable on these returns totaled $55,558.25 for 2018 and $56,899.36 for 2019, plus penalties and interest.

[14] With respect to GST/HST filings for her sole proprietorship, the Applicant filed a return for 2019 without payment, leaving an outstanding balance. Together with the outstanding income tax amounts, the Applicant's total balance owing is $132,051.63, as noted in the Decision.

***B. Decision under Review***

[15] In December 2017, the Applicant requested a remission of income tax plus related penalties and interest on the basis of her ongoing mental illness and financial hardship. In October 2018, the Applicant provided additional medical documentation to CRA.

[16] The Remission & Delegations Section of the Legislative and Policy Directorate of the CRA prepared a memorandum and presented the file orally to the Remission Committee to consider the Applicant's request for the 2017, 2018, and 2019 tax years. The Committee also considered a remission of GST/HST owing for the period ending December 31, 2019. On August

27, 2020, the Remission Committee decided not to recommend remission. The Director General adopted the recommendation and issued the Decision.

## III. **Issues**

[17] The Applicant raises several grounds for judicial review: (1) unreasonable use of discretion that cannot withstand probing examination, (2) ignoring relevant evidence and failing to give adequate regard to relevant medical evidence, and (3) breaching the rules of procedural fairness and natural justice in failing to respond to or consider the emergency circumstances surrounding the Applicant's mental state.

[18] The Respondent submits, and I agree, that the only issue before me is whether the decision not to recommend remission of the Applicant's tax liability is reasonable.

## IV. **Preliminary Issues**

[19] As a preliminary point, pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 [the *Rules*], the appropriate respondent in this case is The Attorney General of Canada and not The Minister of National Revenue. The style of cause will be accordingly amended.

[20] At the hearing, the Respondent raised a preliminary issue regarding the Applicant's Notice of Application. Citing rules 301(d) and (e) of the *Rules*, the Respondent submits that the Applicant failed to set out a complete and concise statement of the grounds intended to be argued in her Notice of Application.

[21] The Respondent submits that it is prejudiced by the deficient Notice of Application in two ways. First, the Applicant alleged in the Notice of Application that the Director General "failed to observe the principles of natural justice, procedural fairness or other procedure that he was required by law to observe" without elaborating how. The Applicant finally did so when she filed her Memorandum of Fact and Law, alleging that the CRA's treatment of her fell below the principles of procedural fairness due to the length of time it took to process her request and that no CRA agent spoke with the Applicant's counsel despite several attempts made by the latter to contact CRA for an update. The Respondent submits it is not in a position to present evidence relating to the delay as it was raised for the first time in the Applicant's Memorandum, after the time for filing the parties' affidavits had expired.

[22] Second, due to the lack of details in the Notice of Application, the Respondent is further prejudiced by having to go through all the materials relating to the Applicant's files with the CRA, as opposed to just focusing on only those documents that the Applicant would be relying upon in the judicial review application.

[23] Quoting from *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*., 2013 FCA 250 [*JP Morgan*] at para 45, the Respondent submits it is "an abuse of process to start proceedings and make entirely unsupported allegations in the hope that something will later turn up."

[24] However, recognizing that the Court will only strike a notice of application for judicial review where it is "so clearly improper as to be bereft of any possibility of success" and "there

must be a “show stopper” or a “knockout punch” – an obvious, fatal flaw striking at the root of this Court’s power to entertain the application (*JP Morgan* at para 47, citing *David Bull Laboratories (Canada) Inc. v Pharmacia Inc*., [1995] 1 F.C. 588 at page 600 (C.A); *Rahman v Public Service Labour Relations Board*, 2013 FC 117 at para 17; *Donaldson v Western Grain Storage By-Products*, 2013 FCA 286 at para 6; *Hunt v Cary Canada Inc*., [1990] 2 S.C.R. 959), the Respondent has opted not to bring a motion to strike but instead ask this Court to consider what, if any, remedy would be appropriate in this case.

[25] The Applicant, in reply, disagrees that the Notice of Application is lacking in any way, as all the grounds are laid out and the documents to be relied upon are listed. The Applicant submits the Memorandum is where the Applicant sets out more clearly her arguments, and that there is no prejudice to the Respondent.

[26] As the Federal Court of Appeal explained in *JP Morgan*, the justifications for a high threshold to strike a notice of application are twofold: a) the court’s power to strike is founded not in the *Rules* but in the Court’s “plenary jurisdiction to restrain the misuse or abuse of courts’ processes” and b) applications for judicial review “must be brought quickly and proceed without delay”, and that an “unmeritorious motion – one that raises matters that should be advanced at the hearing on the merits – frustrates that objective.”: *JP Morgan*, at para 48. In view of the above rationale, it is thus a tad ironic for the Respondent to be raising concerns about the potential abuse of process regarding the Applicant’s Notice of Application at the eleventh hour, and once having raised the issue, to choose not to specify the remedy, if any, it is seeking. This begs the question as to why the issue was raised in the first place.

[27] Having said that, I do note that overall, the grounds for judicial review as contained in the Notice of Application are worded in a general way. However, with the exception of one aspect, I do not find the Notice of Application to be so deficient as to justify the exceptional remedy of striking it, either in whole or in part. Read as a whole, the Notice of Application contains enough details to indicate that the Applicant is seeking a review of the Decision on the basis that it was made without regard for the material before it. The Notice of Application also sets out the supporting materials to be relied upon by the Applicant, including the medical evidence, which would serve as a guidepost for understanding the Applicant's main objection to the Decision.

[28] The one major deficiency in my view is its lack of specificity with respect to the alleged breach of procedural fairness. The Respondent would not have known from reviewing the Notice of Application the precise nature of the allegation, which made it impossible for the Respondent to put forward a substantive and meaningful response.

[29] In light of this deficiency, I find it appropriate for me not to address the procedural fairness argument made by the Applicant.

[30] Even if I were to address this argument, I find there is nothing in the record to substantiate the Applicant's claim. The Applicant has not pointed to any evidence to suggest that the time the CRA took to process her relief request was exceptionally long, or that counsel for the Applicant has made any contact with the CRA to which response was not received.

## V. **Standard of Review**

[31] The presumptive standard of review of the merits of an administrative decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25. A reasonable decision "is 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). To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Applicant bears the burden of establishing that the decision is unreasonable.

## VI. **Analysis**

### *A. Relevant Legislative Framework and Guidelines*

[32] Subsection 23(2) of the *FAA* gives the Minister of National Revenue broad discretion to recommend remission of amounts paid under the *ITA*, as follows:

| | |
|---|---|
| **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 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. | **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 exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise. |

[33] Subsection 222(1) of the *Excise Tax Act* (R.S.C., 1985, c. E-15) [*ETA*], copied below, requires sole proprietors like the Applicant to hold GST/HST from their sale transactions in trust to be remitted to the CRA:

| | |
|---|---|
| **222 (1)** Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person […] until the amount is remitted to the Receiver General […] | **222 (1)** La personne qui perçoit un montant au titre de la taxe prévue à la section II est réputée, à toutes fins utiles et malgré tout droit en garantie le concernant, le détenir en fiducie pour Sa Majesté du chef du Canada, séparé de ses propres biens […] jusqu'à ce qu'il soit versé au receveur général […] |

[34] The CRA also publishes an Employee Remission Manual [Manual] which lists some of the factors that are considered to ensure that CRA officials review remission requests fairly and consistently. The Manual recommends four factors indicating when remission should be granted: (i) extreme hardship, (ii) incorrect action or advice on the part of CRA officials, (iii) financial setback coupled with an extenuating factor, and (iv) unintended results of the legislation. The Manual replaces the October 2014 CRA Remission Guide, but the factors in the Manual reflect the same factors as contained in the previous CRA Remission Guide (see reference to the CRA Remission Guide in *Boivin v Canada (Attorney General)* 2019 FC 210 [*Boivin*] at para 21).

***B. Was the Decision Not to Recommend Remission Reasonable?***

[35] The Applicant's Memorandum and her submissions at the hearing, like her Notice of Application, contain mostly general statements of law.

[36] The Applicant argues that the Decision does not provide an explicit account of the Director General's personal reasoning, and as such cannot be rationally supported. While the Decision states that the Director General has reviewed all of the information the Applicant submitted, the Applicant argues that he failed to give adequate regard to the medical opinions on record. The Applicant submits the Director General cannot conclude that her medical condition was insufficient to grant the remission request without probing, challenging or contradicting the medical evidence provided. The Applicant also submits that the Director General was required to give more weight to the medical opinions. Overall, the Applicant argues that the CRA did not apply its discretion correctly or reasonably.

[37] With respect, the Applicant's arguments must fail.

[38] As a starting point, subsection 23(2) of the *FAA* is a highly discretionary provision, and as the Respondent submits, "where factual appreciation, specialized understandings and policies predominate, the range of possible, acceptable outcomes open to the Minister is broad". On this point, the Respondent references the Federal Court of Appeal's interpretation of subsection 23(2) of the *FAA* in *Waycobah First Nation v. Canada (Attorney General)*, 2011 FCA 191, which says:

> [18] Nor does the language of subsection 23(2) itself ("unreasonable or unjust" or "otherwise in the public interest") indicate that Parliament intended that a debt should normally be remitted if payment would cause extreme hardship. These are open-ended terms that enable the Minister to take into account the wider impact of recommending remission, including, for example, the public interest in the integrity of the tax system and its proper administration, and fairness to other taxpayers. The decision-maker must balance the competing interests to determine whether, in light of the particular facts, collection of the tax would be unreasonable, unjust or otherwise not in the public interest.

[39] As such, the Respondent submits that the Applicant's circumstances (including any hardship) need to be assessed against competing public interests when determining whether remission should be granted. The Respondent further argues that the Decision complies with the Manual, and that the Federal Court of Appeal has stated that compliance with unchallenged policy statements and guidelines has been taken to be an indicator of reasonableness, though not a conclusive one: *Canada (Attorney General) v. Abraham*, 2012 FCA 266 at para 54.

[40] The Respondent's submission is consistent with the approach that this Court has adopted in reviewing decisions dealing with remission requests.

[41] Decisions from this Court confirm that remission of taxes, interest or penalties owing constitutes an exceptional and extraordinary measure: *Meleca v Canada (Attorney General)*, 2020 FC 1159 [*Meleca*] at para 21, citing *Fink v Canada (Attorney General)*, 2019 FCA 276 [*Fink*], at para 1; *Escape Trailer Industries v Canada (Attorney General)*, 2020 FCA 54 [*Escape Trailer Industries*].

[42] Moreover, the Court has also confirmed that the CRA Remission Guide serves to assist officials in determining whether the collection of tax or the enforcement of penalties might be unreasonable, unjust or contrary to the public: *Internorth Ltd v Canada (Minister of National Revenue)*, 2019 FC 574 at para 23; *Meleca* at para 25. Finally, decisions related to remission under the *FAA* are highly discretionary and the Court must exercise restraint and deference with respect to these decisions: *Meleca* at para 23; *Boivin*, at para 32.

[43] Applying these principles to the case at hand, I agree with the Respondent that the Decision rationally connects the evidence to the conclusion reached, in accordance with *Vavilov*'s requirements for a reasonable decision. Contrary to the Applicant's submission that medical evidence was ignored, the Decision noted the Applicant's health issues with some details including that the Applicant has "experienced prolonged mental and physical health issues as a consequence of abuse that occurred throughout her childhood, and that she suffers from anxiety, anorexia, nervosa, bulimia and suicidal ideation." The Decision also referenced a number of health-related documents that were filed with the remission request including service contracts with personal care workers, admitting documents to an eating disorder program, and history notes from the eating disorder program on an outpatient basis, etc. The Decision acknowledged that the Applicant stated she had made some mental and physical health gains, but that her tax situation was an "ever-present and constant worry" and that the Applicant has "forestalled extensive dental work (caused by her anorexia) because of the amount of money she owes the CRA". The Decision also referred to the Applicant's position that she was unable to address tax affairs for decades due to "her health problems".

[44] Given such detailed account of the Applicant's health problems, I find no merit in the Applicant's argument that the Decision ignored relevant medical evidence.

[45] As to whether the Decision has failed to give adequate regard to relevant medical evidence, the Respondent submits it is not the Court's role to reweigh evidence: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, citing *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 91. I agree.

[46] Moreover, I find the Decision did have adequate regard to the Applicant's medical evidence. The Decision noted that in order for the Applicant's health problems to be considered an extenuating factor for remission purposes, "there should be a direct correlation between an illness and a taxpayer's inability to meet his or her tax obligations, as well as appropriate substantiation to support such a conclusion". This finding mirrors the section in the Manual dealing with "financial setback with an extenuating factor", and stating that such factor "may apply in cases where there is a direct link between a person's serious illness and their inability to meet their tax of filing obligations".

[47] In view of the Manual, it was thus reasonable for CRA to consider whether the health issues directly led to the Applicant's inability to meet her tax obligations. The Decision did so by looking at the Applicant's history of non-compliance with tax filing and her refusal to provide full financial disclosure to CRA officials, as well as noting that her current balances are composed primarily of "correctly assessed federal income tax and unremitted GST/HST collected in trust". Then the Decision assessed the Applicant's claim that these debts arose from circumstances beyond her control, and found it not to be so because "the federal income tax and GST/GST [sic] payable were not caused by her illness, but originated from an obligation under the law to pay income tax on her earnings and to remit GST/HST collected from clients."

[48] The Respondent submits that this conclusion is in accordance with subsection 222(1) of the *ETA*, which states that these amounts are held in trust for the Crown, as well as the Manual, which explains that remission is generally not recommended if the debt is held in trust for the Crown. I agree.

[49] In addition to the statutory requirement for the withholding and remitting of GST/HST, the conclusion of the Director General that the Applicant's debts were not caused by her illness, in my view, was entirely reasonable in light of the evidence before him. As noted in the Decision, the Applicant's gross commission income in 2016 and 2017, during the timeframe of her documented health crisis, was "amongst the highest earned income of her career to date"—and that was the same period when the Applicant indicates that her health has deteriorated. As such, I agree with the Respondent that there was no evidence that the Applicant's medical struggles prevented her from remitting some of that income as tax.

[50] I also find it reasonable for the Director General to conclude that extreme financial hardship does not exist in the Applicant's case in view of her reported income. The Manual defines extreme hardship as "hardship of such severity that the person does not have the financial means to resolve it." While the Manual does not specify an exact measurement of extreme hardship, it calls for a comparison of the annual income of the person making the remission request against the Low Income Cut Off [LICO] established by Statistics Canada for the geographical area in which the person resides. In finding that the Applicant does not suffer extreme financial hardship, the Decision reasonably referenced the LICO for her family (including her husband and adult son) and noted that their total household income has been above LICO since 2002, and "significantly above LICO since 2007", owing to the Applicant's earnings alone. This conclusion, in view of the Applicant's reported gross commission income between $214,899 and $269,266 from 2016 to 2019, was reasonable.

[51] As to the Applicant's arguments that the Director General's use of discretion was "unreasonable" and "cannot withstand probing examination", that the Director General did not provide any "explicit account for personal reasoning" and that "no evidence was given for his decision", these arguments must fail in light of all the evidence referred to in the Decision, not only about the Applicant's medical history, and her income tax filing history, but also her income earnings at the time she made the request for remission.

[52] With respect to the Applicant's submission that the Director General cannot conclude that her medical condition was insufficient to grant the remission request without probing, challenging or contradicting the medical evidence provided, this argument is misguided. The burden is on the Applicant to provide sufficient evidence to support her claim for relief based on medical grounds, and not for the Director General to come up with evidence to challenge or contradict her evidence.

[53] Based on all of the above, I find no basis to interfere with the Decision.

[54] The Respondent did not make arguments on costs at the hearing, even though it has requested in its written submission that the application be dismissed with costs. As no submissions were made on this issue, I will not order costs.

## VII. **Conclusion**

[55] The application for judicial review is dismissed.

[56] There is no order as to costs.

**JUDGMENT in T-1552-20**

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

1. This application for judicial review is dismissed.

2. There is no order as to costs.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-1552-20 |
| **STYLE OF CAUSE:** | TRUDY ARONSON v THE MINISTER OF NATIONAL REVENUE |
| **PLACE OF HEARING:** | HELD VIA VIDEOCONFERENCE |
| **DATE OF HEARING:** | DECEMBER 1, 2021 |
| **JUDGMENT AND REASONS:** | GO J. |
| **DATED:** | DECEMBER 21, 2021 |
| **AMENDED** | DECEMBER 23, 2021 |

**APPEARANCES:**

| | |
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| Dominik Longchamps | FOR THE RESPONDENT |

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| Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT |