Federal Court  Cour fédérale

Date: 20231220

Dockets: T-1836-21
T-472-23
T-540-23

Citation: 2023 FC 1728

Ottawa, Ontario, December 20, 2023

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MAVERICK OILFIELD SERVICES LTD. &
LATIGO TRUCKING LTD.

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Before the Court is a consolidated application for judicial review of three review decisions [the Decisions] of the Minister of National Revenue [the Minister] on behalf of the Canada Revenue Agency [CRA] concerning applications made by the Applicants for relief from interest and penalties accrued during their 2014 through 2020 taxation years.

[2] These applications for relief were made pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act], which provides as follows:

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
(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.	**(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.

[3] The Applicants, Maverick Oilfield Services Ltd. [Maverick] and Latigo Trucking Ltd. [Latigo], requested taxpayer relief for their 2014-2020 taxation years primarily due to the mismanagement of the corporations by a former Chief Executive Officer [CEO] that caused the Applicants to fail to comply with their payroll remittance obligations under section 153 of the Act. The Minister granted only partial relief to the Applicants for the period when the director,

Mike Schnell, regained control over the corporations and entered into a payment arrangement with the CRA. Upon review of the initial decisions, the Minister denied any further relief.

[4] For the following reasons, the Court grants this consolidated application for judicial review, sets aside the Decisions, and remits the matters to a different decision-maker for redetermination. While subsection 220(3.1) of the Act provides the Minister with broad discretion to grant taxpayer relief, and the Minister did not fetter this discretion, the Decisions are unreasonable for failing to meaningfully consider circumstances that may be outside the Applicants' control, namely the mismanagement of the corporations by the former CEO.

I. Background

[5] Maverick provides oilfield services and Latigo provides related trucking and transportation services. Mr. Schnell is the director of both Maverick and Latigo. As of the date of this judicial review, he is a 50% shareholder in both companies, with his wife holding the other 50%.

[6] Mr. Schnell started and ran Maverick with his brother from 1978 to 1994. From 1994 to 2012, Mr. Schnell oversaw Maverick's operations on his own as the sole director. On June 26, 2012, Mr. Schnell wished to semi-retire and he hired Chris Challis as the CEO of both Maverick and Latigo.

[7] Mr. Challis was CEO for Maverick and Latigo from 2012 to 2018. He hired Kevin Fawns to act as Chief Financial Officer [CFO] for the Applicants until 2017, after which Shelina Hirji took over as CFO. They reported only to Mr. Challis.

[8] Prior to 2016, the Applicants were largely compliant with their source deduction and remittance obligations under section 153 of the Act. On June 2, 2016, Mr. Fawns on behalf of Maverick filed its first request [the 2015-2016 Maverick Relief Request] for taxpayer relief relating to late remittance penalties and associated interest assessed: December 31, 2015 ($14,586.88), January 7, 2016 ($12,975.55), and January 14, 2016 ($26.71). Its reason was a frozen bank account. On October 19, 2016, the Minister granted the requested relief in full.

[9] On January 23, 2018, Maverick filed its second request [the 2016-2017 Maverick Relief Request] for taxpayer relief relating to late remittance penalties (2016: $6,293.56; 2017: $88,512.44), failure to remit penalties (2016: $40,995.62; 2017: $125,549.95), and associated interest (2016: $793.94; 2017: $3,108.49) assessed in the 2016 and 2017 taxation years. Its reason was a downturn in the economy and a working capital deficiency. On March 8, 2018, the Minister denied the requested relief entirely.

[10] Mr. Schnell became aware of the Applicants' failures to make the required remittances in May 2018. On learning of this, he fired Mr. Challis, Mr. Fawns, and Ms. Hirji, and took control of the companies again.

[11] In efforts to mitigate the Applicants' liabilities, Mr. Schnell entered into a payment arrangement with the CRA in April 2018. He made full payment of the liabilities by January 8, 2020.

[12] On December 24, 2018, Mr. Schnell, on behalf of Maverick, filed a request [the 2018 Maverick Relief Request] for taxpayer relief relating to late remittance penalties ($59,674.15), failure to remit penalties ($5,925.21), and associated interest ($23,754.58) assessed in the 2018 taxation year. On March 13, 2019, the Minister denied the requested relief entirely.

[13] On June 19, 2020, Ali Zulfikar, an advisor and authorized representative of the Applicants, filed joint requests for taxpayer relief from penalties and interest incurred by Maverick and Latigo in their 2014, 2015, 2016, 2017, 2018, 2019, and 2020 taxation years.

[14] The basis for the requests for relief is described as "extraordinary circumstances leading to [ ] financial hardship." The reason provided was that Mr. Schnell was unable to address the Applicants' remittance failures because he was not aware of them given the mismanagement of the Applicants by Mr. Challis, Mr. Fawns, and Ms. Hirji. It was noted that the Applicants had an excellent history of compliance with their taxpayer obligations prior to the appointment of Mr. Challis and that Mr. Schnell took steps to mitigate the Applicants' liabilities once he became aware of the failures in 2018, including leveraging his personal assets and finances.

[15] Because the Applicants previously filed for taxpayer relief during the requested taxation periods (namely, the 2016-2017 Maverick Relief Request and the 2018 Maverick Relief

Request), the CRA split its review of the Applicants' relief application into three and issued the following separate but related decisions on April 26, 2021:

A. The Maverick 1 Second Decision: The CRA conducted a second-level review of the March 2018 and March 2019 decisions denying the 2016-2017 Maverick Relief Request and 2018 Maverick Relief Request, respectively, for the 2016, 2017, and 2018 taxation years. The CRA only granted relief from interest assessed to Maverick during the period from April 19, 2018 through January 8, 2020. This corresponds with the date the CRA approved the payment arrangement with Mr. Schnell to the date the arrears were paid in full for these years. The CRA noted that it granted relief based on Mr. Schnell's actions during that period to take "all the necessary measures to pay the arrears and stay current with the remittances." Concerning the outstanding penalties and arrears interest, the CRA denied relief on the basis that, despite Maverick's reliance on Mr. Challis as CEO, "the director remained responsible to take the necessary measures and make appropriate verifications on a regular basis to ensure that all obligations [were] met when required" and failed to do so. The CRA also denied relief under financial hardship as Maverick made the appropriate financial arrangements to pay the arrears including borrowing and restructuring finances to retire the debt.

B. The Maverick 2 First Decision: The CRA conducted a first-level review of Maverick's request for taxpayer relief in relation to its 2014, 2015, 2019, and 2020 taxation years. The CRA denied the requested relief in full, based largely on the reasons given in the Maverick 1 Second Decision. That is, the CRA found

that the director was responsible for ensuring that the Applicants' tax obligations were met, and failed to do so. The CRA found that the payment arrangement Mr. Schnell made with the CRA in 2018 impacted mostly the years 2016, 2017, and 2018, and so no relief would be granted on that basis. The CRA also denied relief based on financial hardship considering that Maverick only incurred "a small amount of penalties"; in 2015, Maverick had paid the penalties incurred for one late remittance in 2014 and three late remittances in 2015, and only three remittances were late from 2019 to June 14, 2020.

C. The Latigo First Decision: The CRA conducted a first-level review of Latigo's request for taxpayer relief in relation to its 2014, 2016, 2017, and 2018 taxation years. Latigo was not assessed interest or penalties for its 2015, 2019, or 2020 taxation years, so the CRA did not review those years. The CRA cancelled interest from April 16, 2019 through January 13, 2020, as the period between when the CRA approved the payment arrangement with Latigo to the date the last payment was received, and from January 3 to April 26, 2021 due to a CRA processing delay. The CRA also cancelled two penalties for remittance periods in October 2016 that were assessed in March 2017 in error. The CRA denied the remaining requested relief, noting that Latigo had the financial resources to pay its arrears although it had deficit in 2016 and 2017 and that the director remained responsible for making sure the corporation met its requirement to remit on time.

[16] On July 29, 2021, Mr. Zulfikar on behalf of the Applicants filed joint requests for reconsideration of the three April 26, 2021 decisions. On November 2, 2021, the Minister delivered the Decisions at issue in this consolidated application, as described briefly below.

[17] The Decisions are accompanied by the CRA's Taxpayer Relief Fact Sheets [Fact Sheets]. These background documents summarize for the Minister's delegate relevant facts related to the request for relief. They also address the factors and considerations set out in Part II of the CRA's Information Circular IC07-1R1, *Taxpayer Relief Provisions*, August 18, 2017 [the Guidelines] and makes recommendations. Together, the Decisions and Fact Sheets form the record.

A. *The Maverick 1 Third Decision – T-1836-21*

[18] Reviewing the Maverick 1 Second Decision, the CRA, on its third-level review, denied the Applicants' request for further relief from penalties and interest assessed during Maverick's 2016, 2017, and 2018 taxation years. The CRA reiterated that Maverick was responsible for making timely remittances in spite of the mismanagement by Mr. Challis and his collaborators, stating:

> […] as the owner, it was your responsibility to ensure that your tax obligations were fulfilled. According to the information we have, no fraud was committed by the former CEO or collaborators so it would have been possible for you to verify the status of the account's remittances through the business' paperwork or the CRA directly.

[19] The CRA also acknowledged the Applicants' request to consider its positive compliance history. The CRA found, however, that compliance history is just one factor the Minister

considers in determining whether to grant relief under subsection 220(3.1) of the Act. The Decision states:

> While the history of compliance of this account shows that remittances were made on a consistent basis up to late 2016, it is to be noted that the unfortunate situation persisted over an extended period of time, from 2016 to 2018. When noncompliance lasts for years, we cannot conclude of extraordinary circumstances. In addition, since the CEO was let go of in May 2018, five penalties were charged due to late or missing remittances and a discrepancy notice was issued for the year 2020 on October 13, 2021.

[20] The related Fact Sheet, indicating that the Applicants' claim for relief was based on "other circumstances," recommended against granting relief because Mr. Schnell had the "ultimate responsibility to ensure remittances were properly made as required by the CRA," despite his reliance on Mr. Challis and his collaborators who had *de facto* control over the Applicants. The Fact Sheet noted "[n]o correspondence was directly addressed to the owner" concerning the late remittances but that "the CRA was not responsible to inform the owner of his company's remittance negligence." The onus remained on Mr. Schnell to keep up-to-date regarding the CRA matters.

[21] The Fact Sheet also noted in the "Analysis of All Facts/Factors" subsection of the Analysis section that "no fraud was committed by the CEO and his team." However, the Fact Sheet made the following observation in response to the question of what circumstances prevented the taxpayer from meeting their tax obligations, and whether they were beyond the taxpayer's control:

> The director was manipulated and kept in the dark on about how the company was operated by a new CEO who took his successful company and ran it into the ground within a few years. The level of stress over the CRA debt was so high that the director's wife,

> who is a shareholder, contemplated suicide on several occasions: she has sought professional help. Relief is requested based on the excellent history of compliance of the company before the new CEO got hired. The owners used most of their personal savings and assets to save the company. Employees, including the accountant and the CFO, violated their fiduciary duties and responsibilities by misleading, deceiving and lying to the director in order to conceal emerging problems and incompetence of the new CEO.
>
> The circumstances described above were beyond the employer's control if documentation can support the explanation.

[22] The Fact Sheet reveals that the CRA contacted the Applicants to ask if Mr. Challis was formally accused of neglect or fraud, to which the Applicants admitted they took no such steps. The Applicants stated, however, that employees or former employees could testify to support the explanation.

[23] The Fact Sheet acknowledged that the dates and explanations provided by the Applicants "mostly" correspond to the Applicants' main submission that the penalties and interest accrued were the result of mismanagement of the corporations, beyond the Applicants' control. The Applicants provided testimony from a senior manager at Maverick and from Mr. Fawns, as well as an explanation letter dated September 28, 2021. The notes in the Automated Collections and Source Deductions Enforcement System further corroborate that Mr. Schnell was unaware of the accruing late penalties and interest until 2018. However, in its recommendation to deny the requested relief, the Fact Sheet stated:

> While explanations, including testimonies and relief requests, confirm that the CEO hired from 2012 to 2018 neglected to pay remittances for the requested periods, the director/owner had the ultimate responsibility to ensure remittances were properly made as required by the CRA.

B. *The Maverick 2 Second Decision – T-540-23*

[24] Reviewing the Maverick 2 First Decision, the CRA, on its second-level review, denied the Applicants' request for relief from penalties and interest assessed during Maverick's 2014, 2015, 2019, and 2020 taxation years. The reasons were substantially similar to those provided in the Maverick 1 Third Decision, relating to the director's diligence and compliance history. The CRA also noted that the penalties and interest assessed for the 2014 and 2015 taxation years "cannot be attributed to the negligence that caused a significant debt such as ones incurred for the years 2016 to 2018," despite Mr. Challis working for Maverick at that time. Regarding the penalties and interest assessed for the 2019 and 2020 taxation years, the CRA found that "the former CEO cannot be held responsible since he was terminated in May 2018." The related Fact Sheet's recommendation confirms the CRA's view that the penalties and interest assessed during these years "are not related to the CEO's negligence that caused the owner to save the company."

C. *The Latigo Second Decision – T-472-23*

[25] Reviewing the Latigo First Decision, the CRA, on its second-level review, denied the Applicants' request for further relief from penalties and interest assessed during Latigo's 2014, 2016, 2017, and 2018 taxation years. Again, the reasons were substantially similar to those provided in the Maverick 1 Third Decision, relating to the director's diligence and compliance history. The CRA also noted that the only penalty charged for 2014 was paid within a reasonable delay, despite Mr. Challis working at that time, and so it cannot be associated with the penalties and interest assessed in 2016 through 2018 that were much higher.

II. Standard of Review

[26] The parties agree that the standard of review is reasonableness, as articulated by the Supreme Court of Canada [the Supreme Court] in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. As summarized by this Court in *Parmar v Canada (Attorney General)*, 2018 FC 912 at paragraph 51:

> The role of this Court is not to determine what is fair, but to determine whether the decision of the Minister's Delegate pursuant to subsection 220(3.1) of the *Income Tax Act* to refuse taxpayer relief is *reasonable* as this term is understood in the realm of administrative law. As noted by the Court in *Takenaka* [*v Canada (Attorney General)*, 2018 FC 347] at para 37:
>
> > The task of this Court on judicial review is not to determine what is fair in the circumstances but whether the Delegate's decision is reasonable in the legal sense of the standard described above. It covers a broad range of outcomes which may subjectively appear to be unfair.

[27] A reasonableness review is concerned with both the decision-maker's reasoning process and the outcome. The decisions must not only be justifiable in light of the record but, when reasons are given, they must be justified by the reasons given. The reviewing court must look at the decision-maker's reasons to determine if they bear the "hallmarks of reasonableness": justification, transparency, and intelligibility: *Vavilov* at para 99. The decisions must be justified in light of the relevant factual and legal constraints that bear on the decisions.

[28] The Supreme Court's recent decision in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*], released after the parties submitted their written submissions but before the oral hearing, revisits *Vavilov* and the process of applying the reasonableness standard.

Mason does not change this process, but it does strongly emphasize the principle of responsive justification: where a decision bears a significant impact on an individual's rights and interests, there is a greater need for the reasons to reflect those stakes.

III. Issues

[29] The Applicants submit that these applications raise the following three issues:

a) whether the CRA fettered its discretion in rendering the Decisions;

b) whether the CRA erred by misapplying relevant principles or ignoring relevant evidence in rendering the Decisions; and

c) whether the Decisions are reasonable.

[30] In my view, the Applicants' submissions may be analyzed under two headings: (1) the approach the Minister took in assessing the applications, and (2) the reasonableness of the Decisions.

IV. Analysis

A. *The Minister's Approach*

[31] Subsection 220(3.1) of the Act empowers the Minister to "waive or cancel all or any portion of any penalty or interest otherwise payable under [the] Act by the taxpayer." It provides no criteria for or restrictions on the exercise of that power. It is a fully discretionary decision. The only limitation is that the decision must be reasonable and made on the facts before the Minister.

[32] Part II of the CRA's Information Circular IC07-1R1 provides some guidance to the Minister's delegates charged with assessing taxpayer requests for relief from penalties and interest under subsection 220(3.1) of the Act. Paragraphs 23-24 of the Guidelines provide guidance on the circumstances that may warrant the Minister granting relief:

> **Circumstances that may warrant relief from penalties and interest**
>
> 23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:
>
> a) extraordinary circumstances
>
> b) actions of the CRA
>
> c) inability to pay or financial hardship
>
> 24. The legislation does not identify specific situations for which the minister has the authority to waive or cancel penalties and interest. The guidelines in this part of the information circular are not binding in law. They do not give the minister's delegate the authority to deny a request and exclude it from proper consideration simply because the taxpayer's circumstances do not meet a guideline described in Part II of this information circular. The minister's delegate may also grant relief even if a taxpayer's circumstances do not fall within the situations stated in ¶ 23.
>
> [emphasis added]

[33] Paragraph 33 of the Guidelines provides guidance on the factors the Minister may use in arriving at a decision to grant or deny relief under subsection 220(3.1) of the Act:

> **Factors used in arriving at the decision**
>
> 33. Where circumstances beyond a taxpayer's control, actions of the CRA, inability to pay, or financial hardship has prevented the taxpayer from complying with the act, the following factors will be considered when determining if the minister's delegate will cancel or waive penalties and interest:

a) whether the taxpayer has a history of compliance with tax obligations

b) whether the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued

c) whether the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system

d) whether the taxpayer has acted quickly to remedy any delay or omission

[34] The Applicants submit that the Decisions fail to reflect the scope of the Minister's discretion under subsection 220(3.1) of the Act; in particular, that the scope goes beyond the Guidelines.

[35] Citing the Federal Court of Appeal in *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 [*Stemijon Investments*], the Applicants submit that the Minister fetters her discretion where she narrows the reasons for which relief can be granted only to those articulated in the Guidelines. The Applicants say this is what occurred in the present case, as the Decisions attempt to fit the Applicants' request for relief within the categories outlined in paragraph 23 of the Guidelines, including "financial hardship/inability to pay" and "CRA error." In so doing, they say that the Minister failed to approach the cases on their own facts.

[36] The Applicants further submit that the Minister limited the scope of her discretion in the following three circumstances. First, by only granting relief from interest assessed during the period when Mr. Schnell mitigated the situation, the Minister limited her ability to provide relief under subsection 220(3.1) of the Act only to circumstances where the taxpayer is aware there is an issue and is actively addressing it. Second, by noting in the Maverick 1 Third Decision and

Latigo Second Decision that Mr. Challis and his collaborators committed no fraud, the Minister required proof of fraud to exercise her discretion without a reasonable basis to do so grounded in the Act. Third, and finally, the Minister in the Maverick 2 Second Decision fettered her discretion by artificially limiting her assessment of the impact of Mr. Challis and his collaborators' negligence on the Applicants' financial hardship to the years in which they were employed by the Applicants. On this last point, the Applicants refer to the decision in *Guerra v Canada (Revenue Agency)*, 2009 FC 459 [*Guerra*] where the Federal Court held it was unreasonable for the CRA to consider that the only time a regularly robbed business would experience financial difficulty, and therefore find it difficult to comply with its remittance obligations, would be the year of the theft. Similarly, the Applicants submit that the Minister should have considered the broader impact of Mr. Challis and his collaborators' negligence, and fettered her discretion when she failed to do so.

[37] In my view, the Decisions show that the Minister looked beyond the Guidelines, with the Fact Sheets explicitly referencing how she considered "other circumstances" when assessing the Applicants' claims for relief.

[38] The Federal Court of Appeal in *Stemijon Investments* at paragraph 31 observed that mere reference to the Guidelines is not enough to find that the Minister fettered her discretion:

> Alone, reference to a policy statement, such as the Information Circular, is not necessarily a cause for concern. Often administrative decision-makers use policy statements to guide their decision-making. As I mention at the end of these reasons, such use is acceptable and helpful, within limits.

[39] In *Stemijon Investments*, the Minister fettered his discretion by looking exclusively to the Guidelines. The Minister explicitly referred to only the three circumstances (extraordinary circumstances, CRA error, and inability to pay) outlined in paragraph 23 of IC07-1 dated May 31, 2007, which was cancelled and replaced by the Guidelines used here, as guiding his discretion. According to the Federal Court of Appeal at paragraph 30, the Minister "was limiting his consideration to the three circumstances set out in the Information Circular, and was not considering the broad terms of subsection 220(3.1) of the Act."

[40] Contrary to the Applicants' submissions, "other circumstances" as a phrase used in the Decisions is not a circumstance mentioned in the current Guidelines. By referencing consideration of "other circumstances," the Minister demonstrated that her consideration went beyond what the current Guidelines provide.

[41] The Minister considered Mr. Schnell's mitigation efforts, the apparent absence of fraud by Mr. Challis and his collaborators, and the impact of those individuals on the Applicants' finances in determining whether to grant the Applicants' requests for relief. As the Applicants note, the Minister is afforded broad discretion under subsection 220(3.1) of the Act. The Act is silent on what factors the Minister may include in her assessment. It is erroneous to state these considerations are limitations on the Minister's discretion; rather, considering them ought to be properly understood as the Minister exercising her discretion and considering "other circumstances" not mentioned in the Guidelines.

[42] Consideration of those circumstances may go to the reasonableness of the Decisions, but has no bearing on the manner in which the Minister conducted herself, given the absolute discretion she has in making these Decisions.

B. *Reasonableness of the Decisions*

[43] It was reasonable for the Minister to consider Mr. Schnell's quick actions in creating and following a payment plan upon becoming aware of the Applicants' situation in deciding to relieve the Applicants of interest assessed during the period of mitigation.

[44] Likewise, it was reasonable for the Minister to consider whether Mr. Challis and his collaborators committed fraud. If the Minister found fraud, it may have led to a finding that the Applicants were unaware of the arrears.

[45] The Minister did not reject the notion that there may be cases where relief is granted under subsection 220(3.1) of the Act on the basis that the taxpayer lacked key knowledge. However, in this case, she found that it was within Mr. Schnell's control as the director to exercise reasonable care in ensuring the Applicants met their remittance obligations.

[46] I find at least three aspects of the Decisions troubling. The first is the finding that it was within the Applicants' control to avoid the late remittances; in other words, that Mr. Schnell bore responsibility for not taking steps to learn of the arrears earlier. The second is the finding that extraordinary circumstances cannot persist over several years. The third is the finding that Mr. Challis, as the former CEO, and his collaborators had no responsibility for the arrears incurred in the years after they were fired

[47] For the following reasons, I find the Decisions are unreasonable and will order the requests for relief be reconsidered by a different decision-maker.

(1) It was unreasonable for the Minister to find that Mr. Schnell, as the director of the Applicants, was responsible for the late remittances as he failed to take reasonable steps to monitor the Applicants' finances

[48] The Minister based her denial of the Applicants' requests for relief on the fact that she found that Mr. Schnell had failed to monitor the Applicants' compliance with their remittance obligations. However, the Minister fails to address the facts in the record that demonstrate that the three individuals who were at fault for mismanaging the Applicants' finances had taken steps to keep Mr. Schnell in the dark. The following fact described by the CRA from the Fact Sheets is not addressed by the Minister: "Employees, including the accountant and the CFO, violated their fiduciary duties and responsibilities by misleading, deceiving and lying to the director [Mr. Schnell] in order to conceal emerging problems and incompetence of the new CEO."

[49] It is clear that the situation created by these people had a significant impact both on the Applicants and on Mr. and Mrs. Schnell. It is described as follows in the Applicants' request for review of the denied relief, dated July 29, 2021:

> Maverick has always been an important employer in Alberta, with over 300 employees in its peak years, and millions of dollars in payroll remittances annually to CRA. By 2020, to stop further bleeding, Maverick's workforce was cut down to just 10 employees. [Mr. Schnell and his wife] sank almost all of their personal savings and assets into rescuing Maverick and Latigo, both of which are now caught up with their payroll remittances, with Maverick improving its workforce to 45 employees in 2021. However, both companies continue to struggle, and still have a long way to go before they are out of the woods.

[50] As noted earlier, *Mason* strongly emphasizes the principle of responsive justification: where a decision bears a significant impact on an individual's rights and interests, there is a greater need for the reasons to reflect those stakes. Given the impact of the Decisions on the Applicants and the owners, the decision-maker had an obligation to consider and address the above-noted deficiencies.

[51] I also note here that the CRA in its Fact Sheet related to the Maverick 1 Third Decision explicitly stated that it considers the circumstances relating to the individuals responsible for the Applicants' late remittances as "beyond the [Applicants'] control," so long as documentation supports the events. Indeed, the CRA found that the Applicants' claims do correspond with the evidence, including testimonies and other documentation. Given these findings, the Minister's reasoning that it was within the Applicants' control, or more precisely within Mr. Schnell's control as director, to ensure that the remittances were paid on time lacks an internally coherent chain of analysis as required under *Vavilov* at paragraph 85.

[52] I acknowledge the established jurisprudence pointed to by the Respondent. These cases state that a taxpayer remains responsible for their tax obligations even if they delegate them to third parties: *Babin v Canada (Customs and Revenue Agency)*, 2005 FC 972 at para 19; *Northview Apartments Ltd v Canada (Attorney General)*, 2009 FC 74 at paras 8, 11; *PPSC Enterprises Limited v Minister of National Revenue*, 2007 FC 784 at para 23; *Jones Estate v Canada (Attorney General)*, 2009 FC 646 at para 59; *Sandler v Canada (Attorney General)*, 2010 FC 459 at para 12. The Respondent argues that, while Mr. Challis is not technically a third party but a former employee of the Applicants, the same principle may apply in these

circumstances to uphold the Minister's finding against granting relief. However, the Guidelines at paragraph 35 explicitly state that exceptional situations may exist where it may be appropriate to grant relief because of third party errors or delays. This Court has confirmed that this principle "should not be treated as a hard and fast rule, particularly in cases where a taxpayer is the unwitting victim of a sophisticated fraudster:" *Mior v Canada (Attorney General)*, 2019 FC 321 at para 45.

[53] In *3563537 Canada inc v Canada (Revenue Agency)*, 2012 FC 1290 [*3563537 Canada inc*] at paragraph 60, the Court found that a taxpayer who was deceived concerning the filing of a tax return can cite this as a circumstance beyond his control. Justice Southcott held that a decision is unreasonable even if the Minister finds a taxpayer remains responsible for its remittance obligations where the Minister fails to assess whether the circumstances involving the third party could constitute extraordinary circumstances (citing *Société Angelo Colatosti Inc v Canada (Attorney General)*, 2012 FC 124 at para 30; see also *Spence v Canada (Revenue Agency)*, 2010 FC 52 at para 30). Here, the Minister did just that; while it was open to her to find that the Applicants' situation was not exceptional, the Minister seemingly based her reasoning solely on the fact that Mr. Schnell remained responsible for the arrears despite delegating the Applicants' tax obligations to the former CEO. This situation is analogous to the one the Court considered in *3563537 Canada inc*, where Justice Southcott found at paragraph 82:

> […] the Court notes that the delegate, by relying on paragraph 33(d) of Information Circular IC07-1 [guiding the Minister to consider whether the taxpayer has acted quickly to remedy any delay or omission in deciding whether to grant relief], implicitly agrees that the delay in filing the applicant's return was due to circumstances beyond the taxpayer's control (i.e. Mr.

> O'Neill's fraud). The Court further notes that [the director] was as yet unaware of Mr. O'Neill's fraud on September 22 and was still being victimized by this scam. Despite this, the delegate found that [the director] did not act diligently in suggesting that [his retained accounting firm] contact Mr. O'Neill again to obtain the necessary information. The Court cannot agree with such a finding which, once again, ignores essential pieces of evidence: Mr. O'Neill's fraud and his interest in shirking his duties to avoid being unmasked.

[54] The Minister's reasons must be based on a rational and internally coherent chain of analysis: *Vavilov* at para 102. Should the Minister have found that the circumstances the Applicants faced were beyond their control, as potentially suggested by the facts in front of her, this may have skewed the Minister's reasons in favour of granting the requested relief. In any event, the Minister was required to consider the facts in full in determining how to exercise her discretion, and the fact that she did not is a reviewable error rendering the Decisions unreasonable.

(2) It was unreasonable for the Minister to state that she cannot find extraordinary circumstances when noncompliance lasts for years

[55] In the Maverick 1 Third Decision and the Latigo Second Decision, the Minister found that "[w]hen noncompliance lasts for years, we cannot conclude of extraordinary circumstances." Since most of the late remittances occurred over 2016 through 2018 under Mr. Challis' leadership, what the Minister describes as "an extended period of time," she found that she could not grant relief.

[56] The Minister's reasoning is flawed. While the Act provides the Minister with wide discretion to determine if extraordinary circumstances exist, there was no basis for her to find

that extraordinary circumstances cannot exist over extended periods of time like the cases here. The Guidelines at paragraph 25 define "extraordinary circumstances" as those beyond a taxpayer's control. Indeed, the Minister's central concern in the Decisions was that there was a lack of extraordinary circumstances given her finding that it was within Mr. Schnell's control to ensure the remittances were paid on time. By further stating that she was unable to find extraordinary circumstances as the circumstances relied upon by the Applicants persisted over at least two years, the Minister's reasons lack coherence. There is no temporal limitation on extraordinary circumstances; paragraph 25 of the Guidelines even lists examples of extraordinary circumstances that could very well persist over an extended period of time (e.g., serious illness or accident, and natural disaster). While the Guidelines are not binding and cannot be used to fetter the Minister's discretion, they nonetheless play a useful and important role in guiding the exercise of discretion under the relief provision: *Stemijon Investments Ltd* at paras 58–60.

[57] Reviewing the Fact Sheets, I note that the delegate stated that "[h]istory of compliance cannot be only taken into account when reviewing a request, especially when noncompliance is for an extended period of time." While this may be a logical conclusion, it does not follow that extraordinary circumstances cannot be found where noncompliance exists for an extended period.

(3) It was unreasonable for the Minister to fail to consider the long-term impact of the mismanagement of the Applicants' finances on subsequent taxation years

[58] The Applicants rely on this Court's decision in *Guerra*, albeit related to the *Excise Tax Act*, RSC 1985, c E-15, to find that the Minister must consider the broader impacts of an adverse

event in determining whether to grant relief in years following said event. They say her failure to consider the long-term impacts of Mr. Challis and his collaborators' negligence on the Applicants' finances in the years after the individuals left is a reviewable error.

[59] In the Maverick 2 Second Decision, in regard to the penalties and interest assessed during the 2019 and 2020 taxation years, the Minister observed that "the former CEO cannot be held responsible since he was terminated in May 2018 according to the information we have."

[60] The Fact Sheets reveal that the CRA accepted that Mr. Challis "took [Mr. Schnell's] successful company and ran it into the ground within a few years." The CRA further acknowledged that "the company's history of compliance is excellent besides the period the new CEO was employed" wherein the corporations amassed annual net losses as high as $8 million and debt for around $20 million. It is clear that the CRA accepts that there exists a causal connection between Mr. Challis' employment by the Applicants and the Applicants' inability to satisfy their tax obligations, as required by the jurisprudence to establish extraordinary circumstances: *Carpenter v Canada (Attorney General)*, 2020 FC 753 at para 41.

[61] In *Bifano v Canada (Attorney General)*, 2019 FC 742, the Court held the Minister acted reasonably in declining to find extraordinary circumstances for the lasting impacts of the applicant's divorce and death of his son due to a lack of evidence demonstrating how those events continued to prevent the applicant from meeting his tax obligations. The facts here are different. The record shows that the Applicants simply did not have the financial resources to

make the necessary payments after firing the CEO. The arrears were only paid by Mr. Schnell and his wife personally injecting cash into the companies. Indeed, the Fact Sheets state that:

> [Mr. Schnell] chose to return and save the company instead of filing for bankruptcy. He and his wife had borrowed against all personal equity and injected all personal savings. He fired CFOs and CEO and took measures to resolve the situation: - personal line of credit, personal mortgage on his house, agreed to payments plan with CRA, close non-profitable divisions, sold assets, reduced staff.

[62] While the CRA considered Mr. Schnell's personal mitigation efforts by cancelling penalties and interest assessed during the period of mitigation, it is evident that the consequences of Mr. Challis' actions did not immediately end with his firing. The Minister's finding to the contrary is unreasonable and not in keeping with the facts before her as required under *Vavilov* at paragraph 126.

V. Costs

[63] Rule 400 of the *Federal Courts Rules*, SOR/98-106, gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid."

[64] The parties agreed upon and submitted a Bill of Costs totalling $5,176.50 for fees and GST, calculated in accordance with Column III of Tariff B. I have no reason to deviate from the parties' proposal. The Applicants are also entitled to recover their disbursements.

[65] A copy of this Judgment and Reasons will be placed in each of the three files.

JUDGMENT IN T-1836-21, T-472-23, T-540-23

THIS COURT ORDERS that

1. These Applications for judicial review are granted;

2. The three review decisions of the Minister of National Revenue dated November 2, 2021 are quashed, with the Applicants' requests for relief remitted to a different decision-maker; and

3. The Applicants are awarded costs of $5,176.50 for fees and GST, in addition to their disbursements.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1836-21, T-472-23, T-540-23
STYLE OF CAUSE:	MAVERICK OILFIELD SERVICES LTD. & LATIGO TRUCKING LTD v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	SASKATOON, SASKATCHEWAN
DATE OF HEARING:	NOVEMBER 15, 2023
JUDGMENT AND REASONS:	ZINN J.
DATED:	DECEMBER 20, 2023

APPEARANCES:

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