

Federal Court



Cour fédérale

Date: 20240202

Docket: T-1099-22

Citation: 2024 FC 174

Vancouver, British Columbia, February 2, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

PAUL CASSIDY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Paul Cassidy seeks judicial review of a decision by a Senior Taxpayer Relief Officer [Officer] with the Canada Revenue Agency [CRA] to grant only limited income tax relief under s 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act].

[2] At the time he requested relief, Mr. Cassidy owed \$45,059.69 in unpaid taxes, penalties, and interest arrears. His request for relief was based on financial hardship and his inability to

pay, the CRA's excessive delay in collecting the debt, and statutory limitation periods on enforcement proceedings prescribed by the Act.

[3] The Officer granted relief for only two brief periods of time in 2020 and 2022, due to delay resulting from the COVID-19 pandemic and some processing delay on the part of the CRA. The Officer found that any limitation period that might affect the CRA's ability to collect the debt was irrelevant to whether the debt should be forgiven.

[4] The Officer considered only the questions of unreasonable delay and statutory limitation periods, and failed to engage with Mr. Cassidy's submissions respecting financial hardship and his inability to pay. The Officer's decision was therefore unreasonable. The application for judicial review is allowed.

II. Background

[5] This was Mr. Cassidy's second request for relief from taxes, interest and penalties. In 2009, the CRA agreed to cancel installment interest and penalties in respect of unpaid taxes for 2006, as well as arrears interest on unpaid taxes up to April 30, 2008, the date on which Mr. Cassidy filed his 2007 return.

[6] Mr. Cassidy submitted a second request for taxpayer relief in July 2021. At the time, he owed \$45,059.69 to the CRA including unpaid taxes dating from 2006. He agreed to a repayment plan of \$350 per month, to be deducted from his Canada Pension Plan payments.

[7] Mr. Cassidy based his request for relief on his inability to pay due to financial hardship resulting from his divorce, the 2008 economic downturn, and the COVID-19 pandemic. He also alluded to limitation periods on enforcement proceedings prescribed by the Act, and suggested that a ten year limitation period should apply in the circumstances. He noted that the parties were well beyond this limitation period, and most of the debt arose from the passage of time: “(2006 arrears \$13,485.38 with interest charges of \$17,786.64 and 2011 arrears \$7,834.01 with interest charges of \$4,042.91)”.

[8] Mr. Cassidy did not dispute the amount of tax owed, but asked for relief from the accumulated interest and penalties, citing his “extraordinary circumstances”. He expressed his intention to return to good standing with the CRA once his company resumed sales after the pandemic.

III. Decision Under Review

[9] The Officer’s decision reads in relevant part:

The second taxpayer relief request, dated July 26, 2021, cited Canada Revenue Agency (CRA) delay and tax collection limitations. My review found that there was no delay or error on the part of CRA that would have affected your ability to pay when and as required. Questions regarding tax collection limitations are not addressed under the taxpayer relief provisions. [...]

A review of the account indicates that instalment payments for tax year 2006 were required and not remitted and any additional balance owing was due April 30, 2007. A balance remains outstanding for tax owed and arrears interest charged. You were advised of the balance owing through notices of assessment, statements of arrears, and through telephone conversations with CRA collections officers.

Under Canada's self-assessment tax system, you are responsible for making sure your tax returns are filled out correctly and filed on time and you pay amounts owing when they are due. You are expected to have general knowledge of your obligations and to meet these obligations without being asked.

The tax year 2006 assessment resulted in taxes owing that were not paid before the due date. When an assessment results in an amount owing, we charge interest compounded daily at the set rate from the due date until the balance is paid in full. Information regarding interest rates can be found on the CRA website. We charge interest to encourage taxpayers to pay tax promptly when due. CRA must consider, in a situation such as this, that you will have use of the amount owing until the balance is received in full.

Arrears interest was waived or cancelled under the COVID-19 related interest relief measures from March 18, 2020, to September 30, 2020, for the individual income tax returns.

Please note that a delay in processing your taxpayer relief request was identified from January 27, 2022, to the date of this decision letter. As a result, arrears interest charged for the tax year 2006, will be cancelled during this period.

IV. Issue

[10] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

V. Analysis

[11] Reasonableness is the presumptive standard of review for administrative decisions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25). The Court will intervene only where "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).

[12] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] The principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties (*Vavilov* at para 127):

The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard [...]. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties.

[14] Discretionary taxpayer relief is addressed in s 220(3.1) of the Act:

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

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

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.

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.

[15] The Respondent relies on the CRA's Information Circular IC07-1 [Information Circular], which provides guidance on the exercise of ministerial discretion under s 220(3.1) of the Act:

Penalties and interest may also be waived or cancelled if the penalty and interest arose primarily because of actions of the CRA, such as:

- a) processing delays that result in the taxpayer not being informed, within a reasonable time, that an amount was owing,
- b) errors in material available to the public, which led taxpayers to file returns or make payments based on incorrect information;
- c) incorrect information provided to a taxpayer, such as in the case where the CRA wrongly advises a taxpayer that no instalment payments will be required for the current year;
- d) errors in processing;
- e) delays in providing information, such as when a taxpayer could not make the appropriate instalment or arrears payments because the necessary information was not available; or

f) undue delays in resolving an objection or an appeal, or in completing an audit.

[16] The Officer reasonably found that, with the exception of the delay arising from the COVID-19 pandemic and the processing of Mr. Cassidy's request for taxpayer relief, the CRA was not to blame for the accumulated debt. The CRA regularly informed Mr. Cassidy of the amounts owed, and there is nothing in the record to suggest that the CRA engaged in any of the acts or omissions specified in the Information Circular.

[17] The Officer's finding respecting the irrelevance of statutory limitation periods was also reasonable. Subsections 222(3) and (4) of the Act impose limitation periods on the CRA's collection of debts, but these provisions are found in the part of the Act that deals with Collections. They are unrelated to the taxpayer relief provisions of s 220(3.1). As Justice Russel Zinn held in *Doig v Canada*, 2011 FC 371 (aff'd on other grounds, *Doig v Canada*, 2012 FCA 28): "the words of s. 222 of the Income Tax Act are precise and unequivocal – the section applies to the 'collection' by the Minister of a tax debt and only to that type of action" (at para 27).

[18] However, the Officer does not appear to have considered whether there were circumstances beyond Mr. Cassidy's control, in particular his divorce, the 2008 economic downturn and the COVID-19 pandemic, that caused him financial hardship and rendered him incapable of repaying the debt. According to the Information Circular:

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 Officer 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

[19] The Officer's decision was silent on all of these considerations. Mr. Cassidy attributed his inability to pay the outstanding tax debt to "personal and business circumstances beyond my control". He noted that prior to 2006, he had always paid his debts in a timely way and he had an excellent credit rating. When he separated from his wife in 2006, both owed approximately \$100,000.00 in tax from their corporations. Mr. Cassidy paid his wife's share of the debt in full, but he continued to owe \$13,485.38. He said that his divorce and the economic downturn of 2008 made it impossible for him to pay the remaining debt.

[20] According to Mr. Cassidy's request for relief:

[...] in spite of the aforementioned hardship I have worked to keep my corporation in good tax standing and pay any debts or amounts owed on behalf of the company. I have also paid back most of the debt owed (90%+) to business suppliers albeit several years later.

[21] It was incumbent on the Officer to "meaningfully account for the central issues and concerns" raised by Mr. Cassidy in his request for taxpayer relief (*Vavilov* at para 127). As the

Supreme Court of Canada has instructed, reasons are the primary mechanism by which decision makers demonstrate they have actually listened to the parties.

[22] The Officer considered only the questions of unreasonable delay and statutory limitation periods, and failed to engage with Mr. Cassidy's submissions respecting financial hardship and inability to pay. The Officer's decision was therefore unreasonable.

VI. Conclusion

[23] The application for judicial review is granted, and the matter is remitted to a different taxpayer relief officer for redetermination.

[24] Mr. Cassidy does not seek costs, and accordingly none are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The matter is remitted to a different taxpayer relief officer for redetermination.
3. No costs are awarded.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

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(on his own behalf)

FOR THE APPLICANT

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