

**Date: 20080908**

**Docket: T-206-08**

**Citation: 2008 FC 996**

**Toronto, Ontario, September 8, 2008**

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

**BETWEEN:**

**JOSEPH PANCHYSHYN**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicant, Joseph Panchyshyn, is a sales representative with an Ontario real estate company and, as such, his income is largely based on commissions earned in respect of real estate transactions with which he was involved. Until the end of 2005, the Applicant paid his income taxes regularly. In 2006, the Applicant suffered a number of personal and family setbacks resulting in reduced income particularly in the first six months of the year. He did not make instalment payments in respect of any part of the 2006 taxation year. Negotiations ensued with the Respondent Canada Revenue Agency (CRA) as a result of which no penalties were assessed for the 2006 taxation year and interest was waived in respect of the first six months of that year. The CRA

however, demanded interest in respect of payments that should have been made in the latter half of the 2006 taxation year on the basis that by that time he had sufficient income to make those payments. It is that decision that is the subject of this judicial review.

[2] Section 152(4.2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> supp.) is part of a statutory scheme sometimes referred to as the “fairness provision” or “fairness package” that gives the CRA the discretion to grant relief against certain provisions of that Act including interest and penalties. The Federal Court, under the provisions of section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 has jurisdiction to conduct a judicial review of the exercise of such discretion by the CRA if circumstances warrant such review.

[3] The Federal Court of Appeal in *Lanno v. Canada (CRA)*, 2005 FCA 153 and in *Comeau v. Canada (CRA)*, 2005 FCA 271 considered what standard of review should be applied to decisions of the CRA in circumstances of this kind in applying the provision of section 152(4.2) of the *Income Tax Act* and determined that the standard to be applied is that of reasonableness. These decisions were made before the Supreme Court of Canada made its decision in *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190. The *Dunsmuir* decision had the effect of reducing three former standards usually applied, patent unreasonableness, reasonableness and correctness into two, reasonableness and correctness. In so doing, the majority of the Court, at paragraphs 47 to 50 cautioned that the move toward a single reasonableness standard does not pave the way for a more intrusive review by the Courts, nor require excessive formalism. Deference is to be afforded to decision makers whose

day to day working in complex matters results in the development of considerable experience and sensitivity in dealing with the subject matter at hand. At paragraph 49, Justice LeBel said:

*49 Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime": D. J. Mullan, "Establishing the Standard of Review: The Struggle for Complexity?" (2004), 17 C.J.A.L.P. 59, at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.*

[4] In the present case, the record shows that the Applicant made his circumstances and concerns known to the CRA and that consideration was given to these matters, as a result of which penalties were waived as were certain interest demands but not others respecting the latter half of the 2006 taxation year. The CRA took into account that the Applicant had little income in the early part of the 2006 year but also noted that in the latter half of that year, the received considerable income that would have enabled him to make the tax payments scheduled to be made. Such determination was not unreasonable and should not be set aside on this judicial review.

[5] The application will be dismissed. Given the relatively small sums involved and that the Applicant was self-represented, no costs will be awarded.

**JUDGMENT**

**For the Reasons provided:**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed;
2. No Order as to costs.

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"Roger T. Hughes"  
Judge

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

**DOCKET:** T-206-08

**STYLE OF CAUSE:** JOSEPH PANCHYSHYN v. CANADA REVENUE  
AGENCY

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 8, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HUGHES J.

**DATED:** September 8, 2008

**APPEARANCES:**

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