Federal Court

Cour fédérale

Date: 20100615

Docket: T-1689-09

Citation: 2010 FC 644

Ottawa, Ontario, June 15, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

CHRISTOPHER PATERSON

Applicant

and

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA
(Canada Revenue Agency)

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] By letter dated May 1, 2009, the applicant was informed that as of April 30, 2009, the Canada Revenue Agency (the CRA) was denying him the privilege of filing his clients' income tax returns electronically by way of the EFILE and SEND programs as provided by section 150.1 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.) (the Act).

[2] The applicant requested an administrative review of this decision, and on September 9, 2009, the Chief of Appeals confirmed the decision to deny the applicant participation in these programs. It is this latter decision which is the subject of the present application for judicial review.

[3] Prior to examining the particular facts of this case, section 150.1 of the Act makes it clear that there is no right to file a tax return electronically. Rather, subsection 150.1(2) specifies that "a person who meets the criteria in writing by the Minister of National Revenue (the Minister) <u>may</u> file a return of income for a taxation year by way of electronic filing" (my emphasis). Based on the wording of the provision, it is clear that the Minister has full discretion to grant, or revoke, the privilege of electronic filing. Relevant factors governing the exercise of the ministerial discretion are listed in the "Suitability screening" form posted on the CRA's website.

[4] Relevant factors include *inter alia*, that the existing or prospective participant in the EFILE program not have been convicted under the Act or any income tax act of any province, not failed to comply with the requirement to pay, collect or remit taxes as required under the Act (among other pieces of legislation), not made any misrepresentations on their application or renewal of their electronic filing privileges, and most importantly for the case at bar, the existing or prospective participant must not have been engaged "in fraud, dishonesty, breach of trust, or <u>other conduct of a disreputable nature</u>" (my underlining).

[5] The applicant is a sole proprietor who prepares and submits income tax returns for a number of clients. Since about 2004, the applicant has had the privilege of preparing and submitting these returns electronically as a participant in the EFILE program set up by the Minister.

[6] The evidence on record reveals that with the assistance of Mr. Mohammed Gaye, one of his clients who worked for a company purporting to campaign on behalf of charitable organizations, the applicant accepted money from taxpayers who wished to “donate” to these charitable organizations in exchange for an “enhanced receipt” for tax purposes (the scheme). The receipt provided to the taxpayer would reflect a much larger sum of money than was actually paid and would then be used in the preparation of the client’s tax return to provide the client with sizeable deductions from their taxable income.

[7] For example, the client participating in the scheme would pay $500 to the applicant who would, in turn, send the money to Mr. Gaye. The applicant’s participating client would then receive a receipt for $7,500, apparently issued in the name of a notable charitable organization, for tax purposes. For each client that purchased one of these enhanced receipts, the applicant was to receive $25 from Mr. Gaye. There is no evidence on record that the tax receipts (although they look authentic) provided through Mr. Gaye came from these charitable organizations and/or that these organizations knew about the scheme or approved of it.

[8] Around March 2009, the applicant was contacted by a client who had received a letter from the CRA indicating that the latter were investigating allegations of offences committed under the Act during the preparation of the individual’s income tax return. While the applicant (as the preparer of said return) was not named in the letter, he voluntarily contacted the investigator at the CRA and arranged a meeting.

[9] The applicant has never denied his involvement in the scheme. On the contrary, he was, and has been, quite forthcoming with the CRA. However, the applicant does not believe he has done anything wrong since he was not aware that he was engaged in any misconduct or fraud. He states that he had no reason to suspect that the enhanced returns were in any way fraudulent. Indeed, the CRA had not taken any issue with any of the returns he filed up until March 2009. There is evidence on record that he himself claimed tax deductions based on the enhanced returns. He now submits that he should have been informed in advance by the CRA pursuant to the Taxpayer Bill of Rights that this posed a problem.

[10] After his meeting with the investigator, the applicant received the letter dated May 1, 2009, notifying him that he had lost his EFILE privileges as of April 30, 2009. The applicant had his privileges reinstated for a brief period of time to enable him to file three outstanding returns for clients, however soon thereafter the applicant's privileges were again suspended.

[11] The applicant sought review of the latter decision. This was not a statutory appeal but an administrative review. The Chief of Appeals reviewed the whole file *de novo*; he considered new evidence brought to his attention. The applicant was informed of the impugned decision to confirm his suspension on September 9, 2009. According to the letter from the Chief of Appeals:

> …
> [The applicant's] conduct was disreputable in nature because of [his] involvement in selling charitable donation receipts to [his] clients for gain. Further, [he] knowingly prepared returns using these donations receipts from which there were no actual contributions to the registered charities. As a result, [the CRA] find[s] that [his] conduct in this matter does not reflect positively on the integrity of the EFILE program…

[12] There is no jurisprudence concerning the applicable standard of review when assessing the decision to revoke an individual's electronic filing privileges. That said, it is clear that the appropriate standard of review is that of reasonableness. Whether an existing or prospective participant is eligible to be given electronic filing privileges is a discretionary determination and mostly a question of fact that warrants a fair amount of deference. In the case at bar, the nature of the question in addition to the special expertise of the Minister support the conclusion that the decision to grant or suspend electronic filing privileges is reviewable on a standard of reasonableness. As such, the Minister, or his "officers, clerks or employees" who are empowered to administer and enforce the Act (see subsection 220(2)), is in a better position than the Court to enforce the Suitability screening criteria and assess what constitutes "fraud", "dishonesty", "breach of trust" or other conduct of a "disreputable nature".

[13] In a nutshell, the applicant argues that the impugned decision warrants intervention. The conclusion that he was not engaged in any "disreputable conduct" is unreasonable as he never had any reason to question the authenticity of the receipts provided to his clients. Furthermore, the applicant states the CRA never once warned him that such suspicious receipts were in circulation and on one previous occasion, the CRA investigated one of the receipts and concluded that it was reasonable. Finally, the applicant argues that the conclusion of the Chief of Appeals is not supported by the evidence since it is not proven that he received money as a result of his alleged participation in the scheme.

[14] For the reasons that follow, the application for judicial review must fail.

[15] The applicant simply disagrees with the conclusion reached by the Chief of Appeals that the applicant's conduct was "disreputable" in nature. According to *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47, when reviewing the reasonableness of a decision, the Court is concerned with the justification, transparency and intelligibility within the decision making process, in addition to whether the decision falls within the range of acceptable outcomes, defensible with regard to the facts and the law. There is no question here that the impugned decision of the Chief of Appeals is reasonable. The Chief of Appeals certainly had the right to come to his own conclusions, which he did in this case.

[16] While the applicant may not have had any reason to question the authenticity of the receipts his clients were being supplied, he most definitely knew that the amounts paid by his clients were not equal to the amounts they were given credit for when he was completing their income tax returns. There was evidently some sort of wilful blindness on the part of the applicant. The mere fact that the applicant did not believe this to be fraudulent does not detract from his admission that he participated in a scheme whereby taxpayers were making claims for the deduction of sums of money they never paid to these charitable organizations. As it is often said, ignorance of the law is no excuse.

[17] Again, as aforesaid, the applicant has never denied his involvement in the scheme and despite the fact that it is not proven that he actually received money from Mr. Gaye, as is evident

from his own admission, he participated in the scheme for gain. Coming from a person who had the privilege of preparing and submitting returns electronically, such behaviour is disturbing. Undeniably, it is enough to cast doubt and suspicion. The Minister is there to protect the integrity of the system. It was reasonable for the Minister to consider this behaviour as some form of breach of trust or other conduct of a disreputable nature. Such conduct certainly did not reflect positively on the integrity of the EFILE program. Accordingly, it cannot be said that the decision to suspend a discretionary privilege, to which the applicant has no right, is unreasonable.

[18] For the foregoing reasons, this application for judicial review is dismissed with costs.

JUDGMENT

THIS COURT ADJUDGES AND ORDERS that the judicial review application made by the applicant be dismissed with costs.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1689-09
STYLE OF CAUSE:	**CHRISTOPHER PATERSON and HER MAJESTY THE QUEEN IN RIGHT OF CANADA (Canada Revenue Agency)**
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 8, 2010
REASONS FOR JUDGMENT:	MARTINEAU J.
DATED:	June 15, 2010

APPEARANCES:

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