

Federal Court



Cour fédérale

**Date: 20140919**

**Docket: T-478-14**

**Citation: 2014 FC 894**

**Ottawa, Ontario, September 19, 2014**

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

**BETWEEN:**

**BRUCE GRAEME TAYLOR**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is a judicial review of a January 14, 2014 Decision [Decision] of the Canada Revenue Agency [CRA], in which the Applicant's second level request for relief from penalties and interest with respect to his 2006 and 2007 taxation returns was denied. The relief is requested pursuant to s 220 (3.1) of the *Income Tax Act* [Act] and s 18.1(3) of the *Federal Courts Act*.

[2] The Applicant is Bruce Graeme Taylor, a taxpayer residing in Toronto.

[3] The case law has held that the reviewing court must determine whether the decision under review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. This Court must find significant issues with the Decision in order to find that it was unreasonable (i.e. it lacked justification, transparency and intelligibility).

[4] The Court acknowledges that Mr. Taylor has faced a difficult set of circumstances over the past decade, and is trying to do his level best under a trying family situation to keep things together for his family. However, the CRA Officer's Decision was defensible in respect of the facts and the law and defensible in its outcome.

## II. **Facts**

[5] The Applicant requested a waiver of penalties and interest in respect of his 2006, 2007 and 2008 income tax returns on July 30, 2009. This judicial review concerns only the 2006 and 2007 tax years.

[6] Mr. Taylor was informed by letter of his initial denial on June 18, 2010. He requested reconsideration of this decision on January 8, 2013. On June 10, 2013, the CRA asked for additional details regarding the personal circumstances mentioned in the Applicant's request for reconsideration.

[7] As part of the second level review, a Second Level Taxpayer Relief Report was prepared and this report recommended a denial of relief. In the January 14, 2014 Second Level Review Decision, the Applicant was denied a waiver of interest and penalties with respect to the 2006 and 2007 taxation years.

[8] More specifically, the CRA found in its Decision that the Applicant had not demonstrated circumstances beyond his control that prevented him from meeting his filing obligations. In addressing the Applicant's grounds for relief, the CRA found:

- Delaying the filing of a 2006 return (filed in September, 2007) until an issue with the 2003 return had been resolved was a personal choice, not an extraordinary circumstance.
- The unfortunate passing of the Applicant's father-in-law in February, 2008 did not prevent compliance in filing a 2007 return (filed January 23, 2009).
- The CRA asked for additional details regarding the Applicant's father-in-law's illness and death in a letter dated June 10, 2013. No submissions were received.
- The Applicant had a history of non-compliance with regards to filing obligations prior to the 2007 year, as well as for the two subsequent tax years.

### III. Issue

[9] The issue in this appeal is whether the CRA's Decision denying the Applicant relief from penalties and interest for the 2006 and 2007 tax years was reasonable.

IV. **Standard of Review**

[10] Discretionary decisions of the Minister which provide relief from the imposition of interest and penalties are reviewed by this Court on a standard of reasonableness: *Canada Revenue Agency v Telfer*, 2009 FCA 23 at para 24; *Tremblay v Canada (Attorney General)*, 2013 FC 1049 at para 9.

[11] As referenced above, in deciding whether a decision is reasonable, this Court is primarily concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law [*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47].

A. *Applicant Submissions*

[12] The Applicant submits that he is current with all of his income tax obligations up to and including the 2013 tax year. He argues that the penalties and arrears contested in this application arose out of circumstances beyond his control.

[13] The 2003 reassessment (received in December 2006) resulted in significant penalties and interest and the Applicant stated that he wanted to resolve this issue before proceeding to file returns for other years.

[14] The Applicant submits that the said 2003 issue was resolved in his favour, as he was issued a refund in September 2007 relating to the 2003 return, which was also around the time his father-in-law became ill, and subsequently died, resulting in his 2006 return not being filed until August 21, 2008. The Applicant's 2007 return was also filed late - on January 21, 2009.

[15] The Applicant explains that the recovery of \$56,213.88 in late filing fees and interest, which is being contested in this application, would greatly assist his family, namely three children and a disabled wife, in managing their future.

B. *Respondent Submissions*

[16] The Respondent submits that the CRA made no reviewable error in rejecting Mr. Taylor's application for relief.

[17] The decision-maker acknowledged the illness and bereavement in the Applicant's family and noted that when the CRA had requested details as to these submissions, no reply was received.

[18] The Respondent further notes that the Applicant's filing history has been poor both prior to and subsequent to the Applicant's father-in-law's illness and death. Notably, the Applicant had filed his 1997, 2000, 2004, 2005, 2006, 2007, 2008 and 2009 tax returns late.

[19] The Respondent submits that financial hardship was not before the CRA, and that the officers at both levels of review cited ample evidence of non-compliance that justified the

ultimate denial by the Minister of the discretionary relief requested, consistent with both the Act and CRA guidelines.

C. *Analysis*

[20] The CRA's policy with respect to taxpayer relief is outlined in Information Circular IC07-1 ["IF"]. The Ministerial Delegate is allowed to take these guidelines into account, but is not bound by them since they are not law [3563537 *Canada Inc v Canada Revenue Agency*, 2012 FC 1290 at para 62].

[21] Paragraph 34 of the IF cites a natural disaster as an example of an extraordinary event.

Paragraph 33 of the IF is also illustrative:

33. Where circumstances beyond a taxpayer's control, actions of the CRA, or inability to pay or financial hardship has prevented the taxpayer from complying with the Act, the following factors will be considered when determining whether or not the CRA will cancel or waive penalties and interest:

- (a) whether or not the taxpayer has a history of compliance with tax obligations;
- (b) whether or not the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued;
- (c) whether or not 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; and
- (d) whether or not the taxpayer has acted quickly to remedy any delay or omission.

[22] While the Court has sympathy for the Applicant and commends his resolve to provide a better life for his wife and children, unfortunately the Applicant must meet a high threshold if the

Court is to conclude that the Decision by the CRA was an unreasonable one, pursuant to the standard of review.

[23] In the Decision, the CRA Officer turned his mind to the unfortunate personal circumstances of the Applicant and provided Mr. Taylor with an opportunity to make further submissions on this point.

[24] The Applicant's history of non-compliance with CRA certainly did not help his cause.

[25] While the Court wishes the Applicant the best of luck with holding together a trying family situation, the Decision was reasonable. Its reasons demonstrated the existence of justification, transparency and intelligibility in both the Second Level Review Decision of January 14, 2014, as well as the original CRA denial of June 18, 2010.

V. **Conclusion**

[26] The application is dismissed. Given Mr. Taylor's difficult situation and best efforts to represent himself in this judicial review, no award of costs will be issued.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed and no award of costs shall be issued.

"Alan Diner"

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Judge



**ANNEX "A"*****Income Tax Act, RSC, 1985, c 1 (5<sup>th</sup> Supp)***

220. (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.

***Federal Courts Act (RSC, 1985, c F-7)***

18.1(3) On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

***Loi de l'impôt sur le revenu (LRC (1985), ch. 1 (5e suppl.))***

(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.

***Loi sur les Cours fédérales (LRC (1985), ch. F-7)***

18.1(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

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

**DOCKET:** T-478-14

**STYLE OF CAUSE:** BRUCE GRAEME TAYLOR v CANADA REVENUE AGENCY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 2, 2014

**JUDGMENT AND REASONS:** DINER J.

**DATED:** SEPTEMBER 19, 2014

**APPEARANCES:**

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**SOLICITORS OF RECORD:**

- Nil - FOR THE APPLICANT

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