Federal Court  Cour fédérale

**Date: 20160525**

**Docket: T-1271-15**

**Citation: 2016 FC 579**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, May 25, 2016**

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

**BETWEEN:**

**2750-4711 QUÉBEC INC.**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

## JUDGMENT AND REASONS

[1] After reviewing the application and responding records submitted by the parties and considering the written and oral submissions of counsel, but discounting what is inadmissible, this Court is of the view that the application for judicial review should be allowed, as it accepts all the review arguments made by the applicant, 2750-4711 Québec Inc.

[2] The decision on whether or not to grant a request for relief under subsection 220(3.1) of the *Income Tax Act*, R.S.C., 1985, chapter 1 (5th Supp.) [Act] is a discretionary power. Given the information already in the possession or brought to the attention of the Minister of National Revenue [Minister] and officials of the Canada Revenue Agency [CRA], I am not satisfied that the June 29, 2015 final decision to deny the request for relief made in response to the notices of assessment issued for the 2001 and 2002 taxation years falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law (*Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299, at paragraph 20 [*Stemijon*]; *Canada Revenue Agency v. Telfer*, 2009 FCA 23, at paragraphs 24 and 25; *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9, at paragraph 47).

[3] The request for relief made on behalf of the applicant on July 19, 2013, was denied a first time on November 1, 2013, by a CRA manager [the initial decision]. Under *Information Circular IC07-1 – Taxpayer Relief Provisions* [the Circular], dated May 31, 2007, a taxpayer may ask for a second independent review. The taxpayer will have the opportunity to make more representations. This is a *de novo* review that involves none of the CRA officials who took part in the first review process. A decision report including the official's recommendation is then submitted to a director of the tax services office [delegate], with whom the final decision rests (Circular at paragraphs 17 and 18; *NRT Technology Corp v. Canada (Attorney General)*, 2013 FC 200, at paragraph 16).

[4] In this case, the delegate says he reviewed the factors cited in the applicant's correspondence, received on November 19, 2014 [the additional representations]. The essence of his reasoning is set out in the following two paragraphs of the impugned decision:

> [TRANSLATION]
>
> We have carefully reviewed all the circumstances surrounding your case, in accordance with the relevant statutory provisions. The reasons cited in your request for the cancellation of penalties and interest are not of themselves extraordinary circumstances beyond your control preventing you from complying with a requirement of the ITA. We regret to inform you that, in this case, there is no basis to cancel the penalties and interest.
>
> The fact that you were sick does not constitute an extraordinary circumstance preventing you from filing your tax returns on time, because you became sick after the normal assessment period. [Emphasis added.]

[5] The respondent admits that the [TRANSLATION] "normal assessment period" referred to by the delegate corresponds to the period during which the Minister could make a reassessment under paragraph 152(4)(b) of the Act following the filing, within three years, of a taxpayer's late or amended returns. In this case, that period ended on August 1, 2006. The respondent also acknowledges that the delegate was in error in saying that the applicant's sole shareholder, Jean Beauchamp, [TRANSLATION] "became sick after the normal assessment period." Accordingly, the respondent invites the Court to examine the entire record to assess the reasonableness of the decision (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62).

[6] In this case, it is not disputed that for the fiscal years ending March 31, 2001, and March 31, 2002, the applicant had to file its tax returns [corporate taxes] no later than

September 30, 2001, and September 30, 2002, respectively. Since it received no returns, the CRA's Non-Filer Division made on August 1, 2003, under subsection 162(2) of the Act, an arbitrary assessment of corporate taxes for the 2001 and 2002 taxation years, in addition to imposing on the applicant penalties and interest for late or insufficient instalment payments.

[7] The circumstances where relief from penalty and interest may be warranted are not exhaustive, and the Minister may grant relief if a taxpayer's circumstances do not fall within the situations stated in paragraph 23 of the Circular (extraordinary circumstances, actions of the CRA, and inability to pay or financial hardship). The Circular cannot under any circumstances mandatorily dictate how the discretionary authority given by subsection 220(3.1) of the Act should be exercised (*Stemijon* at paragraphs 22 to 25 and 58 to 60). Therefore, the delegate's analysis must not be limited to whether or not a taxpayer filed his tax return on time. The delegate must consider all of the taxpayer's personal, tax and financial circumstances, which in this case includes any reasonable cause preventing the taxpayer from filing a return and/or paying the tax, interest or penalties that may have been imposed as a result of an arbitrary assessment.

[8] The delegate suggests that relief could have been granted if the taxpayer had been sick during the normal assessment period. Mr. Beauchamp was gravely ill in 2005 and 2006; he was battling cancer, which forced him to rely on his accountant to file his returns within the normal assessment period. However, Mr. Beauchamp's inability was indeed brought to the attention of the CRA and the Minister. Still, the respondent submits that the delegate's error is not determinative when one considers the entire record and the decision report prepared by

Marie-Hélène Beaucage. Justification for the outcome has not been established to the satisfaction of the Court (*Société Angelo Colatosti Inc. v. Canada (Attorney General)*, 2012 FC 124, at paragraphs 31 to 37 [*Société Angelo Colatosti*]; *Stemijon* at paragraphs 36 to 39; *3563537 Canada inc. v. Canada Revenue Agency*, 2012 FC 1290, at paragraphs 66 and 70 to 82 [*3563537 Canada inc.*]).

[9] First, on July 24, 2006, following the measures taken to collect the outstanding tax debts [corporate taxes, GST and QST], the applicant, Mr. Beauchamp and two other related companies (Planim-Implan Inc. and 9038-9594 Québec Inc.) [together, the debtors] signed an agreement [the Agreement] with Revenu Québec and Her Majesty in right of Canada, represented by the Minister. It was a comprehensive agreement whereby the collection measures would be suspended and the debtors would file corporate and individual tax returns for various periods between 1995 and 2005 inclusively no later than September 15, 2006. Although the Agreement does not specify the amount of the applicant's outstanding federal tax debts for the years ending 2001 and 2002, it is clear that its overall scope and general intent are relevant factors with regard to the request for relief, when one considers that the tax, interest and penalties owed by the debtors were substantially reduced after the amended returns were filed.

[10] Second, on September 13, 2006, the applicant's former accountant did submit to a CRA official amended returns for 2001 and 2002, but by the respondent's own admission, they were not accepted or processed then, since they contained a clerical error regarding the year-end date (which was subsequently corrected by hand on the original documents). However, for a reason that was never clarified, it was not until June 7, 2007, that the CRA acknowledged receipt of the

said amended returns, which are mentioned in the computer system on June 20, 2007. At that time, the CRA did not accept them, because they had been filed beyond the three-year period ending August 1, 2006. Legally speaking, the refusal to process the amended returns is justified on the basis that the Minister cannot make a reassessment beyond the three-year period. Still, one wonders whether total or partial relief from the penalties and interest accrued over 10 years was not warranted, considering the unfairness of such treatment under the comprehensive settlement signed on July 24, 2006.

[11] Even though the delegate's erring in his assessment of the medical circumstances is determinative, in any case, I am not satisfied that all relevant factors were fully examined during the second independent review. The request for relief dated July 19, 2013, cites not only Mr. Beauchamp's battle with cancer in 2005 and 2006 but also the fact that all his energy was previously put into his defence in court regarding a dispute over land held by another one of his companies. Other relevant factors include the fact that Revenu Québec agreed to make reassessments, and the false or misleading statements of the applicant's former accountant.

[12] Moreover, in its additional representations, dated November 18, 2014, the applicant says that its new accountant did in fact file the amended returns before August 1, 2006, which the respondent is not prepared to admit today. In any event, the jurisprudence recognizes that a taxpayer who was deceived concerning the filing of a tax return can cite this as a circumstance beyond his control (*3563537 Canada inc.* at paragraphs 60 *et seq.*). The lack of analysis and sufficient reasons in this regard constitutes a reviewable error (*Société Angelo Colatosti Inc.*, at paragraph 30). That being said, it is not really disputed that after receiving the arbitrary notices

of assessment, Mr. Beauchamp sent relevant information to his former accountant, asking the latter to follow up with the tax authorities. He mistakenly believed that everything was under control and that his former accountant would have the assessments cancelled because the applicant had almost no revenue in 2001 and 2002. The accountant had told Mr. Beauchamp that he need not worry about the time limit, because the tax authorities would make reassessments and cancel the previous assessments as soon as the tax returns were filed with the actual revenue earned by the applicant. Eventually the former accountant admitted to being wrong, and Mr. Beauchamp got a new accountant (although he may have consulted the old one).

[13] These surely constitute significant circumstances beyond the applicant's control. And yet, when summarizing her recommendation, Ms. Beaucage did not make the connection between Mr. Beauchamp's illness and the instructions given to his accountants. The reasoning behind her conclusion that [TRANSLATION] "[i]t was perfectly reasonable to expect Mr. Beaucoup to exercise due diligence in conducting his business and to file his returns on time" is circular, such that her recommendation to deny the request strikes me as gratuitous and unreasonable. Moreover, certain portions of the decision report and the delegate's decision suggest that the CRA officials mistakenly believed that the provisions of the Circular were mandatory, which also constitutes a reviewable error (*Stemijon*, at paragraph 60; *3563537 Canada inc.*, at paragraphs 64, 69 and 75 to 85; *Société Angelo Colatosti*, at paragraphs 35 to 37).

[14] The errors and omissions mentioned earlier, when considered cumulatively, render the impugned decision unreasonable, such that a new independent review will have to be conducted before a new final decision can be made on behalf of the Minister concerning the applicant's

request for relief. For these reasons, the application for judicial review will be allowed. The decision made by the Minister's delegate on June 29, 2015, will be quashed, and the applicant's request for relief will be sent back for redetermination in accordance with these reasons for judgment.

## JUDGMENT

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed. The decision of the Minister of National Revenue's delegate is quashed, and the applicant's request for relief is sent back for redetermination, in accordance with these reasons for judgment.

"Luc Martineau"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1271-15 |
| **STYLE OF CAUSE:** | 2750-4711 QUÉBEC INC. v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | MAY 19, 2016 |
| **JUDGMENT AND REASONS:** | MARTINEAU J. |
| **DATED:** | MAY 25, 2016 |

**APPEARANCES:**

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|---|---|
| Mathieu Angers<br>Julie Gaudreault-Martel | FOR THE APPLICANT |
| Anne Poirier | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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