Federal Court  Cour fédérale

Date: 20190801

Dockets: T-943-18
T-982-18

Citation: 2019 FC 1034

Ottawa, Ontario, August 1, 2019

PRESENT: Mr. Justice Boswell

Docket: T-943-18

BETWEEN:

VINCENT BAILINI, RANDALL BARRS, GEOFFREY BELCHETZ, ROBERT BERGER, STEVEN BLACK, CLEMENTE CABILLAN, WAYNE CARMAN, DAVID DE SILVA, JOYCE DOYLE, WILLIAM EASTON, TIMOTHY FELTIS, SANDRA GERTNER, JOSEPH GOTTDENKER, ROBERT HILL, NIZAR KANJI, ANASTASSIOS KARANTONIS, FRANK KOSAR, HENRY KUTZKO, FRANK MAGNUS, MARIO MASELLIS, ALAN MCFADYEN, THE ESTATE OF THE LATE DAVID MCINNIS, STUART MITCHELL, FRANN RASMINSKY-MITCHELL, JAMES RATHBUN, JOHN NKANSAH, NARH OMABOE, GAIL PALERMO, IAN BRUCE ROBINSON, LOUIS SCHEINMAN, HOWARD SIDSWORTH, MICHAEL SLOCOMBE, MICHAEL SPIVAK, MALCOLM STAFFORD, ROBERT TAUTKUS, DAVID THOMAS, GARY THORNTON, JOSEPH TRAGER, EDWARD VALLEAU, WALTER VOGL and WILLIAM WILKINSON

Applicants

and

HER MAJESTY THE QUEEN (as represented by the Minister of National Revenue in her capacity as Minister responsible for the Income Tax Act), CANADA REVENUE AGENCY and THE ATTORNEY GENERAL OF CANADA

Respondents

Docket: T-982-18

AND BETWEEN:

LORENZO BRANDIMARTE

Applicant

and

HER MAJESTY THE QUEEN(as represented by the Minister of National Revenue in her capacity as Minister responsible for the Income Tax Act), CANADA REVENUE AGENCY and THE ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

[1] This matter has a long history, spanning some 35 years.

[2] Starting from as early as 1984, the Applicants subscribed for one of three types of limited partnerships promoted and marketed by the Overseas Credit and Guaranty Corporation [OCGC].

OCGC claimed the partnerships were an opportunity to invest in a luxury yacht chartering business with attractive tax advantages and with limited personal risk. This business, known as "Fantaseas", turned out to be a sham; it was a fraud whose victims were the Applicants and the Canada Revenue Agency.

[3] The CRA commenced an audit of OCGC's business in 1986 and also began auditing the Applicants' tax returns. Ultimately, after appeals to the Tax Court of Canada which lasted more than two decades, a delegate of the Minister of National Revenue [the Delegate] denied the Applicants' request for cancellation or waiver of interest under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended [*ITA*].

[4] The Applicants have now applied under subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7, for judicial review of the Delegate's decision. They ask the Court to issue certain directions to the Minister or, alternatively, issue an order directing the Minister to reconsider their request for cancellation or waiver of interest in accordance with such directions as the Court deems just.

I. Background

[5] OCGC acted as the general partner for each limited partnership in which the Applicants invested. Mr. Einar Bellfield was the operating mind of OCGC.

[6] The alleged tax advantages were flow-through losses resulting from substantial start-up expenses as well as the ability to claim depreciation on the yachts prior to the generation of

revenue. The Applicants were also supposed to have the ability to deduct interest expenses incurred on promissory notes issued by them to the limited partnerships as well as professional fees. The Applicants claimed each of these deductions on their 1984 to 1990 income tax returns.

[7] In October 1986, the CRA began auditing OCGC's business and also began auditing the Applicants' tax returns. The CRA came to the belief that OCGC was engaged in fraudulent activity in the limited partnerships. Between July and November 1987 (and also in 1988 and 1989), the CRA sent "intercept" letters to the Applicants, advising them that their tax returns were being held in abeyance until completion of the CRA's audit and that if they wanted their returns assessed without the deductions in question they should request the Audit Programs Directorate to do so. The Minister disallowed all losses, interest, and professional fees claimed by the Applicants. Eventually, all Applicants received notices of assessment notifying them of the amount of taxes and interest owing.

[8] In 1994, the CRA's Special Investigations unit (in conjunction with the RCMP) laid charges, including two counts of fraud, against the principal of OCGC, Mr. Bellfield, and two other individuals. The criminal proceedings concluded in 2004.

[9] There were approximately 600 investors in the OCGC scheme. Throughout the years, several settlement offers were exchanged. In 1994, a settlement appeared to have been reached but the CRA withdrew from the agreement in order not to jeopardize the criminal proceedings. Other offers were made in 1996 and 2004. Approximately 300 investors settled with the CRA.

Those who did not settle appealed the assessments to the Tax Court of Canada in September 1991.

[10] Following disposition of the Tax Court appeals in January 2014, numerous Applicants requested relief under s. 220(3.1) of the *ITA*, citing, as their main reason, delay by the CRA. In some instances, the request was a renewed request since a group of the Applicants had made an initial request in 2004. Those Applicants who requested relief in 2004 were not restricted as to the time period for which the Minister could grant interest relief; those who sought relief in 2014 were limited to only ten years after the end of a taxation year due to an amendment to subsection 220(3.1) in 2005. As such, these applications concern two groups of Applicants; those who requested interest relief before the amendment to subsection 220(3.1) [the 2004 Applicants], and those who made requests after the 2005 amendment [the 2014 Applicants].

[11] A member of the CRA's Appeals Division conducted a first level review of the Applicants' requests for interest relief in 2015. For the 2004 Applicants, approximately 14 years of accrued interest was cancelled. For the 2014 Applicants, approximately 51 months of accrued interest was cancelled.

[12] Unsatisfied with the results of this first review, beginning in October 2015 and running into early 2016 the Applicants made requests for a second level review. They advanced five grounds for a second level review: (i) the first level review only considered specific periods of delay; (ii) the Applicants were charged interest before they knew the balance owing; (iii) the

CRA repudiated the 1994 settlement to give priority to the criminal proceedings; (iv) the first review was delayed; and (v) the unfair distinction drawn between the 2004 and 2014 Applicants.

[13] Decision letters were sent to each Applicant between late May and early June 2017. A member of the CRA's Appeals Branch determined that, for most Applicants, further interest cancellation of approximately 12 months was warranted to account for the delay in appointing a reviewing officer for the first level review and in processing the related adjustments. These periods of delay affected both classes of Applicants. For the 2004 Applicants, the Minister cancelled approximately 15 years of accrued interest. For the 2014 Applicants, the Minister cancelled approximately 63 months of accrued interest.

[14] The Applicants initiated a judicial review application to assess the reasonableness of the second level review decision. This application precipitated a settlement between the Applicants and the Respondents in October 2017. The settlement included a provision that the Minister would conduct another independent review by an officer not previously involved in the decisions affecting the Applicants. It also included a provision whereby the Applicants retained the right to seek judicial review of the third review decision.

[15] For the third review, the Applicants claimed they should receive interest relief because: (i) the first level review only considered delay; (ii) of the overall delay and other considerations of fairness; (iii) the CRA had repudiated the 1994 settlement; (iv) they were not made aware of balances owing before 1990; (v) the criminal proceedings took priority over the Applicants' interests; and (vi) other taxpayers in other tax schemes had their interest cancelled. In a letter

dated April 23, 2018, the Delegate denied the Applicants' requests for further relief from arrears interest.

II. The Delegate's Decision

[16] The decision letters denying the Applicants' requests for total interest cancellation differed somewhat, in that the letters sent to the 2014 Applicants contained a paragraph which stated they were limited to only a ten-year review from the date of their first request. The letters were based on a report entitled the Third Independent Review OCGC Taxpayer Relief Report. This Report addressed the Applicants' submissions under seven headings.

A. *Delays in Assessing or Reassessing Returns*

[17] The Delegate noted that, while subsection 152(1) of the *ITA* requires the Minister to act with due dispatch, at the time of the reassessments the *ITA* permitted the CRA to process a reassessment within three years from the date of original assessment, or issue a notification that no tax was payable for a taxation year. The Delegate found that the returns had been reassessed within the timeframe established by the *ITA*. The Delegate observed that audit proceedings began in October 1986 and that returns for 1984 were due on April 30, 1985 or, for self-employed taxpayers, on June 15, 1985.

[18] The Delegate also noted that intercept letters were issued as early as 1987, informing the Applicants their 1986 returns were being held pending a review of the limited partnerships. The CRA stated in these letters that the Applicants could have their returns processed without the

deductions. (Similar letters were issued in 1988 and 1989 for subsequent returns). The letters provided contact information for the auditors if the Applicants wanted more information. The Delegate acknowledged that, although the intercept letters did not detail the balance owing, the Applicants had a choice to file the returns without the losses and receive their notice of assessment and their balance owing.

[19] The Delegate remarked that, in the first and second reviews, delays attributed to the CRA in the assessment and reassessment of returns were weighed and relief given for any period in which the audit was not actively being worked on. The Delegate found no undue delays in the assessment or reassessment of returns that warranted additional arrears interest relief other than that already given.

B. *The MNR Failed to Consider Anything but CRA Delays*

[20] The Delegate recognized that 30 years is a long time frame, but the delays due to objections and appeals were attributable to both parties. The Delegate continued:

> … the 30 year timeframe without factoring in circumstances attributable to the taxpayers goes against the principles of taxpayer relief … While the reassessments of the taxpayers' returns and removal of losses claimed was beyond their control in the sense that taxpayers were led to believe the claims were valid by the perpetrators of the program, the taxpayers made the choice to continue to participate in the program in subsequent years. It was also the taxpayers' choice to object to their assessments and reassessments and later appeal to the courts.
>
> …
>
> … taxpayers were quoted balances and had the ability to address them to minimize the ongoing accrual of interest. Therefore it can

> be determined that the accruing interest during the objection and appeal stage is not beyond their control, despite the timeframe it took for them to receive a final decision.

[21] In the Delegate's view, the CRA could not be held responsible for the actions of the OCGC promoters providing false financial statements.

C. *1994 Settlement Being Pulled Warrants Relief*

[22] The Delegate found that relief had already been granted in the first review decision to take into account the 1994 settlement being pulled off the table by cancelling interest from February 24, 1992 (when the settlement negotiations began) to March 31, 1996 (when the 1996 settlement was proposed). The Delegate referenced a 2005 decision in this matter that the CRA was legally entitled to repudiate the settlement and there was no sanction the court could impose.

[23] The Delegate noted that the Applicants had the option to accept a settlement proposed in 1996 to get an accurate determination of their taxes owing and also had the ability to contact the CRA at any point during the Tax Court litigation to request statements of accounts to get an accurate amount of accruing interest and unpaid balances if they desired to pay the amounts owing. The Delegate observed that the Applicants made a conscious choice not to accept the 1996 settlement proposal and to continue with the objections and later their appeals to the Tax Court.

D. *Delay in Processing the First Administrative Review*

[24] After summarizing the events leading up to the first review decision and considering the decision itself, the Delegate stated:

> The second review decision took into account delays where the first review was not being actively worked due to other workload priorities of the officer it was assigned to. The second review confirmed delays from August 4, 2014, to September 2, 2014, and from November 12, 2014, to January 26, 2015. The second review decision was to grant relief for those timeframes in relation to what they found as delays by the CRA in processing the request. The second review decision also granted relief from September 17, 2016, to the date of the decision letter in relation to delays in completing the second review case. However, this cancellation was redundant for certain taxpayers, as the first review cancellation granted relief until the date the first review cancellations were processed.

[25] The Delegate found that the first and second review decisions had already taken account of many of the delays referenced by the Applicants. As for the decision letters not including a calculation of the debt owing after relief, for the Delegate this circumstance held little weight to an Applicants' ability to pay the balances after the assessment or reassessment of their returns. The Delegate noted that the Applicants had been issued notices of assessment or reassessment with detailed balances that were fully collectible until objections were received and balances disputed. The Delegate further noted that the Applicants had been effectively notified of their balances in statements detailing balances in prior years and in collection letters from the CRA. The Delegate remarked that the 1996 settlement offer detailed the interest cancellation for Applicants if they accepted the settlement.

[26] The Delegate concluded this section of the Report by stating that: “Waiting to pay balances until after interest cancellations and statements of accounts being issued was a choice of the taxpayers and not beyond their control.”

E. *Criminal Proceedings Took Priority*

[27] The Delegate noted that in October 1994 the Department of Justice sent a letter to the CRA, advising that the settlement should not be concluded as it could undermine the criminal proceedings. The CRA withdrew the settlement offer in November 1994.

[28] The Delegate found that the criminal proceedings relating to OCGC did not affect the Applicants' ability to file accurate returns upon initial filing, to accept their returns as filed without the deductions relating to OCGC, or to pay balances owing upon assessment and reassessment of their returns.

F. *Creating Equality Amongst the Applicants*

[29] After reviewing the amendment of subsection 220(3.1) and a paragraph in an information circular about taxpayer relief, the Delegate concluded that the 2004 Applicants and the 2014 Applicants could not be considered in the same fashion. The Delegate determined that this subsection did not allow the Minister to consider all Applicants as having submitted a request for relief before December 2004. The Delegate found there was nothing in subsection 220(3.1) or the information circular to allow relief for interest accrued before January 1, 2004, for requests made by the 2014 Applicants.

G. *Other Considerations of Fairness*

[30] The Delegate found that comparing settlements from other tax shelters or tax schemes held little weight. For the Delegate, the position taken by the CRA and the Department of Justice in relation to the Global Learning Gifting Initiative [GLGI] donors had no impact on the review, analysis, or decision in relation to OCGC. The Delegate stated that the CRA treats all cases separately.

[31] With respect to the circumstances of individual Applicants, the Officer noted that the 2017 settlement specifically stipulated that a global review in relation to the overall delays was to be conducted. The Delegate stated:

> … I am required to conduct a global review in relation to the overall delays of OCGC. Taxpayers had the ability to make requests relating to their individual circumstances in the first and second reviews and decisions were made in relation to those individual factors. However, my review finds that these individual circumstances were avoidable. Taxpayers had the ability to avoid the uncertainty and stress related to OCGC by making payments on the balances while waiting for a resolution of their objections and appeals. My review failed to indicate how a taxpayer's age or current ability to pay relates to their ability to resolve the balances when they were first assessed.

[32] The Delegate concluded the Report by stating that the taxpayer relief provisions were not intended to be used as a bargaining tool to negotiate payment of tax balances.

III. Standard of Review

[33] The standard of review applicable to a decision made under subsection 220(3.1) of the *ITA* is reasonableness (*Canada Revenue Agency v Telfer*, 2009 FCA 23 at paras 24 and 25 [*Telfer*]. The unstructured nature of the Minister's statutory power under subsection 220(3.1) of the *ITA* militates against the Court subjecting the decision-making process to close scrutiny (*Telfer* at para 40).

[34] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para16).

[35] The standard of review for an allegation of procedural unfairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79). The Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115).

[36] An issue of procedural fairness "requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation" (*Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 74). As the Federal Court of Appeal has observed: "even though there is awkwardness in the use of the terminology, this reviewing exercise is 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. The Applicants' Submissions

[37] In the Applicants' view, delay was the only factor considered by the Delegate despite their submissions on other issues. According to the Applicants, the reasons for the decision to deny further interest relief manifest the narrow approach taken by the Delegate and mischaracterize the second level review as being related primarily to delay. The Applicants say the Delegate misunderstood and mischaracterized the wide scope of the third review which was to be a fresh, independent review *de novo* and not merely an appellate type review of the earlier decisions.

[38] The Applicants point to paragraph 26 of Information Circular IC07 -1, Taxpayer Relief Provisions [the Circular], which states that penalties and interest may be waived or cancelled if they resulted mainly because of the CRA's actions, such as processing delays resulting in a taxpayer not being informed, within a reasonable time, that an amount was owing. In this case, the Applicants complain that the processing delays were such that the CRA did not inform them

that an amount was owed and could not knowingly allow a balance to exist until the CRA issued the notices of assessment in 1990. The Applicants say delays in issuing the notices also resulted in several years of continued payments to OCGC, in continued claims for deductions and losses (since the Applicants believed the limited partnerships were genuine), and in the substantial accumulation of daily compounded interest from 1984 to 1990.

[39] In the Applicants' view, the Delegate perpetuated the mischaracterization of the intercept letters. According to the Applicants, the Delegate unreasonably relied on these letters to support the finding that the CRA did not delay in informing them of a balance owing, while at the same time acknowledging that the letters did not detail the balance owing. The Applicants say there is nothing in the intercept letters warning them that their claimed losses would be disallowed by the CRA, and the letters do not support a finding that they had knowledge of an amount owed to the CRA.

[40] The Applicants say the language used by the Delegate in the reasons for the decision shows that he restricted his decision to the specific situations stated in the Circular, and that he did not consider the broad principles of fairness pursuant to subsection 220(3.1) or the fact that the interest owing had begun to dwarf the amount of the tax owing by the time the assessment notices were issued. In the Applicants' view, the Delegate slavishly followed the Circular.

[41] The Applicants also say the CRA had on a principled basis in 1994 acknowledged that fairness dictated a complete waiver of interest up to December 31, 1989 and that the tax dispute should end. According to the Applicants, there was no reason, and the Delegate provided no

reason, why the principled approach that applied in 1994 should not equally be applicable in the third review, with the result that interest relief should have been granted in full. In the Applicants' view, had the CRA not prioritized the criminal proceedings and reneged on a legal and concluded settlement, this matter would have ended in 1994, they would have had a complete waiver of interest up to December 31, 1989, and they would owe no interest after November 1994.

[42] According to the Applicants, the Delegate took a rigid and formulaic approach to the fairness provisions in considering interest owing from 1990 until the Tax Court decision in 2014. The Applicants maintain that the Delegate restricted his consideration of relief to a determination of whether the accrual of interest was beyond the Applicants' control and made no mention of the overarching principles of fairness underlying subsection 220(3.1). In the Applicants' view, the Delegate failed to consider the issues raised by the Applicants and, in effect, rubberstamped the earlier review decisions.

[43] The Applicants say the Delegate blamed them for being innocent victims of a large-scale, sophisticated fraud and for the large amounts owing from which they sought relief, and he also failed to recognize that they did not know of the amounts owing. According to the Applicants, nowhere did the Delegate engage in a consideration of the overall principles of fairness in light of the particular history of this case, including the fact that interest accrued between 1984 and 1990 without knowing they owed anything to the CRA.

[44] According to the Applicants, fairness requires that all of them be granted the same relief, regardless of whether they applied before or after the amendment to subsection 220(3.1), because all Applicants were investors in OCGC, all claimed deductions and losses on their income tax returns in similar or the same tax periods, and all were victims of fraud and subject to the same type of delays caused through no fault of their own.

[45] The Applicants claim relief should have been granted because they should be treated the same as other similarly situated taxpayers, namely the so-called KPMG Untouchables. They note that in this case they were innocent victims of fraud, while the KPMG Untouchables knowingly participated in a suspect offshore tax scheme in the Isle of Man. The Applicants submit that a hallmark of fairness is that all similarly situated persons be treated equally in considering whether to grant interest relief under subsection 220(3.1), pointing to the KPMG Untouchables case and the GLGI cases where taxpayers were granted full interest relief despite their culpability in participating in the tax schemes. The decision is silent on this issue, and for the Applicants this indicates that the Delegate gave no proper consideration to this submission.

V. The Respondents' Submissions

[46] The Respondents maintain that the Delegate duly considered each of the grounds raised in the Applicants' submissions. In the Respondents' view, the Applicants have advanced no evidence or tenable argument that the Delegate ignored or disregarded their submissions. The 2017 minutes of settlements highlight that delay was the first and predominant consideration for a third review.

[47] It was reasonable, the Respondents say, for the Delegate to review the first and second level review decisions since the Applicants' counsel provided copies of them to the Delegate and made numerous submissions on how the reasoning contained in the earlier decisions was faulty. The Respondent notes that the Delegate considered the reneging of the 1994 settlement, and he reasonably concluded sufficient interest relief had already been given in the first level review with respect to the 1994 settlement.

[48] The Respondent further notes that a similar offer to settle the appeals on the basis of interest relief was made in 1996, but the Applicants chose not to accept it. At that time, the Respondent also notes that the Applicants had been provided with a balance statement indicating what amount would be owed if they accepted the proposed settlement. According to the Respondents, nothing prevented the Applicants from paying the balance owed at any time after the assessments.

[49] In the Respondents' view, the Delegate's reasons were grounded by the purpose of subsection 220(3.1), which is to alleviate default beyond a taxpayer's control. The Respondents say the Delegate's analysis was supported by the facts and therefore reasonable.

[50] As to the intercept letters, according to the Respondents these letters put the Applicants on notice that something was amiss at OCGC and their decision to continue investing with OCGC was not the fault of the CRA.

[51] According to the Respondents, the Delegate did not conclude that the Applicants only had themselves to blame. Rather, he concluded there were no circumstances beyond their control which prevented them from complying with their obligations. In saying this, the Respondents claim the Delegate did not restrain or fetter the discretion afforded under subsection 220(3.1).

[52] The Respondents say the Delegate could not ignore the provisions of the *ITA*. According to the Respondents, prior to 2005 the Minister could grant interest relief for unlimited time periods under subsection 220(3.1). According to the Respondents, subsection 220(3.1) now permits the Minister to exercise her discretion only to cancel or waive accrued interest in any taxation year ending within ten years before the taxpayer's request for relief, regardless of when the underlying tax debt arose.

[53] The Respondents also say the treatment of other taxpayers is legally irrelevant when determining the merits of the case brought by the current taxpayer. In the Respondents' view, the Applicants have failed to show how the KPMG Untouchables or the GLGI donors are related to the Applicants. These applications concern interest being cancelled and the Delegate reasonably determined that there was little weight to be given to a comparison with settlements from other tax schemes.

VI. Analysis

[54] I agree with the Respondents that the Delegate considered all the grounds submitted by the Applicants. It was reasonable for the Delegate to refer back to the earlier reviews, and just because he referred to those reviews does not mean he did not conduct a *de novo* review.

[55] I also agree with the Respondents that the sheer quantity of the delays did not automatically warrant interest relief. In my view, the Delegate conducted a holistic review of all the delays and other considerations raised by the Applicants. The Delegate reasonably considered the length of the delays and recognized that certain time periods were not appropriate for interest relief and others had already been accounted for in the earlier reviews. All in all, I find the Delegate's analysis of the Applicants' requests for further interest relief was reasonable.

[56] It also was reasonable for the Delegate to find that, since interest relief had already been provided in respect of the reneged 1994 settlement, no further relief stemming from that settlement should be granted in the third review.

[57] I agree with the Respondents that there were no circumstances beyond the Applicants' control which prevented them with complying with their obligations to pay tax. Had the Applicants accepted the offer in the intercept letters for their returns to be assessed without the flow-through tax credits and other deductions, they would have received notices of assessment they could have objected to on the basis that the assessments did not include credits and deductions they genuinely believed to be valid. If they paid the taxes owing as stated in the assessments, no interest would have accumulated. If the objections were ultimately upheld and the flow-through tax credits and deductions found to be valid, the Applicants could have been retroactively granted the credits and deductions with interest, thereby making them whole.

[58] As to creating equality amongst the Applicants, in my view the Delegate appropriately denied interest relief beyond 10 years for the 2014 Applicants. Under subsection 220(3.1), the

Minister no longer has discretion to cancel or waive interest beyond 10 years before a taxpayer's request for relief, regardless of when the underlying tax debt arose (*Bozzer v Canada*, 2011 FCA 186 at paras 12 and 58 to 59).

[59] Lastly, I agree with the Respondents that comparisons to the KPMG Untouchables or the GLGI donors are neither factually relevant nor legally permissible. In *Ludco Enterprises Ltd v Canada*, [1994] FCJ No 2007, the Federal Court of Appeal held that evidence about other taxpayers who had benefited from an interest deduction for loans obtained in circumstances identical to those of the appellants was inadmissible:

> 30 The appellants sought to present evidence that other taxpayers had benefited from the interest deduction under s. 20(1)(c) of the Act for loans obtained in identical circumstances. They made the argument that the Minister was guilty of discrimination against them.
>
> 31 In my opinion this allegation does not give rise to the conclusions of the action and the evidence is accordingly not admissible. In *Hokhold v The Queen*, 93 D.T.C. 5339, a case which specifically involved a motion to dismiss allegations, Rothstein J. said in this regard (at 5344):
>
> > The plaintiff's concern seems to be that other taxpayers were treated differently than he was by Revenue Canada. Whatever the reasons for Revenue Canada's action in respect of other taxpayers, they are not relevant to the plaintiff's situation.
>
> 32 In the same case, after citing *Ford Motor Company of Canada v. M.N.R.* (1994), 85 F.T.R. 116, which applied the same rule in a similar case, he added (at D.T.C. 5344):
>
> > While it is understandable that the plaintiff considers it unfair that Revenue Canada appears to have treated taxpayers in similar circumstances differently, that cannot be the basis for the plaintiff's appeal. The plaintiff is either entitled on a reasonable interpretation of the words of

> subparagraph 110(1) (f)(iii) of the Income Tax Act, to the social assistance deduction or he is not. I have found that it is clear that he is not.

VII. Conclusion

[60] The Delegate's decision in this case was reasonable. The reasons for the decision are intelligible, transparent, and justifiable, and the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicants' applications for judicial review are, therefore, dismissed.

[61] At the hearing of this matter, the Respondents indicated they were not seeking costs. Accordingly, there will be no order as to costs.

JUDGMENT IN T-943-18 AND T-982-18

THIS COURT'S JUDGMENT is that: the applications for judicial review are dismissed; a copy of this judgment shall be placed in each of court file T-943-18 and T-982-18; and there is no order as to costs.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-943-18
STYLE OF CAUSE:	VINCENT BAILINI, RANDALL BARRS, GEOFFREY BELCHETZ, ROBERT BERGER, STEVEN BLACK, CLEMENTE CABILLAN, WAYNE CARMAN, DAVID DE SILVA, JOYCE DOYLE, WILLIAM EASTON, TIMOTHY FELTIS, SANDRA GERTNER, JOSEPH GOTTDENKER, ROBERT HILL, NIZAR KANJI, ANASTASSIOS KARANTONIS, FRANK KOSAR, HENRY KUTZKO, FRANK MAGNUS, MARIO MASELLIS, ALAN MCFADYEN, THE ESTATE OF THE LATE DAVID MCINNIS, STUART MITCHELL, FRANN RASMINSKY-MITCHELL, JAMES RATHBUN, JOHN NKANSAH, NARH OMABOE, GAIL PALERMO, IAN BRUCE ROBINSON, LOUIS SCHEINMAN, HOWARD SIDSWORTH, MICHAEL SLOCOMBE, MICHAEL SPIVAK, MALCOLM STAFFORD, ROBERT TAUTKUS, DAVID THOMAS, GARY THORNTON, JOSEPH TRAGER, EDWARD VALLEAU, WALTER VOGL and WILLIAM WILKINSON v HER MAJESTY THE QUEEN (as represented by the Minister of National Revenue in her capacity as Minister responsible for the Income Tax Act), CANADA REVENUE AGENCY and THE ATTORNEY GENERAL OF CANADA
AND DOCKET:	T-982-18
STYLE OF CAUSE:	LORENZO BRANDIMARTE v HER MAJESTY THE QUEEN (as represented by the Minister of National Revenue in her capacity as Minister responsible for the Income Tax Act), CANADA REVENUE AGENCY and THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 26, 2019
JUDGMENT AND REASONS:	BOSWELL J.

DATED: AUGUST 1, 2019

APPEARANCES:

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Samantha Hurst Andrea Jackett	FOR THE RESPONDENTS

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