Federal Court  Cour fédérale

Date: 20200310

Docket: T-1601-18

Citation: 2020 FC 356

Ottawa, Ontario, March 10, 2020

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SUKHWINDER GREWAL

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns a decision of the Minister of National Revenue (the "Minister") to assess gross negligence penalties against the Applicant under subsection 163(2) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the "*Act*").

[2] In 2014, the Applicant initiated an application to the Voluntary Disclosure Program (the "VDP") of the Canada Revenue Agency (the "CRA"). The policy of the CRA and the Minister

is that when an application to the VDP is accepted, the Minister may waive penalties, with respect to the disclosure made by the taxpayer.

[3] The CRA accepted the Applicant's application to the VDP in 2015, and the Minister reassessed the Applicant in accordance with this acceptance. However in 2018, following an audit, the Minister assessed the Applicant for penalties under subsection 163(2) of the *Act*, on income that the Applicant argues had been disclosed under the VDP and conversely the Respondent argues had not been disclosed.

[4] For the reasons below, I find that the Minister's decision to impose gross negligence penalties on the Applicant was reasonable. This application for judicial review is dismissed with costs.

II. **Facts**

A. *The Voluntary Disclosure Program*

[5] The VDP promotes compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct previous inaccuracies or omissions in their tax returns. Taxpayers who make a valid disclosure and are accepted into the program will be required to pay the taxes or charges plus interest, but potentially without penalty or prosecution that the taxpayer would otherwise be subject to under the *Act*.

[6] Information Circular IC00-1R4 (the "Information Circular") is applicable to the case at bar and was in effect at the time the Applicant made a disclosure under the VDP. The

Information Circular is a CRA document providing information on the discretionary authority of the Minister to grant relief to taxpayers, including relief from penalties in the case of a valid disclosure under the VDP. Pursuant to the Information Circular, the Minister will consider VDP requests to cancel or waive penalties and avoid prosecution if the following four conditions are met:

a) The disclosure is voluntary;

b) The disclosure is complete;

c) The disclosure involves the application, or potential application, of a penalty; and

d) The disclosure includes information that is at least one year past due, or less than one year past due where the disclosure is to correct a previously filed return.

B. *The Applicant and Timeline of Events*

[7] On April 4, 2014, Mr. Sukhwinder Grewal (the "Applicant") initiated an application to the Minister for relief under the VDP with a no-name voluntary disclosure for his 2004 through 2013 taxation years. The Applicant indicated that the disclosure was "expected to primarily involve T1 Adjustments setting out previously unreported Canadian business income". On April 14, 2014, the Applicant's counsel identified the Applicant by name.

[8] By letter dated June 14, 2014, a VDP officer informed the Applicant that completed and signed T1 Income Tax Returns or Adjustment Requests would be required to complete a review of the disclosure. By letter dated September 9, 2014, the Applicant requested an extension on the basis that the Applicant did not have complete information because his former business partners were unwilling to share information. By letter dated September 15, 2014, a VDP officer

granted the extension and restated the request for T1 Adjustment Requests for tax years 2006 to 2013 and T1135 Information Returns for tax years 2006 to 2013.

[9] On October 24, 2014, the Applicant provided the CRA with a submission including a letter dated October 24, 2014 (the "Letter") and a spreadsheet detailing T1 adjustments to the Applicant's income for the years 2004 to 2013 (the "Spreadsheet"). The Letter included information about the Applicant's business dealings, his interests in Panamanian and Canadian corporations, and dealings between the corporations in which the Applicant had interests. The Letter referenced a number of loans made between Panamanian corporations in which the Applicant held shares, and various individuals and entities. Some of the loan amounts were included as income, but other than items listed on the Spreadsheet, the Applicant did not disclose any benefits that he received, either directly or indirectly, in respect of the loans.

[10] By letter dated June 18, 2015, a VDP officer requested further information from the Applicant regarding T1 adjustments and T1 returns. By letter dated July 17, 2015, the Applicant provided the requested materials.

[11] By letter dated July 31, 2015 (the "VDP Decision Letter"), the Minister notified the Applicant that his disclosure under the VDP had been accepted.

[12] The Applicant was reassessed for his 2006 to 2012 taxation years and assessed for his 2013 taxation year (the "Initial Reassessments"). On July 26, 2016, the Minister issued Notices of Reassessment. The Minister did not assess any penalties against the Initial Reassessments.

[13] After the acceptance to the VDP, the Applicant was audited for his 2007 to 2013 taxation years in conjunction with an audit of Solaris Pharmaceuticals Inc. ("Solaris"), of which the Applicant was the Chief Financial Officer ("CFO"). Solaris is in the business of sales of pharmaceutical products, i.e. prescribed drugs, and the sales are primarily derived from online sales to individual customers in the United States, and the products are shipped by mail. The Applicant is an indirect shareholder of Solaris. The Respondent submits that the audit uncovered $670,784.13, $647,575.35, $1,994,844.51, $684,327.15, $3,993,090.94, $6,802,133.48, and $242,241.76 of additional income for the Applicant's respective 2007, 2008, 2009, 2010, 2011, 2012, and 2013 taxation years. The Respondent takes the position that these amounts had not been disclosed as part of the Applicant's disclosure to the VDP.

[14] By letter dated February 26, 2018, the Minister proposed to further reassess the Applicant for the 2007 to 2013 taxation years, and to impose gross negligence penalties on the further adjustments under subsection 163(2) of the Act, on the basis that the Applicant knowingly, or under circumstances amounting to gross negligence, made false statements in his updated tax returns for those years.

[15] By letter dated April 5, 2018, the Applicant responded to the Minister, disagreeing with the imposition of penalties and requested a second-level review of the decision to assess penalties on the basis that the decision to assess penalties was a rejection of a voluntary disclosure made by the Applicant.

[16] By letter dated August 2, 2018, the Minister confirmed her decision to impose gross negligence penalties on the Applicant (the "Penalty Decision") and denied the Applicant's request for a second administrative review of the Penalty Decision. The Minister informed the Applicant that the audit of his Income Tax Returns for 2007 to 2013 was complete and penalties under subsection 163(2) of the *Act* would be imposed on the amounts that the Minister had found to be "undisclosed" previously. The Minister wrote that a second-level review was not a recourse for an audit case and that the Applicant had to file a Notice of Objection if he disagreed with the audit adjustments.

[17] On August 22, the Minister issued Notices of Reassessment with respect to the Applicant's 2007 to 2013 taxation years (the "Penalty Reassessments"). Under the Penalty Reassessments, the Minister assessed the Applicant with gross negligence penalties under subsection 163(2) of the *Act* totaling $3,341,383.67 for the 2007 to 2013 taxation years. The gross negligence penalties were applied only to the additional taxable benefits reassessed under the Penalty Reassessments, and not to the additional taxable income that the Applicant had reported on his adjusted T1 forms through the VDP application.

[18] The additional income assessed to the Applicant under the Penalty Reassessments was "disclosed" in the Applicant's application to the VDP in the broader sense of the word, but was not reported on his adjusted T1 forms as part of his application. The Applicant had characterized these amounts as non-taxable loans. The Minister took the position that these amounts represented taxable benefits under subsection 246(1) of the *Act*.

[19] On August 31, 2018, the Applicant filed an application to this Court for judicial review of the Penalty Decision.

[20] On November 20, 2018, the Applicant filed a Notice of Objection with the CRA objecting to the Penalty Reassessments under subsection 163(2) of the *Act*.

III. **Statutory Provisions**

[21] Subsection 220(3.1) of the *Act* gives the Minister a broad discretion to waive or cancel all or any portion of any penalty or interest otherwise payable under the *Act*. It reads as follows:

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
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.	**220(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.

[22] Subsection 163(2) of the *Act* imposes penalties on a taxpayer for gross negligence. It reads partly as follows:

False statements or omissions	**Faux énoncés ou omissions**
163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of $100 and 50% of the total of	**163(2)** Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, un formulaire, un certificat, un état ou une réponse (appelé « déclaration » au présent article) rempli, produit ou présenté, selon le cas, pour une année d'imposition pour l'application de la présente loi, ou y participe, y consent ou y acquiesce est passible d'une pénalité égale, sans être inférieure à 100 $, à 50 % du total des montants suivants :
[…]	[…]

[23] Subsection 246(1) of the *Act* provides that where a person confers a benefit on a taxpayer, the amount of the benefit must be included in the income of the taxpayer. It reads as follows:

Benefit conferred on a person	**Avantage conféré à un contribuable**
246 (1) Where at any time a person confers a benefit, either directly or indirectly, by any means whatever, on a taxpayer, the amount of the benefit shall, to the extent that it is not otherwise included in the taxpayer's income or taxable income earned in Canada under Part I and would be included in the taxpayer's income if the amount of the benefit were a payment made directly by the person to the taxpayer and if the taxpayer were resident in Canada, be	**246 (1)** La valeur de l'avantage qu'une personne confère à un moment donné, directement ou indirectement, de quelque manière que ce soit à un contribuable doit, dans la mesure où elle n'est pas par ailleurs incluse dans le calcul du revenu ou du revenu imposable gagné au Canada du contribuable en vertu de la partie I et dans la mesure où elle y serait incluse s'il s'agissait d'un paiement que cette personne avait fait directement au contribuable et si le contribuable résidait au Canada, être :
(a) included in computing the taxpayer's income or taxable income earned in Canada under Part I for the taxation year that includes that time; or	**a)** soit incluse dans le calcul du revenu ou du revenu imposable gagné au Canada, selon le cas, du contribuable en vertu de la partie I pour l'année d'imposition qui

(b) where the taxpayer is a non-resident person, deemed for the purposes of Part XIII to be a payment made at that time to the taxpayer in respect of property, services or otherwise, depending on the nature of the benefit.	comprend ce moment; **b)** soit, si le contribuable ne réside pas au Canada, considérée, pour l'application de la partie XIII, comme un paiement fait à celui-ci à ce moment au titre de bien ou de services ou à un autre titre, selon la nature de l'avantage.

[24] The VDP is outlined in the Information Circular. The most relevant provisions are as follows:

> ***Principles of the VDP***
>
> 8. The VDP promotes compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct previous omissions in their dealings with the CRA. Taxpayers who make a valid disclosure will have to pay the taxes or charges plus interest, without penalty or prosecution that the taxpayer would otherwise be subject to under the acts noted above.
>
> 9. The VDP is not intended to serve as a vehicle for taxpayers to intentionally avoid their legal obligations under the acts administered by the CRA.
>
> […]
>
> ***Relief Provided Under the VDP***
>
> **Penalty Relief**
>
> 11. If the CRA accepts a disclosure as having met the conditions set out in this policy, it will be considered a valid disclosure and the taxpayer will not be charged penalties or prosecuted with respect to the disclosure.
>
> […]
>
> ***Conditions of a Valid Disclosure***
>
> 31. A disclosure must meet the following four conditions in order to qualify as a valid disclosure:
>
> […]

ii) Complete

35. The taxpayer must provide full and accurate facts and documentation for all taxation years or reporting periods where there was previously inaccurate, incomplete or unreported information relating to any and all tax accounts with which the taxpayer is associated. While the disclosure is being evaluated by the CRA, the VDP officer may request additional specific documentation in order to verify certain details such as revenue amounts being disclosed, tax credits being applied for, or expenses being claimed. The taxpayer must comply with such requests within the stipulated timeframes (see paragraphs 50 to 54), and provide sufficient detail to allow all of the facts of the case to be verified. Additional information on requirements for maintaining books and records can be found in the current version of IC 78-10, Books and Records Retention/ Destruction, for Income Tax, and for GST/HST, in GST/HST Memorandum 15-1, General Requirements for Books and Records (Revised June 2005), for Excise Duties, in Excise Duties Memorandum 9.1.1, General Requirements for Books and Records, and for Excise Taxes, in Excise Taxes and Special Levies Memorandum X6-1 - Books and Records.

36. Due to the nature of a particular disclosure, referrals to other programs within the CRA may be considered necessary in order to fully analyze the disclosure.

37. While the information provided in a disclosure must be complete, the disclosure may not be disqualified simply because it contains minor errors or omissions. Each submission will be reviewed on it's own merits.

IV. **Issues and Standard of Review**

[25] The issue that arises on this application for judicial review is whether the Minister acted unreasonably in rendering the Penalty Decision, and in particular, whether:

i. The Minister failed to observe the duty of procedural fairness in making the decision to assess penalties; and

ii. The Minister is estopped from rendering and enforcing the Penalty Decision.

[26] Prior the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the standard of review with respect to discretionary decisions made under subsection 220(3.1) of the *Act* was the reasonableness standard (*Easton v Canada (Revenue Agency)*, 2017 FC 113 (CanLII) at para 41; *Worsfold v Canada (National Revenue)*, 2012 FC 644 (CanLII) at para 104). There is no need to depart from the standard of review followed in previous jurisprudence, as the application of the *Vavilov* framework results in the same standard of review: reasonableness.

[27] As noted by the majority in *Vavilov*, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker," (*Vavilov* at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (*Vavilov* at para 100).

[28] Where there are questions of law that arise with respect to the decision-making process, such questions are reviewable on a standard of correctness: *Williams v Canada (National Revenue)*, 2011 FC 766 (CanLII) at para 13; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 (CanLII) at para 53. The same applies post-*Vavilov*.

[29] Given the circumstances in this matter and the Supreme Court's instructions in *Vavilov* at paragraph 144, this Court has found that it was not necessary to ask the parties to make additional submissions for the standard of review.

V. **Analysis**

A. *Reasonableness and Procedural Fairness*

[30] The Applicant argues that the Minister owed a duty to procedural fairness to the Applicant, as the Applicant had legitimate expectations that he would not be assessed with penalties after his application to the VDP was accepted. The Applicant submits that he had legitimate expectations that his disclosure was complete with the VDP Decision Letter. The Applicant submits that the Information Circular is a public communication to taxpayers that where an application to the VDP is accepted, the taxpayer will not be assessed with penalties.

[31] The Applicant also takes the position that the doctrine of *functus officio* prevents the Minister, a public authority, from revisiting a past decision and asserts this is a breach of the duty of procedural fairness. However, in my view, the doctrine of *functus officio* does not apply in this case.

[32] The Applicant argues that this doctrine prevents the Minister from "chang[ing] its mind" with respect to whether the Applicant's application to the VDP was complete. However, it would be a mischaracterization to assert that the audit is a "re-visitation of a past decision" simply by linkage that the audit was performed on a taxpayer who had a decision rendered on his VDP application. As the Respondent notes, the Minister is not barred from undertaking audit procedures even after the acceptance of the VDP, which is what transpired in the case at bar. This fact was also communicated to the Applicant in the VDP Decision Letter:

> Our acceptance of the disclosure covers only the years specified above. Please note that the VDP has not verified the accuracy of

> the information you have provided in this disclosure and the Canada Revenue Agency reserves the right to open these years for audit or verification in the future.

[33] The penalties flowing from the Penalty Reassessment occurred when the CRA subsequently exercised its right to audit the Applicant, and determined that the Applicant was in receipt of taxable income in the form of benefits conferred on him, which had been reported by the Applicant as a non-taxable loan in his VDP application. If, as he claims, the Applicant held legitimate expectations that penalties would not be assessed on taxable income disclosed through the VDP application upon acceptance, it seems disingenuous for the Applicant to have included taxable benefits as non-taxable loans in his VDP to avoid penalty on those amounts.

[34] The Respondent cites *Ludco Enterprises Ltd v Canada*, [1993] F.C.J. No. 1299 [*Ludco*] for the proposition that the Minister of National Revenue is not bound by prior determinations that she may have made on a taxpayer. In *Ludco*, the Minister determined, on a reassessment, that interest expenses claimed by the plaintiffs were not deductible. The plaintiffs alleged that representations made by the Minister during an audit on earlier taxation years had led them to believe they could deduct similar interest expenses in future years, and also argued that the Minister did not follow his own policy that was known and in force during the period in question (*Ludco* at paras 2-4). Since the Minister had communicated the future possibility of audit or verification on the accepted VDP application in the case at bar, the Court's decision in *Ludco* only bolsters the finding that the Minister is not bound by prior determinations, i.e. not barred from undertaking audit procedures.

[35] Furthermore, the Minister did not ignore the prior decision to grant relief on the VDP when assessing penalties from the audit. The Minister did not revoke the decision to waive penalties that would have normally applied on the Applicant's income, as disclosed under the VDP. As a result, the Minister's decision to issue penalties was not unreasonable.

[36] The Applicant argues that the Minister's decision to assess taxpayers with penalties after accepting applications to the VDP defeats the VDP's public policy rationale. The Applicant claims this would eliminate the incentive for taxpayers to make a disclosure and put a "chill" on the program since they could still be assessed with penalties after an acceptance to the VDP. Additionally, the Applicant submits that he did exercise a degree of care, and that he provided all the information he had at the time of the VDP application. The Applicant submits it is unreasonable to use the information provided by the Applicant in his VDP application to penalize him for having provided disclosure.

[37] However, I am not persuaded by the Applicant's arguments. If taxpayers could re-characterize taxable income or benefits as non-taxable benefits in their applications to the VDP and thereby escape penalties from future audits for having "disclosed" the amounts in this application, it would be contrary to the purpose of the VDP and its public policy rationale, which is meant to promote compliance with Canada's tax laws by encouraging taxpayers to voluntarily come forward and correct previous omissions in their dealings with the CRA. Contrary to the Applicant's submissions, the potential assessment of penalties even after an acceptance to the VDP will encourage taxpayers to be more diligent in their VDP applications, and to ensure that

they exercise a high degree of care when submitting their VDP applications to ensure completeness and accuracy.

[38] I agree with the Respondent's position that to interpret the Information Circular as promising protection from penalties even on the non-taxable amounts disclosed by the taxpayer would put taxpayers applying to the VDP in a better position than the ordinary taxpayers. Moreover, the Applicant is an experienced professional accountant, with experience at KPMG, one of the four major accounting firms in Canada. He is an experienced businessman, had interests in several businesses, and was the CFO of Solaris. Although the Applicant argues that section 246(1) is an "obscure provision" in Part 16 of the *Act* and that not all accountants are well-versed with the entirety of the *Act*, the audit papers further note that the Applicant and Solaris consulted several tax professionals throughout the audit period about offshore businesses and non-resident companies. Given his background, the Applicant was knowledgeable about tax matters, and it raises suspicions as to whether the Applicant may have been attempting to avoid penalties on his loans by characterizing them as non-taxable, but including them in his VDP application.

[39] The Respondent argues that as seen in the VDP Decision Letter, the Minister decided to waive the penalties that would have *normally applied* on the disclosed information. The content of the decision, when read in its ordinary sense, appears to be referring to the T1 adjustments and T1 returns, which are the Applicant's unreported income disclosed in the VDP. I agree with the Respondent's position that no penalties could be said to have "normally applied" to non-taxable

information or amounts disclosed in the VDP application, as they would have no tax consequences.

B. *Promissory Estoppel*

[40] To establish promissory estoppel, one must show: (1) a promise that the promisor will conduct itself in a certain way in given circumstances; (2) reliance on that promise by the promisee; and (3) action on the promise to the promisee's detriment and/or the promisor's benefit (*Wong v Canada (National Revenue)*, 2007 FC 628 (CanLII) [*Wong*] at para 35; *Aurchem Exploration Ltd v Canada* (1992), 1992 CanLII 8524 (FC); *W&R Plumbing and Heating Ltd v R*, [1986] 2 FC 195 (TD)).

[41] The Applicant argues that the Minister was estopped from rendering the Penalty Decision, given the Minister's public promises and representations regarding the VDP (through the Information Circular) that the Applicant would not be assessed penalties once his application to the VDP was accepted. The Applicant argues that he relied on these promises and representations to his detriment. Additionally, the Applicant submits that the CRA may audit, but not impose penalties with regard to the period covered in the VDP Decision Letter, since it has already been "accepted" into the VDP, and thus shielded from future penalties.

[42] The Respondent argues that the Minister was not estopped from deciding to assess penalties because the Minister never represented or promised to the Applicant that the acceptance of a disclosure application under the VDP constituted a blanket protection from any and all penalties that might be applicable to "the taxation years and issues covered by the

disclosure". The Respondent adds that the VDP Decision Letter clearly discusses "T1 adjustments" and "T1135 information returns" in relation to the years specified. It does not claim to be a blanket statement on all amounts disclosed for those years. The Respondent notes that even if the Applicant believed there was such a promise, he did not act on the promise to his detriment.

[43] I agree with the Respondent's position on this issue. The issue must be taken with a view to the totality of the provisions. The discussion of "amounts" in the Information Circular refers to taxable income. This is supported by section 220(3.1) of the *Act*, which states that penalties will be waived on amounts otherwise payable. This infers that penalties are only applicable on taxable income, and on amounts that would have been disclosed in T1 adjustments and T1135 information returns.

[44] The Applicant relies on *Wong* at paragraphs 34 to 41 for the proposition that the lack of CRA warnings to the taxpayer that his disclosure may not be considered voluntary, together with the relevant information circular, constituted a promise to the taxpayer that his disclosure to the VDP would be accepted. In *Wong*, the disclosure was found to be made to Mr. Wong's detriment. However, this case can be distinguished from the case at bar on its facts.

[45] In *Wong*, the taxpayer had been under an audit for the year 2005, and had been told that although he did not qualify for the VDP for 2005, disclosure for the years prior to 2005 would be "okay" (*Wong* at paras 12-13). Moreover, when the applicant informed the CRA that he wanted to make a voluntary disclosure, he was given no warning that voluntariness might be an issue,

although the CRA officials were aware of the on-going 2005 audit (*Wong* at para 14). Having received no indication of issues relating to his qualification to the VDP, Mr. Wong proceeded to disclose unreported income—to his detriment—as he later found out that he did not qualify for the VDP.

[46] Unlike in *Wong*, in the case at bar, the Applicant was not given implicit or explicit promises by the CRA that his application would be accepted into the VDP. The Applicant understood that if his application was accepted, penalties would be waived. However, I find that the Applicant had not relied on any promise of waived penalties at the time of disclosure, since he would not have known whether his application would be accepted. As the Information Circular states, it was open to the Minister to reject the disclosure and still use the Applicant's disclosed information to assess him for tax and penalties.

[47] The Applicant relies on *Karia v Canada (Minister of National Revenue)*, 2005 FC 639 (CanLII) [*Karia*] for the proposition that CRA information circulars, combined with actions or representations by the CRA, constitute binding promises that prevent the CRA or the Minister from subsequently acting in a contrary manner, under the doctrine of promissory estoppel. However, similarly to *Wong*, *Karia* can be distinguished from the case at bar on its facts.

[48] In *Karia*, after the applicants had advised the Canada Customs and Revenue Agency ("CCRA") of being a search target by an unidentified police force, the CCRA wrote to the applicants stating, "based on the circumstances described we consider that the disclosure would be valid as presented," (*Karia* at para 9). The Court found that the CCRA's letter, read together

with the information circular, resulted in an invitation to proceed with disclosure, and created an assumption that the further disclosures would be regarded as voluntary. The applicants proceeded on this promise to their detriment (*Karia* at para 9).

[49] However, in the case at bar, the CRA made no such statements or promises in its earlier correspondence with the Applicant before he made any disclosures.

VI. **Conclusion**

[50] The Minister did not breach procedural fairness in making the decision to assess penalties, and the Minister was not estopped from rendering and enforcing the Penalty Decision. The Minister did not act unreasonably in rendering the Penalty Decision.

[51] This application for judicial review is dismissed with costs to the Respondent.

JUDGMENT in T-1601-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs of $6,970.90 are awarded to the Respondent.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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