

Federal Court



Cour fédérale

Date: 20240628

Docket: T-2269-23

Citation: 2024 FC 1012

Toronto, Ontario, June 28, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

THOMAS ALBERT GOLDTHORPE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Mr. Goldthorpe, wished to apply for a GST/HST New Housing Rebate for Owner-Built Homes [the Rebate]. In order to qualify for the Rebate, section 256 of the *Excise Tax Act*, RSC 1985, c E-15, requires that applications be received by the Canada Revenue Agency [CRA] within two years of the date on which the home construction is substantially completed. Mr. Goldthorpe filed his Rebate application roughly two months after this deadline

had passed. As a result, a decision-maker rejected the application. A first-level review denied the Applicant an extension of time to file the Rebate. A second-level review was then conducted by a new decision-maker [the Second Reviewer], who came to the same conclusion. The Applicant seeks judicial review of the decision of the Second Reviewer.

[2] While I sympathize with the Applicant and recognize the challenges that he endured, I have concluded that the decision of the Second Reviewer was reasonable. As such, I must dismiss this application for judicial review. My reasons follow.

II. PRELIMINARY ISSUE – STYLE OF CAUSE

[3] At the hearing of this matter, the Respondent made a preliminary submission that the Style of Cause improperly listed the Respondent as the Minister of National Revenue when it should, pursuant to the *Federal Courts Rules*, SOR/98-106, be the Attorney General of Canada. I agree with the Respondent, and the Style of Cause is amended accordingly.

III. BACKGROUND

A. *Facts*

[4] As noted, Mr. Goldthorpe applied for a GST/HST New Housing Rebate for Owner-Built Homes, based on his 2019 home renovation [the Rebate Application]. The CRA determined that his “base date” for his home renovation, the date that the renovation was substantially complete, was June 14, 2019. As such, the Rebate Application had to be received within two years of that date – June 14, 2021.

[5] The CRA received the Applicant's Rebate Application on August 18, 2021. In a letter dated February 11, 2022, the Rebate Application was rejected for late filing. The Applicant submitted a written objection, based on his assertion that the proper substantial completion date was October 18, 2019 – which would have made his filing deadline October 18, 2021. The Minister replied, in a letter dated August 16, 2022, that the proper substantial completion date was in fact June 14, 2019, as more than 90% of the work on the house itself (excluding the outdoor spaces) had been completed by that point. The Applicant submits that the Rebate Application was determined to be valid in all respects except for the deadline issue, and would have been valid if extraordinary circumstances were present.

[6] On May 8, 2023, the Applicant submitted a written request for an extension of time for submitting the Rebate Application. The basis was that a) he had misunderstood the rules around the substantial completion date and thought the base date was October 2019, and so the Rebate Application deadline was October 2021; and b) that COVID-19 had delayed the state and completion of his Rebate Application. Mr. Goldthorpe submitted that the impact of the pandemic on him and his family constituted extraordinary circumstances, and that the Minister should exercise discretion to permit the late filed Rebate Application, in accordance with its guidelines (excerpted in sections below).

[7] The Applicant submits that the impact of COVID-19 on him constituted extraordinary circumstances for the following reasons:

- Mr. Goldthorpe was the primary caregiver for three young children, isolated at home during the lockdowns. The older two (ages 3 and 6 at the start of the pandemic) had

virtual school and then needed to be occupied for the remainder of the day. The youngest (9 months at the time) required constant care.

- Mr. Goldthorpe was, at the same time, working 60-hour weeks in addition to caring for his children.
- COVID-19 delayed Mr. Goldthorpe's ability to collect the 134 separate receipts needed to file the Rebate Application, as his wife had thrown out their original copies. The collation needed to be done virtually, due to the pandemic.
- Mr. Goldthorpe's entire family contracted COVID-19 at different times throughout June and July of 2021.

[8] By letter dated June 19 2023, the Minister denied the Applicant's request for an extension of time, on the basis that the reasons provided would not have reasonably prevented Mr. Goldthorpe from filing his Rebate Application on time, and so it would be inappropriate to grant an extension of time.

[9] By letter dated July 7, 2023, the Applicant requested a second review of his extension of time request. He submitted that his delay in filing the Rebate Application was due to COVID-19, which constituted extraordinary circumstances as it, "drove serious illness, emotional, and mental distress" for himself and his family.

[10] On July 18, 2023, Sandy Stewart, who was assigned to conduct the second review called Mr. Goldthorpe to request documents in support of his asserted serious mental and emotional distress and/or medical complications associated with the pandemic: i.e., prescriptions for

medications; or invoices, letters, or reports from counsellors and/or doctors. The Applicant did not provide any medical documents but instead, provided a letter from his parents.

B. *Decision under Review*

[11] By letter dated September 28, 2023, the Minister informed the Applicant that the reasons he had provided to explain his delay in filing the Rebate Application did not meet the definition of extraordinary circumstances and so it would not be appropriate to allow him an extension of time.

[12] In addition to the decision letter sent to the Applicant, the Second Reviewer prepared detailed notes in a “Fact Sheet” that also form a part of the decision-maker’s reasons for decision. In the Fact Sheet, the Second Reviewer:

- Summarized the basis on which the Applicant sought the extension of time;
- Outlined her conversation with the Applicant in which she asked for further documentation;
- Summarized the response received, including the letter from the Applicant’s parents; and
- Provided further reasons justifying the denial of the extension of time request.

IV. ISSUES

[13] The sole issue on judicial review is whether it was reasonable for the Minister to deny the Applicant’s request for an extension of time in which to apply for the Rebate.

V. LEGAL FRAMEWORK

[14] The following sections of the *Excise Tax Act* are relevant to the determination of this matter.

Application for rebate

256 (3) A rebate under this section in respect of a residential complex shall not be paid to an individual unless the individual files an application for the rebate on or before

(a) the day (in this subsection referred to as the “due date”) that is two years after the earliest of

(i) the day that is two years after the day on which the complex is first occupied as described in subparagraph (2)(d)(i),

(ii) the day on which ownership is transferred as described in subparagraph (2)(d)(ii), and

(iii) the day on which construction or substantial renovation of the complex is substantially completed; or

(b) any day after the due date that the Minister may allow.

Demande de remboursement

256 (3) Les remboursements prévus au présent article ne sont versés que si le particulier en fait la demande au plus tard :

a) à la date qui suit de deux ans le premier en date des jours suivants :

(i) le jour qui suit de deux ans le jour où l'immeuble est occupé pour la première fois de la manière prévue au sous-alinéa (2)d)(i),

(ii) le jour où la propriété est transférée conformément au sous-alinéa (2)d)(ii),

(iii) le jour où la construction ou les rénovations majeures de l'immeuble sont achevées en grande partie;

b) à toute date postérieure à celle prévue à l'alinéa a), fixée par le ministre.

[15] In addition to statutory authority, guidelines assist decision-makers in exercising the Ministerial discretion provided at paragraph 256(3)(b) of the *Excise Tax Act*: see the *STC Reference Guide for Taxpayer Relief Provisions: Guidelines for accepting late-filed GST/HST Rebate applications* [the Guidelines].

[16] The Guidelines state, under the “**Purpose and intent of the fairness provisions**” heading, that:

The TRP (formerly known as Fairness) permits the CRA to help clients resolve problems that arise in filing their GST/HST new housing rebate application through no fault of their own. The provisions allow for a common-sense approach to dealing with those who, because of personal misfortune or other circumstances beyond their control, are unable to comply with the requirement to file the New Housing Rebate application for owner-built homes within the two-year time limit. These provisions allow the CRA to be more flexible and responsive to a client’s circumstances when it would be unreasonable or unfair to penalize the client. The types of circumstances beyond a client’s control may be summarized as follows:

- Natural or human-made disasters such as flood, heavy storms, or fire;
- Civil disturbances or disruptions in services such as strikes or demonstrations;
- Serious illness or accident;
- Serious emotional or mental distress caused by death, serious illness, or accident in the immediate family, marital separation, or loss of employment; or
- Actions of the CRA, such as providing incorrect information, processing delays, errors or delays in providing information.

[Emphasis added.]

[17] The Guidelines stipulate that “**Requests should be complete**” and an extension of time to file requests should include the following:

- The type and nature of the extraordinary circumstances that prevented the client from complying;
- All supporting documentation such as death certificates, doctor’s statements, or insurance statements;
- Supporting details of any incorrect information given by the CRA in the form of written answers or errors in published information, or other objective evidence;
- A complete history of events including what measures were taken in order to resolve the late-filing issue; and
- The name, address, and telephone number, where the client may be reached if more information or explanation is needed.

[Emphasis added.]

[18] The Guidelines provide as follows in assessing a “**Serious illness or accident**”:

- Review the date(s) and nature of the illness or accident, and how it corresponds to the period for which the relief is requested.
- Review the client’s explanation of how the event prevented compliance. Consider whether the client could have had someone else take care of his or her obligations.
- Consider the client’s explanations of whether other personal or business obligations were impaired.
- Review any supporting documentation such as accident reports, insurance reports (accident or health), and medical or hospital reports to make sure they verify the client’s description of events.

[Emphasis added.]

[19] In relation to “**Serious emotional or mental distress**” the Guidelines provide that:

Clients can also be granted relief if compliance was delayed or prevented because they suffered serious emotional or mental distress because of a death, serious illness, or accident in the immediate family, marital separation, or loss of employment. Guidelines to consider when evaluating such circumstances can be:

- Consider the relationship of the parties involved.
- Review the date of death of the family member, marital breakdown, loss of employment, or other traumatic event and how it relates to the period for which the relief is requested.
- Review any supporting documentation to make sure it verifies the client's description of events.

These types of requests should be handled with consideration and tact.

[Emphasis added.]

[20] Finally, the Guidelines state the following in relation to “**Ignorance of the law**”:

Generally, ignorance of the law or client error should not be accepted as a proper basis for granting relief under the Taxpayers Relief Provisions. If the delay in compliance arose through neglect, carelessness, or lack of awareness on the part of the client or their representatives, the TRP request should not be granted.

For example, the fact that a client was not aware of a filing requirement does not constitute by itself an acceptable reason for granting relief.

VI. STANDARD OF REVIEW

[21] The parties agree, as do I, that the Second Reviewer's decision is to be reviewed on a standard of reasonableness.

[22] Under the reasonableness standard, a reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 15. 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.

[23] Not all errors in a decision will render it unreasonable. To establish that a decision is unreasonable, an Applicant must identify flaws that are sufficiently central or significant to the decision-maker's conclusion: *Vavilov* at para 100. Moreover, a reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings about exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

VII. ANALYSIS

[24] The Applicant argues that the COVID-19 pandemic generally, and its affect on him specifically, amounted to precisely the kind of extraordinary circumstance contemplated by paragraph 256(3)(b) of the *Excise Tax Act* and its corresponding Guidelines. He points to the impact that the pandemic had on his childcare responsibilities, particularly in light of a demanding job. He points to the mental stress and fatigue caused by the pandemic, and to the fact that his family contracted COVID-19 at different times. He further points to the difficulty he experienced in obtaining all of the receipts necessary for the Rebate Application, which he attributes, at least in part, to the pandemic. According to the Applicant, it therefore follows that

his request for an extension of time ought to have been granted, and the decision denying the request is therefore unreasonable. For the following reasons, I disagree.

[25] As the Respondent pointed out, it was within the government's discretion to create an at-large extension of time for individuals submitting rebate applications during the pandemic. In other contexts, the government did just this. However, the government did not elect to extend or eliminate deadlines in the context of the Rebate in question. It can thus be inferred that the government did not intend to automatically grant all extension of time requests for rebate applications. In the absence of an at-large extension of time, then, each request must be considered on its own merits. To do so requires the submission of evidence.

[26] Evidence forms the factual foundation upon which burdens are met and cases are established. In other cases, where a request for an extension of time to file a rebate application was predicated upon extraordinary circumstances, this Court has found it reasonable for the request to be denied on the basis that there was an insufficient evidentiary foundation to support the applicant's request: *March v Canada (Attorney General)*, 2013 FC 294 at para 22.

[27] In this case, the primary item of evidence adduced by the Applicant in support of his extension of time request was a letter from his parents. With respect, it is clear from the Guidelines that establishing the presence of "extraordinary circumstances" will generally require evidence of a more formal nature than a simple letter from a family member (and I note that the Applicant's parents are also co-owners of the property in question). The Guidelines are quite explicit on this point, referring to expected documents such as doctor's or medical reports, death

certificates, police reports, and insurance claims. Moreover, the Second Reviewer's notes make it clear that, in her conversation with the Applicant, she specifically informed him of the expected documentation. The notes state as follows:

Reason for contact: To ask for documents to support the client suffered from serious emotional and mental distress. Examples provided: prescriptions for medications; invoices/letters/reports from counsellors and/or doctors related to the serious mental/emotional stress and/or medical complications due to COVID.

[28] As such, I find that the Applicant was fully aware of the kind of documentation that is generally required to establish a case of extraordinary circumstances warranting relief. This is not to say that letters from family members are irrelevant to the analysis. When submitted, they should be assessed, analyzed, and weighed as with any other item of evidence. It is to say, however, that such evidence may not be sufficient on its own to establish that an extension of time is warranted under paragraph 256(3)(b) of the *Excise Tax Act*.

[29] The Applicant submits that, because of the pandemic, he could not obtain any formal medical documentation. He did not wish to visit medical offices due to the inherent dangers in doing so during the pandemic, and did not want to further burden the healthcare system. The Applicant's explanation, however, somewhat cements the Respondent's point, as it does not seem that the Applicant's circumstances were such that medical intervention – for either physical or mental health reasons – was required.

[30] Acts of Ministerial discretion attract deference from reviewing courts. While this deference is not a "blank cheque," I find in this case that the Second Reviewer's reasons were

intelligible and transparent, and that they justified the decision to deny the Applicant's extension of time request.

[31] On a final note, I would add that the Second Reviewer also addressed the Applicant's assertion that he thought he had filed his application before the deadline, based on his own assessment of the base date. While the Applicant suggests that the Minister's assessment of the base date was erroneous, I see no merit in this argument and note that it was not only passingly pursued in the Applicant's arguments. In her notes, the Second Reviewer indicated that this element of the Applicant's submission suggested that he had *not* missed the filing deadline due to the hardship imposed by the pandemic, but by his own inadvertent miscalculation. I see no reviewable error in this observation, as ignorance of the law is not generally considered a sufficient basis to extend a deadline under paragraph 256(3)(b) of the *Excise Tax Act*.

VIII. COSTS

[32] I will not award costs in this matter. The fact that the Applicant missed a filing deadline, and did not provide an adequate evidentiary basis to support an extension of time request, does not detract from the hardship that he endured or his good faith belief that an extension was warranted in the circumstances. As a result, in the exercise of my discretion pursuant to the *Federal Courts Rules*, I make no order as to costs.

IX. CONCLUSION

[33] For these reasons, this application for judicial review is dismissed. No costs are awarded.

JUDGMENT in T-2269-23

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No costs are awarded.

“Angus G. Grant”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2269-23

STYLE OF CAUSE: THOMAS ALBERT GOLDTHORPE v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 19, 2024

JUDGMENT AND REASONS: GRANT J.

DATED: JUNE 28, 2024

APPEARANCES:

Thomas Goldthorpe

FOR THE APPLICANT
ON HIS OWN BEHALF

Nian Fan (George) Lin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT