Federal Court  Cour fédérale

Date: 20250708

Docket: T-1569-23

Citation: 2025 FC 1209

Ottawa, Ontario, July 8, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

ALEX CHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Alex Chan, seeks judicial review of a decision by the Canada Revenue Agency's [CRA] Taxpayer Relief Centre of Expertise under the direction of the Minister of National Revenue [Minister]. The decision under review granted him partial relief from arrears interest accumulated on a disallowed GST/HST New Housing Rebate [Rebate].

[2] The CRA conducted two independent reviews of the Applicant's request for relief from arrears interest. The second review, the decision challenged here, determined that he was entitled

to partial relief from the arrears interest due to the CRA's delay in auditing his Rebate application.

[3] The Applicant argues that the CRA decision to grant him partial relief was unreasonable. He asks this Court for an Order: (1) deeming him eligible for the Rebate; and (2) cancelling all arrears interest accrued on the disallowed Rebate.

[4] Despite the Applicant's very capable and organized submissions while representing himself in this matter, for the reasons set out below, I am unable to grant his application for judicial review. The application is dismissed, without costs.

II. Background

A. *Rebate Eligibility*

[5] The Applicant purchased a new home in 2015 [Rebate Property]. On February 21, 2017, he applied for and received a $25,578.96 Rebate.

[6] Just over a year later, on February 23, 2018, following an audit of the Applicant's Rebate, the CRA advised him in a letter that he was not eligible for the Rebate. The Rebate was disallowed because the Rebate Property was not the Applicant's primary place of residence, which is a requirement under the *Excise Tax Act*, RSC 1985, c E-15, s. 254 [ETA]. As a result, the Applicant was issued a Notice of Assessment on February 26, 2018, requiring him to return the entire amount of the Rebate that he received.

[7] The Applicant filed a Notice of Objection to the CRA's decision disallowing his Rebate. On October 2, 2018, the Appeals Division of the CRA refused the Applicant's objection [Eligibility Appeal Decision]. It confirmed that the Rebate was correctly disallowed pursuant to s. 254(2)(b) of the ETA.

B. *Accrual of Arrears Interest*

[8] The Applicant decided not to appeal the Eligibility Appeal Decision to the Tax Court of Canada [TCC]. He advised a CRA officer that he intended to repay the Rebate and inquired about his balance and methods of payment. He was given no answers and instead told to await further communication from the CRA. The Applicant's evidence is that he proceeded to reach out to the CRA's general help line multiple times without success.

[9] On November 29, 2019, the CRA issued a legal warning letter outlining the balance owed and methods of payment [First Warning Letter]. The Applicant says he never received it. He cross-examined the Respondent's affiant and asked if the CRA had proof that the First Warning Letter was delivered. The affiant's response was that the letter was sent by regular mail to the Rebate Property, and so there is no delivery notification. The Respondent did not produce a copy of the First Warning Letter in its materials filed with this Court.

[10] The CRA issued a second legal warning letter on March 12, 2021 [Second Warning Letter], which the Applicant says is the first CRA communication he received after the Eligibility Appeal Decision. The Second Warning Letter set out a total balance owing of $31,710.02. This balance included the Rebate amount, as well as around $6,000.00 in arrears interest. The letter provided five methods for the Applicant to make payment, including: (1)

using a financial institution's online banking service; (2) using a debit card on the CRA's website; (3) using a Business Account on the CRA's website; (4) paying in-person at a financial institution; or (5) sending a check by mail.

[11] According to the Respondent, the CRA also issued three "small balance letters" to the Applicant on May 26, 2021, August 25, 2021, and August 26, 2022, in addition to issuing a Statement of Account dated April 19, 2021.

[12] The Applicant paid down the entire balance owing through three separate payments on April 8, 2021, May 4, 2021, and September 16, 2022.

[13] The first payment in April 2021 was, in accordance with the CRA's instructions, a small test amount. When the Applicant learned that the test amount was misdirected, the CRA advised him to instead pay using a Business Account on its website; he attempted to do so without success. Finally, the Applicant paid the majority of the balance owing in-person at a bank via remittance voucher in May 2021. He made a further and final payment in September 2022.

C. *Application for Relief from Arrears Interest*

[14] On April 12, 2021, the Applicant made a request for relief from the arrears interest [First Level Request].

[15] The Applicant's request for relief is governed by s. 281.1 of the ETA, which provides the Minister with discretion to waive or cancel interest payable by a taxpayer under s. 280. A CRA

guideline, GST/HST Memorandum 16.3, “Cancellation or Waiver of Penalties and Interest,” informs the exercise of this discretion [Guideline].

[16] In the First Level Request, the Applicant said he did not receive timely or correct information from the CRA regarding how much he owed and viable methods to pay. He took the position that the CRA is at fault because its error and delay prevented him from immediately repaying the Rebate.

[17] A CRA officer conducted the first review of the Applicant’s request for relief [First Level Review]. Her analysis is set out in a Taxpayer Relief Fact Sheet [First Level Fact Sheet]. The Fact Sheet forms part of the CRA’s reasons for its decision: *O’Hara v Canada (National Revenue)*, 2013 FC 197 at para 17 [*O’Hara*]. The officer noted that the Applicant knowingly allowed a balance to exist and did not act quickly after receiving the Notice of Assessment to address it. However, she also found that partial relief was warranted due to the CRA’s delay in issuing the First Warning Letter. Outside of the period between the Eligibility Appeal Decision and First Warning Letter being issued, she found there was no delay by the CRA which “prevented him from meeting his tax obligations.”

[18] The First Level Fact Sheet was reviewed by a Team Leader, who agreed with the recommendation and issued a decision letter dated December 1, 2022, cancelling arrears interest accrued from October 2, 2018 (date of Eligibility Appeal Decision) to November 29, 2019 (date of First Warning Letter).

[19] On January 28, 2023, the Applicant sought a reconsideration of the decision in the First Level Review [Second Level Review], arguing he should not be responsible for any amount whatsoever, because the interest accumulated due to the CRA's own action or inaction.

III. Decision Under Review

[20] A different CRA officer conducted the Second Level Review. Her analysis is recorded in a second Taxpayer Relief Fact Sheet [Second Level Fact Sheet]. She recommended granting only partial relief to the Applicant due to the CRA's delay in auditing the Rebate application. The CRA aims to conduct such audits within six-months of receiving an application. In this case, the audit took a year. Accordingly, the officer recommended granting relief from August 21, 2017 (six months after the Rebate application was received) to February 26, 2018 (date of the Notice of Assessment), due to the delay in auditing.

[21] The First and Second Level Fact Sheets were reviewed by a Team Leader who agreed with the Second Level Review officer's recommendation and issued a decision letter dated June 28, 2023, granting relief from August 21, 2017, to February 26, 2018.

[22] The Second Level Review decision letter states that there was no further delay or errors by the CRA. It notes that the Applicant was informed of the balance owing on February 26, 2018, in the Notice of Assessment, and again in the First Warning Letter on November 29, 2019, and that he only made a payment in 2021. It notes that taxpayers are responsible to ensure their returns and rebates are correctly completed, filed on time, and that payment is made when due.

[23] Finally, the decision letter notes that no arrears interest was accrued on the disallowed Rebate between March 28, 2020, and June 30, 2020, due to COVID-19 related interest relief measures for GST/HST returns.

IV. Issues and Standard of Review

[24] The Respondent raises as a preliminary issue the admissibility of certain exhibits attached to the Applicant's affidavit in support of this application.

[25] The Applicant raises the issue of whether he was in fact eligible for the Rebate because he claims the Rebate Property was his primary place of residence.

[26] The third and determinative issue in this application is whether the Second Level Review decision was unreasonable in granting only partial relief to the Applicant.

[27] The presumptive standard of reasonableness set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] has not been rebutted: *Allen v Canada (Attorney General)*, 2021 FC 364 at paras 7-9; *Demma v Canada (Attorney General)*, 2024 FC 2091 at paras 16-17 [*Demma*].

[28] The Supreme Court of Canada has confirmed that in conducting this judicial review on a standard of reasonableness, I must show some deference to the decision-maker below. The task for me is not to reweigh and reassess the evidence afresh, or determine what decision I would have made: *Vavilov* at para 125.

[29] To succeed on this application, the Applicant must satisfy the Court that there are serious shortcomings in the decision such that it is not justifiable, intelligible and transparent: *Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36. The burden is on the Applicant to demonstrate the Second Level Review was unreasonable: *Vavilov* at para 100.

V. Submissions and Analysis

A. *Preliminary Issue – Admissibility of Evidence*

[30] The Respondent takes issue with several exhibits to the Applicant's affidavit, arguing that they were not before the CRA officer who conducted the Second Level Review, and constitute new evidence that the Court should disregard. The impugned evidence includes Exhibits 1-4, 6, 8-10, 12 and 15.

[31] As a general rule, evidence that was not before an administrative decision-maker cannot be considered in a judicial review: *White v Canada Post Corporation*, 2024 FC 198 at para 13 [*White*]. There are three exceptions to the general rule. New evidence can be admitted if it: (1) assists the Court to understand general background circumstances; (2) is relevant to an issue of procedural fairness; or (3) highlights a complete absence of evidence before the decision-maker: *White* at para 14, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 20.

[32] Typically, the evidence before a decision-maker is identified by what is included in a Certified Tribunal Record [CTR], requested by a party pursuant to Rule 317 of the *Federal Courts Rules*, SOR/98-106. Rule 317 allows any party to obtain from a tribunal the relevant

materials not already in that party's possession. Neither the Applicant, who is self-represented, nor counsel for the Respondent requested a CTR from the decision-maker.

[33] This Court has conducted judicial reviews without CTRs where, as here, both parties provide the record through affidavits: *White* at para 11, citing *Rainy River Nations v Bombay*, 2022 FC 1434 at para 6 [*Rainy River Nation*] and *Spence v Bear*, 2016 FC 1191 at para 3 [*Spence*]. In such circumstances, the Court only admits evidence from the parties' records that would have clearly been before the decision-maker, such that they "re-create the CTR": *Rainy River Nations* at paras 60, 62; *Spence* at para 3.

[34] With this in mind, I will consider the challenged exhibits and whether they constitute new evidence that was not before the decision-maker on the Second Level Review.

[35] Exhibits 1-4 and 6 concern the Applicant's ties to the Rebate Property for the purpose of establishing it was his primary place of residence. As I will discuss further below, the issue of eligibility is beyond this Court's jurisdiction and so the evidence is not relevant and will not be considered in any case: see *Zaki v Canada (National Revenue)*, 2018 FC 928 at para 25 [*Zaki*].

[36] Exhibit 8 is the Applicant's Notice of Objection filed with the CRA. Exhibit 9 is the CRA's Eligibility Appeal Decision letter. Exhibit 10 is the Second Warning Letter the CRA issued on March 12, 2021. Exhibit 15 is the small balance letter the CRA issued on August 25, 2021. Each of these documents were filed with or issued by the CRA, and all were referenced as documents in the CRA's records throughout the First and Second Level Fact Sheets, which the Respondent's affiant stated that she reviewed when conducting the Second Level Review. As

such, they do not constitute new evidence that was not before the decision-maker and are admissible: see *Zaki* at paras 23-24.

[37] Exhibit 12 is a screenshot of the CRA's website showing an error message on the CRA's Business Account service. Although the Applicant submitted at both levels of review that he experienced problems using the CRA's Business Account service, it does not appear this particular screenshot could have been before the CRA officer on the Second Level Review. Indeed, the error message is current to June 2, 2024 – it post-dates the relevant time period for this judicial review and could not have been before the decision-maker. It is therefore excluded.

B. *Rebate Eligibility*

[38] The Applicant argues that he is eligible for the Rebate and submits that the Rebate Property was his primary place of residence.

[39] The Federal Court does not have jurisdiction to review the Eligibility Appeal Decision. This issue is therefore beyond the scope of this application: *Guerra v Canada (Revenue Agency)*, 2009 FC 459 at para 32 [*Guerra*].

[40] As noted in the Eligibility Appeal Decision, if the Applicant disagreed with the decision, his recourse was to file an appeal with the TCC. The Applicant concedes in his affidavit that, although he disagreed with the Eligibility Appeal Decision, he deliberately chose not to pursue an appeal to the TCC.

C. *Is the Second Level Review Decision Unreasonable?*

[41] The Applicant argues that he should not be liable for any of the arrears interest because he was not responsible for the late repayment of the disallowed Rebate. He says that he tried multiple times to get information about the balance owing but heard nothing from the CRA until he received the Second Warning Letter in March 2021. He maintains that he did not receive the First Warning Letter in November 2019.

[42] The Applicant further submits that the CRA failed to provide viable payment methods, and that he should not be responsible for any arrears interest that accrued after he tried to make payment for the first time on April 7, 2021.

[43] Section 280 of the ETA imposes liability for interest if a person fails to pay an amount when due under the Act. Section 281.1 of the ETA confers a broad discretionary power on the Minister and their delegates in the CRA to waive or cancel interest payable under s. 280: *Guerra* at para 17. The Respondent relies on the CRA's Guideline. Although the Guideline is not law, it is beneficial guidance that provides for more organized reasons, enhanced consistency, transparency and accountability in CRA decision-making: *Quastel v Canada (Revenue Agency)*, 2011 FC 143 at para 14; *Guerra* at para 19.

[44] The Guideline states at paragraph 8 that the CRA may consider it appropriate to exercise its discretion to grant relief where, "despite a person's best efforts…as a result of extraordinary circumstances beyond the person's control, the person [was] prevented from complying with the requirements of the [ETA]." Paragraph 12 provides that penalties and interest may be waived or cancelled if they resulted primarily because of the CRA's actions, such as:

- processing delays that resulted in the person not being informed within a reasonable amount of time that an amount was owing;
- errors in CRA publications, which led the person to file returns or make payments based on incorrect information;
- incorrect written information provided in an interpretation or notice given to a specific person by the CRA;
- errors made by the CRA in the processing of GST/HST returns or information; or
- delays in providing information necessary for the person to comply with the Act.

[45] The Second Level Review officer granted partial relief due to the CRA's processing delay in taking more than six months to audit the Applicant's Rebate application, but found that no further relief was warranted. This was not an unreasonable decision.

[46] The reasons provided for the Second Level Review were justifiable, intelligible and transparent. They dealt squarely with the Applicant's main argument that he was not aware of the amount owing and how to make a payment.

[47] The reasons clearly explain the basis for denying further relief – the Applicant was aware he owed $25,578.96 as early as February 26, 2018. I note that the amount he was liable to repay was also confirmed for him by the Eligibility Appeal Decision rendered on October 2, 2018. Nevertheless, the Applicant did not attempt to make *any* payments until 2021, more than two years later.

[48] While I empathize with the difficulty experienced by the Applicant in trying to get information from the CRA by telephone, the CRA was justified in concluding that it was not its own error or delay which caused the Applicant's failure to meet his tax obligations during this period. Indeed, the Applicant could not satisfactorily explain in his oral submissions why he did not attempt to make any payments on even the principal amount of the Rebate after his liability to return it was confirmed on October 2, 2018.

[49] Additionally, it was not unreasonable for the CRA to refused to grant relief for the period following the Applicant's first attempt to make payment on April 7, 2021. He has not demonstrated that the CRA provided incorrect information on the available payment options. Although I accept that the Applicant was confronted with some issues, I agree with the Respondent that he has not established the CRA was responsible for the failed attempts to pay. The Second Warning Letter received in March 2021 listed payment in-person at a financial institution as an available option, which the Applicant was able to successfully complete.

[50] The Applicant has not established that the CRA was unreasonable in granting him only partial relief on the Second Level Review.

VI. Costs

[51] The Respondent seeks its costs for this application. Pursuant to Rule 400 of the *Federal Courts Rules*, SOR/98-106, the Court has "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid."

[52] The Applicant is self-represented and brought this application in good faith: *Khan v Canada (Attorney General)*, 2024 FC 1840 at para 25. Under the circumstances, I exercise my discretion not to award any costs to the Respondent despite its success: *Demma* at para 29.

VII. Conclusion and Disposition

[53] The CRA did not unreasonably exercise its discretion in granting the Applicant only partial relief on its Second Level Review.

[54] This application for judicial review is therefore dismissed, without costs.

JUDGMENT in T-1569-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No costs are awarded.

"Meaghan M. Conroy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1569-23
STYLE OF CAUSE:	ALEX CHAN v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 12, 2025
REASONS AND JUDGMENT:	CONROY J.
DATED:	JULY 8, 2025

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