Federal Court Cour fédérale

Date: 20250801

Docket: T-1059-24

Citation: 2025 FC 1351

Ottawa, Ontario, August 1, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

ATEFEH SHIRAFKAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the "Decision") of the Minister of National Revenue (the "Minister"), pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the "Act"). The Minister denied the Applicant's requests for relief from interest and late filing penalties with respect to the 2016 and 2017 taxation years.

[2] For the reasons below, the application is dismissed.

II. Background

[3] The Respondent's memorandum of fact and law at paragraphs 6 to 20 outlines the background of this proceeding, which is for the most part reproduced below.

[4] The Applicant's tax return for the 2016 taxation year was filed on June 18, 2018, approximately 13 months after its due date of April 30, 2017 (the "2016 Return").

[5] The Minister initially assessed the Applicant's 2016 taxation year and, accordingly, issued a notice on June 29, 2018. The Applicant's assessment was based on her filed return. She was assessed on a net income of $95,717. The net income included dividend income of $81,900. The Minister assessed a late-filing penalty in the amount of $1,800.93 and arrears interest, as of June 29, 2018, in the amount of $775.39.

[6] The Applicant's tax return for the 2017 taxation year was filed on January 2, 2019, approximately 8 months after its due date of April 30, 2018 (the "2017 Return"). The Minister assessed the Applicant's 2017 taxation year and issued a notice on January 10, 2019. The Applicant was assessed based on her filed return. She was assessed on a net income of $60,945. The net income included dividend income of $58,500. The Minister assessed a late filing penalty in the amount of $438.83 and arrears interest as of January 10, 2019, in the amount of $163.28.

[7] On May 26, 2023, the Minister reassessed the Applicant's taxation years from 2014 to 2021 to include the disability tax credit and issued notices on that date (the "May 26, 2023 Reassessments"). As of the May 26, 2023 Reassessments, there was no balance owing for the 2016 and 2017 taxation years.

[8] On December 19, 2022, the Applicant filed a taxpayer relief request, seeking the cancelation of late-filing penalties and arrears interest with respect to the 2016 and 2017 taxation years (the "First Request").

[9] On January 24, 2023, a delegate of the Minister requested additional information in respect of the request for taxpayer relief dated December 19, 2022.

[10] On July 7, 2023, the delegate denied the First Request ("First Decision").

[11] On or around July 9, 2023, the Applicant filed a second taxpayer relief request, seeking the cancelation of penalties and arrears interest with respect to the 2016 taxation year only (the "Second Request").

III. The Decision

[12] In a letter dated March 3, 2024, a delegate of the Minister (the "Second Reviewer") denied the Applicant's request for relief from the late-filing penalty and arrears interest. The letter includes the following reasons:

> The tax years in review were due after the diagnosis of your mental illness. Therefore, it is reasonable to expect that you had the ability to have arrangements in place to assist with you and the preparation of your returns.
>
> Some of your medical issues became more severe in late 2019 after the due dates of the returns. Therefore, I cannot conclude that these issues affected your ability to file your returns and remit payment by the required due dates.
>
> Your request refers to the IC07-1R1 taxpayer relief provisions. The first taxpayer relief review and this review have followed the taxpayer relief provisions.
>
> In reviewing a taxpayer relief request, the Canada Revenue Agency will consider whether or not the taxpayer:
>
> - has a history of voluntary compliance with tax obligations;
>
> - knowingly allowed a balance to exist;
>
> - exercised a reasonable amount of care; and
>
> - acted quickly to remedy any delays or omissions.
>
> My review found that the four factors have not been met. There is a history of late filed returns and late payment. My review included tax years 2010 and 2022 in the review period and found that the 2010 and 2014 tax years were the only years filed on time. Tax year 2013 was assessed under subsection 152(7) prior to the return being filed. As well, a balance has been allowed to remain on the account accruing arrears interest.

IV. Issues

[13] This application raises the following issues:

A. Was there a breach of procedural fairness?

B. Was the Decision reasonable?

V. Analysis

[14] The standard of review with respect to the Minister's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25; *Grewal v Canada (National Revenue)*, 2020 FC 356 at para 26). The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

A. *Preliminary Issues*

[15] The Respondent raises two preliminary issues in this case.

[16] First, the Respondent requests this Court to amend the style of cause to name the Attorney General of Canada as the Respondent in this case (*Federal Courts Rules*, SOR 98/106, Rule 303(2)). The Applicant does not oppose this request. I agree that the Attorney General is the proper Respondent, and the style of cause is hereby amended.

[17] Second, the Respondent submits that a number of paragraphs and exhibits in the Applicant's affidavit that were not before the Second Reviewer should be disregarded on judicial review. This new evidence includes communications with her accountant, various medical records, mortgage information and statements, bank information, paycheque history, and airtime records from the Applicant's phone. The Respondent asserts that this new evidence does not fall within one of the three exemptions to the general rule that the Court should not consider

evidence not before the administrative decision maker, either that it: (1) contains general contextual information; (2) responds to questions of procedural fairness; or (3) highlights the complete absence of evidence before the decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[18] The Applicant has not argued that the evidence falls under one of the exceptions, and I find that none of the exceptions are applicable. The new evidence will not be considered.

B. *Legislative Framework*

[19] The relevant statutory provisions of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the "Act") are as follows:

162 (1) Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of	**162 (1)** Toute personne qui ne produit pas de déclaration de revenu pour une année d'imposition selon les modalités et dans le délai prévus au paragraphe 150(1) est passible d'une pénalité égale au total des montants suivants :
(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and	**a)** 5 % de l'impôt payable pour l'année en vertu de la présente partie qui était impayé à la date où, au plus tard, la déclaration devait être produite
(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12,	**b)** le produit de 1 % de cet impôt impayé par le nombre de mois entiers, jusqu'à concurrence de 12, compris dans la période commençant

from the date on which the return was required to be filed to the date on which the return was filed.

à la date où, au plus tard, la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

161 (1) Where at any time after a taxpayer's balance-due day for a taxation year

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI, VI.1 and VI.2 (determined in accordance with subsection 191.5(9)) for the yearexceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI, VI.1 or VI.2 for the year the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

161 (1) Dans le cas où le total visé à l'alinéa a) excède le total visé à l'alinéa b) à un moment postérieur à la date d'exigibilité du solde qui est applicable à un contribuable pour une année d'imposition, le contribuable est tenu de verser au receveur général des intérêts sur l'excédent, calculés au taux prescrit pour la période au cours de laquelle cet excédent est impayé :

a) le total des impôts payables par le contribuable pour l'année en vertu de la présente partie et des parties I.3, VI, VI.1 et VI.2 (calculé conformément au paragraphe 191.5(9));

b) le total des montants représentant chacun un montant payé au plus tard à ce moment au titre de l'impôt payable par le contribuable et imputé par le ministre, à compter de ce moment, sur le montant dont le contribuable est redevable pour l'année en vertu de la présente partie ou des parties I.3, VI, VI.1 ou VI.2.

162 (1) Every person who fails to file a return of income for a taxation year as

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and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

d'imposition selon les modalités et dans le délai prévus au paragraphe 150(1) est passible d'une pénalité égale au total des montants suivants :

a) 5 % de l'impôt payable pour l'année en vertu de la présente partie qui était impayé à la date où, au plus tard, la déclaration devait être produite;

b) le produit de 1 % de cet impôt impayé par le nombre de mois entiers, jusqu'à concurrence de 12, compris dans la période commençant à la date où, au plus tard, la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

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

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

partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.	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.

[20] Section 220(3.1) gives the Minister extraordinary discretion to waive or cancel all or part of any penalties or interest otherwise payable by a taxpayer (*Canada Revenue Agency v Telfer*, 2009 FCA 23 [*Telfer*] at para 34). The focus of subsection 220(3.1) of the Act is granting relief where there are extenuating circumstances beyond the control of the person seeking relief, including actions of the CRA and an inability to pay or financial hardship (*Chekosky v Canada (Revenue Agency)*, 2019 FC 841 at para 42 citing *Information Circular IC07-1 Taxpayer Relief Provisions* (the "Circular")). These circumstances should explain the Applicant's inability to comply with the Act (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 [*Stemijon*] at para 50).

C. *There Was No Breach of Procedural Fairness*

[21] The Applicant asserts the Second Reviewer breached the duty of procedural fairness by creating a reasonable apprehension of bias and by denying her the opportunity to provide any relevant evidence or make arguments about the evidence provided.

[22] The Applicant has not met the high threshold of establishing a reasonable apprehension of bias (*Oleynik v Canada (Attorney General)*, 2020 FCA 5 at paras 56-57, citing *Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 (SCC)). The test for bias

requires asking: “What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he or she think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.” The answer to this question is “no”. Contrary to the Applicant’s assertions, the Second Reviewer did not use her “personal opinion” or “personal beliefs” to make her conclusions but based her conclusions on an assessment of the evidence before her. The issues raised go to reasonableness and will be assessed accordingly.

[23] The Applicant was not denied the opportunity to present evidence or raise arguments based on the evidence. The CRA sent two letters and attempted to call the Applicant requesting additional information in respect of her request for taxpayer relief, which specifically requested for a doctor’s letter providing information on the type of illness and “any explanation about what the effect the medical condition may have had on you meeting your tax obligations”. I am satisfied the Applicant knew the case to meet and had a full and fair opportunity to respond. There was no breach of the Applicant’s procedural fairness rights.

D. *The Decision Was Reasonable*

[24] The Applicant argues that the Second Reviewer failed to review the relevant evidence, “seriously misconstrued” the evidence, and failed to follow the policy during the evaluation of the factors. She asserts that the Decision is defective because the Second Reviewer based her Decision on assumptions that are not supported by the evidence.

[25] The Decision followed an internally coherent and rational chain of analysis and was justified in light of the constraining law and facts. Based on the evidence and the Applicant's tax filing history, the Second Reviewer reasonably concluded that each of the four factors were not met. First, the Applicant did not have a history of voluntary compliance with tax obligations as only two of the 12 years reviewed were filed on time. Second, the Applicant knowingly allowed a balance to exist during this time. Third, the Applicant did not exercise a reasonable amount of care, as she failed to arrange for assistance in the preparation of her tax returns after her diagnosis in 2014. It was reasonable for the Second Reviewer to conclude that the Applicant's mental illness did not prevent her from meeting her tax obligations as she was able to operate a business during the same years. The Applicant failed to establish a causal connection or nexus between her medical conditions and her failure to file tax returns (*Carpenter v Canada (Attorney General)*, 2020 FC 753 at paras 41 to 42). Finally, given the history of late filed returns and payment, there was no evidence that she acted quickly to remedy any delays and omissions.

[26] Additionally, I agree with the Respondent that the Applicant's assertion of financial hardship, which is now supported by the new evidence submitted on this application and not considered, was not before the Second Reviewer and does not render the Decision unreasonable (*Telfer* at para 31).

[27] The Applicant has not established exceptional circumstances beyond her control that explain her non-compliance with the Act (*Stemijon* at para 50).

VI. Conclusion

[28] The Decision was reasonable and was made in a procedurally fair manner.

[29] The application is dismissed.

JUDGMENT in T-1059-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to name the Attorney General of Canada as the proper Respondent.
2. The application is dismissed.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1059-24
STYLE OF CAUSE:	ATEFEH SHIRAFKAN v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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APPEARANCES:

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Arshdeep Sandhu Shannon Fenrich	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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