

Federal Court



Cour fédérale

Date: 20250904

Docket: T-655-24

Citation: 2025 FC 1461

Ottawa, Ontario, September 4, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

NICOLE MINION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review concerns a decision by Canada Revenue Agency (“CRA”). By letter bearing the subject line “Second review – Relief decision for the tax years 2021 and 2022” dated March 13, 2024 (the “Second Review Decision”), CRA denied the applicant’s request under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (the “ITA”) for relief of arrears interest and installment interest accrued during the 2021 and 2022 taxation years.

[2] The applicant asked the Court to set aside the second review decision, on the basis that it was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

[3] For the reasons that follow, I conclude that the application must be granted.

I. **Events leading to this application**

[4] The applicant is a citizen of the United States. She lives in British Columbia and works remotely for a company in the United States.

[5] As a resident of Canada, the applicant pays Canadian income tax. Her net tax owing for the tax years of 2018, 2019 and 2020 exceeded \$3,000, so the ITA required her to make quarterly installment payments in 2021. The same was true in 2022. Tax instalments are payments made throughout the year to cover taxes normally paid in one lump sum on April 30 of the following year.

[6] In 2021 the applicant was assessed by CRA and advised that she had to make the following instalment payments:

- a) 2 payments of \$3,608.00 on March 15, 2021, and June 15, 2021; and
- b) 2 payments of \$4,265.00 on September 15, 2021, and December 15, 2021.

[7] In 2022 the applicant was assessed by CRA and advised that she had to make the following instalment payments:

- a) 2 payments of \$3,937.00 on March 15, 2022, and June 15, 2022; and
- b) 2 payments of \$3,806.00 on September 15, 2022, and December 15, 2022

[8] For the tax year 2021, the applicant paid \$488.28 in instalment interest. For the tax year 2022, the applicant paid \$527.71 in instalment interest and \$302.66 in arrears interest.

[9] During those two years, the applicant's American employer also withheld taxes from her pay and remitted it to governments in the US. The applicant claimed \$16,030.26 in foreign tax credit for the 2021 tax year and \$11,945.47 in foreign tax credit for the 2022 tax year.

[10] In the taxation years 2021 and 2022, the applicant made no quarterly installment payments. She advised that she could not afford to do so. CRA assessed her tax returns for 2021 and 2022, it assessed interest on the unpaid installments and on arrears.

[11] The applicant requested that CRA grant relief under ITA subsection 220(3.1) from the installment interest and arrears interest for the taxation years 2021 and 2021. CRA denied her request.

[12] The applicant asked for a second review, which was also denied. Now she asks the Court to set aside that second decision as unreasonable.

II. Standard of Review

[13] The standard of review of CRA's decision is reasonableness, as described in *Vavilov*: *Spence v. Canada (Revenue Agency)*, 2012 FCA 58, at para 5; *Joo v. Canada (Attorney General)*, 2024 FC 1558, at para 26.

[14] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194.

[15] In applying the deferential standard of reasonableness, the Court focuses on the reasoning process used by the decision maker and the applicable constraints: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 60-61, 64-66. The Court does not come to its own view of the merits, or measure the impugned decision against the Court's assessment: *Vavilov*, at paras 83, and *Mason*, at para 62 (both citing *Delios v. Canada (Attorney General)*, 2015 FCA 117, at para 28). Absent exceptional circumstances, the Court's role is not to reassess or to reweigh the evidence: *Vavilov*, at paras 125-126.

[16] A reviewing court may intervene if it loses confidence in the decision because it was “untenable in light of the relevant factual ... constraints”. The court may intervene if the decision maker fundamentally misapprehended the evidence, failed to account for critical evidence in the record that runs counter to a material conclusion, ignored evidence, or if there is no evidence to rationally support a finding: *Vavilov*, at paras 101, 126 and 194; *Mason*, at para 73; *Kahkewistahaw First Nation v. Canada (Crown-Indigenous Relations)*, 2024 FCA 8, at paras 56-57; *Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93, at paras 116-117; *Federal Courts Act*, RSC 1985, c F-7, paragraph 18.1(4)(d).

III. The Legal Landscape for the Impugned Decision

[17] The respondent submitted that subsection 220(3.1) of the ITA gives the Minister broad discretion to waive or cancel penalties and interest that is otherwise payable:

200.	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	(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

<p>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.</p>	<p>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.</p>
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[18] The respondent advised that the ITA does not identify specific situations for which the Minister has the authority to waive or cancel penalties and interest. CRA's administrative guidelines (Information Circular IC07-1R1, Taxpayer Relief Provisions, August 18, 2017) serve to inform the exercise of this discretion.

[19] The respondent submitted that in exercising the discretion under subsection 220(3.1) of the ITA, the Minister was required to take into account the relevant and unique circumstances of a particular applicant. Cancellation of interest may be justified where a taxpayer has been unable to deal with their obligations due to delays on the part of the Minister, extraordinary circumstances, or financial hardship. The Minister also retains discretion to grant relief in other situations.

[20] There is no dispute in this case that the ITA required the applicant to make quarterly installment payments.

IV. **The Second Review Decision was unreasonable**

[21] The material part of the Second Review Decision reads as follows:

Our records show that you were charged instalment interest and/or arrears interest for each year from 2017 to 2020, since instalment payments were not made or payments of balance owing were received late. Therefore, I cannot conclude that you were unaware of the consequences of not making instalment payments or paying late your tax owing.

Please note that tax instalments are payments you make throughout the year to cover the taxes you normally pay in one lump sum on April 30 of the following year. I understand that an amount was already been withheld from your income by your employer. However, since you are a Canadian resident and your net tax owing was more than \$3,000 for some prior tax years, instalment payments were required as per the CRA regulations. [...]

Regarding the tax year 2021 request for adjustment that was approved, a letter dated October 31, 2023 explained why your claim was accepted. As such, I consider that you have all the information to request the same claim for your tax years 2022 and 2023, if applicable.

Since you withdrew the financial hardship circumstance, and that you were able to request from your employer to [reduce] the [withheld] amount on each pay, I was unable to conclude that you were unable to make instalment payments.

Consequently, your request did not support any circumstance that would have shown that you were prevented from making the requested instalment payments in a timely manner.

[Emphasis added. Typos corrected]

[22] As may be seen from the underlined part of the second last paragraph of CRA's letter, there were two reasons provided for CRA's conclusion that the applicant had not shown that she was prevented from making instalment payments in a timely manner: (1) she withdrew financial hardship as a ground to justify relief ("Reason 1"); and (2) she was able to request that her employer reduce the amount withheld from her pay ("Reason 2").

[23] The applicant's submission was that the decision was unreasonable, because Reason 2 was factually incorrect. One of the two reasons for CRA's decision had no basis in fact.

[24] At the hearing, the respondent was unable to find any information in the record before CRA to support Reason 2 in CRA's letter. Substantially the same statement was made in the Taxpayer Relief Fact Sheet for the second review, but there is no source for it to be found anywhere else in the certified tribunal record.

[25] The respondent argued that the fact that the applicant was able to request that her employer reduce the withholding was either not relevant or a minor consideration for the decision. However, CRA's letter shows that Reason 2 was provided as a significant factor that led to CRA's overall conclusion. CRA considered the two Reasons together to determine whether the applicant was "prevented from making the ... installment payments on a timely basis". The same two-pronged finding is found in the Taxpayer Relief Fact Sheet for the second review, which in part considered whether the applicant was unable to meet her obligation to make the quarterly payments.

[26] In the circumstances, the absence of a factual foundation in the record for one of the two reasons provided by CRA for its conclusion rendered the Second Review Decision unreasonable.

[27] It is beyond this Court's role on this application to consider whether the applicant's circumstances constituted financial hardship as that term is used in CRA's publications, or to assess either party's submissions on "double taxation". The applicant will now be aware of the

Minister's position on the latter issue by reading the respondent's written submissions on this application.

[28] On remedy, the usual order on a successful judicial review application is to set aside the decision and return it for redetermination by a different decision maker who has authority to render a decision. While the applicant asked the Court to make an order reimbursing amounts she has paid and discharging her from the outstanding interest and arrears, the usual order is appropriate in this case with one added requirement concerning the process to be followed: *Vavilov*, at para 142.

V. **Conclusion**

[29] For these reasons, the application for judicial review is granted. CRA's Second Review Decision is set aside. Another second reviewer will determine the applicant's request for relief. For that redetermination, the applicant will be given an opportunity to clarify and confirm the basis for her request for relief and the factual and legal grounds for her request, so both parties are clear on what is being requested and why.

[30] The respondent advised that for this matter, the proper responding party is the Attorney General of Canada, as the applicant challenged a decision made by an officer of the CRA on behalf of the Minister of Employment and Social Development. The style of cause will be amended accordingly.

[31] There will be no costs order.

JUDGMENT in T-655-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The decision of Canada Revenue Agency in its letter dated March 13, 2024, is set aside.
2. The applicant's request for a second review will be redetermined by another reviewer. For that redetermination, the applicant shall be given an opportunity to clarify and confirm the basis for her request for relief and the factual and legal grounds for her request.
3. The style of cause is amended to reflect the Attorney General of Canada as the proper respondent.
4. There is no costs order.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-655-24

STYLE OF CAUSE: NICOLE MINION v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: FEBRUARY 13, 2025

JUDGMENT AND REASONS: LITTLE J.

DATED: SEPTEMBER 4, 2025

APPEARANCES:

Nicole Minion	Self-represented
Jessica Ko	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT
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