

Federal Court



Cour fédérale

Date: 20251016

**Dockets: T-2200-24
T-2201-24**

Citation: 2025 FC 1698

Toronto, Ontario, October 16, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

IMAX CORPORATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, IMAX Corporation [IMAX], seeks judicial review of a second level review decision dated July 23, 2024 [Decision] made by an officer [Officer] of the Canada Revenue Agency [CRA] refusing to extend the deadlines for IMAX to file claims under the Canada Emergency Wage Subsidy [CEWS] program. The CEWS program was enacted during the COVID-19 pandemic [Pandemic] to provide a wage subsidy to help employers retain

workers through payroll challenges posed by the Pandemic. IMAX submitted that it missed the deadlines due to a confluence of exceptional circumstances that left its tax team depleted and overworked. The Officer declined to extend the deadlines finding that IMAX had not shown exceptional circumstances beyond its control.

[2] IMAX seeks judicial review of the Decision on the basis that it is based on an unreasonable interpretation of subsection 125.7(16) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) as amended [ITA] and is incoherent and unintelligible. For the more detailed reasons that follow, based on a standard of review of reasonableness, I am forced to acknowledge that both the Officer's interpretation of the scope of the discretion afforded by subsection 125.7(16) of the ITA and the Officer's application of that discretion, were reasonably open to the Officer on the facts and the law, and the Decision displays the requisite level of intelligibility, justification and transparency. As there is no basis for this Court's intervention, IMAX's applications for judicial review are dismissed.

II. Facts

[3] IMAX is a Canadian company that designs, manufactures and sells theatre projection systems and carries out film development, digital remastering and post-production of Hollywood and local language films that it distributes through its global theatre network.

A. *IMAX's missed CEWS Claims*

[4] IMAX was hit hard by the Pandemic. Not only were movie theatres shut down, but the company's operation was deeply affected by a series of personnel issues in its Tax and Finance Departments. IMAX says these circumstances led it to miss two deadlines for applying for the CEWS.

[5] Despite having successfully claimed the CEWS for all qualifying periods through Period 10, IMAX failed to file claims for Period 11 and Period 12 [collectively, the Claims]. The Claims relate to two of the Applicant's payroll accounts: payroll account 10245 7215RP0002 (which is the subject of Federal Court File No T-2200-24); and payroll account 10245 7215RP0001 (which is the subject of Federal Court File No T-2201-24).

[6] After discovering its error in mid-August 2022, IMAX submitted the Claims on September 28, 2021, together with a written request [the Initial Request] that the CRA waive the CEWS filing requirements and extend the deadlines for the filing of IMAX's Claims. IMAX based its request on subsections 220(2.1) and 220(3) of *ITA*, which give the CRA the discretion to cancel or waive penalties and interest and accept certain late, amended or revoked income tax elections [General Fairness Provisions]. IMAX explained that it was deeply affected by staffing shortages and workload issues leading up to the missed deadlines, noting in particular the significant turnover in its Finance Department which subjected their short-staffed tax team to "overwhelming pressures" at a time when they were also dealing with new tax audits and ensuring compliance with both the wage subsidy and rent subsidy programs. IMAX noted that

the five-member tax team (three of which were new hires in 2021) had been working 80-90 hours a week.

B. *The first level decision*

[7] In February 2022, the CRA verbally communicated its first level review decision denying the relief requested on the basis that IMAX had “ample time” to file the Claims before the expiry of the Claims periods and did not meet the requirements to file a late claim per section 26-02 of its publication, “Frequently Asked Questions - CEWS” [CEWS FAQ].

C. *IMAX’s request for second level review*

[8] On February 17, 2023, the Applicant submitted a written request for a second level review [the Second Request]. IMAX’s Second Request leveraged the newly enacted subsection 125.7(16) of the *ITA*, which specifically grants the CRA the power to grant an extension of time.

[9] IMAX provided further details of the circumstances leading to the missed deadlines referencing the significant illness of two senior staff during the Pandemic and the staff shortages and workload issues that existed in the lead up to the missed deadlines. IMAX emphasized that it had not been negligent and had intended to file the Claims noting that the calculations for the Claims had been prepared by its accountants as early as May 2021. IMAX urged the CRA to adopt a “flexible and supportive” approach to its interpretation of the discretion afforded to the CRA as a delegate of the Minister of National Revenue, under subsection 125.7(16) of the *ITA*

and submitted that it would be unfair and result in undue hardship if the CRA were to deny it the extension sought.

[10] In yet a further submission dated July 5, 2024, IMAX provided additional information that detailed both operational issues (resulting from movie theatre closures and low attendance due to the Pandemic) as well as the personnel issues in the Finance and Tax Departments. IMAX noted by way of example, that between January 2020 to June 2021, the Finance Department had 29 individuals depart the company and 16 others were on leaves of absence.

D. *The Decision*

[11] The basis for the Officer's Decision can be found in the Second Level Review – Fact Sheets that accompanied the Decision. First, the Officer considered whether IMAX's circumstances fell within any of the scenarios provided in section 26–02 of the CEWS FAQ. The Officer found that they did not, while noting that the CRA is not limited to circumstances identified in the CEWS FAQ.

[12] The Officer also considered the scope of the discretion afforded by subsection 125.7(16) of the *ITA* and determined that this provision allows for narrow exceptions to the fixed deadlines under the *ITA* CEWS provisions, which exceptions are to be considered on a case-by-case basis in exceptional circumstances in a manner consistent with the General Fairness Provisions. The Officer stated that the General Fairness Provisions address *exceptional* circumstances (including where the request arises from circumstances beyond a taxpayer's control) and *extraordinary* circumstances including natural or human-made disasters, such as flood and fire, civil

disturbances, disruptions in postal or other services, a serious illness or accident or serious emotional or mental distress, such as death in the immediate family.

[13] The Officer noted that IMAX had sought consideration due to “exceptional circumstances because of situations beyond its control” but denied the extension finding that, while IMAX’s tax team may have been short-staffed, they had sufficient time to submit the applications prior to the filing deadlines as IMAX received the calculations for the Claims from its accountants in May 2021 and IMAX was able to meet other deadlines during the same period. The Officer suggested that IMAX could have instructed its accountants to file the Claims if it was short-staffed.

III. Issues and Standard of Review

[14] The only issue raised in this application is whether the Decision is reasonable as that standard of review is described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. This Court must start by considering the Officer’s reasons read in light of the evidentiary record and consider whether the Decision reflects a reasonable interpretation and application of subsection 125.7(16) of the *ITA*, which falls within a “range of possible, acceptable outcomes which are defensible in respect of the facts and law” that constrained the Officer (Vavilov at para 86 and *Sailsman v Canada (National Revenue)*, 2014 FC 1033 at para 27). The Decision must not demonstrate a fatal flaw in logic or reasoning (Vavilov at para 102).

IV. Analysis

[15] The Applicant submits that the Decision is unreasonable for two reasons: first, the Decision reflects an unreasonable interpretation of the discretion afforded by subsection 125.7(16) of the *ITA*; and second, the CRA's reasoning is illogical and incoherent.

A. *The CRA's interpretation of subsection 125.7(16) of the ITA is reasonable*

[16] The Applicant argues that Decision reflects a statutory interpretation that fails to consider the CEWS's status as an emergency program which calls for a flexible and lenient interpretation of the CRA's discretion to extend deadlines.

[17] Contrary to IMAX's submission, I find the Officer's interpretation of the scope of discretion afforded by subsection 125.7(16) of the *ITA* to be reasonable. Notably, that interpretation mirrors the guidance provided in the explanatory notes that accompanied the enactment of subsection 125.7(16) of the *ITA* (*Explanatory Notes Relating to the Income Tax Act and Other Legislation* (Canada, Department of Finance, April 2022 at clause 14) [the Explanatory Notes]). The key guidance in the Explanatory Notes (which IMAX itself urged the CRA to consider in interpreting the scope of its new discretion) states:

New subsection 125.7(16) would provide the Canada Revenue Agency with the specific discretion to accept late filed subsidy applications on a case-by-case basis in exceptional circumstances, consistent with the more general existing fairness rules.

[18] The Officer acknowledged the confluence of exceptional events that affected IMAX's operations during the Pandemic, however, as the Respondent points out, it was open to the

Officer to further consider whether the deadlines were missed in these exceptional circumstances due to factors beyond IMAX's control, a consideration that is consistent with the General Fairness Provisions.

[19] Moreover, the Officer was responsive to the focus of IMAX's submissions which focused on exceptional circumstances related to the Pandemic. I note that at the hearing of these applications, IMAX's counsel took the position that the Officer failed to address IMAX's alternate submission (which is also consistent with the General Fairness Provisions), that it took reasonable steps to comply with the deadlines under the *ITA*. IMAX characterized this omission as a failure in responsive justification. I do not agree. To the extent that such a submission can be teased out of the Initial Request, it certainly was not among the various bases upon which IMAX framed its request for consideration on second level review, nor did IMAX raise this issue in its Memorandum of Fact and Law.

B. *The Decision is not illogical and incoherent*

[20] The Applicant submits that the Decision is illogical and incoherent in two ways.

[21] First, IMAX argues that the Decision engages in circular reasoning: the CRA said that the missed deadlines are not the fault of the CRA, and the missed deadlines were avoidable as IMAX had sufficient time to meet the filing deadlines as the Claims were prepared by IMAX's accountants in May 2021 and IMAX could have had its accountants submit the Claims if they were understaffed. IMAX submits that this same circular reasoning was criticized in *C.W. Carry Ltd. v Canada (Attorney General)*, 2024 FC 1983 [CW Carry] in which Justice Battista held:

The analysis acknowledges the Applicant's "simple mistake," but denies the extension solely based on the avoidable nature of the mistake and the fact that it was not made by the CRA. This logic would result in the refusal of extensions in virtually all cases of mistake and the discretion to allow for extensions based on mistakes would be rendered meaningless (*CW Carry* at para 26).

[22] Even if I were to accept that the Decision engages with the type of circular reasoning found to be unreasonable in *CW Carry*, I agree with the Respondent that this authority is distinguishable as the impugned reasoning was not the sole basis for the Decision. The Officer also found that the missed deadlines were not beyond IMAX's control considering that IMAX had managed to file other applications in the same period. IMAX suggests that this essentially punishes it for otherwise being compliant and would disentitle all but the most careless taxpayers from extensions under subsection 125.7(16) of the *ITA*. I cannot agree – nothing could be more relevant to the consideration of whether IMAX's circumstances were beyond its control than IMAX's own filing history in the period. Nor do I consider consideration of the CRA's role in the missed deadlines to be incoherent just because IMAX did not argue the CRA bore any responsibility – the Officer was simply considering previously identified circumstances considered by the CRA to be beyond a taxpayer's control.

[23] Second, IMAX submits that the Decision is incoherent because the Officer did not explain why IMAX's circumstances were not considered extraordinary.

[24] The Decision states:

When considering using our authority under 125.7(16) of the *ITA*, we do consider the fairness rules noted above. We are not legislated to subsections 220(2.1) and 220(3), and those particular pieces of legislation are tied to taxpayer relief ... *We have not*

limited our review to the extraordinary circumstances noted in the general fairness provisions, of which we note, have not been met. We have considered the applicant's unique situation in the request to late-file as each request is considered on a case-by-case basis [*emphasis added*].

[25] IMAX submits that the staff shortages it experienced during the Pandemic squarely fall under (or are at least equivalent to) the extraordinary circumstances considered under the General Fairness Provisions which include natural or human-made disasters, civil disturbances or disruptions in services or serious emotional or mental distress.

[26] I acknowledge that the Officer baldly notes that IMAX's circumstances did not amount to extraordinary circumstances under the General Fairness Provisions. However, the Officer stated this in the context of emphasizing that the General Fairness Provisions were not the relevant provisions for consideration; rather, subsection 125.7(16) of the *ITA* required that the Officer consider exceptional circumstances related to IMAX's unique situation. I find that the Officer's focus on exceptional (as opposed to extraordinary) circumstances to be justified as it is consistent with the emphasis in both the Explanatory Notes and the CEWS FAQ. Moreover, IMAX's second level review submissions did not include a submission based on the list of extraordinary circumstances linked to the General Fairness Provisions. Accordingly, I find that the Officer's unexplained reasons amount to a minor misstep, which do not justify this Court's intervention (*Vavilov* at para 100).

V. Conclusion

[27] IMAX has not met its burden of showing that the Decision is unjustified or lacks intelligibility. On the contrary, the Decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Accordingly, the applications are dismissed.

JUDGMENT in T-2200-24 and T-2201-24

THIS COURT'S JUDGMENT is that:

1. The applications are dismissed; and
2. There is no cost award.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2200-24
T-2201-24

STYLE OF CAUSE: IMAX CORPORATION v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

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