

**Date: 20070906**

**Docket: T-1236-06**

**Citation: 2007 FC 892**

**Ottawa, Ontario, September 6, 2007**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**KENNETH THOMAS KREKLEWICH**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Kenneth Kreklewich seeks judicial review of a “fairness” decision by which the Minister of National Revenue refused his request for relief from the interest and penalties assessed in relation to Mr. Kreklewich’s 1995, 1996 and 1997 income tax years.

[2] While I am not unsympathetic to Mr. Kreklewich’s position, for the reasons that follow his application for judicial review will be dismissed.

## **Background**

[3] In June of 1998, Mr. Kreklewich was advised that an audit of his income tax returns for his 1995, 1996 and 1997 tax years would be carried out. This audit was completed in August of 1999.

[4] As a result of the disallowance of a number of deductions claimed by Mr. Kreklewich, he was reassessed. On August 24, 1999, a statement identifying the final adjustments made to his income tax assessments was mailed to Mr. Kreklewich. By this Notice, Mr. Kreklewich was advised that he owed an additional \$9,210.00 in unpaid taxes.

[5] Mr. Kreklewich was further advised that interest would continue to accrue on his unpaid balance, and that he could avoid further interest charges by paying his account.

[6] Mr. Kreklewich and his accountant evidently did not take issue with some of the deductions being disallowed, but did dispute the disallowance of others. As a result, in February of 2000, a departmental appeal was commenced by Mr. Kreklewich in relation to the disputed deductions. Just over a week later, this appeal was dismissed.

[7] Mr. Kreklewich then appealed the disallowance of the disputed deductions to the Tax Court. His appeal was scheduled to be heard in August of 2001. Following discussions between Mr. Kreklewich and counsel for the respondent, an agreement was reached, the result of which was a consent judgment issued by the Tax Court, providing \$6,345.00 in tax relief to Mr. Kreklewich.

[8] According to Mr. Kreklewich, after the consent judgment was signed, the respondent advised him that he owed approximately \$8,822.00 in unpaid taxes. Mr. Kreklewich could not understand how, having obtained \$6,345.00 in tax relief, his balance owing had only decreased by approximately \$400.00. As he explained in his affidavit, “This frankly did not seem logically possible. With no way to verify Revenue Canada’s claim I decided to wait for a complete statement of account. Such a statement never arrived.”

[9] It appears that the reason that Mr. Kreklewich’s balance owing did not decrease appreciably after the consent judgment of the Tax Court was because interest had continued to accrue on the balance owing with respect to that portion of the disallowed deductions that had not been disputed by Mr. Kreklewich.

[10] In February of 2002, Mr. Kreklewich was contacted by Calvin Miller, a representative of the respondent, who wanted to know when Mr. Kreklewich would be paying his unpaid taxes. Mr. Kreklewich evidently advised Mr. Miller that he was still waiting for an explanation as to how the claimed balance had been calculated.

[11] In February of 2003, Mr. Kreklewich was contacted by a second representative of the respondent, one James Curtis, who was again demanding payment of Mr. Kreklewich’s outstanding arrears. Mr. Kreklewich again indicated that he “could not pay the amount without a proper statement”. According to Mr. Kreklewich, he felt that without such a statement, the claim for payment was “unjust”.

[12] Mr. Curtis evidently provided Mr. Kreklewich with a statement in March of 2003, purporting to explain how the balance was arrived at. According to Mr. Kreklewich, neither he nor his accountant could understand the statement. As a consequence, Mr. Kreklewich had his accountant prepare a calculation of what he thought Mr. Kreklewich owed to the respondent.

[13] On March 20, 2003, Mr. Kreklewich met with Mr. Curtis, and provided him with a cheque in the amount of \$4,622.38, which Mr. Kreklewich believed to be what his original tax bill should have been, without any interest having accrued.

[14] In May of 2003, Mr. Kreklewich received a further statement regarding his unpaid tax liabilities from the respondent, this time in a form that was comprehensible to Mr. Kreklewich. As I understand it, Mr. Kreklewich did not disagree with the respondent's calculations as to his indebtedness.

[15] Mr. Kreklewich then sought relief from the respondent in accordance with the fairness provisions of subsection 220(3.1) of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th supp.), with respect to the interest and penalties that had accrued in relation to the unpaid balance to that point.

[16] In this regard, Mr. Kreklewich relies on the provisions of Information Circular 92-2, prepared by the respondent, which provides guidance in the interpretation and application of subsection 220(3.1) of the Act. Specifically, Mr. Kreklewich relies on sections 6(a) and 6(e) of Information Circular 92-2 which provides that:

6. Cancelling or waiving interest or penalties may also be appropriate if the interest or penalty arose primarily because of actions of the Department, such as:

a) processing delays which result in the taxpayer not being informed, within a reasonable time, that an amount was owing;

...

e) delays in providing information such as the case where the taxpayer could not make the appropriate instalment or arrears payment because the necessary information was not available.

[17] Mr. Kreklewich's request for fairness relief was reviewed by a first level Fairness Request Committee, which determined that the audit of Mr. Kreklewich's 1995, 1996 and 1997 taxation years had been completed in a timely manner and that there were no undue delays caused by the respondent. As a consequence, Mr. Kreklewich's request was denied.

### **The Decision Under Review**

[18] By letter dated February 9, 2004, Mr. Kreklewich made a second request for fairness relief with respect to his 1995, 1996 and 1997 taxation years. It is the final decision made with respect to this request that is the underlying decision in this application for judicial review.

[19] Mr. Kreklewich's second request was initially reviewed by a Team Leader in the respondent's Verification and Enforcement Division, who prepared a report recommending that the

request be denied, as the audit of Mr. Kreklewich's 1995, 1996 and 1997 taxation years had been completed in a timely manner, and because there were no undue delays caused by the respondent.

[20] This report was then reviewed by the Director of the Regina Tax Service Office, who also considered the documentation relating to Mr. Kreklewich's first fairness request in her deliberations. The Director concluded that there were no undue delays with respect to the Objection and Appeal processes. She further observed that at the conclusion of the audit and appeal processes, Mr. Kreklewich had been provided with Notices of Assessment and Reassessment that had explained the adjustments that had been made to Mr. Kreklewich's tax payable, and identified the balance due.

[21] In her decision letter, the Director goes on to note that:

With respect to interest charges, it is noted that in our initial correspondence to you, you were advised that interest continues to accrue on your unpaid balance and you could avoid interest charges by paying your account balance. Therefore, I have concluded that this is not a case in which it would be appropriate to cancel the arrears [of] interest."

[22] Mr. Kreklewich now seeks judicial review of this decision, asserting that the audit conducted by the respondent was not carried out in a fair or timely manner. As I understand his position, he says that the decision of the Director should be set aside, as the respondent consistently refused his reasonable request to provide him with a breakdown of the amount that the respondent claimed was owing by Mr. Kreklewich.

[23] Without such a breakdown, Mr. Kreklewich says that he could not reasonably have been expected to make a payment.

### **Standard of Review**

[24] This case involves a discretionary decision made by the Canadian Revenue Agency, pursuant to the ‘fairness’ provisions of the *Income Tax Act*. It is not the task of this Court, sitting on judicial review, to substitute its own view of the situation for the decision of the respondent. Rather, the task of the Court is to determine whether the decision of the respondent was reasonable: see *Lanno v. Canada (Canada Customs and Revenue Agency)*, [2005] F.C.J. No. 714, 2005 FCA 153.

[25] That is, the question is whether the decision can withstand a somewhat probing examination: *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, 2003 SCC 20.

### **Analysis**

[26] The respondent’s audit of Mr. Kreklewich’s 1995, 1996 and 1997 taxation years took some fourteen months. A review of the chronology of events surrounding the audit discloses that some of the time taken for the audit resulted from Mr. Kreklewich or his accountant failing to provide the respondent with information requested in a timely fashion.

[27] Having reviewed all of the available information with respect to progress of the audit, I am satisfied that the time taken for audit was acceptable, and that the Director’s conclusion that the

audit of Mr. Kreklewich's 1995, 1996 and 1997 taxation years had been completed in a timely manner was one that was reasonably open to her on the record before her.

[28] As a consequence, Mr. Kreklewich has not persuaded me that there were processing delays in this case that resulted in him not being informed, within a reasonable time, that an amount was owing, as is contemplated by section 6(a) of Information Circular 92-2.

[29] This leaves Mr. Kreklewich's contention that he could not reasonably have been expected to have paid the balance claimed by the respondent, without having first receiving a breakdown of how the amount was calculated.

[30] In this regard, the Director found that Mr. Kreklewich had been advised interest would continue to accrue on his unpaid balance, and that he could avoid further interest charges by paying his outstanding balance.

[31] It would certainly have been helpful had the respondent simply given Mr. Kreklewich what he sought – namely a clear and timely explanation of how it had arrived at the balance it claimed was owing. That said, this is not a situation such as that contemplated by section 6(e) of Information Circular 92-2.

[32] That is, Mr. Kreklewich was not precluded from paying the outstanding arrears because the information necessary to allow him to make such a payment was not available. The respondent had



told Mr. Kreklewich precisely how much the respondent believed he owed. If Mr. Kreklewich did not agree with that assessment, it was open to him to make the payment in order to stop the clock on the interest charges, and then to challenge the respondent's calculation through the appeal process.

[33] As a consequence, I am satisfied that the decision of the Director not to exercise her discretion in favour of Mr. Kreklewich was not unreasonable, and should not be set aside. Mr. Kreklewich's application for judicial review is dismissed.

### **Costs**

[34] While costs were sought by the respondent in its memorandum of fact and law, counsel for the respondent did not press the matter at the hearing. In all of the circumstances, and in the exercise of my discretion, I decline to make any order of costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed, without costs.

“Anne Mactavish”

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Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1236-06

**STYLE OF CAUSE:** KENNETH THOMAS KREKLEWICH v.  
CANADA REVENUE AGENCY

**PLACE OF HEARING:** Regina, Saskatchewan

**DATE OF HEARING:** August 30, 2007

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Mactavish J.

**DATED:** September 6, 2007

**APPEARANCES:**

Kenneth Kreklewich

FOR THE APPLICANT

Lyle Bouvier

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Kenneth Kreklewich

FOR THE APPLICANT

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FOR THE RESPONDENT