Federal Court  Cour fédérale

Date: 20140904

Docket: T-1672-12

Citation: 2014 FC 843

Ottawa, Ontario, September 4, 2014

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MICHAEL BIRD

Applicant

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Bird (the applicant) asked the Canada Revenue Agency (the CRA or the respondent) to cancel the penalty and interest charged on his 2007 and 2008 tax years, which the Minister can do by virtue of subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act]. However, the applicant's request was refused at both the first and second level reviews. He now applies to this Court for judicial review of the second level decision pursuant to subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7.

[2] In his notice and application, the applicant states he wants the "cancellation of penalty and interest charged on 2007, 2008, 2009, 2010 income tax returns." In his affidavit, he states he seeks "relief/forgiveness of the balance of my account, specifically $12,328.39 (as of Feb. 25, 2011)." In his brief, he maintains his request for "full relief" but alternatively asks the Court to order the judgment removed and allow him "to pay the outstanding only off future refunds with no additional negative impact on my credit-worthiness."

I. Background

[3] The applicant is a hotel manager and currently runs a bed and breakfast out of his home. According to his initial request for taxpayer relief, his troubles began in 1999, when he lost his job in Whistler, British Columbia and moved to Charlottetown, Prince Edward Island for work. Between 1999 and 2004, he was unemployed for two years. Over the same time period, he was diagnosed with depression.

[4] In 2001, he got a job out-of-province and had to maintain two homes. He incurred debts that he could not pay and he fell behind on his taxes. He tried to sell his property in order to satisfy his creditors, but the CRA blocked the sale and refused his proposal to settle his tax debt. Because of that, the applicant went bankrupt in 2005 from which he was only discharged on September 14, 2006.

[5] Financially, the applicant recovered and he earned a healthy income from 2007 to 2010: $204,188 in 2007, $165,418 in 2008, $136,190 in 2009 and $179,996 in 2010.

[6] However, the applicant also incurred expenses. In late 2007, he bought a house worth $330,000 which he financed by a $267,303.75 mortgage with a very high interest rate (10.9%). He says in his affidavit that he was paying $2,800 per month toward that mortgage, but he put $2,670 in his most recent monthly income and expenses statement and the mortgage agreement itself says that monthly instalments were $2,372.61. From 2007 to 2010, he was also paying $1,300 per month for a collateral mortgage on the same house.

[7] Unfortunately, the applicant lost his job in 2009 and was unable to find other employment. Most of his income in 2010 was from cashing in his registered retirement income fund, which is now depleted. As well, he did not pay all the taxes that he owed, leaving balances every year: $19,110.49 in 2007, $12,220.19 in 2008, $723.23 in 2009 and $8,011.99 in 2010. Interest has been accruing on some of those sums since April 30, 2008 and he has also been assessed some penalties for filing his 2007, 2008 and 2010 income tax returns late. By May 16, 2012, he owed the CRA just over $69,000 in back taxes, penalties and interest and the only payment he had made against it in the previous four years was $426.91.

[8] On November 19, 2009, the applicant wrote to the CRA asking it to cancel the penalty and interest on his 2007 and 2008 tax years, citing his inability to pay and referring to many of the above described circumstances. He also claims that he received verbal assurances from CRA officials later that relief for 2009 and 2010 would also be considered without any formal request.

[9] Meanwhile, he was receiving employment insurance and eventually decided to employ himself. He converted his home into a bed and breakfast, reactivated his hospitality management

consultancy and started a destination management company with his wife. He eventually sold the house to his daughter and father-in-law and he claims that he has been able to pay the CRA $55,000 since November 2012.

II. The First Level Review Decision

[10] The matter first went to a taxpayer relief officer who prepared a fact sheet dated March 17, 2011. She summarized the applicant's submissions, then said the applicant has repeatedly filed personal income tax returns late and has not acted quickly to remedy any delays or omissions.

[11] She also noted that the applicant's net worth was approximately $129,000 once she excluded his tax debt from his assets and she recommended that the request be denied. A handwritten notation from another reviewer indicated agreement and also said the applicant had withdrawn nearly $200,000 from his RRIFs and RRSPs in 2010 but did not put any of that money toward his tax debt.

[12] The matter was then forwarded to the Minister's delegate, assistant director of the Charlottetown Tax Services Office. He agreed with the officer's recommendation and denied the applicant's request by a generic letter dated March 30, 2011. The assistant director briefly described the factors which are relevant to taxpayer relief decisions and then asserted that a careful review of the facts in this case failed to show that payment of the entire liability would cause undue hardship.

III. The Second Level Review Decision

[13] The applicant then applied for a second level review, claiming that the assistant director ignored the facts he had presented.

[14] As with the first level review, the record disclosed a taxpayer relief fact sheet; this one prepared by another taxpayer relief officer. The fact sheet notes that since 2000, the applicant has only filed his tax returns on time in 2001, 2005 and 2009 and has given no explanation as to why. It also refers to his fairly high income from 2007 to 2010 and notes that the applicant has not paid his large tax debt or the interest that has been accruing since 2008.

[15] The officer then reviewed the applicant's current financial situation. The applicant had given to the CRA assets and liabilities information showing that his home was worth $330,000 and his cars were worth $4,000. Those assets are offset, however, by a $275,000 mortgage, a $6,000 credit card debt, a $1,500 overdraft on his bank account and a $50,000 debt to the CRA. Since the CRA debt had increased to $69,034 by the time the fact sheet was prepared, the officer calculated the applicant's net worth to be approximately $17,500. The officer also said that a search of Google Maps showed that the applicant owned a cottage, but that did not appear to affect his calculations.

[16] Further, the officer noted that the applicant had cashed in his $130,000 RRIF. After taxes on the withdrawal, he had $91,000 remaining, which he spent as follows: $29,000 paying back a

loan from the Able Group, $44,700 towards an expenses shortfall and $17,300 toward other loans and legal payments. He used none of it to pay his back taxes.

[17] Finally, the officer reviewed the applicant's income and expenses statement. It showed a monthly shortfall of $18, but business expenses were not separated from personal expenses, nor did the applicant say how much of the home was reserved for personal use. The officer looked at the 2010 tax return for the bed and breakfast and saw that a number of expenses were duplicated, including insurance, property taxes, telephone and utilities, fuel costs, motor vehicle expenses, and interest. Even subtracting just the property taxes from the monthly expenses would give the applicant a surplus of $246.

[18] All that considered, the officer recommended that the request be denied. In his view, the applicant had sufficient resources to pay off his tax debt and simply had not, prioritizing other debts and living above his means. His surplus in 2010 alone would have been sufficient to cover the entire tax debt. Further, from 2009 to 2010, he had contributed $46,299 to RRSPs without ever addressing his tax debt.

[19] A reviewer agreed with the recommendation and forwarded the matter to another Minister's delegate, manager of the Taxpayer Relief Appeals Division in the Summerside Tax Centre. The manager also approved the recommendation and he rejected the applicant's request by a letter dated July 31, 2012.

[20] This letter gave many of the same reasons that the officer had suggested. The manager began by identifying that the applicant was seeking relief for the 2007 and 2008 tax years due to financial hardship and inability to pay. The manager also summarized the applicant's submissions, but dismissed them because the events all occurred before the time period for which the applicant was requesting relief; they did not explain why the applicant could not file his tax returns on time or make the required payments.

[21] As well, the manager spoke generally about the taxpayer relief provisions and noted that four factors should ordinarily be considered: whether the individual has a history of voluntary compliance with tax obligations, whether the individual has knowingly allowed a balance to exist, whether the individual exercised a reasonable amount of care in conducting his or her affairs and whether the individual has acted quickly to remedy any delays or omissions. The manager concluded that all four factors were negative for the applicant.

[22] The manager also said that the CRA views financial hardship as the prolonged inability to provide basic necessities such as food or shelter. It is usually determined by factors such as household income, basic living expenses and the capacity to borrow. Here, he said that he could not discern the applicant's financial situation because there was no true separation between his business and personal expenses.

[23] Further, he said that the applicant earned sufficient income in 2007 and 2008 to pay the taxes when they were due. The manager stressed that during the 2009 and 2010 years, the

applicant made large contributions to his RRSPs and withdrew $130,000 from his RRIF without ever addressing his tax debt.

[24] The manager concluded that relief was not warranted and informed the applicant that interest would continue to accrue until he paid his debt.

IV. Application for Judicial Review

[25] The applicant then applied for judicial review of the second level decision and in so doing, asked for all correspondence between himself and the CRA from 2005 until 2012. The respondent objected to the extent of disclosure and produced in the tribunal record only those documents considered by the decision maker. The applicant challenged that refusal, but Prothonotary Morneau agreed with the respondent and refused to order any further disclosure.

[26] However, the applicant was able to find copies of some of that missing correspondence and has included those copies in his record. Generally speaking, they relate to six matters: an instance where the CRA garnished his salary by more than 100%, his diagnosis of depression and anxiety, the sale of his house to his daughter and father-in-law, his bankruptcy, some cheques that he claims were sent to the CRA and never cashed and his and his wife's business.

V. Issues

[27] There are five issues in this application:

A. Are the additional documents submitted by the applicant admissible?

B. What is the standard of review?

C. Was the process unfair?

D. Was the decision unreasonable?

E. What remedy is appropriate, if any?

VI. Applicant's Written Submissions

[28] The applicant says the manager's affidavit was reasonably accurate and so he largely focuses on the documents he states were missing from the tribunal's record but included in his own. In his view, those documents are relevant since they relate to matters referred to in his initial request.

[29] The applicant does not take a position on the standard of review.

[30] The applicant argues that he is a good citizen who has hit a rough patch in his life, but the CRA has been unreasonably dismissive and inflexible. In his view, the record shows that his financial and personal difficulties, including his depression, have made it impossible for him to comply with the requirements of the Act. He has had to deplete his entire life savings over the past few years and he says that obviously shows hardship.

[31] Further, he says that his current income is at poverty level but that he has still paid the CRA $55,000 since 2012. As well, his business is showing promise and the only thing keeping him from returning to good credit is his debt to the CRA for interest and penalties. The applicant

concludes his memorandum by asking the Court to cancel the interest and penalty on his 2007 to 2010 taxation years or alternatively, to remove the judgment against him.

[32] As well, the applicant makes other complaints when reciting his version of the facts in his affidavit. In particular, he views the fact sheet prepared by the officer as incomplete and misleading and he complains that the manager's decision completely ignores the "human element". Although affidavits are not the appropriate place for arguments, I will consider those complaints as well.

VII. Respondent's Written Submissions

[33] The respondent notes that none of the documents attached to the applicant's affidavit were before the decision maker but really only challenges the admissibility of the documents appended at pages 99 to 117. It says that these are not attached as exhibits to an affidavit and are therefore inadmissible.

[34] As for the substance of the decision, the respondent says that the standard of review is reasonableness and that the decision was reasonable. The manager properly dismissed the evidence of events leading to the bankruptcy since they could not explain his failure to comply with the Act in 2007 and 2008. Further, the applicant had a history of non-compliance, had provided inconsistent financial information from which his financial situation could not be discerned, had failed to pay his taxes when they were due despite having the means to do so and prioritized other debts over his tax debts. The respondent says the record amply supports those facts which justify the decision to deny the applicant's request.

[35] In the event that it is wrong, the respondent argues that the requested remedies are inappropriate. In its view, the only thing the Court can do is send the matter back for redetermination, since only the Minister can cancel the penalty and interest. Further, the respondent says that the alternative remedy requested is outside the purview of judicial review.

VIII. Analysis and Decision

A. *Issue 1- Are the additional documents submitted by the applicant admissible?*

[36] The applicant's affidavit suffers from a few formal defects. Contrary to subsection 80(1) of the *Federal Courts Rules*, SOR/98-106 [the Rules], it is not in Form 80A and contrary to subsection 80(3), none of the exhibits are endorsed by the person before whom the affidavit was sworn. Indeed, none of the exhibits were expressly identified in the affidavit and most were not even referred to generally. They are essentially just loose documents whose inclusion in the record is not contemplated by Rule 309(2).

[37] However, the respondent has only objected to a few of those documents; the ones contained at pages 99 to 117 of the applicant's record. Plainly, the respondent is right that these exhibits were not filed in compliance with the Rules. Further, these Rules are not simply technicalities. As it is, the applicant has not advised what these documents are or whether they are authentic, nor has he committed himself to the truth of those representations by oath or affirmation. Their value as evidence is dubious.

[38] That said, section 55 of the Rules allows the Court to "vary a rule or dispense with compliance with a rule" in special circumstances. Here, the applicant is a self-represented litigant. While that is not as special a circumstance as it ought to be, he has tried in other ways to comply with the processes of this Court, but the Rules can be complicated. Some procedural irregularities can be expected and, in my view, forgiven where they are honest mistakes that do not prejudice another party. I draw some support for this view from *Wheeldon v Canada (Attorney General)*, 2012 FC 355 at paragraphs 17 to 19, [2012] FCJ No 403, where a self-represented litigant's non-compliance with Rule 317 was excused since the mistake was caused by lack of knowledge and the documents were necessary to consider the merits of the judicial review.

[39] Here, the nature of most of the challenged documents are fairly self-evident, they are mostly correspondence between the Birds and other parties, including the CRA. Some are date stamped by the CRA. Most would have been identifiable by the applicant and they do not appear to be forgeries. I am satisfied that his failure to identify and authenticate them was an honest oversight.

[40] As well, it is not prejudicial to the respondent to admit these documents. They were included within the applicant's record which was filed on September 10, 2013. The respondent had plenty of time to respond before it filed its own record on October 7, 2013.

[41] Further, although it is not this Court's role on judicial review to assess evidence that was not before the decision maker, it is potentially erroneous for the CRA to ignore relevant evidence

to which it had access. For that reason, evidence that could show that the CRA possessed pertinent information that it did not consider potentially has probative value.

[42] In my view, these are special circumstances and it is in the interests of justice to treat the documents as if they were properly submitted exhibits.

B. *Issue 2 – What is the standard of review?*

[43] Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 57, [2008] 1 SCR 190 [*Dunsmuir*]).

[44] Although the applicant does not frame it this way, aspects of his argument about the missing documents raise a procedural fairness issue. Such issues are reviewable on a correctness standard (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 43, [2009] 1 SCR 339 [*Khosa*]). Decision makers must accord to affected persons the procedural rights to which they are entitled, though sometimes an error will not attract relief if it "is purely technical and occasions no substantial wrong or miscarriage of justice" (see *Khosa* at paragraph 43).

[45] As for the substantive review, our Court of Appeal has held that the standard of review for a decision under subsection 220(3.1) of the Act is reasonableness (see *Telfer v Canada (Revenue Agency)*, 2009 FCA 23 at paragraph 24, 386 NR 212). That means that this Court will not intervene if the decision is transparent, justifiable, intelligible and within the range of

acceptable outcomes based on the evidence before the decision maker (see *Dunsmuir* at paragraph 47 and *Khosa* at paragraph 59). As the Supreme Court held in *Khosa* at paragraphs 59 and 61, a reviewing court cannot substitute its own view of a preferable outcome, nor can it reweigh the evidence.

[46] The reason for this limited scope of review is because Parliament assigned the discretion to make these decisions to the Minister, not to this Court. That legislative choice commands deference, so the Court cannot usurp the Minister's role. Rather, my only function is to determine whether the Minister's delegate exercised his discretion lawfully, which he did if he followed a fair process and made a reasonable decision. Therefore, when it comes to the substance of the decision, I can only set it aside if the reasons, read in the context of the record, do not reveal why the manager decided as he did or allow me to determine whether his conclusions are defensible in view of the facts and applicable law (see *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraphs 15 and 16, [2011] 3 SCR 708; *Dunsmuir* at paragraph 47).

C. *Issue 3 – Was the process unfair?*

[47] Parts of the applicant's arguments are directed at whether the respondent was right not to include some correspondence from his file in the record. That issue has been dealt with by the Prothonotary and is not before me. However, implicit in the applicant's submissions and affidavit is a complaint that it was unfair for the manager not to consider that correspondence. The problems relating to the bankruptcy and his rejected proposal were raised in his initial

complaint, after all, and the CRA could have verified that information from its own file. Instead, the CRA ignored it.

[48] In some circumstances, I can see how it might be unfair for a decision maker to reject an applicant's version of events due to lack of evidence when it could have verified the submissions from its own files.

[49] However, that is not what happened here. The manager did not reject the applicant's version of events. He never denied that the applicant was depressed in 2004 or that he was working in another province or that he went bankrupt in 2005. Indeed, he did not even deny that the CRA caused the bankruptcy through its aggressive refusal to compromise. Rather, the manager simply found that those facts, occurring as they did from 1999 to 2006, did not explain why the applicant could not file his 2007 or 2008 income tax returns on time, nor why he could not pay the interest on his taxes in view of his substantial income. I will discuss whether that was reasonable shortly, but it is not unfair to believe an applicant's statements without verifying them.

D. *Issue 4 – Was the decision unreasonable?*

[50] Because the CRA made no procedural error, the exhibits filed by the applicant are, in the end, irrelevant. Most tend to prove facts that were already accepted by the decision maker (such as the high interest mortgage) and none were presented to the decision maker as evidence. Indeed, some of the events, such as the sale of his house and the $55,000 payment to the CRA

happened after the manager made his decision on July 31, 2012. Decision makers are not required to predict the future.

[51] Similarly, a decision maker cannot be faulted for failing to consider evidence that the applicant did not presented. The applicant submits in his affidavit that the CRA has treated him as if he was "guilty until proven innocent," but people are expected to pay their taxes on time and in the ordinary course are penalized if they do not. Relief under subsection 220(3.1) is discretionary and the Minister did not have to prove anything. Rather, the applicant was trying to convince the Minister to make an exception for him and that means he is the one responsible for providing the evidence.

[52] As such, I cannot accord any weight to such matters as the applicant's statements that he lived in his garage and rented the house out for the winter of 2011 or that he only made about $29,000 for that year. The manager's decision can only be evaluated on the basis of the evidence that he had before him and those allegations were not made at the time.

[53] Moving to the substance of the decision then, the applicant does not challenge many of the facts upon which the decision maker relied. He does not deny that he has repeatedly filed his tax returns late, nor that he has knowingly allowed a balance to exist, nor that he has been slow to remedy delays and omissions.

[54] Rather, the applicant primarily complains about four aspects of the decision: the manager's dismissal of the evidence about the applicant's depression and the circumstances

leading to his bankruptcy; the manager's failure to consider that the applicant was paying current income tax faithfully; the manager's conclusions about his co-mingling of expenses; and the CRA's failure to consider the "human element." I will consider these in turn. Also, as the manager approved the recommendations in the fact sheet, it is appropriate to refer to it to flush out some of the manager's conclusions when assessing whether his decision was reasonable.

[55] The applicant states in his initial letter that he was diagnosed with depression in 2004 and had been receiving treatment since then (he has since provided a doctor's note saying that he was actually diagnosed in 2000). However, the applicant did not explain to the manager what continuing effect this disease has had on his life or on the decisions that caused his current financial crisis. Therefore, there was no evidence to suggest it was related to his failure to file his returns or pay his taxes on time and it was reasonable for the manager to dismiss that factor.

[56] With respect to the circumstances surrounding his bankruptcy, the applicant says in his affidavit that they are relevant since his bankruptcy is the reason that he has poor credit and had to pay such an obscene amount of interest on his home. Therefore, it is related to his inability to pay his taxes.

[57] The applicant says that the home purchase was his best option after having lost his first house and cottage in the bankruptcy and then moving twice more when houses he had been renting were sold.

[58] In any event, it is worth emphasizing that the manager decided that, even with that mortgage, the applicant had enough money to pay his taxes when they were owed. That was the substance of the decision and it therefore does not matter why the mortgage payments were so high, since the manager accepted that they were legitimate expenses. Given that, the failure to consider the circumstances surrounding the bankruptcy was reasonable even in light of the explanations the applicant now provides.

[59] Moving to the next complaint, the applicant says in his affidavit that the officer's calculations at page 4 of the second level review fact sheet are based on gross income and ignore the fact that he was only receiving about half that after taxes.

[60] There are two sets of calculations on that page and it is unclear to which he is referring, but in either case, the allegation is unfounded. The first set of calculations is based on a monthly income and expense statement filled out by the applicant. It is undated, but the applicant confirmed by a phone call with the officer that it was current as of May 17, 2012. That form asks for net income, not gross, and the fact sheet accurately records the applicant's responses. If the applicant put his gross income on that form, then that would have caused an error in the officer's calculations, but it was reasonable for the officer to assume that the statement was filled out correctly.

[61] In the second set of calculations, the officer measured the applicant's declared expenses in 2010 against his income and found that he would have had a $59,595 surplus over the course of the year. In doing that, the officer specifically subtracted from the applicant's income the

$47,884 of tax that was withheld at source, so he plainly was not just considering gross income. The officer evaluated it against the total amount of tax owing in January 2011.

[62] Therefore, in both sets of calculations, the officer used net income, not gross, and the applicant's submissions are unfounded. To the extent that the applicant implies that he should not have to pay his back taxes because he was paying his current taxes faithfully, present compliance does not excuse past non-compliance and it was reasonable for the decision maker not to attach any significance to that. Rather, the manager had to evaluate the applicant's ability to pay and he reasonably concluded that the applicant could have paid his back-taxes at the time he made his request, even on top of the taxes he was paying on his 2010 income.

[63] Next, the applicant says that his taxes are prepared by a certified general accountant and that he has not co-mingled his personal and business expenses. On this issue, the record is defective, since the officer said he considered the 2010 tax return for the bed and breakfast in the fact sheet and I assume that the manager did the same, but that return is not in the record. As a result, I cannot determine whether it was reasonable for the Minister's delegate to draw that conclusion.

[64] However, even assuming that aspect of the decision was unreasonable, I cannot say the decision as a whole was unreasonable. The officer said in his fact sheet that the applicant contributed $46,299 to his RRSPs in 2010, though he had earlier put the number at $27,299 and that is the number the manager says he relied on in his affidavit. In either case, it was a substantial amount and the applicant admits that he did that. He now says he did it to reduce

taxes owed and then diverted the funds, but whatever the merit of that strategy, he provided the CRA with no explanation as to why at the time. He also does not deny that he cashed in his RRIFs and directed all the after tax income toward other matters. It was reasonable for the Minister's delegate to derive from those facts that the applicant had the ability to pay and simply failed to exercise a reasonable amount of care in conducting his affairs under the self-assessment tax regime.

[65] Finally, the applicant submits in his affidavit that the CRA has misunderstood or disregarded the "human element." He is a real person who is trying his best to negotiate a balance between his responsibilities to his family and to the state. When describing his choice between accruing more debt or selling his house, he says the following:

> In human day to day living terms, my decision became easier: Pay CRA, lose our home, file for bankruptcy again, abandon my family, fail them again. CRA continued to take 40% of my income so they were getting paid. I will use my life savings to pay, in order of priority, food, shelter, basic medical, transportation etc. for my family and try to secure employment.

[66] His concerns are understandable, but the decision maker found as a fact that he was prioritizing more than basic necessities such as food and shelter. To reiterate, he was also prioritizing paying back loans to the Able Group and contributing to his RRSPs and that finding of fact is supported by the evidence.

[67] In these circumstances, I understand why the Minister's delegate did not cancel the interest and penalties on the applicant's account and that outcome is defensible even if the

manager was wrong about the co-mingling of business and personal expenses. The decision was reasonable.

[68] Finally, before leaving this issue, the applicant also states in his affidavit that the officer was wrong about him owning a cottage. I agree that the officer's search of Google Maps was not a reasonable basis to conclude the opposite. However, neither the officer nor the manager attached any significance to the cottage, so it does not affect the reasonableness of the decision.

[69] Similarly, it does not matter that the manager failed to consider granting relief for 2009 and 2010 as well. The manager says in his affidavit there was no request to do so in the file, but in any case, it is clear from his reasons that he would not have granted relief for 2009 or 2010 either. As such, even if that mistake was made, it does not disturb my conclusion on reasonableness.

[70] It appears from the applicant's affidavit that the situation has changed substantially since the manager made his decision. It may very well be that an application made now, supported by the evidence the applicant has provided, would have a different result. However, this is not something I am allowed to assess on this judicial review. Rather, my only task is to determine whether the second level decision was procedurally fair and reasonable at the time it was made and I am satisfied that it was. I therefore dismiss this application for judicial review.

[71] Because of my conclusions, I need not deal with Issue 5.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

***Federal Courts Act*, RSC 1985, c F-7**

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.
…	…
(3) On an application for judicial review, the Federal Court may	(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

***Federal Court Rules*, SOR 98-106**

55. In special circumstances, in a proceeding, the Court may vary a rule or dispense with compliance with a rule.	55. Dans des circonstances spéciales, la Cour peut, dans une instance, modifier une règle ou exempter une partie ou une personne de son application.

…	…
80. (1) Affidavits shall be drawn in the first person, in Form 80A.	80. (1) Les affidavits sont rédigés à la première personne et sont établis selon la formule 80A.
…	…
(3) Where an affidavit refers to an exhibit, the exhibit shall be accurately identified by an endorsement on the exhibit or on a certificate attached to it, signed by the person before whom the affidavit is sworn.	(3) Lorsqu'un affidavit fait mention d'une pièce, la désignation précise de celle-ci est inscrite sur la pièce même ou sur un certificat joint à celle-ci, suivie de la signature de la personne qui reçoit le serment.
…	…
309. (2) An applicant's record shall contain, on consecutively numbered pages and in the following order,	309. (2) Le dossier du demandeur contient, sur des pages numérotées consécutivement, les documents suivants dans l'ordre indiqué ci-après :
(a) a table of contents giving the nature and date of each document in the record;	a) une table des matières indiquant la nature et la date de chaque document versé au dossier;
(b) the notice of application;	b) l'avis de demande;
(c) any order in respect of which the application is made and any reasons, including dissenting reasons, given in respect of that order;	c) le cas échéant, l'ordonnance qui fait l'objet de la demande ainsi que les motifs, y compris toute dissidence;
(d) each supporting affidavit and documentary exhibit;	d) les affidavits et les pièces documentaires à l'appui de la demande;
(e) the transcript of any cross-examination on affidavits that the applicant has conducted;	e) les transcriptions des contre-interrogatoires qu'il a fait subir aux auteurs d'affidavit;

(e.1) any material that has been certified by a tribunal and transmitted under Rule 318 that is to be used by the applicant at the hearing;	e.1) tout document ou élément matériel certifié par un office fédéral et transmis en application de la règle 318 qu'il entend utiliser à l'audition de la demande;
(f) the portions of any transcript of oral evidence before a tribunal that are to be used by the applicant at the hearing;	f) les extraits de toute transcription des témoignages oraux recueillis par l'office fédéral qu'il entend utiliser à l'audition de la demande;
(g) a description of any physical exhibits to be used by the applicant at the hearing; and	g) une description des objets déposés comme pièces qu'il entend utiliser à l'audition;
(h) the applicant's memorandum of fact and law.	h) un mémoire des faits et du droit.

***Income Tax Act*, RSC 1985, c 1 (5th Supp).**

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 partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.	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 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.
…	…
223. (2) An amount payable by a person (in this section referred to as a "debtor") that has not been paid or any part of an amount payable by the debtor that has not been paid may be certified by the Minister as an amount payable by the debtor.	223. (2) Le ministre peut, par certificat, attester qu'un montant ou une partie de montant payable par une personne — appelée « débiteur » au présent article — mais qui est impayé est un montant payable par elle.
(3) On production to the Federal Court, a certificate made under subsection 223(2) in respect of a debtor shall be registered in the Court and when so registered has the same effect, and all proceedings may be taken thereon, as if the certificate were a judgment obtained in the Court against the debtor for a debt in the amount certified plus interest thereon to the day of payment as provided by the statute or statutes referred to in subsection 223(1) under which the amount is payable and, for the purpose of any such proceedings, the certificate shall be deemed to be a judgment of the Court against the debtor for a debt due to Her Majesty, enforceable in the amount certified plus interest thereon to the day of payment as provided by that statute or statutes.	(3) Sur production à la Cour fédérale, un certificat fait en application du paragraphe (2) à l'égard d'un débiteur est enregistré à cette cour. Il a alors le même effet que s'il s'agissait d'un jugement rendu par cette cour contre le débiteur pour une dette du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit les lois visées au paragraphe (1) en application desquelles le montant est payable, et toutes les procédures peuvent être engagées à la faveur du certificat comme s'il s'agissait d'un tel jugement. Dans le cadre de ces procédures, le certificat est réputé être un jugement exécutoire rendu par cette cour contre le débiteur pour une dette envers Sa Majesté du montant attesté dans le certificat, augmenté des intérêts courus jusqu'à la date du paiement comme le prévoit ces lois.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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