

Federal Court of Appeal



Cour d'appel fédérale

Date: 20231204

Docket: A-88-22

Citation: 2023 FCA 236

**CORAM: STRATAS J.A.
LEBLANC J.A.
BIRINGER J.A.**

BETWEEN:

**ONTARIO ADDICTION TREATMENT
CENTRES**

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on December 4, 2023.

Judgment delivered from the Bench at Toronto, Ontario, on December 4, 2023.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 4, 2023).

STRATAS J.A.

[1] The Appellant appeals from the Judgment dated March 23, 2022 of the Federal Court and the related Judgment on costs dated April 12, 2022 (*per Go J.*): 2022 FC 393. The Federal Court dismissed the Appellant's application for judicial review of a decision of the Minister of National

Revenue. The Appellant's request for remission of tax under subsection 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11 was refused.

[2] For relief under subsection 23(2), the taxpayer must show that “collection... or... enforcement... [would be] unreasonable, unjust or...otherwise [not] in the public interest”. Multiple factors, sometimes subjective and impressionistic, fall to be considered. The decision, based on these factors, is highly discretionary. As a result, it is often said that relief under the subsection is unusual or extraordinary.

[3] Using the terminology of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, decisions of this sort are relatively unconstrained: the Minister has a discretion of sweeping ambit based on wide criteria. Thus, courts conducting reasonableness review rarely set aside these decisions: *Fink v. Canada (Attorney General)*, 2019 FCA 276, [2019] D.T.C. 5127; *Escape Trailer Industries Inc. v. Canada (Attorney General)*, 2020 FCA 54, 86 Admin. L.R. (6th) 1. In practical terms, normally only a fundamental misreading or misapplication of subsection 23(2), irrationality, or bad faith on the part of the Minister will lead to relief.

[4] In our view, the Federal Court correctly identified reasonableness as the standard of review and applied it properly. We agree with its reasons in support of those conclusions.

[5] The Federal Court observed that it was open to the Appellant to protect itself by making a protective rebate claim and it was not the responsibility of the Canada Revenue Agency to advise

the Appellant of this. We agree with the Federal Court. Like the Federal Court, we fail to see what incorrect action on the part of the Agency caused a payment or retention of tax that, in the circumstances, was unreasonable, unjust or not in the public interest. On the issue of delay in the processing of the Appellant's ruling request, we agree with the reasons of the Federal Court.

[6] The Appellant cites an earlier remission case, which it says is similar to its case. In that case, relief was granted. The Appellant says that in light of this case, it would be irrational and unfair not to give it relief. The Appellant also says the reasons denying it relief and not following this other case are inadequate. We reject these submissions and adopt the reasons given by the Federal Court at paras. 66-77. Although the cases are superficially similar in a number of ways, there was one distinguishing factor identified by the Federal Court that adequately explains and justifies the different result in the earlier remission case and supports the reasonableness of the decision in this case: see the confidential reasons of the Federal Court at para. 68. Here again, we agree with the Federal Court.

[7] In this regard, the Appellant says the Federal Court supplemented the Minister's reasons. The Federal Court did no such thing. It was attempting, as a reviewing court should, to explain why the decision before it could fit in with the Minister's other remission decisions and, thus, was reasonable.

[8] The Appellant submits that the decision does not provide sufficient justification for the outcome reached. We disagree. There is a coherent and rational chain of reasoning between the evidence and the outcome reached.

[9] We also agree with the Federal Court's conclusion and its reasons at paras. 81-89 on the issue of procedural fairness. In the context of remissions under subsection 23(2), the level of procedural fairness is relatively low: *Desgagnés Transarctik Inc. v. Canada (Attorney General)*, 2014 FCA 14, 454 N.R. 381; *Waycobah First Nation v. Canada (Attorney General)*, 2011 FCA 191, 421 N.R. 193. In this case, the Appellant made full submissions in support of its position. The Minister considered those submissions. Nothing in the circumstances of this case suggests that the Minister had to seek further information, documents or submissions from the Appellant.

[10] We observe that the Federal Court closed its whole hearing to the public. It did so because the parties intended to make submissions about the earlier remission case mentioned in paragraph 6, above, and confidential tax information was involved.

[11] The Federal Court erred in closing the whole hearing. The default is that court proceedings are open. Any secrecy must be necessary, justified and minimized: *Sherman Estate v. Donovan*, 2021 SCC 25 458 D.L.R. (4th) 361; *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522.

[12] In the Federal Court, the submissions containing confidential information were only a small part of the hearing. At most, it should have closed only a small part of its hearing. In fact, in this Court it was possible to keep the hearing open for all but a few minutes. One way to do this is to invite counsel in the course of their public oral submissions on this point, if necessary, to draw the Court's attention to paragraphs in the confidential memoranda filed and then to make their points orally without disclosing the confidential information.

[13] This error on the part of the Federal Court, however, does not affect the validity of its judgment.

[14] Therefore, we will dismiss the appeal with costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-88-22

**APPEAL FROM JUDGMENTS OF THE HONOURABLE JUSTICE GO DATED
MARCH 23, 2022 AND APRIL 12, 2022, DOCKET NO. T-1199-18**

STYLE OF CAUSE: ONTARIO ADDICTION
TREATMENT CENTRES v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 4, 2023

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
LEBLANC J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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