

Federal Court



Cour fédérale

**Date: 20150213**

**Docket: T-1515-13**

**Citation: 2015 FC 177**

**Ottawa, Ontario, February 13, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**EARL J. MACDONALD**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Earl MacDonald seeks judicial review of a decision of the Canada Revenue Agency (CRA) refusing to grant him relief from penalties and interest assessed in relation to his payroll and GST/HST accounts for a number of taxation years between 1995 and 2010.

[2] Mr. MacDonald is a 62 year old farmer living in Prince Edward Island. He based his request for fairness relief on the financial hardship that he says that he has suffered over the last several decades. Mr. MacDonald states that his economic difficulties started in the 1980s and 1990s, when poor potato prices and a virus negatively affected his potato crops. This led him to stop growing potatoes, and to go into the cattle and lumber industries. However, the emergence

of “Mad Cow” disease in the 1990s caused a drop in beef prices, and the softwood lumber dispute caused the lumber market to collapse. The combined effect of these events was to leave Mr. MacDonald seriously in debt.

[3] Mr. MacDonald says he has now planted blueberries on his property. He does not enjoy an elaborate lifestyle, and is simply trying to make a living, pay his debts and cooperate with the CRA.

[4] In 2005, Mr. MacDonald sought relief with respect to his payroll and GST/HST accounts for a number of tax years between 1991 and 2004. By letter dated November 15, 2005, the CRA denied this request.

[5] Mr. MacDonald filed a second request in March of 2011 for relief from penalties and interest that had been applied to his payroll account for the years between 1995 and 2005, and to his GST/HST account for the 1995 to 2001 tax years. Mr. MacDonald cited financial hardship as the basis of his second request, describing the challenges that he had faced as a farmer during the 1990s and 2000s. Mr. MacDonald provided the CRA with a list of his assets and liabilities in support of his request, as well as income and expense statements and other financial information.

[6] Because it was not clear which taxation years had been considered by the CRA in connection with its 2005 decision, the CRA decided to treat Mr. MacDonald’s 2011 request for relief as a second-level request. This operated to Mr. MacDonald’s benefit, as it allowed the CRA to go back 10 years from the date of his 2005 request, and to consider the possibility of granting him relief for the 1995-2001 tax years. Had the CRA treated Mr. MacDonald’s 2011 request as a fresh request for relief, it could only have considered granting relief for the tax years

dating back to 2001. The CRA also appears to have considered whether relief was appropriate for the tax years between Mr. MacDonald's first and second requests.

[7] A second level reviewer considered Mr. MacDonald's submissions, noting that payroll deductions and GST/HST remittances were trust funds, and were not to be used to fund Mr. MacDonald's farming operations. The reviewer further noted that Mr. MacDonald had a history of non-compliance with his tax obligations, failing not only to make the necessary remittances, but also to file his tax returns on a timely basis.

[8] Based upon a telephone discussion with Mr. MacDonald, the reviewer concluded that Mr. MacDonald had a net worth of \$137,500, with the result that he had assets available to satisfy his tax debt. The reviewer further noted that Mr. MacDonald had sold property in 2011 and 2013, and that he had applied the proceeds to his mortgage debt with Farm Credit Canada and to his payroll. It was also observed that Mr. MacDonald had gone through farm debt mediation twice, and that trust examiners had noted that Mr. MacDonald was uncooperative, either failing to meet with them or breaking their payment arrangements.

[9] Accordingly, the reviewer recommended that the Minister deny Mr. MacDonald's request for the cancellation of penalties and interest for the taxation years in issue. This recommendation was accepted, and the negative decision was communicated to Mr. MacDonald in a letter dated August 13, 2013.

[10] In his Notice of Application and memorandum of fact and law, Mr. MacDonald asks this Court to review his financial situation and his ability to pay the amounts that he owes for the

period in question, and to grant him relief from the interest and penalties that he has incurred for the tax years in issue.

[11] As I explained to Mr. MacDonald at the hearing, my role on an application such as this is not to review the material that was provided to the CRA and decide for myself whether Mr. MacDonald should receive taxpayer relief. My role is limited to determining whether or not the CRA's decision was reasonable, and whether Mr. MacDonald was treated fairly in the fairness relief process.

[12] Mr. MacDonald has not identified any procedural irregularity in the review process. Consequently, there is no basis for the Court to intervene on the grounds of procedural fairness.

[13] Mr. MacDonald has also not persuaded me that the second-level decision was unreasonable. For a decision to be unreasonable, it must lack justification, transparency or intelligibility, or the outcome must be beyond the range of possible, acceptable outcomes that are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[14] Mr. MacDonald did not identify any error on the part of the CRA that would make its decision unreasonable. Although he raised a concern regarding the value that the CRA had ascribed to his real estate holdings, a review of the record demonstrates that this value was based on Mr. MacDonald's own estimates as to the properties' worth. Mr. MacDonald has not identified any irrelevant considerations that were taken into account by the CRA in concluding that he should not be afforded discretionary relief. Moreover, Mr. MacDonald's submissions

were all considered by the CRA, and he was given a clear explanation as to why his submissions were not accepted.

[15] While I am sympathetic to the financial predicament in which Mr. MacDonald finds himself, no basis has been shown for this Court's intervention, and his application for judicial review must therefore be dismissed. In the exercise of my discretion, I have determined that each side should bear its own costs.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed.

"Anne L. Mactavish"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1515-13

**STYLE OF CAUSE:** EARL J. MACDONALD v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** CHARLOTTETOWN, PRINCE EDWARD ISLAND

**DATE OF HEARING:** FEBRUARY 11, 2015

**JUDGMENT AND REASONS:** MACTAVISH J.

**DATED:** FEBRUARY 13, 2015

**APPEARANCES:**

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FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Caitlin Ward

FOR THE RESPONDENT

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