Federal Court  Cour fédérale

Date: 20190620

Docket: T-1455-18

Citation: 2019 FC 841

Ottawa, Ontario, June 20, 2019

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

RON CHEKOSKY

Applicant

and

CANADA REVENUE AGENCY

Defendant

JUDGMENT AND REASONS

[1] The Applicant, Mr. Ron Chekosky, filed a Notice of Application on August 1, 2018 seeking judicial review of a September 21, 2012 proposal letter (Proposal Letter) issued by the Canada Revenue Agency (CRA). The Proposal Letter set out the CRA's proposals for the reassessment of the Applicant's 2005, 2006 and 2007 taxation years. Mr. Chekosky requests an order quashing the Proposal Letter on the basis that the reassessment conducted by the CRA was flawed and that the audit process was unfair. The application for judicial review is brought pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (Act).

[2] The Applicant's Notice of Application gives rise to a number of preliminary issues, including the identification of the decision under review and the Court's jurisdiction to entertain the application. Although the Notice names the Proposal Letter as the decision for review, a subsequent decision of the Minister of National Revenue (Minister) in 2017 (Refusal Decision) refusing to exercise her discretion to waive certain penalties and arrears interest is the only decision which is subject to review in this application.

[3] I have carefully considered the parties' submissions regarding the jurisdiction of this Court, the relief requested by the Applicant and the reasonableness of the Refusal Decision. For the reasons that follow, I have found that the Refusal Decision was reasonable and that the application must be dismissed.

I. Introduction

[4] The issues in this application centre on the Applicant's 2005, 2006 and 2007 taxation years (Taxation Years). The Applicant did not file income tax returns for the Taxation Years and, as a result, the Minister assessed his income for the Taxation Years pursuant to subsection 152(7) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA) on December 8, 2008.

[5] In 2010, the Applicant's representative, Mr. Don Mitchell, filed late returns for the Taxation Years. On May 11, 2011, CRA auditors began an audit of the late filed returns. Over the following months, there were ongoing meetings and calls discussing the audit among the CRA auditors, the Applicant and Mr. Mitchell.

II. The Proposal Letter

[6] On September 21, 2012, the CRA issued the Proposal Letter. The first paragraph of the Proposal Letter is as follows:

> We had assessed your income tax returns under subsection 152(7) of the *Income Tax Act*, since they had not been filed as requested/required. Based on our review of your submitted returns, the following adjustments are proposed:
>
> (My emphasis)

[7] The Proposal Letter then sets out the adjustments proposed for the Taxation Years and the methods used by the CRA to formulate its proposals. The letter states that the Applicant must provide additional information to refute the proposed income adjustments and that the CRA "will delay the reassessments of the proposed adjustments for a period of thirty (30) days from the date of this letter. If we do not hear from you within the period mentioned above, we will reassess your returns based on our proposal". The Applicant was notified in the Proposal Letter that the CRA was considering imposing penalties pursuant to subsection 163(2) of the ITA (gross negligence) in respect of the proposed adjustments.

[8] The Applicant states that he did not receive the Proposal Letter until March 2017. However, the CRA auditor's contemporaneous notes indicate that the Proposal Letter was sent to the Applicant by registered mail on September 21, 2012 and that the auditor spoke to the Applicant by phone the same day, informing him that the letter would be coming and providing a summary of the adjustments proposed for the Taxation Years. The auditor's notes also state that he spoke with Mr. Mitchell on September 25, 2012. Mr. Mitchell acknowledged receipt of the

Proposal Letter and indicated that he disagreed with the content of the letter, notably the use of industry averages for expenses.

[9] On October 16, 2012, the CRA auditor spoke with the Applicant and asked him what questions he had regarding the Proposal Letter and whether he had additional information for the auditor. The two men discussed the use of industry averages and the auditor indicated that he needed supporting documentation from the Applicant to verify that the expenses actually claimed were correct. The auditor requested that the Applicant call him by the end of the week.

[10] The auditor attempted to call the Applicant on October 31 and November 2, 2012 to no avail and was advised by his team leader to close the file. The Applicant left a voicemail for the auditor on November 30, 2012 indicating that he would work with Mr. Mitchell in December and would call the auditor in mid-December once he had had the opportunity to review the records. However, on December 5, 2012, having received no documentation from the Applicant or Mr. Mitchell, the auditor closed the file.

[11] On January 31, 2013, the CRA issued reassessments for each of the Taxation Years in conformity with the adjustments set out in the Proposal Letter (January 31, 2013 Reassessments).

III. Subsequent Events – Requests for relief

[12] In March 2014, the Applicant filed amended income tax returns for the Taxation Years and requested reassessment of those years pursuant to subsection 152(4.2) of the ITA. The Minister denied the request on February 2, 2015 because the Applicant had not provided new

information in support of the request. The new tax returns were identical to those filed in 2010. The Minister referred to the Proposal Letter and the fact that the Applicant neither replied to the letter nor filed notices of objection to the January 31, 2013 Reassessments. In addition, the Minister concluded that the Applicant had not provided an explanation and/or documentation establishing extraordinary circumstances that prevented him from taking action to correct his tax affairs.

[13] On July 31, 2015, the Applicant submitted a request for taxpayer relief from late filing and failure to remit penalties, gross negligence penalties and arrears interest levied in respect of the 2006, 2007, 2008 and 2010 taxation years (T1, Goods and Services and payroll accounts). The request was made in reliance on subsection 220(3.1) of the ITA. The Applicant's request was refused on January 15, 2016.

[14] On April 28, 2016, the Applicant made a second and final request for reconsideration of the January 15, 2016 refusal of his request for relief.

IV. The Refusal Decision – Refusal of relief pursuant to subsection 220(3.1) of the ITA

[15] On June 26, 2017, Ms Sandy Desautels, the Minister's delegate, issued the Refusal Decision, refusing the Applicant's second request for relief. Ms Desautels first set out the bases upon which discretionary relief is generally granted pursuant to subsection 220(3.1) of the ITA, stating:

> This is the case where the penalty or interest resulted from circumstances beyond the taxpayer's control, arose primarily because of the actions of the CRA, or if there is an inability to pay or financial hardship. These provisions also allow the CRA to grant requests which do not fall within these situations.

[16] Ms Desautels then reviewed the grounds upon which the Applicant requested relief. She considered the serious health issues of both the Applicant (2015) and his wife (2011). However, she concluded that the Applicant's non-compliance with his tax obligations began well before 2011 when he failed to file T1 returns for the Taxation Years. The CRA prepared tax returns on his behalf pursuant to subsection 152(7) of the ITA. The Applicant responded in 2010 and an audit ensued, culminating in the January 31, 2013 Reassessments. The Applicant did not exercise his appeal rights in respect of those reassessments.

[17] Ms Desautels addressed the Applicant's argument that he did not receive the Proposal Letter until March 2017 and, therefore, did not understand the basis for the January 31, 2013 Reassessments. Ms Desautels did not accept this argument due to the September and October 2012 calls described above between the auditor, the Applicant and Mr. Mitchell.

[18] The Applicant argued that his failure to act was caused by his reliance on his accountants. Ms Desautels did not accept the Applicant's argument as any action or inaction of his representatives was his responsibility. Finally, the Applicant's submissions regarding the financial hardship he would suffer if required to pay the balance owing to the CRA were not persuasive.

[19] Ms Desautels refused the relief requested by the Applicant:

> I have not noted any additional information that would change the original decision and the essential facts remained the same. My review revealed that there were no circumstances beyond your control that would have affected your ability to file and remit as required. I have therefore concluded that relief is not warranted.

[20] Ms Desautels concluded the Refusal Decision by informing the Applicant that, if he felt the Minister's discretion had not been properly exercised, he could apply to the Federal Court for judicial review of the Refusal Decision within 30 days of receipt of the decision pursuant to subsection 18.1(2) of the Act.

V. Issues

[21] I will address the following issues in this judgment:

1. What is the decision under review?
2. Does the Court have jurisdiction to review the substance of the issues raised by the Applicant in the Notice of Application and to grant the Applicant's request for relief?
3. Was the Refusal Decision reasonable?

VI. What is the decision under review?

[22] I am mindful that the Applicant is a self-represented litigant and that both the role of this Court on an application for judicial review and the nature of judicial review itself are not always evident. As I stated at the outset of the hearing, an application for judicial review involves the consideration or review by this Court of a decision of a federal board, tribunal or other decision-maker. The Court's authority to conduct such a review is set out in section 18.1 of the Act.

Typically, the Court determines whether the underlying decision was reasonable and, if not, quashes the decision and returns the matter to the original decision-maker for redetermination (*see*, paragraph 18.1(3)(b) of the Act).

[23] The Court's authority or jurisdiction to review the decisions of federal decision-makers is limited by section 18.5 of the Act, which provides that judicial review is not available to the extent that a matter may be appealed by statute. As discussed more fully below in this judgment, appeals relating to the assessment of income tax and the correctness of income tax assessments are reserved exclusively to the Tax Court of Canada (Tax Court) pursuant to the Tax Court of Canada Act, RSC 1985, c T-2 (TCC Act) and the ITA.

[24] In his Notice of Application, the Applicant requests the following relief:

1. The quashing of the Proposal Letter;
2. Reimbursement of $22,707 plus 5% interest from a garnishment on May 2, 2011 based on an original assessment; and
3. Reimbursement plus 5% interest for all garnishments taken because of arrears interest, late filing penalties and negligence penalties that were a result of the reassessment in the Proposal Letter.

[25] There are two issues with the Applicant's request for judicial review of the Proposal Letter. First and foremost, the Proposal Letter is not a decision. The language used in the Proposal Letter is unambiguous. The letter refers to proposed adjustments to the Applicant's income for the Taxation Years and requests additional information. The Proposal Letter

informed the Applicant of the quantum and nature of the proposed adjustments, and the fact that the Minister was considering the imposition of penalties, and stated:

> We will delay the reassessments of the proposed adjustments for a period of thirty (30) days from the date of this letter. If we do not hear from you within the period mentioned above, we will reassess your returns based on our proposal.

[26] The Proposal Letter was an interim step in the CRA's reassessment of the Applicant's income. It did not determine the Applicant's substantive rights or obligations in respect of the Taxation Years. His tax liabilities for those years were established by the January 31, 2013 Reassessments. As a result, I find that the Proposal Letter is not a reviewable decision (*Air Canada v Toronto Port Authority et al.*, 2011 FCA 347 at paras 26-29; *Landriault v Canada (Attorney General)*, 2016 FC 664 at para 21).

[27] Second, even if the Proposal Letter were subject to review, the Applicant's Notice of Application was filed long after the expiry of the 30-day time limit set forth in subsection 18.1(2) of the Act. The Proposal Letter is dated September 21, 2012 and the Respondent has filed evidence that it was sent by registered mail to the Applicant the same day. The Applicant alleges that he did not receive the Proposal Letter until March 2017 but the evidence in the record establishes that he was aware of the letter, its content and the CRA's request for further information in September or October 2012 following a number of telephone calls with the CRA auditor. Mr. Mitchell, the Applicant's representative, acknowledged receipt of the letter at that time and discussed the CRA's proposals with the auditor. Further, the Proposal Letter was clearly referenced in the Minister's February 2, 2015 letter to the Applicant responding to his March 2014 request for reassessment:

> A full audit of these returns has already been completed. You were advised in a proposal letter dated September 21, 2012 that in order to refute the proposed income changes to your 2006 and 2007 returns we required a breakdown of the amounts for all unidentified bank deposits and in order to refute the expense adjustments we required you to itemize and organize the supporting documents for these expenses.

[28] I find that the Applicant had notice of the existence and content of the Proposal Letter in late 2012 and was reminded of its importance in February 2015. He acknowledges that he received a copy of the Proposal Letter in March 2017 but he took no action until August 1, 2018 when he filed the Notice of Application. In light of the length of the delay and the fact that the Applicant has provided no evidence of a continuing intention to pursue the application, I see no basis upon which the Court would permit an extension of the 30-day period set forth in subsection 18.1(2) of the Act (*Canada (Attorney General) v. Hennelly*, (1999), 244 N.R. 399 (F.C.A.), [1999] FCJ No 846).

[29] Although the Proposal Letter is not a reviewable decision, I have considered whether the Refusal Decision can properly be considered as the underlying decision for review in this application notwithstanding it is only referenced in passing in the Notice of Application.

[30] The Refusal Decision is a discretionary decision of the Minister pursuant to subsection 220(3.1) of the ITA. It is well-established that such decisions are subject to review by this Court (*Canada (National Revenue) v Sifto Canada Corp.*, 2014 FCA 140 at para 23; *Cybernius Medical Limited v Canada (Attorney General)*, 2017 FC 226 at para 27). The Respondent has made written and oral submissions regarding the reasonableness of the Refusal Decision. At the hearing, I invited the Applicant to make submissions in this regard in light of the significant time

and resources devoted by him and his family to this application. As both parties have had the opportunity to present their arguments concerning the reasonableness of the Minister's refusal to exercise her discretion and cancel or waive the penalties and arrears interest imposed in respect of the Taxation Years, I will proceed on the basis that the Refusal Decision is the subject matter of this application.

VII. Does the Court have jurisdiction to review the substance of the issues raised by the Applicant in the Notice of Application and to grant the Applicant's request for relief?

[31] Before turning to my review of the Refusal Decision, it is necessary to address the scope of the Applicant's requests for relief and the jurisdiction of the Court to grant relief in this application. The Applicant's written and oral submissions focus on the results of the CRA's reassessment of the Taxation Years and the conduct of the audit process. He submits that the January 31, 2013 Reassessments were wrong and that the CRA audit process that gave rise to both the Proposal Letter and the January 31, 2013 Reassessments was unfair, inaccurate and unprofessional. The Applicant states that the CRA has misled and misinformed him through the years and that his rights under the Taxpayer Bill of Rights have not been respected. The Applicant made comprehensive submissions in this regard at the hearing and requests that this Court conduct a full review of the CRA's process and audit results for the Taxation Years.

[32] The Respondent correctly submits that the Federal Court has no jurisdiction to review the January 31, 2013 Reassessments nor does it have jurisdiction to grant the relief requested by the Applicant in paragraphs 2 and 3 of his Notice of Application. Subsection 152(8) of the ITA deems an assessment to be valid and binding unless varied or vacated in accordance with the

appeal process set out in the ITA. The Tax Court has exclusive jurisdiction to determine the correctness of CRA assessments and reassessments by virtue of subsection 152(8) and section 169 of the ITA, section 12 of the TCC Act and sections 18.1 and 18.5 of the Act (*Canada v Roitman*, 2006 FCA 266 at para 19 (*Roitman*)).

[33] This Court simply has no ability (or jurisdiction) to delve into or alter the Applicant's income as assessed for the Taxation Years in the January 31, 2013 Reassessments. The Refusal Decision is subject to review by this Court but the remedy available to the Applicant at the conclusion of that review is, at best, a redetermination of the Minister's decision under subsection 220(3.1) not to waive penalties and arrears interest (*Roitman* at para 20). In *Kapil v Canada Revenue Agency,* 2011 FC 1373, Justice Rennie, as he then was, set out the limited remedies the Court can grant in taxpayer relief cases (at para 20):

> [20] As a matter of law, this Court does not have the jurisdiction to order the Minister to waive taxes, penalties, and arrears interest. The jurisdiction of the Court is limited to ordering the Minister to substantively reconsider his decisions not to waive the taxes and related interest and penalties. The applicant must understand, therefore, that even if this Court had found in his favour, he would not automatically be entitled to a waiver and refund of his money. This Court's review is confined to an analysis of whether the Minister's exercise of discretion in refusing the waiver requests was lawful, not to substitute its decision for that of the Minister: *Canada (Citizenship and Immigration) v Khosa,* 2009 SCC 12.

[34] The Applicant also submits that the CRA audit process was unfair and unprofessional. This argument was addressed by the Court in *Ritter v Canada (National Revenue),* 2013 FC 411 (*Ritter*). Justice de Montigny, as he then was, stated (at para 18):

> [18] Counsel for the Applicant tried to distinguish between the substantive and the procedural validity of an assessment, arguing that the Tax Court has exclusive jurisdiction only over the former and not over the latter. Such a distinction is, however, unwarranted, and counsel for the Applicant cited no authority in support of that proposition.

[35] The Applicant cannot challenge the fairness of the CRA's audit process in this Court. Such a challenge is effectively a challenge of the January 31, 2013 Reassessments and the Applicant's appropriate recourse against any unfairness or procedural flaw in the audit process was an appeal of those reassessments to the Tax Court. The Applicant argues that he was not aware of his appeal rights in 2013 but any such lack of awareness is not sufficient to remove his case from the exclusive jurisdiction of the Tax Court. It is the taxpayer's responsibility to know and to safeguard their rights of objection and appeal under the ITA.

[36] The Applicant states that he has been directed to the Federal Court for relief and that the Court accepted his Notice of Application. Therefore, he should be entitled to request a full review of the CRA's reassessment of the Taxation Years. The Applicant's argument is based on the Refusal Decision which stated:

> If you feel that discretion was not properly exercised during our review of your request for relief, section 18.1(2) of the "Federal Courts Act" provides for a judicial review of any discretionary decision made by the federal government. You can apply to the Federal Court for a judicial review within 30 days of the day you received this letter.

[37] The Refusal Decision notified the Applicant of his ability to request this Court's review of the Minister's exercise of discretion pursuant to subsection 220(3.1) of the ITA. The language used is specifically limited to the denial of the Applicant's request for relief from penalties and

arrears interest. There is no suggestion in the letter that the January 31, 2013 Reassessments could be challenged by way of judicial review in this Court.

[38] With respect to the Applicant's argument that the Court accepted his Notice of Application, the acceptance for filing of a notice of application by a registry officer of the Court marks the beginning of the judicial review process. It in no way determines either the jurisdiction of the Court or the merits of all or any part of the application or the relief requested.

VIII. Was the Refusal Decision reasonable?

Standard of review

[39] On judicial review of a decision of the Minister pursuant to subsection 220(3.1) of the ITA, the Court is to determine whether the decision was reasonable (*Canada Revenue Agency v Slau Limited*, 2009 FCA 270 at para 27; *Canada Revi*ew *Agency v. Telfer*, 2009 FCA 23 at paras 24-25 (*Telfer*)) and not whether the penalty should originally have been imposed (*Martineau v Canada Revenue Agency*, 2018 FC 595 at para 17; *Parmar v Canada (Attorney General)*, 2018 FC 912 at para 58).

[40] In *Telfer*, Justice Evans provided the following guidance (at para 25):

> [25] When reviewing for unreasonableness, a court must examine the decision-making process (including the reasons given for the decision), in order to ensure that it contains a rational "justification" for the decision, and is transparent and intelligible. In addition, a reviewing court must determine whether the decision itself falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Dunsmuir* at para. 47.

Overview of subsection 220(3.1) of the ITA)

[41] Subsection 220(3.1) of the ITA permits the Minister to waive or cancel any penalty or interest otherwise payable under the ITA:

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
(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.	**(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.

[42] In determining whether to grant taxpayer relief pursuant to subsection 220(3.1), the Minister must take into account all relevant considerations and base her decision on the purpose of the provision, that of fairness (Canada v Guindon, 2013 FCA 153 at para 58). The CRA has developed administrative guidelines that inform the exercise of the Minister's discretion. Although

the Minister may not fetter her discretion in making a subsection 220(3.1) decision, the guidelines set out in *Information Circular IC07-1 Taxpayer Relief Provisions* (the Circular) are a useful starting point. Paragraph 23 of the Circular outlines the circumstances that may warrant relief:

> 23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:
>
> (a) extraordinary circumstances
>
> (b) actions of the CRA
>
> (c) inability to pay or financial hardship

[43] Paragraph 24 of the Circular recognizes that the guidelines are not binding in law and that a Minister's delegate may grant relief if a taxpayer's circumstances do not fall within the categories listed in paragraph 23 (*see, Stemijon Investments Ltd. v Canada (Attorney General)*, 2011 FCA 299 at para 27) . Extraordinary circumstances are those beyond the taxpayer's control and include serious illness (paragraph 25 of the Circular).

Parties' submissions

[44] The Applicant's submissions centre on the alleged unfairness of the audit process undertaken by the CRA in respect of the Taxation Years. He submits that the CRA repeatedly violated the *Taxpayer Bill of Rights* and completed the audit without all the required facts and without asking him for additional supporting documentation. The Applicant also argues that he has not been given an opportunity to challenge the reassessments. He argues that these issues are

relevant to the reasonableness of the Refusal Decision and should have been taken into account by Ms Desautels.

[45] The Respondent submits that the Refusal Decision was reasonable. In support of the Refusal Decision, the Respondent argues that the Minister's delegate properly considered the circumstances upon which the Applicant based his request for relief, reviewed the history of the Applicant's interactions with the CRA in respect of the Taxation Years and properly applied the provisions of the Circular.

Analysis

[46] The focus of my review is the Refusal Decision: the Minister's refusal, pursuant to subsection 220(3.1) of the ITA, to cancel the late filing and failure to remit penalties, gross negligence penalties and arrears interest levied on the Applicant under the ITA. As stated above, the audit process leading to the January 31, 2013 Reassessments and the accuracy of those reassessments are not subject to review in this application and cannot be challenged collaterally by alleging that flaws in the 2011-2013 audit process render the Refusal Decision unreasonable.

[47] I find that the Refusal Decision was reasonable. Ms Desautels addressed each of the Applicant's arguments in support of his request for relief and reviewed his past dealings with the CRA. The reasons for the refusal are stated clearly and comprehensively.

[48] The Refusal Decision is detailed and well-organized. Ms Desautels reviewed the nature and scope of the Minister's discretion pursuant to subsection 220(3.1) and the Applicant's obligations under Canada's self-assessment system of taxation:

> We have reviewed your request to cancel penalty and interest under CRA error, other circumstances, serious illness and/or mental distress and financial hardship. We considered the information provided in your written submission, telephone conversations and three meetings with you and your wife. Your son, Kurt attended the first meeting. We have also relied on information available in our computer systems.

[49] In her affidavit filed in this application, Ms Desautels provides further detail regarding the CRA's review of the Applicant's request for relief. Ms Desautels describes generally the review of taxpayer relief requests within the CRA, including the involvement of both the Taxpayer Relief and Audit Divisions if a request includes relief from gross negligence penalties, as in the present case. With respect to the Applicant's request, she states:

> 15. I am informed and do verily believe that officers of the Agency in the Winnipeg Taxation Centre Taxpayer Relief Division and Audit Division reviewed the applicant's second-level review request and the information contained within the Agency's records. The officers recommended to deny the applicant's request and set these recommendations out in three separate, Second Level Review Taxpayer Relief Fact Sheets, one for the applicant's T1 account (Attached and marked as Exhibit "C"), one for his GST/HST account (Attached and marked as Exhibit "D") and one for his Payroll account (Attached and marked as Exhibit "E").
>
> 16. As this was a joint review, the Audit Division of the Agency also prepared a Second Review Taxpayer Relief Decision Report (Attached as Exhibit "F") outlining its determination. A copy of this report was provided to me in my capacity as Team Leader in the Taxpayer Relief Division.

[50] In arriving at her decision to deny the Applicant's request for relief, Ms Desautels reviewed his second-level review request and its attachments, the Second Level Review Taxpayer Relief Fact Sheets, the Second Review Taxpayer Relief Decision Report, and the fact sheets prepared and considered during the review of the Applicant's first-level review request.

[51] The Taxpayer Relief Fact Sheets relied on by Ms Desautels comprehensively describe and analyse the Applicant's arguments in support of his request for relief (financial hardship, serious illness and other circumstances). They contain a summary of the penalties and arrears interest levied on the Applicant, his history of late filing and failure to file tax returns with the CRA, and the reasons for the imposition of gross negligence penalties. The Taxpayer Relief Decision Report prepared by the Audit Division is similarly comprehensive in its analysis of the specific request for relief from gross negligence penalties. In my view, the Taxpayer Relief Fact Sheets and Decision Report reflect a detailed consideration of the Applicant's request for relief and form a reasonable basis for the Refusal Decision.

[52] In the Refusal Decision itself, Ms Desautels emphasized the obligations of the taxpayer to comply with the provisions of the ITA:

> Under Canada's self-assessment system of taxation, the onus is on the individual to file complete, accurate tax returns and pay any amounts owing by their due dates. If returns are incomplete or inaccurate, penalties and interest may be assessed. The taxpayer relief legislation is available to taxpayers, who through no fault of their own were unable to comply with the legislation.

[53] Ms Desautels reviewed the Applicant's submission that the serious illnesses he and his wife suffered affected his ability to comply with his obligations under the ITA. However, Ms Desautels stated:

> In your case, the noncompliance started when the 2005 to 2007 T1 returns were not filed voluntarily and the CRA took steps to achieve compliance. To do this, the CRA prepared returns on your behalf under subsection 152(7) of the ITA. These assessments were processed in 2008. You filed returns in response to these assessments in 2010 and the returns were selected for audit. The audit commenced in May 2011 and was completed in January 2013.
>
> The noncompliance started long before your wife's illness in 2011 and your surgery in 2015. In this case, we do not consider the illness and surgery to be a factor beyond your control that prevented you from complying under the ITA.

[54] Ms Desautels specifically addressed the Applicant's argument that he did not receive the Proposal Letter until March 2017 which compromised his ability to object to the January 31, 2013 Reassessments. She did not find his argument persuasive due to the evidence regarding his calls with the CRA auditor. Ms Desautels recounted in some detail the October 16, 2012 call in which the details of the proposed adjustments were discussed and the Applicant was provided an extension of time to file the requested information. He did not provide the information despite the extension. Ms Desautels also noted that the Applicant was informed of his right to appeal the January 31, 2013 Reassessments but failed to exercise that right.

[55] Finally, Ms Desautels considered the Applicant's statement that he could not afford to pay the penalties and interests levied against him due to financial hardship. She reviewed the financial information provided by the Applicant but concluded that he had not established financial hardship or an inability to pay.

[56] The facts recounted in the Refusal Decision are supported by the record and provide an intelligible basis for Ms Desautels' conclusions. It is apparent that she was fully aware of the Applicant's history with the CRA in respect of the Taxation Years and considered all of the circumstances relevant to the Applicant's request fairly. Having reviewed the Refusal Decision against the evidence in the record, the guidelines established by the CRA in the Circular, and the review conducted by the CRA's Taxpayer Relief and Audit Divisions, I find that the Minister's decision to refuse the Applicant's request for relief was justified and transparent and was within the range of acceptable outcomes.

IX. Conclusion

[57] The application is dismissed.

[58] I have considered the parties' submissions on costs. Taking into account all of the circumstances of this matter, I will make no order as to costs.

JUDGMENT in T-1455-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Elizabeth Walker"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1455-18
STYLE OF CAUSE:	RON CHEKOSKY v CANADA REVENUE AGENCY
PLACE OF HEARING:	WINNIPEG, MANITOBA
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JUDGMENT AND REASONS:	WALKER J.
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APPEARANCES:

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David Grohmueller	FOR THE DEFENDANT

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