Federal Court  Cour fédérale

Date: 20210217

Docket: T-606-19

Citation: 2021 FC 157

Ottawa, Ontario, February 17, 2021

PRESENT: Mr. Justice Pentney

IN THE MATTER OF THE *INCOME TAX ACT*

BETWEEN:

1594418 ONTARIO INC.

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] The Applicant, 1594418 Ontario Inc., seeks judicial review of a decision of the Minister of National Revenue (Minister) dated March 7, 2019, not to examine the Applicant's corporate tax returns for its 2009-2012 fiscal years. It claims that this decision is unreasonable because it understood that an officer of the Canada Revenue Agency (CRA) had extended its deadline to file these returns, and also because the Minister's explanation for the refusal is insufficient.

[2] For the reasons that follow, this application for judicial review is dismissed.

I. Background

[3] The Respondent assessed the Applicant's income for the fiscal years ending April 30, 2009, April 30, 2010, April 30, 2011, and April 30, 2012 (2009-2012 taxation years), by notices dated June 4, 2013. These were arbitrary assessments raised pursuant to subsection 152(7) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*] because the Applicant had not voluntarily filed its tax returns for those years.

[4] In December 2015, a CRA officer (Officer) was assigned responsibility for the Applicant's file because it had not filed its tax returns for its taxation years ending April 30, 2013, April 30, 2014, and April 30, 2015 (2013-2015 taxation years). The Officer's records show a series of exchanges with the principals of the Applicant company, as well as Ms. Julia Stavreff, the accountant retained to prepare these returns and named as the authorized representative for this purpose.

[5] It is at this point that the narratives of the parties begin to diverge. The key point of dispute concerns the meaning of the Officer's references to "outstanding returns" in her exchanges with the Applicant's accountant.

[6] The Applicant claims that Ms. Stavreff understood that the Officer was assigned carriage of all of the outstanding tax returns, including those relating to the 2009-2012 taxation years. It filed an affidavit of a law clerk employed by the Applicant's counsel, which provides a number of documents relating to the proceeding that had been prepared by Ms. Stavreff. The law clerk

admitted in cross-examination that she had not been part of any of the telephone conversations between Ms. Stavreff and the Officer, but she described a conversation that she attended between the Applicant's counsel and Ms. Stavreff, and she stated that the content of this conversation is reflected in a letter the counsel sent to Ms. Stavreff.

[7] The Respondent objects that this evidence is pure hearsay, since it describes a conversation between Ms. Stavreff and the Applicant's counsel, yet neither party to the conversation could be examined under oath about it. Further, there was no explanation as to why Ms. Stavreff did not provide an affidavit.

[8] The Respondent submits that the only admissible evidence in the proceeding on this point is set out in the affidavit of the Officer, which indicates that she had only been assigned carriage of the tax files for the 2013-2015 taxation years, and that she never discussed the 2009-2012 taxation years with anyone associated with the Applicant.

[9] The records show a series of exchanges in April and May of 2016, between Ms. Stavreff and the Officer regarding the Applicant's outstanding tax returns. The Officer asked Ms. Stavreff to advise her clients that if they did not file the returns for the 2013-2015 taxation years she would raise an arbitrary assessment of them under subsection 152(7) of the *ITA*. Ms. Stavreff indicated to the Officer that she was following up with her clients to obtain the necessary information to complete the tax returns, but that this was taking longer than anticipated. The parties agree that in late May 2016, Ms. Stavreff informed the Officer that the outstanding returns would be completed and filed by mid-June 2016, and that the Officer indicated that this was acceptable.

[10] The records also indicate that Ms. Stavreff informed the Officer on June 30, 2016, that she would be filing the Applicant's tax return for the 2009-2012 taxation years, and that she later informed the Officer that these returns had not been accepted for filing because they were filed beyond the reassessment period. The Applicant states that this is proof that it understood that the earlier returns were being dealt with by the Officer, and that the Officer's agreement to extend the deadline for filing until mid-June 2016 included the earlier returns in respect of the 2009-2012 taxation years. The Respondent says that the Officer was merely noting what she had been told by Ms. Stavreff, and that these tax returns were not the ones being referred to in the exchanges about "outstanding returns". The Respondent says the earlier returns were not "outstanding" at that time, because they had already been assessed.

[11] In any event, it is not disputed that on August 15, 2016, the Applicant requested that the Minister reassess the 2009-2012 taxation years based on its own returns, to replace the assessments that had been raised previously. On October 13, 2016, the Minister denied the request to process the returns under subsection 152(4) of the *ITA* because the three-year limitation period set out in that provision had elapsed. The decision points out that the Applicant's returns for these years had been assessed on June 4, 2013, but the request to reassess them was only received on August 15, 2016, thus the request was outside of the limitation period.

[12] On October 31, 2016, Ms. Stavreff told the Officer that the CRA had refused to reassess the tax returns for the 2009-2012 taxation years because they were statute barred. The records show that during this conversation the Officer advised Ms. Stavreff that the Applicant should

have addressed the assessments when they were issued in 2013. This is the only evidence of a discussion between Ms. Stavreff and the Officer regarding the 2009-2012 taxation year returns.

[13] The records show that the Applicant attempted to file notices of objection with respect to the assessments for the 2009-2012 taxation years. However, in a letter dated January 10, 2017, the CRA advised that it would not accept these notices of objection because they were not filed within the 90-day time limit, nor within the deadline to request an extension of time to file a notice of objection. In December 2018, the Applicant made another attempt to file the returns for the 2009-2012 taxation years, but on March 7, 2019, the Minister advised that the returns would not be assessed because more than three years had elapsed from the initial assessments. This second refusal is worded in virtually identical terms to the first one issued in January 2017.

[14] On April 8, 2019, the Applicant filed a notice of application for judicial review seeking to overturn the Minister's decision not to examine its returns for the 2009-2012 taxation years. It seeks an Order directing the Minister to examine these returns, as well as its costs.

II. Issues and Standard of Review

[15] There are three principal issues:

A. Does the Court have jurisdiction to hear this application, or is it barred because its essential character is a challenge to the assessments raised on June 4, 2013?

B. If the Court has jurisdiction to consider this matter, should it be dismissed because the Applicant commenced its application outside of the time limitation set out in subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7 [*FCA*] and did not seek an extension of time?

C. If the application is not time-barred, is the Minister's decision not to reassess the returns for the 2009-2012 taxation years unreasonable?

[16] The only issue for which a standard of review analysis is pertinent is the third, and there is no dispute that the standard that applies is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Under the framework set out in *Vavilov*, when conducting reasonableness review, the "Court's role is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2).

III. Analysis

A. *Does the Court have jurisdiction to hear this application, or is it barred because its essential character is a challenge to the assessments raised on June 4, 2013?*

[17] The Respondent submits that this Court does not have jurisdiction to deal with this case because its essential nature is a challenge to the assessment of the Applicant's taxes, which is a matter that can only be dealt with by the Tax Court of Canada.

[18] The Federal Court of Canada has jurisdiction to hear applications for judicial review of decisions made by a wide range of federal boards, commissions, or tribunals, including the Minister and/or the CRA. However, by virtue of section 18.5 of the *FCA*, where the *ITA* provides a right of appeal to the Tax Court of Canada, the Federal Court is not the appropriate venue for the matter. This is to prevent a multiplicity of proceedings: where Parliament decides that an

appeal from a particular decision is to be heard by another court, there is no reason for the Federal Court to deal with it.

[19] In order to determine which court has jurisdiction to hear this case, the first step is "a characterization of the essential nature of the claim" (*Canada v Domtar Inc*, 2009 FCA 218 at para 26 [*Domtar*]). In doing so, the correct approach is to examine the essential nature of the dispute with a realistic appreciation of the practical result sought by the claimant, without an undue focus on matters of form (*Canada (National Revenue) v JP Morgan Asset Management (Canada)*, 2013 FCA 250 at para 50 [*JP Morgan*]). If the essential nature of the taxpayer's claim is a challenge to the assessment issued by the Minister, it can only be dealt with by the Tax Court of Canada (*Canada v Addison & Leyen Ltd*, 2007 SCC 33 [*Addison & Leyen*]). In *Addison & Leyen* the Supreme Court noted that a reviewing court must be prudent when undertaking a judicial review in circumstances that relate to the system of tax appeals established by Parliament (at para 11).

[20] In addition, a claim before the Federal Court must state a ground and seek a type of remedy that is recognized under administrative law (*JP Morgan* at para 70).

[21] The Respondent argues that the essential character of the relief sought by the Applicant is the setting aside of the assessment, and its claim therefore falls squarely within the rules set out in *JP Morgan*. It says that this is revealed by a number of elements: (1) the Applicant explicitly challenges the assessment and its entire case rests on the assumption that the assessments are incorrect; (2) the record includes the tax returns the Applicant sought to file and its Notice of Objection makes clear that it is a challenge to the assessments for the 2009-2012 taxation years;

and (3) the Applicant's submissions emphasize that it was in a net loss position and so should not be assessed any tax liability for the 2009-2012 taxation years.

[22] The Respondent submits that the Minister's decision to assess a taxpayer's return under subsection 152(4) of the *ITA* is not discretionary, contrasting it with the situation under the so-called "taxpayer relief" provisions under the *ITA*, set out for example in subsection 152(4.2). It argues that the Minister has no discretion whether to assess a taxpayer, and further that in this case the Applicant had many opportunities to challenge the assessment raised by the Minister by filing a notice of objection and then, if not satisfied, by filing an appeal with the Tax Court of Canada.

[23] Further, the Respondent contends that a taxpayer cannot somehow confer jurisdiction on the Federal Court by choosing not to pursue the avenues to challenge or object that are open to it under the *ITA*.

[24] The Applicant submits that its case is not, at its heart, a challenge to the assessments. Rather, it is asking for an Order that the Minister examine the returns. According to the Applicant, it is the Minister's refusal to do so after the Officer led it to believe that an extension had been granted, as well as the Minister's failure to provide sufficient reasons for the refusal, which lies at the heart of the case.

[25] The Applicant notes that the Federal Court has conducted judicial review of the Minister's refusal to examine returns based on subsection 152(4) of the *ITA* in other cases (*Revera Long Term Care Inc v Canada (National Revenue)*, 2019 FC 239 at para 13 [*Revera*]); *Kerry (Canada) Inc v Canada (Attorney General)*, 2019 FC 377 [*Kerry*]; *6075240 Canada Inc v*

Canada (National Revenue), 2019 FC 642 [*6075240 FC*], aff'd 2020 CAF 194 [*6075240 FCA*]). It contends that a similar result should follow here. The Applicant also points to CRA documents that describe the Minister's decision under 152(4) as discretionary. For example, in a CRA Interpretation from July 9, 2014 (CRA Interpretation 2014-052537117), the request involved a situation similar to the case at bar: a corporation had failed to file its return and the Minister had raised an arbitrary assessment pursuant to subsection 152(7) of the *ITA*. The question was whether subsection 152(4) of the *ITA* provided the Minister with a discretion to make an assessment or reassessment beyond the normal reassessment period. The answer states that "it is our general view that in circumstances such as those outlined in your inquiry, the Minister may exercise her discretion under subparagraph 152(4)(a)(i) to make a reassessment beyond the normal reassessment period". The Applicant states that this is further confirmation that CRA views this provision as discretionary.

[26] I am not persuaded by the Respondent's argument that the essential nature of this case is about the assessment of the Applicant's taxes. While it may be fair to assume that most taxpayers launch challenges to their income taxes seeking to pay less, the fact that the Applicant here has attempted to file returns to lower its taxes owing for the relevant years is not a determinative consideration regarding the question of jurisdiction.

[27] Viewing the claim holistically and practically, and seeking a realistic appreciation of its essential character without fixating on matters of form (*JP Morgan* at para 50), the core of the Applicant's complaint is that the Minister refused to examine its returns without an adequate explanation. It advances two main propositions: (1) the Minister cannot rely on the limitations period to refuse to consider the returns because the Officer led it to believe that it could file its

returns late; and (2) the Minister's decision is unreasonable because it is merely a three-line statement of a conclusion without explanation.

[28] As explained below, both of the attacks levied by the Applicant are cognizable in administrative law.

[29] On the Applicant's first proposition, a number of observations can be made at this stage without pronouncing on the merits of the issue. First, the Applicant's challenge is not directed to the Officer's actions but rather to the Minister's refusal. The actions of the Officer are only cited to explain why the Minister should have exercised the discretion to review the returns, rather than relying on the time limit in subsection 152(4) of the *ITA* without considering any of the exceptions set out in the subparagraphs of that provision. The refusal to reassess tax is not a matter that can be appealed to the Tax Court of Canada (*Revera* at para 13, citing *Abakhan & Associates Inc v Canada (Attorney General)*, 2007 FC 1327). The substantive reasonableness of an administrative decision maker's decision is a ground of review recognized in administrative law.

[30] On the Applicant's second proposition, where written reasons are provided by a decision maker, a reviewing court must focus on and put those reasons first (*Vavilov* at paras 82-87). Hence, even if sufficiency of the reasons of an administrative decision maker is often unsuccessful as the sole basis to render a decision unreasonable (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16), it is a well-known ground of judicial review.

[31] Therefore, the Applicant's second ground of attack is also recognized in administrative law. In addition, the Applicant seeks an order in the nature of *mandamus*, directing the Minister to consider the returns. This is a type of relief that is within the authority of this Court.

[32] The Respondent seeks to distinguish the authorities relied on by the Applicant, arguing that the issue of whether the Court had jurisdiction was not considered in *607524 FC*, that it was conceded by the Crown in *Kerry*, and that the decision in *Revera* does not apply the essential elements of the Federal Court of Appeal's guidance in *JP Morgan*.

[33] While I accept that the matter was not discussed at length in several of the prior decisions cited, I am not persuaded that all of these precedents should be discarded. For one thing, the fact that the Minister conceded the jurisdictional point in *Kerry* is not irrelevant, given the role of the Attorney General and the maxim that jurisdiction cannot be conferred by consent (*744185 Ontario Inc v Canada*, 2020 FCA 1 at para 53). Further Justice Shirzad Ahmed specifically found in *Revera* that the dispute was within the jurisdiction of the Federal Court and I am not persuaded that his analysis did not follow the guidance in *JP Morgan*. The ruling on the jurisdictional point in *Revera* is grounded in a finding on the essential nature of the claim, which is exactly what the jurisprudence requires.

[34] Stepping back from these particular decisions, an analysis based on the applicable jurisprudence leads me to conclude that the Federal Court is not barred from considering this case by virtue of section 18.5 of the *FCA*.

[35] There can be no dispute that appeals relating to assessments of income tax and the accuracy of such assessments can only be dealt with by the Tax Court of Canada, by virtue of the

combined effect of section 12 of the *Tax Court of Canada Act*, RSC 1985, c T-2 and section 18.5 of the *FCA*. On the other hand, it is also trite law that the exercise of discretion by the Minister in relation to matters relating to income tax may give rise to an application for judicial review in this Court; several examples of these types of discretionary decisions are provided in *JP Morgan* at paragraph 96.

[36] The Respondent submits that the Minister's decision to refuse to consider the Applicant's tax returns because they were filed outside of the time limit set by subsection 152(4) of the *ITA* is not discretionary. I disagree. The Respondent has not explained how the discretionary character of the Minister's decision under this provision is different – as a matter of principle – from a decision under subsection 152(4.2) of the *ITA*, which was one of the discretionary decisions specifically referred to as being subject to judicial review in *JP Morgan* (at para 96).

[37] While I accept that there may be different preconditions or processes to trigger the exercise of the Minister's discretion under the two provisions, that does not eliminate the discretionary character of subsection 152(4). Under subsection 152(4), the Minister "may" decide to assess a tax return and, if it is filed beyond the three year limitation period, there are limitations on the circumstances under which the Minister may assess or reassess a return. These limitations do not eliminate or erase the discretionary nature of the decision. If the Minister's decision was grounded in clearly improper reasoning, as explained in *JP Morgan*, the decision could be challenged in this Court. That is a complete answer to the question (see also *9027-4218 Québec Inc v Canada (National Revenue)*, 2019 FC 785).

[38] To summarize, while it may be true that the ultimate objective of the Applicant here is to reduce or eliminate its taxes owing by having the Minister consider the tax returns it has filed to

replace the notional assessments, that does not transform the essential nature of the claim into a challenge to the assessment. The Applicant's claim before this Court is that it was led to believe that the deadline for filing its returns had been extended by the Officer, and therefore the Minister's refusal to consider these returns is unreasonable. It further argues that the Minister's reasons for the refusal are so inadequate as to be unreasonable. Both claims are cognizable in administrative law. Both involve a challenge to the Minister's exercise of discretion to refuse to consider the returns. These are matters for this Court, and there will be no multiplicity of proceedings because the Applicant cannot pursue these claims before the Tax Court of Canada.

[39] For these reasons, I find that the Applicant's claim is not barred by virtue of section 18.5 of the *FCA*. The case falls within the jurisdiction of this Court, and so it is necessary to turn to the other issues raised by the parties.

B. *If the Court has jurisdiction to consider this matter, should it be dismissed because the Applicant commenced its application outside of the time limitation set out in sub-section 18.1(2) of the FCA, and did not seek an extension of time?*

[40] Under subsection 18.1(2) of the *FCA*, the Applicant had thirty (30) days to launch its challenge; failing that, it had to bring an application for an extension of time. The Respondent states that the Applicant did not meet its deadline nor did it seek an extension of time, and therefore the claim should be dismissed. The Respondent submits that the Applicant's real challenge is to the refusal to reassess the 2009-2012 taxation years, a decision that was first communicated to the Applicant on October 13, 2016. It says that the Applicant's second attempt in 2018 cannot have the effect of extending the deadline to challenge the first decision.

[41] I agree.

[42] It is essential to go back to the sequence of events that gave rise to this application for judicial review. The Applicant did not file its tax returns for the 2009-2012 taxation years. After several attempts by the Respondent to follow up with the Applicant so that it would file these returns, it exercised its authority under subsection 152(7) of the *ITA* to issue arbitrary assessments of the Applicant's taxes. The Applicant was advised of this by letters dealing with each taxation year, dated June 4, 2013.

[43] On August 15, 2016, the Applicant requested that the Minister reassess its tax returns for the 2009-2012 taxation years based on its own returns to replace the earlier assessments. On October 13, 2016, the Minister advised the Applicant that they could not process the adjustment request under subsection 152(4) of the *ITA* because the three-year time limit had expired.

[44] The Applicant then attempted to file the same returns as it had previously filed for the 2009-2012 taxation years on December 18, 2018. Once again, the Minister refused to reassess the returns for exactly the same reasons and the Applicant was advised of this on March 7, 2019. That gave rise to this application for judicial review.

[45] The Respondent contends that the legally operative decision is the first one, and the Applicant received notice of it by letter dated October 13, 2016. That set in motion the thirty-day time limit prescribed by subsection 18.1(2) of the *FCA*. It argues that the Applicant cannot overcome this time limit simply by re-submitting the same request.

[46] In several previous cases, this Court has found that the time limit for initiating an application for judicial review cannot be extended by a party simply repeating the same request with the intention of provoking a reply (see *Dhaliwal v Canada (Minister of Citizenship and*

Immigration) (1995), 56 ACWS (3d) 393, [1995] FCJ No 982 (QL); *Wong v Canada (Minister of Citizenship and Immigration)* (1995), 55 ACWS (3d) 843, [1995] FCJ No 685 (QL)). Much will depend on the facts of each case and the key consideration is whether the subsequent request actually caused the decision maker to reconsider the facts of the case and whether there was a fresh exercise of discretion (*Dumbrava v Canada (Minister of Citizenship and Immigration)* (1995), [1995] FCJ No 1238 (QL) at paras 11-18, 101 FTR 230 (FCTD); *Brar v Canada (Minister of Citizenship & Immigration)* (1997), 140 FTR 163 at paras 7-8, 1997 CanLII 5685 (FCTD); *Moresby Explorers Ltd v Superintendent of Gwaii Haans National Park Reserve*, [2000] ACF No 1944 at para 12, [2000] FCJ No 1944 (QL) (FCTD)). Justice Elizabeth Walker recently confirmed this reasoning in *9027-4218 Québec Inc.* at paragraphs 38-41.

[47] In this case, the Applicant describes the key sequence of events in the following way in its memorandum of fact and law:

> 15. The Minister did not accept the returns filed for the subject years by the applicant's authorized representative in 2016.
>
> 16. By letter dated December 18, 2018, the applicant's authorized representative again attempted to file the returns for the subject years.

[48] There is no evidence in the record to demonstrate that the second request was based on any new facts that had emerged, nor did the Applicant advance any new legal argument. Rather, it simply repeated the same request it had made in 2016. The Minister's refusal letter of March 2019 repeated the earlier response, and there is no indication that this involved any new exercise of discretion or meaningful reconsideration of the claim.

[49] In these circumstances, I find that the legally operative decision was the first one, set out in the letters dated October 13, 2016. The second request cannot have the effect of extending the time limit for challenging that decision, because it was not, in fact or in law, a “new” or “fresh” request; rather, it simply repeated the Applicant’s first request, based on the same facts and seeking the same legal relief.

[50] The Applicant did not seek an extension of time, and therefore it is not possible to consider the factors for such a request set out in the jurisprudence, for example in *Canada (Attorney General) v Larkman*, 2012 FCA 204 at paragraph 61.

[51] I conclude that the application must be dismissed. It was filed well beyond the thirty-day time limit set out in subsection 18.1(2) of the *FCA*. The time limit set out there is not a mere procedural barrier. It serves an important public interest in seeking finality to decision-making, to the benefit of both the decision-maker and the party affected by the decision (*Canada (Minister of Human Resources) v Hogervost*, 2007 FCA 41 at paras 21 and 24; *396491 Canada Inc v Canada*, 2020 FC 894 at para 39).

C. *If the application is timely, is the Minister’s decision not to reassess the tax returns for the 2009-2012 taxation years unreasonable?*

[52] In light of my determination on the time limits issue, it is not necessary to address this issue. I would simply add a few words, for the benefit of the Applicant and in view of the submissions that were advanced on this issue.

[53] I am not persuaded that the Minister’s decision was unreasonable. The only admissible evidence on the discussions between the Officer and the authorized representative is the affidavit

of the Officer. The Applicant wisely did not seek to rely on the affidavit it filed, and so the only evidence on this issue is that of the Respondent. The Officer's evidence is that she was only authorized to deal with the 2013-2015 taxation years, and further that she did not consider the returns for the 2009-2012 taxation years to be "outstanding" because they had already been assessed. The Officer's evidence was not altered or undermined on cross-examination.

[54] The fact that Ms. Stavreff informed the Officer that she was filing the earlier returns did not somehow transform the exchange into an undertaking to extend the time limit in regard to those returns. There is no evidence of any other exchange between the Officer and the representative relating to the earlier taxation years. These facts do not give rise to a basis to challenge the Minister's refusal to reassess the taxation years.

[55] I am also not persuaded that the reasons for decision are insufficient, taking into account the context for decision-making (see *6075240 FCA* at para 46).

IV. Conclusion

[56] For the reasons set out above, this application for judicial review is dismissed.

[57] The parties were unable to reach an agreement on costs, and each made submissions on the matter following the hearing.

[58] The Applicant requested a lump sum costs award in the event it was successful, and no costs awarded against it if it was not, because of the nature of the case, pointing out that in prior cases the Court has considered a taxpayer's reliance on the Minister's representations to award no costs against the unsuccessful taxpayer (*Jack Cewe Ltd v Canada* (1999), 162 FTR 4, 1999

CanLII 7349 (FCTD)). The Applicant also points to other cases where either no costs, or minimal costs, were awarded to taxpayers (*6075240 FC*, where costs were fixed at $250; and *Revera*, where no costs were awarded).

[59] The Respondent seeks costs of $5,650, calculated at the mid-level of Column III of Tariff B. It notes that Tariff B reflects a compromise between awarding full costs to the successful party and imposing a crushing burden on the unsuccessful party, in particular for a case of average complexity (*Air Canada v Thibodeau*, 2007 FCA 115 at para 21). It submits that this case raised a number of legally important and complex issues, including the jurisdiction question, noting that costs were awarded in favour of the Minister in the seminal cases on this point (*JP Morgan* at para 113; *Domtar* at para 41). The Respondent therefore seeks its costs in accordance with the mid-level of Column III of Tariff B, pursuant to Rule 407 of the *Federal Court Rules*, SOR/98-106.

[60] Costs are in the discretion of the Court pursuant to Rule 400, which sets out a number of considerations, including the results achieved and the importance and complexity of the issues. This was not a particularly complex case, nor does it raise new legal issues that have not otherwise been considered in recent jurisprudence. I am not persuaded that the jurisdictional point is either novel or complex, given the jurisprudence of the Federal Court of Appeal and the recent decisions of this Court on this very question.

[61] The Applicant's counsel states that she acted *pro bono*, and she further indicates that an offer to resolve the matter was made to the Respondent prior to the hearing. While these may both be relevant considerations, their impact is reduced given the outcome of the proceeding.

The fact is that the Applicant pursued its claim long after the time limit for doing so had expired, and therefore the Respondent had to respond to its claim.

[62] Having considered the submissions of the parties in light of the relevant factors set out in Rule 400, as well as the factors that favour an award of lump sum costs (*Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25), I hereby order the Applicant to pay to the Respondent lump sum costs in the amount of $1,500, inclusive of fees, disbursements, and taxes.

JUDGMENT in T-606-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The Applicant shall pay to the Respondent lump sum fees in the amount of $1,500, inclusive of fees, disbursements, and taxes.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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