Federal Court  Cour fédérale

Date: 20221202

Docket: T-1174-22

Citation: 2022 FC 1665

Ottawa, Ontario, December 2, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

EMILY CARASCO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a Team Leader, Canada Revenue Agency [CRA], as a delegate of the Minister of National Revenue [Minister's Delegate], disallowing Emily Carasco's [Applicant] request to adjust her income tax returns for the 2011 and 2012 taxation years made pursuant to the taxpayer relief provision in s 152(4.2) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*]. The Applicant sought to claim additional deductions from her employment income for legal expenses incurred in those taxation years. It was disallowed on the

basis that the expenses did not fall within s 8(1)(b) of the *ITA*. The negative decision was made after the CRA communicated a first proposal to allow the adjustment.

Background

[2] On February 15, 2021, the Applicant submitted T1 adjustment requests to the CRA in respect of her 2011 and 2012 taxation years [Adjustment Requests]. Because the requested adjustments pertained to taxation years that would otherwise normally be statute barred, the requests were considered pursuant to s 152(4.2) of the *ITA*, a taxpayer relief provision. In the Adjustment Requests, the Applicant sought deductions from her employment income for employment expenses at line 229 of her income tax returns for the 2011 and 2012 taxation years. The basis for the requested adjustment being that she had incurred legal fees in those taxation years, in the amounts of $19,274 and $175, 276, respectively, relating to a human rights claim she had initiated against her employer.

[3] On July 16, 2021, a Supplementary Examination CRA employee at the Winnipeg Tax Centre wrote to the Applicant to advise that the CRA was reviewing her request to adjust the returns and to request additional documents. Further communications between the CRA employee and the Applicant followed in the course of which the Applicant supplied documentation to support her request. This supporting documentation included interim procedural decisions made by the Human Rights Tribunal of Ontario with respect to a complaint made by the Applicant against her employer, the University of Windsor, alleging discrimination on the basis of race and sex in connection with a decision not to appoint the Applicant to the position of Dean of the Faculty of Law, as well as invoices for related legal fees.

[4] On February 14, 2022, a different employee with Supplementary Examination at the Winnipeg Tax Centre, Ms. K. Valencia, wrote to the Applicant proposing to allow the requested adjustments in addition to adding the $50,000 that the Applicant received from her employer as a settlement of her court case against it to the Applicant's employment income for her 2012 taxation year [February 14th Letter]. The letter advised that the processing of the proposed adjustments would be delayed until March 14, 2022 to permit the Applicant to make any further representations, should she wish to do so, and if no representations or information was received by that date, then the CRA would proceed with the proposed adjustments. The Applicant did not make any further representations.

[5] On April 1, 2022, Ms. Valencia again wrote to the Applicant. She stated that after further review, new adjustments were proposed [April 1st Letter]. Specifically, that the Adjustment Requests were now disallowed on the basis that the Applicant's court case was not related to salary or wages owed to the Applicant and, therefore, her claimed legal fees were not permissible pursuant to s 18(1)(a) of the *ITA*. The letter states that the processing of the proposed adjustments would be delayed until April 15, 2022 to allow the Applicant to make further representations.

[6] On April 14, 2022, the Applicant wrote to Ms. Valencia to "affirm [they] had a binding agreement" pursuant to the February 14th Letter. The Applicant stated that she had not responded to that letter by the March 14, 2021 delay date which meant that she had accepted the proposal and that the CRA was to proceed with the proposed adjustments and issue Notices of Reassessment for the subject taxation years on the basis stated in the February 14th Letter.

[7] By letter dated May 5, 2022, Adewunmi Adeagbo, a Team Leader with Supplementary Examinations in the Winnipeg Tax Centre and, for purposes of this matter, the Minister's Delegate, advised the Applicant that the CRA would be processing the adjustments as proposed in the April 1st Letter. The requested adjustments would be denied based on s 8(1)(b) of the *ITA.* In that letter, the Minister's Delegate advised the Applicant of her right to seek a second level review of the decision, or, alternatively, to apply for judicial review of the decision.

[8] On June 6, 2022, the Applicant filed a Notice of Application seeking a judicial review of the CRA's May 5, 2022 decision [Decision].

Relevant Legislation

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

> **Deductions allowed**
>
> **8 (1)** In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto
>
> …
>
> Legal expenses of employee
>
> **(b)** amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect, or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this Subdivision to be included in computing the taxpayer's income;
>
> …
>
> **Reassessment with taxpayer's consent**
>
> **152 (4.2)** Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining — at any time after the end of the normal reassessment period, of a taxpayer who is an individual (other than

> a trust) or a graduated rate estate, in respect of a taxation year — the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is 10 calendar years after the end of that taxation year,
>
> > (a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and
> >
> > (b) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3) or (3.001), 122.51(2), 122.7(2) or (3), 122.8(4), 122.9(2), 122.91(1), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

Issues

[9] The Applicant's written representations do not define the issues. However, she asserts that the Decision was unfair in light of the February 14th Letter. In that regard, she submits that the Minister's Delegate was estopped from making the Decision, that to do so was an abuse of process, and that the CRA became *functus officio* when it issued the February 14th Letter.

[10] The Respondent submits that the Applicant's submissions boil down to the single issue of whether the Decision was procedurally fair. The Respondent adds, in the event the Court determines that the Applicant was denied procedural fairness, then an additional issue of whether this Court should exercise its discretion to grant relief in this application for judicial review arises.

[11] In my view, the issue can be appropriately framed as whether the Decision was made in breach of the duty of procedural fairness owed to the Applicant.

Standard of Review

[12] Although the Applicant's submissions are exclusively concerned with procedural fairness, she states that, "in the end, the Respondent's actions were unreasonable", citing *Canada (Minister of Immigration and Citizenship v Vavilov*, 2019 SCC 65 at paras 76, 81 and 83 [*Vavilov*]). When appearing before me, counsel for the Applicant submitted that the reasonableness standard of review applies in this matter.

[13] Conversely, the Respondent submits that issues of procedural fairness are to be reviewed on a standard akin to correctness, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*].

[14] I agree with the Respondent. It is well established that issues of procedural fairness are to be reviewed on a correctness standard (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). This was not changed by the Supreme Court's decision in *Vavilov*. That said, in *CPR*, the Federal Court of Appeal held that although the required reviewing exercise may be best – albeit imperfectly – reflected in the correctness standard, issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the Court is to determine whether the proceedings were fair in all of the circumstances. That is, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (*CPR* at paras 54-56; see also

Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35; *Ahousaht First Nation v Canada (Indian Affairs and Northern Development)*, 2021 FCA 135 at para 31). Accordingly, I understand the standard of review for issues of procedural fairness to be correctness, or at least, essentially correctness.

Preliminary Issue

Style of Cause

[15] The Respondent submits that the CRA is incorrectly named as the Respondent in this application for judicial review. Pursuant to Rule 303(2) of the *Federal Courts Rules*, the correct respondent is the Attorney General of Canada and the style of cause should be amended accordingly. When appearing before me counsel for the Applicant advised that he did not oppose the proposed change. Accordingly, I will order that the style of cause be amended, replacing the Canada Revenue Agency with the Attorney General of Canada as the named respondent.

Was the Decision made in breach of the duty of procedural fairness owed to the Applicant?

[16] It is perhaps helpful, as a starting point, to first set out the content of the letters in question.

[17] The February 14th Letter states, in part, as follows:

> Based on our review and available information, we propose the following adjustment to the above noted returns:
>
> …..

> We are allowing your request to adjust your other employment expenses (Line 229) claimed in 2011 and 2012 based on the documents you have provided. However, we are proposing to increase your other employment income (Line 104) by $50,000, which is the amount you have received from University of Windsor as a settlement of your court case against them as per subsection 8(1) of the Income Tax Act.
>
> We will delay processing of the proposed adjustments until **March 14, 2022**, to provide you the opportunity to make further representation concerning this matter. If you would like to make further representation, please contact me by this date**.** If no new information is received and no contact is made with this office by **March 14, 2022**, it will be assumed that you do not wish to make further representation concerning this matter at this time and we will proceed with the proposed adjustments and issuance of Notices of Reassessment for the 2011 and 2012 tax years.
>
> ……
>
> [Emphasis in original.]

[18] The April 1, 2022 Letter states, in part, as follows:

> As per our letter on February 14, 2022 (see attached letter), we have completed our review of the documents submitted on August 16, 2021 and November 15, 2021.
>
> However, after undertaking further review on the case, the following are the new proposed amounts:
>
> ….
>
> We are disallowing the request to adjust other employment expenses for 2011 and 2012 tax returns as we have concluded based on the court case submitted that it was not related to salary or wages owed to you.
>
> As per paragraph 18(1)(a) of the Income Tax Act, you can claim legal fees that you paid in the year **to collect or establish a right to a salary or wages owed to you**. The amounts claimed are not tied to the successful outcome of your case, However, the legal expenses must be incurred by you to collect or establish a right to

> collect an amount owed to you that, if received by you, would have to be included in your employment income.
>
> ……
>
> [Emphasis in original.]

[19] The May 5, 2022 Letter, the Decision under review, states in part as follows:

> Based on the revised proposal letter dated April 1, 2022 and phone conversations we had with the representative, we will be processing the following adjustments proposed in our letter dated April 1, 2022, as follows:
>
> ….
>
> Further to our revised proposal letter sent on April 1, 2022, as mentioned in our phone conversation with the representative, **paragraph 8(1)(b) of the Income Tax Act** states "amounts paid by the taxpayer to collect , or to establish a right to, an amount owed to the taxpayer that, if received by the taxpayer, would be required by this Subdivision to be included in computing the taxpayer's income."
>
> Therefore, we are disallowing the request to adjust other employment expenses (Line 229) for 2011 and 2012 tax returns.
>
> ….
>
> [Emphasis in original.]

[20] I will now address the submissions.

i. Estoppel

[21] The Applicant submits that the Minister's Delegate was estopped from rendering the Decision, as the February 14th Letter clearly and unequivocally allowed the Adjustment Requests. The Applicant submits that, read in its totality, the February 14th Letter was an

unambiguous decision to proceed in a certain way achieving a certain result. The Applicant understood the letter to mean that "if we don't hear from you, we will proceed with the proposed adjustments". The Applicant proceeded on that basis by not contacting the Respondent or providing new information. The Applicant refers to *Amalgamated Investment & Property Co. (In Liquidation) v Texas Commerce International Bank*, [1982] QB 84 (CA) at paragraph 122 in support of her position.

[22] The Respondent does not directly address estoppel in its written submissions.

[23] I note that the Supreme Court of Canada has held that estoppel does not apply "in the face of an express provision of a statute" and "is of no assistance to a litigant who wishes to avoid the application of a clear legislative provision" (*St. Ann's Island Shooting & Fishing Club Ltd v R*, [1950] SCR 211, [1950] DLR 225 at para 31; *Immeubles Jacques Robitaille Inc. c Québec (Ville)*, 2014 SCC 34 at para 4, see also paras 19-30). Here, the Minister's Delegate ultimately disallowed the Adjustment Requests because they found, based on the human rights case pertaining to the Applicant's discrimination claims against her employer, that the amounts claimed were not related to salary or wages owed to her as set out in s 8(1)(b) of the *ITA*. The Applicant has not challenged that characterization of the case and its result. Accordingly, in my view, the Minister's Delegate disallowed the Adjustment Requests in applying a "clear legislative provision", that is s 8(1)(b) of the *ITA*, and was therefore not estopped from rendering the Decision.

ii. Abuse of Process

[24] The Applicant submits it was an abuse of process for the Minister's Delegate to render the Decision as, if left to stand, it would undoubtedly bring the administration of tax justice into disrepute as taxpayers would be deprived of any sense of certainty and finality in the settlement or disposition of assessments and other tax disputes. When appearing before me the Applicant submitted that, on its face, the February 14th Letter was a final decision.

[25] The Respondent does not make submissions speaking directly to this point. But, as will be discussed below, the Respondent submits that the Minister's February 14th Letter was not a final decision, relying on *Chekosky v Canada (Revenue Agency)*, 2019 FC 841 at paragraphs 25-26 [*Chekosky*].

[26] In *Chekosky*, Justice Walker held that a similar letter sent to the applicant therein was not a final decision stating "[t]he 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", as the applicant's tax liabilities for those years were established by the subsequent reassessments (para 26) (see also *Prince v Canada (National Revenue)*, 2020 FCA 32 at para 21; *Newave Consulting Inc v Canada (National Revenue)*, 2021 FC 1203 at para 132 [*Newave*]).

[27] On that basis, as the February 14th Letter was a proposal that did not establish the Applicant's substantive rights or obligations and was not a final decision, I do not agree with the Applicant that taxpayers would be deprived of any sense of certainty and finality by the CRA rendering the Decision. If anything, the Decision provided certainty.

[28] And while the Applicant suggests that a distinction should be made between proposal letters that propose an outcome that is favourable to an applicant – such as the February 14 Letter – with those that are not in an applicant's favour, the Applicant points to no case law that supports such a distinction. I also agree with the Respondent that there is no meaningful distinction in the wording of the proposal letters in those cases and the February 14th Letter. In any event, any such distinction would not serve to make the proposal letter a final decision.

iii. Functus Officio

[29] The Applicant characterizes the February 14th Letter as a decision and submits that the CRA became *functus officio* when it rendered that decision. Conversely, the Respondent submits that the CRA was not *functus officio* upon issuing the February 14th Letter, as it was not a final decision. Rather, it was rather a proposal letter (citing *Chekosky*).

[30] Given my finding above that the February 14th Letter was not a final decision, I agree with the Respondent that the CRA was not *functus officio* upon issuing that letter.

iv. Was the decision made in breach of a duty of procedural fairness?

Applicant's position

[31] In essence, the Applicant submits that the Minister's Delegate rendered the Decision in breach of procedural fairness, as the CRA first made a decision by way of the February 14th Letter allowing the Adjustment Requests and then made another decision disallowing them. She submits that the Minister's Delegate effectively overruled, rescinded or flatly ignored the

decision made by way of the February 14th Letter and attempted to substitute the Decision. In her Notice of Application, the Applicant also appears to rely on the doctrine of legitimate expectations to establish that there was a breach of the duty of procedural fairness. Although this was not pursued in her written submissions, when appearing before me, her counsel argued that *Baker v Canada (Minister of Citizenship and Immigration)* 1999 SCC 699 supports the Applicant's position. Further, the Applicant submits that the CRA acknowledged that its February 14th Letter was in error. Accordingly, the Applicant should not suffer the consequences of that error.

Respondent's position

[32] The Respondent submits that the CRA's process in reaching the Decision was procedurally fair. The procedural requirements in applications for taxpayer relief are minimal, and applicants are "entitled only to an adequate, not the optimum, opportunity to inform the decision-maker of their case" (citing *Ontario Addiction Treatment Centres v Canada (Attorney General)*, 2022 FC 393 at paras 81-83 further citing *Constabile v Canada (Customs & Revenue Agency)*, 2008 FC 943 at para 38 [*Constabile*]; *1680169 Ontario Limited v Canada (Attorney General)*, 2019 FC 562 at para 29 [*1680169 Ontario Ltd*]]. Here, the CRA advised the Applicant of the case to be met in order for the CRA to grant the Adjustment Requests on multiple occasions both before and after the February 14th Letter was issued and also verbally communicated with the Applicant about her case on multiple occasions, even though it was not required to do so.

[33] With respect to any legitimate expectations the Applicant may have had as a result of the February 14th Letter, the Respondent submits that where correspondence from an administrative decision-maker or other officer may lead one to legitimately expect that a decision-maker will reach a given substantive outcome, that expectation is not enforceable (referencing *JP Morgan Asset Management (Canada) Inc v Minister of National Revenue*, 2013 FCA 250 at para 75 [*JP Morgan*]). This is because legitimate expectations cannot create substantive rights (referencing *Baker* at para 26). While the Applicant may have legitimately expected that the CRA would allow the Adjustment Requests based on the proposal contained in the February 14th Letter, the CRA was not bound to proceed with those adjustments and the Applicant is not entitled to enforce the February 14th Letter. CRA retained the discretion to deny the Adjustment Requests pursuant to its mandate to apply s 152(4.2) of the *ITA* in accordance with the law. The process in reaching the Decision was procedurally fair, notwithstanding any legitimate expectations held by the Applicant.

Analysis

[34] In *Baker*, the Supreme Court of Canada held that the duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker (para 22). Further, there are several factors that are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it;

(2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself (paras 23-27). This list is not exhaustive (para 28).

[35] With respect to legitimate expectations, the Supreme Court stated:

> 26 Fourth, the legitimate expectations of the person challenging the decision may also determine what procedures the duty of fairness requires in given circumstances. Our Court has held that, in Canada, this doctrine is part of the doctrine of fairness or natural justice, and that it does not create substantive rights: *Old St. Boniface*, *supra*, at p. 1204; *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525, at p. 557. As applied in Canada, if a legitimate expectation is found to exist, this will affect the content of the duty of fairness owed to the individual or individuals affected by the decision. If the claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness: *Qi v. Canada (Minister of Citizenship and Immigration)* (1995), 33 Imm. L.R. (2d) 57 (F.C.T.D.); *Mercier-Néron v. Canada (Minister of National Health and Welfare)* (1995), 98 F.T.R. 36; *Bendahmane v. Canada (Minister of Employment and Immigration)*, [1989] 3 F.C. 16 (C.A.). Similarly, if a claimant has a legitimate expectation that a certain result will be reached in his or her case, fairness may require more extensive procedural rights than would otherwise be accorded: D. J. Mullan, *Administrative Law* (3rd ed. 1996), at pp. 214-15; D. Shapiro, "Legitimate Expectation and its Application to Canadian Immigration Law" (1992), 8 *J.L. & Social Pol'y* 282, at p. 297; *Canada (Attorney General) v. Human Rights Tribunal Panel (Canada)* (1994), 76 F.T.R. 1. Nevertheless, the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain. This doctrine, as applied in Canada, is based on the principle that the "circumstances" affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representations as to procedure, or to backtrack on substantive promises without according significant procedural rights.

[36] In *JP Morgan*, the Federal Court of Appeal stated that some matters, by themselves and without more, do not constitute an abuse of discretion, that is, they are not substantively unreasonable. One example of this pertained to expectations of a substantive outcome (at para 75):

> *Expectations of a substantive outcome.* Sometimes an administrative decision-maker may lead one to believe that a particular substantive decision will be made but then fails to make it. **Even though the person has a legitimate expectation that a particular substantive outcome will be reached, that expectation is not enforceable**: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paragraph 97; *Reference re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525; *St. Ann's Island Shooting and Fishing Club Ltd. v. The King*, [1950] S.C.R. 211, *per* Rand J., at page 220 **("there can be no estoppel in the face of an express provision of a statute")**; *The King v. Dominion of Canada Postage Stamp Vending Co.*, [1930] S.C.R. 500; *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at paragraph 79. In the tax context, see *M.N.R. v. Inland Industries*, [1974] S.C.R. 514; *Louis Sheff (1984) Inc. v. The Queen*, 2003 TCC 589 at paragraph 45 **("an estoppel cannot override the law of the land and…the Crown is not bound by the errors or omissions of its servants")**; *Gibbon v. The Queen*, [1978] 1 F.C. 247 (T.D.).
>
> [Emphasis added.]

[37] More generally, in *1680169 Ontario Ltd*, this Court held that the content of the duty of procedural fairness in taxpayer relief applications is minimal (para 26). In *Constabile*, the Court found that under s 152(4.2) of the *ITA*, the Minister has a duty to act fairly; although their powers must be exercised in accordance with the rules of procedural fairness, no specific rules are set out in the *ITA* with respect to applications for relief brought pursuant to it (para 37). There, the Court found that the Minister did not breach the rules of procedural fairness as the Applicant was given the opportunity to submit information and documents when requesting relief (para 38). And, in *Sherry v Canada (Minister of National Revenue)*, 2011 FC 1208, the Court relied on

Constabile to conclude that the Minister met their duty of procedural fairness in affording the Applicant ample opportunity to provide all necessary information pertaining to their request for relief (para 17).

[38] I agree with the Applicant that the February 14th Letter clearly stated that the CRA was allowing the Applicant's Adjustment Request. Further, that if no new information was received and no contact was made with that office by March 14, 2022, it would be assumed that the Applicant did not wish to make further representations and that the CRA "would" proceed with the proposed adjustments and issuance of Notices of Reassessment for the 2011 and 2012 tax years. It is also apparent from the materials contained in the record that on March 15, 2022, Ms. Valencia, having received no response from the Applicant, prepared a final letter, finalized the case and sent to the Team Leader, the Minister's Delegate, for approval. On March 19, 2022 the Minister's Delegate rejected the decision and instructed Ms. Valencia to write another proposal to deny the claim based on s 8(1)(b) of the *ITA*. In her subsequent communications with the Applicant, Ms. Valencia confirmed that she had made an error with respect to the February 14th Letter but stated that this did not preclude her from doing a further review of the file.

[39] I would also observe that in responding to the application for judicial review the Respondent filed the affidavit of the Team Leader/Minister's Delegate, affirmed on July 19, 2022. Therein the affiant states that Ms. Valencia did not have the delegated authority to render a final decision allowing or denying adjustments requested under the taxpayer relief provisions. This may well be so, however, it would certainly not have been apparent to the Applicant from the February 14th Letter.

[40] Despite these observations, and in any event, to the extent that the Applicant may have had a legitimate expectation that a particular substantive outcome would be reached – that the Adjustment Requests would be allowed and reassessments reflecting this issued – that expectation is not enforceable. Even though the February 14th Letter erroneously proposed to allow the Adjustment Requests, the Minister's Delegate had no discretion and was compelled to apply s 152(4.2) of the *ITA* in accordance with the parameters set out in s 8(1)(b). In assessing the tax liability of a taxpayer, "the Minister generally has no discretion to exercise and, indeed, no discretion to abuse. Where the facts and the law demonstrate liability for tax, the Minister must issue an assessment" (*JP Morgan* at para 77), and:

> [78] In this regard, as far as the assessments of a taxpayer's own liability are concerned, the Minister does not have "any discretion whatever in the way in which [she] must apply the *Income Tax Act*" and must "follow it absolutely": *Ludmer v. Canada*, [1995] 2 F.C. 3 at page 17 (C.A.); *Harris v. Canada*, [2000] 4 F.C. 37 at paragraph 36 (C.A.). This Court cannot stop the Minister from carrying out this duty: *Tele-Mobile Co. Partnership v. Canada (Revenue Agency)*, 2011 FCA 89 at paragraph 5 (in the context of the *Excise Tax Act*, R.S.C. 1985, c. E-15); *Ludmer*, *supra*, at page 9.

(See also *Newave* at para 115.)

[41] Further, and significantly, once the determination was made that the Applicant did not meet the requirements of s 8(1)(b) of the *ITA* as the legal fees she paid were not to collect or establish a right to salary or wages owed to her, Ms. Valencia informed the Applicant of the new proposal to disallow the Adjustment Requests, on that basis, by way of the April 1st Letter. In that letter, the Applicant was afforded the opportunity to make representations on the matter until April 15th, 2022. The Applicant responded by letter dated April 14, 2022, expressing her view

that the February 14th Letter served as a binding agreement, but she did not make any representations on how the legal fees she paid in 2011 and 2012 were to collect or establish a right to salary or wages owed to her. Rather, the Applicant asked that the Minister honour the "agreement" outlined in the February 14th Letter. The record also demonstrates that Ms. Valencia also spoke with the Applicant on April 12th, 21st, and 28th, 2022 about the proposal to disallow the Adjustment Requests and explained that the Applicant would need to submit other supporting documents that would provide proof that the legal fees claimed were related to salary or wages. However, no further submissions were made by the Applicant.

[42] When appearing before me, counsel for the Applicant submitted that the Applicant did not provide a substantive response to the April 1st Letter because she did not want to be seen as agreeing that the February 14th Letter was not a binding final decision. I note that this explanation is not found the affidavit affirmed on July 4, 2022 and filed by the Applicant in support of her application for judicial review. Nor does the Applicant point to any documentary evidence that she could otherwise have filed to support her claim that the circumstances surrounding the incurring of her legal fees fell within the requirements of s 8(1)(b) of the *ITA*.

[43] In these circumstances, I conclude that while the Applicant may have had a legitimate expectation of a specific outcome based on the proposal outlined in the February 14th Letter, that letter was not a final decision. And, in any event, that expectation is not enforceable. Further, by way of the April 1st Letter and subsequent communications with the Applicant, the duty of procedural fairness owed to the Applicant was met by explaining to her that the Adjustment Requests were being disallowed pursuant to s 8(1)(b) of the *ITA* and affording her the

opportunity to provide documentation to demonstrate that the legal fees claimed fell within the parameters of s 8(1)(b). That is, the legal fees were amounts paid by her to collect, or to establish a right to, an amount owed to her that, if received by her, would be required to be included in computing her income. In short, the Applicant was afforded procedural fairness because she knew the case to be met and was provided with an opportunity to address it.

[44] Accordingly, this application for judicial review is dismissed.

Costs

[45] The parties have advised the Court that costs to the successful party in the amount of $1,920 have been agreed upon. Accordingly, the Respondent shall have its costs in that amount.

JUDGMENT IN T-1174-22

THIS COURT'S JUDGMENT is that

1. The style of cause is hereby amended, replacing the Canada Revenue Agency with the Attorney General of Canada as the named respondent;

2. The application for judicial review is dismissed; and

3. The Respondent shall have its costs in the all inclusive lump sum amount of $1,920.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1174-22
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APPEARANCES:

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