

Federal Court



Cour fédérale

Date: 20231030

Docket: 23-T-87

Citation: 2023 FC 1439

[ENGLISH TRANSLATION]

Montréal, Quebec, October 30, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

MORGAN LAURENT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Introduction

[1] The applicant, Mr. Morgan Laurent, filed a motion in writing pursuant to section 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], seeking an order of the Court granting an extension of time pursuant to subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7 [Act] to file an application for judicial review of collection action taken by the Canada Revenue Agency [CRA] against him.

[2] The respondent, the Attorney General of Canada [AGC], opposes Mr. Laurent's request.

[3] For the reasons that follow, having considered Mr. Laurent's application record and the AGC's response, Mr. Laurent's application is dismissed.

II. Background

[4] Mr. Laurent, a construction foreman, wishes to file an application for judicial review to contest collection measures undertaken by the CRA for tax debts.

[5] The CRA is claiming an amount of over \$48,000 [Amount Claimed] from Mr. Laurent for the 2013, 2014 and 2015 taxation years. The Amount Claimed relates to source deductions that were allegedly withheld from wages paid to Mr. Laurent by his employers for the years in question, but which were not remitted to the CRA. The CRA has initiated collection action against Mr. Laurent to collect the Amount Claimed, but Mr. Laurent states that he is not responsible for the source deductions withheld and not remitted by his employers.

[6] Mr. Laurent points out that the CRA cannot turn to an employee to recover source deductions that his employers allegedly did not remit to the CRA.

[7] The AGC's response is that Mr. Laurent has never established the veracity of the source deductions he alleges. According to the AGC, Mr. Laurent has never been able to respond to the numerous requests made by the CRA and demonstrate that the source deductions appearing on the T4 slips he produced were in fact made. Mr. Laurent's T4 slips were therefore not accepted by the CRA as reflecting reality.

[8] According to the AGC, the CRA's notices of assessment are now presumed valid, the collection measures undertaken by the CRA are well founded, and Mr. Laurent's application for

judicial review is the wrong vehicle to have these collection measures quashed. Moreover, the AGC argues that Mr. Laurent's action is doomed to fail in the absence of a prima facie case to demonstrate the very existence of the source deductions.

[9] There is no doubt that Mr. Laurent did not file his application for judicial review in a timely manner, given the collection measures undertaken by the CRA. The time limit for filing such an application is 30 days from the first communication of the CRA's decision to collect the amounts it considers due. Mr. Laurent states that the CRA initiated a first collection action on August 21, 2018. Since then, on August 13, 2022, the CRA issued a collection notice to Mr. Laurent, and on March 15, 2023, it denied his request for relief.

[10] It therefore remains to be determined whether, in the circumstances, the extension of time Mr. Laurent requested should be granted.

III. Analysis

[11] To be successful, Mr. Laurent must meet the four criteria established by the Federal Court of Appeal for granting an extension of time (*Thompson v Canada (Attorney General)*, 2018 FCA 212 [*Thompson*] at para 5; *Canada (Attorney General) v Larkman*, 2012 FCA 204 [*Larkman*] at para 61; *Canada (Attorney General) v Hennelly*, 244 NR 399, 1999 CanLII 8190 (FCA) [*Hennelly*] at para 3).

[12] These four factors are the following: (i) did Mr. Laurent have a continuing intention to pursue his application for judicial review; (ii) is there some potential merit to his application; (iii) is there any prejudice to the AGC or the CRA as a result of the delay; and (iv) is there a reasonable explanation for the delay? The burden is on Mr. Laurent to prove each of these

elements (*Virdi v Canada (Minister of National Revenue)*, 2006 FCA 38 at para 2). However, the criteria are not conjunctive: a motion for an extension of time may be granted even if not all the criteria are met (*Larkman* at para 62).

[13] That said, the power to grant an extension of time remains discretionary, and the four criteria established by the case law, while framing its exercise, do not have the effect of restricting this discretion. Ultimately, the overriding consideration in the exercise of the Court's discretion is "the interests of justice" (*Larkman* at paras 62, 85). The Court must therefore examine each of the criteria with some flexibility to ensure that justice is done and decide whether it would be in the interests of justice to grant the extension of time (*Thompson* at para 6; *Larkman* at para 62; *MacDonald v Canada (Attorney General)*, 2017 FC 2 at para 11).

[14] Having considered the written submissions of the parties, I am not satisfied that this is a situation where I should exercise my discretion in favour of Mr. Laurent and where it would be in the interests of justice to grant an extension of time, because the evidence is wholly insufficient to satisfy at least three of the factors governing the exercise of my discretion. In particular, the evidence does not establish a consistent intention to challenge the CRA's collection actions through an application for judicial review, a basis for the application for judicial review sought by Mr. Laurent, or a reasonable explanation for the lengthy delay in filing his application.

A. *Continuing intention to pursue application*

[15] An extension of time requires that Mr. Laurent demonstrate a continuing intention to pursue his application for judicial review throughout the period since the prescribed 30-day time limit. Admittedly, Mr. Laurent has made numerous attempts to have the amounts he believes the

CRA is wrongly claiming from him cancelled. But there is no evidence of Mr. Laurent's intention to seek judicial review of the CRA's collection actions.

[16] I share the AGC's opinion that Mr. Laurent's continuing intention to obtain the cancellation of the Amount Claimed by means other than judicial review cannot, logically, prove a continuing intention to file the application for judicial review within the 30-day time limit.

B. *Merits of application*

[17] Mr. Laurent also maintains that his application for judicial review has legal merit, namely the cancellation of the Amount Claimed, since it is established case law that an employee cannot be held liable for source deductions collected and not remitted by his employer.

[18] I do not share this opinion. Rather, I conclude that Mr. Laurent has not presented persuasive reasons or arguments demonstrating the likelihood of success of his application for judicial review.

[19] As the AGC points out, Mr. Laurent's position on the merits of his application for judicial review must be assessed in light of the particular context of this case, the fact that notices of assessment issued by the CRA are deemed valid and binding (*Income Tax Act*, RSC 1985, c 1 (5th Supp), subsection 152(8)), the absence of evidence on the very existence of the source deductions at issue, and the exclusive jurisdiction conferred on the Tax Court of Canada to contest assessments (*Kerry (Canada) Inc v Canada (Attorney General)*, 2019 FC 377 at para 33).

[20] The record shows that Mr. Laurent never proved that his employers had in fact made deductions at source from his salary. The submission of T4s is not sufficient to demonstrate, on a balance of probabilities, that source deductions did in fact take place (*Beaudry v Canada*

(*Attorney General*), 2013 FC 547 at para 24). The 2013, 2014 and 2015 notices of assessment were issued by the CRA after Mr. Laurent proved unable to demonstrate that source deductions had been made on his pay cheques. The CRA subsequently rejected all objections and requests for relief made by Mr. Laurent in respect of these assessments.

[21] Since Mr. Laurent was unable to demonstrate the inaccuracy of the notices of assessment, the recovery action taken by the CRA is well founded, since it stems from valid assessments based on the absence of deductions at source.

[22] I agree with the AGC that the remedy Mr. Laurent would like to pursue in his application for judicial review is not really aimed at the CRA's collection measures but would indirectly amount to questioning the accuracy of the assessments issued by the CRA, a matter over which the Tax Court of Canada has exclusive jurisdiction. Moreover, this is a collection matter for which Mr. Laurent has offered no factual evidence as to the existence of source deductions.

C. *Reasonable justification for delay*

[23] Let me move on to the last criterion established by case law, namely a reasonable explanation justifying the delay. On this issue, once again, I can only note the silence of the evidence: I can find no reasonable explanation to justify Mr. Laurent's long delay in filing his application for judicial review, either in his submissions or in his affidavit.

[24] Mr. Laurent merely states that the CRA's collection actions date back to August 21, 2018, and that he received bad advice from a CRA officer in 2019. Mr. Laurent also claims that the numerous contradictory pieces of information provided by various CRA officers in his file

and the various steps he has taken to try to have the CRA's claims cancelled constitute a reasonable explanation to justify his delay.

[25] I am not persuaded by these arguments, and they do not come close to explaining the very long time that has elapsed since the application for judicial review should have been filed.

D. *Assessing the factors and the interests of justice*

[26] In weighing each of the factors set out in *Larkman* and *Hennelly*, and taking into account the circumstances of this case, I give decisive weight to the lack of justification for the very long delay and the lack of demonstration that Mr. Laurent's application has merit. Having completed my analysis, I can therefore identify no reason that would allow me to extend the time for filing Mr. Laurent's application for judicial review.

[27] It has been repeatedly recognized that undertaking judicial review of administrative tribunal decisions within the relatively short timeframes prescribed by the Act reflects the public interest in the finality of administrative decisions (*Canada v Berhad*, 2005 FCA 267 [*Berhad*] at para 60, leave to appeal to SCC refused, 31166 (May 25, 2006); *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41 at para 24). This time limit "is not whimsical" and exists "in the public interest, in order to bring finality to administrative decision so as to ensure their effective implementation without delay" (*Berhad* at para 60).

[28] I recognize that the interests of justice remain the paramount consideration in granting an extension of time. But the interests of justice do not exist in a vacuum and do not absolve an applicant of the duty to meet his or her burden of proof. Here, to exercise my discretion in Mr. Laurent's favour would require me to ignore the established criteria for an extension of time,

and to turn a blind eye to the lack of evidence to support the factors set out in the case law to considering granting such an extension. The rule of law is based on the fundamental principles of certainty and predictability. The exercise of a discretionary power must originate in the law. The exercise of such a power cannot be adequate or judicious, and in the interests of justice, if it ignores the minimum requirements of the applicable law.

IV. Conclusion

[29] In the circumstances, I conclude that it is not in the interests of justice to grant the requested extension of time.

[30] Furthermore, I am of the opinion that there is no reason to depart from the general principle that the unsuccessful party must bear the costs. I would add that, in accordance with section 410 of the Rules, costs relating to a motion for an extension of time are normally borne by the applicant. In the exercise of my discretion, I therefore award costs to the respondent and set the amount at \$500.

ORDER in 23-T-87

THIS COURT ORDERS as follows:

1. The motion for an extension of time is denied.
2. Costs of \$500 are awarded to the respondent.

“Denis Gascon”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 23-T-87

STYLE OF CAUSE: MORGAN LAURENT v ATTORNEY GENERAL OF
CANADA

**MOTION IN WRITING CONSIDERED AT MONTRÉAL, QUEBEC, PURSUANT TO
SECTION 369 OF THE *FEDERAL COURT RULES***

ORDER AND REASONS: GASCON J.

DATED: OCTOBER 30, 2023

WRITTEN SUBMISSIONS BY:

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