Date: 20051221

Docket: T-1737-04

Citation: 2005 FC 1720

BETWEEN:

MARIO LATOUR

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER

PINARD J.

[1] This is an application for judicial review of a decision by the Canada Customs and Revenue Agency (hereinafter the respondent) under the fairness initiative, dated August 26, 2004, denying the applicant's application for a waiver of additional overdue interest, arising from a tax credit received in error, for the 1997, 1998 and 1999 taxation years, in accordance with subsection 220(3.1) of the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (the Act).

* * * * * * * *

[2] The relevant facts may be summarized as follows:

[3] On May 28, 1999, Mario Latour (the applicant) owed a tax debt to the respondent amounting to $2,449.85.

[4] In July 2000, the debt amounted to $3,917.61.

[5] During the period from May 28, 1999, to July 26, 2000, the respondent sent Requirements to Pay to the applicant as well as statements indicating the increase in his tax debt.

[6] During the same period, the applicant made payments ranging from $52 to $69 and one payment of $170.55.

[7] In March 2000, the respondent commenced garnishment proceedings against the applicant.

[8] On August 16, 2000, the respondent mistakenly credited $2,874.86 to the applicant's tax account.

[9] On September 25, 2000, the respondent sent the applicant a statement indicating that his tax debt was now only $754.22. The same statement, which the applicant acknowledges having received, indicated a credit for the above-mentioned amount of $2,874.86, which the applicant had not actually paid.

[10] On December 8, 2000, the applicant also contacted the Support Payment Collection Program after receiving a second notice that his support payments were being increased.

[11] Between September 25, 2000, and January 5, 2004, the applicant made no attempt to contact the respondent to inquire about the significant and unexpected decrease in his tax debt in September 2000.

[12] On January 5, 2004, the respondent, having realized its mistake, sent the applicant a statement indicating that his tax debt now stood at $3,774.76.

[13] On January 8, 2004, the applicant contacted the respondent for an explanation, which was not provided, since the officer in question was not apprised of his file.

[14] The applicant made further attempts to contact the respondent about this subject on January 16 and 20 and February 2, 2004.

[15] On February 2, 2004, the applicant received a detailed statement, dated January 29, 2004. It was at that moment that the respondent explained to the applicant for the first time that his account had been credited by mistake.

[16] On February 13, 2004, the applicant first applied to the respondent for a waiver of interest under the fairness provisions set out in subsection 220(3.1) of the Act, requesting a waiver of the interest that had accrued between August 16, 2000, and January 5, 2004, the date he received his first bill.

[17] In a letter dated April 22, 2004, decision maker Gilles Laberge informed the applicant of his decision to waive the interest accrued during the first 60 days following the issuing of the statement listing the mistaken payment made to the applicant's account. Mr. Laberge expressed his opinion that a 60-day period was sufficient time for the applicant to inform them of the error.

Enclosed with the letter was a copy of Circular IC-92-2, entitled Guidelines for the Cancellation and Waiver of Interest and Penalties. The respondent directed the applicant's attention to paragraph 14 of the Guidelines in particular.

[18] In a letter to the respondent dated May 6, 2004, the applicant sought administrative review of the decision dated April 22, 2004, in which his application for a waiver of interest had been allowed in part.

[19] A second review committee analyzed the applicant's second application. Despite the applicant's personal difficulties, Officers Brigitte Lamontagne and Bérangère Savard recommended that the decision of April 22, 2004, be maintained because the applicant, who had not reported the error when it was made in 2000 but had only brought it up when the respondent readjusted his account, did not exercise reasonable care in managing his affairs.

[20] In a letter dated August 26, 2004, decision maker Pierre Boutin informed the applicant that his application for administrative review had been denied, hence this application for judicial review.

* * * * * * * *

[21] It is worth reproducing here the text of the relevant subsection of the Act:

220. (3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to 152(5), such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.	**220.** (3.1) Le ministre peut, à tout moment, renoncer à tout ou partie de quelque pénalité ou intérêt payable par ailleurs par un contribuable ou une société de personnes en application de la présente loi, 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.

[22] The relevant paragraph of the Guidelines for the Cancellation and Waiver of Interest and Penalties reads as follows:

14. If taxpayers or employers believe that the Department has not exercised its discretion in a fair and reasonable manner, then they may request, in writing, that the director of a district office or taxation centre review the situation.	**14.** Si un contribuable ou un employeur estime que le Ministère n'a pas exercé son pouvoir discrétionnaire de manière raisonnable et équitable, il peut alors demander, par écrit, au directeur d'un bureau de district ou d'un centre fiscal d'examiner la situation.

* * * * * * * *

[23] Recently, in *Lanno v. Canada Customs and Revenue Agency*, 2005 FCA 153, Madam Justice Sharlow of the Federal Court of Appeal set out the applicable standard of review for decisions involving an exercise of a discretionary power such as the one conferred by subsection 220(3.1) of the Act:

> [7] In my view, there is no relevant factor that points to a standard of review that is more deferential than reasonableness. Therefore, I must respectfully disagree with the decisions of the Federal Court in *Sharma* and *Cheng* and conclude that the standard of review in this case, as in *Hillier*, is reasonableness. . . .

[24] In *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, the Supreme Court of Canada, citing the decision in *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, explained the standard of reasonableness as follows on page 268:

> An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it.

[25] Canada's tax system is based on the principle of self-assessment. As explained by my colleague Blais J. in *Boudreault v. Canada Customs and Revenue Agency*, 2002 FCT 84, at paragraph 30, while it is understandable that an individual might want to benefit from an error made by the respondent, it is nevertheless unacceptable. By failing to inform the respondent of

the error, the applicant jeopardized his chances of being granted discretionary relief under subsection 220(3.1) of the Act.

[26] It is true that in this case the respondent did not inform the applicant of his error until January 29, 2004. If the respondent's error had been one that the applicant was unlikely to notice, I might have accepted his application to have the interest waived. But the sudden and significant drop in the applicant's tax debt should have prompted him to make inquiries, especially in light of the facts that show that when the applicant looks at his mail, he responds quickly if he sees any error. In my opinion, it is not unreasonable to determine that the applicant knew there had been an error in his file and tried to take advantage of it. Like in *Boudreault*, mentioned above, this may be understandable, but it is not acceptable.

[27] The Minister structured the exercise of his discretion by adopting the Guidelines for the Cancellation and Waiver of Interest and Penalties and the Fairness Provisions Reference Guide. In my opinion, the respondent followed those Guidelines when it considered the applicant's situation and decided to cancel the interest for 60 days after the date of the statement following the mistaken payment, giving the applicant enough time to inform the respondent of the error.

[28] It is worth noting, however, that the Guidelines cannot confine the Minister's discretionary power, which means that a discrepancy between the respondent's actions and the Guidelines does not automatically warrant the intervention of this Court (see *Maple Lodge Farms v. Government of Canada*, [1982] 2 S.C.R. 2, at pages 6 and 7 and *Lachine General Hospital Corp. v. Québec (Procureur général)*, [1996] R.J.Q. 2804, at page 2817).

[29] Moreover, the Fairness Provisions Reference Guide, which the applicant claims should have been sent to him, is simply a working document prepared for the respondent's employees. It was therefore not necessary that it be sent to the applicant.

[30] Finally, it was not unreasonable for the respondent to find that the applicant's life circumstances did not justify a cancellation of the additional overdue interest, as the facts of the case show that his situation was never beyond his control and do not reveal any extraordinary circumstances not experienced by a majority of Canadians (see, for example, *Babin v. Canada Customs and Revenue Agency*, 2005 FC 972).

[31] As for the second decision, Pierre Boutin examined all the information submitted and decided that the discretionary power had been properly exercised in the first decision. In my opinion, the decision of August 26, 2004, was based on a reasonable analysis of the applicant's file given the documentary evidence and written observations that he provided. Therefore, the decision itself is reasonable, and the intervention of this Court is not warranted.

[32] Accordingly, the application for judicial review is dismissed. In light of the particular circumstances of this case, there will be no order as to costs.

"Yvon Pinard"
Judge

OTTAWA, ONTARIO
December 21, 2005

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1737-04
STYLE OF CAUSE:	MARIO LATOUR v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	November 30, 2005
REASONS FOR ORDER BY:	The Honourable Mr. Justice Pinard
DATED:	December 21, 2005

APPEARANCES:

Mario Latour	APPLICANT
André Leblanc	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mario Latour Gatineau, Quebec	APPLICANT ON HIS OWN BEHALF
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT