

Date: 20071003

Docket: T-505-07

Citation: 2007 FC 1014

Halifax, Nova Scotia, October 3, 2007

PRESENT: The Honourable Madam Justice Layden-Stevenson

BETWEEN:

**THE ESTATE OF KENNETH CHRISTIE
as represented by SANDRA CHRISTIE, EXECUTOR**

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant seeks judicial review of a ministerial delegate's decision dated February 1, 2007, denying a request for relief pursuant to subsection 220(3.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA). For the reasons that follow, I conclude that the application must be dismissed.

Background

[2] Approximately one month before his death on November 17, 2000, Kenneth Christie executed a Will (contradictory to the terms of an estate plan he had arranged with the benefit of advice from his solicitor and financial adviser) providing that his new wife was to be the beneficiary of his Registered Retirement Income Fund (RRIF). Somewhat contemporaneously, his wife entered a trust agreement delineating specific terms and conditions in relation to the distribution of the RRIF payments and the disposition of the capital. Following Mr. Christie's death, his widow failed to acknowledge the trust agreement.

[3] The executors of the estate refused to recognize the widow as the rightful owner of the RRIF. Mr. Christie's final T1 income tax (IT) return, filed on April 30, 2001, did not include reference to the RRIF (valued at approximately \$159,000 at the time of Mr. Christie's death). Negotiations between the widow and the estate ensued over a period of two and a half years. A settlement was achieved only after the executors threatened litigation. In the interim, the financial institution refused to collapse the RRIF.

[4] On October 16, 2003, a T1-ADJ request to include the fair market value of the RRIF on Mr. Christie's final tax return was filed. Tax liability of \$78,000 was paid at that time. A notice of reassessment reflecting the disposition of the RRIF was issued on May 5, 2005. The notice of reassessment included an amount of \$17,312.85 payable with respect to arrears interest.

[5] On July 27, 2005, one of the executors (also the ultimate beneficiary of the RRIF and henceforth referred to as the "executor") requested that the Canada Revenue Agency (CRA), under

subsection 220(3.1) of the ITA, waive the interest assessed on the account because of circumstances beyond the taxpayer's control. The stated basis for the request was that "the estate, represented by [its] executors, refused to probate the will until [the widow] acknowledged the agreement. [The financial institution] refused to collapse the RRIF until the probate was complete. The matter was not resolved until more than two years later". Further, "[i]t was not clear that the RRIF should be included in [the deceased's] final return until the matter with the widow was resolved...the only way to avoid the interest was to capitulate to his widow receiving full ownership of the RRIF which was contrary to [the deceased's] wishes and was against all principals (sic) of equity and fairness".

[6] Following a two-tier review, by correspondence dated November 15, 2005, a ministerial delegate informed the executor that the arrears interest would be cancelled for the period encompassing the 18 months that the CRA had taken to process the adjustments. Otherwise, the request was denied.

[7] On March 28, 2006, the executor's solicitor requested a second review of the request to cancel the arrears interest. Upon receipt of this request, the file was referred to officers other than those involved in the first review. A second two-tier review was conducted. By correspondence dated February 1, 2007, the Director of Nova Scotia Tax Services Office, CRA (the Director) informed the executor as follows:

- arrears interest from April 27, 2006 until February 5, 2007 would be cancelled (because of delay in the processing of the request);
- since a new allegation — that the estate had no means of paying the taxes without suffering grave hardship — had been raised, this submission would be considered on

the basis of inability to pay and would be referred to a fairness review under the financial hardship provision;

- the circumstances did not meet the conditions [beyond the taxpayer's control] that would allow for cancellation of the total amount.

[8] It is the ministerial delegate's February 1, 2007 decision wherein he declined to exercise discretion pursuant to subsection 220(3.1) of the ITA that is the subject of this application.

Legislative Provisions

[9] The pertinent legislative provisions are subsections 146.3(6) and 220(3.1) of the ITA. The latter is commonly referred to as one of the fairness provisions.

Income Tax Act,
R.S.C. 1985, c. 1 (5th Suppl.)

146.3(6) Where the last annuitant under a registered retirement income fund dies, that annuitant shall be deemed to have received, immediately before death, an amount out of or under a registered retirement income fund equal to the fair market value of the property of the fund at the time of the death.

220.(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

Loi de l'impôt sur le revenu,
L.R.C. 1985, ch. 1 (5^e suppl.)

146.3(6) Le dernier rentier dans le cadre d'un fonds enregistré de revenu de retraite est réputé, s'il est décédé, avoir reçu, immédiatement avant son décès, un montant dans le cadre d'un tel fonds égal à la juste valeur marchande des biens du fonds au moment de son décès.

220.(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

<p>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.</p>	<p>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.</p>
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Issues

[10] The applicant's written submissions contain various allegations of error on the part of the ministerial delegate. At the hearing, the applicant's counsel candidly, and in my view appropriately, abandoned all but one of the arguments. The sole outstanding issue is whether the Minister's delegate failed to have regard to the "legal ownership" of the RRIF during the period from Mr. Christie's death to the date of the settlement.

The Standard of Review

[11] The applicable standard of review in relation to discretionary decisions of the Minister under the fairness provisions of the ITA has been authoritatively determined by the Federal Court of Appeal: *Lanno v. Canada Customs and Revenue Agency* (2005), 334 N.R. 348 (F.C.A.) (*Lanno*); *Comeau v. Canada Customs and Revenue Agency* (2005), 361 N.R. 141 (F.C.A.). Such decisions are to be reviewed on the standard of reasonableness. Since *Lanno*, the Federal Court has applied a reasonableness standard of review to subsection 220(3.1) decisions: *Dort Estate v. Minister of*

National Revenue, [2005] 4 C.T.C. 233 (F.C.); *Dobson Estate v. Canada (Attorney General)*, [2007] 4 C.T.C. 93 (F.C.); *Carter-Smith v. Canada (Attorney General)*, [2007] 1 C.T.C. 163 (F.C.); *Young v. Canada (Attorney General)*, [2007] 1 C.T.C. 124 (F.C.); *Ross v. Canada (Customs and Revenue Agency)* (2006), 289 F.T.R. 160, [2006] 3 C.T.C. 42 (F.C.); *Hauser v. Canada (Revenue Agency)*, [2007] 2 C.T.C. 152 (F.C.).

Analysis

[12] The applicant asserts that the CRA Information Circular IC92-2 entitled *Guidelines for the Cancellation and Waiver of Interest and Penalties* specifies that the guidelines are not intended to be exhaustive or to restrict the spirit or intent of the legislation. The applicant contends that in the unique circumstances of this matter, relief ought to have been granted. The ministerial delegate erred in that he failed to consider the “legal” status of the RRIF in arriving at his decision.

[13] While I am sympathetic to the applicant’s plight, it is not correct to say that the above-noted submission was not addressed. The second request for review was conducted by two officers. Their recommendation was accepted and approved by the Director. Accordingly, regard should be had to the contents of the recommendation as well as the correspondence of the Director.

[14] In addressing the various submissions of the applicant’s solicitor, the recommendation document specifically refers to the applicant’s position that “the estate had no legal entitlement whatsoever to the RRIF until July 31, 2003”. The comments in the recommendation state that if the RRIF had become the property of the spouse, it need not have been included in the final income return for the deceased. The executors should have been aware, if successful in contesting the will,

that the income would be fully taxable to the deceased, yet they made no attempt to lessen the interest burden. Further, “the RRIF income is not income of the estate, but income to the deceased...the executors were fully aware of the RRIF and its approximate value”. Additionally, the officers state that the CRA must be satisfied that the estate took a reasonable amount of care to comply with the ITA. That is, the estate was expected to make efforts to avoid or minimize delays in complying, paying or remitting amounts due. A taxpayer’s action or inaction must reflect what might reasonably be expected in comparable circumstances.

[15] The Director explained that because the proceeds of the RRIF did not become the property of the deceased’s spouse, the full amount had to be reported as income on Mr. Christie’s 2000 income tax return. The requirement arises when a RRIF is transferred to an unqualified beneficiary. The requirement to report exists even where an information slip is not provided. Here, the executors were aware of the existence of the RRIF and its value. Therefore, the onus was on the executors to know that the income would be fully taxable to the deceased. Inability to access the funds does not operate to eliminate or postpone the tax implications. The arrears interest on this account is similar to that charged on other accounts in similar situations. The Director concluded that the circumstances did not meet the conditions [beyond the taxpayer’s control] that would allow for the cancellation of the requested amount.

[16] To succeed on this application, the applicant must demonstrate that the ministerial delegate’s conclusion was unreasonable. The reasonableness standard of review is described in *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247 at paragraphs 55 and 56 as follows:

A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from

the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see Southam, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see Southam, at para. 79).

This does not mean that every element of the reasoning given must independently pass a test for reasonableness. The question is rather whether the reasons, taken as a whole, are tenable as support for the decision. At all times, a court applying a standard of reasonableness must assess the basic adequacy of a reasoned decision remembering that the issue under review does not compel one specific result. Moreover, a reviewing court should not seize on one or more mistakes or elements of the decision which do not affect the decision as a whole.

[17] I am unable to conclude that the ministerial delegate did not properly consider the various submissions tendered by the applicant. It is evident from the documentation that the officers and the Director were fully aware of the circumstances including the submission in relation to the “legal ownership” of the RRIF. While I may have arrived at a different conclusion, it is not my function to substitute my opinion for that of the decision-maker. The reasons contained in the recommendation and the Director’s correspondence of February 1, 2007 withstand the scrutiny of a somewhat probing examination. Consequently, the application for judicial review must be dismissed.

[18] Both parties requested costs. Neither pressed the issue at the hearing. In the exercise of my discretion, the application will be dismissed without costs.

ORDER

THIS COURT ORDERS THAT the application is dismissed. No costs are awarded.

“Carolyn Layden-Stevenson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-505-07

STYLE OF CAUSE: THE ESTATE OF KENNETH CHRISTIE as
represented by SANDRA CHRISTIE, EXECUTOR v.
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 2, 2007

REASONS FOR ORDER: LAYDEN-STEVENSON J.

DATED: October 3, 2007

APPEARANCES:

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John Ashley FOR THE RESPONDENT

SOLICITORS OF RECORD:

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