

**Date: 20071116**

**Docket: T-2298-05**

**Citation: 2007 FC 1198**

**Ottawa, Ontario, November 16, 2007**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**PIOTR ZYLKA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Piotr Zylka is a self-employed carpenter. In 2005, he asked the Canada Revenue Agency (CRA) to waive interest and penalties he owed in respect of previous taxation years because of financial hardship. The CRA concluded that Mr. Zylka had not shown circumstances that would justify waiver of his tax debt. Mr. Zylka made a second request for forgiveness and that, too, was turned down.

[2] Mr. Zylka argues that the CRA treated him unfairly in denying his requests for relief and asks me to order the CRA to reconsider them. I can find no basis for overturning the CRA's decision and must, therefore, dismiss this application for judicial review.

## I. Issue

Did the CRA treat Mr. Zylka unfairly?

## II. Analysis

[3] I can overturn the CRA's decision only if I conclude that it was unreasonable.

[4] Under the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.), s. 220(3.1) (relevant enactments are set out in the Annex) and the *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 281.1(1), (2), the Minister may, in his or her discretion, waive penalties or interest payments; Information Circulars and Memoranda outline the kinds of circumstances where the Minister may decide to exercise that discretion. For example, under the *Income Tax Act*, interest and penalties may be waived when the taxpayer has been prevented from making payments due to natural disasters, civil disturbances, a postal strike, serious illness, or emotional or mental distress (Information Circular 92-2). Similar guidelines are provided for in relation to the *Excise Tax Act* (GST Memorandum 500-3-2-1).

[5] In Mr. Zylka's first request to the CRA, he noted that the years 2000 and 2001 were very difficult years in the construction industry. He was forced to rely on credit cards, loans and the generosity of his family and friends to get by. In addition, he had to travel to Poland to visit an ailing family member, who died in 2001. Further, his marriage broke down.

[6] Mr. Zylka's request was considered by a collections officer in Vancouver. She recommended that his request for relief be denied on the basis that his statement of income and expenses disclosed his ability to repay the amounts he owed without undue hardship. The officer's recommendation was confirmed by a manager and Mr. Zylka was informed of the outcome.

[7] Mr. Zylka's second request noted that "crucial evidence" had been ignored. Mr. Zylka implored the CRA to give him favourable consideration in order to help him make a better life for his family.

[8] This second request was considered by a different collections officer, who reviewed Mr. Zylka's entire file with fresh eyes. However, he too felt that Mr. Zylka was able to repay his debt without undue hardship. The officer's recommendation was considered and confirmed by a "fairness committee" of CRA managers.

[9] Mr. Zylka originally claimed that the CRA had relied on a falsified document when it concluded that he was in a position to repay his tax debt. That allegation was withdrawn at the hearing when counsel for the respondent produced an original of the document in question.

[10] Mr. Zylka also alleged that some of the documents he submitted to the CRA were lost, which resulted in the collections officers not having a complete picture of his financial situation. Further, his tax liability was assessed on the basis of assumptions about his income and expenses, rather than actual evidence.

[11] Clearly, Mr. Zylka was concerned about his actual assessments, as well as the refusal to waive penalties and interest. He made representations to the CRA about his tax liability and was able to persuade CRA officials to lower the amounts he owed. He argues that there were other errors that went uncorrected. However, the correctness of the underlying tax assessments is not the issue before me. I can only consider whether the decision not to waive interest and penalties was arrived at fairly.

[12] Mr. Zylka gave an articulate and impassioned presentation of his circumstances, for which I commend him. However, I have reviewed all of the materials before me and have found nothing indicating that he was treated unfairly by the CRA, or that the CRA exercised its discretion unreasonably in denying his request for relief.

[13] Accordingly, I must dismiss this application for judicial review.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that :**

1. The application for judicial review is dismissed.

“James W. O’Reilly”

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Judge

## Annex

Income Tax Act, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.)Loi de l'impôt sur le revenu, L.R.C. 1985, ch. 1 (5<sup>e</sup> suppl.)

Waiver of penalty or interest

Renonciation aux pénalités et aux intérêts

**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.

*Excise Tax Act*, R.S.C. 1985, c. E-15*Loi sur la taxe d'accise*, L.R.C. 1985, ch. E-15

Waiving or cancelling interest

Renonciation ou annulation — intérêts

**281.1** (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel interest payable by the person under section 280 on an amount that is required to be remitted or paid by the person under this Part in respect of the reporting period.

**281.1** (1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler les intérêts payables par la personne en application de l'article 280 sur tout montant qu'elle est tenue de verser ou de payer en vertu de la présente partie relativement à la période de déclaration, ou y renoncer.

Waiving or cancelling penalties

Renonciation ou annulation — pénalité pour production tardive

(2) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel all or any portion of any

(2) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d'une période de déclaration d'une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler tout ou partie des pénalités ci-après, ou y renoncer :

(a) penalty that became payable by the person under section 280 before April 1,

a) toute pénalité devenue payable par la

2007, in respect of the reporting period;  
and

*(b)* penalty payable by the person under section 280.1 in respect of a return for the reporting period.

personne en application de l'article 280 avant le 1<sup>er</sup> avril 2007 relativement à la période de déclaration;

*b)* toute pénalité payable par la personne en application de l'article 280.1 relativement à une déclaration pour la période de déclaration.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2298-05

**STYLE OF CAUSE:** PIOTR ZYLKA v. ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** July 17, 2007

**REASONS FOR JUDGMENT:** O'REILLY J.

**DATED:** November 16, 2007

**APPEARANCES:**

Mr. Piotr Zylka FOR THE APPLICANT (SELF-REPRESENTED)

Mr. Carl Januszczak FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Piotr Zylka FOR THE APPLICANT (SELF-REPRESENTED)  
Vancouver, B.C.

John . Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Vancouver, B.C.