

Date: 20080215

Docket: T-1311-07

Citation: 2008 FC 196

Ottawa, Ontario, February 15, 2008

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

MICHEL LAFRAMBOISE

Applicant

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] After the hearing of this application, I advised the parties that I would allow the application for judicial review. The following are my reasons.

I. Background

[2] Mr. Michel LaFramboise failed to file his income tax returns when required in the 2002 and 2004 taxation years. He also failed to include all his income as required under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) in those years. As a result, interest and penalties were assessed against him. As of June 1, 2007, Mr. LaFramboise owed a total of \$14,185.92, which amount included

\$2,440.92 in penalties and \$3,089.77 in interest arrears. Mr. LaFramboise requested relief from the assessments of interest and penalties from officials at the Canada Revenue Agency (CRA) which request was denied by letter dated March 8, 2007.

[3] Mr. LaFramboise does not dispute the assessment against him; he acknowledges his past failures to report. His concern is that the interest and penalties have continued to mount and that he is unable to pay them. His request for relief was based on two key factors. The first is that a fire destroyed his house, thereby throwing his life into disarray. Records were destroyed in the fire and he was forced to live elsewhere. The second principal reason for claiming relief is that he simply could not afford to pay the interest and penalties; based on his current income level and future prospects.

II. The Second Fairness Decision

[4] After his first request for relief was denied, Mr. LaFramboise asked for a second level review. In a letter dated June 19, 2007 (the Second Fairness Decision), C. MacLean, acting on behalf of the Minister of National Revenue (Minister) set out the following reasons for denying the request:

Our review has carefully considered all file documentation and your comments with regard to your request in relation to the applicable legislation. The payments made on your account have been very sporadic with no arrangement in place for repayment; as well your 2006 Individual Tax Return has not been filed.

[5] A review of the tribunal record indicates that the decision was made on the basis of a number of factors. Most prominently, CRA officials appear to have relied on the following:

- For the period 2002 to 2004, Mr. LaFramboise was delinquent in filing his income tax returns and reporting all of his income;
- Mr. LaFramboise had not submitted an acceptable repayment plan for addressing his outstanding income tax debt; and
- Mr. LaFramboise had \$60,000 in home equity.

III. Statutory Scheme

[6] The Minister may waive or cancel all or any portion of any penalty or interest that has been assessed (*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 220(3.1)). In handling fairness requests for waiver of interest and penalties, the Minister (through his delegates, the officials at the CRA) is guided by *Information Circular 92-2 Guidelines for the Cancellation and Waiver of Interest and Penalties* (Guidelines – since replaced by *IC07-1 Taxpayer Relief Provisions*). Of particular relevance in this application, s. 5 of the Guidelines allows relief where there are circumstances beyond the control of the taxpayer (such as a fire) and s. 7 permits waiver where there is an inability to pay the amounts outstanding. It appears to me that Mr. LaFramboise’s situation could fall within either of these provisions. Further, s. 10 of the Guidelines sets out a non-exhaustive list of factors that “will” be considered, as follows:

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| <p>10. The following factors will be considered when determining whether or not the Department will cancel or waive interest or</p> | <p>10. Le Ministère tiendra compte des points suivants dans l'étude des demandes d'annulation des intérêts ou</p> |
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penalties:	des pénalités ou de renonciation à ceux-ci:
(a) whether or not the taxpayer or employer has a history of compliance with tax obligations;	a) si le contribuable ou l'employeur a respecté, par le passé, ses obligations fiscales;
(b) whether or not the taxpayer or employer has knowingly allowed a balance to exist upon which arrears interest has accrued;	b) si le contribuable ou l'employeur a, en connaissance de cause, laissé subsister un solde en souffrance qui a engendré des intérêts sur arriérés;
(c) whether or not the taxpayer or employer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system;	c) si le contribuable ou l'employeur a fait des efforts raisonnables et s'il n'a pas fait preuve de négligence ni d'imprudence dans la conduite de ses affaires en vertu du régime d'autocotisation;
(d) whether or not the taxpayer or employer has acted quickly to remedy any delay or omission.	d) si le contribuable ou l'employeur a agi avec diligence pour remédier à tout retard ou à toute omission.

IV. Standard of Review

[7] The appropriate standard of review of a fairness decision is that of reasonableness *simpliciter* (*Lanno v. Canada Customs and Revenue Agency*, 2005 FCA 153, at paras. 3-7). On this standard, I can only overturn the decision if I determine that the decision is not supported by reasons

that stand up to a “somewhat probing examination” (*Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 56).

V. Analysis

[8] With these Guidelines and standard of review in mind, I turn to the particular circumstances of Mr. LaFramboise and the reasonableness of the Second Fairness Decision.

[9] The Respondent points out that Mr. LaFramboise did not submit a repayment plan, as is provided for in s. 7(b) of the Guidelines. In my view, it would be difficult – if not impossible – for someone in Mr. LaFramboise’s financial situation to undertake a meaningful repayment plan. With monthly income of only \$2,185 and monthly expenses of \$2,095, Mr. LaFramboise is far from capable of supporting any regular payments on his income tax debt. This fact seems to have been ignored or overlooked in the CRA’s analysis. A comment in the tribunal record is to the effect that, with payments of \$50 per month, it would take Mr. LaFramboise over 18 years to repay the principal tax debt. Beyond this cursory remark, there was nothing on the record that indicated that CRA officials calculated what Mr. LaFramboise could afford to pay on his outstanding tax debt.

[10] I am also concerned with the CRA’s lack of understanding of the situation in which Mr. LaFramboise found himself when his house was destroyed in a fire. Although his submissions to the CRA on how the fire affected his life could have been more detailed, it is reasonable to assume that a house-destroying fire would have a serious impact on the life of a taxpayer. In addition to losing financial records, the victim of a fire would be forced to find replacement

accommodation. An obvious consequence of such a fire would be an inability to pay down any debt obligation. No less obvious, in my view, would be the shifting of the focus of attention of the fire victim to rebuilding his life; during this period, completion of income tax returns would likely not be the first priority. I see little evidence that CRA officials attempted to understand how the house fire affected the life and income tax obligations of Mr. LaFramboise. In terms of s. 10(c) of the Guidelines, I am not convinced that consideration was given to whether the house fire prevented Mr. LaFramboise from exercising a reasonable amount of care in conducting his affairs under the self-assessment system.

[11] According to CRA officials, Mr. LaFramboise has \$60,000 in equity in the home that he is now in the processing of rebuilding. The total value of the home is only \$145,000, subject to a mortgage of \$84,500. Given Mr. LaFramboise's income, it is evident that he could not arrange a refinancing of the home. Further, if forced to sell his home to retire the tax debt and outstanding interest and penalties, Mr. LaFramboise would be left with little money and no place to live. I am not satisfied that CRA officials gave due consideration to these consequences.

[12] Overall, it appears that CRA officials focused, almost exclusively, on the tax history of Mr. LaFramboise. Since 2002, even Mr. LaFramboise admits, he has not met all of his income tax filing obligations. Nevertheless, there are reasons for Mr. LaFramboise's delinquency and, from the record before me, it is impossible to determine whether the decision maker had regard to those factors that would have favoured a waiver of the penalties and interest.

[13] In sum, the reasons do not stand up to a somewhat probing examination.

VI. Conclusion

[14] For these reasons, the decision will be overturned and the matter sent back to the Minister for redetermination. In that process, Mr. LaFramboise should be given the opportunity to make further submissions that – hopefully – will be more comprehensive. In turn, it is hoped that any decision of the Minister be made having regard to all the relevant factors and be expressed in clear reasons.

[15] As discussed at the hearing, I decline to award costs on the particular facts of this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is allowed and the Second Fairness Decision is quashed;
2. The matter is referred back to a different delegate of the Minister for redetermination as to whether the penalty and interest should be waived in whole or part.

“Judith A. Snider”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1311-07

STYLE OF CAUSE: MICHEL LAFRAMBOISE v. THE CANADA
REVENUE AGENCY

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 5, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** SNIDER J.

DATED: February 15, 2008

APPEARANCES:

Mr. Michel LaFramboise APPLICANT

Ms. Nimanthika Kaneira FOR THE RESPONDENT

SOLICITORS OF RECORD:

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