

Federal Court



Cour fédérale

Date: 20090618

**Dockets: T-1734-08
T-1735-08
T-1736-08**

Citation: 2009 FC 646

Ottawa, Ontario, June 18, 2009

PRESENT: The Honourable Mr. Justice Beaudry

Docket: T-1734-08

BETWEEN:

ESTATE OF CHARLOTTE JONES

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1735-08

BETWEEN:

ESTATE OF RONALD JONES

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Docket: T-1736-08

BETWEEN:

JOHN CORBETT JONES

Applicant

and

**TAXPAYER RELIEF PROVISIONS DIVISIONS
CANADA REVENUE AGENCY**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] These are three applications for judicial review of three decisions rendered on October 7, 2008, by the Minister of National Revenue (the Minister). In docket T-1734-08, the Minister denied the Applicant's request for cancellation of interests and penalties on the last return of the estate of Charlotte Jones who filed her return late for the taxation year 2003. In docket T-1735-08, the Minister denied the Applicant's request for cancellation of interests and penalties on the last return of Ronald Jones which were filed late by the liquidator for the years 2003 and 2004 as well as the adjustment for the year 2004. In docket T-1736-08, the Minister denied the Applicant's request for cancellation of interests and penalties charged on his returns that were filed late for the years 2003 and 2004.

ISSUES

[2] These applications raise the following issues:

- a) Were the Minister's decisions in all three cases reasonable under the circumstances?
- b) Can the Applicant invoke third party actions to justify the late filing of his tax returns?
- c) Regarding docket T-1736-08, can the Respondent amend its name to "the Attorney General of Canada"?

[3] It has to be noted that the Respondent has filed a motion requesting that the Applicant's application in file number T-1735-08 be granted. In view of the Respondent's submissions and the Applicant's comments, the Court grants the motion by way of a separate Order.

FACTUAL BACKGROUND

T-1734-08

[4] Charlotte Jones died on February 28, 2003, leaving the administration of her estate to her spouse, Ronald Jones, who died on August 6, 2004. Her husband managed to file her 2002 tax return by April 23, 2003, even though he seemed to be suffering from heart and lung problems prior to his treatments between January to August 2004.

[5] John Corbett Jones (the Applicant) is the liquidator of the estates of his brother and business partner in an insurance business, Ronald Jones, and of his sister-in-law, Charlotte Jones. The Applicant has never been implicated nor does he have any knowledge of the administration of the business or of the preparation of any income tax returns.

[6] A few days after the death of his brother Ronald, the Applicant hired a notary because there was no will. The Applicant thought that the notary would settle everything, including the tax returns. Meanwhile, the Applicant concentrated on selling the business, which he did in March 2005. In November 2005, the notary told to the Applicant that he should find an accountant.

[7] The Applicant then hired an accountant who began by classifying the documents. He asked the Applicant to obtain the information concerning the shares (stocks) which were supposedly in the hands of the notary. After many requests and before the notary turned in his files to the Superior Court because he had decided to stop his practice, the notary's secretary informed the Applicant that all the documents in his file were returned to him but there were no documents concerning the stocks. After this, the Applicant was unable to contact the notary.

[8] The accountant filed all the returns by May 3, 2006. Due to all of the interrelation between the returns of John Corbett Jones's brother Ronald, his sister-in-law Charlotte and his own tax returns, the accountant prepared all the returns in chronological order to ensure that every fact in the return was not affecting other returns of the group or other years.

[9] The Applicant did not include payments because he had no idea of the total amount due and he did not know the amount of penalties and interest he would have to pay. The Applicant decided to wait for this information in order to decide which stocks he would sell to pay both governments.

[10] The Respondent assessed the returns on June 8, 2006 and imposed a late filing penalty.

[11] The Applicant was diagnosed with cancer on June 12, 2006 and was under treatment until November 1, 2006.

[12] By letter dated January 21, 2008, the Applicant submitted a request, which was treated as a “first level” taxpayer relief application, for cancellation of its accrued interests and penalties pursuant to subsection 220(3.1) of the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (the Act). After review of the Applicant’s submissions, the Minister sent a letter dated May 1, 2008, refusing the Applicant’s taxpayer relief application.

[13] By letter dated July 15, 2008, the Applicant submitted a request to the Respondent for re-examination for the first taxpayer relief decision, which was treated as a “second level” taxpayer relief application. By letter dated October 7, 2008, the Minister partially reduced the Applicant’s interests and penalties on the estate of Charlotte Jones as follows:

- a) For the 2003 taxation year, the interest payable was reduced by an amount of \$1,432.52, taking into account a mourning period for the Applicant’s liquidator, John Corbett Jones, following the death of his brother; the time period during which John Corbett Jones was undergoing cancer treatments; and a period of recovery following the said cancer treatments;

- b) The late filing penalty imposed under subsection 162(1) of the Act was also reduced, in consideration of the health problems of the Applicant's widower, Ronald Jones, as well as a mourning period for the Applicant's liquidator, John Corbett Jones, following the death of his brother. However, because the Applicant's tax return was still late by the maximum of 12 full months, the amount of the penalty (17% of the tax payable) was not changed;
- c) All other interest amounts and penalties were maintained.

[14] The Minister reduced the interest by \$1,432 out of \$3,126.53, taking into account a mourning period of six months following the death of the Ronald Jones, and a period of approximately one year during the Applicant's sickness. The Respondent rejected the relief of the penalty, considering that the return was filed late.

T-1736-08

[15] The Applicant filed his income tax returns for the 2003 and 2004 taxation years on or about May 3, 2006. In reassessing the Applicant's returns, the Minister imposed a late filing and repeated failure penalties for the 2003 taxation year, and a repeated late filing penalty with respect to the 2004 taxation year.

[16] By letter dated October 7, 2008, the Minister partially reduced the Applicant's interests and penalties as follows:

- a) For the 2003 taxation year, the interest payable was reduced by an amount of \$139.81, taking into account a mourning period following the death of the Applicant's brother, the time period during which the Applicant was undergoing cancer treatments, and a period of recovery following the said cancer treatments;
- b) For the 2003 taxation year, the late filing penalty imposed under subsection 162(1) of the Act was also reduced, in consideration of the same time periods. However, because the Applicant's tax return was still late by the maximum of 12 full months, the amount of the penalty (17% of the tax payable) was not changed;
- c) For the 2003 taxation year, the repeated failure penalty imposed under subsection 163(1) of the Act was cancelled;
- d) For the 2004 taxation year, the interest payable was reduced by an amount of \$75.34, taking into account the time period during which the Applicant was undergoing cancer treatments, as well as a period of recovery following the said cancer treatments.
- e) All other interest amounts and penalties were maintained.

[17] The Minister reduced the interest by \$725.72 out of \$2,091.71, taking into account a period of approximately one year during the Applicant's sickness. However, the Minister rejected the relief of the penalty, considering that the return was filed late.

IMPUGNED DECISIONS

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[18] The Minister reviewed the file of Charlotte Jones which showed that because of her late husband's medical condition, he was prevented from filing her 2003 tax return on time. However, the estate, represented by John Corbett Jones, should have filed within a reasonable amount of time following the passing of Ronald Jones. Since the 2003 return was filed on May 3, 2006, the late-filing penalty remains at 17% even though the Minister took into consideration a six-months mourning period. Consequently, the late-filing penalty was not reduced.

[19] However, the same period was considered in the reduction of arrears interest (from August 6, 2004 to March 6, 2005) and the Minister also considered the period where John Corbett Jones was under medical treatment and an additional period of six months for recovery period after his final treatment (from June 1, 2006 to November 1, 2006 plus a six months recovery time). According to the Minister, a payment on filing should have been sent. Also, the Minister did not take into consideration the period where the notary ceased his operation since the Agency is not responsible for delay caused by a third party.

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[20] Regarding the 2003 taxation year, the review of the file showed that the Applicant was not prevented from filing his 2003 tax return on time. Even though the Minister took into consideration a mourning period from August 2004 to February 2005, the late filing penalty remained at the maximum of 17% of unpaid tax. However, the Minister deleted the repeated failures penalty. The arrears interest was also reduced to take into consideration the months from August 2004 until February 2005 and June 2006 to November 2006 plus an additional period of six months for

recovery time following the Applicant's medical treatment. However, a payment on filing should have been sent.

[21] Regarding the 2004 taxation year, the Applicant was not prevented from filing his return. Consequently, there was no adjustment to the repeated late-filing penalty. However, the Minister reduced the arrears interest to take into account the period he was under medical treatment and an additional period for recovery time. Once again, a payment on filing should have been sent and the Minister noted that he did not take into consideration the period where the notary ceased his operation since the Agency is not responsible for delay caused by a third party.

LEGISLATIVE PROVISIONS

[22] The relevant legislative provisions can be found at Appendix A at the end of this document.

GENERAL ARGUMENTS APPLICABLE

Applicant's Arguments

[23] The Respondent states that the Applicant filed late tax returns for prior years. However, the Applicant submits that this should not be considered by the Respondent as it has nothing to do with the case at bar. The deceased Charlotte Jones is the taxpayer and not the Applicant, who is the liquidator and sole beneficiary of the estate. In addition, the Applicant is not asking for relief for the prior years.

[24] Charlotte Jones' and Ronald Jones' 2003 tax returns were filed late firstly because of the death of Ronald Jones. The Applicant then had to be confirmed as the sole beneficiary and sole liquidator of the estate. As soon as this was confirmed, the notary should have immediately referred the Applicant to an accountant in order to take further analyze the situation and work on the file. However, because of the complexity of the estates, which in some returns included the shares and the business partnership, it was difficult to file all the returns on time. Finally, the Applicant was also diagnosed with cancer, which created a lot of additional stress in addition to the death of his brother and his sister-in-law.

[25] The Applicant alleges that he was never implicated in the administration of the partnership and he had to concentrate on selling the business, which was sold in March 2005. The Applicant's brother previously administered the business and prepared the partnership information for the tax returns and he also prepared the returns of the entire family while the Applicant was only a salesman.

[26] The accountant relied on the notary to obtain the details for the transfer of the stocks. Because of the complexity of the estates, which in some returns included the stocks and the business partnership, it was difficult to file all the returns on time. Because of the interrelation between the returns of the Applicant, his brother and his sister-in-law, the accountant had to prepare the returns in chronological order in order to ensure that each fact did not affect the other returns. The Applicant did not have any idea of the total amount due or of the penalties and interest he would have to pay. The Applicant waited to obtain this information in order to decide which stocks he had

to sell to pay the Respondent. The Applicant notes that he wanted to honour his brother's memory by paying every debt, which he did.

Respondent's Arguments

[27] The Respondent submits that the standard of review applicable to discretionary decisions made under the "fairness provisions" is reasonableness (*Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153, 334 N.R. 348 at para. 7; 3500772 *Canada Inc. v. Canada (Minister of National Revenue)*, 2008 FC 554, 328 F.T.R. 188 at paras. 25-26). Consequently, this Court must ask itself whether "the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." The Court must show deference to the administrative decision-maker and may not substitute its opinion merely because it would have come to a different conclusion (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47).

[28] The Respondent argues that the Minister's decision was reasonable and should be maintained. Subsection 220(3.1) of the Act allows the Minister to waive interest and penalties otherwise payable by a taxpayer and his discretion to grant relief under the fairness provisions is broad. The Act and its Regulations are silent as to what criteria are to be used by the Minister in exercising his discretion. In these circumstances, the Respondent submits that the Minister is free to use any criteria he chooses, as long as he abides by a general duty to act fairly in accordance with the rules of procedural fairness as developed in administrative law (*Sutherland v. Canada (Customs*

and Revenue Agency), 2006 FC 154, 146 A.C.W.S. (3d) 380 at para. 17; *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 S.C.R. 2, at paras. 6 and 7).

[29] To facilitate his exercise of discretion, the Minister has created general policy guidelines in the form of Information Circular IC07-1, entitled “Taxpayer Relief Provisions” (the Guidelines). However, the Minister cannot fetter his discretion by treating the guidelines as binding and excluding all other relevant reasons for exercising his discretion (*Maple Lodge Farms*, above at paras. 6 and 7).

[30] The Respondent advances that the Minister has considered all relevant facts alleged by the Applicant in making his decision in all three cases. The Guidelines provide examples of extraordinary circumstances beyond a taxpayer’s control where the cancellation or waiver of penalties and interest might be justified. These include:

- a) natural or man-made disasters such as flood or fire;
- b) civil disturbances or disruptions in services, such as a postal strike;
- c) a serious illness or accident; or
- d) serious emotional or mental distress, such as death in the immediate family.

[31] The Applicant alleges that the Minister failed to take into account the liquidator John Corbett Jones’ lack of experience in the administration of his business and tax affairs and his reliance on third party professionals to file his tax returns. However, the Respondent notes that this

Court has held that taxpayers are solely responsible for all their obligations resulting from the Act, including errors made by third parties acting on their behalf (*Légaré v. Canada (Customs and Revenue Agency)*, 2003 FC 1047, 133 A.C.W.S. (3d) 372 at para. 10; *Babin v. Canada (Customs and Revenue Agency)*, 2005 FC 972, [2005] 4 C.T.C. 1 at para. 19; *Northview Apartments Ltd. v. Canada (Attorney General)*, 2009 FC 74, 2009 D.T.C. 5051 at para. 11).

[32] The Minister thus properly found that the delay in filing the Applicant's tax returns could not be justified by the delays or errors of its notary or accountant, or its liquidator's lack of experience in administering financial affairs as none of these are relevant considerations. It was therefore reasonable for the Minister to conclude that the actions of third parties in filing the Applicant's tax returns were not a proper basis to grant relief from interest or penalties.

[33] The Respondent adds that the Applicant's Record includes an exhibit marked "C", which is not mentioned in the Applicant's affidavit dated December 8, 2008, and which was served on the Respondent on February 4, 2009. Rule 306 of the *Federal Court Rules*, SOR/98-106, stipulates that the Applicant's supporting affidavits and documentary exhibits must be filed and served on the Respondent within 30 days after the issuance of the Notice of Application.

[34] Rule 312 of the *Federal Court Rules* mentions that a party may file additional affidavits to those provided for in Rules 306 and 307 with leave of the Court. The Respondent therefore submits that the Applicant cannot file additional documentary evidence after the time limit provided at Rule 306 without obtaining leave from the Court.

[35] The application for judicial review names as Respondent “Taxpayer Relief Provisions Divisions Canada Revenue Agency”. Rule 303 of the Federal Court Rules provides that when there are no persons that are directly affected by the order sought in the application, the Applicant shall name the Attorney General of Canada as a Respondent. Pursuant to Rule 303, either the Minister of National Revenue or the Attorney General of Canada should be named as Respondent in an application for judicial review.

[36] Rule 76 of the Federal Courts Rules provides that with leave of the Court, an amendment may be made to correct the name of a party. The Respondent accordingly seeks leave of the Court to amend its name to “the Attorney General of Canada”. Finally, the Respondent requests that the Court dismiss the applications with costs.

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Applicant’s Arguments

[37] The Applicant acknowledges receipt of the amount of \$1,445.50 which constitutes the interest cancelled on the August 14, 2008 statement and reimbursed on November 7, 2008. The Applicant also understands that the original penalty of \$1,467.82 has not been cancelled because the return was filed by May 3, 2006 when the latest the government would accept being March 6, 2005, considering a 6 month mourning period.

[38] The interest, on the other hand, was reduced by \$1,432.52 from a total amount of \$3,126.53, which covers the period of August 6, 2004 to March 6, 2005 as well as from June 1, 2006 to November 1, 2006 while the Applicant was undergoing treatment for cancer.

[39] During the long waiting period for the assessments and statements, Revenue Quebec discovered stocks belonging to Charlotte Jones. The stocks were transferred to Ronald Jones who had to declare them in his last return. After long discussions and negotiation with Revenue Quebec, an agreement was reached as shown by the accountants' letter dated January 26, 2007, a copy of which was mailed to Revenue Canada.

[40] In this letter, Revenue Quebec accepted the capital gain and issued a notice of assessment on February 28, 2007 but the Applicant never received this notice of assessment. In August 2007, the Applicant discovered from a Revenue Quebec statement that a notice of assessment was issued. The Applicant's accountant estimated that the amount was approximately correct and he paid Revenue Quebec in full. The Applicant requested a copy of the notice of assessment which he finally received on January 21, 2008. The Applicant's accountant immediately prepared and filed a T1-ADJ with Revenue Canada to adjust the capital gain. Revenue Canada answered on May 1, 2008 and issued a notice of assessment on which they charged interest and penalty on June 25, 2008.

[41] In the decision dated October 7, 2008, Revenue Canada does not accept to cancel the penalty and the interest that was charged on this adjustment. The Applicant believes that he has been wrongly reassessed and that all penalties and interests should be cancelled. The Applicant

submits that he acted diligently and asks that all the points in issue be considered as a whole. The Applicant also asks that the Respondent accept to cancel the entire balance of \$1,694.01 from the total of \$3,126.53 in interests and penalties charged to the estate of Charlotte Jones.

Respondent's Arguments

[42] The Respondent submits that the Minister properly considered the extraordinary circumstances brought to his attention by the Applicant in this case. The Minister exercised his discretion to grant relief from interest for the 2003 taxation year, for a mourning period following the death of the liquidator's brother Ronald Jones, the period during which the liquidator was undergoing cancer treatments and a recovery period following these treatments.

[43] The Minister also revised the late filing penalty imposed for the 2003 taxation year, for a mourning period following the death of the liquidator's brother Ronald Jones, and the time period during which Ronald Jones was undergoing treatments for heart and lung disease (from January 1 to August 6, 2004).

[44] John Corbett Jones states in his affidavit that his brother Ronald Jones was undergoing treatments for his heart condition for over two years before he died. The Applicant claims that the Minister should have granted relief from interest and penalties for the periods from September 30, 2003 to December 21, 2003 and May 1, 2004 to August 6, 2004. However, the medical documentation provided by the Applicant states that Ronald Jones "required multiple hospitalizations and changes in his treatments between January and August 2004 when he passed

away.” The Minister relied on this information in rendering his decision. The Respondent submits that the Minister’s discretion was properly exercised on the basis of evidence presented by the Applicant, and thus, does not warrant the Court’s intervention.

[45] In his affidavit, the Respondent mentions that the Applicant was late in filing his returns for the taxation years 1998, 2000, 2001 and 2003. The Applicant claims that the Minister should not have considered John Corbett Jones’ history of filing late returns, as it is irrelevant to the Applicant’s file. However, the Respondent clarifies that the Minister was in fact referring to the Applicant’s filing history and not John Corbett Jones’ filing history. Furthermore, it was reasonable for the Minister to consider the Applicant’s history of filing late tax returns. The administrative policy set out in the Guidelines refers to the taxpayer’s history of compliance with tax obligations as a factor that can be used in determining whether or not the Minister will waive penalties and interest. This Court has held that a taxpayer’s compliance history is relevant to the Minister’s discretionary decision of whether the taxpayer’s non-compliance “is part of a pattern of careless contact or a one-time, extraordinary event.” (*TDX Exploration and Mining Ltd. v. Canada* (1999), 89 A.C.W.S. (3d) 830, [1999] 4 C.T.C. 148 (F.C.T.D.)). Finally, the Applicant’s filing history was not referred to in the Minister’s October 7, 2008 letter to the Applicant, as it was not a central factor in the decision. In sum, the Minister did not err by relying on irrelevant considerations in making his decision.

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Applicant’s Arguments

[46] The Applicant understands that the original penalty for the taxation year 2003 as well as the original penalty for the taxation year 2004 in the amount of \$1,402.21 has been reduced to \$865.31 because the return was filed by May 3, 2006 because the latest the government would accept is March 6, 2005, considering a 6 month mourning period.

[47] The interest, on the other hand, was reduced by \$188.82 from a total amount of \$699.50 for 2003 and 2004. This reduction covers the period of August 6, 2004 to March 6, 2005 as well as from June 1, 2006 to November 1, 2006, which the Applicant was undergoing treatment for cancer. The Applicant submits that he has acted to the best of his ability in the circumstances and he considers that he has been wrongly reassessed and that all penalties and interests should be cancelled.

Respondent's Arguments

[48] The Respondent submits that the Minister exercised his discretion to grant relief from interest and penalties for the 2003 taxation year for a mourning period following the death of the Applicant's brother Ronald Jones.

[49] The Minister also granted relief from interest for the 2004 taxation year, considering the dates of the Applicant's cancer treatments as well as a recovery period following the treatments. However, the Minister maintained the repeated late filing penalty imposed under subsection 162(2) of the Act for the 2004 taxation year, since at the filing due date of June 15, 2005, the Applicant's mourning period was ended and the Applicant had not yet received his cancer diagnosis. At this

point in time, the Applicant's failure to comply with the Act was not attributable to the extraordinary circumstances cited (*Construction & Rénovation M. Dubeau Inc. v. Canada (Customs and Revenue Agency)*, 2001 FCT 1139, 213 F.T.R. 94 at para. 22). Thus, the Minister properly found that the delay in filing the Applicant's tax returns could not be justified by the delays or errors of his notary or accountant, his lack of experience in administering his own affairs, or his problems administering his brother's and sister-in-law's estates.

[50] The Respondent notes that in his affidavit, the Minister's statutory delegate mentions that the Applicant was late in filing his returns for the taxation years 1995, 1997, 1998, 1999, 2000, 2001, 2003 and 2004. The Applicant claims that his history of filing late returns should not have been considered since his brother Ronald Jones always prepared his tax returns. As stated above, the Applicant cannot rely on third party errors to justify his failure to perform his obligations set out in the Act (*Légaré*, above at paras. 10-12).

ANALYSIS

a) *Were the Minister's decisions in T-1734-08 and T-1736-08 reasonable under the circumstances?*

[51] With regard to the standard of review of the Minister's decision under the Fairness provisions of the Act, the Federal Court of Appeal has determined that the applicable standard is that of reasonableness (*Lanno*, above and *Comeau v. Canada (Customs and Revenue Agency)*, 2005 FCA 271, 361 N.R. 141).

[52] This Court noted in *Northview Apartments Ltd.*, above at para. 6 that certain factors may come into play and possibly limit the amount of interest relief. These factors are also considered when determining whether or not the Canada Revenue Agency will cancel or waive penalties and interest:

- a) whether or not the taxpayer has a history of compliance with tax obligations;
- b) whether or not the taxpayer has knowingly allowed a balance to exist on which arrears has accrued;
- c) whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under the self-assessment system; and
- d) whether or not the taxpayer has acted quickly to remedy any delay or omission (Information Circular IC07-1, *Taxpayer Relief Provisions*, May 31, 2007 at para. 33).

[53] The Guidelines provide examples of situations where the Minister may waive all or a portion of any interest or penalties payable when the failure to comply with the Act results from circumstances beyond the taxpayer's control. The Guidelines, however, do not have the force of law and cannot fetter the Minister's discretion (see for example, *Ross v. Canada (Customs and Revenue Agency)*, 2006 FC 294, 289 F.T.R. 160).

[54] The burden lies on the party seeking a waiver of interest and penalties to provide with the Minister within the necessary evidence to determine whether the failure to comply with the Act was

due to circumstances beyond the control of that party, in this case, the deaths of Charlotte Jones and Ronald Jones and the illnesses of Ronald Jones and John Corbett Jones.

[55] In the case at bar, the Applicant provided the required supporting information as required by the Guidelines to obtain a reduction or cancellation of the penalties and interests. The decision-maker had to ask whether the deaths of Charlotte and Ronald Jones, as well as the illnesses of Ronald Jones and John Corbett Jones, were circumstances beyond the Applicant's control, and if so, whether these circumstances prevented or may have prevented the Applicant from complying with the Act.

[56] It cannot be disputed that the deaths of Charlotte and Ronald Jones constitute circumstances beyond the control of the Applicant. The question then becomes whether the illnesses prevented the Applicant from complying with the Act (*Young v. Canada* (1997), 138 F.T.R. 37, 76 A.C.W.S. (3d) 447 (F.C.T.D.)). I find that based on the facts, the conclusion of the decision-maker in T-1734-08 and T-1736-08 was open to him.

[57] I do not have to decide whether the decision-maker was right or wrong but whether he fairly considered the evidence before him so as to determine if the Applicant's failure to comply with the Act was caused by factors beyond his control. The question is not whether I would have appreciated the factual situation differently, but whether the Minister's delegate's decision was reasonable.

[58] I am satisfied that the Minister exercised his statutory discretion in good faith and in accordance with the principles of natural justice. I am satisfied that the Minister properly considered the evidence before him and that the decision was not based on considerations irrelevant or extraneous to the statutory purpose (*Maple Lodge Farms*, above at p. 8).

b) Can the Applicant invoke third party actions to justify the late filing of his tax returns?

[59] Taxpayers are generally considered to be responsible for errors made by third parties acting on their behalf for income tax matters (*Légaré*, above at para. 10; *Babin*, above at para. 12; *Tadross v. Canada (Minister of National Revenue)*, 2004 FC 1698, [2005] 1 C.T.C. 201 at paras. 10 and 11). In *Northview Apartments*, above at para. 8, the Court noted that there may be exceptional situations, where it may be appropriate to provide relief to taxpayers because of third party errors or delays. I find that this is not the case in the present situations.

[60] The extraordinary circumstances cited by the Applicant to explain the delay in filing the various tax returns include primarily the deaths of Charlotte Jones and Ronald Jones, as well as the illnesses of Ronald Jones and John Corbett Jones. It appears from the facts in question that these circumstances have indeed prevented the Applicant from filing the tax returns on time and it was not the omissions or errors of the Applicant's account or notary. The Respondent considered these exceptional circumstances.

c) Regarding docket T-1736-08, can the Respondent amend its name to "the Attorney General of Canada"?

[61] The Respondent correctly noted that according to Rule 303(2) of the *Federal Court Rules*, the Attorney General of Canada shall be named where there are no persons that can be named who are directly affected by the order sought in the application or required to be named as a party under an Act of Parliament pursuant to which the Applicant is brought. Accordingly, the Respondent's name shall be changed to the Attorney General of Canada.

[62] I would further like to note that pursuant to an order dated December 16, 2008 by Prothonotary Morneau, the name of the Respondent in files T-1734-08 and T-1735-08 had already been changed to the Attorney General of Canada.

[63] For the reasons stated above, the applications for judicial review in files T-1734-08 and T-1736-08 must fail. In the Court's exercise of its discretion, there will be no costs.

JUDGMENT

THIS COURT ORDERS that the applications in files T-1734-08 and T-1736-08 be dismissed without costs.

“Michel Beaudry”

Judge

APPENDIX A

Relevant Legislation

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

150. (1) Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,

Corporations(a) in the case of a corporation, by or on behalf of the corporation within six months after the end of the year if

(i) at any time in the year the corporation

(A) is resident in Canada,

(B) carries on business in Canada, unless the corporation's only revenue from carrying on business in Canada in the year consists of amounts in respect of which tax was payable by the corporation under subsection 212(5.1),

(C) has a taxable capital gain (otherwise than from an excluded disposition), or

(D) disposes of a taxable Canadian property (otherwise than in an excluded disposition), or

(ii) tax under this Part

(A) is payable by the corporation for the year, or

(B) would be, but for a tax treaty, payable by the corporation for the year (otherwise than in

150. (1) Sous réserve du paragraphe (1.1), une déclaration de revenu sur le formulaire prescrit et contenant les renseignements prescrits doit être présentée au ministre, sans avis ni mise en demeure, pour chaque année d'imposition d'un contribuable :

Sociétés a) dans le cas d'une société, par la société, ou en son nom, dans les six mois suivant la fin de l'année si, selon le cas :

(i) au cours de l'année, l'un des faits suivants se vérifie :

(A) la société réside au Canada,

(B) elle exploite une entreprise au Canada, sauf si ses seules recettes provenant de l'exploitation d'une entreprise au Canada au cours de l'année consistent en sommes au titre desquelles un impôt était payable par elle en vertu du paragraphe 212(5.1),

(C) elle a un gain en capital imposable (sauf celui provenant d'une disposition exclue),

(D) elle dispose d'un bien canadien imposable (autrement que par suite d'une disposition exclue),

(ii) l'impôt prévu par la présente partie :

(A) est payable par la société pour l'année,

(B) serait, en l'absence d'un traité fiscal, payable par la société pour l'année (autrement que

respect of a disposition of taxable Canadian property that is treaty-protected property of the corporation);

relativement à la disposition d'un bien canadien imposable qui est un bien protégé par traité de la société);

Deceased individuals(b) in the case of an individual who dies after October of the year and on or before the day that would be the individual's filing due date for the year if the individual had not died, by the individual's legal representatives on or before the day that is the later of the day on or before which the return would otherwise be required to be filed and the day that is 6 months after the day of death;

Personnes décédées b) dans le cas d'une personne décédée après le 31 octobre de l'année et avant le lendemain du jour qui aurait représenté la date d'échéance de production qui lui est applicable pour l'année si elle n'était décédée, par ses représentants légaux au plus tard au dernier en date du jour où la déclaration serait à produire par ailleurs et du jour qui tombe six mois après le jour du décès;

Trusts or estates(c) in the case of an estate or trust, within 90 days from the end of the year;

Successions ou fiducies c) dans le cas d'une succession ou d'une fiducie, dans les 90 jours suivant la fin de l'année;

Individuals(d) in the case of any other person, on or before

Particuliers d) dans le cas d'une autre personne :

(i) the following April 30 by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative (in this paragraph referred to as the person's "guardian"),

(i) au plus tard le 30 avril de l'année suivante, par cette personne ou, si celle-ci ne peut, pour quelque raison, produire la déclaration, par son tuteur, curateur ou autre représentant légal,

(ii) the following June 15 by that person or, if the person is unable for any reason to file the return, by the person's guardian where the person is

(ii) au plus tard le 15 juin de l'année suivante, par cette personne ou, si celle-ci ne peut, pour quelque raison, produire la déclaration, par son tuteur, curateur ou autre représentant légal, dans le cas où elle est :

(A) an individual who carried on a business in the year, unless the expenditures made in the course of carrying on the business were primarily the cost or capital cost of tax shelter investments (as defined in subsection 143.2(1)), or

(A) un particulier qui a exploité une entreprise au cours de l'année, sauf si les dépenses effectuées dans le cadre de l'exploitation de l'entreprise représentent principalement le coût ou le coût en capital d'abris fiscaux déterminés, au sens du paragraphe 143.2(1),

(B) at any time in the year a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual to whom clause 150(1)(d)(ii)(A) applies, or

(B) au cours de l'année, l'époux ou conjoint de fait visé, au sens de l'article 122.6, d'un particulier auquel s'applique la division (A);

(iii) where at any time in the year the person is a cohabiting spouse or common-law partner (within the meaning assigned by section 122.6) of an individual to whom paragraph 150(1)(b) applies for the year, on or before the day that is the later of the day on or before which the person's return would otherwise be required to be filed and the day that is 6 months after the day of the individual's death; or

Designated persons(e) in a case where no person described by paragraph 150(1)(a), 150(1)(b) or 150(1)(d) has filed the return, by such person as is required by notice in writing from the Minister to file the return, within such reasonable time as the notice specifies.

150. (5) For the purposes of this section, a disposition of a property by a taxpayer at any time in a taxation year is an excluded disposition if

(a) the taxpayer is non-resident at that time;

(b) no tax is payable under this Part by the taxpayer for the taxation year;

(c) the taxpayer is, at that time, not liable to pay any amount under this Act in respect of any previous taxation year (other than an amount for which the Minister has accepted, and holds, adequate security under section 116 or 220); and

(d) each taxable Canadian property disposed of by the taxpayer in the taxation year is

(i) excluded property within the meaning assigned by subsection 116(6), or

(iii) si, au cours de l'année, la personne est l'époux ou conjoint de fait visé, au sens de l'article 122.6, d'un particulier auquel l'alinéa b) s'applique pour l'année, au plus tard le dernier en date du jour où elle serait tenue par ailleurs de produire sa déclaration et du jour qui tombe six mois après le décès du particulier;

Personnes désignées e) dans le cas où aucune personne visée à l'alinéa a), b) ou d) n'a produit la déclaration, par la personne qui est tenue, par avis écrit du ministre, de produire la déclaration dans le délai raisonnable que précise l'avis.

150. (5) Pour l'application du présent article, la disposition d'un bien effectuée par un contribuable au cours d'une année d'imposition est une disposition exclue si les conditions suivantes sont réunies :

a) le contribuable est un non-résident au moment de la disposition;

b) aucun impôt n'est payable par le contribuable pour l'année en vertu de la présente partie;

c) au moment de la disposition, le contribuable n'est pas tenu de payer une somme en vertu de la présente loi pour une année d'imposition antérieure (sauf s'il s'agit d'une somme pour laquelle le ministre a accepté et détient une garantie suffisante en vertu des articles 116 ou 220);

d) chaque bien canadien imposable dont le contribuable a disposé au cours de l'année est, selon le cas :

(i) un bien exclu, au sens du paragraphe 116(6),

(ii) a property in respect of the disposition of which the Minister has issued to the taxpayer a certificate under subsection 116(2), (4) or (5.2).

152. (2) After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

152. (3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

162. (1) Every person who fails to file a return of income for a taxation year as and when required by subsection 150(1) is liable to a penalty equal to the total of

(a) an amount equal to 5% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(b) the product obtained when 1% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

162. (2) Every person

(a) who fails to file a return of income for a taxation year as and when required by subsection 150(1),

(b) on whom a demand for a return for the year has been served under subsection 150(2), and

(c) by whom, before the time of failure, a penalty was payable under this subsection or

ii) un bien relativement à la disposition duquel le ministre a délivré un certificat au contribuable en vertu des paragraphes 116(2), (4) ou (5.2).

152. (2) Après examen d'une déclaration, le ministre envoie un avis de cotisation à la personne qui a produit la déclaration.

152. (3) Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par la présente partie.

162. (1) Toute personne qui ne produit pas de déclaration de revenu pour une année d'imposition selon les modalités et dans le délai prévus au paragraphe 150(1) est passible d'une pénalité égale au total des montants suivants :

a) 5 % de l'impôt payable pour l'année en vertu de la présente partie qui était impayé à la date où, au plus tard, la déclaration devait être produite;

b) le produit de 1 % de cet impôt impayé par le nombre de mois entiers, jusqu'à concurrence de 12, compris dans la période commençant à la date où, au plus tard, la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

162. (2) La personne qui ne produit pas de déclaration de revenu pour une année d'imposition selon les modalités et dans le délai prévus au paragraphe 150(1) après avoir été mise en demeure de le faire conformément au paragraphe 150(2) et qui, avant le moment du défaut, devait payer une pénalité en application du présent paragraphe ou du paragraphe (1) pour défaut de production d'une déclaration de revenu pour une des trois années d'imposition précédentes est passible d'une pénalité égale au

subsection 162(1) in respect of a return of income for any of the 3 preceding taxation years is liable to a penalty equal to the total of

(d) an amount equal to 10% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed, and

(e) the product obtained when 2% of the person's tax payable under this Part for the year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 20, from the date on which the return was required to be filed to the date on which the return was filed.

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 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.

Federal Court Rules, SOR/98-106:

76. With leave of the Court, an amendment may be made

(a) to correct the name of a party, if the Court is

total des montants suivants :

a) 10 % de l'impôt payable pour l'année en vertu de la présente partie qui était impayé à la date où, au plus tard, la déclaration devait être produite;

b) le produit de 2 % de cet impôt impayé par le nombre de mois entiers, jusqu'à concurrence de 20, compris dans la période commençant à la date où, au plus tard, la déclaration devait être produite et se terminant le jour où la déclaration est effectivement produite.

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 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.

76. Un document peut être modifié pour l'un des motifs suivants avec l'autorisation de la Cour, sauf lorsqu'il en résulterait un préjudice à une partie qui ne pourrait être réparé au moyen de dépens ou par un ajournement :

a) corriger le nom d'une partie, si la Cour est

satisfied that the mistake sought to be corrected was not such as to cause a reasonable doubt as to the identity of the party, or

(b) to alter the capacity in which a party is bringing a proceeding, if the party could have commenced the proceeding in its altered capacity at the date of commencement of the proceeding, unless to do so would result in prejudice to a party that would not be compensable by costs or an adjournment.

303. (1) Subject to subsection (2), an applicant shall name as a respondent every person

(a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or

(b) required to be named as a party under an Act of Parliament pursuant to which the application is brought.

(2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.

(3) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of which the application is made, as a respondent in the place of the Attorney General of Canada.

306. Within 30 days after issuance of a notice of application, an applicant shall serve and file its supporting affidavits and documentary exhibits.

convaincue qu'il s'agit d'une erreur qui ne jette pas un doute raisonnable sur l'identité de la partie;

b) changer la qualité en laquelle la partie introduit l'instance, dans le cas où elle aurait pu introduire l'instance en cette nouvelle qualité à la date du début de celle-ci.

303. (1) Sous réserve du paragraphe (2), le demandeur désigne à titre de défendeur :

a) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande;

b) toute autre personne qui doit être désignée à titre de partie aux termes de la loi fédérale ou de ses textes d'application qui prévoient ou autorisent la présentation de la demande.

(2) Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.

(3) La Cour peut, sur requête du procureur général du Canada, si elle est convaincue que celui-ci est incapable d'agir à titre de défendeur ou n'est pas disposé à le faire après avoir été ainsi désigné conformément au paragraphe (2), désigner en remplacement une autre personne ou entité, y compris l'office fédéral visé par la demande.

306. Dans les 30 jours suivant la délivrance de l'avis de demande, le demandeur signifie et dépose les affidavits et les pièces documentaires qu'il entend utiliser à l'appui de la demande.

307. Within 30 days after service of the applicant's affidavits, a respondent shall serve and file any supporting affidavits and documentary exhibits.

308. Cross-examination on affidavits must be completed by all parties within 20 days after the filing of the respondent's affidavits or the expiration of the time for doing so, whichever is earlier.

312. With leave of the Court, a party may

(a) file affidavits additional to those provided for in rules 306 and 307;

(b) conduct cross-examinations on affidavits additional to those provided for in rule 308; or

(c) file a supplementary record.

307. Dans les 30 jours suivant la signification des affidavits du demandeur, le défendeur signifie et dépose les affidavits et les pièces documentaires qu'il entend utiliser à l'appui de sa position.

308. Toute partie qui désire contre-interroger l'auteur d'un affidavit le fait dans les 20 jours suivant le dépôt des affidavits du défendeur ou dans les 20 jours suivant l'expiration du délai prévu à cette fin, selon celui de ces délais qui est antérieur à l'autre.

312. Une partie peut, avec l'autorisation de la Cour :

a) déposer des affidavits complémentaires en plus de ceux visés aux règles 306 et 307;

b) effectuer des contre-interrogatoires au sujet des affidavits en plus de ceux visés à la règle 308;

c) déposer un dossier complémentaire.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1734-08
T-1735-08
T-1736-08

STYLE OF CAUSE: ESTATE OF CHARLOTTE JONES and
THE ATTORNEY GENERAL OF CANADA

ESTATE OF RONALD JONES and
THE ATTORNEY GENERAL OF CANADA

JOHN CORBETT JONES and
TAXPAYER RELIEF PROVISIONS DIVISIONS
CANADA REVENUE AGENCY

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: June 15, 2009

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

DATED: June 18, 2009

APPEARANCES:

John Corbett Jones FOR THE APPLICANT
(self-represented)

Sarom Bahk FOR THE RESPONDENT

SOLICITORS OF RECORD:

Not applicable FOR THE APPLICANT

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Deputy Attorney General
Montreal, Quebec