

**Date: 20091002**

**Docket: T-968-08**

**Citation: 2009 FC 995**

**Ottawa, Ontario, October 2, 2009**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**DONNA M. ADAMS**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] This judicial review of the Canada Revenue Agency's (CRA) decision to deny "fairness" relief from a late filing penalty turns on the reasonableness of the decision and the fairness of the process.

[2] The standard of review on the merits of this type of CRA decision has been consistently held to be "reasonableness" (see *Jones Estate v. Canada (Attorney General)*, 2009 FC 646).

However, with respect to procedural fairness, the standard of review is “correctness” (see *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539).

## II. BACKGROUND

[3] Ms. Adams’ problems stem from her failure to appreciate the difference between the obligation to file a tax return and the obligation to pay. She assumed that they were the same and that by payment through the bank internet system, that system also took care of the filing obligation. Her understanding of the process is not attributable to CRA in any manner.

[4] The 2006 tax filing was the first year Ms. Adams had to take care of tax filings and payments. She was recently divorced and these tax matters had previously been handled by her then husband.

[5] Prior to leaving Canada for a work stint and aware that she had taxes to pay on the April 30 filing date, she attempted to obtain an estimate of taxes, both from her part-time employers and from her tax advisors H & R Block.

[6] Having secured an estimate from H & R Block, she contacted CRA by phone and was advised that payment could be made through her financial institution’s website under the “payment on filing” option. This phrasing might well lead someone to believe that there was an on-line correlation between payment under this method and the tax return filing obligation.

[7] As matters turned out, Ms. Adams was unable to use this payment method at the BMO website and having secured advice from an accountant that the consequences of late payment were minor, awaited her return to Canada to complete her taxes. She then filed her return and payment two weeks late.

[8] The Applicant was assessed a late penalty for filing and payment, from which she commenced her request for “fairness” relief. The final decision by the Minister’s delegate (Delegate) denying relief was issued May 20, 2008.

### III. ANALYSIS

[9] As early as the first stage review, CRA found that there had been a late filing penalty (LFP) in the 1999 return. This fact was one of the few substantive facts listed in the final decision. The Applicant has denied this fact throughout and CRA has yet to prove this conclusion to be true.

[10] While compliance history is one factor in a “fairness” assessment, it was clearly an important factor in this case. It is one that was never established and one that the Applicant was denied any real opportunity to challenge. It was an important factor because the reviewer noted that a penalty balance was again outstanding, and used this fact against the Applicant without regard for the fact that the current penalty was the very issue in dispute.

[11] The final decision had a paucity of reasons. The Respondent attempted to supplement the Record by submitting an affidavit of the Delegate in which she outlines the information on file and the factors the Delegate considered.

[12] It is improper for the Delegate to attempt to try to supplement her reasons. That effort is consistent with a finding that the Applicant did not receive proper and full reasons and was therefore denied procedural fairness. Most importantly, the Delegate's actions confirm the inadequacy of reasons at the second level and in letters exchanged which undermined the Applicant's right to make an adequate reply.

[13] Therefore, the Applicant was again denied procedural fairness.

[14] While the Applicant raised but did not fully articulate this next matter, the Court is concerned that there was undue emphasis on "extraordinary" circumstances without adequate attention to all of the factors raised. There was erroneous consideration of compliance history, and no consideration of the payment method other than noting that the failure was that of the financial institution (which acts as at least a conduit for payment to CRA). The CRA focused on the issue of whether the circumstances were beyond the control of the taxpayer without proper regard to the Applicant's efforts to ensure compliance.

IV. CONCLUSION

[15] Therefore, for all these reasons, this judicial review will be granted, the Delegate's decision quashed and the matter remitted back for a new consideration. The Applicant will be entitled to her disbursements only.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is granted, the Delegate's decision is quashed and the matter is to be remitted back for a new consideration. The Applicant is entitled to her disbursements only.

“Michael L. Phelan”

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Judge

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

**DOCKET:** T-968-08

**STYLE OF CAUSE:** DONNA M. ADAMS

and

CANADA REVENUE AGENCY

**PLACE OF HEARING:** St. John's, Newfoundland

**DATE OF HEARING:** October 1, 2009

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

**DATED:** October 2, 2009

**APPEARANCES:**

Ms. Donna Adams	FOR THE APPLICANT
Ms. Caitlin Ward	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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MR. JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENT