

Federal Court



Cour fédérale

**Date: 20100429**

**Docket: T-1299-09**

**Citation: 2010 FC 459**

**Ottawa, Ontario, April 29, 2010**

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

**BETWEEN:**

**STAN SANDLER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Mr. Stan Sandler was required to file a Foreign Income Verification Statement (Form T1135) with the Canada Customs and Revenue Agency (CRA) in respect of his 2005 income. It was due on June 15, 2006. Mr. Sandler filed it on April 27, 2007. The CRA imposed a penalty of \$2500 and interest. Mr. Sandler freely admits that he was required to file the form and that he filed it late.

[2] However, Mr. Sandler maintains that the penalty is unjustified and excessive. The form did not report any income that he had not already disclosed and on which he paid tax. It was a mere formality, identifying the amount of his foreign holdings and their location. Under the circumstances, he asked the CRA to waive the penalty and interest. It declined. Mr. Sandler made a second request. An Acting Director of the CRA in Charlottetown turned him down again.

[3] Mr. Sandler asks me to order a reconsideration of his request. However, I can find no grounds for overturning the Acting Director's decision and must, therefore, dismiss this application for judicial review.

[4] The only issue is whether CRA treated Mr. Sandler unfairly or rendered an unreasonable decision on his request for relief.

## II. Analysis

### (1) Legislative Framework

[5] A person who files a tax form late is subject to a penalty of \$25 a day, for up to 100 days (*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 162(7)). That is why the CRA imposed on Mr. Sandler a penalty of \$2500.

[6] The Minister of National Revenue (or delegate) has the discretion to waive any penalty or interest imposed under the Act (s. 220(3.1)). This is often referred to as the "fairness" provision.

[7] The Court can overturn the Minister's decision under the fairness provision only if it was unreasonable, in the sense that it falls outside the range of possible acceptable outcomes based on the facts and the law (*Telfer v. Canada Revenue Agency*, 2009 FCA 23, at para. 25).

(2) The Acting Director's decision

[8] The Acting Director endorsed a recommendation of the federal-provincial coordinator in the Charlottetown office of the CRA. The coordinator reviewed the history of Mr. Sandler's file and noted the following:

- Mr. Sandler had not yet filed his 2008 income tax return;
- Mr. Sandler had filed his 1999, 2000, 2001, 2005, 2006 and 2007 income tax returns late;
- Mr. Sandler had filed his 2007 T1135 form late;
- the CRA had sent Mr. Sandler a letter in 2005 informing him that an earlier T1135 was late, but it did not impose a penalty.

[9] The coordinator concluded that Mr. Sandler had not exercised due care to ensure he was complying with tax rules. Further, no special circumstances, departmental errors or financial hardship would justify waiving the penalty and interest imposed on Mr. Sandler.

[10] The Acting Director agreed, and so informed Mr. Sandler by letter on July 8, 2009. In her letter, she referred to the various circumstances that might justify waiver of penalties and interest – disasters, illness, serious distress, errors by the CRA, or financial hardship. None of these situations was present in Mr. Sandler’s case and, therefore, the CRA could provide no relief.

(3) Was Mr. Sandler treated fairly?

[11] Mr. Sandler was given a fair opportunity to present his concerns to the CRA and attracted the attention of the senior officials who reviewed his request for relief. No issue of fairness arises from the manner in which the CRA dealt with Mr. Sandler’s requests. Mr. Sandler argues, however, that a fundamental unfairness arises from the imposition of a penalty and interest on him because:

- he had not failed to disclose any income;
- Form T1135 is poorly named (“Foreign Income Verification Statement”) because it does not actually involve the reporting of foreign income. It describes foreign holdings;
- the form does not mention penalties for late filing; and
- the three-page guide to the form mentions that “[t]here are substantial penalties for failing to complete and file Form T1135 by the due date” but only at the very end.

[12] Mr. Sandler’s submissions suggest that Form T1135 and the instructions for completing it could be clearer. That may be a valid comment but it does not amount to unfairness. Taxpayers self-

report their income and are expected inform themselves of the applicable filing requirements. There is nothing fundamentally unfair about that.

(4) Was the Acting Director's decision unreasonable?

[13] Mr. Sandler's submissions do not demonstrate that the CRA erred when it decided not to waive the penalty and interest imposed on him for late filing. He had not presented any basis for concluding that his circumstances justified extraordinary relief from the statutory consequences of late filing. Therefore, I cannot find anything unreasonable about the CRA's decision.

i. Conclusion and Disposition

[14] While Mr. Sandler may have raised some valid observations about Form T1135 and the instructions accompanying it, he has not persuaded me that he was treated unfairly or that the CRA's decision not to waive the usual penalty and interest was unreasonable. Therefore, I must dismiss this application for judicial review, with costs fixed at \$200.00.

**JUDGMENT**

**THIS COURT'S JUDGMENT IS that**

1. The application for judicial review is dismissed with costs fixed at \$200.00.

“James W. O’Reilly”

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Judge

## Annex “A”

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

**162.** (7) Every person (other than a registered charity) or partnership who fails

(a) to file an information return as and when required by this Act or the regulations, or

(b) to comply with a duty or obligation imposed by this Act or the regulations

is liable in respect of each such failure, except where another provision of this Act (other than subsection 162(10) or 162(10.1) or 163(2.22)) sets out a penalty for the failure, to a penalty equal to the greater of \$100 and the product obtained when \$25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

**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.

*Loi de l'impôt sur le revenu, 1985, ch. 1 (5e suppl.)*

**162.** (7) Toute personne (sauf un organisme de bienfaisance enregistré) ou société de personnes qui ne remplit pas une déclaration de renseignements selon les modalités et dans le délai prévus par la présente loi ou le *Règlement de l'impôt sur le revenu* ou qui ne se conforme pas à une obligation imposée par la présente loi ou ce règlement est passible, pour chaque défaut 00 sauf si une autre disposition de la présente loi (sauf les paragraphes (10) et (10.1) et 163(2.22)) prévoit une pénalité pour le défaut — d'une pénalité égale, sans être inférieure à 100 \$, au produit de la multiplication de 25 \$ par le nombre de jours, jusqu'à concurrence de 100, où le défaut persiste.

**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.

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

**DOCKET:** T-1299-09

**STYLE OF CAUSE:** SANDLER v.  
ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Charlottetown, P.E.I.

**DATE OF HEARING:** April 13, 2010

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

**DATED:** April 29, 2010

**APPEARANCES:**

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Caitlin Ward FOR THE RESPONDENT

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