Federal Court  Cour fédérale

Date: 20141105

Docket: T-377-14

Citation: 2014 FC 1045

Ottawa, Ontario, November 5, 2014

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

ANIS HAYMOUR

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review brought by Anis Haymour [the Applicant] under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] of a decision by the National Conflict Resolution Office [the NCRO or the Respondent] of the Canada Revenue Agency [CRA], made on December 16, 2013. The NCRO maintained its earlier decision to refuse the Applicant's request to refer his termination grievance to an Independent Third Party

Reviewer [ITPR] because it was received by the Respondent outside the prescribed timeframe and was therefore ineligible.

[2] This application for judicial review is allowed for the reasons set out below.

II. Facts

[3] Most of the facts relevant for this case were noted by Justice Manson in an earlier case involving the same parties, the same known facts and an almost identical core legal issue (*Haymour v Canada (Revenue Agency)*, 2013 FC 1072 at paras 3-9 [*Haymour No. 1*]):

> [3] The Applicant was employed with the [CRA] since 1994. From 1997 to 2002, he was employed as an AU-01 Auditor. In 2002, the Applicant was promoted to the position of MG-03 as a Team Leader. As a result of poor performance appraisals in 2003, 2004 and 2005, the Applicant was demoted back to an AU-01 position on April 26, 2006. The Applicant filed grievances regarding the poor performance appraisals and the demotion. These grievances were referred to an ITPR on April 24, 2008, and a hearing was held in March, 2011.
>
> [4] On September 12, 2008, the Applicant went on leave for medical reasons. Subsequent to his going on leave, the CRA made multiple requests for updated medical information. The Applicant complied with various requests until 2011, when he failed to provide updated medical information after a request was made. As a result of not responding to this request, the Applicant was terminated for abandonment of his position on November 18, 2011.
>
> [5] The Applicant filed a grievance regarding his termination on January 6, 2012. After pursuing the grievance process through 2012, the Applicant's grievance was denied at the final level on October 2, 2012. On October 15, 2012, a copy of the October 2, 2012, grievance response was mailed to the Applicant. *According to the Applicant's affidavit, on October 16, 2012, the Applicant's union representative, Kent McDonald, provided the Applicant with a copy of the October 2, 2012, grievance response and advised him that there was a deadline of seven days from the date on which the*

> *Applicant received it to request a referral to the ITPR, running from the date on which the Applicant received notice from his employer. The Applicant filed a request for referral to ITPR using form RC-117- Request for an Independent Third Party Review. This form was received by the CRA on October 29, 2012.*
>
> *[6] In an affidavit provided in support of this application for judicial review, the Applicant states that he did not receive notice of the grievance response until November 1, 2012.* The admissibility of the affidavit is challenged by the Respondent.
>
> [7] On December 4, 2012, the [Respondent] contacted the Applicant by letter and informed him that his request for referral to an ITPR was denied due to untimeliness.
>
> [8] The [Respondent] noted that form RC-117 states that it "is to be completed by the requestor and received by the [NCRO] within 7 calendar days following the date of notice or event leading to the requestor's right to access the ITPR recourse mechanism."
>
> [9] Based on the fact that the grievance response was sent on October 15, 2012, and Canada Post's delivery standards meant the letter would have been received no later than October 19, 2012, the [Respondent] found that the Applicant's request for referral, received October 29, 2012, was untimely, as it was received after the seven day period prescribed to request an ITPR - after the due date of October 26, 2012.
>
> [italics added and discussed below]

[4] While the parties knew the same facts then that they know now, in *Haymour No. 1*, they agreed that the Applicant's affidavit referred to above should not be considered. As Justice Manson stated:

> [11] At the hearing, it was agreed by counsel for both parties that in light of the relevant jurisprudence in this Court and the Federal Court of Appeal, the affidavit of Anis Haymour dated January 23, 2013, should not be considered. It was not before the decision maker, and does not meet the exceptions to the rule that evidence not before the administrative decision maker should not be considered by the Court on substantive review (*Assn of*

> *Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22, at para 20).

[5] Therefore, while the parties knew the same facts then as they know now, the Respondent did not defend on the basis of certain facts. These facts ("additional known facts") are italicized in paragraphs 5 and 6 of Justice Manson's reasons quoted in paragraph 3 above. These additional known facts are central to the Respondent's current position.

[6] The Respondent in *Haymour No. 1*, not referring to the additional known facts in the Applicant's affidavit, argued that the Applicant was one day late in initiating his appeal, in accordance with the deemed delivery rules of Canada Post. The deemed delivery rules of Canada Post are calculated from the date of mailing, namely October 12, 2012. According to these rules, the deadline for the Applicant to initiate his appeal was October 28, 2012. The Applicant filed a request for referral to ITPR on October 29, 2012, using form RC117 - Request for an Independent Third Party Review. This form was received by the CRA one day late, according to the Respondent in *Haymour No. 1*, and the CRA rejected it on that basis alone.

[7] Justice Manson rejected these arguments and granted the Applicant's application for judicial review on October 23, 2013. Justice Manson held that refusing to process the appeal due to a one day delay was unreasonable, and remitted the Applicant's October 29, 2012 request for ITPR to the Respondent for re-determination in accordance with his Judgment. Justice Manson's reasons conclude:

> The result of the deadline established is that the Applicant is denied his opportunity to engage in the ITPR process because his request for a referral to an ITPR was late by one business day. Bearing in mind the length of these proceedings, the prejudice to

> the Applicant, lack of prejudice to the Respondent, and the other factors set out above, such a result is unreasonable (*Haymour No. 1* at para 20).

[8] Justice Manson also ruled that "time limit provisions should be interpreted in a manner that gives effect to their purposes" (*Haymour No. 1* at para 18).

[9] The Respondent did not appeal the decision of Justice Manson.

[10] The additional known facts on which the Respondent now relies to support its second refusal to process the Applicant's appeal (which facts it knew at the time of *Haymour No. 1*) are that on October 16, 2012, the Applicant's union representative, Kent McDonald, provided the Applicant with a copy of the October 2, 2012 grievance response and advised him that there was a deadline of seven days from the date on which the Applicant received it, to request a referral to the ITPR, running from the date on which the Applicant received notice from his employer.

[11] Instead of pointing to a one day delay under the deemed delivery rules of Canada Post, the Respondent now argues the Applicant was six days late given receipt from the union of the grievance response on October 16, 2012, the deadline being October 23, 2012, and the Applicant not filing his request for referral until October 29, 2012. It is for this six day delay that the Respondent refused to consider the Applicant's second appeal filing.

[12] The Applicant relies on one additional known fact (also on record in *Haymour No. 1*) namely that the Applicant did not receive notice of the grievance response from his employer by mail until November 1, 2012. I note that if the seven days ran from November 1, 2012, the

appeal was instituted within the time limits, because the deadline would have been November 8, 2012, whereas the appeal document was received by the Respondent on October 29, 2012. In this circumstance the Applicant was not late at all.

[13] As previously mentioned, the Respondent refused to process Mr. Haymour's appeal a second time and did so by relying on the very facts that they knew at the time of *Haymour No. 1*, namely the union's October 16, 2012 delivery of the decision documents to the Applicant.

[14] As further background, on October 31, 2013, with Justice Manson's Reasons in hand, the Applicant requested the Respondent to re-determine his ITPR request in accordance with *Haymour No. 1*.

[15] The Respondent once again refused the Applicant's request.

[16] On December 16, 2013, the Respondent sent a letter to the Applicant stating that it was maintaining its earlier decision refusing the request for ITPR except that this time, it was on the grounds that the appeal was received outside of the prescribed timeframe having regard to the union's delivery to the Applicant. The Respondent relied on delivery of the decision to the union on October 16, 2012 to start the clock and stated in its letter:

> The NCRO regrets to inform you that your request for ITPR will not proceed to the reviewer stage for the following reason:
>
> > As per the RC117 – Request for Independent Third Party Review, "*This form is to be completed by the requestor and received by the [NCRO]* ***within 7 calendar days following the date of notice*** *or event leading to the requestor's right to access the ITPR recourse mechanism. A copy of the request must*

> *also be sent to the manager whose decision is the basis for the ITPR request or to the local human resources office."*
>
> The Federal Court Decision makes reference to your signed affidavit indicating that you had received notice of the grievance response on October 16th, 2012 by your union representative, which would have allowed you to send in the request for ITPR within 7 calendar days, by October 23, 2012. The first ITPR request was received on October 29th, 2012 which is beyond the 7 calendar days.
>
> The Federal Court Decision also makes reference to your signed affidavit indicating that you confirmed, under oath at paragraph [6], that you "*did not receive notice of the grievance response until November 1, 2012*" which would have allowed you to send in the request for ITPR within 7 calendars [sic] days, by November 8, 2012. The second ITPR request was received on November 13, 2012.
>
> Based on these facts, both requests for ITPR were received by the NCRO outside of the prescribed timeframe and is therefore ineligible.
>
> [emphasis in original]

[17] On December 20, 2013, counsel for the Applicant wrote to the Respondent requesting that it reconsider its second refusal decision:

> The decision of the [NCRO] is surprising, given the decision of the Federal Court finding the earlier process followed by the NCRO to be unreasonable.
>
> […]
>
> You neglect to note that formal notice form the employer was only received by Mr. Haymour on November 1, 2012. At that point, in an abundance of caution, Mr. Haymour had already filed his ITPR request as of October 29, 2012.
>
> Your penultimate paragraph is therefore surprising […].
>
> Clearly, the NCRO was already in receipt of Mr. Haymour's ITPR request as of October 29, 2012, well before the dates referred to in your decision.

> In light of these facts, we request that you reconsider whether you have sufficient facts to make a decision concerning the eligibility of Mr. Haymour's ITRP request. We submit that Mr. Haymour should be given an opportunity to respond to any questions or concerns you may have with respect to the timeliness of his request. This could be done either in writing, or by teleconference.

[18] On January 13, 2014 (the letter is mistakenly dated January 13, 2013), the Respondent wrote to the Applicant maintaining its earlier decision:

> The NCRO has redetermined the ITPR request based on the information in its ITPR file. The NCRO's decision remains, the ITPR request will not proceed to the reviewer stage for the following reason:
>
> > As per the RC117 – Request for Independent Third Party Review, "*This form is to be completed by the requestor and received by the [NCRO] within 7 calendar days* ***following the date of notice*** *or event leading to the requestor's right to access the ITPR recourse mechanism. A copy of the request must also be sent to the manager whose decision is the basis for the ITPR request or to the local human resources office.*"
>
> Our file indicates that Mr. Haymour had received notice of the final grievance response on October 16th, 2012 by his union representative, which would have allowed Mr. Haymour to send in the request for ITPR within 7 calendar days following this notice, by October 23, 2012. The first ITPR request was received on October 29th, 2012 which is beyond the 7 calendar days.
>
> Our file also indicates that Mr. Haymour had received formal notice on November 1, 2012, which would have allowed Mr. Haymour to send in the request for ITPR within 7 calendar days following this notice, by November 8, 2012. The second ITPR request was received on November 13, 2012, which is also beyond the 7 calendar days.
>
> Based on these facts, both requests for ITPR were received by the NCRO outside of the prescribed timeframe and is [sic] therefore ineligible.
>
> [emphasis in original]

III. Decision under Review

[19] The decision under review in the case at bar is the NCRO's December 16, 2013 decision to maintain its previously set aside decision, dated December 4, 2012, to deny the Applicant's request for ITPR. In this case, there is either no delay at all as I have found or a delay of either two days or six days as shall be discussed, whereas Justice Manson found a one day delay to be unreasonable in *Haymour No. 1*.

IV. Issue

[20] This matter raises the question of whether the NCRO's decision to refuse the Applicant's request to refer his termination grievance to ITPR was reasonable.

V. Standard of Review

[21] Both parties agree that the standard of review on judicial review is that of reasonableness.

[22] However, the Applicant describes the question as one of mixed facts and law while the Respondent describes it as being strictly a question of fact. The Applicant refers to *Canada (AG) v Abraham*, 2012 FCA 266 at paras 42-43:

> [42] Reasonableness is a single standard of review. But asserting that there is a range of possible, acceptable outcomes begs the question as to how narrow or broad the range should be in a particular case. As the majority of the Supreme Court said in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paragraph 59, while "[r]easonableness is a single standard," it "takes its colour from the context."

> [43] That context affects the breadth of the ranges. The Supreme Court has confirmed that the range of acceptable and rational solutions depends on "all relevant factors" surrounding the decision-making: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 at paragraphs 17-18 and 23; *Halifax (Regional Municipality)*, *supra* at paragraph 44.

[23] The Applicant submits that the range of acceptable outcomes in this case is narrow because it involves a highly objective finding of fact (the date on which the Applicant received the grievance response) and the NCRO's interpretation of the time limit as prescribed by the ITPR referral form RC117. The Respondent submits that the Applicant's approach should be resisted, arguing that this Court has previously determined that the standard of review for eligibility decisions made by the NCRO was reasonableness in *Haymour No. 1*, and previously held that questions related to timeliness are purely factual in *Pieters v Canada (AG)*, 2004 FC 342 at para 7.

[24] In my opinion this dispute is not relevant to the present case because I find the Respondent's decision to be unreasonable under either a narrow or a broad range of acceptable outcomes. I rely on *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], where at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

VI. Analysis

[25] There are three reasons why judicial review should be granted: the Applicant filed within the required time having regard to the correct construction of the relevant time period; the Respondent is prevented from relying in this case on facts which it could and should have, but decided not to raise in *Haymour No. 1*; and because the Reasons for Judgment and conclusions in *Haymour No. 1* effectively conclude this issue.

A. *The Applicant filed within time*

[26] The Applicant in its Record noted that the "7 calendar day" time limit on the RC117 - Request for Independent Third Party Review Form was introduced by way of an internal policy entitled "Agency Conflict Management System Review (ITPR)" [See Applicant's Record pages 28 and 51], which described the procedural guidelines for the ITPR process as follows:

> The Manager and/or the ODM must receive the request within **7 calendar days** from the date of receiving individual feedback regarding a staffing process or of receiving a response regarding the final-level grievance. The receiving unit should apply discretion in accepting a request after the time limit when extenuating circumstances exist.
>
> [emphasis in original]

[27] In fact, it appears that the Applicant was relying on a 1999 policy.

[28] The Respondent filed the policy applicable in 2012/13, which dates from 2005 [Respondent's Record, pages 15 and following]. I accept the Respondent's evidence that the 2005 policy governs.

[29] The difference between the policies is relevant even though both policies require an applicant to complete and file the same form.

[30] I mention the differences because the Respondent relies upon a very strictly construed right to notice. Lack of strictly construed legal notice in terms of time is central to the Respondent's case. However, the Respondent gave the Applicant little notice in writing of the stringent seven day notice the Respondent now relies upon.

[31] The major difference in this respect is that the notice provision referred to in paragraph 26 above was entirely repealed and not replaced.

[32] Instead, the 2005 policy contains only a single oblique reference to a seven day time limit. The 2005 policy makes no mention of a "7 calendar day" notice. It refers to a "7-day time limit", but does so only on the fourth page. The policy uses the definite article in connection with this "7-day time limit", stating: "The requestor may submit missing information if the original request is incomplete, however the initial 7-day time limit applies". While an earlier draft of the 2005 policy might have had one (hence the use of the definite article "the"), there is no prior reference to a seven day time limit in the 2005 policy. This sole reference to a seven day time limit is not set out where it would be expected, namely in the preceding section of the 2005 policy headed "ITPR PROCESSING STEPS AND OVERVIEW".

[33] The notice paragraph in the 1999 policy, quoted in paragraph 26 of my reasons, was eliminated in the 2005 policy. That removed the following features of the 1999 policy from the

2005 policy: an explicit notice with reference to seven calendar days; the words "7 calendar days" were in bold type; and the 1999 policy contained an explicit warning that the notice period is mandatory, i.e., must be complied with. Also missing from the 2005 policy is a reference to discretion in accepting a request after the time limit when extenuating circumstances exist. I concede that an employee reading the entire 2005 policy might ask "what seven day period are they referring to", but the answer is far from clear in the policy itself.

[34] The 2005 policy certainly makes no mention of a seven *calendar* day limit to start an appeal. Rather, it directs an applicant to an online form which is prefaced, in an extremely small font, by a sentence that reads "[t]his form is to be completed by the requestor and received by the National Conflict Resolution Office (NCRO) within 7 calendar days following the date of notice or event leading to the requestor's right to access the ITPR recourse mechanism". Only the form contains a reference to seven calendar days. That is not where one would expect material information to be set out relating to potentially catastrophic loss of appeal rights.

[35] Given the consequences of missing this extremely short notice period, not to mention its importance to the Respondent, the Respondent could have maintained the minimal disclosure contained in the 1999 policy, but did not.

[36] Turning to the question of timely filing, if time runs from the date the employee receives official notice from his employer, because we know that the Respondent employer's letter enclosing management's decision was received by the Applicant on November 1, 2012, the

Applicant was within the seven day time limit because he filed on October 29, 2012 while he had until November 8, 2012, to file.

[37] On the other hand, if time runs from when the Applicant received the employer's decision from his union on October 16, 2012, he had until October 23, 2012. All parties agree he filed his request for referral on October 29, 2012. Therefore, if the date his union gave it to him governs (October 16, 2012), and he had seven calendar days to file, he was six days late.

[38] There are other questions surrounding the notice relied on by the Respondent. Is the time period seven calendar days, or seven business days? The form speaks of the seven calendar days, but the 2005 policy makes no reference to calendar days. While reference to seven calendar days is only contained on the online form, even the form does not define what constitutes notice except to say that it is "following the date of notice or event leading to the requestor's right to access the ITPR recourse mechanism". Justice Manson gave no effect to those last words and neither do I. Taken literally and given that the results are sent by mail, it could very well be that time would run out before anyone had notice of the decision, such that the right would be defeated by delay.

[39] At issue is when does time begin to run? Is it when the employee receives the letter officially by mail from the employer, or is it when the union provides him with a copy? Nothing in either the 1999 or 2005 policies or the form itself define the starting point for the seven day time period.

[40] In my view the policies and form are ambiguous as to when notice starts to run. This ambiguity must be resolved in favour of the employee according to the decision of the Supreme Court of Canada in *Berardinelli v Ontario Housing Corp*, [1979] 1 SCR 275 at 280 [*Berardinelli*] which states:

> a restrictive provision wherein the rights of action of the citizen are necessarily circumscribed by its terms, attracts a strict interpretation and any ambiguity found upon the application of the proper principles of statutory interpretation should be resolved in favour of the person whose right of action is being truncated.

[41] Given the ambiguity in the present case and in consideration of this law, I have no hesitation in finding that the governing date for notice is the date on which the employee received official notice from the employer. In this case, notice was received on November 1, 2012. Therefore, the Applicant filed within time. He filed on October 29, 2012, and had until November 8, 2012 to file. Therefore, the Respondent's decision to reject was wrong and unreasonable.

[42] I note the Respondent argues by way of analogy from certain Supreme Court of Canada decisions dealing with limitation of actions. However, I am bound by the *Berardinelli* decision of the Supreme Court of Canada which, rather than by analogy, directly deals with the very issue in this case. *Berardinelli* is contrary to the Respondent's line of argument and I have accepted it as applicable to the case before me.

B. *Respondent relying on defence it could and should have advanced in Haymour No. 1*

[43] The second reason why judicial review should be granted arises from the fact that the Respondent is raising as a defence a ground of which it was fully aware at the time of *Haymour No. 1*. The Respondent could have and should have raised this very point regarding delivery to the union with Justice Manson.

[44] The Respondent had the Applicant's affidavit setting out the dates on which he received the final level decision from the union (October 16, 2012) when it was before Justice Manson.

[45] The Respondent having that information, decided not to use those facts as part of its defence before Justice Manson. Instead, the Respondent decided to oppose the motion before Justice Manson on the basis of Canada Post's deemed delivery rules, choosing in effect to have a second kick at the can if and when the Applicant attempted to exercise the right given to him by Justice Manson of this Court. It is very important to note that the Respondent today relies on the very information – the Affidavit of the Applicant – that it had but did not rely upon before Justice Manson.

[46] The Respondent now opposes the re-determination ordered by Justice Manson on the basis of the very same facts it decided not to rely upon in *Haymour No. 1*. This it may not do. In these circumstances, the Respondent may not save away a ground of defence in one proceeding, and use it either to refuse a Court ordered re-determination or to resist this second judicial review application. In my view, the Respondent was under a duty to raise all defences known to it at the

time of the hearing before Justice Manson. It chose not to do so. As a consequence the Respondent is prohibited from raising that defence in this second proceeding. To allow otherwise would be abusive of the Court's processes.

[47] In my view the need to prevent duplicative proceedings and re-litigation of decided issues is alive and present in this case (see *Burton v Canada (Minister of Citizenship and Immigration)*, 2014 FC 910). The Respondent's conduct, if allowed, opens up the possibility of undesirable and duplicative proceedings, fragmentation of a party's defence, and avoidable use of court resources. Moreover, such conduct defeats an important objective in litigation, namely the need for finality in legal processes. The respondent's approach in this case is also objectionable because it adds both to the expense and length of this proceeding.

C. *The Reasons for Judgment and conclusions of Justice Manson in Haymour No. 1*

[48] In *Haymour No. 1*, this Court considered the issue of timing not only in a general manner, but in specific detail. Two key findings of this Court were:

1. "time limit provisions should be interpreted in a manner that gives effect to their purposes" at paragraph 18; and
2. the Applicant in the circumstances then under review was late by one business day. The Court held at paragraph 20: "Bearing in mind the length of these proceedings, the prejudice to the Applicant, lack of prejudice to the Respondent, and the other factors set out above, such a result is unreasonable".

[49] The Respondent did not appeal the decision of Justice Manson.

[50] In the circumstances, I am of the view that the Respondent must live with the substance of *Haymour No. 1* which found that refusing to accept a filing that was late by one day was unreasonable. Now, in this case, to put the Respondent's position at its highest, the Applicant was late by six days, even if I am wrong in terms of the governing date being November 1, 2012.

[51] In my view, there is no material difference between a delay of one day and a delay of six days. Justice Manson found rejection by reason of the former was unreasonable, and I find rejection for the latter equally unreasonable. The Respondent's refusal to accept the Applicant's appeal is as unreasonable in the present circumstances as it was found to be in *Haymour No. 1*. It is unreasonable for the same reasons outlined in *Haymour No. 1*, which governs in this regard, which the Respondent did not appeal, and with which I agree. I can do no better than repeat the concluding words of my colleague Justice Manson in *Haymour No. 1*:

> [20] The result of the deadline established is that the Applicant is denied his opportunity to engage in the ITPR process because his request for a referral to an ITPR was late by one business day. Bearing in mind the length of these proceedings, the prejudice to the Applicant, lack of prejudice to the Respondent, and the other factors set out above, such a result is unreasonable.

[52] In summary, the Respondent acted unreasonably in refusing to accept the Applicant's filing in that its decision fell outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law per *Dunsmuir*.

D. *Additional considerations*

[53] In light of the second basis of this decision, it is necessary to ask if this Court should go further under section 18.1(3) of the *Federal Courts Act* and make a specific direction, or order a

second re-determination in accordance with these Reasons. This concern was raised by the Court at the outset of the hearing of this judicial review.

[54] I note that Justice Manson in *Haymour No. 1* did not just allow judicial review. Justice Manson added the words "in accordance with this Judgment" to his Judgment. Those words constitute a direction by this Court ordering the Respondent to decide the matter in accordance with the Reasons for Judgment of Justice Manson.

[55] In my view this is a needless re-litigation of the fundamental issues raised in *Haymour No. 1*, as can be seen in the outline of facts which draws on this Court's previous decision. Many of the arguments, not to mention the results, are the same. As previously noted, the known facts are exactly the same.

[56] I will not make a specific direction in terms of the filing date as part of my order. However, I repeat that the Applicant did file his request to appeal within the time allowed.

[57] The parties are in agreement to fixed costs in the amount of $2,500.

VII. Conclusion

[58] The application for judicial review is granted, the NCRO's decision set aside, and the matter remitted for re-determination by the NCRO in accordance with these Reasons, that is, on the basis that the Applicant's request was filed within time. Costs will be payable by the Respondent to the Applicant in the amount of $2,500.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. Judicial review is granted;
2. The decision of the National Conflict Resolution Office of the Canada Revenue Agency, made on December 16, 2013 is set aside;
3. The Applicant's request shall be re-determined by the National Conflict Resolution Office in accordance with these Reasons; and
4. Costs in the amount $2,500 are payable by the Respondent to the Applicant.

"Henry S. Brown"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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