

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220927

Docket: A-147-21

Citation: 2022 FCA 160

**CORAM: STRATAS J.A.
RIVOALEN J.A.
LOCKE J.A.**

BETWEEN:

ZEIFMANS LLP

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on September 27, 2022.
Judgment delivered from the Bench at Toronto, Ontario, on September 27, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 27, 2022).

STRATAS J.A.

[1] The appellant accounting firm appeals from the judgment of the Federal Court dated April 26, 2021: 2021 FC 363 (*per* Walker J.). The Federal Court dismissed the accounting firm's application for judicial review. In its judicial review, the accounting firm had applied for an

order quashing the Minister's requirement that it provide information to the Minister about certain of its clients.

[2] The Federal Court conducted reasonableness review of the Minister's decision to issue the requirement. This was proper. Reasonableness is the presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. And, contrary to the submissions of the accounting firm, there is nothing here to rebut that presumption: this is not the sort of rare case described in *Vavilov* where the governing legislation offers *indicia* telling us that we should review for correctness.

[3] Before the Federal Court, the accounting firm argued, among other things, that the provision governing the requirement, section 231.2 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), obligated the Minister to first obtain judicial authorization for the requirement.

[4] The Federal Court concluded that the Minister was reasonable in interpreting section 231.2 and finding that prior authorization was not needed. It would appear that the Minister took the view that prior judicial authorization is needed only where a requirement requests information and documents relating to ascertainable unnamed persons in order to verify the unnamed persons' compliance with their obligations under the Act. On the facts here, the Federal Court found that "[t]here is no evidence in the record that [ascertainable unnamed persons] are a current investigation target" (at para. 64) and so the Minister's decision to issue the requirement without prior judicial authorization was reasonable.

[5] We agree. As the Federal Court observed, the Minister's interpretation of section 231.2 of the Act was consistent at a conceptual level with much authority: multiple binding decisions of this Court (*Canada (Customs and Revenue Agency) v. Artistic Ideas Inc.*, 2005 FCA 68, 330 N.R. 378 and *eBay Canada Ltd. v. Canada (National Revenue)*, 2008 FCA 348, [2010] 1 F.C.R. 145 at para. 23); an *obiter* of the Supreme Court of Canada that is consistent at a conceptual level with *Artistic Ideas (Redeemer Foundation v Canada (National Revenue))*, 2008 SCC 46, [2008] 2 S.C.R. 643); and numerous Federal Court decisions that have followed *Artistic Ideas* (e.g., *Canada (National Revenue) v. Morton*, 2007 FC 503, [2007] 4 C.T.C. 108 at para. 11, *Canada (National Revenue) v. Advantage Credit Union*, 2008 FC 853, 331 F.T.R. 252 at paras. 16-17, *Canada (National Revenue) v. Amex Bank of Canada*, 2008 FC 972, 333 F.T.R. 259 at para. 54, *London Life v. Canada (Attorney General)*, 2009 FC 956, 377 F.T.R. 8 at paras. 21-24 and *Ghermezian v. Canada*, 2020 FC 1137 at paras. 39-41). We consider ourselves bound by the interpretation of section 231.2 offered by this Court in *Artistic Ideas* and *eBay*, cases that postdate and differ at a conceptual level and in interpretive result with *Canada (Minister of National Revenue) v. Toronto Dominion Bank*, 2004 FCA 359, 332 N.R. 70.

[6] By adopting and applying an interpretation of section 231.2 of the Act that was consistent with *Artistic Ideas*, *eBay* and their progeny, the Minister adopted and applied an interpretation that was reasonable. *Artistic Ideas*, *eBay* and its progeny correctly interpret section 231.2. To the extent that *Toronto Dominion Bank* stands for something different from *Artistic Ideas*, *eBay* and their progeny, it should not be followed. The Federal Court effectively said just that. We agree with the Federal Court for the reasons it gave.

[7] As for the Federal Court's finding of fact that the Canada Revenue Agency had not targeted the unnamed entities for investigation, only an error of law or palpable and overriding error can cause us to displace it. The Federal Court had evidence before it on which it made its finding of fact and it made no legal error. Thus, the Federal Court's finding of fact must stand in this Court: the unnamed entities were not investigative targets.

[8] The accounting firm attempts to throw doubt on all of this in another way. It notes that the Minister never supplied an express interpretation of section 231.2. Thus, in its view, the Minister never thought about the interpretation of section 231.2 and, thus, did not do her job. Citing *Vavilov* at para. 96, the accounting firm cautions us not to do the Minister's job and fill in the gap by drafting reasons for the Minister. Instead, we must quash the Minister's requirement and order the Minister to reconsider the matter.

[9] We disagree. *Vavilov* goes further. *Vavilov* tells us that reviewing courts must not insist on the sort of express, lengthy and detailed reasons that, if asked to do the job themselves, they might have provided: *Vavilov* at paras. 91-94. To so insist could subvert Parliament's intention that administrative processes be timely, efficient and effective.

[10] *Vavilov* says more. It tells us that an administrative decision should be left in place if reviewing courts can discern from the record why the decision was made and the decision is otherwise reasonable: *Vavilov* at paras. 120-122; *Canada (Citizenship and Immigration) v. Mason*, 2021 FCA 156 at paras. 38-42. In other words, the reasons on key points do not always need to be explicit. They can be implicit or implied. Looking at the entire record, the reviewing

court must be sure, from explicit words in reasons or from implicit or implied things in the record or both, that the administrator was alive to the key issues, including issues of legislative interpretation, and reached a decision on them.

[11] Here, a review of the record before the Minister and the decision reached by the Minister leaves us in no doubt: we know where the Minister was coming from, the Minister was aware of section 231.2, the Minister implicitly or impliedly adopted an interpretation of section 231.2 that was consistent with *Artistic Ideas, eBay* and their progeny, and applied that interpretation to the facts of this case in a reasonable way. The Minister's decision was reasonable.

[12] The accounting firm refers to a Canada Revenue Agency policy concerning section 231.2 that it says supports its position. But policies are not law. The Minister is obligated to follow the authentic meaning of legislation, not the substantive content of administrative policies: *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299, 341 D.L.R. (4th) 710.

[13] The accounting firm also repeats other arguments it made in the Federal Court against the requirement issued by the Minister. We reject these arguments substantially for the reasons given by the Federal Court. In particular, for the reasons given by the Federal Court, we do not find the requirement unduly vague and we consider service upon the accounting firm in the name of the firm partnership to be valid and effective.

[14] Overall, we substantially agree with the analysis and the conclusions of the Federal Court. The Minister's decision to issue the requirement was reasonable.

[15] Therefore, despite the able oral argument of Mr. Marciano, we will dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-147-21

APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE WALKER OF THE FEDERAL COURT DATED APRIL 26, 2021 IN DOCKET NO. T-400-19.

STYLE OF CAUSE: ZEIFMANS LLP v. HIS MAJESTY THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 27, 2022

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
RIVOALEN J.A.
LOCKE J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

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