

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250917**

**Docket: A-340-24**

**Citation: 2025 FCA 165**

**CORAM: STRATAS J.A.  
MONAGHAN J.A.  
GOYETTE J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**ROGER MALONEY**

**Respondent**

Heard at Toronto, Ontario, on September 16, 2025.

Judgment delivered at Toronto, Ontario, on September 17, 2025.

**REASONS FOR JUDGMENT BY:**

**STRATAS J.A.**

**CONCURRED IN BY:**

**MONAGHAN J.A.  
GOYETTE J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250917

Docket: A-340-24

Citation: 2025 FCA 165

**CORAM: STRATAS J.A.  
MONAGHAN J.A.  
GOYETTE J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Appellant**

**and**

**ROGER MALONEY**

**Respondent**

**REASONS FOR JUDGMENT**

**STRATAS J.A.**

[1] The Attorney General appeals from the judgment dated September 19, 2024 of the Federal Court (*per* Whyte Nowak J.): 2024 FC 1474. The Federal Court allowed Mr. Maloney's application for judicial review from a decision of a delegate of the Minister in the Canada Revenue Agency. In that decision, the Minister's delegate had allowed a good portion of Mr. Maloney's request for relief from penalties and interest under subsection 230(3.1) of the *Income*

*Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (nine years of interest relief). The Federal Court found that the decision of the Minister's delegate was procedurally unfair and substantively unreasonable.

[2] The appeal must be allowed.

[3] First, the issue of procedural fairness. Mr. Maloney complains that certain documents were withheld from him. The Federal Court agreed. But when we assess this, we must keep front of mind the real issues in play, here financial hardship and undue delay. Many of the documents Mr. Maloney sought were irrelevant to those issues. For example, some documents concerned the basis for earlier reassessments of tax for the 2000-2003 taxation years, a matter irrelevant to the fairness determination under subsection 220(3.1) of the Act, while others concerned the tax treatment of certain athletes and the "ultra-rich".

[4] The level of procedural fairness to which Mr. Maloney was entitled in this "fairness" determination under subsection 220(3.1) of the Act is relatively low: *R. & S. Industries Inc. v. Canada (National Revenue)*, 2016 FC 275; *Waycobah v. Canada*, 2011 FCA 191. Overall in this case, procedural fairness standards were met: given the issues that were in play, Mr. Maloney was aware of the case he had to meet and he had adequate opportunity to respond to that case.

[5] As for substantive reasonableness, the Federal Court also erred. It formed its own views of what was an appropriate delay and imposed those views upon the matter before it. This was disguised correctness review, not reasonableness review.

[6] When conducting reasonableness review in this case, the Federal Court had to start with the reasons of the Minister's delegate, read them with due consideration in light of the evidentiary record before the Minister's delegate, take into account that the Minister's delegate has a very wide, unconstrained discretion under subsection 220(3.1) of the Act to determine what is fair (itself a rather subjective and impressionistic concept that cannot be concretely defined), and, finally, assess whether the decision of the Minister's delegate fell outside the rather loose constraints in this case: see generally *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653. The Federal Court did not follow this methodology.

[7] In reviewing the Federal Court's decision, this Court conducts review all over again, without any deference to the Federal Court: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-46.

[8] In this case, the decision of the Minister's delegate is reasonable. I note the various matters summarized in paragraphs 40-47 of the Attorney General's memorandum of fact and law: objections involving a tax shelter are more complex and in such situations the Minister cannot guarantee how long an objection will take to complete; Mr. Maloney was warned over many years about his debt but chose not to pay it, letting the interest accumulate; he was responsible for the accuracy and timeliness of his tax returns; he was given some relief due to financial hardship during delays in processing his taxpayer relief request; and he had the ability to make payments on his tax debt but chose not to. On this last point, as a matter of law, those who "knowingly fail to pay a tax debt pending a decision...normally cannot complain that they

should not have to pay interest” or penalties or that the imposition of interest and penalties is unfair: *Canada Revenue Agency v. Telfer*, 2009 FCA 23 at para. 35; see also *Comeau v. Canada (Customs and Revenue Agency)*, 2005 FCA 271 at para. 20.

[9] Mr. Maloney also complains that the Minister’s delegate did not consider certain documents. Even if true, I am not persuaded that, given the above analysis, they would have changed the result.

[10] For the foregoing reasons, I would allow the appeal, set aside the judgment of the Federal Court, and dismiss the application for judicial review. In oral argument, the Attorney General abandoned its claim for costs. Therefore, I would not award costs.

“David Stratas”

---

J.A.

“I agree.

K.A. Siobhan Monaghan J.A.”

“I agree.

Nathalie Goyette J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-340-24

**STYLE OF CAUSE:** ATTORNEY GENERAL OF  
CANADA v. ROGER MALONEY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 16, 2025

**REASONS FOR JUDGMENT BY:** STRATAS J.A.

**CONCURRED IN BY:** MONAGHAN J.A.  
GOYETTE J.A.

**DATED:** SEPTEMBER 17, 2025

**APPEARANCES:**

Andrea Jackett  
Ian Pillai

FOR THE APPELLANT

Roger Maloney

FOR THE RESPONDENT  
(UNREPRESENTED)

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef  
Deputy Attorney General of Canada

FOR THE APPELLANT