Federal Court Cour fédérale

Date: 20260108

Docket: T-2338-25

Citation: 2026 FC 20

Toronto, Ontario, January 8, 2026

PRESENT: The Honourable Justice Thorne

BETWEEN:

BENNY ISLA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks an order in the nature of *mandamus*, pursuant to paragraph 18(1)(a) of the *Federal Courts Act*, RSC 1985, c F-7, to compel the Canada Revenue Agency [CRA] to complete an assessment of a second income tax return the Applicant had purported to file with the CRA for the 2023 tax year. The Applicant also seeks from the Court a declaration that the CRA failed to assess this income tax return "with all due dispatch", contrary to their statutory duty under subsection 152(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*].

[2] For the reasons that follow, this application is dismissed.

II. Background

[3] On November 23, 2023 the Applicant filed for a consumer proposal under section 66.13 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*], in relation to managing his debts. This section of the legislation outlines the process for a consumer debtor to file a consumer proposal with an official receiver.

[4] Shortly thereafter, on November 29, 2023, the Applicant filed his 2023 income tax return, in which he declared his income for January 1, 2023 to November 23, 2023. The CRA assessed this tax return, and on March 14, 2024 issued the Notice of Assessment, which determined that a payment of $25,828.68 was owed by the Applicant.

[5] Some months later, on or around May 1, 2024, the Applicant then purported to file another return of income, which was also in relation to the 2023 tax year [Second Tax Return]. This Second Tax Return indicated that it specifically pertained to his income over the period of November 24, 2023 to December 31, 2023, and suggested that the Applicant should receive an income tax refund of $2,964.93. The CRA's records indicate that this filing was received by the CRA on October 10, 2024, and include that the following acknowledgement was sent to the Applicant in return: "We received your T1 adjustment request. For information on Canada Revenue Agency (CRA) service standards, go to Canada.ca/cra-service-standards. The CRA is experiencing delays in processing T1 adjustment requests due to a higher than normal number of requests." The CRA's Progress History records indicate that on May 1, 2024, February 10, 2025,

April 1, 2025 to August 12, 2025 and November 10, 2025 it was noted that the Applicant's adjustment review was either in progress or required additional review.

[6] In the course of this review, the Applicant sent letters responding to certain CRA requests for further information on October 10, 2024, January 20, 2025, and June 27, 2025. In each of these letters, he also sought updates on what he termed as the assessment of the Second Tax Return. In his January 20, 2025 letter, sent to the Appeals Division of the Canada Revenue Agency, the Applicant stated that he wished to "formally request a review and escalation of my file and reassessment for the tax period from November 24 to December 31, 2023, due to the ongoing delay in the issuance of my Notice of Reassessment". In the June 27, 2025 letter, the Applicant stated that in the Second Tax Return he was not seeking to amend a previously filed return "but rather [had submitted] a separate part-year return for a legally distinct tax period under a creditor's arrangement made on November 23, 2023, pursuant to the Bankruptcy and Insolvency Act (BIA) [sic]". Further, this letter stated that in the Applicant's view "[t]hese returns are intended to reflect income and allowable deductions separately before and after the legal arrangement, consistent with practice under the Bankruptcy and Insolvency Act (BIA) [sic] and Canada Revenue Agency administrative policy for insolvency-related filings".

[7] On July 9, 2025, the Applicant filed with the Federal Court this application for a writ of *mandamus* and a declaration, asserting that the CRA had failed to comply with the statutory duty to assess his second 2023 income tax return "with all due dispatch", as required under subsection 152(1) of the *ITA*.

III. Preliminary Issue

[8] The Applicant named “HIS MAJESTY THE KING (as represented by the Minister of National Revenue)” as the Respondent in the Notice of Application for this matter.

[9] At the request of the Attorney General, without objection from the Applicant, and in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*], the title of these proceedings shall be amended to name the Attorney General of Canada as the Respondent in this application.

IV. Issues and Standard of Review

[10] The issues in this matter are:

> 1. Whether the Applicant has satisfied the criteria for a writ of *mandamus* to be issued to compel the Minister of National Revenue, acting through the Canada Revenue Agency, to assess the Applicant’s Second Tax Return within 60 days.
> Whether the Court should issue a declaration that the Minister failed to comply with their duty to assess the 2023 income tax return “with all due dispatch”.

[11] I note that a standard of review is inapplicable to this matter. This Court has repeatedly held that an application for a writ of *mandamus* does not require the standard of review to be determined (*Bedard v Canada (Attorney General)*, 2024 FC 570 at para 24 citing *Callaghan v Canada (Chief Electoral Officer)*, 2010 FC 43 at para 64 and *Samideh v Canada (Citizenship and Immigration)*, 2023 FC 854 at para 22; see also *3533158 Canada Inc v Canada (Attorney General)*, 2024 FC 1090 at para 24 (appeal dismissed in *3533158 Canada Inc v Canada (Attorney General)*, 2025 FCA 163)).

V. Relevant Legal Provisions

[12] The legislative provision relied on by the Applicant in their argument as to *mandamus* is subsection 152(1) of the *ITA*, which requires the Minister to act "with all due dispatch" to examine and assess a taxpayer's return of income:

> Assessment
>
> 152 (1) The Minister shall, **with all due dispatch**, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine
>
> (a) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or
>
> (b) the amount of tax, if any, deemed by any of subsections 120(2) or (2.2), 122.5(3) to (3.003), 122.51(2), 122.7(2) or (3), 122.72(1), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2) or (2.1), 127.1(1), 127.41(3), 127.44(2), 127.45(2), 127.48(2), 127.49(2) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year. [Emphasis added]

[13] For an individual, a taxpayer's taxation year is generally the calendar year, pursuant to subsection 248(1) of the *ITA*. However, if an individual is a bankrupt, then Division F of the *ITA* may apply, allowing the creation of a "split" in the taxation year, pursuant to subparagraphs 128(2)(d)(i) and (ii):

> Where individual bankrupt
>
> 128 (2) Where an individual has become a bankrupt, the following rules are applicable:
>
> […]
>
> (d) except for the purposes of subsections 146(1), 146.01(4) and 146.02(4) and Part X.1,
>
> (i) a taxation year of the individual is deemed to have begun at the beginning of the day on which the individual became a bankrupt,

> and
>
> (ii) the individual's last taxation year that began before that day is deemed to have ended immediately before that day;

[14] A "bankrupt" is defined in subsection 248(1) of Part XVII of the *ITA* such that this "has the meaning assigned by the Bankruptcy and Insolvency Act".

[15] A "Bankrupt", "Debtor" and "Insolvent Person" are also defined in section 2 of the *BIA* as follows:

> "bankrupt" means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)
>
> […]
>
> "debtor" includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt; (*débiteur*)
>
> […]
>
> "insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
>
> (a) who is for any reason unable to meet his obligations as they generally become due,
>
> (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
>
> (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

[16] A “consumer proposal” is defined in section 66.11 of the *BIA* as a proposal made under Division II of the *BIA,* and a “consumer debtor” who may file such a proposal under section 66.12, may include a bankrupt or insolvent individual:

> “consumer debtor" means an individual who is bankrupt **or insolvent** and whose aggregate debts, excluding any debts secured by the individual's principal residence, are not more than $250,000 or any other prescribed amount; *("débiteur consommateur")*
> [Emphasis added]

VI. Analysis

A. *The Applicant has not satisfied the criteria for a writ of mandamus*

[17] Upon review of the record and the submissions of the Applicant and the Respondent, I have little difficulty in determining that neither the writ of *mandamus*, nor the declaration sought by the Applicant will be issued. Among other issues, the Applicant has not satisfied the first condition of the conjunctive test for a writ of *mandamus* that there exists a “public legal duty to act” which the decision maker failed to satisfy.

[18] The framework pertaining to the issuance of a writ of *mandamus* is set out in *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (FCA) at 766, aff’d 1994 CanLII 47 (SCC), [1994] 3 SCR 1100 [*Apotex*] which, in summary, requires that no less than eight separate conditions must be met:

> There are eight conditions for a mandamus to issue:
>
> 1) there must be a public legal duty to act;
>
> 2) the duty must be owed to the applicant;
>
> 3) there must be a clear right to performance of that duty;

> a) the applicant has satisfied all conditions precedent giving rise to the duty;
>
> b) there was:
>
> (i) a prior demand for performance of the duty;
>
> (ii) a reasonable time to comply with the demand unless refused outright; and
>
> (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay.
>
> 4) where the duty sought to be enforced is discretionary, the discretion is fettered and spent;
>
> 5) no other adequate remedy is available to the applicant;
>
> 6) the order sought will have some practical value or effect;
>
> 7) the Court finds no equitable bar to the relief sought; and
>
> 8) on a balance of convenience an order of mandamus should be issued.
>
> (*Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (FCA) at 766, aff'd 1994 CanLII 47 (SCC), [1994] 3 SCR 1100; *Yuehong v Canada (Citizenship and Immigration)*, 2025 FC 1837 at para 39 [*Yuehong*])

[19] As noted, these requirements are conjunctive, so in order for a writ of *mandamus* to be issued, an applicant must have satisfied all eight conditions. (*Yuehong* at para 41)

[20] Upon review, the Applicant's case for *mandamus* fails on the first prong of the test, the requirement that there must be a public legal duty to act – in this case with respect to the CRA being required to assess the Second Tax Return that was filed for the 2023 tax year.

[21] The Applicant argues that such a public duty is imposed on the CRA by subsection 152(1) of the *ITA*, and that this provision requires that this obligation must be carried out "with

all due dispatch". He maintains that as no Notice of Assessment has yet been issued in relation to his Second Tax Return, which was filed in March 2024, there has been an unacceptable delay which contravenes the legislative requirement of "due dispatch". He accordingly seeks a writ of *mandamus* which would require the CRA to assess his Second Tax Return within 60 days, along with a declaration from the Court that the CRA failed to assess his return "with all due dispatch".

[22] I note that in its responses to the Applicant about the Second Tax Return, the CRA consistently termed, and interpreted, that filing to be a "T1 Adjustment" request to amend or reassess the Applicant's first 2023 Tax return, rather than as a separate, second income tax return for the 2023 tax year. The Applicant argues that in doing so, the CRA "erroneously classified" this second income tax return as a "request to change" the 2023 return, and submits that in his view, as a post-consumer proposal submission it rather reflected a "distinct legal status of the post-arrangement tax period". The Respondent, however, submits that the Applicant is not a bankrupt as per section 2 of the *BIA*, and therefore cannot be assessed on a split taxation year. They note that the purported Second Tax Return was therefore rightly treated as a T1 adjustment request by the CRA.

[23] The Respondent submits that the Applicant fails to satisfy the *Apotex* test for *mandamus.* They stress that while bankrupt individuals are permitted, under the legislation, to have two income tax filings submitted on their behalf in a single tax year, this is not so for others. They assert that while the Applicant filed a consumer proposal under section 66.13, he is not a bankrupt as per section 2 of the *BIA.* As a non-bankrupt he is not permitted to have his taxes assessed according to a split year, nor is he permitted to file more than one income tax return in a single tax year. In the Respondent's view, the Second Tax Return filed by the Applicant was

essentially a request for a split year tax filing, to which he was not entitled. The Respondent observes that, as a result, the CRA instead considered the Second Tax Return to be a T1 Adjustment "reassessment" when it was received, not a distinct second income tax filing pursuant to subsection 128(2) of the *ITA*. As the *ITA* precludes the Minister from assessing a non-bankrupt individual for two periods within a single calendar year, the Respondent submits that therefore there was no "public duty to act" in the manner sought by the Applicant and that the Applicant, accordingly, does not satisfy the *Apotex* test for a writ of *mandamus*.

[24] During the hearing, the Applicant clearly admitted that while he made a consumer proposal with respect to his debts, he is not a bankrupt. It appears that he simply believes that filing a consumer proposal should have been enough to empower him to file two tax returns in a single tax year, as could be done on his behalf if he was a bankrupt. With respect, there is simply no authority in support of this view.

[25] By way of background, I note that the Supreme Court of Canada recently described consumer proposals in relation to bankruptcy in *Piekut v Canada (National Revenue)*, 2025 SCC 13 at para 31:

> A consumer proposal is a procedure under the *BIA* allowing insolvent individuals who meet certain conditions to propose an arrangement to pay their creditors a percentage of what they owe, or to pay their debts over an extended period, or both, subject to the supervision of an administrator. Consumer proposals are generally quicker, more efficient, and less costly than bankruptcy. Many consumer debtors prefer a consumer proposal to an assignment in bankruptcy to avoid the stigma of bankruptcy and because a consumer proposal often allows a debtor to keep their house or apartment, vehicle, or other property (*BIA*, ss. 66.11 to 66.4 [and the authorities cited therein])

[26] Moreover, the difference between a bankrupt and a person who files a consumer proposal was directly considered in *Canada v Marchessault*, 2007 FCA 345 at paras 77–78, in which the Federal Court of Appeal specifically found that the *ITA* provision which deems a current taxation year to end on the day immediately before an individual becomes a bankrupt – and therefore allows for two income tax filings in that year – does not apply to consumer proposals. Thus, an individual who has made a consumer proposal simply does not have divided "pre-proposal" and "post-proposal" tax periods (*Marcogliese v Her Majesty the Queen*, 2013 TCC 388 at paras 21 – 22). Accordingly, such an individual cannot file more than one tax return in a taxation year.

[27] I note that, when directly asked during the hearing, the Applicant – who is himself a Certified Professional Accountant [CPA] – also eventually admitted that there is no authority that he knows of that would allow a person who has filed a consumer proposal to then be allowed to file a second tax return.

[28] Given this, it is not clear why the Applicant felt that he should file a second tax return for 2023, rather than simply filing a T1 Adjustment to add any additional information to the initial tax return that he had filed. When asked about this, he stated only that he would have been including a great deal of information in line items, which he felt would have been "cumbersome" and not practical. Why this would have been less practical than taking the aberrational step of filing a second tax return in that year is also unclear.

[29] In any event, it is clear that the *ITA* does not contemplate the filing of multiple tax returns in a single year by individuals who are not bankrupt. It rather contemplates that only one such filing may be done for each year, as is evident from the language in subsection 150(1):

> Subject to subsection (1.1), **a** return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for **each** taxation year of a taxpayer [Emphasis added]

[30] It is also clear that, under the tax regime, filing a return then triggers the various obligations of the CRA with respect to processing and assessing that return, including their obligation under subsection 152(1) of the *ITA* to do so "with all due dispatch". The Applicant's initial November 29, 2023 income tax filing triggered this obligation, which the CRA satisfied when it issued its notice of assessment on March 14, 2024. It cannot be said that there was any untoward delay in the assessment of his initial 2023 income tax filing.

[31] In relation to the subsequent filing, it is clear the Applicant did not have the right to file a second income tax return in 2023. As a result, while he purported to do so, the second income tax filing was a nullity, which carried with it no obligation to be assessed by the CRA at all, much less "with all due dispatch". There was therefore no delay in the CRA's not assessing the Second Tax Return. The Applicant cannot unilaterally decide that he should be entitled to file a second tax return in a tax year because he filed a consumer proposal, demand that return be assessed within a certain amount of time, and then fault the CRA for not complying. The Applicant certainly cannot claim the right to do so merely because he felt that it would have been cumbersome to include the additional information that he wished to be considered in a T1 Adjustment request for his initial 2023 tax return.

[32] Given that there is no entitlement to file a second tax return, at best the Applicant can be regarded as having submitted a request for a T1 adjustment, when he purported to do so (and as

the CRA accordingly interpreted his May 1, 2024 submission to constitute). However, no obligation of "all due dispatch" attaches to such adjustment requests under the legislation.

[33] In short, there is therefore simply no public legal duty to act in respect of the CRA's assessment of the Applicant's purported Second Tax return, and the Respondent is correct that the Applicant has thus not satisfied the test for the issuance of a writ of *mandamus*. Further, it is evident that no declaration can be issued to the effect that the CRA failed to assess that return "with all due dispatch", given that no such duty existed.

[34] Finally, I note that both parties have requested costs in relation to this hearing. Rule 400(1) of the *Federal Courts Rules* provides this Court with "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." I take the Respondent's point that the Applicant, though unrepresented, is far from unsophisticated and that his claims that he is merely a simple person dealing with the tax system stretch credulity, given that he is a CPA by profession, who also teaches tax at the college level. Though I further agree that the Applicant has brought an application devoid of merit, and I strongly considered granting costs, as the Respondent requested, after consideration of all factors I have ultimately concluded that an award of costs would not be appropriate, and none are ordered.

VII. Conclusion

[35] For the foregoing reasons, the application for a writ of *mandamus* and a declaration is dismissed.

JUDGMENT IN T-2338-25

THIS COURT'S JUDGMENT is that:

1. The application for a writ of *mandamus* and a declaration is dismissed without costs.

2. The style of cause shall be amended to identify the Respondent as the Attorney General of Canada.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2338-25
STYLE OF CAUSE:	BENNY ISLA V THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ON
DATE OF HEARING:	DECEMBER 18, 2025
REASONS AND JUDGMENT:	THORNE J.
DATED:	JANUARY 8, 2026

APPEARANCES:

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Ian Pillai	FOR THE RESPONDENT

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