Federal Court Cour fédérale

Date: 20260206

Docket: T-1674-25

Citation: 2026 FC 171

Ottawa, Ontario, February 6, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ERROL MCHAYLE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an officer of the Canada Revenue Agency [the CRA] acting as a delegate of the Minister of National Revenue [the Delegate], dated March 13, 2025 [the Decision], denying the Applicant's request for relief from interest pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [the ITA].

[2] As explained in greater detail below, this application is dismissed, because the Applicant has not demonstrated that the Decision is unreasonable or was made in a procedurally unfair manner.

II. **Background**

[3] After the Applicant filed his tax return for the 2021 taxation year and the CRA assessed the return, the CRA performed a reassessment, which resulted in a balance owing and the resultant imposition of arrears interest in the amount of $21.80.

[4] In February 2022, the CRA issued to the Applicant an installment reminder, informing him that if his tax owing for the 2022 taxation year would be over $3,000, he may be required to pay income tax by installments, and providing information on options for instalment payments. In August 2022, the CRA issued another installment reminder, informing the Applicant that he would not be required to pay further installments in 2022 if he had paid all the amounts identified in earlier reminders. However, the Applicant did not make any instalment payments in 2022.

[5] When the CRA assessed the Applicant's return for the 2022 taxation year on May 23, 2023, he had a balance owing of $9127.13, including arrears interest and instalment interest resulting from his failure to make instalment payments. The Applicant subsequently made periodic payments and retired this balance.

[6] In a letter dated December 28, 2022, the Applicant requested interest relief pursuant to subsection 220(3.1) of the ITA in relation to the interest charged for the 2021 taxation year. He

argued that he had inadvertently made an error on his tax return and that it was unreasonable for the CRA to charge him interest when the CRA was responsible for reviewing the information in the return before issuing a notice of assessment.

[7] In the December 28 letter and in a subsequent letter dated June 14, 2023, the Applicant also provided submissions in relation to the interest charged for the 2022 taxation year. He explained that he had verified with his bank, which had issued a T5 that contributed to the income giving rise to the instalment obligations, that the T5 included notional interest on guaranteed investment certificates that was attributed to the Applicant in the 2022 taxation year but not yet paid to him. He asserted that he should not be expected to pay taxes by instalment on notional income that he had not yet received [the Notional Income Argument]. The Applicant requested interest relief pursuant to subsection 220(3.1) of the ITA in respect of the interest charged for the 2022 taxation year.

[8] In a letter dated July 13, 2023, the CRA denied the Applicant's request to waive the arrears interest from the 2021 taxation year [the 2021 First Review Decision]. The 2021 First Review Decision explained that it is the responsibility of the taxpayer to accurately comply with their obligations under the various acts and regulations administered by the CRA. Additionally, the 2021 First Review Decision stated that, when a return is received, the CRA completes a limited review to send a notice of assessment as quickly as possible. Then, to protect the self-assessment tax system, the CRA later performs a further review to verify income reported and deductions and credits claimed.

[9] In a letter dated November 24, 2023, the CRA also denied the Applicant's request to waive instalment interest and arrears interest in relation to the 2022 taxation year [the 2022 First Review Decision]. The 2022 First Review Decision explained that the arrears interest was correctly applied because the balance due on the Applicant's return was not paid on time. The 2022 First Review Decision further explained that when instalments were not paid as required by the due date, instalment interest will be charged and, consequently, instalment interest was correctly applied as the Applicant failed to make the instalment payments required by the instalment reminders issued to him by the CRA.

[10] During a telephone call with a Taxpayer Relief Officer [the Relief Officer] on October 15, 2024, the Applicant requested a second review of his relief requests for the 2021 and 2022 taxation years.

III. **Decision under Review**

[11] In a letter dated March 13, 2025 [the Decision Letter], the Delegate conveyed the Decision denying the Applicant's second-level review request for relief from instalment interest and arrears interest for the 2021 and 2022 taxation years.

[12] The Decision Letter rejected the Applicant's argument that the CRA did not do their due diligence in failing to catch the inadvertent error the Applicant had made when manually completing his tax return for the 2021 taxation year. The Delegate reasoned that it was the Applicant's responsibility to correctly fill out his return and ensure that all information was accurate, irrespective of whether he filed it manually, used tax preparation software, or employed

the services of a third party. The Decision Letter explained that the CRA processes millions of income tax returns each year, most of which are processed without a manual review of the information reported so as to ensure a notice of assessment can be issued quickly. Then, all returns may be subject to review within three years after the date of the original notice of assessment and, if changes are made, interest will be calculated on any additional amount owed.

[13] Additionally, the Decision Letter conveyed the conclusion that there had been no delay on the part of the CRA. The Decision Letter explained that the notice of reassessment for the 2021 taxation year was issued on December 8, 2022, within approximately eight months after the return was filed, which is within the normal three-year reassessment period. The Decision Letter further explained that arrears interest was correctly charged beginning on the day after the balance due date.

[14] In relation to the 2022 taxation year, the Decision Letter rejected the Applicant's argument that he should not have to pay instalment interest on T5 investment income that he had not yet received. The Decision Letter explained that taxpayers are required to make tax instalments payments if their net tax owing is more than $3,000 in the current year and was more than $3,000 in either of the two previous tax years. The Decision Letter noted from the CRA's records that the Applicant had been sent an instalment reminder in February 2022, explaining that he may have to pay instalments in 2022 if his net tax owing was going to be over $3000, and a second instalment reminder in August 2022. The Decision further noted that there was no record that the Applicant called the CRA to inquire about the instalment reminders if he was uncertain of his obligation to pay instalments.

[15] The record before the Court indicates that the Relief Officer, who affirmed an affidavit on July 21, 2025 [the Relief Officer's Affidavit], in support of the Respondent's position in this application, considered the Applicant's second-level review request and provided recommendations to the Delegate before the Decision was made. The record includes the Relief Officer's notes to which I will turn later in these Reasons, as those notes, along with the Decision Letter, inform an understanding of the reasons for the Decision.

IV. **Law**

[16] Subsection 220(3.1) of the ITA provides the Minister the following discretion to waive or cancel any penalty or interest otherwise payable under the ITA:

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
(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.	**(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.

[17] In his recent decision in *Shirafkan v Canada (Attorney General)*, 2025 FC 1351 [*Shirafkan*] at paragraph 20, Justice Michael Manson explains the operation of this section as follows:

> 20. Section 220(3.1) gives the Minister extraordinary discretion to waive or cancel all or part of any penalties or interest otherwise payable by a taxpayer (*Canada Revenue Agency v Telfer*, 2009 FCA 23 [*Telfer*] at para 34). The focus of subsection 220(3.1) of the Act is granting relief where there are extenuating circumstances beyond the control of the person seeking relief, including actions of the CRA and an inability to pay or financial hardship (*Chekosky v Canada (Revenue Agency)*, 2019 FC 841 at para 42 citing *Information Circular IC07-1 Taxpayer Relief Provisions* (the "Circular")). These circumstances should explain the Applicant's inability to comply with the Act (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 [*Stemijon*] at para 50).

[18] The CRA's *Income Tax Information Circular, No. IC07-1R1* [the Circular], a previous version of which was referenced above in *Shirafkan*, is also included in the record now before the Court as Exhibit A to the Relief Officer's Affidavit. The Relief Officer describes the Circular as representing guidelines dealing with how requests for cancellation or waiver of penalties and interest are conducted.

[19] Relevant portions of the Circular include the following:

> 23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:
>
> a) extraordinary circumstances
>
> b) actions of the CRA
>
> c) inability to pay or financial hardship
>
> 24. The legislation does not identify specific situations for which the minister has the authority to waive or cancel penalties and

> interest. The guidelines in this part of the information circular are not binding in law. They do not give the minister's delegate the authority to deny a request and exclude it from proper consideration simply because the taxpayer's circumstances do not meet a guideline described in Part II of this information circular. The minister's delegate may also grant relief even if a taxpayer's circumstances do not fall within the situations stated in ¶ 23.

[20] Consistent with this explanation in the Circular, the particular situations identified in the above paragraphs thereof are not the only circumstances in which the discretion afforded by subsection 220(3.1) applies. That subsection incorporates a general concept of fairness, and a decision thereunder that has regard to only the three above-referenced situations would represent an improper fettering of discretion (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 17).

V. **Issues and Standard of Review**

[21] While the parties formulate the issues somewhat differently, I interpret their submissions as raising the following issues for the Court's determination (including procedural issues raised by the Respondent):

A. What is the proper name of the Respondent?

B. Can the Applicant challenge multiple decisions in a single application?

C. Has the Applicant submitted new evidence that is inadmissible on judicial review?

D. Has the Applicant established a breach of procedural fairness?

E. Is the Decision reasonable?

[22] The correctness standard of review applies to the procedural fairness issue (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Put otherwise, the Court is required to assess whether the procedure followed was fair having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[23] A reflected in the articulation of the last issue above, the merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17).

VI. **Analysis**

A. *What is the proper name of the Respondent?*

[24] The Applicant's Notice of Application [the NOA], which commenced this application for judicial review, named the Respondent as the "ATTORNEY GENERAL OF CANADA, the Department of Justice, Canada Ontario regional Office (representing THE MINISTER OF NATIONAL REVENUE c/o the Canada Revenue Agency (CRA))".

[25] The Respondent submits that the proper name of the Respondent is simply the "ATTORNEY GENERAL OF CANADA". While purely a procedural matter that has no impact on the merits or outcome of this application, the Respondent is correct in this submission (see Rule 303 of the *Federal Courts Rules*, SOR/98-106 [the Rules]; *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 13-14). My Judgment will therefore correct the name of the Respondent in the style of cause.

B. *Can the Applicant challenge multiple decisions in a single application?*

[26] As another procedural matter, the Respondent raises the point that Rule 302 provides that, unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought. While these Reasons reference a Decision under review in this application, I understand the Respondent's point to be that technically the Applicant may be considered to be challenging two decisions of the Delegate (i.e., decisions related to each of the 2021 and 2022 taxation years) in a single application.

[27] However, the Respondent acknowledges that the decisions related to the 2021 and 2022 taxation years were made simultaneously by the same Delegate, are closely connected in nature, and are similar in terms of the facts, legal issues raised, and bases for the decisions. As such, the Respondent submits that the time and effort required to bring separate applications is not necessary in this case.

[28] Consistent with the jurisprudence identified in *Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at para 19, I am content that the decisions related to the 2021 and 2022 (referred to together in these Reasons as the Decision) be addressed in this single application as the Applicant proposes, and my Judgment will so provide.

C. *Has the Applicant submitted new evidence that is inadmissible on judicial review?*

[29] The Applicant's Amended Application Record filed on August 21, 2025, includes both an affidavit sworn by the Applicant on June 3, 2025, and attached exhibits [the Applicant's Affidavit] and a supplemental affidavit sworn by the Applicant on August 18, 2025, and attached

exhibits [the Supplemental Affidavit]. The Respondent submits that the Supplemental Affidavit is inadmissible, based on the following:

A. the Respondent did not serve the Supplemental Affidavit on the Respondent within 30 days after issuance of the NOA, as required by Rule 306, or obtain leave under Rule 312 to file an additional affidavit; and

B. as none of the evidence in the Supplemental Affidavit was before the Delegate when the Decision was made, that evidence offends the general rule that the evidentiary record for the Court on judicial review is restricted to that which was before the administrative decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 19).

[30] The Supplemental Affidavit seeks to introduce into the record before the Court the following documentation attached in two exhibits:

A. a copy of a decision by the Federal Court in which the Applicant successfully sought judicial review of a decision denying him relief from penalties and interest in relation to his 2019 and 2020 taxation years (*McHayle v Canada (Attorney General)*, 2024 FC 302 [*McHayle*]); and

B. copies of email correspondence exchanged between the Applicant and the Respondent's counsel in the course of the present proceeding [the Email Correspondence].

[31] Because *McHayle* is an authority of this Court, it need not be introduced into evidence in order for the Court to take it into account if relevant to the issues in this application. I will

therefore treat *McHayle* as properly before the Court. Otherwise, for the reasons explained below, I agree with the Respondent that the Supplemental Affidavit is inadmissible.

[32] As the Supplemental Affidavit was sworn on August 18, 2025, it clearly was not served upon the Respondent within 30 days of issuance of the NOA on April 1, 2025. Nor has the Applicant sought leave of the Court under Rule 312 to file the Supplemental Affidavit.

[33] Turning to the more substantive analysis, I note that the Email Correspondence that is the principal subject of the Supplemental Affidavit dates from June 2025 and demonstrates that: (a) the Applicant sought to cross-examine the Relief Officer on the Certified Tribunal Record [CTR] that had been filed in this matter or, in the alternative, sought responses to a number of questions; and (b) the Respondent opposed those initiatives on the basis that the Relief Officer had not at that stage filed an affidavit in this application.

[34] The Applicant explains that he pursued the initiatives demonstrated by the Email Correspondence, because he considered the CTR to be deficient in that it does not include reference to the following telephone communications that he asserts took place between the Relief Officer and him:

A. the Relief Officer assuring the Applicant that she understood the Notional Income Argument and would be recommending to her superior that the Applicant be afforded interest relief [the Assurances]; and

B. following issuance of the Decision, the Relief Officer advising the Applicant that she had tried to have him afforded interest relief.

[35] Applying the general rule identified in *Access Copyright*, I agree that the Email Correspondence is inadmissible in this application, as it does not form part of the record that was before the Delegate when the Decision was made.

[36] In so concluding, I note that *Access Copyright* recognizes exceptions to the general rule, including for evidence relevant to the Court's adjudication of a procedural fairness argument (at para 20). In the case at hand, the Applicant does raise what he characterizes as procedural fairness arguments. As will be explained in more detail shortly, some of those arguments, to the effect that the that the Delegate failed to meaningfully engage with the Applicant's submissions, are properly understood as challenging the reasonableness of the Decision, not its procedural fairness. As explained in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, procedural fairness concerns whether a party had an opportunity to know the case they had to meet and to fully and fairly address that case. Therefore, the *Access Copyright* exception has no potential application to the Applicant's arguments that his submissions were not properly considered.

[37] However, the Applicant also advances an argument that the Decision was procedurally unfair based on the Assurances. That argument can be characterized as a procedural fairness argument, seeking to invoke the doctrine of legitimate expectations based on a representation received from an administrative decision-maker. However, the Email Correspondence is not relevant to the Court's adjudication of that argument. Such evidence may have been relevant to a motion seeking to challenge the completeness of the CTR and obtain attendant relief, and any further evidence obtained as a result of such relief may have been relevant to a legitimate expectations argument if it spoke to representations made by the Relief Officer or the Applicant's reliance thereon. However, the Email Correspondence is not itself relevant to the

legitimate expectations argument and therefore is not admissible under the *Access Copyright* exception.

[38] In summary, while the *McHayle* decision may be treated as an authority before the Court, I agree with the Respondent's position that the Supplemental Affidavit itself is inadmissible.

D. *Has the Applicant established a breach of procedural fairness?*

[39] As previous noted, the Applicant argues that the Decision resulted from a breach of procedural fairness, in that Relief Officer who analysed the Applicant's relief request and the Delegate who subsequently made the Decision failed to engage with key submissions or supporting material upon which the Applicant relied.

[40] The Applicant references authority such as *Nixon v Canada (National Revenue)*, 2008 FC 917, and *Cassidy v Canada (Attorney General)*, 2024 FC 174, as confirming that an administrative decision-maker ignoring key submissions or omitting material communications represents a breach of procedural fairness. Those authorities do represent successful judicial reviews of CRA decisions, but they are based on the reasonableness of the decisions, not breaches of procedural fairness. The Applicant's arguments, to the effect that his submissions were not taken into account, will be addressed shortly when the Court is considering the reasonableness of the Decision within the meaning of *Vavilov*.

[41] However, I will address the Applicant's argument, based on the Assurances that he says he received from the Relief Officer, as a procedural fairness argument. As previously noted, that argument can be characterized as an effort to invoke the doctrine of legitimate expectations based on representations made by or on behalf of an administrative decision-maker. As described

in *Jennings-Clyde, Inc (Vivatas, Inc) v Canada (Attorney General)*, 2024 FC 1141 [*Jennings-Clyde*] at paragraph 39:

> 39. The doctrine of legitimate expectation is described as "an extension of the rules of natural justice and procedural fairness": *Foster Farms LLC v Canada (International Trade Diversification)*, 2020 FC 656 at para 92, citing *Reference re Canada Assistance Plan (BC)*, 1991 CanLII 74 (SCC), [1991] 2 SCR 525 at 557. A legitimate expectation may arise, for instance, where an administrative decision-maker makes representations about the process that will be followed in making a particular decision: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 94-95 [*Agraira*].

[42] As identified earlier in these Reasons, the Applicant's submissions refer to both the Assurances and the subsequent telephone conversation in which he says that the Relief Officer advised him that she had tried to have him afforded interest relief. The record before the Court does not include any evidence of that subsequent telephone conversation. However, there is evidence that supports the Applicant's assertion that the Assurances were given. In the Applicant's Affidavit, he deposes that he had multiple conversations with the Review Officer, who indicated that she understood the issues he raised and advised him that she would be recommending that taxpayer relief be granted for both 2021 and 2022, subject to team lead approval.

[43] It is noteworthy that the Respondent has not adduced any evidence contradicting that of the Applicant. In the Relief Officer's Affidavit, she explains her process for reviewing the Applicant's relief request and states that, following her review, she recommended that the Applicant was not eligible for relief for the 2021 and 2022 taxation years and that the Delegate ultimately accepted her recommendation. Consistent with the Relief Officer's evidence, her notes that form part of the record before the Court reflect that she recommended against relief.

However, neither the Relief Officer's Affidavit, nor any of the documentary evidence before the Court, contradicts the Applicant's evidence that he was told by the Relief Officer that she would be recommending in favour of relief.

[44] The Court finds this evidence concerning, as it suggests that the Relief Officer told the Applicant one thing and then did the opposite. However, ultimately it is not necessary for the Court to make a formal finding of fact in this regard because, as the Respondent submits, the doctrine of legitimate expectations (which might otherwise respond to representations made by an administrative decision-maker) provides for procedural rights, not substantive rights (*Jennings-Clyde* at para 40). Even where a person has a legitimate expectation that a particular outcome will be reached, that expectation is not enforceable (*Jennings-Clyde* at para 40, citing *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 75).

[45] Before leaving this point, I note that in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817, the Supreme Court of Canada confirmed that the doctrine of legitimate expectations cannot lead to substantive rights outside the procedural domain but also noted that, if a party has a legitimate expectation that a certain result will be achieved in their case, fairness may require more extensive procedural rights than would otherwise be accorded. However, the Applicant has not asserted in the case at hand that he was deprived of procedural fairness as a result of the absence of any particular additional steps following his receipt of the Assurances.

[46] As such, notwithstanding the concern expressed above, the Applicant's argument surrounding the Assurances does not support a finding of reviewable error.

E. *Is the Decision reasonable?*

[47] In relation to his 2021 taxation year, the Applicant argues that the Decision is unreasonable because the $21.80 in arrears interest that was charged that year resulted from, or was contributed to by, CRA's failure to identify in its first assessment of the Applicant's taxes for that year the error that the Applicant had made when he filed his tax return. The Applicant refers the Court to *Bozzer v Canada (National Revenue)*, 2011 FCA 186, as supporting a conclusion that subsection 220(3.1) of the ITA applies to post-assessment interest, and *Milgram Foundation v Canada (Attorney General)*, 2024 FC 1405, as supporting a conclusion that relief may be available where interest was triggered by an oversight by CRA.

[48] I accept the general propositions advanced by the Applicant based on these authorities and do not understand the Respondent to argue that subsection 220(3.1) does not apply to the sort of interest for which the Applicant sought relief or that the application of interest or penalties attributable to the action of CRA is not among the circumstances in which relief may be available. Indeed, in relation to the latter point, the Circular identified earlier in these Reasons expressly so provides.

[49] However, in considering the reasonableness of the Decision, the Court must apply the principles explained in *Vavilov* and therefore focus upon the particular reasons for the Decision, in the context of the particular facts of the matter at hand including the record that was before the administrative decision-maker, to assess whether the Decision is justified, transparent and intelligible (*Vavilov* at paras 15, 84-85).

[50] In relation to the 2021 taxation year, the Decision Letter expressly considered the Applicant's argument that the CRA did not do their due diligence in failing to catch the

inadvertent error the Applicant had made when manually completing his tax return. In rejecting that argument, the Delegate reasoned that it was the Applicant's responsibility to correctly fill out his return and ensure that all information was accurate. The Decision Letter explained that the CRA processes millions of income tax returns each year, most of which are processed without a manual review of the information reported so as to ensure a notice of assessment can be issued quickly, and that returns may be subject to review within three years after the date of the original notice of assessment. If changes are made, interest will be calculated on any additional amount owed. In the Applicant's case, the CRA identified the Applicant's error when it conducted a review approximately eight months after the return was filed.

[51] In other words, the Delegate reasoned that it was the Applicant who made the error when he filed his 2021 tax return, the CRA identified that error when it conducted the more robust review that resulted in its reassessment of the Applicant, and the CRA therefore applied interest to the additional taxes owing by the Applicant that had not been paid on time. This reasoning is intelligible, is supported by the record before the Delegate, and withstands reasonableness review.

[52] In relation to his 2022 taxation year, the Applicant argues that the Relief Officer who analysed his relief request and the Delegate who subsequently made the Decision failed to engage with key submissions or supporting material upon which the Applicant relied. Consistent with authorities cited by the Applicant, such an argument, if accepted by the Court based on the evidence in the record, could support a finding that the Decision is unreasonable.

[53] Principally, the Applicant argues that the Decision is unreasonable in that the Delegate failed to accept, or to adequately engage with, the Notional Income Argument (that the income

giving rise to his instalment obligations included notional interest on guaranteed investment certificates that had not yet been paid to him, for which he should not be expected to pay taxes by instalment).

[54] I note that the Applicant submits that the CRA later accepted the Notional Income Argument in relation to his 2023 taxation year, which he argues demonstrates inconsistency in the CRA's decision-making. He also submits that CRA subsequently issued him a refund of $3090.44 in June 2055, following his successful judicial review in *McHayle*, which he submits undermines the CRA's premise that he was liable for interest on amounts owing by him.

[55] Other than the *McHayle* decision itself (which returned to CRA for reconsideration a subsection 220(3.1) decision related to the Applicant's 2020 taxation year), the record before the Court does not include evidentiary support for these submissions. More importantly, there is no indication that the facts identified in these submissions were before the Relief Officer or the Delegate when the Decision was made. As such, these submissions do not undermine the reasonableness of the Decision.

[56] In support of the Notional Income Argument, both in his relief request and now before the Court, the Applicant relies on an interpretation bulletin published by CRA, dated May 29, 1984, and bearing No. IT-369R [the Bulletin], which the Applicant asserts support his position that interest is taxable only when paid to a taxpayer. The Applicant argues that the Delegate failed to adequately engage with the Notional Income Argument and, in particular, the application of the Bulletin.

[57] It is clear that the Relief Officer (who made the recommendation to the Delegate) was aware of the Notional Income Argument, in that the Relief Officer's notes (which inform an

understanding of the reasons for the Decision) reference the Applicant's explanation that the T5 income, which resulted in him being charged installment interest for 2022, related to investments from which he had not yet received the money. The notes further capture the Applicant's position that he therefore should not have had to pay instalment interest on amounts he had not received.

[58] Consistent with the Decision Letter itself, the Relief Officer's notes also set out the Relief Officer's reasoning that, although the Applicant believed he should not have to pay instalment interest, taxpayers are required to make tax instalment payments if their net tax owing is more than $3000 in the current year and more than $3000 neither of the two previous tax years. The Relief Officer noted that the Applicant was sent reminders as to his potential instalment obligations and that, if he was uncertain of his obligations, he could have called the CRA upon receipt of those reminders to make further inquiries. The Relief Officer observed that, although the Applicant believed otherwise, he did not meet his tax obligations for the 2022 taxation year. This analysis shows that the administrative decision-maker understood the Notional Interest Argument into account and engaged with that argument.

[59] In so concluding, I have considered the Applicant's submission that neither the Relief Officer's notes nor the Decision Letter make express reference to the Bulletin. He argues that the Decision does not engage with the import of that document and his particular submission that the Bulletin supports his position that interest is taxable only when paid to a taxpayer. However, as the Respondent submits, the issue before the Relief Officer and in turn the Delegate in addressing the interest relief request under subsection 220(3.1) of the ITA was not whether the tax (and therefore the obligation to make instalment payments) on the relevant investment income was properly assessed.

[60] As explained in *Pathak v Canada (Attorney General)*, 2025 FC 2020 at paragraph 65, there is a distinction between the ability of a taxpayer to object to an assessment of a tax liability, which the CRA must perform correctly in accordance with the applicable legislation and without any exercise of discretion (and which can be appealed to the Tax Court), and the taxpayer's ability to seek an exercise of discretion by the CRA where a discretionary authority is afforded by applicable legislation (a decision on which can be judicially reviewed in the Federal Court). An assessment by the CRA and an exercise of discretion by the CRA are two different statutory roles that are qualitatively and practically distinct (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at paras 22-24, 77-79; *Dow Chemical Canada ULC v Canada*, 2024 SCC 23 at paras 39, 64).

[61] Consistent with that distinction, it was not the role of the Relief Officer and the Delegate to consider the correctness (consistent with the Bulletin or otherwise) of the CRA's assessment of tax, and therefore interest on unpaid instalments of that tax, on the Applicant's 2022 investment income.

[62] Finally, the Applicant challenges the reasonableness of the Decision on the basis that the Assurances are not found in the CTR and therefore were not before the Delegate. He argues that the Delegate therefore had an incomplete record when making the Decision. In relation to the Assurances, I have noted earlier in these Reasons my concern about the Relief Officer appearing to have advised the Applicant that she would make a favourable recommendation and then failing to do so. However, despite that concern, I cannot conclude that it is material to the reasonableness of the Decision.

[63] As previously noted, because the Assurances described by the Applicant relate to a substantive outcome, they would not be enforceable. The actual recommendation made to an administrative decision-maker is obviously relevant and potentially material background to the decision and, if the record before the Court had indicated that a favourable recommendation was not placed before the Delegate, I can envision that omission undermining the reasonableness of the Decision. However, the evidence before the Court indicates that the Relief Officer's recommendation to the Delegate was unfavourable. The Court has not been presented with a basis to conclude that the asserted absence from the record before the Delegate (i.e., the absence of an indication that the Relief Officer had previously advised the Applicant that the recommendation would be favourable) represents an omission of a fact relevant to the substantive analysis in which the Delegate was required to engage in making the Decision.

[64] Having considered the Applicant's arguments, I find that the Decision is reasonable.

VII. **Conclusion and Costs**

[65] The Applicant proved to be an organized and capable advocate on his own behalf at the hearing of this application. However, despite his able advocacy, he has not demonstrated a reviewable error in the Decision. As such, this application for judicial review must be dismissed.

[66] Notwithstanding the Respondent's success in opposing this application, it has not claimed costs against the Applicant and, as such, no costs will be awarded.

JUDGMENT IN T-1674-24

THIS COURT'S JUDGMENT is that:

1. The style of cause in this application is amended to change the name of the Respondent to the "ATTORNEY GENERAL OF CANADA".
2. The Applicant may seek judicial review of the Decision in this single application, notwithstanding that the Decision relates to both the 2021 and 2022 taxation years.
3. This application for judicial review is dismissed, with no award of costs.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1674-25
STYLE OF CAUSE:	ERROL MCHAYL v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 29, 2026
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	FEBRUARY 6, 2026

APPEARANCES:

Errol McHayle	FOR THE APPLICANT (ON THEIR OWN BEHALF)
Elliot McPhail	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canda Toronto, Ontario	FOR THE RESPONDENT