

Federal Court



Cour fédérale

Date: 20260311

Docket: T-2608-24

Citation: 2026 FC 331

Ottawa, Ontario, March 11, 2026

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

MELFLOR INVESTMENTS LTD.

Applicant

and

**ATTORNEY GENERAL OF CANADA
MINISTER OF NATIONAL REVENUE**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Melflor Investments Ltd., seeks a judicial review of a decision made by a delegate (the “Delegate”) of the Minister of National Revenue (the “Minister”) to deny the Applicant relief from tax penalties and interest for late filing under the Voluntary Disclosure Program (“VDP”), dated September 4, 2024. This decision affirmed an initial determination,

dated October 7, 2022, to deny the Applicant relief under the VDP. The determinative issue was the Applicant's voluntariness in submitting a VDP disclosure.

[2] For the following reasons, I find no reviewable error in the Delegate's determination. Accordingly, the application for judicial review is dismissed.

II. Background

A. *Legislative Framework*

[3] Taxpayers are required to pay interest and penalties for failing to file tax returns pursuant to sections 161 and 162 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) ("ITA"). Nevertheless, the Minister has discretion to grant relief to taxpayers for some or all of these payments under subsection 220(3.1) of the ITA.

[4] The VDP was created under subsection 220(3.1) of the ITA to encourage taxpayers to make a disclosure of their own initiative (*Christen v Canada (Revenue Agency)*, 2021 FC 1440, aff'd 2023 FCA 101 ("*Christen*") at para 15).

[5] In this case, as I previously noted in the Order issued February 3, 2026, the CRA's Information Circular IC00-1R6, "Voluntary Disclosures Program" (December 15, 2017) (the "Information Circular") guides the application of the VDP. If a disclosure under the VDP is valid, the taxpayer may have relief against interest owing and will not be subject to penalties or prosecuted for this disclosure (*Christen* at para 15; Information Circular at paras 13-15).

[6] For a disclosure under the VDP to be valid it must meet five criteria; the only criterion at issue in this case is “voluntariness”. Although a delegate of the Minister retains discretion, the Information Circular provides that a VDP disclosure is not voluntary if an enforcement action regarding the subject matter of the taxpayer’s disclosure was taken against the taxpayer or related entities prior to the taxpayer’s disclosure (*Christen* at para 29; *Worsfold v Canada (National Revenue)*, 2012 FC 644 (“*Worsfold*”) at para 5). An enforcement action includes requests and demands from the CRA relating to unfiled tax returns (Information Circular at para 30).

[7] If a delegate refuses a VDP disclosure and the taxpayer believes that the delegate has not exercised their discretion in a fair and reasonable manner, the taxpayer may request a second review of the original decision.

[8] If the taxpayer is denied relief in the second review and considers that the Minister’s delegate has not exercised their discretion in a fair and reasonable manner, the taxpayer may make an application to the Federal Court for a judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

B. *Facts*

[9] The Applicant is a family-owned investment holding company. Its founders, Melvyn Naimer and Florence Naimer, both passed away in 2002 and 2010, respectively. In 2010, the founders’ three children inherited the corporation.

[10] The Naimer siblings, the principal contact being Mark Naimer, decided to maintain the same accountant, Derek De Gannes, who had prepared the Applicant's tax returns from 2002 to 2005.

[11] Through a series of communications cumulating on March 25, 2019, Mark Naimer stated that he discovered that Mr. De Gannes had unilaterally stopped completing the Applicant's tax returns since 2009. The siblings subsequently filed a professional misconduct complaint against Mr. De Gannes with the Chartered Professional Accountants of Ontario ("CPAO"). On February 11, 2022, the Discipline Committee of the CPAO found Mr. De Gannes breached his professional obligations from 2012 to 2019 due to his actions in relation to the Applicant.

[12] On March 26, 2019, Mark Naimer emailed an accounting firm with whom he had a previous working relationship, HSM LLP, and stated that he needed to bring the Applicant "up to date with filings since 2009". In June and July 2019, HSM LLP issued interim invoices purporting to account for time spent since February 2019 on the forensic accounting necessary to bring the Applicant into compliance with the ITA.

[13] While the Applicant's accountants were working on bringing the corporation up to date with its tax filings, the CRA sent several communications to the Applicant. In a letter dated May 28, 2019, the CRA requested that the Applicant file its tax return for the year ending June 30, 2017. In November 2019, a CRA agent phone called HSM LLP, as the Applicant's authorized accountants, regarding an unfiled tax return for 2017 and the accountant at HSM LLP stated that they would inform the Chief Commercial Officer of the Applicant. Lastly, in a letter dated

December 3, 2019, the CRA demanded that the Applicant file its tax return for the year ending on June 30, 2017.

[14] The Applicant admits that they were aware of the CRA's November 2019 phone call before they submitted their information to the VDP.

[15] On February 11, 2020, the CRA received the Applicant's disclosure for the tax period between 2008 and 2018 under the VDP.

[16] In a letter dated October 7, 2022, a delegate of the Minister denied the Applicant's relief under the VDP (the "First Review"). The delegate specified that the disclosure was not voluntary because the CRA had sent the Applicant two letters, both of which regarded a tax return for one of the years covered in the Applicant's disclosure. The delegate's denial letter to the Applicant does not specify the dates on which the enforcement letters were sent, but the delegate noted the exact dates in their internal notes.

[17] After an administrative delay, in a letter received by the CRA on June 6, 2024, the Applicant submitted a request for a second review of the CRA's denial of relief under the VDP.

C. *Decision Under Review*

[18] In a decision dated September 4, 2024, the Delegate denied the Applicant relief under the VDP because their disclosure was not considered voluntary (the "Second Review").

[19] The Delegate noted that the two enforcement letters sent to the Applicant dated in May and December 2019 and the November 2019 phone call made to the Applicant's authorized accountant were indicative of a non-voluntary disclosure. The Delegate further considered that the information before him did not prove that the Applicant took steps to file its missing tax returns or start the VDP process before these enforcement actions.

[20] In the Delegate's internal notes, he acknowledges that the Applicant submitted emails between Mark Naimer and Mr. De Gannes dated from between October 2018 and March 2019. The Delegate draws the conclusion that these emails show that Mark Naimer was aware that Mr. De Gannes did not comply with the ITA, but they do not show that any filing was underway.

[21] Because the enforcement actions started before the Applicant submitted its disclosure and the Applicant could not prove that the disclosure was underway before these enforcement actions, the Delegate concluded that the VDP disclosure was not valid.

III. Preliminary Issue

[22] As an exhibit to the Affidavit of Mark Harendorf, the Applicant submitted a detailed list of the billable hours that the Applicant's accountant completed between January and December 2019 and email correspondence between Mark Naimer and an accountant at HSM LLP. These documents were not before the decision maker, and thus they are generally inadmissible (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 ("Access Copyright") at para 19). I see no reason to depart from this general prohibition in this instance.

[23] There are limited instances where extrinsic documents may be accepted in a judicial review even though they were not before the decision maker (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 28). These include instances where the extrinsic document provides general background information, reveals the lack of information before a decision maker, or attempts to demonstrate a procedural defect that could not otherwise be shown on the decision maker's record (*Access Copyright* at para 20).

[24] At the hearing, the Applicant submitted that it did not have an opportunity to submit these documents, as the First Review did not specify the dates on which the enforcement action occurred.

[25] The Applicant's submissions appear to misunderstand the role of a reviewing court. The billable hours from the Applicant's accountant do not reveal any procedural defect or show helpful background information. Rather, the Applicant had the opportunity to submit this additional evidence in both the First and Second Review of its VDP disclosure. It chose not to include these documents. Whether this was due to a lack of communication regarding the timing of the enforcement action is a procedural fairness issue that will be addressed below, but regardless, it does not allow this Court to consider and reweigh this new evidence (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("Vavilov") at para 125). I therefore find that I cannot accept these documents that were not before the decision maker and are not relevant to any issue in this proceeding.

IV. Issues and Standards of Review

[26] The Applicant challenges the reasonableness of the decision and submits that the Applicant did not have an opportunity to submit relevant evidence due to a lack of communication from the First Review decision. Accordingly, the two issues in this judicial review are whether the Delegate's decision is reasonable and rendered in a procedurally fair manner.

[27] The parties submit that reasonableness is the standard of review for the merits of the decision (*Vavilov* at paras 25, 86-87). I agree.

[28] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[29] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the

record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[30] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[31] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

V. Analysis

A. *The Second Review Did Not Breach Procedural Fairness Rights*

[32] The Applicant submits that it could not properly present its arguments or documents in the Second Review because the First Review did not specify the dates on which the enforcement letters were sent and the Naimer siblings do not specifically recall receiving these letters.

[33] The Respondents submit that the CRA does not bear the burden of proving its enforcement action and that the recollection of the Applicant's owners is irrelevant.

[34] In my view, the First Review's omission of the exact dates of the enforcement letters did not deprive the Applicant of a full opportunity to present its case (*Canadian Pacific Railway Company* at para 56). I further agree with the Respondents' submissions at the hearing that it is the responsibility of the Applicant to put its best foot forward while applying for discretionary tax relief (*Klopak v Canada (Attorney General)*, 2019 FC 235 at para 59; *Building Products of Canada Corp v Canada (Attorney General)*, 2020 FC 784 at para 33).

[35] This Court has previously determined that taxpayers who make VDP disclosures have minimal procedural rights because of the expansive discretion under subsection 220(3.1) of the ITA (*1680169 Ontario Limited v Canada (Attorney General)*, 2019 FC 562 at paras 26, 29). There is no evidence before me that demonstrates that this low threshold was not met in this case.

[36] The CRA's procedure provided the Applicant with sufficient information that it would have been aware of the challenges it faced in establishing voluntariness in the Second Review. The First Review explicitly mentioned the Applicant's contact with a CRA collections agent prior to its filing of the VDP application. The First Review also stated that the Applicant was sent a reminder letter and a demand letter to file its income tax return for the tax year of 2017. Although the First Review does not specify the dates on which the CRA sent the reminder and demand letters, the Applicant would have understood that there were prior enforcement actions that may well have occurred before the phone call with the CRA in November 2019.

[37] Despite the CRA's letters, the Applicant states—without any basis in its affidavit evidence—that the Naimer siblings do not specifically recall receiving the reminder and demand letters from the CRA and that the delegate in the First Review would have known that they were not aware of these letters.

[38] The evidence before me does not reflect the Applicant's assertion. In its submissions for the Second Review, the Applicant did not restrain itself to documents pertaining to its intentions prior to the CRA's enforcement phone call in November 2019. Rather, it included its accountant's interim invoices from June and July 2019 and email correspondence between Mark Naimer and Mr. DeGannes from February to March 2019. Moreover, I note that the CRA's enforcement letters are both directed to the same address the Applicant provides as its mailing address in its VDP application. I must emphasize that it is not the CRA's duty to check the Applicant's mail.

[39] Therefore, I find that it was not clear that the Applicant lacked awareness of the CRA's enforcement letters before the First or Second Review determination and any actual unawareness cannot be attributed to the CRA's procedure.

B. *The Delegate did not Fetter his Discretion*

[40] Noting the broad discretion that the Delegate held under subsection 220(3.1) of the ITA, the Applicant submits that the Information Circular does not prevent the Delegate from finding that the disclosure was voluntary (*Cassidy v Canada (Attorney General)*, 2024 FC 174 at paras

17-18, 21). The Applicant submits that the Delegate relied on the Information Circular to ignore its key arguments.

[41] The Respondents agree that the Information Circular does not prevent the Delegate from finding that the disclosure was voluntary. Instead, the Respondents submit that the Delegate conducted a review of the Applicant's disclosure that was not mechanical or rigid, but rather duly considered the Applicant's conduct and the sequence of events.

[42] In my view, the Delegate did not fetter his discretion. Rather, his analysis shows due regard for the Information Circular's role in creating predictability within VDP decisions while also understanding that his discretion is not bound by the Information Circular.

[43] Although *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 ("*Thamotharem*") addresses an applicant's challenge to policies in an entirely different context than the ITA, the Applicant relied on it at the hearing to submit that the Information Circular is not binding law. I acknowledge that *Thamotharem* finds that policies are not to be applied as if they were binding law, but the case also touts policies as a useful tool for good public administration that allow the public to predict proceedings and arrange their affairs accordingly (*Thamotharem* at paras 55-57, 62).

[44] Indeed, this Court endorsed the use of Information Circulars in the context of a VDP decision in *Brown v Canada (Customs and Revenue Agency)*, 2005 FC 1639 ("*Brown*"), on which the Applicant also relies. In *Brown*, this Court found that the delegate reasonably used the Information Circular, along with consideration for the facts of the case, to determine that the

disclosure was not voluntary. I find the Delegate in the case before me conducted a similar analysis considering both the Information Circular and the Applicant's submissions. The Delegate relied on the Information Circular for definitions and the framework for his analysis, but he also considered factors outside the Information Circular, such as the Applicant's initial contact with a new accountant.

C. *The Delegate's Non-Voluntariness Finding Grappled with the Applicant's Key Arguments*

[45] The Applicant submits that the Delegate did not consider the complexity of its tax disclosure when determining the effective date of disclosure. Relying on *Worsfold*, the Applicant further submits that the Delegate had insufficient evidence to conclude that the disclosure was caused by the enforcement actions. Also citing *Christen*, the Applicant submits that the Delegate failed to address its argument that disclosure may still be voluntary where enforcement action predates the effective date of disclosure. Accordingly, the Applicant submits that the Delegate should have found the effective date of disclosure was in March 2019, when it acted on and incurred costs to carry out a disclosure relevant to its non-compliance.

[46] The Respondents maintain that the Delegate's analysis of the voluntariness and extraordinary circumstances was consistent with this Court's jurisprudence. The Respondents also submit that the Applicant had not wholly initiated the disclosure process in March 2019, which distinguishes this case from *Worsfold*. In particular, the Respondents submit that the facts before the Delegate were sufficient for him to find that the disclosure was non-voluntary.

[47] I agree with the Respondents. The Delegate meaningfully considered each of the Applicant's arguments and found insufficient evidence to conclude that the disclosure was voluntary.

[48] Although the Delegate does not characterize this case as complex, the Delegate acknowledged that the Applicant was attempting to account for not filing its tax assessments since 2009 and that the reason for the Applicant's non-compliance was the alleged misconduct of the Applicant's former accountant. The fact that the Delegate did not allow the Applicant additional time to file its VDP after the enforcement actions based on these factors does not make the decision unreasonable. Though I am sympathetic to the injustice felt by those who place their trust in ineffective professionals, the Delegate's decision reflects this Court's well-established principle that taxpayers are directly responsible for meeting their tax obligations, regardless of the misconduct of their representatives (*Fleet v Canada (Attorney General)*, 2010 FC 609 at para 29).

[49] I further do not find that the Delegate's decision that the enforcement actions triggered the Applicant's disclosure was speculative. As the Respondents described at the hearing, in *Worsfold*, the delegate had assumed that the applicant's disclosure was triggered by an audit of a company in which the applicant was one of three shareholders. This assumption was not reasonable in light of the contradictory evidence showing that the company management had not notified the shareholders and that the audit of this company began only two days before the Applicant's representative made a no-name voluntary disclosure to the CRA including identifying details about the non-compliance (*Worsfold* at paras 21-24, 114-115).

[50] Whereas the applicant in *Worsfold* had received legal advice before the enforcement action and effectively communicated his disclosure to the CRA just two days after the audit started against a related company, the Applicant in this case did not communicate their intention to submit a VDP to the CRA until more than eight months after the CRA's first enforcement action. Additionally, as the Respondents noted at the hearing, the enforcement action in *Worsfold* was against a related corporation, not the applicant himself. In this case, the Applicant and its accounting representative were sent the CRA enforcement action directly. I therefore find that *Worsfold* is distinguishable from the evidence before the decision maker in this case.

[51] I also am not persuaded that the Applicant's contact with its accountant in March 2019 contradict the Delegate's finding that disclosure occurred in February 2020. In my view, *Christen* does not establish that initial contact with the CRA or an accountant constitutes the date of effective disclosure. *Cristen* addressed whether to issue a directed verdict for the CRA to approve the applicant's VDP because the applicant's representative had made an anonymous phone call to the CRA discussing a possible VDP before any enforcement action (*Christen* at para 3). Despite this preliminary call, the Court found that it was not a foregone conclusion that this disclosure was voluntary because the intentions of the applicant to submit a VDP can change from their preliminary steps to the time when the VDP is actually submitted (*Christen* at paras 41-42, 71).

[52] Similarly, the Delegate in this case considered the preliminary steps that the Applicant took to begin to address its non-compliance with the ITA, but it was open for the Delegate to conclude that these preliminary steps were not determinative of the Applicant's intention to submit a VDP. The Delegate meaningfully considered the Applicant's argument that it had

begun the process of preparing a disclosure before the initial enforcement action. Noting the emails from October 2018 to March 2019 showing that one of the Naimer siblings was made aware of their former accountant's non-compliance with the ITA and professional conduct standards, the Delegate found that this did not amount to proof that the Applicant's VDP disclosure was underway. Contrary to the Applicant's submission, these documents do not prove that it unambiguously aimed to submit a VDP to bring its corporation into compliance as of March 2019. They merely show the Applicant was aware of its failure to comply with the ITA and took initial steps towards calculating the extent of its missing filings. The Delegate simply did not find sufficient evidence showing that the Applicant addressed its non-compliance before the enforcement date.

[53] In similar contexts, this Court has found that the benefit recipient bears the responsibility of bringing evidence of their eligibility (*He v Canada (Attorney General)*, 2022 FC 1503 at para 25; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 37). The Applicant failed to provide sufficient evidence for the Delegate to conclude that the disclosure was voluntary. I see no reason to interfere with this finding.

VI. Costs

[54] Both parties requested an order as to costs, but neither made submissions as to the amount. I find that costs should be calculated in accordance with the centre column in the table in Tariff B to the *Federal Courts Rules*, SOR/98-106 (the "*Rules*"), in accordance with Rule 407 of the *Rules*.

[55] From this calculation, I award the Respondents \$3,780 in costs for this application and an additional \$540 in costs for the preliminary motion that was dismissed in my Order issued February 3, 2026.

VII. Conclusion

[56] The Delegate's conclusion accords with the evidence on record and reflects the applicable contextual and legal constraints (*Vavilov* at para 85). The Applicant had a full opportunity to submit its evidence, which the Delegate found to be insufficient to demonstrate that it had undertaken a VDP disclosure before the CRA's enforcement actions. The Delegate reasonably inferred from this sequence of events that the Applicant's disclosure was not voluntary. I find no reason to interfere with this decision.

JUDGMENT in T-2608-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The Respondents are awarded \$4,320 in costs.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2608-24

STYLE OF CAUSE: MELFLOR INVESTMENTS LTD. v ATTORNEY
GENERAL OF CANADA AND MINISTER OF
NATIONAL REVENUE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 3, 2026

JUDGMENT AND REASONS: AHMED J.

DATED: MARCH 11, 2026

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