

Federal Court



Cour fédérale

**Date: 20260505**

**Docket: T-2109-24**

**Citation: 2026 FC 597**

**Ottawa, Ontario, May 5, 2026**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**JOHN MOKRYCKE**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This judicial review application arises out of the Applicant's request for remission of the taxes, penalties, and interest assessed as owing for the 2005 and 2006 taxation years by the Canada Revenue Agency [CRA]. In requesting remission pursuant to subsection 23(2) of the *Financial Administration Act*, RSC 1985, c F-11 [FAA], the Applicant asserted that, due to circumstances beyond his control, he was unable to respond effectively to the concerns raised during the CRA's

2008 audit, nor was he able to challenge the subsequent reassessments during the CRA's objection and appeal processes. He further argued that, had he been able to respond, he would have been able to establish that the reassessments were incorrect.

[2] In May 2019, the CRA concluded that remission could not be recommended. This decision was set aside by the Court on judicial review: *Mokrycke v Canada (Attorney General)*, 2020 FC 1027 [*Mokrycke*]. In accordance with the Court's decision, the Applicant's remission request was sent back for reconsideration by the CRA.

[3] On reconsideration, the Director General of the CRA's Legislative Policy Directorate [Director General] determined that remission could not be supported. Specifically, the Director General found that there was insufficient evidence of extenuating factors preventing the Applicant from addressing the audit and challenging the reassessments during the objection and appeal processes. The Applicant seeks judicial review of this decision, arguing that it is both unreasonable and procedurally unfair.

[4] While I find that the Director General failed to consider the totality of the personal and professional challenges the Applicant was facing during the CRA's audit, this failure is ultimately inconsequential. This is because the Director General reasonably concluded that the Applicant did not establish that any extenuating factors precluded him from disputing the reassessments during the objection and appeal processes. With respect to procedural fairness, the Applicant has failed to demonstrate that the CRA's delay in reconsidering his remission request caused any prejudice. I am therefore dismissing the application for judicial review.

## II. Background

[5] The Applicant is an architect who, during the relevant period, was the principal and sole proprietor of John Mokrycke Architect. He also generated income by leasing property through another company, CAMUL Building Corporation, of which he was the sole owner.

[6] In late 2008, the CRA conducted an audit of the Applicant's personal income tax returns for the 2005 and 2006 taxation years. After examining the Applicant's financial records, the CRA auditor identified several unsubstantiated business expenses as well as unreported income. On February 10, 2009, the CRA sent a proposal letter to the Applicant identifying the issues found during the audit. The Applicant never replied to this letter.

[7] Consequently, the CRA issued a Notice of Reassessment for each taxation year on May 28, 2009. For the two taxation years combined, the CRA determined that the Applicant owed \$155,223.56, including tax arrears, interest, and penalties.

[8] The Applicant's accountant at the time [first accountant] filed Notices of Objection on August 4, 2009. Shortly thereafter, however, the first accountant notified the Applicant that he was unable to continue assisting him.

[9] In September 2009, the Applicant retained another accountant [second accountant] to contest the reassessments. In January 2010, the Applicant's second accountant submitted additional representations to the CRA in support of the objections. By letter dated June 28, 2010,

the CRA requested that the Applicant provide information and documentation to support his objections by July 30, 2010, failing which, the reassessments would be confirmed.

[10] Neither the Applicant nor his second accountant responded to the CRA's letter. As a result, on August 30, 2010, the CRA issued a Notice of Confirmation, confirming the 2005 and 2006 reassessments. The Applicant was advised of his right to appeal to the Tax Court of Canada and was provided with information on how to do so. He did not file an appeal within the 90-day deadline.

[11] In February 2011, the Applicant inquired with the CRA about the Notices of Objection. In response, the CRA explained that the objection file was closed and that the reassessments had been confirmed. The CRA advised the Applicant that he could apply for an extension of time to appeal to the Tax Court and provided instructions on how to do so. The Applicant did not seek an extension of time within the applicable period.

[12] In late 2012, the Applicant re-engaged his first accountant. In November 2013, the first accountant resubmitted Notices of Objection respecting the 2005 and 2006 reassessments. The CRA advised both the Applicant and the first accountant that the objections were invalid because the reassessments had been confirmed.

[13] In September 2014, the Applicant's first accountant filed an application for an extension of time to appeal the Notice of Confirmation to the Tax Court. The Tax Court dismissed the application on June 22, 2015, as it was filed out-of-time.

[14] In December 2015, the Applicant's first accountant made a request under the taxpayer relief provisions of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), alleging errors in the audit and reassessments for both taxation years. The CRA denied this request.

[15] The Applicant subsequently retained counsel. In February 2016, his lawyer requested that the CRA reconsider its decision to deny taxpayer relief. The CRA denied this request in April 2016 but suggested that the matter could be considered by way of a remission order.

[16] In January 2017, the Applicant's lawyer requested remission on the Applicant's behalf, seeking relief of the taxes, interest, and penalties owing. He asserted that due to personal and professional challenges, the Applicant's ability to attend to his tax affairs was impaired from the time the audit began, and the reassessments issued, until after the time within which he could file an appeal with the Tax Court.

[17] In April 2017, the Applicant paid the amounts owing for the 2005 and 2006 taxation years in full.

[18] In May 2019, the CRA determined that remission could not be recommended. The Applicant sought judicial review of that decision.

[19] By decision dated November 3, 2020, the Court allowed the Applicant's judicial review application and remitted the matter to the CRA for reconsideration. Justice Norris found that the

CRA's decision lacked the hallmarks of reasonableness because it failed to "engage meaningfully with the main basis of the applicant's request for remission": *Mokrycke* at para 5.

[20] In December 2020, the Applicant was advised that the CRA would be conducting a second review of his remission request based on information he had submitted to date, as well as any additional information that he wished to provide. At that time, the Applicant was provided with the most recent version of the CRA's Employee Remission Manual dated November 2019 [Remission Guide]: Letter dated December 17, 2020, Applicant's Record [AR] at 19–21.

[21] In March and July 2021, the Applicant provided additional information and documentation to support his remission request: Letter dated March 25, 2021, Respondent's Record [RR] at 127–128; Documents provided on March 25, 2021, and July 12, 2021, RR at 129–653. In addition, during a telephone conversation with a CRA policy analyst in July 2021, the Applicant addressed the personal and professional challenges that he had been facing, as well as the income and expenses at issue in the reassessments: Notes of Telephone Meeting dated July 8, 2021, RR at 72–75.

[22] Based on a review of the Applicant's file, a CRA policy analyst prepared a comprehensive report concluding that remission was not recommended. This report was approved by the Manager of the CRA's Remissions Section of the Legislative Policy Directorate: Second Review Remission Request Report dated June 13, 2024 [Second Review Report], RR at 17–35.

[23] After considering the Second Review Report, the Director General agreed that remission could not be supported. Despite acknowledging the Applicant's personal and professional difficulties, the Director General determined that there was insufficient evidence to conclude that these circumstances prevented him from responding to the audit and disputing the reassessments through the normal objection and appeal processes: Letter dated July 5, 2024 [Director General Decision], at 4, AR at 63.

[24] In response to the alleged audit errors, the Director General concluded that the Applicant's reassessments may have been reduced had he provided the relevant documentation during the audit or objection processes, but that remission is not intended to reopen an audit or extend time limits for filing an objection or appeal: Director General Decision at 6, AR at 65. The Applicant seeks judicial review of this decision.

### **III. Issues and Standard of Review**

[25] There is no dispute that the standard of review of reasonableness applies to the merits of the Director General's remission decision: *Ontario Addiction Treatment Centres v Canada (Attorney General)*, 2022 FC 393 at para 27 [*OATC FC*], aff'd *Ontario Addiction Treatment Centres v Canada (Attorney General)*, 2023 FCA 236 at para 4 [*OATC FCA*]; *Mokrycke* at para 38.

[26] 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*];

*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61. Furthermore, the reviewing court “must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”: *Vavilov* at para 100.

[27] With respect to the Applicant’s allegations of procedural unfairness, no standard of review is applied but the Court’s reviewing exercise is “best reflected on a correctness standard”: *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. The reviewing court must ask whether the decision-making process was fair in the circumstances: *CPR* at para 54.

#### IV. Analysis

##### A. *Preliminary issues*

[28] There are two preliminary issues for determination. First, the properly named Respondent. The Applicant named the Canada Revenue Agency as the Respondent. However, pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], the Attorney General of Canada should have been named: *Mokrycke* at para 7. The style of cause is therefore amended accordingly.

[29] The second issue is the admissibility of the Applicant's affidavit evidence. The Applicant filed an affidavit attaching sixteen exhibits, marked C through S. Generally, the only evidence admissible on judicial review is material that was before the decision-maker: *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 7 [*Sharma*]; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 13 [*Bernard*]; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*].

[30] There are three recognized exceptions to this general rule: (1) evidence that provides general background in circumstances where that information may assist the reviewing court in understanding the issues relevant to the judicial review application; (2) evidence that addresses issues of procedural fairness, for example, procedural defects in the decision-making process that are not found in the record; and (3) evidence that highlights the complete absence of evidence before the decision-maker: *Sharma* at para 8; *Bernard* at paras 14, 20–27; *Access Copyright* at para 20.

[31] Here, Exhibits D, G, K, and L, to the Applicant's affidavit form part of the Certified Tribunal Record and are therefore admissible. Although the remaining exhibits were not before the Director General when she made the impugned decision, the Respondent fairly conceded that several could be considered as background information or as potentially relevant to the Applicant's procedural fairness arguments. I find that Exhibits F, H, I, J, and M, fall within the recognized exceptions and are admissible. Exhibits C, E, P, and S, however, do not fall within any of the recognized exceptions and are therefore not admissible.

[32] Exhibits N, O, Q, and R, essentially constitute the Applicant's submissions regarding alleged errors in the underlying decision. As such, these exhibits are not properly admissible as evidence. However, I am cognizant that the Applicant, as a self-represented litigant, may not be familiar with the *Rules* and the requirement to include a Memorandum of Fact and Law in his Application Record. While these four exhibits are not admissible as evidence, I have considered them as the Applicant's written submissions in support of his application for judicial review.

B. *The relevant legal framework*

[33] Pursuant to subsection 23(2) of the *FAA*, a Minister may recommend the remission of taxes, penalties, and interest to the Governor in Council where the collection of the tax or other debt, or enforcement of the interest or penalty, is unreasonable or unjust or if remission is otherwise in the public interest:

**23 (2)** The Governor in Council may, on the recommendation of the appropriate Minister, remit any tax or penalty, including any interest paid or payable thereon, where the Governor in Council considers that the collection of the tax or the enforcement of the penalty is unreasonable or unjust or that it is otherwise in the public interest to remit the tax or penalty.

**23 (2)** Sur recommandation du ministre compétent, le gouverneur en conseil peut faire remise de toutes taxes ou pénalités, ainsi que des intérêts afférents, s'il estime que leur perception ou leur exécution forcée est déraisonnable ou injuste ou que, d'une façon générale, l'intérêt public justifie la remise.

[34] A remission order is an extraordinary measure: *Fink v Canada (Attorney General)*, 2019 FCA 276 at para 1 [*Fink*]; *Mokrycke* at para 64; *Internorth Ltd v Canada (National Revenue)*, 2019 FC 574 at para 20 [*Internorth*]. As the Federal Court of Appeal explains, remission is a highly discretionary determination that considers various factors: *OATC FCA* at paras 2–3; *Waycobah*

*First Nation v Canada (Attorney General)*, 2011 FCA 191 at paras 18–19. On this basis, considerable deference is owed to the decision-maker: *Fink* at para 1; *Rahman v Canada (Attorney General)*, 2022 FC 806 at para 27 [*Rahman*]; *Internorth* at paras 10, 41.

[35] The Remission Guide was developed by the CRA to assist officials in assessing remission requests. It identifies four non-exhaustive categories that are generally considered: (i) extreme hardship; (ii) financial setback with an extenuating factor; (iii) mistake made by the CRA; and (iv) unintended results of the legislation: Remission Guide, RR at 9; *OATC FC* at para 32; *Jefferson v Canada (Attorney General)*, 2021 FC 658 at para 34; *Mokrycke* at paras 43–44.

C. *The Director General reasonably considered relevant factors*

[36] In this case, the Director General was acting as the delegate of the Minister of National Revenue in deciding whether to recommend remission.

[37] In his remission request, the Applicant asserted that, because of his personal and professional challenges, he was more reliant than usual on his professional advisors for assistance with his tax affairs. In addition, the Applicant argued that he could establish that the reassessments were incorrect as he had documentation to show that his income and expenses for the 2005 and 2006 taxation years had been properly reported and claimed: Letter dated January 17, 2017 at 2–3, RR at 78–79.

[38] As discussed above, on reconsideration, the CRA gave the Applicant an opportunity to file additional information and evidence to support his remission request. The CRA specifically

requested further information and documentation from the Applicant to establish the circumstances that prevented him from addressing his tax matters at the audit, objection, and appeal stages, as well as documentation to support his assertion that the reassessments were incorrect.

[39] Based on the Applicant's representations, the Director General considered two categories, as set out in the Remission Guide, in determining whether the Applicant's remission request could be supported. First, whether there was a financial setback with an extenuating factor. Second, whether there was a mistake made by the CRA.

(1) Financial setback with an extenuating factor

[40] According to the Remission Guide, remission may be recommended "when a financial setback is present, as well as at least one extenuating factor" [emphasis in original]. Moreover, the Guide provides that "[a]n extenuating factor is usually a circumstance beyond the person's control which impacts their ability to meet their tax, filing, or payment obligations": Remission Guide at 7, RR at 11.

[41] In the circumstances, the Director General determined that the payment of the tax debt constituted a financial setback for the Applicant. However, she concluded that there were no extenuating factors justifying a remission order. In that respect, she considered the Applicant's circumstances at the audit, objection, and appeal stages: Director General Decision at 4–5, AR at 63–64.

(a) *The audit stage*

[42] With respect to the audit stage (October 2008 to May 2009), the Director General acknowledged that the Applicant was facing numerous significant personal and professional issues during that time. She further recognized “the challenges of dealing with these competing urgent complex personal and professional matters”. The Director General nonetheless found there was “insufficient documentation and information” supporting that the Applicant was unable to address the audit: Director General Decision at 4, AR at 63.

[43] I agree with the Applicant that the Director General failed to consider the combined effect of his challenges. In the Applicant’s remission request, his lawyer referred to the Applicant’s circumstances as a “perfect storm”: Letter dated January 17, 2017 at para 13, RR at 78. This is an apt description, given the convergence of different challenges faced by the Applicant during the audit stage — a family law dispute, the eviction of a tenant who was causing damage to his property and being the architect on a renovation project where the building was on the verge of collapse.

[44] Rather than considering the totality of these personal and professional challenges, each was assessed by the CRA in isolation. This is highlighted in the Second Review Report, where each matter is individually examined. Notably, the CRA policy analyst comments that family disputes and urgent work matters are not “uncommon situations”: Second Review Report at 11, RR at 27.

[45] In my view, the Director General should have considered whether, based on the combination of these personal and professional matters, the Applicant had demonstrated that he was unable to address the audit issues within the applicable period. This said, as explained below, the Director General's failure in this regard is not a fatal flaw that renders her decision unreasonable: *Vavilov* at para 100.

[46] Even accepting that the Applicant was unable to address the CRA's concerns during the audit, his first accountant filed Notices of Objection to the 2005 and 2006 reassessments on his behalf in August 2009. The filing of these objections preserved the Applicant's ability to challenge the reassessments through the CRA's objection and appeal processes. As a result, it was necessary for the Director General to consider whether any extenuating factors precluded the Applicant from addressing the reassessments at the objection and appeal stages. For the following reasons, I find that the Director General's reasoning in this regard is wholly reasonable.

(b) *The objection and appeal stages*

[47] On reconsideration, the CRA requested further information with respect to the Applicant's circumstances during the objection stage (August 2009 to July 2010), including his efforts to pursue the objection and his communications with his representative. More particularly, he was asked:

- How often did you follow up with the representative about the progress of your objection? (Email exchanges, phone calls log can be provided as support)
- What did you do when you received the CRA's letter dated June 28, 2010 that proposed to confirm the reassessment?

- Did you follow up with the representative when the deadline to submit representations was approaching?
- What did you do when you received the Notice of Confirmation dated August 30, 2010 for both taxation years?
- Were there any circumstance that prevented you from following up with the representative or the appeals officer during and after the objection? If yes, please provide details and supporting document to collaborate the timeline of the event(s).

Letter dated May 21, 2021 at 1–2, RR at 65–66.

[48] The evidence demonstrates that, during the objection stage, the Applicant continued to deal with his family law matter until April 2010 and was managing a foreclosure on two of his mortgages between December 2009 and February 2010. Based on this timeline, the Director General, however, concluded that the Applicant still “had sufficient opportunity to gather, prepare and provide supporting documentation for [his] objection”: Director General Decision at 5, AR at 64. This conclusion was reasonably open to the Director General on the record: *Vavilov* at para 103. Given that his personal and professional challenges were dealt with by April 2010, the Applicant had ample time (over four months) to turn his mind to the objections and follow-up with his tax advisor.

[49] Despite the CRA’s June 28, 2010 request, with a deadline of July 30, 2010, the Applicant did not provide any further information or documentation to support his objections. During the second review, the Applicant explained to the CRA policy analyst that he simply forwarded the CRA’s correspondence to his accountant, “trusting he would handle it”: Notes of Telephone Meeting dated July 8, 2021, RR at 72.

[50] In the circumstances, the Director General reasonably rejected the Applicant's argument that remission was warranted because his tax advisors had failed him. As she explained, taxpayers are expected to monitor their tax affairs and reliance on a representative who fails to act does not justify remission unless circumstances render the taxpayer incapable of acting independently:

It was your responsibility to follow up with your representatives to ensure that they had made representations to support your objection. Given the substantial audit adjustments, you should have actively monitored the objection's progress and resolution. However, it is unclear why you waited until February 2011 to contact the CRA about your objection.

Generally, engaging a tax professional who fails to deliver the promised services does not support a positive recommendation for remission, unless there are extenuating circumstances outside of a taxpayer's control which rendered them incapable of managing the tax affairs themselves. Many taxpayers face personal and professional problems and nonetheless are still expected to manage their tax affairs. As explained above, there were no extenuating circumstances that would have prevented you from following up with your representatives during the objection review.

Director General Decision at 5, AR at 64.

[51] The Director General's finding in this regard is consistent with the jurisprudence that taxpayers are responsible for errors made by their representatives, absent exceptional circumstances: *Hajar Properties Inc v Canada (Attorney General)*, 2023 FC 944 at paras 8, 31, 32; *Rosenberg Estate v Canada (National Revenue)*, 2011 FC 445 at paras 2, 47.

[52] Finally, the Director General considered the Applicant's circumstances at the appeal stage (August 2010 to November 2011). As the Director General noted, following confirmation of the reassessments in August 2010, the CRA advised the Applicant of his appeal rights and the deadline of November 28, 2010, for doing so. He was subsequently advised in February 2011 that he could

seek an extension of time to appeal to the Tax Court, as well as the filing deadline of November 29, 2011.

[53] On reconsideration, the CRA asked the Applicant why he had not pursued an appeal or sought an extension of time within the applicable periods, and whether there were any reasons for his delay: Letter dated May 21, 2021 at 2, RR at 66. In response, the Applicant stated that, after receiving the Notice of Confirmation in August 2010, the second accountant refused to assist him as the Applicant had failed to pay a previous account (the Applicant refused as the accountant had not done what he was supposed to do). The Applicant acknowledged that the accountant never promised to deal with the Notice of Confirmation or to file an appeal on his behalf. The Applicant expressed feeling overwhelmed and not knowing who to turn to: Notes of Telephone Meeting dated July 8, 2021, RR at 72–73.

[54] On the evidentiary record before her, the Director General reasonably found that the Applicant had not “identified any extenuating circumstances that prevented [him] from appealing to the [Tax Court] or requesting a time extension before all deadlines expired in November 2011”: Director General Decision at 5, AR at 64.

(2) Mistake made by the CRA

[55] In accordance with the Remission Guide, remission may be recommended when an individual is required to pay additional taxes because CRA officials have taken incorrect action or have provided incorrect advice. In such cases, the individual must be able to provide evidence

supporting that an error occurred. However, the Remission Guide makes clear that the presence of an error alone will not generally support remission.

[56] The Remission Guide sets out relevant factors that the CRA may consider in assessing whether remission should be recommended due to a mistake made by the CRA. Significantly, one factor is that “the person could not reasonably have been expected to file a waiver or Notice of Objection or provide new information within the required time limits to resolve the problem by the usual means (for example, by providing additional representations during the course of an audit or objection)”: Remission Guide at 8, RR at 12.

[57] In his remission request, the Applicant asserted that “[i]f he had been able to respond effectively, he would have been able to show that the income and expenses he reported were as filed”: Letter dated January 17, 2017 at 3, RR at 79.

[58] On reconsideration, the Applicant submitted documentation to support his claimed income and expenses, and to demonstrate that the reassessments were incorrect. After reviewing the documentation, the Director General determined that had the Applicant presented the documentation during the audit or the objection stages, his reassessments may have been reduced.

[59] Although the CRA found some allocation errors between the two taxation years, it concluded that “the errors were immaterial to the amounts assessed and are balanced over the two taxation years”: Second Review Report at 8, RR at 24. The Director General further noted there remained a “significant portion of expenses” that were not justified as business expenses, including

personal travel and meals, motor vehicle expenses, payments to family members, and transfers of funds to and from his corporation: Director General Decision at 5–6, AR at 64–65.

[60] Ultimately, the Director General concluded that it was the Applicant’s responsibility to provide the documentation when requested during the audit or objection processes, or to file a notice of appeal. She explained that remission was not “a means to revisit an audit or extend the time to file an objection or appeal”, absent extenuating circumstances: Director General Decision at 6, AR at 65. This conclusion is consistent with the jurisprudence: *Abdat v Canada (Attorney General)*, 2022 FC 1316 at para 25; *Rahman* at paras 48–51; *Internorth* at paras 30–31.

[61] At the judicial review hearing, the Applicant argued that bias and bad faith by the CRA during the audit constituted the incorrect action justifying remission. He further asserted that the audit was “fraudulent, false, and grossly misleading”. This allegation of bias was not raised in the Applicant’s initial remission request: Letter dated January 17, 2017, RR at 77–79.

[62] According to the Second Review Report, the Applicant “implied that the CRA was biased in the audit selection process,” stating that a commercial tenant of his company was a CRA employee who “had instigated the audit as a ‘vindictive action’ against him for his persistent requests to pay outstanding rent.” However, the CRA policy analyst noted that the Applicant did not provide any documentation to support this bias allegation: Second Review Report at 9, RR at 25. As already discussed, the Applicant was given an opportunity to submit any additional information he wanted the CRA to consider during the second review.

[63] Moreover, the Applicant faces the same hurdle, in that he could have raised this issue during the objection or appeal stages as a ground for disputing the reassessments. Indeed, this Court has held that any alleged unfairness in the CRA's conduct at the audit or assessment stage may be remedied through the objection process and, ultimately, by an appeal *de novo* to the Tax Court of Canada: *Ghazi v Canada (National Revenue)*, 2019 FC 860 at paras 41, 46.

(3) Extreme financial hardship

[64] In his oral submissions, the Applicant argued that extreme financial hardship was another factor that justified granting remission. This factor, however, was not addressed by the CRA on reconsideration because, in the first judicial review application, Justice Norris found that it was “clear” that the Applicant's circumstances did not rise to the level of extreme financial hardship: *Mokrycke* at para 47. Furthermore, the Applicant did not submit any evidence or make any representations demonstrating extreme financial hardship during the CRA's second remission review: Second Review Report at 13, RR at 29.

[65] Generally, arguments made for the first time on judicial review should not be entertained where the issue could have been raised before the administrative decision-maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–23; *Sturgeon v Canada (Attorney General)*, 2026 FCA 46 at para 10; *Zoghbi v Air Canada*, 2024 FCA 123 at paras 26–27, 30; *Terra Reproductions Inc v Canada (Attorney General)*, 2023 FCA 214 at paras 6–7; *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 49. On this basis, I decline to entertain this new argument.

D. *The CRA's decision-making process was fair*

[66] The Applicant submits that the decision-making process was unfair because it took the CRA almost four years to reconsider his remission request following the Court's decision allowing his first judicial review application. I agree with the Respondent that this ground of review cannot succeed.

[67] As the Federal Court of Appeal explains, delay, in and of itself, will rarely constitute a ground of review; an applicant must establish that the delay prejudiced their ability to have a fair hearing: *Maximova v Canada (Attorney General)*, 2017 FCA 230 at para 16, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101. Here, there is simply no evidence that the passage of time impaired the Applicant's ability to present his case.

[68] The jurisprudence is also clear that an affected party must raise any concerns about delay before the decision-maker at the first opportunity: *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 78. This was not done here.

[69] At the judicial review hearing, the Applicant stated that, in his conversations with the CRA policy analysts during the second review, it was implied that "the results would be favourable for [him]". To the extent that the Applicant may be raising an argument about legitimate expectations, this also must fail. The doctrine of legitimate expectations does not create substantive legal rights, only procedural ones: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 97; *Chelsea (Municipality) v Canada (Attorney General)*, 2024 FCA 89 at para 36. As

a result, even where a person has “a legitimate expectation that a particular substantive outcome will be reached, that expectation is not enforceable”: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 75.

[70] For these reasons, the Applicant has not established any breaches of procedural fairness.

**V. Conclusion**

[71] The discretionary decision of whether to recommend remission is an exceptional remedy, and, as such, is owed significant deference by the reviewing court. While I have sympathy for the Applicant’s situation, there are no reviewable errors in the Director General’s decision refusing to recommend remission. I must therefore dismiss the application for judicial review.

[72] Post-hearing, the parties advised the Court that they had agreed that neither party would seek costs. On this basis, no costs will be awarded to the Respondent.

**JUDGMENT in T-2109-24**

**THIS COURT’S JUDGMENT is that:**

1. The style of cause is amended to name the Attorney General of Canada as the Respondent.
2. The application for judicial review is dismissed without costs.

“Anne M. Turley”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2109-24

**STYLE OF CAUSE:** JOHN MOKRYCKE v THE ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 23, 2026

**JUDGMENT AND REASONS:** TURLEY J.

**DATED:** MAY 5, 2026

**APPEARANCES:**

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ON HIS OWN BEHALF

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Nancy Arnold

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT