Federal Court  Cour fédérale

Date: 20250305

Docket: T-2240-24

Citation: 2025 FC 408

Ottawa, Ontario, March 5, 2025

PRESENT: Mr. Justice Grammond

BETWEEN:

LAILA MCMILLAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Ms. Laila McMillan, seeks judicial review of a decision by the Canada Revenue Agency [CRA] denying her request for relief under subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [the Act] in respect of interest accrued since 2005.

[2] I am dismissing Ms. McMillan's application because the CRA's decision is reasonable and was rendered in a procedurally fair manner.

[3] Therefore, this application for judicial review is dismissed.

I. Background

[4] On her tax return for the 2005 fiscal year, Ms. McMillan claimed a tax credit in respect of a donation to the Canadian Humanitarian Trust in the amount of $41,615.67. It is not disputed that the donation was arranged by her ex-husband, even though she claimed it on her own tax return. Upon this occasion, Ms. McMillan claims that she had a telephone conversation with a CRA officer about the legitimacy of the Canadian Humanitarian Trust. She states that the officer informed her that there were no known concerns with this organization.

[5] As it later turned out, however, the Canadian Humanitarian Trust was a donation tax shelter scheme in which thousands of Canadians participated. For the present purposes, suffice it to say that participants made a cash donation to the Canadian Humanitarian Trust, which then generated an in-kind donation that the participants claimed on their tax returns. In 2005, for example, Ms. McMillan's cash donation had been in the amount of $11,340 while the in-kind donation represented the difference between this amount and the amount of $41,615.67 claimed on her tax return.

[6] In June 2008, the CRA reassessed Ms. McMillan's 2005 tax return, and denied the donation tax credit in full. She was consequently reassessed for an additional amount of $18,460.09 with respect to her income tax, plus arrear interest.

[7] In December 2008, Ms. McMillan filed her first notice of objection. In February 2009, the CRA informed her that given the high number of Canadians who had participated in the Canadian Humanitarian Trust, her objection would be held in abeyance until a final judicial decision on the validity of these donations was rendered.

[8] In February 2015, the CRA advised Ms. McMillan that her 2005 tax return would be reassessed to allow the cash portion of the donation and that interest would be adjusted accordingly. The CRA, however, maintained its decision with respect to the in-kind portion of the donation. Through a letter, the CRA provided Ms. McMillan with two options: she could either waive her objection or appeal rights and the CRA would cancel the interest for the in-kind portion of her donation, or she could pursue her objection, in which case interest would continue to accrue on her outstanding balance. The letter indicated that silence would be interpreted as selecting the second option. Ms. McMillan did not answer.

[9] In July 2015, Ms. McMillan's 2005 tax return was effectively reassessed. Her outstanding tax was reduced to $13,551.01, with interest adjusted accordingly.

[10] In September 2015, Ms. McMillan filed a notice of objection for this second reassessment. Her objection was held in abeyance pending a final decision in the lead cases *Morrison* and *Eisbrenner*, which pertained to the validity of in-kind donations to the Canadian Humanitarian Trust.

[11] In May 2020, the Federal Court of Appeal ultimately ruled that the Canadian Humanitarian Trust was, in fact, a donation tax shelter scheme, and disallowed claims for charitable tax credits for in-kind donations: *Eisbrenner v Canada*, 2020 FCA 93. The final resolution of this tax law saga came when the Supreme Court of Canada denied leave to appeal in January 2021: *Dieter Eisbrenner v Her Majesty the Queen*, 2021 CanLII 1093 (SCC); *V. Ross Morrison v Her Majesty the Queen*, 2021 CanLII 1092 (SCC).

[12] The CRA then resumed processing objections pertaining to the reassessment of Canadian Humanitarian Trust donations. In June 2022, Ms. McMillan was issued a notice of confirmation that the in-kind donation of $30,318 was disallowed as a charitable donation. Nevertheless, the CRA waived interest from March 18, 2020 to September 30, 2020 because of the CRA's response to the pandemic, and then from March 14, 2021 to June 30, 2022 because of the CRA's delays in processing objections after the final resolution of *Eisbrenner* and *Morrison*.

[13] In November 2022, Ms. McMillan filed her first application to the Minister for discretionary relief under subsection 220(3.1) of the Act.

[14] In May 2023, Ms. McMillan filed an appeal from the reassessment of her 2005 tax return to the Tax Court. A week later, her tax refund for the 2022 fiscal year was applied to offset her outstanding balance with the CRA.

[15] In February 2024, the Tax Court dismissed Ms. McMillan's appeal: *McMillan v The King* (13 February 2024), Vancouver 2022-2833(IT)I (TCC). The Court determined that she could not shift responsibility onto her ex-husband, as "she claimed the donations on her 2005 tax returns and now she must live with the consequences." This finding was buttressed by Ms. McMillan's call to CRA in 2005, which, in the Tax Court's opinion, confirmed that she understood that she was the one who made the donation.

[16] In April 2024, the CRA refused Ms. McMillan's request for relief from arrears interest. She then requested a second independent review of her application.

[17] In August 2024, the CRA issued its second review decision, which is the subject of the present application for judicial review. It granted relief in part from January 1, 2012 to December 31, 2015 because of financial hardship, but denied it in all other respects.

II. Second Review Decision

[18] The CRA officer first stated that subsection 220(3.1) of the Act prevents it from granting relief beyond the ten calendar years before the year the request was made. As Ms. McMillan filed her request in 2022, the CRA only reviewed the period starting January 1, 2012.

[19] The CRA officer then noted that the CRA had issued warnings to taxpayers about donation tax shelter schemes since the early 1990s.

[20] They found no unreasonable delays on the part of the CRA except from March 14, 2021 to June 30, 2022, for which relief had already been granted. They noted the complexity and magnitude of the Canadian Humanitarian Trust scheme, which took many years to detect and process. They determined that the normal three-year timeframe for reassessment was respected, as Ms. McMillan's initial notice of assessment was issued in May 2006 while the reassessment was done in June 2008.

[21] The CRA officer found that Ms. McMillan had been informed on multiple occasions over the years that she could pay the balance she owed to avoid interest accumulating, and that she had declined to do so. They further recalled that in February 2015, she was provided with the option to waive her right to object, in which case the CRA would waive interest on her in-kind donation, and that she had ignored this offer.

[22] The CRA officer then turned to financial hardship. They found that most of Ms. McMillan's submissions related to her expected future financial situation upon retirement, for which they cannot yet grant relief. However, they did grant relief from 2012 to 2015 due to her minimal income during those years but found that otherwise, her family income and the funds in her bank accounts were sufficient to offset the taxes.

III. Analysis

A. *Preliminary Matter*

[23] At the hearing, the respondent submitted that the style of cause should be amended to identify the Attorney General of Canada as the proper respondent, in accordance with rule 303(2) of the *Federal Courts Rules*, SOR/98-106. I agree.

B. *Merits*

[24] I am dismissing Ms. McMillan's application, as she has not met her burden to demonstrate the unreasonableness of the decision to deny her taxpayer relief. I find that the CRA officer was responsive to the arguments raised by Ms. McMillan and abided by the legal constraints bearing upon them.

[25] Subsection 220(3.1) of the Act affords broad discretion to the Minister to "waive or cancel all or any portion of any penalty or interest." The CRA has issued an administrative guideline, Circular 07-1R1 [Circular], setting out factors that the Minister considers upon determining relief requests.

[26] The Circular explains the purpose of subsection 220(3.1) of the Act:

> The [Act] gives the CRA the ability to administer the income tax system fairly and reasonably. The CRA does this by helping taxpayers resolve issues that come up through no fault of the taxpayers and by allowing for a common-sense approach in dealing with taxpayers who, because of personal misfortune or circumstances beyond their control, could not comply with a legal requirement for income tax purposes.

It provides for three categories of circumstances upon which the Minister may grant relief: (1) extraordinary circumstances; (2) actions of the CRA; and (3) financial hardship. The CRA will also consider the taxpayer's conduct, including whether they have a history of voluntary compliance with tax obligations, whether they knowingly allowed a balance to exist, whether they exercised a reasonable amount of care with respect to their tax affairs, and whether they acted quickly to remedy delays or omissions on their part: *Simmons v Canada (Attorney General)*, 2021 FC 202 at paragraph 19.

(1) Extraordinary circumstances

[27] Ms. McMillan first argues that the CRA misapprehended her extraordinary circumstances, which should have warranted relief. She labels as "extraordinary circumstances" elements that more properly pertain to the CRA's conduct, which I will therefore analyze below. Her main arguments at this stage are that it was her ex-husband, not her, who donated to the Canadian Humanitarian Trust, and that given its complexity, she could not have known that the Canadian Humanitarian Trust was a donation tax shelter scheme.

[28] Ms. McMillan submitted certain letters addressed to her ex-husband in respect of a donation to the Canadian Humanitarian Trust. She argues that this is evidence that the donations

were made by her ex-husband, not by her. However, it appears from the CRA's reply before the Tax Court that her ex-husband transferred the tax credit to her. In any event, the computerized records filed in evidence show that she claimed a tax credit in respect of the donation that is at the heart of the present case.

[29] While I do not doubt that it was her ex-husband who arranged for making the donation, I cannot find any reviewable error in the CRA officer's determination that this did not amount to an extraordinary circumstance. The purpose of subsection 220(3.1) of the Act is to excuse a taxpayer who found themself unable to meet their tax obligations because of circumstances beyond their control. Examples of extraordinary circumstances listed in the Circular include civil disruption, serious illness and disaster. The CRA officer reasonably determined that claiming a charity donation on the advice of one's spouse is simply not akin to these examples, and not outside of a taxpayer's control. As the Tax Court did, the CRA officer reasonably explained that Ms. McMillan cannot shift responsibility onto her ex-husband as the "responsibility for meeting obligations under the [Act] rest[s] with the individual." Any misunderstanding in this regard would be a matter between Ms. McMillan and her ex-husband, rather than with the CRA.

[30] I also find no error in the CRA's assessment of extraordinary circumstances in light of the complexity of the Canadian Humanitarian Trust tax scheme. The CRA explained that "the duty to investigate, research, or solicit independent professional advice about a particular tax scheme or programs, as well as the risks of participation, rests on the taxpayer" and that "[t]axpayers should not expect to profit from a charitable donation." The CRA also noted that it had been issuing warnings to taxpayers about the risks of participating in donation tax shelter schemes since 1993. Simply put, it was reasonable to decide that the complexity of a tax scheme cannot be a ground for

taxpayer relief when individuals willingly participate in it. The CRA cites the principle that if one expects to make a profit from their participation in a charity, then they must bear the associated risk, and I agree.

(2) Actions of the CRA

[31] The Circular provides that relief may be granted due to the actions of the CRA, including delays in providing information or resolving an objection and incorrect information provided to the taxpayer. Ms. McMillan submits that the CRA should have found that its deficient handling of her file entitled her to relief. She relies on the inaccurate information she was provided by a CRA officer in 2005, the delays in resolving her objection, and contradicting information about the amount of tax owing.

[32] I first turn to the 2005 conversation. Ms. McMillan claims to have decided to go ahead with the charitable donation tax credit claim after a CRA officer informed her that there were no concerns on record with the Canadian Humanitarian Trust. Nonetheless, the CRA officer determined that the information provided during this conversation did not warrant relief. The CRA officer noted that the fact that the Canadian Humanitarian Trust was registered did not guarantee that taxpayers would receive the expected tax benefits, especially where the expected benefits exceed the actual amount of the donation. In addition, even though the CRA is making efforts to warn the public about questionable tax schemes, the officer noted that this can only take place "after the CRA becomes aware of them and has determined that they may be questionable." In my view, this is entirely reasonable.

[33] Neither can I find a ground of review in the CRA's conclusion that, with the exception of March 2021 to June 2022, there were no undue delays attributable to the CRA. The CRA explained that a three-year timeframe is the standard for reassessments, and it was respected as two years had elapsed between Ms. McMillan's 2006 assessment and her 2008 reassessment. The CRA officer held that the delay until the final resolution of *Eisbrenner* and *Morrison* was not CRA's making, as it is "subject to the same timelines imposed by the courts as are taxpayers." They then reminded that Ms. McMillan had agency over the magnitude of the accrued interest, as she chose not to accept the 2015 waiver offer which would have cancelled the arrear interest on the in-kind portion of her donation. This is again only logical, and fully supported by the facts.

[34] I agree with Ms. McMillan that normally, a seven-year delay for ruling on an objection would be excessive. However, the delay in the present case is justified by the magnitude and the complexity of the situation. Thousands of Canadians participated in the Canadian Humanitarian Trust donations program. The CRA understandably took both time and resources to decipher and address it. That is equally true in other similar tax schemes: see, for example, *Belchetz v Canada (National Revenue)*, 2020 FCA 225; *Amoroso v Canada (Attorney General)*, 2013 FC 157 at paragraph 69, referring to *Moledina v The Queen*, 2007 TCC 354.

[35] The CRA officer reasonably found that Ms. McMillan had allowed "interest to accrue on the unpaid balance." The CRA officer noted that she did not avail herself of the 2015 waiver offer, which would have cancelled the interest owing, and that she was "advised on each notice of assessment or reassessment following [her] objection that the CRA charges daily compound interest on any unpaid balance." This is fully supported by the record. Ms. McMillan was informed on multiple occasions that interest would continue to accrue: for example through the February 25,

2015 waiver offer; the June 30, 2022 notice of confirmation; the October 4, 2022 notice of collection; the December 16, 2022 acknowledgement of receipt for the first relief request; and the May 9, 2023 service complaint. Other communications stated that to avoid this situation, she could pay her account balance, which would be reimbursed if her objection was successful: for example the February 25, 2009 letter acknowledging receipt of the notice of objection. The CRA officer's determination is in line with the caselaw, as this Court has upheld denials of relief based on delays in cases where applicants were warned that interest would continue to accrue in the absence of payments: *Chau v Canada (Attorney General)*, 2019 FC 1342 at paragraph 22, referring to *Martel v Canada (Attorney General)*, 2019 FC 840 at paragraph 28; *Pathak v Canada (National Revenue)*, 2019 FC 252 at paragraph 55.

[36] At the hearing, Ms. McMillan indicated that she never received the 2015 waiver offer or the 2008 notice of reassessment, which would have been sent to her ex-husband. This submission, however, is not properly before this Court as it was not before the CRA. Because this judicial review is a review of the reasonableness of the CRA's decision, I must restrict my inquiry to the submissions that were before the CRA officer to ascertain whether the decision rendered is justified in light of the facts and submissions that were presented to them: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paragraph 23. In any event, Ms. McMillan objected to the 2015 reassessment, which shows that she had received it. It is difficult to understand why she would not have received the waiver offer a few months earlier.

[37] Ms. McMillan argues that she was provided with contradictory information on the amount of the principal she owed. She points to the CRA's reply before the Tax Court, which mentions a

"net tax advantage" of $6,818. If I understand her argument correctly, this would have discouraged her from paying her tax debt. In this regard, Ms. McMillan appears to confuse the principal amount she owes with the net tax advantage created by her 2005 tax credit claim. The latter was the amount mentioned in the CRA's reply and corresponds to the difference between the cash donation that was actually made and the federal and provincial tax credits that ensued. Although the CRA officer did not deal with this submission, I fail to see how it can warrant relief, as the CRA did not provide erroneous information to Ms. McMillan.

(3) Financial Hardship

[38] Ms. McMillan asserts that the CRA officer should have granted relief due to financial hardship. The Circular defines financial hardship as a "prolonged inability to provide basic necessities … such as food, medical care, transportation, or accommodation." The CRA officer determined that Ms. McMillan had sufficient family income and funds in her Registered Retirement Savings Plan account from 2016 to 2022 to be able to pay her balance without enduring undue hardship. Upon reviewing the material before me, I find that the CRA officer's assessment was reasonable. In their notes, the CRA officer explained that except from 2012 to 2015, Ms. McMillan's family income was above the Net Household Income for the National Maximum for Financial Hardship, Income levels from Benefit Manual. I also note that even though Ms. McMillan contributed to her Tax-Free Savings Account in 2012, 2013 and 2014, the CRA officer still granted relief from 2012 to 2015.

[39] Ms. McMillan takes issue with the CRA officer's refusal to consider her future financial situation. The CRA officer explained that they could only consider her current financial situation.

As the respondent points out, this is consistent with the Circular, which indicates that taxpayers are required to "send another request to cancel the interest that accrued after the date of the [relief] decision, if their financial situation has not improved." This Court has also held that CRA officers cannot be asked to predict the future: *Bird v Canada (National Revenue)*, 2014 FC 843 at paragraph 50; *Allen v Canada (Attorney General)*, 2021 FC 364 at paragraph 22.

C. *Procedural Fairness*

[40] In both her written and oral submissions, Ms. McMillan raised several issues concerning procedural fairness. She mainly argues that she was never made aware of her file; that she had difficulty reaching the CRA to gather information about her case; that the CRA owed her a duty of care as a taxpayer; and that the CRA wrongly applied her tax refund to offset her balance, contrary to Article 7 of the *Taxpayer Bill of Rights*. Again, I cannot find any merit to Ms. McMillan's arguments. I will review each of them in turn.

[41] At the hearing, Ms. McMillan claimed that the CRA failed to give her proper notice of her tax situation. The record contradicts this submission. The 2008 and 2015 notices of objection are not in the record before me. However, I can assume that Ms. McMillan filed them: the February 25, 2009 letter acknowledging receipt of her notice of objection was addressed to her; and by 2015, she had separated from her ex-husband. The 2015 waiver offer was also addressed to her. In other words, the record simply does not support that she was not made aware of her reassessments, of the balance owing, or of the accruing interest.

[42] Ms. McMillan takes issue with the CRA's failure to assign an officer to her file, which in her opinion resulted in her inability to reach the CRA and to receive crucial information in a timely manner. Again, the record does not support this submission. The CRA was not required to assign an officer to Ms. McMillan. The record shows that the CRA contacted Ms. McMillan at all relevant steps of her file, and I fail to see any relevant information that was not communicated to Ms. McMillan and that she would have needed to avoid interest accruing with the magnitude that they have.

[43] It is trite law that the CRA owes no duty of care to taxpayers: *Oddi v Canada (Revenue Agency)*, 2022 FC 1313 at paragraphs 73–86. Therefore, I cannot accept Ms. McMillan's submission in this regard.

[44] Finally, Ms. McMillan's grievance about the application of her 2022 tax refund to her tax debt must also fail. She relies on Article 7 of the *Taxpayer Bill of Rights*, which states that "unless otherwise provided by law, [a taxpayer has the right] not to pay income tax amounts in dispute before [they] have had an impartial review." Ms. McMillan submits that the CRA wrongfully seized her 2022 tax refund while her file was still in dispute given her appeal to the Tax Court. However, this issue is not properly before this Court, nor was it properly before the CRA officer, as it does not relate to the decision to grant relief or not.

IV. Conclusion

[45] For all the above reasons, I dismiss the application for judicial review. The CRA officer reasonably and fairly determined that Ms. McMillan was not entitled to discretionary taxpayer relief from the interest accrued since 2005.

The respondent is not seeking costs. Thus, no costs will be awarded.

JUDGMENT in T-2240-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Attorney General of Canada as the proper respondent.

2. The application for judicial review is dismissed.

3. There is no award as to costs.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2240-24
STYLE OF CAUSE:	LAILA MCMILLAN v ATTORENY GENERAL OF CANADA
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