

Federal Court



Cour fédérale

**Date: 20180810**

**Docket: T-159-17**

**Citation: 2018 FC 825**

**Ottawa, Ontario, August 10, 2018**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**DAVID M. ROBINSON**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant, David M. Robinson, [Mr. Robinson] seeks judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision made by Rene Phaneuf [the Decision Maker] a Team Leader with the Taxpayer Relief Centre of Expertise, Appeals Branch of the Canada Revenue Agency [the CRA], acting as the delegated authority of the Minister of National Revenue [the Minister]. The Decision Maker reviewed Mr. Robinson's second level request for reconsideration of a first level taxpayer relief decision which denied him taxpayer

relief from penalties and interest assessed against him under the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Supp) [the *ITA*] with respect to his 2008 taxation year.

[2] In a letter dated January 3, 2017, the Decision Maker advised Mr. Robinson that he would not exercise their discretion to cancel or waive penalties or interest in respect of Mr. Robinson's 2008 taxation year beyond those already canceled [the Decision].

[3] Mr. Robinson asserts that the Decision Maker committed a reviewable error by failing to consider certain facts, while misapprehending other facts, which could have had an impact on whether the relief should have been granted.

[4] Mr. Robinson further suggests in his notice of application that there may have been a breach of the CRA's duty of care, statutory duty, and possibly bad faith or improper conduct. Those allegations were not pursued at the hearing.

[5] Mr. Robinson requests the Decision be found unreasonable and that this Court make an order that all penalties and interest be reversed or that the matter be sent back for redetermination. He further asks this Court to order a stay of collections in the interim, a discharge of any related securities or liens, and solicitor and client costs.

[6] The Minister opposes the application. It says the Decision Maker's determination that relief was not warranted was reasonable given the fact that Mr. Robinson did not file his 2008 return on time or within the time period of the various extensions offered. The Minister further suggests that any subsequent delays that were a result of the CRA actions do not change the fact that Mr. Robinson did not file on time, and that Mr. Robinson has provided no evidence that the penalties and interest would result in financial hardship. The Minister also submits that the

Decision Maker's considerations and conclusion are reasonable when considering the administrative guidelines for taxpayer relief.

[7] For the reasons that follow this application is dismissed. The Decision, including the recommendation given to the Decision Maker set out in the taxpayer relief fact sheet [the Fact Sheet] prior to rendering the Decision, was reasonable. It appropriately took into account the personal circumstances of Mr. Robinson and the taxpayer relief provisions set out in the guidelines established in Information Circular IC07-1 - Taxpayer Relief Provisions, dated May 31, 2007 [the Guidelines] (the Guidelines have since been updated on August 18, 2017). The submissions made by Mr. Robinson were considered and the reasons provided were intelligible, justified, and transparent. As the outcome falls within the range of possible, acceptable outcomes on the facts and law it meets the required standard of reasonableness.

## II. **BACKGROUND**

### A. *The T1 Return*

[8] Mr. Robinson filed his 2008 T1 general tax return [the Return] on February 8, 2010. It had been due on April 30, 2009 for employed individuals or June 15, 2009 for those who were self-employed.

[9] Regardless of the filing deadline, the due date for payment of any taxes owing by Mr. Robinson to the CRA for the 2008 tax year was April 30, 2009.

[10] At the time he filed the Return, Mr. Robinson did not pay any of the taxes of \$65,642.12 that his Return declared he owed.

[11] In 2008 Mr. Robinson, a lawyer by profession, was working as an independent contractor providing negotiation and contract management services to businesses. As such, he was self-employed. Unfortunately, one of the entities with whom Mr. Robinson was doing business issued him a T4 slip indicating that he received employment income of over \$200,000. This T4 caused Mr. Robinson a problem which took some time, and a Tax Court of Canada [TCC] judgment, to resolve.

[12] The CRA contacted Mr. Robinson in September 2009 inquiring about his lack of filing. At that time Mr. Robinson said he had not filed due to illness, he did not work in 2007 and he became self-employed in 2008. In subsequent explanations Mr. Robinson said the filing delay arose from inaccessible accounting data.

[13] The CRA sent a request to file to Mr. Robinson in October 2009 followed in November 2009 by a second request to file. Mr. Robinson replied that he was sending information to his accountant. The CRA then gave him a deadline of January 22, 2010 to file the Return in order to avoid a non-filing assessment.

[14] On January 26, 2010 Mr. Robinson requested an extension from the CRA. He was given until February 5, 2010 to file the Return.

[15] This is the point in time at which Mr. Robinson says the CRA committed reviewable errors that caused the Decision to be based on what he characterizes as a vital mistake of fact.

[16] Mr. Robinson states that on February 5, 2010, he had a conversation with a non-filer officer at the CRA, Ms. Miske, in which he asked her for an address to provide to the courier to deliver his Return. He says she told him to deposit the Return in a drop box at the CRA office in

Calgary and that she verbally agreed to extend his deadline to February 8, 2010, in order to provide him with time to personally deposit the Return.

[17] Mr. Robinson personally delivered the Return to the drop box on the next business day, Monday, February 8, 2010.

[18] The Return, which included the T4 employment slip, declared that Mr. Robinson had business income, not employment income. No explanation was put forward by Mr. Robinson as to why he was providing a T4 showing employment income and, at the same time, declaring that he was self-employed.

*B. The Non-filer NOA*

[19] The CRA mailroom directed the Return to Winnipeg for general processing, not to Ms. Miske. Then, on February 12, 2010, not having received the Return, the non-filer office requested that a non-filer assessment of Mr. Robinson take place. As a result, on March 11, 2010, Mr. Robinson was issued a 2008 Notice of Assessment [non-filer NOA] based on the T4 slip and other documents on file at the CRA but without considering the Return as it had not been received by those conducting the non-filer NOA.

[20] The non-filer NOA showed a total income of \$294,798 upon which Mr. Robinson owed \$121,224.92 of which \$101,846.99 was tax. The balance was late filing penalty of \$14,258.58 which was stated to be 14% of the unpaid tax as of April 30, 2009, and arrears interest of \$5,119.35 to the date of the notice. The non-filer NOA indicated that interest arrears are compounded daily at the prescribed rate although the rate itself was not set out in the notice.

[21] After receiving the non-filer NOA, Mr. Robinson on March 17, 2010 contacted the CRA and emailed a copy of his Return, showing it was date and time stamped as of February 8, 2010, at 12:15 p.m.

[22] The Return was received by the Calgary office of the CRA on March 31, 2010. At that time a non-filer officer reviewed it. According to a letter dated December 14, 2012, responding to Mr. Robinson's service level complaint, the Return was recorded by CRA on March 31, 2010, but it was not accepted or processed as the T4 income from Starco Engineering was not included.

*C. The Reassessment*

[23] On November 15, 2010 the Winnipeg Tax Centre sent a letter to Mr. Robinson indicating his return had been reassessed using his date of filing of February 8, 2010, and that a notice of reassessment would be mailed to him. The letter confirmed that the CRA's records showed a T4 slip for employment income was on file and advised that, if it was issued in error, Mr. Robinson should contact the issuer for an amendment.

[24] On November 16, 2010, a notice of reassessment [Reassessment] was issued reflecting a filing date to February 8, 2010. The Reassessment stated his income was \$258,051 and tax was reduced from \$101,846.99 to \$83,308.83. The penalties were reduced from \$14,258.58 to \$11,660.24. Similarly, interest was reduced by \$1,702.49. The revised total amount owing was \$101,585.51 which was slightly over \$20,000 less than the amount due under the non-filer NOA. The Reassessment indicated that the balance due must be paid by December 6, 2010, to avoid additional interest charges.

*D. The Settlement Offer*

[25] Mr. Robinson filed a notice of objection on February 21, 2011. The CRA offered a settlement to treat the income as self-employment income but Mr. Robinson did not accept it as he would have been required to waive all of his rights of appeal and the settlement did not include forgiveness of interest and penalty.

[26] On January 3, 2013, the Reassessment showing employment income was confirmed by the CRA. The basis for such confirmation was that the CRA had requested information a number of times but was advised by Mr. Robinson that he did not have all the receipts. The Reassessment was confirmed by the CRA “[i]n the absence of clear documentation to support the adjustments”.

*E. The Tax Court of Canada*

[27] Mr. Robinson appealed to the TCC on either March 28, 2013, or April 9, 2013, the actual date being in dispute between the parties. As nothing turns on the actual date of the filing of the appeal the discrepancy need not be resolved.

[28] On October 31, 2013, a consent judgment was agreed upon which was issued by the TCC on January 9, 2014. In this consent judgment the income was classified as being from a business, not employment. In addition, business expenses of \$28,000 were allowed as a deduction from business income and non-capital losses of \$28,354 were to be applied.

[29] The judgment did not address interest, penalties or costs nor did it contain any statement of facts.

[30] Prior to the appeal to the TCC, Mr. Robinson on December 10, 2012, had filed a service complaint with the CRA and a formal complaint to the Ombudsman. Shortly after the TCC appeal was filed Mr. Robinson was informed that the investigation by the Ombudsman indicated that the non-filer NOA was issued due to an error in the mailroom that had resulted in the Return being misdirected.

*F. The Second Reassessment*

[31] On March 24, 2014, as directed by the TCC consent judgment, a second notice of reassessment [TCC NOA] was issued. Mr. Robinson's gross income was reduced from \$258,051 to \$230,051 and deductions from net income were increased from \$325 to \$28,679. The result was his taxable income was reduced from \$247,654 to \$191,300. Tax owing went from \$83,308.83 to \$61,482.77. Consequently, the late filing penalty was reduced from \$11,660.24 to \$8,702.34 and interest arrears were reduced by \$4,106.92.

[32] Overall, the TCC NOA reduced the amount payable by Mr. Robinson by \$28,890.88. The revised balance due was \$91,524.10 including interest and penalties. The TCC NOA stated that the balance was due in full by April 14, 2014, failing which additional interest charges would apply.

[33] Mr. Robinson did not remit any payment on or before April 14, 2014.

*G. First Level Taxpayer Relief Request and First Tax Payment*

[34] In June 2014, one month prior to making his first payment on the taxes owing, Mr. Robinson made a first level request for taxpayer relief seeking the cancellation of his late filing penalty of \$8,702.34 and interest arrears of \$23,715.09. His request was denied on March



25, 2015, due to, amongst other reasons, Mr. Robinson's failure to file his return on time and pay the taxes he owed being not attributable to any error or delay by the CRA.

[35] On July 10, 2014, the CRA received a payment of \$59,820.97 from Mr. Robinson. The CRA applied various internal transfers which resulted in the payment in full of the tax portion of the amount owing.

[36] Mr. Robinson made no payment on the penalty and interest arrears which remained unpaid and upon which compound interest continued to accrue daily.

#### *H. Second Level Taxpayer Relief Request*

[37] In June of 2016 Mr. Robinson submitted his second level Taxpayer Relief Request. He sought cancellation of all accrued penalties and interest and waiver of any future penalties and interest which might accrue pending disposition of his application for relief.

[38] Mr. Robinson's request said that the facts had been established by the TCC and they were incorrectly stated in the first level review. Mr. Robinson also argued that as he was 60 years of age he was elderly, had limited income, and, given the lien on his house and the garnishment that had occurred, his financial resources were restricted. He further raised that he had been forced to take his dispute about business income to the TCC and that the behaviour of the CRA, including the misplacement of his tax return, amounted to a breach of their duty of care owed to him which taken as a sum he felt should cause the CRA to cancel all penalties and interest.

[39] Mr. Robinson asserted that during the litigation he had been assured by counsel for the Respondent that after the TCC judgment the penalties and interest would be resolved as an administrative matter. He further stated that if he was not successful, this matter would be put

forward by his MP as an example of why there should be legislation imposing a duty of care on the CRA.

[40] Finally, as the CRA had seized his bank accounts, filed a lien on his house, and thereby damaged his credit rating, Mr. Robinson said that he was not able to obtain financing for the interest and penalty debt resulting in financial hardship.

[41] As stated earlier, the refusal of the second level Taxpayer Relief Request is the Decision under review in this proceeding.

### III. **THE DECISION**

[42] In arriving at the Decision, the Decision Maker had before him Mr. Robinson's request for relief including his submissions and accompanying documents which included tax caselaw excerpts. There was also the information in the Fact Sheet, together with a recommendation that the requested relief be denied. This information, as well as other documents found in the Certified Tribunal Record, forms part of the underlying record which may be consulted during this review, if necessary, to understand the reasons for the Decision and assess the reasonableness of it: *Stemijon Investments Ltd v Canada (AG)*, 2011 FCA 299 at para 37, 341 DLR (4th) 710 [*Stemijon*].

#### A. *The Fact Sheet*

[43] The Fact Sheet set out the relevant facts as provided by Mr. Robinson and added additional facts from the CRA records. It reviewed Mr. Robinson's historic compliance with the *ITA* noting that there had been collection activity in his account as early as 1995. It also indicated

that: Mr. Robinson had received verbal and written legal warnings about the outstanding balance owing, garnishments were issued, and he had broken promises to file and pay.

[44] The Fact Sheet set out that Mr. Robinson was audited for the period 2011 to 2013 as a result of which his income was increased, deductions were disallowed, and gross negligence penalties were applied in each year. It was noted however that those reassessments were under objection.

[45] With respect to the 2008 tax year the Fact Sheet noted that the only voluntary payment Mr. Robinson made was received July 10<sup>th</sup>, 2014, and that he had not responded promptly to requests to file. In addition, verbal and written legal warnings to pay went unanswered.

[46] The Fact Sheet pointed out that the issue regarding when the Return was received had been corrected and any additional penalty and interest had been reversed in the Reassessment issued on November 16, 2010.

[47] The issue with respect to the T4 slip and allowable business expenses was also addressed and any penalty and interest related to it was reversed on March 24, 2014, when the TCC NOA was issued.

[48] With respect to the circumstances that prevented Mr. Robinson from meeting his tax obligations and whether they were beyond his control, the Fact Sheet set out an extensive timeline of events beginning April 30, 2009, when the 2008 tax payment was first due. It was noted that when the Return was filed Mr. Robinson provided no information as to why he was unable to pay the amount of tax shown in the Return to be due.

[49] The Fact Sheet also noted that Mr. Robinson was levied a penalty in the same manner as all taxpayers who filed late returns showing taxes as owing.

[50] The reviewer concluded the CRA did not cause any delay or affect the penalty levied or the arrears interest charged to Mr. Robinson. It was noted that the GST account had been reviewed for relief and determined separately.

[51] The reviewer further noted that when he was provided with the opportunity to pay the balance owing Mr. Robinson gave no reason for his late filing and made no payment.

[52] Regarding financial hardship, the Fact Sheet indicated Mr. Robinson said he was elderly and with limited income, as well as restricted financial resources because of the lien filed against his home and the seizure of his bank accounts by the CRA. It was pointed out that Mr. Robinson failed to provide more information in response to a letter sent to him on September 7, 2016, requesting he provide documents to support his claim of financial hardship.

[53] It was concluded that financial hardship had not been substantiated. A review of the tax returns for Mr. Robinson and his wife showed that the household income was sufficient for basic living. In 2014 it was just over \$109,000 and in 2015 it was over \$131,000 with RRSP contributions of \$25,865.72 and \$51,347.42 in those same years.

[54] Finally, it was noted that although Mr. Robinson had mentioned his age as being a factor there was no connection found between his age and his ability to pay his taxes.

*B. The Decision*

[55] The Decision Maker started by noting that he had discretion under subsection 220(3.1) of the *ITA* to waive or cancel all or part of any penalties or interest. The Decision Maker went on to state that these amounts may be waived if they arose due to circumstances beyond the taxpayer's control, actions of the CRA, a taxpayer's inability to pay, or financial hardship. Avoiding the issue that arose in *Stemijon*, it was also acknowledged that relief requests which do not fall within those situations may also be granted.

[56] The Decision reviewed the fact that the Return was not received on time with Mr. Robinson twice having requested and receiving more time, which was granted to a specific date. Each such time he did not meet the new date.

[57] The Decision stated that when the Return was received on February 8, 2010 it "was not misplaced, it was directed to the processing area". It is noted that Mr. Robinson takes great issue with this characterization of the facts.

[58] The Decision Maker also observed that the February return was assessed in November, 2010 and, at that time, interest and penalties were adjusted to reflect the actual filing date of February 8, 2010.

[59] The Decision considered that the 2008 T4 slip which was filed with the Return showed employment earnings, not self-employment income. It noted that this dispute was addressed by the objection, appeal and TCC judgment at which time the interest and penalties were again adjusted to reflect the tax payable based on the income being recognized as business income.

[60] To support his position Mr. Robinson had submitted with his request for relief excerpts from: *Leroux v Canada Revenue Agency*, 2014 BCSC 720; 2014 DTC 5068 and *Canada v Scheuer*, 2016 FCA 7, 2016 DTC 5011. The Decision Maker indicated he had reviewed the cases and found no connection between the facts of those cases and Mr. Robinson's situation. In the Decision it was noted that Mr. Robinson was advised on multiple occasions that interest was accruing on the balance owing and he was also advised how to minimize interest from continuing to accrue.

[61] Mr. Robinson had also alleged that the CRA breached the Taxpayer Bill Of Rights by breaching its legal duty of care to him. The Decision confirmed that such concern was previously addressed in letters dated December 14, 2012, and December 18, 2015, in response to his service level complaints.

[62] Regarding Mr. Robinson's statement that he was sixty years of age and elderly, the Decision Maker agreed with the reviewer's assessment that there was no nexus between Mr. Robinson's age and his ability to pay the taxes owing. The Decision Maker also referred to Mr. Robinson's failure to provide additional financial information as requested in the letter of September 7, 2016.

[63] With respect to financial hardship, the Decision found the household income of Mr. Robinson and his spouse, as indicated in their tax returns and information on file, was sufficient to meet their basic living requirements.

[64] The Decision concluded that if Mr. Robinson felt the Minister's discretion had not been properly exercised in arriving at the Decision then he could apply for judicial review. It also

noted that daily compound interest was charged on any unpaid balance and a payment arrangement could be discussed by contacting a particular person whose telephone number was provided. A separate contact telephone number was also provided for another person should Mr. Robinson have any questions about the Decision.

#### IV. **LEGISLATION AND GUIDELINES**

[65] The taxpayer relief provisions are found in subsection 220(3.1) of the *ITA* and Guidelines are set out in the Taxpayer Relief Provisions. Excerpts are attached at Appendix A. Where helpful for reading this Judgment and Reasons relevant parts of the *ITA* and the Guidelines are also set out in the body.

##### A. *The ITA*

[66] Briefly put, with respect to interest and penalties, subsection 220(3.1) of the *ITA* provides that, on application by the taxpayer within a fixed timeframe, the Minister has the discretion to waive or cancel all, or any portion, of any penalty or interest otherwise payable.

[67] Liability for, and the calculation of, interest and penalties are set out in sections 161 and 162 of the *ITA*.

[68] Under section 161 if, after the balance due date - April 30, 2009, in Mr. Robinson's case - the balance due exceeds any amounts already paid, for example through quarterly instalments or with the filing of the return, then interest is payable at the prescribed rates. In addition, if instalments payments were required to be made and they were late then interest is payable on the amount that is late and interest is also payable on the late filing penalty.

[69] Section 162 stipulates that every person who fails to file a return when required under the ITA is liable to pay a penalty calculated as set out therein. An increased penalty may be payable for a repeated failure to file within the preceding three years.

*B. The Guidelines (May 31, 2007 version)*

[70] The exercise of discretion by the Decision Maker, who is the Minister's delegate, is guided by the provisions set out in the Guidelines. Various circumstances where it may be suitable to grant relief from penalty and interest charges are outlined in the Guidelines.

[71] There are three specific situations addressed in the guidelines which may justify relief from penalty and interest. They are set out in paragraph 23 of the Guidelines:

- (a) extraordinary circumstances
- (b) actions of the CRA
- (c) inability to pay or financial hardship

[72] If relief is requested based on any of the situations in paragraph 23 then the factors set out in paragraph 33 of the Guidelines are to be considered when determining whether to cancel or waive penalties and interest. These include the taxpayer's compliance record, whether they have knowingly allowed a balance to exist and interest to accrue, a consideration of the care or negligence exhibited by the taxpayer and, whether the taxpayer has quickly remedied any delay or omission.

[73] Paragraph 24 reiterates the Minister's broad general power to grant relief under subsection 220(3.1) if the taxpayer's situation does not fall within the provisions of paragraph 23.



[74] Extraordinary circumstances, referred to in paragraph 23, are described in paragraph 25 as being circumstances beyond a taxpayer's control. A short, non-exhaustive list of examples is provided:

- (a) natural or man-made disasters such as, flood or fire;
- (b) civil disturbances or disruptions in services, such as a postal strike;
- (c) a serious illness or accident; or
- (d) serious emotional or mental distress, such as death in the immediate family.

[75] In paragraph 27 the Guidelines outline factors for consideration when faced with a confirmed inability to pay and tasked with deciding whether to waive or cancel interest in whole or in part. Paragraph 28 indicates that cancelling a penalty based on inability to pay or financial hardship is generally not considered unless extraordinary circumstances (as outlined in paragraph 25) prevented compliance; but, relief might be warranted if enforcement of the penalty would threaten continuation of a business, jobs of the employees, and the welfare of the community as a whole.

[76] By indicating the kind of information that is expected to accompany a relief request, paragraph 32 gives guidance to a taxpayer on how to support their request. For example, the taxpayer should include all the circumstances set out in paragraph 23 together with a complete and accurate description of the facts and reasons in support of the relief claimed. They should also provide all relevant documentation, full financial disclosure, and an explanation of how the circumstances affected the taxpayer's ability to meet their obligations.

[77] If financial hardship is a ground for the relief then a meaningful financial payment plan is also recommended to accompany the request together with a statement of income and expenses, as well as assets and liabilities.

V. **ISSUE AND STANDARD OF REVIEW**

[78] Both parties agree, as do I, that the single issue in this review is whether the Decision was reasonable. Such determination includes a review of whether the Decision Maker reasonably exercised the discretion given to the Minister in the *ITA* and in their consideration of the Guidelines.

[79] Mr. Robinson submits that the Decision is based on a vital mistake of fact that tainted the Decision and rendered it unreasonable. He says that in arriving at the Decision, the Decision Maker did not properly consider the following facts:

1. the non-filer assessment was a circumstance beyond his control;
2. a vital mistake of fact was made given the statement in the Decision that the Return “was not misplaced”; and
3. the Decision Maker placed an undue amount of focus on Mr. Robinson’s compliance history.

[80] It is now well known that a decision is reasonable if the decision-making process exhibits justification, transparency, and intelligibility, resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*].

[81] If the reasons, when read as a whole, “allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met”: *Newfoundland and Labrador Nurses’*

*Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

[82] Previous jurisprudence of this Court when considering Taxpayer Relief Request decisions also provides useful guidance.

[83] For example, in conducting this review I am mindful of the recent statement by Madam Justice St-Louis that when reviewing the decision of the Minister's Delegate under subsection 220(3.1) "[t]he Court's role is not to reweigh the evidence ... but rather to examine if the Minister's Delegate "properly considered the evidence before him and that the decision was not based on considerations irrelevant or extraneous to the statutory purpose": *Easton v Canada (Revenue Agency)*, 2017 FC 113 at para 43, 2017 DTC 5014 (Internal citations omitted).

[84] It has also been established that (1) the provisions of subsection 220(3.1) of the *ITA* provide a discretionary power to the Minister with no particular conclusion being mandated and (2) the requirement to pay penalties and interest for late filing results from the application of the *ITA*, not from a discretionary decision. The Minister's power is limited to providing exceptional relief from the *ITA* when the Minister, or the Minister's delegate, determines it to be warranted: *Jenkins v Canada (Revenue)*, 2007 FC 295 at para 13, 2007 DTC.5193.

[85] Nonetheless, "the delegate's analysis must not be limited to whether or not a taxpayer filed his tax return on time. The delegate must consider all of the taxpayer's personal, tax and financial circumstances, which in this case includes any reasonable cause preventing the taxpayer from filing a return and/or paying the tax, interest or penalties that may have been

imposed as a result of an arbitrary assessment”: 2750-4711 Québec inc v Canada (AG), 2016 FC 579 at para 7, 2016 DTC 5085.

[86] If a mistake of fact has been made by a decision maker, the resulting decision is unreasonable if the decision maker misapprehended facts that were material to his or her decision: *Johnston v Canada*, 2003 FCT 713 at para 29, 2003 DTC 5494.

## VI. ANALYSIS

[87] Throughout this analysis it is important to remember that the Decision Maker is presumed to have considered all the evidence before them including Mr. Robinson’s submissions and documents as well as the Fact Sheet: *Smith v Canada Revenue Agency*, 2009 FC 694 at paras 21-22, 2009 DTC 5187.

### A. *Was the Non-Filer Assessment an event Beyond the Control of Mr. Robinson?*

[88] In his Notice of Application and subsequent Memorandum of Fact and Law, Mr. Robinson set out his overview of the grounds for judicial review. He indicates his position is that the error committed by the CRA when processing his filed tax return “gave rise to a chain of events that precipitated the interest and penalties because it led to a prolonged dispute with the CRA.”

[89] Mr. Robinson explains that his Return was misplaced “through no fault of [his own]” and as such the non-filer NOA was a circumstance beyond his control. Therefore, he submits that he ought to have received relief from all ensuing interest charges and the late-filing penalty.

[90] Mr. Robinson also says that had the Return originally been delivered to Ms. Miske then the non-filer NOA would never have been issued. He claims that the non-filer NOA was the cause of the penalty and interest charged to him and it was an error on the part of CRA to issue it.

(1) The Alleged Causal Connections

[91] When asked at the hearing to explain to the Court the causal connection between the issuance of the non-filer NOA and the claim that Mr. Robinson ought to have received relief from all the consequences of his late filing, counsel for Mr. Robinson offered that the non-filer NOA showed significantly more tax was owed than Mr. Robinson's Return had claimed and the non-filer NOA amount was therefore wrong. The non-filer NOA amount of tax was so much more than the amount in the Return that it led Mr. Robinson to pay nothing.

[92] The argument put forward is that the dispute which ensued was therefore a direct result of the non-filer NOA having been issued.

(2) Events were not beyond the control of Mr. Robinson

(a) *The Guidelines*

[93] Paragraph 25 of the Guidelines sets out examples of the circumstances that may be "beyond a taxpayer's control": a natural or man-made disaster, a disruption of services such as a postal strike, a serious illness or accident, or serious emotional or mental illness such as a death in the family.

[94] None of these circumstances were relied upon by Mr. Robinson and there is no evidence in the record that any of them might apply.

[95] Mr. Robinson's reaction to the non-filer NOA was to submit no tax payment at all for over five years after it was due. In his request for taxpayer relief Mr. Robinson did not claim that any of the circumstances envisioned by paragraph 25 prevented his compliance. He blames the CRA for issuing the non-filer NOA.

[96] No explanation has been given for why Mr. Robinson did not pay his 2008 taxes when he initially filed the Return. The only explanation has been that Mr. Robinson subsequently chose not to pay his income taxes for the year 2008 because he believed the non-filer NOA was wrong.

[97] His view of the lack of merits of the non-filer NOA does not provide Mr. Robinson with the legal right to pay no income tax; the adverse financial consequences that flow under the *ITA* from non-payment of taxes when due still occur under the *ITA*'s provisions.

(b) *The ITA provisions*

[98] As set out in the Decision, the cause of the interest and penalties assessed against Mr. Robinson was his late filing of the Return (which was adjusted to the correct date of his late filing), his inclusion, without explanation, of the T4 slip (which was later remedied), and his non-payment of his self-declared to be due taxes at that time.

[99] Subsection 152(3) makes it clear that the obligation to pay tax arises independently of an assessment, including one which is incorrect:

**Liability not dependent on assessment**

(3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

**Responsabilité indépendante de l'avis**

(3) Le fait qu'une cotisation est inexacte ou incomplète ou qu'aucune cotisation n'a été faite n'a pas d'effet sur les responsabilités du contribuable à l'égard de l'impôt prévu par

la présente partie.

(3) The Decision

[100] The Decision shows that the Decision Maker was fully conversant with Mr. Robinson's tax history both generally and specifically with respect to his 2008 tax year. It is noted that the Return was due June 15, 2009, and his tax payment was due April 30, 2009. Mr. Robinson had been contacted several times in the fall of 2009 with requests to file and ultimately had been advised to file a return by January 22, 2010. On January 26, 2010 he requested and was given a further extension to February 5, 2010, but the return was not received on that date.

[101] The Fact Sheet points out that Mr. Robinson was not penalized based on the way he reported his income but because he filed late. As there was a balance owing at that time, the penalty was levied correctly.

[102] The Fact Sheet goes on to acknowledge that the issue with respect to whether Mr. Robinson's income was from his employment or his business was resolved in the appeal and the Return was then reassessed to reflect business income with allowable expenses deducted. Penalty and interest were adjusted to reflect the change in his taxes.

[103] Given the facts, the legislation, and the Guidelines, I find the underlying reasons outlined in the Fact Sheet for denying Mr. Robinson's request were reasonable justifications:

no CRA delay had been found that affected the penalty levied, or the arrears interest charged. ... The amount of interest and penalty charged to the taxpayer was completely within his control. He has provided no circumstance to why his return was filed late. He was provided the opportunity to pay his calculated tax balance, was advised of the implications of accruing interest, but no payment was ... made.

[104] Given the broad discretion available to the Decision Maker and bearing in mind that this proposed recommendation in the Fact Sheet was before him, it was also reasonable for the Decision Maker to reject any argument that either CRA error, or the issuance of the non-filer NOA, were the cause of Mr. Robinson's interest and penalty assessments rather than his own actions. It was Mr. Robinson's personal choice not to pay the accumulated interest and penalty throughout the period of his dispute with the CRA, continuing up to and including the filing of his second request for taxpayer relief.

[105] Even if the issuance of the non-filer NOA is accepted as a circumstance beyond Mr. Robinson's control, it had no material impact on Mr. Robinson's dispute with the CRA. Under subsection 152(3), Mr. Robinson's tax owing was due by April 30, 2009, regardless of whether the balance due as shown in the non-filer NOA was correct or not. By deciding that the amount of the non-filer NOA was wrong and too high to pay, Mr. Robinson alone made the choices not to pay any tax or interest or penalty, even though he could have made full or partial payment with any final surplus being refunded to him, with interest. The Decision recognized those choices, and given the discretionary nature of the requested relief, it was reasonable for the Decision Maker to determine that events were not beyond Mr. Robinson's control and to deny the request for taxpayer relief on that basis.

*B. Was a Vital Mistake of Fact made in the Decision?*

(1) The words "not misplaced"

[106] It is argued that the Decision Maker's incorrect statement in the Decision that the Return "was not misplaced" is sufficient to render the Decision unreasonable. Mr. Robinson states that the misdirection of his return was a material fact that constituted the CRA error upon which his



request for relief was based. He says this fact was not considered by the Decision Maker therefore the Decision “cannot have been within the range of possible, acceptable outcomes . . . given that it was based on a clear misapprehension of fact”.

[107] Given this factual misstatement it is best to look at substance rather than form in determining whether it is material to the Decision. Regardless of the accuracy of the word “misplaced”, the relevant question is: did the question of whether the Return was directed to the intended department immediately on February 8, 2010 or, at a later date, have any material effect on the Decision or on the calculation of interest and penalty?

[108] In my view, it very clearly did not.

[109] Mr. Robinson’s request for relief sought cancellation of all penalty and interest, past and future, because of “administrative negligence, erroneous assessments, delays, and the extraordinary circumstances attributable to the Canada Revenue Agency (“CRA”) as confirmed by the Tax Court of Canada”.

[110] In his written submissions Mr. Robinson correctly points out that the cancellation or waiver of penalties and interest is appropriate if the penalties and interest were incurred primarily because of actions of the CRA. That consideration is set out in paragraph 26 of the Guidelines.

[111] In this case though, the penalties and interest were incurred primarily, in fact solely (given the past adjustments), because of Mr. Robinson’s late tax return filing and his non-payment of the taxes he owed as a result of his income in 2008. On November 16, 2010, all the interest and penalty levied as a result of the non-filer NOA was cancelled and readjusted to reflect the filing of the Return on February 8, 2010. The interest and penalty remaining arose

from two of his actions: (1) filing on February 8, 2010, a tax return that was due June 15, 2009; and, (2) his non-payment by April 30, 2009 of the taxes owing for his 2008 income.

[112] As I understand it, Mr. Robinson's argument is one continuous thread: the non-filer NOA would not have been issued if the non-filing office had known that the Return had been filed on February 8, 2010, and the issuance of the non-filer NOA was beyond his control so he is entitled to relief against interest and penalties pertaining to the 2008 tax year even if not related to the non-filer NOA. The Applicant's mistake of fact argument, premised on the use of the word "misplaced" in the Decision seems to be put forward as a form of "smoking gun" which he holds up to say that the Decision Maker did not appreciate his argument.

[113] There is no doubt that the Decision Maker appreciated the sequence of events and the arguments made by Mr. Robinson. They are fully set out in the Fact Sheet and are referred to in the Decision. Consideration of the fact that the initial error was fully corrected is also clearly set out in the Decision. They also form the basis of the determination that events were not beyond Mr. Robinson's control.

[114] I am satisfied from my review of the record that there is no evidence the Decision Maker misapprehended any material facts or that the choice of words used to describe the internal delivery delay of the Return had any impact on the Decision. The Decision Maker noted that once the Return was reviewed, the date of filing was revised to February 8, 2010 and monies owing were recalculated using that date. That is the material fact.

(2) Alleged Errors by the CRA

[115] Mr. Robinson is also concerned that the first and second Taxpayer Relief Reviews each recognized the Return was sent elsewhere but did not say that an error was made by the CRA.

[116] As already mentioned, paragraph 26 of the Guidelines sets out that it may be appropriate to waive or cancel penalties and interest “if the penalty and interest arose primarily because of actions of the CRA”. Examples of CRA actions that may lead to such relief include “errors in processing” or “processing delays that result in the taxpayer not being informed, within a reasonable time, that an amount was owing”.

[117] Mr. Robinson was regularly advised of the amount that was owing and was asked, both verbally and in writing, to pay it. He was also regularly apprised of the fact that compound daily interest was accruing. The Fact Sheet acknowledges that Mr. Robinson claims error and delay and other circumstances as grounds for relief and points out they were already addressed and any penalty and interest assessed were reversed when the TCC NOA was issued.

[118] The consent to judgment filed with the TCC contains no facts and attributes no blame as between the parties. Mr. Robinson made no payment on the balance due for his 2008 taxes until after the TCC NOA. With the adjustment of interest and penalties to be based upon the amount agreed upon as being Mr. Robinson’s taxable income at the time of the issuance of the TCC NOA any financial consequences arising from anything that occurred prior thereto was eliminated.

[119] In my view, for reasons already set out, it was reasonable for the Decision Maker to conclude that no action by the CRA in connection with the processing of Mr. Robinson’s 2008

tax year could be said to be the primary or material cause of the penalty and interest charged to him. For this reason, given the broad discretion available under the *ITA*, it was within the range of acceptable possible outcomes for the Decision Maker to decide relief was not warranted.

*C. The Decision Maker did not give Undue Weight to Past Non-Compliance*

[120] In his Memorandum of Fact and Law, Mr. Robinson alleges the Decision Maker only considered whether his return was filed on time, failing to take into account the events which followed the filing of the Return. He says that the non-filer NOA was an arbitrary assessment against a “fully compliant taxpayer” that was erroneously issued as result of Ms. Miske’s instructions to deliver the Return to the drop box.

[121] I will not address again the non-filer NOA argument or the internal delivery of the Return.

[122] The new claim to be considered under this ground is that Mr. Robinson alleged in his submissions to the Decision Maker that he was a “fully compliant taxpayer”. That statement squarely put in play his compliance history. For this reason it was entirely reasonable for the Fact Sheet to discuss his history of non-compliance. On review, the record of past compliance reasonably supports the discretionary decision not to grant relief.

[123] The Guidelines indicate in paragraph 33(a) that past compliance is a factor to consider when determining a taxpayer relief request. Likewise, knowingly allowing a balance to exist is a factor to be considered under paragraph 33(b).

[124] The evidence in the record shows that Mr. Robinson was late filing his returns for the tax years 1982, 1984, 1985, 1986, 1988, 1991, 1992, 1993, 1998, 2004, 2007, 2008, 2009, 2010 and

2012. He also had late filing penalties imposed in relation to amounts owing for taxation years 1991, 1992, 1998, 2004, 2008 and 2012. Given this history, Mr. Robinson would have been well aware of the financial consequences he would face by not filing on time and not paying any of the tax he owed.

[125] There is no doubt that Mr. Robinson willingly allowed a balance to exist for almost six years.

[126] In effect, Mr. Robinson is asking the Court to re-weigh the evidence that was before the Decision Maker. Not only is that not the role of the Court, Mr. Robinson's historic non-compliance and current non-payment is both notable and relevant; it supports the Decision reached.

[127] The Decision Maker recognized that Mr. Robinson put forward other factors for relief such as his claim that at the age of 60 he was elderly and that he was suffering from financial hardship. As the requested further information was not supplied to substantiate those grounds the Decision Maker reasonably rejected them.

[128] Given Mr. Robinson's poor compliance history, both in terms of filing returns and paying his taxes, I am unable to agree with him that it was outside the range of possible acceptable outcomes for the Decision Maker to determine that relief would not be granted. The Decision is also adequately justified, transparent, and intelligible, especially having regard to the record before the Decision Maker.

VII. Summary

[129] The decision by CRA to cancel interest is entirely discretionary according to the *ITA* and need only be exercised in a reasonable manner; this discretionary power is an exceptional relief: *Amoroso v Canada (AG)*, 2013 FC 157 at para 50, 2013 DTC 5044, citing *Jim's Pizza Ltd v Canada (Canada Revenue Agency)*, 2007 FC 782 at para 13, 2007 DTC 5506.

[130] It was Mr. Robinson's personal choice not to pay any taxes at all when he received the non-filer NOA. He chose to ignore the fact that his filed Return showed that he owed \$65,642.12. He chose not to submit any tax payment at the time he filed the Return. That choice, and the non-payment from the date when the tax was originally owed resulted in penalty and interest charges being assessed originally on the amount of income shown in the non-filer NOA with downwards adjustments then undertaken to account for the filing on February 8, 2010, and the eventual determination that his income was business income.

[131] The Decision Maker reasonably rejected each of Mr. Robinson's arguments that any of the interest and penalty owing at the time of the second level taxpayer relief request was the fault of the CRA.

[132] Ironically, the tax that Mr. Robinson ultimately owed was less than that shown in his 2008 Return. But for the late filing charges of penalty and interest, the CRA might have owed Mr. Robinson money and interest had he paid the tax at the time he filed the Return. That is not the fault of the CRA.

[133] As the Federal Court of Appeal noted in a different but somewhat analogous situation:

Those who, like Ms Telfer, knowingly fail to pay a tax debt pending a decision in a related case normally cannot complain that

they should not have to pay interest. If they had promptly paid the sum claimed to be due, and were later found not liable to pay it, the Minister would have had to repay the overpayment, with interest: see *Comeau v. Canada (Customs and Revenue Agency)*, 2005 FCA 271, 2005 D.T.C. 5489, at para. 20. The relatively high rate of interest charged to the taxpayer is no doubt intended, for the benefit of all taxpayers, to encourage the prompt payment of tax debts.

*Canada Revenue Agency v Telfer*, 2009 FCA 23 at para 35, 2009 DTC 5046.

[134] When Mr. Robinson did not pay his taxes for 2008 on the date they were due, and did not file his 2008 return on time, he set in motion the very chain of events which he claims was beyond his control. When he then filed his Return over half a year after it was due, included an improperly issued T4 slip with it, and still did not pay the taxes, he exacerbated the problem.

[135] This application is denied. On all the facts of this case, for the reasons given, I am not persuaded that the Decision Maker unreasonably exercised his discretion when he denied Mr. Robinson's request for cancellation and waiver of all penalties and interest owing under the *ITA* with respect to the income tax he was assessed for the 2008 tax year.

[136] The parties have agreed that regardless of the outcome, no costs shall be awarded.

**JUDGMENT IN T-159-17**

**THIS COURT'S JUDGMENT is that** the application is dismissed, without costs.

“E. Susan Elliott”

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Judge



## APPENDIX A

Subsection 220(3.1) of the *ITA*:

### **Waiver of Penalty or Interest**

(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.

### **Renonciation aux pénalités et aux intérêts**

(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.

Other Relevant paragraphs of the Guidelines are:

### **Part II**

#### **Guidelines for the Cancellation or Waiver of Penalties and Interest**

[...]

*Circumstances Where Relief*

### **Partie II**

#### **Lignes directrices concernant l'annulation ou la renonciation aux pénalités et aux intérêts**

[...]

***From Penalty and Interest  
May Be Warranted***

23. The Minister may grant relief from the application of penalty and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement at issue:

- (a) extraordinary circumstances
- (b) actions of the CRA
- (c) inability to pay or financial hardship

24. The Minister may also grant relief if a taxpayer's circumstances do not fall within the situations stated in ¶ 23.

**Extraordinary Circumstances**

¶25. Penalties and interest may be waived or cancelled in whole or in part where they result from circumstances beyond a taxpayer's control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying with an obligation under the Act include, but are not limited to, the following examples:

- (a) natural or man-made disasters such as, flood or fire;
- (b) civil disturbances or

***Situations dans lesquelles un allègement des pénalités et des intérêts peut être justifié***

23. Le ministre peut accorder un allègement de l'application des pénalités et des intérêts lorsque les situations suivantes sont présentes et qu'elles justifient l'incapacité du contribuable à s'acquitter de l'obligation ou de l'exigence fiscale en cause :

- a) circonstances exceptionnelles;
- b) actions de l'ARC;
- c) incapacité de payer ou difficultés financières.

24. Le ministre peut également accorder un allègement même si la situation du contribuable ne se trouve pas parmi les situations mentionnées au paragraphe 23.

**Circonstances exceptionnelles**

¶ 25. Les pénalités et les intérêts peuvent faire l'objet d'une renonciation ou d'une annulation, en tout ou en partie, lorsqu'ils découlent de circonstances indépendantes de la volonté du contribuable. Les circonstances exceptionnelles qui peuvent avoir empêché un contribuable d'effectuer un paiement lorsqu'il était dû, de produire une déclaration à temps ou de s'acquitter de toute autre obligation que lui impose la Loi sont les suivantes, sans être exhaustives:

disruptions in services, such as a postal strike;

(c) a serious illness or accident; or

(d) serious emotional or mental distress, such as death in

the immediate family.

Actions of the CRA

¶26. Penalties and interest may also be waived or

cancelled if the penalty and interest arose primarily because of actions of the CRA, such as:

(a) processing delays that result in the taxpayer not being informed, within a reasonable time, that an amount was owing;

(b) errors in material available to the public, which led taxpayers to file returns or make payments based on incorrect information;

(c) incorrect information provided to a taxpayer, such as in the case where the CRA wrongly advises a taxpayer that no instalment payments will be required for the current year;

(d) errors in processing;

(e) delays in providing information, such as when a taxpayer could not make the appropriate instalment or

a) une catastrophe naturelle ou causée par l'homme, telle qu'une inondation ou un incendie;

b) des troubles publics ou l'interruption de services, tels qu'une grève des postes;

c) une maladie grave ou un accident grave;

d) des troubles émotifs sévères ou une souffrance morale grave, tels qu'un décès dans la famille immédiate.

Actions de l'ARC

¶ 26. Les pénalités et les intérêts peuvent également faire l'objet d'une renonciation ou d'une annulation si ces pénalités et ces intérêts découlent principalement d'actions prises par l'ARC, telles que :

a) des retards de traitement, qui ont fait en sorte que le contribuable n'a pas été informé d'une somme en souffrance dans un délai raisonnable;

b) des erreurs dans la documentation mise à la disposition du public, ce qui a amené des contribuables à soumettre des déclarations ou à faire des paiements en se fondant sur des renseignements inexacts;

c) des renseignements inexacts qu'un contribuable a reçus, comme dans le cas où l'ARC a informé, par erreur, un contribuable qu'aucun acompte

arrears payments because the necessary information was not available; or

(f) undue delays in resolving an objection or an appeal, or in completing an audit.

#### Inability to Pay or Financial Hardship

¶27. It may be appropriate, in circumstances where there is a confirmed inability to pay all amounts owing, to consider waiving or cancelling interest in whole or in part to enable taxpayers to pay their account. For example:

(a) when collection had been suspended due to an inability to pay and substantial interest has accumulated or will accumulate;

(b) when a taxpayer's demonstrated ability to pay requires an extended payment arrangement, consideration may be given to waiving all or part of the interest for the period from when payments start until the amounts owing are paid, as long as the agreed payments are made on time and compliance with the Act is maintained; or

(c) when payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical help, transportation, or shelter, consideration may be given to

provisionnel n'était requis pour l'année en cours;

d) des erreurs de traitement;

e) des renseignements fournis en retard, comme dans le cas où un contribuable n'a pas pu faire les paiements appropriés d'acomptes provisionnels ou d'arriérés, parce que les renseignements nécessaires n'étaient pas disponibles;

f) des retards indus pour régler une opposition ou un appel, ou la réalisation d'une vérification.

#### Incapacité de payer ou difficultés financières

¶ 27. Il peut être approprié, lorsque l'incapacité de payer tous les montants dus est confirmée, de considérer la renonciation ou l'annulation aux intérêts, en tout ou en partie, pour permettre au contribuable de régler son compte. Par exemple :

a) lorsque les mesures de recouvrement ont été suspendues à cause de l'incapacité de payer et qu'un montant considérable d'intérêts s'est accumulé ou s'accumulera;

b) lorsque la démonstration de la capacité de payer d'un contribuable exige une prolongation de l'arrangement de paiements, on peut considérer la renonciation aux intérêts, en tout ou en partie, pour la période allant du début

cancelling all or part of the total accumulated interest.

¶28. Consideration would not generally be given to

cancelling a penalty based on an inability to pay or financial

hardship unless an extraordinary circumstance, as described in ¶ 25 has prevented compliance. However, there may be exceptional situations that may give rise to cancelling penalties, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole, consideration may be given to providing relief of the penalties.

#### *Making a Request*

32. Taxpayers should include all the circumstances (as listed in ¶ 23) that they intend to rely on in their initial request. It is important that taxpayers provide the CRA with a complete and accurate description of their circumstances to explain why their situation should merit relief. To support a request, taxpayers should provide all relevant information including the following, where applicable:

(a) the name, address,

des paiements jusqu'à ce que le solde soit acquitté, aussi longtemps que les paiements convenus sont faits à temps et que l'observation des termes de la Loi est maintenue;

c) lorsque le paiement des intérêts accumulés causerait une incapacité prolongée (difficultés financières) à subvenir aux besoins essentiels, tels que la nourriture, les soins médicaux, le transport, ou le logement, on peut considérer l'annulation des intérêts accumulés, en tout ou en partie.

¶ 28. De façon générale, on ne considèrera pas l'annulation d'une pénalité en raison d'une incapacité de payer ou de difficultés financières à moins que des circonstances exceptionnelles, telles qu'elles sont décrites au paragraphe 25, aient empêché l'observation. Cependant, des situations exceptionnelles peuvent donner lieu à l'annulation totale ou partielle des pénalités. Par exemple, lorsqu'une entreprise a des difficultés financières extrêmes et que l'application des pénalités mettrait en danger la continuité de son exploitation, des emplois et du bien-être de la collectivité dans son ensemble, on peut considérer un allègement des pénalités.

#### *Présenter une demande*

32. Les contribuables devraient indiquer toutes les circonstances (liste au

telephone number, social insurance number, account number, partnership number, trust account number, and business number or any other identification tax number assigned by the CRA to the taxpayer;

(b) the tax year(s) or fiscal period(s) involved;

(c) the facts and reasons supporting that the interest or penalties were either mainly caused by factors beyond the taxpayer's control, or were as a result of actions of the CRA;

(d) an explanation of how the circumstances affected the taxpayer's ability in meeting their tax obligation;

(e) the facts and reasons supporting the taxpayer's inability to pay the interest or penalties levied, or to be levied;

(f) any relevant documentation such as death certificates, doctor's statements, or insurance statements to support the facts and reasons;

(g) in cases involving financial hardship (inability to pay), a meaningful payment arrangement which covers at least the tax and the penalty part, if applicable, and full financial disclosure including a statement of income and

expenses, as well as a statement of assets and

paragraphe 23) qu'ils ont l'intention d'invoquer dans leur demande initiale. Il est important que les contribuables fournissent à l'ARC une description complète et exacte de ces circonstances afin d'expliquer pourquoi leur situation mériterait un allègement. Pour appuyer une demande, les contribuables devraient fournir tous les renseignements pertinents, y compris les suivants, s'il y a lieu :

a) le nom, l'adresse, le numéro de téléphone, le numéro d'assurance sociale, le numéro de compte, le numéro de la société de personnes, le numéro de compte de fiducie, le numéro d'entreprise ou tout autre numéro d'identification-impôt attribué par l'ARC au contribuable;

b) les années d'imposition ou exercices visés;

c) les faits et les raisons appuyant que les intérêts ou les pénalités découlent principalement de facteurs indépendants de la volonté du contribuable ou sont le résultat d'actions de l'ARC;

d) une explication décrivant comment les circonstances ont nui à la capacité du contribuable à respecter ses obligations fiscales;

e) les faits et les raisons appuyant l'incapacité de payer les intérêts ou les pénalités

liabilities;

(h) supporting details of incorrect information given by the CRA in the form of written answers, published information, or other objective evidence;

(i) where incorrect information given by the CRA is of a oral nature, the taxpayer should give all possible details they have documented, such as date, time, name of the CRA official spoken to, and details of the conversation;

and

(j) a complete history of events including what measures were taken (e.g., payments and payment arrangements) and when they were taken to resolve the non-compliance.

imposés au contribuable ou qui seront imposés;

f) tous les documents pertinents, tels que des certificats de décès, des rapports de médecin ou des rapports d'assurance, pour appuyer les faits et les raisons;

g) dans les cas impliquant des difficultés financières (incapacité de payer), un arrangement de paiement sensé qui couvre au moins la partie de l'impôt et la pénalité, s'il y a lieu, et une divulgation financière complète, comprenant un état des revenus et des dépenses, ainsi qu'un état des actifs et des passifs;

h) les détails appuyant les renseignements inexacts fournis par l'ARC sous forme de réponses écrites, renseignements publiés ou autres preuves objectives;

i) lorsque les renseignements inexacts fournis par l'ARC l'ont été de vive voix, le contribuable devrait fournir tous les détails recueillis, tels que la date, l'heure, le nom du fonctionnaire de l'ARC à qui il a parlé et les détails de la conversation;

j) un historique complet des événements, y compris les mesures qui ont été prises (p. ex. les paiements et arrangements de paiements) et le moment où elles ont été prises afin de régler l'inobservation.

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

**DOCKET:** T-159-17

**STYLE OF CAUSE:** DAVID M. ROBINSON v MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** DECEMBER 5, 2017

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** AUGUST 10, 2018

**APPEARANCES:**

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