Federal Court  Cour fédérale

Date: 20190222

Docket: T-584-18

Citation: 2019 FC 210

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, February 22, 2019

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

LINDA BOIVIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Linda Boivin is contesting a decision rendered on March 9, 2018, by the Assistant Commissioner of the Legislative Policy and Regulatory Affairs Branch (the Assistant Commissioner) of the Canada Revenue Agency (CRA), refusing to recommend a remission under subsection 23(2) of the *Financial Administration Act*, RSC, 1985, c F-11 [the Act].

[2] As she confirmed at the hearing, Ms. Boivin is asking the Court to allow her application for judicial review and quash the Assistant Commissioner's decision.

[3] I am obviously sensitive to Ms. Boivin's situation, but she has failed to persuade me that the Assistant Commissioner's decision is unreasonable and that the intervention of the Court is warranted. For the reasons set out below, I will therefore dismiss the application for judicial review.

I. BACKGROUND

[4] On May 26, 2016, Ms. Boivin applied for a remission order seeking forgiveness of a debt owed to the CRA, as provided under subsection 23(2) of the Act. In general terms, Ms. Boivin argues that her debt to the CRA is unfair and should be forgiven. Ms. Boivin has attached various documents to her application and essentially raises the following points:

1. She was married from 1986 to 1993. Her husband filed tax returns on her behalf without her consent, reported interest income on her behalf and claimed child tax credits;
2. From 1995 to 1998, she did not file any tax returns;
3. In 1995, she had to withdraw funds from her RRSP but did not pay all the taxes applicable to them, believing that her child tax credits would be enough to offset any amount owing;
4. From 1994 to 1999, the CRA never contacted her or provided her with any information concerning her debt for 1993. It was only in 2000 that she received a letter informing her that the CRA was withholding her tax refund for an outstanding debt. She received a similar letter every year until 2014, but believed that the debt would eventually be paid off, without further action on her part, since a CRA official she had met with in 1993 had not informed her about the accrued interest or the possibility of contesting this debt;
5. In 2015, she was extremely surprised to receive a letter from the CRA asking her to pay the amount of $33,093.56;

6. In 2015, since she did not have any details about this debt, she filed a complaint with the ombudsman;

7. In 2016, she received a call from a CRA official who informed her that for 1995, the CRA had assessed her income from support payments as totaling $24,000, when she had not even received that amount; he also stated that she had not paid the taxes applicable to her RRSPs. She subsequently received letters detailing her account but had reason to believe that the debt was statute-barred.

[5] Ms. Boivin is therefore seeking forgiveness of this debt, totaling $33,093.56. The application went through the processes within the Legislative Policy and Regulatory Affairs Branch, as explained in paragraphs 23 to 30 of the respondent's memorandum, and all the officials involved recommended denying the application for remission.

[6] On March 9, 2018, the Assistant Commissioner concluded that remission could not be recommended. He noted that Ms. Boivin's application for remission was primarily based on financial setbacks coupled with extenuating circumstances, reviewed the case history concerning Ms. Boivin's situation and set out the remission process.

[7] The Assistant Commissioner noted that Ms. Boivin's family income was above the low income thresholds provided for 20 of the 27 years since 1990, and that extreme hardship would not be recognized for remission purposes.

[8] The Assistant Commissioner also noted Ms. Boivin's claim that a CRA official had informed her that the CRA had added a support amount totalling $24,000 to her income for 1995. However, the Assistant Commissioner noted that this income of $24,000 was included in Ms. Boivin's tax return for 1995 and that this return had been assessed as filed. He also noted that there was no information to confirm Ms. Boivin's claims that an amount totalling $24,000

had been added to her income or that a CRA official had informed her that this addition had been made. The Assistant Commissioner therefore concluded that, based on the available information, there was no indication of incorrect action or advice on the part of CRA officials.

[9] The Assistant Commissioner also responded to Ms. Boivin's other allegations as follows:

> [TRANSLATION]
>
> - Ms. Boivin alleges that she did not file tax returns for the 1995 to 1998 taxation years. However, according to the information in the CRA's systems, these tax returns were filed and assessed as filed on April 15, 1996, April 14, 1997, April 20, 1998 and May 17, 1999;
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> - Ms. Boivin alleges that her ex-husband reported interest income and claimed child tax credits. However, the tax liability did not result from interest, but rather from a change in the family income for the purpose of calculating the child tax credit;
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> - Ms. Boivin alleges that the CRA never contacted her between 1994 and 1999 concerning her debt. However, notices of assessment were forwarded to her at the address indicated on file, and the notices for 1996, 1998, 1999, 2000 and from 2007 to 2014 all contained a statement indicating that the tax refund had been applied to reduce her debt and that this debt was not indicated in the summary of the notice. A code also indicates that in 1995, Ms. Boivin made an inquiry into or objected to the assessment for 1993.

[10] Lastly, the Assistant Commissioner concluded that there were no circumstances beyond Ms. Boivin's control that would have prevented her from following up on her tax liability, filing an objection within the deadlines provided in the Act or making payments to minimize her debt.

II. POSITIONS OF THE PARTIES

A. *Ms. Boivin's position*

[11] In support of her application for judicial review, Ms. Boivin filed an affidavit, sworn on April 3, 2018, in which she recounted her case's history and to which she attached 13 exhibits.

[12] In her memorandum, under her statement of facts, Ms. Boivin stresses the following points: (1) in 1993, a CRA official advised her not to do anything and told her that her account would remain "dormant"; (2) she was not asked to file tax returns for the 1994 to 1999 taxation years; (3) since she had not received any notice of assessment during the 1994 to 1999 taxation years, she was not able to exercise her right to object; and (4) since 2000, she had received notices of assessment which failed to mention her balance owing and her accrued interest, despite the fact that she had the financial means to pay the debt.

[13] Also in her memorandum, Ms. Boivin essentially raises three arguments. First, she maintains that the Assistant Commissioner's opinion was based on flawed guidelines. Indeed, the *CRA Remission Guide* (the Guide) provides for four situations which justify debt remission. According to Ms. Boivin, the Assistant Commissioner's assessment should not have focussed on whether she belonged to the category of taxpayers experiencing "financial setback coupled with extenuating factors", but on whether her situation was due to "incorrect action or advice by a CRA official".

[14] Second, Ms. Boivin alleges that the Assistant Commissioner failed to consider: (1) evidence that contradicted the fact that she allegedly filed tax returns for the 1995 and 1998 taxation years, namely, the Quebec Pension Plan statement, which confirmed that Ms. Boivin did not have any qualifying income for the 1995 to 1998 taxation years; (2) the fact that, between 1994 and 2001, she did not receive any request to file tax returns; (3) evidence that the CRA had fabricated income that was higher than it really was; and (4) the fact that between 2000 and 2015, the CRA did not inform her of the outstanding balance and the accrued interest, in violation of rule 6 of the *Taxpayer Bill of Rights*, which provides that taxpayers have the right to receive "complete, accurate, clear and timely information".

[15] Third, Ms. Boivin argued that the Assistant Commissioner's finding that the CRA sent her notices of assessment for the 1994 to 1998 taxation years is not supported by the evidence, since [TRANSLATION] "no evidence of any notice of assessment is included in the respondent's record" (Applicant's Memorandum, paragraph 7).

[16] During the hearing, Ms. Boivin added that the CRA had created the tax returns included in her file for the 1991 to 1996 taxation years and had then waited until 2016 to send her a tax bill, knowing that these statements would then have been destroyed. However, this argument was never put before the Assistant Commissioner and was not included in Ms. Boivin's memorandum (*McMaster v Canada (Attorney General)*, 2018 FCA 37 at para 4; *Bellec v Canada (Attorney General)*, 2015 FCA 252 at para 5).

B. *Respondent's position*

[17] The respondent filed an affidavit from Geoff Trueman, the Assistant Commissioner, signed on May 7, 2018, accompanied by 2 exhibits, as well as an affidavit from Lynne Laplante, Senior Analyst, signed on May 7, 2018, accompanied by 12 exhibits.

[18] The respondent counters that the Assistant Commissioner's decision not to recommend a remission was reasonable, arguing that the Assistant Commissioner took all the facts of the case into account in order to render a decision and conclude that Ms. Boivin did not meet the criteria for a remission.

[19] First, the respondent submits that the applicable standard is that of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 48; *Germain v Canada (Attorney General)*, 2012 FC 768 at paras 27–29; *Waycobah* First *Nation v Canada (Attorney General)*, 2011 FCA 191 at paras 12–13; *Thomas R Jarrold v Canada Revenue Agency*, 2015 FC 153 at para 17; *Newfoundland and Labrador Nurses Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17).

[20] Second, the respondent outlined the legislative framework concerning tax remissions under subsection 23(2) of the Act. This subsection gives the Minister of National Revenue broad discretion to recommend a remission and constitutes an exceptional remedy (*Axa Canada Inc. v Canada*, 2006 FC 17; *Twentieth Century Fox Home Entertainment Canada Limited v Canada*

(Attorney General), 2012 FC 823; *Twentieth Century Fox Home Entertainment Canada Limited v Canada (Attorney General)*, 2013 FCA 25).

[21] The Guide provides guidelines for applying subsection 23(2) of the Act. These guidelines identify four situations which justify debt remission: (1) extreme hardship, (2) incorrect action or advice on the part of CRA officials, (3) financial setback coupled with extenuating factors, and (4) unintended results of the legislation. The respondent points out that granting a remission order involves a departure from the ordinary rules of taxation based on the principle of equality of treatment (*Waycobah First Nation v Canada (Attorney General)*, 2010 FC 1188 at para 31; *Frank Arthur Investments Inc. v Minister of National Revenue*, 2014 FC 336 at para 35).

[22] The respondent submits that the Assistant Commissioner's decision was reasonable because Ms. Boivin's situation does not correspond to any of the situations set out in the Guide. In his analysis of each of the first three situations, the Assistant Commissioner considered Ms. Boivin's circumstances and concluded that she did not satisfy any of these situations. His decision is transparent, intelligible and justified.

[23] The respondent also alleges that Ms. Boivin's arguments are flawed, in light of contradictory evidence. CRA records show that Ms. Boivin filed tax returns for the 1995 to 1998 taxation years, that she was assessed on the basis of the tax returns for 1995 and not based on fabricated income, that she received the notices of assessment, and that 12 of the notices of assessment informed her of the existence of an old tax debt. Furthermore, at the Court's request, the respondent specifically confirmed that the document issued by the CRA for the 1995 taxation

year, and produced by Ms. Boivin, confirms that the amount of $24,000 in income from support payments had in fact been reported for the 1995 fiscal year and that the tax returns for the 1995 taxation year were assessed as filed.

[24] Lastly, the respondent submits that the Court does not have jurisdiction to award damages in the context of an application for judicial review (section 18.1(3) of the *Federal Courts Act*, RSC, 1985, c F-7; *Al-Mhamad v Canada (Canadian Radio-Television and Telecommunications Commission)*, 2003 FCA 45).

III. DISCUSSION

A. *Relevant provisions*

[25] Under subsection 23(2) of the Act, the remission of taxes, interest or penalties owing constitutes an exceptional and extraordinary measure (*Fink v Canada (Attorney General)*, 2018 FC 936 at para 12 [*Fink*]; *Deshaies v Canada (National Revenue)*, 2018 FC 699 at para 20 [*Deshaies*]).

[26] Consequently, 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.

[27] According to the Guide, each application for remission is subject to a thorough review to determine whether any of the following situations apply: (1) extreme hardship, (2) financial setback coupled with extenuating factors, (3) incorrect action or advice on the part of CRA officials, and (4) unintended results of the legislation. The case law has confirmed that applying the criteria provided in the Guide is appropriate (*Deshaies* at para 30; *Pay Audio Services Limited Partnership v Canada (National Revenue)*, 2018 FC 494 at para 5 [*Pay Audio Services*]).

[28] Therefore, in order for a case to be recognized as involving extreme hardship, the annual family income of the individual concerned must be less than the low income cut-off established by Statistics Canada for the region in which that individual resides. This situation must exist at the time of the remission application and has to have persisted since the original tax debt arose.

[29] In cases of financial setback coupled with extenuating circumstances, the situation must involve significant financial difficulty and at least one extenuating circumstance that is reasonable and directly linked to the application for remission. The circumstance must be beyond the control of the taxpayer, unless there is sufficient evidence to demonstrate that CRA officials should have detected and corrected the error.

[30] In the third category of cases, the taxpayer may obtain a remission if he or she acted on the basis of incorrect advice provided by a CRA official. Moreover, the situation must be such that it would be unreasonable to expect the taxpayer to have taken appropriate measures to reduce or cancel the debt.

[31] Lastly, the fourth case applies when the application of tax legislation results in tax consequences that are undoubtedly unfair and contrary to the spirit of the law.

B. *Standard of review*

[32] The standard of review applicable to the Assistant Commissioner's decision concerning debt remission is reasonableness. Furthermore, subsection 23(2) of the Act gives the Minister and his or her delegates broad discretionary powers. The Court must therefore exercise restraint and deference with respect to the Assistant Commissioner's decision (*Fink* at para 14; *Deshaies* at para 20; *Pay Audio Services* at para 24).

[33] Therefore, this Court will intervene only if the Assistant Commissioner's decision is unreasonable, that is, if it does not fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law and if the decision-making process is not justifiable, transparent and intelligible (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

C. *Ms. Boivin's arguments*

(1) The Assistant Commissioner did not err in applying the guideline

[34] Contrary to Ms. Boivin's assertion, the Assistant Commissioner did in fact express an opinion on the guideline that she identified, "incorrect action or advice on the part of CRA officials", at the end of paragraph 3 of page 3 of his decision. Based on the evidence on record, the Assistant Commissioner's decision was reasonable.

(2) The Assistant Commissioner did not neglect to consider certain facts

[35] The record shows that the Assistant Commissioner did not neglect to consider the facts, contrary to Ms. Boivin's claim.

a) *Evidence contradicting the fact that she filed tax returns for the 1995 and 1998 taxation years*

[36] On this point, Ms. Boivin referred to her statement of participation in the Quebec Pension Plan, which indicates that she did not have any qualifying employment income for that plan from 1995 to 1998. However, this does not constitute proof that she did not file tax returns or that she was not assessed. The Assistant Commissioner noted that tax returns were filed, according to the information in the CRA systems, and that the details of these returns are on record, even though the original returns were destroyed. In light of the evidence on record, the Assistant Commissioner did not fail to consider this fact, and his decision was reasonable.

b) *Between 1994 and 2001, Ms. Boivin claims that she did not receive any request to file tax returns*

[37] Ms. Boivin did not raise this allegation in her application for remission, so the Assistant Commissioner did not need to take it into consideration. In any event, the record shows that Ms. Boivin filed these tax returns and that they were assessed. Ms. Boivin did not present any evidence to support her new allegation that the CRA had fabricated or created all her returns and assessments, and the Court cannot accept this claim. Therefore, even assuming, without

deciding, that the CRA had an obligation to ask Ms. Boivin to file her returns, the CRA had no reason to do so in this case, since the evidence shows that the tax returns were filed.

c) *Evidence indicating that the CRA fabricated income that was higher than actually earned*

[38] Ms. Boivin referred to a document concerning the bankruptcy of Mario Duval and to a statement of account from Revenu Québec concerning the collection of her support payments. The first document indicates that Ms. Boivin was one of her ex-husband's unsecured creditors, and the second indicates that she did not receive any support payments in 1995.

[39] Ms. Boivin argues that the CRA [TRANSLATION] "fabricated income that was higher than actually earned" by adding $24,000 in support payments to her income for 1995. The Assistant Commissioner instead maintains that this amount was reported in Ms. Boivin's tax returns for 1995 (page 3, 3rd paragraph), which were assessed as filed. The Assistant Commissioner notes that the tax returns for 1995 are no longer kept on file at the CRA and that there is no evidence to confirm Ms. Boivin's claim that the CRA added the amount of $24,000 to her income.

[40] On February 8, 2019, at the Court's request, the respondent filed a letter with the Court confirming that the amount of $24,000 in support payments had been reported for the 1995 taxation year. In short, in this letter, the respondent points out that when an amount reported by a taxpayer is identical to the amount assessed, the CRA does not indicate any amount in the "Reported" column of form RC143 generated by the CRA, which was indeed the case for

Ms. Boivin's form. The respondent had also compelled some documents in English, but in light of Ms. Boivin's comments, the Court will only consider the content of the letter.

[41] On February 14, 2019, Ms. Boivin replied to the respondent's letter, stating that the blank space in the "Reported" column only proves that the CRA did not challenge her own returns, and that it was unfortunate that the CRA continued to deny the addition that it made to Ms. Boivin's tax returns. She adds that there is no document attesting to any alleged withdrawal from an RRSP for 1995 and that Revenu Québec confirmed that she did not file returns for those years. Ms. Boivin notes that all taxpayers—except for her, apparently—are entitled to receive a notice of assessment stating an amount owing or receivable. Lastly, she confirms that she is not challenging the competence of the decision makers and deplores the fact that these decision makers are employed by the CRA.

[42] According to the evidence, the tax return for 1995 was assessed as filed, and no amount was added to it. Therefore, the Assistant Commissioner's finding was supported by the evidence.

> d) *Between 2000 and 2015, the CRA allegedly did not inform her of the outstanding balance and accrued interest, in violation of rule 6 of the Taxpayer Bill of Rights, which provides that taxpayers have the right to receive "complete, accurate, clear and timely information"*

[43] The Assistant Commissioner concludes that the statement on the notices of assessment, to the effect that the tax refunds had been applied to reduce the tax liability, is sufficient (page 4, 2nd paragraph). He also notes that after receiving the notices concerned, Ms. Boivin could have

made inquiries with the CRA, which she did in fact do in January 1995, which suggests that she was aware of her tax liability for the 1993 taxation year.

[44] According to the evidence before the Court, the notices of assessment for the 2000 and 2003 to 2014 taxation years confirm that there was an outstanding balance due and owing to the CRA and/or that the amounts payable to Ms. Boivin were applied against her debt.

[45] The Assistant Commissioner's decision cannot be described as unreasonable, given that several notices of assessment clearly mentioned the existence of a debt and the fact that tax refunds had been applied against the debt.

(3) The Assistant Commissioner's finding concerning the mailing of notices of assessments from 1994 to 1998 is supported by the evidence

[46] The Assistant Commissioner confirms that every year, a notice of assessment was mailed to the address indicated in the CRA systems, and there is no evidence to contradict this position. Therefore, this finding was also reasonable.

IV. Conclusion

[47] Even though Ms. Boivin's file inspires sympathy, she has not persuaded the Court that its intervention is justified. In light of the evidence on record, the Assistant Commissioner's decision is reasonable.

JUDGMENT in IMM-584-18

THIS COURT ORDERS AND ADJUDGES that:

- The application for judicial review is dismissed.
- Without costs.

"Martine St-Louis"
Judge

Certified true translation
This 17th day of May, 2019.
Michael Palles, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-584-18
STYLE OF CAUSE:	LINDA BOIVIN AND ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	QUÉBEC
DATE OF HEARING:	DECEMBER 10, 2018
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APPEARANCES:

Linda Boivin	SELF-REPRESENTED
Gilles Robert	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Linda Boivin Québec, Quebec	SELF-REPRESENTED
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT

APPENDIX

***Financial Administration Act* (RSC, 1985, c F-11)**	***Loi sur la gestion des finances publiques* (LRC (1985), ch F-11)**
Remission of taxes and penalties **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.	**Remise de taxes ou de pénalités** **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.