Date: 20060601

Docket: T-31-05

Citation: 2006 FC 675

Ottawa, Ontario, June 1st, 2006

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

HERBERT WAX

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 18(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 with respect to a decision of Mrs. Carole Gouin, Director, Montreal Tax Services Office for the Canada Customs and Revenue Agency (CCRA). In her decision dated July 22, 2004, Mrs. Gouin denied Mr. Herbert Wax's (the Applicant) request for a cancellation of interest accruing to $14,783.42 for taxation year 1988 and $966.92 for 1990.

1. Issues

[2] The issues are whether Mrs. Gouin erred in fact or in law in rejecting the Applicant's request for a cancellation of interest and whether the CCRA is statute-barred from collecting the arrears from the Applicant. This last argument was not brought up to the attention of Mrs. Gouin and therefore, she did not have to deal with it. Since it brings into play a question of law, I shall deal with it.

[3] For the reasons given hereafter, I conclude that the application for judicial review is dismissed with costs to the Applicant.

2. Facts and History of the Proceedings

[4] On August 6, 1993, the Applicant was reassessed for the 1988 taxation year (Applicant's Record, Tab 1). He failed to submit a Notice of Objection before November 4, 1993, as per subsection 165(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Suppl.) (the ITA). However, he was granted an extension of time and filed his objection on December 14, 1993. The CCRA and the Applicant agreed that the losses for the 1991 taxation year would be carried back to the 1988 taxation year, which reduced the amount of income tax owed for the 1988 taxation year to zero. A Notice of Reassessment purporting to reflect the settlement was issued on August 24, 1995

(Applicant's Record, Tab 2). For calculation purposes, the CCRA initially considered November 4, 1993 as the effective date of the loss carry back (effective date) (Applicant's Record, Tab 1, p. 5).

[5] The Applicant filed various applications seeking a reduction of arrears between 1996 and 2004 (Respondent's Record, p. 35 to 80). On October 21, 1996, the Applicant's accountant, Mr. Derek Silverman, sent a letter to the CCRA requesting that the August 24, 1995 reassessment be reviewed. More specifically, Mr. Wax requested that the effective date of the loss carry back correspond to the statutory date of production of his declaration for the year of the loss (April 30, 1992), not the statutory expiration date to file a request for the loss carry back (November 4, 1993). This was denied on February 28, 1997 (Applicant's Record, Tab 3). On March 27, 1997, Mr. Silverman (the first representative of the Applicant) filed a request to have the interest waived for the 1988, 1990 and 1995 taxation years. On March 18, 1998, the CCRA denied this request. On June 9, 2000, the Applicant sent another request to the CCRA, requesting corrections to the CCRA assessments, including a change to the the loss carry back date (the second request). On September 28, 2000, the CCRA refused it. On January 23, 2001, the Applicant's new representative, Mr. Eddy Perreault, requested that the interest for the 1988 taxation year be waived. Mr. Perreault argued that Mr. Yehoda Kopps, C.A.(another representative of the Applicant), misled the Applicant in advising him to defer the payment of his arrears. On April 25, 2001, the CCRA refused this request. On January 9, 2002, Mr. Kopps filed a third request to have the date of the loss carry back effective April 30, 1992 rather than November 4, 1993.

[6] On April 25, 2002, Aurélien Turcotte of the Appeals Division determined that the effective date of the loss carry back be set as April 30, 1992, thus reducing the amount owed by the Applicant to $8,863.39 under the fairness package (Respondent's Record, Tab B, p. 10; see also Tab D, p. 81 to 83; Tab E, p. 84). Between May 2002 and July 2003, correspondence was exchanged between the Applicant and the CCRA with respect to the details of the calculation. On August 6, 2003, Mr. Kopps filed another request to have part of the interests waived for the 1988 taxation year and offered to pay $4,296.00 ("as per our calculations" which were not supplied to the Respondent nor the Court"), claiming that excessive delays in reassessing his income tax after he filed a Notice of Objection in December 1993 caused extra interest. The application was rejected on March 26, 2004 by Mr. Patrice Allard, Chief of Appeals at the CCRA.

[7] On July 17, 2004, after the Applicant requested a second review of his file under the fairness package, France Leduc, Tax Auditor for the CCRA, recommended that the claim be rejected. On April 13, 2004, the Applicant by phone made another request to Mrs. Gouin, Director of the Montreal Tax Services Offices. Mrs. Gouin rejected the Applicant's claim.

3. Analysis

[8] In the present case, the decision dated July 22, 2004 was made pursuant to subsection 220(3.1) of the ITA. Under this subsection, the Minister has the power to waive or cancel, upon request, the interests and penalties owed by a taxpayer. It reads:

220 (3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to 152(5), such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.	220 (3.1) Le ministre peut, à tout moment, renoncer à tout ou partie de quelque pénalité ou intérêt payable par ailleurs par un contribuable ou une société de personnes en application de la présente loi, 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.

[9] In *Comeau c. Canada (Agence des Douanes et du Revenu)*, 2005 CAF 271, at para. 16, Justice Pelletier dealt with a decision based on subsection 220 (3.1) of the ITA, applied the decision of the Federal Court of Appeal in *Lanno v. Canada (Customs and Revenue Agency)*, 2005 FCA 153 and determined that the reasonableness standard applies to discretionary ministerial decisions under the fairness package (Arguments A and B). The prescription argument will be dealt with as a question of law (Argument C).

A. *Delays*

[10] The Applicants submit that the time that elapsed between the date on which he filed his Notice of Objection (December 14, 1993) and the date of the Notice of Reassessment (August 24, 1995) is excessive and resulted in him being charged extra interest (see Memorandum of Fact and Law of the Applicant, page 15). At the hearing, the Applicant's counsel took a different approach and argued that the CCRA took too long in coming to a favourable decision on the effective date of the loss carry back (from 1996 to 2002) and in dealing with the numerous requests of the Applicant with respect to the interest and the calculations made. He also argues that, in general, the CCRA was not diligent in responding to his various applications.

[11] The history of the file is clearly presented by the Respondent (see annex C of the Respondent's Record). It is noted that the Applicant is responsible for some of the major delays. For example, there is an unexplained delay of more than 2 years between March 18, 1998 and June 9, 2000. Also, a further delay of more than 7 months elapsed between April 21, 2001 and January 9, 2002. In relation to the Applicant's numerous requests to review the decisions made concerning the date of the loss carry back or the interest demanded, I find that the Respondent responses were given within a reasonable time periods (the responses varied between a few days, weeks to a few months, the lengthiest delay being around 7 months). The file of the Applicant had a long life because of the numerous demands made. It is of significance to note that the Applicant was represented in its dealing with CCRA by at least 4 different representatives (Silverman, Bacharier, Perreault, Kopps) over the years. As mentioned before, the Applicant also made a personal intervention on his files by telephone on April 13, 2004.

[12] Having said that, I note that the first request to change the effective date of the loss carry back from November 4, 1993 to April 30, 1992 was made by letter dated October 21, 1996. The explanation given for such change was that it should correspond to the statutory date of production of the declaration for the year of the loss and not the date of the filing of the request for the loss carry back. That first request was refused on February 28, 1997. A second request was made on June 9, 2000 and was denied on September 28, 2000. A third request was made on January 9, 2002. It was granted on April 25, 2002 and as a consequence, the interest was reduced to cover the period

of the change of the loss carry back from November 1993 to April 30, 1992 for a total amount of $8, 863.22. Therefore, the Applicant was successful and his interest was reduced as a consequence of the change of date of the loss carry back.

[13] This correction made by CCRA does not justify the Applicant in asking for a cancellation of the interest to be paid or offering to pay a lesser amount. As subsection 161(1) of the ITA indicates, this does not change the fact that as of the 1988 fiscal year, the Applicant was found to be responsible for the payment of income tax following the reassessment made for that taxation year and that some interest had to be paid. The parties came to a settlement on June 13, 1995 and a notice of reassessment was issued on August 25, 1995. As part of the settlement, it was agreed that the losses for the 1991 fiscal year would be carried back to the 1988 fiscal year. The initial date of the loss carry back was November 4, 1993 in accordance with subsection 161(7) of the ITA and as mentioned before, it was changed by the CCRA to April 30, 1992 and a credit on the interest was given. There is still some interest to be paid for the period in question from 1991 to the 1988 tax year (see Section 161(1) of the ITA).

[14] There were a fair number of demands made by the Applicant to review the calculations of interests. A more recent request was made on August 6, 2003 pursuant to circular 92-2, Guidelines for the cancellation and waiver of interest and penalties dated March 18, 1992 (“Guidelines”),

which triggered a complete review of the Applicant's file. It was refused by the Chief of Appeals in a letter dated March 12, 2004. Finally, on April 13, 2004, the Applicant himself phoned the Regional Director for another complete review of his file, which was done, and a letter dated July 22, 2004 was signed by the said Director. She concluded that "[…] it would not be appropriate to cancel the interest charged on your account" and that since the Applicant "[…] have not attempted to settle [his] debt and compound interest is being charged on the interest already due, in accordance with Subsection 248(11) of the *Income Tax Act*".

B. ***Errors of the CCRA***

[15] In the Guidelines, the following three circumstances are listed to indicate when interest should be waived:

- Extraordinary circumstances such as a disaster or disruption of services beyond a taxpayer's control that may have prevented a taxpayer from making a payment when due or otherwise complying with the ITA;
- Where the interest or penalty arose primarily because of actions of Revenue Canada including delay; and
- Where there is an inability to pay the amounts owing.

[16] The Applicant argues that given that neither the first nor the third situation fits the present factual situation, the CCRA implicitly admitted that an error has been committed by the CCRA.

[17] In the present case, Mr. Turcotte's decision dated April 25, 2001 (Respondent's Record, pp. 81 to 83) provides no reason to justify the tax relief that was granted to the Applicant. However, the Guidelines cannot be interpreted in the way the Applicant seeks to have them interpreted. The Guidelines are not authoritative and can not be interpreted as if they were binding. Section 3 of the Guidelines states:

> 3. These are only guidelines. They are not intended to be exhaustive, and are not meant to restrict the spirit or intent of the legislation. As the Department gains experience in applying the legislation, these guidelines may be adjusted, as necessary.

As a general rule, guidelines are not binding, unless a statute states so (*Pezim v. British Columbia (Superintendant of Brokers)* [1994] 2 S.C.R. 557, at para. 75; *Maple Lodge Farms v. Governement of Canada*, [1981] 1 FC 500, at p. 513, aff'd [1982] 2 R.C.S. 2).

[18] In addition, the CCRA did not commit any mistake but used its discretion to waive parts of the amounts owed by the Applicant. In the first place, the CCRA considered that the effective date

of the loss carry back was the statutory expiration date to file request for the loss carry back (November 4, 1993). After a third request made on January 9, 2002 to change the effective date, the CCRA agreed to deem the statutory date of production of the declaration for 1992 (April 30, 1992) as the effective date, and granted the Applicant some relief. This determination was made notwithstanding that paragraph 161(7)b) of the ITA states that the effective date of the loss carry back should be determined as follows:

b) the amount by which the tax payable under this Part and Parts I.3, VI and VI.1 by the taxpayer for the year is reduced as a consequence of the deduction or exclusion of amounts described in paragraph (a) is deemed to have been paid on account of the taxpayer's tax payable under this Part for the year on the day that is 30 days after the latest of (i) the first day immediately following that subsequent taxation year, (ii) the day on which the taxpayer's or the taxpayer's legal representative's return of income for that subsequent taxation year was filed, (iii) where an amended return of the taxpayer's income for the year or a prescribed form amending the taxpayer's return of income for the year was filed in accordance with subsection 49(4) or 152(6) or paragraph 164(6)(e), the day on which the amended return or prescribed form was filed, and (iv) where, as a consequence of a request in writing, the Minister reassessed the taxpayer's tax for the year to take into account the deduction or exclusion, the day on which the request was made [my emphasis].	b) la somme qui est appliquée en réduction de l'impôt payable par le contribuable pour l'année en vertu de la présente partie [...] par suite de la déduction ou de l'exclusion de montants visés à l'alinéa a) est réputée avoir été versée au titre de son impôt payable pour l'année en vertu de la présente partie le trentième jour suivant le dernier en date des jours suivants : (i) le premier jour qui suit cette année d'imposition ultérieure, (ii) le jour où la déclaration de revenu du contribuable ou de son représentant légal pour cette année d'imposition ultérieure a été produite, (iii) le jour où une déclaration de revenu modifiée du contribuable pour l'année a été produite ou un formulaire prescrit modifiant sa déclaration de revenu pour l'année a été présenté conformément au paragraphe 49(4) ou 152(6) ou à l'alinéa 164(6)e), dans le cas où il y a une telle production ou présentation, (iv) le jour de la demande écrite à la suite de laquelle le ministre établit une nouvelle cotisation concernant l'impôt du contribuable pour l'année et qui tient compte de la déduction ou de l'exclusion, dans le cas où il y a une telle nouvelle cotisation [je souligne].

By establishing the effective date of the loss carry back as April 30, 1992, the CCRA granted the Applicant a concession under the fairness package. Under a strict interpretation of the ITA, April

30, 1992 could not to be recognized as the effective date of the loss carry back. As a consequence of this new effective date, the CCRA used its discretion to waive part of the interest ($8,862.39) owed by the Applicant. In this context, the mere fact that the CCRA changed the effective date cannot support the Applicant's argument that the CCRA erred in setting November 4, 1993 as the effective date in the August 24, 1995 Reassessment. In any event, even if an error had been made which is not the case, the Applicant would have been compensated by the waiver of interest and such an error would not justify the Applicant to request the cancellation of interest (or the payment of a lower amount).

[19] Furthermore, I have already indicated that as of 1988, some income tax was owed. The application of a loss carry back neutralizes the income tax owed, but it does not follow that the interest should not be paid. Subsection 161(1) of ITA clearly states that interest still has to be paid. After all, the CCRA has the duty and obligation to make sure that the ITA is applied in a fair, uniform and equitable way for all taxpayers. As noted before, the Applicant offered to pay $4,296.00. In the documentation, reference is made to some calculations which were not submitted. The Court cannot do more in such situation without having some understanding about the exactitude of this amount.

[20] I find that the decision made by Mrs. Gouin in her letter dated July 22, 2004 is reasonable and that the reasons given do support the decision made.

C. *Limitation period*

[21] Finally, the Applicant claims that by virtue of section 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (CLPA), the CCRA is statute-barred from collecting the Applicant's arrears. Section 32 of the CLPA reads:

32. Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.	32. Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent lors des poursuites auxquelles l'État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

[22] At the hearing, Counsel for the Applicant substantially changed this argument and pleaded at the hearing that prescription rules provided for in section 222 are not applicable to him by virtue of subparagraph 222(4)(a)(i) of the ITA. In addition, he submitted that the theory of acquired rights applies to his benefit. Parties were given time to submit further submissions to address these two arguments.

[23] Additional submissions were filed by the Respondent on April 3, 2006 and the Applicant sent the Court a response dated April 19, 2006. The Respondent indicated in a letter dated April 24, 2006 that the Applicant invoked additional authorities in his April 19, 2006 memorandum. On May 3, 2006, I allowed the Respondent to reply by May 12, 2006. In a letter dated May 4, 2006, the

Respondent asked the Court to extend the deadline to May 23, 2006. I granted this request in a direction dated May 5, 2006. The Respondent sent a further memorandum of argument on May 23, 2006.

[24] First I will address the argument based on the wording of subparagraph 222(4)(a)(i) of the ITA and I will then turn to the theory of acquired rights.

(1) Wording of Subparagraph 222(4)(a)(i) ITA

[25] While section 32 of the CLPA sets the general time limitation, subsection 222(4) of the ITA sets the specific time frame for the collection of arrears. It reads:

222 (4) The limitation period for the collection of a tax debt of a taxpayer (a) begins (i) if a notice of assessment, or a notice referred to in subsection 226(1), in respect of the tax debt is mailed to or served on the taxpayer, after March 3, 2004, on the day that is 90 days after the day on which the last one of those notices is mailed or served, and (ii) if subparagraph (i) does not apply and the tax debt was payable on March 4, 2004, or would have been payable on that date but for a limitation period that otherwise applied to the collection of the tax debt, on March 4, 2004; and (b) ends, subject to subsection (8), on the day that is 10 years after the day on which it begins.	222 (4) Le délai de prescription pour le recouvrement d'une dette fiscale d'un contribuable : a) commence à courir : (i) si un avis de cotisation, ou un avis visé au paragraphe 226(1), concernant la dette est posté ou signifié au contribuable après le 3 mars 2004, le quatre-vingt-dixième jour suivant le jour où le dernier de ces avis est posté ou signifié, (ii) si le sous-alinéa (i) ne s'applique pas et que la dette était exigible le 4 mars 2004, ou l'aurait été en l'absence de tout délai de prescription qui s'est appliqué par ailleurs au recouvrement de la dette, le 4 mars 2004; b) prend fin, sous réserve du paragraphe (8), dix ans après le jour de son début.

[26] The Applicant submitted at the hearing that the wording of subparagraph 222(4)(a)ii) of the ITA, which states that "[...] if subparagraph (i) does not apply and the tax debt was payable on March 4, 2004 [...]", shows that the amount had to have been payable on March 4, 2004 for section 222 ITA prescription rule to apply.

[27] This argument is dismissed. A comprehensive reading of section 222 reveals, as the Respondent noted in its additional submissions, that it is not required that the tax debt be payable on March 4, 2004 for the prescription rule to apply. In subparagraph 222(4)ii) of the ITA, the words " [...] or would have been payable on that date [March 4, 2004] but for a limitation period that otherwise applied to the collection of tax debts [...]" are unambiguous. A tax debt that was prescribed prior to the adoption of Bill C-30 can nevertheless be enforced by the Canadian Revenue Agency under the Act (For a detailed analysis on this issue, see *Gibson v. Canada*, 2005 FCA 180 and *Collins v. Canada*, 2005 FC 1431).

[28] As I mentioned in *Collins*, Bill C-30, *An Act to Implement Certain Provisions of the Budget Tabled in Parliament on 23 March 2004*, 3rd Sess., 37th Parl., 2004 (Received royal Assent on May 14, 2004) ("Bill C-30") was adopted as a response to the Supreme Court of Canada's decision in *Markevich v. Canada*, 2003 CSC 9. In this decision, the Supreme Court gave effect to a time

limitation found in provincial legislation. In adopting Bill C-30, Parliament intended that all time limitations applicable prior to the adoption of the Bill be given no effect for the purposes of tax collection.

(2) Theory of Acquired Rights

[29] The Applicant further submits that the theory of acquired rights should be given effect to his benefit. In other words, he argues that Bill C-30 should not be applied to his particular case because he has an acquired right to not pay his tax debts which he allegedly would have no obligation to pay given the limitation period set out in s. 32 of the CLPA.

a) Jurisprudential Analysis

[30] The theory of vested rights was developed as an interpretation rule applicable only where the intention of the legislature is unclear and reasonably susceptible of two constructions (See *Gustavson Drillin (1964) Ltd. v. Canada (Minister of National Revenue – M.R.N.)*, [1977] 1 S.C.R. 271. However, statutory interpretation rules have evolved through the decisions of the Supreme Court of Canada in the recent years and this evolution impacted on the theory of vested rights. It is now well established that there is one approach to interpretation – the modern approach to interpretation (see *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, at para. 26 to 30):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[31] In the recent decision, *Dikranian v. Quebec (Attorney General)*, [2005] S.C.J. No. 75, 2005 SCC 73, Justice Bastarache reconciled the modern rule of interpretation with the theory of vested rights as developed in the previous line of authority. Below I reproduce substantial portions of this decision. At paras. 32 to 34, he explained the relationship between the modern approach to interpretation and the theory of vested rights as exposed in the old jurisprudence:

> 4.2 Vested Rights
>
> [...]
>
> 4.2.2 Statement of Principle
>
> ¶ 32 The principle against interference with vested rights has long been accepted in Canadian law. It is one of the many intentions attributed to Parliament and the provincial legislatures. As E. A. Driedger states in Construction of Statutes (2nd ed. 1983), at p. 183, these presumptions were designed as protection against interference by the state with the liberty or property of the subject. Hence, it was "presumed", in the absence of a clear indication in the statute to the contrary, that Parliament did not intend prejudicially to affect the liberty or property of the subject. [...]
>
> ¶ 33 The leading case on this presumption is Spooner Oils Ltd. v. Turner Valley Gas Conservation Board, [1933] S.C.R. 629, at p. 638, where this Court stated the principle in the following terms:
>
> > A legislative enactment is not to be read as prejudicially affecting accrued rights, or "an existing status" (Main v. Stark [(1890), 15 App. Cas. 384, at 388]), unless the language in which it is expressed requires such a construction. The rule is described by Coke as a "law of Parliament" (2 Inst. 292), meaning, no doubt, that it is a rule based on the practice of Parliament; the underlying assumption being that, when Parliament intends prejudicially to affect such rights or such a status, it declares its intention expressly, unless, at all events, that intention is plainly manifested by unavoidable inference.
>
> ¶ 34 The principle has since been codified in interpretation statutes. The Interpretation Act is no exception:

> 12. The repeal of an act or of regulations made under its authority shall not affect rights acquired ... and the acquired rights may be exercised ... notwithstanding such repeal.

[32] In short, the Courts formerly considered the theory of vested rights as a mere presumption, which could apply only where a statute is ambiguous. However, in *Dikranian v. Quebec (Attorney General)*, above, Justice Bastarache cautioned the Courts "not to get caught up in the last vestiges of the literal approach" and stated his view that the theory of vested right informs interpretation in every case. At paras. 35 and 36, he wrote:

> 4.2.2.1 Rule of Construction
>
> ¶ 35 In the past, this Court has stressed that the presumption against interference with vested rights could be applied only if the relevant legislation were ambiguous, that is, reasonably susceptible of two constructions (see Gustavson Drilling, at p. 282; Acme Village School District, at p. 51; Venne, at p. 907).
>
> ¶ 36 This statement must be qualified somewhat in light of this Court's recent decisions. As Professor Sullivan says, care must be taken not to get caught up in the last vestiges of the literal approach to interpreting legislation:
>
> > In so far as this language echoes the plain meaning rule, it is misleading. The values embodied in the presumption against interfering with vested rights, namely avoiding unfairness and observing the rule of law, inform interpretation in every case, not just those in which the court purports to find ambiguity. The first effort of the court must be to determine what the legislature intended, and ... for this purpose it must rely on all the principles of statutory interpretation, including the presumptions. [at p. 576]
>
> Since the adoption of the modern approach to statutory interpretation, this Court has stated time and time again that the "entire context" of a provision must be considered to determine if the provision is reasonably capable of multiple interpretations (see, for example, Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 29). [my emphasis]

[33] Finally, Justice Bastarache exposed the criteria that courts should apply to find whether a vested right exists, at paras. 37 to 40:

> 4.2.2.2 Criteria for Recognizing Vested Rights
>
> ¶ 37 Few authors have tried to define the concept of "vested rights". The appellant cites Professor Côté in support of his arguments. Côté maintains that an individual must meet two criteria to have a vested right: (1) the individual's legal (juridical) situation must be tangible and concrete rather than general and abstract; and (2) this legal situation must have been sufficiently constituted at the time of the new statute's commencement (Côté, at pp. 160-61). [...]
>
> ¶ 38 I am satisfied from a review of the case law of this Court and the courts of the other provinces that the analytical framework proposed by the appellant is the correct one.
>
> ¶ 39 A court cannot therefore find that a vested right exists if the juridical situation under consideration is not tangible, concrete and distinctive. The mere possibility of availing oneself of a specific statute is not a basis for arguing that a vested right exists [...]. As Dickson J. (as he then was) clearly stated in Gustavson Drilling, at p. 283, the mere right existing in the members of the community or any class of them at the date of the repeal of a statute to take advantage of the repealed statute is not a right accrued [...]. In other words, the right must be vested in a specific individual.
>
> ¶ 40 But there is more. The situation must also have materialized [...]. When does a right become sufficiently concrete? This will vary depending on the juridical situation in question. [...]

[34] Justice Bastarache's rulings were applied by the British Columbia Supreme Court in *B.C. Nurses' Union v. Municipal Pension Board of Trustees*, [2006] B.C.J. No. 156. At para. 111, Justice Romilly summarized the applicable law :

> ¶ 111 The presumption against interference with vested rights had historically been held to apply only when the legislation at issue was ambiguous, that is, reasonably susceptible of two constructions. The Supreme Court in Dikranian modified that position, cautioning against a literal approach to interpreting legislation [...]
>
> ¶ 112 Accordingly, the entire context of a provision must be considered to determine whether it is reasonably capable of multiple interpretations.

[35] My understanding of *Dikranian v. Quebec (Attorney General)*, above, is that the Court should read the words of the ITA in their context and in their grammatical and ordinary sense

harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament. Vested rights, if any, should be taken into consideration in construing a statute.

b) Application to the Facts

[36] In my view, section 222, read in its "entire context", cannot be interpreted in the way the Applicant suggests. If, as the Applicant submits, a vested right to the application of s. 32 of the CLPA existed to his benefit, it would mean that any taxpayer may apply for multiple reviews of its tax debts to get the benefit of a time limitation. This would, in my view, contradict the scheme of the ITA. In addition, subsection 42(1) of the *Interpretation Act*, R.S.C., c. I-21 set out a general rule:

42. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.	42. (1) Il est entendu que le Parlement peut toujours abroger ou modifier toute loi et annuler ou modifier tous pouvoirs, droits ou avantages attribués par cette loi.

This provision reflects, in my view, Parliament's clear intention to preserve its prerogative to abolish vested rights. In the matter at hand, the intention of Parliament cannot be clearer.

[37] Finally, the passage "[...] or would have been payable on that date [March 4, 2004] but for a limitation period that otherwise applied to the collection of tax debts [...] " would be given no effect if the interpretation suggested by the Applicant were adopted.

[38] Therefore, the CCRA is not statute-barred from collecting the Applicant's arrears.

[39] For these reasons, the application for judicial review is dismissed with costs.

JUDGMENT

THE COURT HEREBY ORDERS THAT:

- The application for judicial review is dismissed with costs.

"Simon Noël"

Judge