

Federal Court



Cour fédérale

**Date: 20220202**

**Docket: T-1715-19**

**Citation: 2022 FC 120**

**Ottawa, Ontario, February 2, 2022**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**VICTORIA MOSHINSKY-HELM**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ms. Moshinsky-Helm, is challenging the decision by the Canada Revenue Agency [CRA] which refused to grant her access to records relating to her ex-spouse's income and businesses. Ms. Moshinsky-Helm sought this information under the *Access to Information Act*, RSC 1985, c A-1 [ATIA].

[2] The CRA denied Ms. Moshinsky-Helm's request because it is prohibited from sharing Mr. Helm's information without his consent, and none of the exceptions to that requirement in the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] would apply to Ms. Moshinsky-Helm's circumstances.

[3] I find no error in the CRA's decision to deny Ms. Moshinsky-Helm's request. I agree with its interpretation of the relevant provisions in the *ATIA* and the *ITA*. I do not find that there was a basis for the CRA to be able to provide Ms. Moshinsky-Helm access to the records she sought.

[4] For the reasons set out below, I dismiss Ms. Moshinsky-Helm's application for judicial review.

## II. Procedural History

[5] On July 9, 2018, Ms. Moshinsky-Helm sent the CRA an access to information request in which she sought information about Mr. Helm's income. In particular, she sought information about businesses that Mr. Helm either owned or had more than one percent interest in between 2004-2017.

[6] On July 17, 2018, the CRA informed Ms. Moshinsky-Helm that, in order to process her request, it required Mr. Helm's social insurance number and his authorization to access his records. Ms. Moshinsky-Helm provided his social insurance number but did not provide an authorization from Mr. Helm.

[7] In a letter dated August 7, 2018, the CRA determined that Ms. Moshinsky-Helm's request was considered abandoned because it had not received the requested information to process the file.

[8] Ms. Moshinsky-Helm challenged the determination that her request should be abandoned by filing a complaint to the Office of the Information Commissioner of Canada [OIC]. After some exchanges between the OIC and the CRA, the CRA agreed to look at the request again and issued a decision to refuse Ms. Moshinsky-Helm's access to information request in a decision dated August 23, 2019.

[9] It is the August 23, 2019 decision that is under review in this judicial review. Ms. Moshinsky-Helm made a second complaint to the OIC, now in relation to this August 23, 2019 decision, to refuse her access request.

[10] On September 25, 2019, the OIC communicated the results of its investigation of the first complaint — the abandonment determination. The OIC concluded that Ms. Moshinsky-Helm's complaint was well-founded and that the CRA erred when it had declared her request abandoned. The OIC went on to consider the August 23, 2019 decision, which is the subject of this judicial review, and found that this final decision was compliant with the *ATIA*.

[11] Ms. Moshinsky-Helm filed an application for judicial review to this Court under s 41(1) of the *ATIA* on October 21, 2019. The proceeding was held in abeyance pending the receipt of

the final determination of the OIC with regards to their investigation into Ms. Moshinsky-Helm's complaint about the August 23, 2019 determination.

[12] On February 3, 2021, the OIC issued its final report in response to Ms. Moshinsky-Helm's second complaint with regards to the final August 23, 2019 decision. The OIC found that this final decision was compliant with the *ATIA* and Ms. Moshinsky-Helm's complaint was not well-founded.

[13] Ms. Moshinsky-Helm brought a motion for advanced costs before this Court. Case Management Judge Ring heard this motion and on February 19, 2021 denied her request for advanced costs.

### III. Analysis

[14] Ms. Moshinsky-Helm's judicial review is brought under s 41(1) of the *ATIA*. Under the heading "*de novo* review", s 44.1 of the *ATIA* provides that judicial review proceedings brought under ss 41 or 44 are to "be heard and determined as a new proceeding." The presumption of reasonableness review therefore does not apply as this fits within the exception set out in *Vavilov*, where the legislature has clearly indicated a different standard should apply (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 32, 34-35; *Concord Premium Meats Ltd. v Canada (Food Inspection Agency)*, 2020 FC 1166 at paras 33, 40-43; *Suncor Energy Inc. v Canada-Newfoundland and Labrador Offshore Petroleum Board*), 2021 FC 148 at paras 51, 52; *Beniey v Canada (Minister of Public Safety and Emergency Preparedness)*, 2021 FC 164 at paras 18-23).

[15] Accordingly, I do not owe any deference to the CRA's decision to deny Ms. Moshinsky-Helm access to the records. I must consider the evidence and the relevant provisions myself and come to a determination as to whether the CRA erred in not providing the records.

[16] Ms. Moshinsky-Helm has sought her ex-spouse's income tax records from the CRA because she claims that without them she is unable to continue her litigation in family court and ensure that the appropriate amounts of spousal and child support are ordered. Considering the legislative provisions set out in the *ATIA* and the *ITA*, I am satisfied that seeking Mr. Helm's records from the CRA is not an option that is available to her.

[17] Section 24(1) of the *ATIA* provides that access to records shall be refused where "disclosure of which is restricted by or pursuant to any provision set out in Schedule II." Schedule II of the *ATIA* includes the following provision in the *ITA*, which the CRA relied upon in denying Ms. Moshinsky-Helm's request for the records:

241(1) Except as authorized by this section, no official or other representative of a government shall

- (a) knowingly provide, or knowingly allow to be provided, to any person any taxpayer information;
- (b) knowingly allow any person to have access to any taxpayer information; or
- (c) knowingly use any taxpayer information otherwise than in the course of the administration or enforcement of this Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or for the purpose for which it was provided under this section.

[18] Section 241(5) of the *ITA* allows disclosure of taxpayer information to the taxpayer themselves or to someone else with the taxpayer's consent. There is no dispute that Ms. Moshinsky-Helm is not seeking her own taxpayer information, nor does she have the consent of the taxpayer, Mr. Helm, whose information and records she is seeking.

[19] The *ITA* provides a list of exceptions to this general prohibition on providing taxpayer information to others, who are not the taxpayer, without their consent. Subsections 241(3.1) to (9.5) of the *ITA* set out these exceptions. None of these exceptions could apply to the circumstances of Ms. Moshinsky-Helm's request.

[20] Ms. Moshinsky-Helm specifically asked whether "family income" is an exception to this general prohibition on disclosing taxpayer information to third parties. There is no such exception. Spouses, even who are still married, do not have a right to obtain their spouse's tax information without their consent; there is no "right" to have access to taxpayer information about income that was generated by one spouse during one's marriage.

[21] Ms. Moshinsky-Helm is not challenging the constitutionality of any legislation in her application for judicial review but raised the *Canadian Charter of Rights and Freedoms* [*Charter*] in a general way, arguing that her case was about a violation of equality rights under s 15 of the *Charter* and that the CRA's decision to "withhold family income information has an adverse impact on the life of the child and mine since 2018." This reference to the *Charter* was vague and made without an evidentiary foundation or specific legal argument. It does not impact

my determination that the CRA was correct in finding that it was prohibited by its governing legislation to provide the requested records of Mr. Helm to Ms. Moshinsky-Helm.

[22] Accordingly, the application for judicial review is dismissed.

[23] The Minister indicated that it was seeking costs in the amount of \$1,000.00 with respect to Ms. Moshinsky-Helm's motion for advanced costs that had been dismissed by Case Management Judge Ring in February 2021. Case Management Judge Ring dismissed the motion and ordered costs in the cause. Having regard to the circumstances of this case, and in particular the financial circumstances of Applicant, I exercise my discretion under rule 400(1) of the *Federal Court Rules*, SOR/98-106 to not order costs.

**JUDGMENT IN T-1715-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed;
2. No costs are awarded.

"Lobat Sadrehashemi"

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Judge



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

**DOCKET:** T-1715-19

**STYLE OF CAUSE:** VICTORIA MOSHINSKY-HELM v MINISTER OF  
NATIONAL REVENUE

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 9, 2021

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** FEBRUARY 2, 2022

**APPEARANCES:**

Victoria Moshinky-Helm

FOR THE APPLICANT,  
ON HER OWN BEHALF

Courtney Davidson

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT