

Federal Court



Cour fédérale

Date: 20120423

Docket: T-948-11

Citation: 2012 FC 465

Ottawa, Ontario, April 23, 2012

**PRESENT:** The Honourable Mr. Justice Barnes

**BETWEEN:**

**SYVERT MYTTING**

**Applicant**

**and**

**MINISTER OF NATIONAL REVENUE**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review by Syvert Mytting challenging a decision by the Minister of National Revenue (Minister) denying Mr. Mytting's request for relief from interest accruing on an income tax debt. Mr. Mytting argues that the Minister is estopped from demanding interest because of misleading information that was conveyed about his tax indebtedness. He argues, in the alternative, that the Minister's decision was unreasonable.

[2] There is no merit to Mr. Mytting's complaint. Mr. Mytting did not establish that he was misled by the Minister or that the decision to deny interest relief was unreasonable. Indeed,

Mr. Mytting knew or ought to have been aware that interest was accruing on the balance owing from the reassessment of his 1998 tax return, but Mr. Mytting did nothing to mitigate his potential liability.

### I. Background

[3] In June 2000, Mr. Mytting sought to adjust his 1998 declared income by the additional sum of \$105,965. This amount represented an unpaid loan from his business that, after one year, was required to be taken into personal income. Within five months, the CRA reassessed him for additional tax in the amount of \$56,987. Mr. Mytting acknowledged the tax debt and had discussions about paying it off with CRA officials. He deposes that he was not then able to make “an immediate payment”. At about the same time, Mr. Mytting filed a Notice of Objection concerning tax payable for the 1997, 1998 and 1999 tax years. This dispute concerned business losses from a tax shelter investment and it was eventually resolved in 2007. At or around the same time, Mr. Mytting received a Statement of Account from the CRA claiming the additional amount owing for the personal income adjustment to his 1998 tax return. Mr. Mytting deposes that he was surprised by the outstanding amount because the previous Statements sent to him by the CRA did not indicate that he had a significant tax liability. He also asserts that had he been aware of his tax indebtedness, he would have increased his regular payments or made a lump-sum payment to avoid the ongoing accrual of interest.

[4] Although Mr. Mytting acknowledges receiving regular Statements of Account from the CRA, he says they were misleading because they failed to indicate what he actually owed and stated that he would be advised of any remaining amount that was not in dispute.

[5] The fundamental problem with Mr. Mytting's argument is that he was not as ill-informed about his tax obligations as he professed to the Minister. He knew that he owed a substantial amount of tax for the 1998 tax year because he had initiated the required restatement of his income in his 2000 T-1 Adjustment filing. He does not deny that he was unable to pay the arrears at that time and that there were ongoing discussions with CRA officials about payment arrangements. Although he had filed a Notice of Objection for the 2008 tax year for unrelated matters, he had no basis to assume that the amount owed for the increase in personal income in that year had disappeared or had been forgiven. It is against that background that the CRA Statements of Account of which he complains must be examined.

[6] Mr. Mytting was repeatedly advised in those Statements that the balances indicated as owing did not include unpaid amounts for the taxation years for which a Notice of Objection had been filed. Each of those Statements set out the unpaid amount that was then provisionally payable (e.g. February 23, 2004 - \$85,918.17 and March 5, 2007 - \$107,337.63) and informed Mr. Mytting that interest would continue to accrue. Mr. Mytting's statement that he was "surprised by the large amount" claimed in 2007 is also belied by the letter sent to him on September 11, 2006 that clearly advised that his account balance for the 1998 tax year was \$90,452.39 – a figure that included accrued interest of \$37,056.60. In addition, the CRA notes to file disclose ongoing dialogue between Mr. Mytting and CRA officials about his outstanding tax obligations. The reasonable assumption from the CRA Statements of Account was that the amounts stated to be provisionally owed were not required to be immediately paid, but interest would continue to accumulate with respect to any amounts that were ultimately deemed to be payable.

[7] Mr. Mytting complains that the CRA failed to advise him of the precise amount payable for the 1998 tax year until mid-2007. While that may be so, he must have known that he was running a risk by failing to pay what he knew to be owing for the additional income earned in 1998. He may have been hopeful that the unrelated adjustments he was claiming for that year would offset the amount he knew to be owed, but there is nothing in the CRA communications to him to support such optimism.

[8] This situation is indistinguishable from that described by the Federal Court of Appeal in *Comeau v Canada (Customs and Revenue Agency)*, 2005 FCA 271 at para 20, [2005] FCJ no 1334 (QL) [*Comeau*]:

As to the third segment, from the assessment of June 1997 to the reassessment of September 11, 2000, the Agency justified its refusal to cancel the interest by the fact that, on June 26, 1997, Mr. Comeau was aware that there was an outstanding amount and that this amount remained unpaid throughout this third segment. Mr. Comeau could have paid the outstanding amount, which would have terminated the accumulation of interest, subject to being reimbursed if his objection succeeded. In other words, a taxpayer may benefit from the suspension of collection proceedings while his objection is being processed and wager on the outcome of his objection by not paying the amounts claimed by the Agency, so that interest accumulates, but if he loses his wager (when his objection is dismissed), he cannot complain that the rules of the game put him at a disadvantage. There is nothing unreasonable in the Agency's decision.

Also see *Telfer v Canada (Revenue Agency)*, 2009 FCA 23 at paras 34-35, [2009] FCJ no 71 (QL).

[9] In summary, there is nothing in the record which would give rise to an estoppel. Indeed, the evidence relied upon by Mr. Mytting falls well short of the type of unambiguous commitment that is

required to create an estoppel: see *Dubé v Canada (Attorney General)*, 2006 FC 796 at par 55, [2006] FCJ No 1014 (QL).

[10] I am also not satisfied that Mr. Mytting has established any detrimental reliance. He deposes that he would have taken steps to pay down his tax obligations had he been advised of what he owed. Nevertheless, he deposes that he was not able to pay anything on the 1998 tax arrears when the debt first arose and the record discloses that he resorted to monthly instalments of \$500 to satisfy very modest tax arrears that were under CRA collection in 2003 and 2004. In the absence of any documentary corroboration that he had the means to pay this tax indebtedness in a timely fashion, I am not satisfied that he has established any prejudice even if he was confused about what he owed.

[11] Like the decision in *Comeau*, above, I can find nothing in the record to support Mr. Mytting's contention that the Minister's decision was unreasonable. The Minister considered Mr. Mytting's complaint that he had been misled and reasonably rejected it on the record produced. The Minister's decision was one that was open to be made on the evidentiary record. It falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and the law and cannot be set aside on judicial review: see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [2008] 1 SCR 190.

[12] For the foregoing reasons, this application for judicial review is dismissed with costs payable to the Minister.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed with costs payable to the Minister.

"R.L. Barnes"

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Judge

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

**DOCKET:** T-948-11

**STYLE OF CAUSE:** MYTTING v MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** Vancouver, BC

**DATE OF HEARING:** April 12, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BARNES J.

**DATED:** April 23, 2012

**APPEARANCES:**

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