

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20191107**

**Docket: A-344-18**

**Citation: 2019 FCA 276**

**CORAM: DAWSON J.A.  
STRATAS J.A.  
MACTAVISH J.A.**

**BETWEEN:**

**RON FINK**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Edmonton, Alberta, on November 5, 2019.

Judgment delivered at Edmonton, Alberta, on November 7, 2019.

**REASONS FOR JUDGMENT BY:**

**DAWSON J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
MACTAVISH J.A.**

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**REASONS FOR JUDGMENT**

**DAWSON J.A.**

[1] Subsection 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11, allows the federal government to provide full or partial relief from any tax or penalty, including 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.” A remission order is an extraordinary remedy granted by the

Governor in Council on the recommendation of the appropriate Minister. Remission orders are highly discretionary and are entitled to significant deference on judicial review.

[2] The appellant unsuccessfully sought remission of income tax payable in respect of taxable benefits he received under a stock option plan offered by his employer, ZCL Composites Inc.

[3] For reasons cited 2018 FC 936, the Federal Court dismissed an application for judicial review of the negative decision. The appellant now appeals the judgment of the Federal Court.

[4] On this appeal the parties agree that the Federal Court correctly reviewed the remission decision on the standard of review of reasonableness. The issue on this appeal, therefore, is whether the Federal Court applied the reasonableness standard correctly.

[5] The appellant's principal argument on appeal is that the decision is unreasonable because the appellant was similarly situated to employees of SDL Optics, Inc. who acquired shares through a stock purchase plan and who were granted remission orders. It is submitted that the decision-maker distinguished the situation in SDL Optics from the present case on a basis that was arbitrary and unreasonable.

[6] I disagree. In the case of SDL Optics, employees who purchased shares through a stock option plan, as opposed to a stock payment plan, were not entitled to remission. This reflects the fact that a stock option plan provides greater flexibility to employees. The appellant had the

option to purchase, or not purchase, shares at a designated price for a specified period of time regardless of shifts in market value during that period. Fewer options are granted under stock purchase plans.

[7] The appellant also argues that he was denied procedural fairness because he legitimately and reasonably expected that he would be provided the same process considerations as the successful SDL Optics employees.

[8] Again, I disagree. The doctrine of legitimate expectation permits a court to grant appropriate procedural remedies – it cannot give rise to substantive rights. What the appellant seeks is a substantive remedy.

[9] The decision-maker reasonably found that the appellant's circumstances were not similar to employees of SDL Optics. He also considered the other factor raised by the appellant under the Canada Revenue Agency Remission Guide guidelines: whether the appellant suffered a financial setback coupled with extenuating factors. The decision-maker reasonably concluded that while the payment of the tax assessed, with interest, would constitute a financial setback there were no extenuating circumstances as required by the guidelines. The appellant acquired the shares with knowledge that the related employee benefit was to be included as taxable income in that taxation year. The decisions to exercise the option to purchase the ZCL shares and to hold those shares were within the appellant's control.

[10] It follows that, despite the able submissions of Mr. Yaskowich, I would dismiss the appeal with costs.

“Eleanor R. Dawson”

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J.A.

“I agree.

David Stratas J.A.”

“I agree.

Anne L. Mactavish J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-344-18

**STYLE OF CAUSE:** RON FINK v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** EDMONTON, ALBERTA

**DATE OF HEARING:** NOVEMBER 5, 2019

**REASONS FOR JUDGMENT BY:** DAWSON J.A.

**CONCURRED IN BY:** STRATAS J.A.  
MACTAVISH J.A.

**DATED:** NOVEMBER 7, 2019

**APPEARANCES:**

James C. Yaskowich  
Ryan Antonello

FOR THE APPELLANT

Margaret McCabe

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Felesky Flynn LLP  
Edmonton, Alberta

FOR THE APPELLANT

Nathalie G. Drouin  
Deputy Attorney General of Canada

FOR THE RESPONDENT