

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191205

Docket: A-287-18

Citation: 2019 FCA 300

[ENGLISH TRANSLATION]

**CORAM: NADON J.A.
BOIVIN J.A.
LOCKE J.A.**

BETWEEN:

YVES DESHAIES

Appellant

and

MINISTER OF NATIONAL REVENUE

Respondent

Heard at Montréal, Quebec, on December 3, 2019.

Judgment delivered at Montréal, Quebec, on December 5, 2019.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**NADON J.A.
LOCKE J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] The appellant is appealing a decision by a Federal Court judge who upheld the refusal of the Assistant Commissioner at the Legislative Policy and Regulatory Affairs Branch of the Canada Revenue Agency (CRA) to recommend to the Governor in Council the remission, under subsection 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11, of an amount

representing the taxes, penalties and interest the applicant owed for the 2000 to 2003 taxation years.

[2] The standard of review applicable on an appeal from a decision by a Federal Court judge dealing with an application for judicial review of an administrative decision is that set out in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paragraphs 45–47. In that case, the judge correctly identified the applicable standard of review, *i.e.*, that of reasonableness, and he applied it appropriately.

[3] Despite the able submissions of the appellant’s counsel and the sympathy that the appellant’s case arouses, the application must be dismissed.

[4] The granting of a remission order is an exceptional measure that necessarily involves a departure, not only from the ordinary rules of taxation, but also from the principle of equality of treatment before the law. This Court stated the following in *Waycobah First Nation v. Canada (Attorney General)*, 2011 FCA 191, at paragraph 18:

[18] Nor does the language of subsection 23(2) itself (“unreasonable or unjust” or “otherwise in the public interest”) indicate that Parliament intended that a debt should normally be remitted if payment would cause extreme hardship. These are open-ended terms that enable the Minister to take into account the wider impact of recommending remission, including, for example, the public interest in the integrity of the tax system and its proper administration, and fairness to other taxpayers. The decision-maker must balance the competing interests to determine whether, in light of the particular facts, collection of the tax would be unreasonable, unjust or otherwise not in the public interest.

[5] More specifically, in the present case, we are of the opinion that the analysis in the Assistant Commissioner's decision is transparent and intelligible and that it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). Indeed, the Assistant Commissioner took into consideration the "Canada Revenue Agency Guide", which provides a framework within which a remission is possible; he noted the failure to comply with tax provisions; he weighed the various relevant factors against the evidence adduced; and he then concluded that the appellant's application did not justify a positive response, as the alleged double taxation resulted from the appellant's negligence.

[6] In light of the applicable standard, the Federal Court judge did not err in determining that the Assistant Commissioner's decision was made "taking into account the specific facts" of the appellant's case (Federal Court judge's Decision, at paragraph 34).

[7] However, it should be noted that, as the parties pointed out at the hearing, the comments made by the Federal Court judge under the "*Obiter*" heading in his judgment were ill-advised. The wording of the "*Obiter*", which suggests that the appellant was "likely" double taxed and that the CRA should address that situation, not only contradicts the decision itself but also creates expectations, which we find inappropriate and unwarranted.

[8] Therefore, I would dismiss the appeal. In the circumstances of this case, I would not award costs.

“Richard Boivin”

J.A.

“I agree.

M. Nadon J.A.”

“I agree.

George R. Locke J.A.”

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-287-18

STYLE OF CAUSE: YVES DESHAIES v. MINISTER
OF NATIONAL REVENUE

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: DECEMBER 3, 2019

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: NADON J.A.
LOCKE J.A.

DATED: DECEMBER 5, 2019

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