

Taxpayer Relief

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Robinson v Canada (National Revenue), [2018 FC 825](#)

The FC held, on judicial review, that the Minister's decision was reasonable.

FACTS

The Taxpayer, an independent lawyer, was erroneously issued a T4 by one of his clients. His status as an independent contractor was finally resolved by the Tax Court of Canada. However, when late filing his returns, the taxpayer included the T4 slip without an explanation as to why he was including a T4 indicating he was an employee while claiming self-employed status.

Because of some internal errors, the return was sent to general processing and not the person at the Non-filer assessment office it was directed to. This resulted in that office issuing a non-filer assessment assessment of taxes outstanding, penalties, and interest. After a service complaint, a reassessment was issued which lowered the amount of interest and penalties owing. A complaint as filed with the Ombudsman's office who, after an investigation, stated that the issuance of the non-filer assessment was due to a mailroom error.

The taxpayer then made a request for taxpayer relief seeking cancellation of the interest and penalties applied. He relied, in part, on the errors and delays caused by the CRA. This was denied resulting in a second level review request. This was denied as well.

ANALYSIS

The Court noted that pursuant to subsection 220(3.1), the Minister, on application by the taxpayer, within a limited time-frame, may waive or cancel all or any portion of any penalty or interest otherwise payable.

The sole issue was whether the decision makers decision was reasonable given the facts and circumstances before it. A decision is reasonable where "the decision-making process exhibits justification, transparency, and intelligibility, resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, [2008 SCC 9](#) at para 47. So long as the reasons, as a whole, "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011 SCC 62](#) at para 16.

The Court's role, on judicial review, is not to weigh the facts, but rather to examine if the

Minister's Delegate "properly considered the evidence before him and that the decision was not based on considerations irrelevant or extraneous to the statutory purpose": *Easton v Canada (Revenue Agency)*, 2017 FC 113 at para 43. A decision maker is presumed to have considered all evidence before them: *Smith v Canada Revenue Agency*, 2009 FC 694 at paras 21-22.

With respect to errors of fact, the Court noted that "a mistake of fact has been made by a decision maker, the resulting decision is unreasonable if the decision maker misapprehended facts that were material to his or her decision: *Johnston v Canada*, 2003 FCT 713 at para 29.

In this case, the Court held that the decision maker was fully conversant with the taxpayer's tax history, and noted that after the errors were detected, late filer penalties and interest were adjusted. It concluded that no delay by the CRA resulted in the non-filer penalty being applied or the interest being charged - this was within the control of the taxpayer who did not file returns on time or pay his tax due on time. The Court stated that " It was Mr. Robinson's personal choice not to pay the accumulated interest and penalty throughout the period of his dispute with the CRA, continuing up to and including the filing of his second request for taxpayer relief." [para 104]. It went on to say, at paragraph 105:

By deciding that the amount of the non-filer NOA was wrong and too high to pay, Mr. Robinson alone made the choices not to pay any tax or interest or penalty, even though he could have made full or partial payment with any final surplus being refunded to him, with interest. The Decision recognized those choices, and given the discretionary nature of the requested relief, it was reasonable for the Decision Maker to determine that events were not beyond Mr. Robinson's control and to deny the request for taxpayer relief on that basis.

The Court found the decision maker's decision to be reasonable and noted, at paragraph 134:

When Mr. Robinson did not pay his taxes for 2008 on the date they were due, and did not file his 2008 return on time, he set in motion the very chain of events which he claims was beyond his control. When he then filed his Return over half a year after it was due, included an improperly issued T4 slip with it, and still did not pay the taxes, he exacerbated the problem.

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