Federal Court  Cour fédérale

Date: 20240715

Docket: T-1984-22

Citation: 2024 FC 1105

Ottawa, Ontario, July 15, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

SCOTT WILLIAM CHARLES MCFADDEN

Applicant

and

HIS MAJESTY THE KING

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. McFadden, seeks judicial review of the decision of a delegate of the Minister of National Revenue [Minister] dated September 9, 2022, denying the applicant's request to waive the Part X.1 tax on excess contributions made to his registered retirement savings plan [RRSP] for the 2008 to 2014 taxation years, under subsection 204.1(4) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*].

[2] For the reasons that follow, and on the basis of the record properly before this Court, I find that the delegate's decision was reasonable. This Application for judicial review is accordingly dismissed. I have declined, however, to award the costs requested by the Respondent.

II. Facts

[3] Mr. McFadden was the Chief Executive Officer of the Thunder Bay International Airports Authority [employer]. His compensation included a participation in a pension plan, which was a defined contribution plan. In addition, Mr. McFadden contributed the maximum amount allowed each year as indicated in his annual notices of assessments, to his or his spouse's RRSP.

[4] In 2008, Mr. McFadden opted out of his employer's pension plan, which also had the effect of increasing the amount that he could contribute to his or his spouse's RRSP. Instead of participating in his employer's pension plan, the employer provided Mr. McFadden with a lump sum payment each year equivalent to that year's maximum allowable RRSP contribution. The employer would either contribute directly into Mr. McFadden's RRSP (or his spouse's RRSP), as per his direction, or provide the funds to Mr. McFadden so that he is then able to contribute to his or his spouse's RRSP.

[5] For example, Mr. McFadden contributed to his RRSP maximum limit of $4,925 in 2007. In 2008, Mr. McFadden opted out of his employer's pension plan, but his RRSP contribution limit for that year as indicated in his notice of assessment was of a maximum of $4,775. Because the changes to his compensation occurred in 2008 (when Mr. McFadden opted out of the employer

pension plan), the increase to Mr. McFadden's RRSP contribution limit only came into effect in 2009, where the maximum RRSP contribution was set at $21,000.

[6] The employer made an RRSP contribution on Mr. McFadden's behalf in January 2008 in the amount of $32,475, which was correctly reported on Mr. McFadden's income tax return. That amount represented a contribution of $20,000, as well as adjustments relating to the 2007 income in the amount of $12,475.04. The payment resulted in an excess RRSP contribution of $20,891 from January 2008 to December 2008. The excess contribution existed because Mr. McFadden's RRSP contribution limit for 2008 remained at $4,775 and had not yet been adjusted to $21,000 to reflect his decision to opt out of the employer's pension plan; because the contribution limit for 2008 was based on the prior year's income and notice of assessment (2007) when Mr. McFadden still participated in the pension plan.

[7] In 2009, Mr. McFadden's notice of assessment indicated that he could contribute a maximum amount of $21,000 to his RRSPs (the contribution limit had now increased due to the opting out of the employer pension plan). Had Mr. McFadden not contributed in 2009, then the new $21,000 contribution limit could have applied to his $20,891 excess contribution of 2008 and would have cured the excess as of 2009.

[8] However, Mr. McFadden (or his employer) contributed $21,000 to his spouse's RRSP before December 31, 2009. Because Mr. McFadden contributed to his maximum limit of $21,000 for 2009, the excess contribution of $20,891 from January 2008 to December 2008 could not be absorbed by attrition within the 2009 new RRSP contribution limit. The excess RRSP contribution

of $20,891 (originally from January 2008 to December 2008) therefore continued and became an excess RRSP contribution for 2009 (and then for subsequent years).

[9] Mr. McFadden believes that the $21,000 contribution made in 2009 was supposed to be deposited into one of his non-registered investment accounts, but instead was invested into his spousal RRSP by error. Mr. McFadden suspects that his employer may have contributed to his spousal RRSP in error, but he also indicated in a letter dated December 14, 2021 and in oral argument that it is possible that his employer gave him a lump sum by cheque, and that he or his spouse then mistakenly invested the amount in the wrong account. Mr. McFadden has no record and no way of knowing what actually occurred, or if the error was made by himself, his employer, the bank, or his spouse. There is also no way of knowing what instructions Mr. McFadden may have given to his employer or the bank and if they were correctly followed (see Certified Tribunal Record [CTR] at 70). What is definitive, however, is that an amount of $21,000 was deposited in Mr. McFadden's name in his spouse's RRSP in 2009 (CTR at 55); and that a deduction of $21,000 was made for this RRSP contribution in Mr. McFadden's 2009 income tax return (Application Record [AR] at 95).

[10] For each of the following years, until 2015, Mr. McFadden continued to always contribute the maximum amount allowed, as indicated in his annual notices of assessments, to his or his spouse's RRSPs (with maximum contribution limits set at, for example, $22,000 for the 2010 fiscal year to $24,930 for the 2015 fiscal year).

[11] The $20,891 amount (originally from January 2008 to December 2008) therefore always continued to represent an excess contribution each year.

[12] Mr. McFadden's 2009 notice of assessment, dated June 3, 2010, notes that he "may have to pay a tax of 1% per month on your RRSP excess contributions as your unused RRSP contributions (amount B) exceed your RRSP deduction limit for 2010 (amount A) as noted on "Your 2010 RRSP Deduction Limit Statement"" (AR at 95).

[13] On September 3, 2014, the Canada Revenue Agency [CRA] sent a letter to Mr. McFadden to notify him of the continued excess contribution and presented two options. Mr. McFadden could either leave the RRSP excess contributions in the RRSPs and file a T1-OVP return and pay the tax each year; or withdraw the funds from the RRSPs and not have to pay tax in the future, and include the amount as income for the year the withdrawal is done (AR at 172).

[14] On November 23, 2014, Mr. McFadden wrote to the CRA to provide an explanation, and proposed to resolve the situation by either making an immediate withdrawal to the RRSPs, or by making no contribution or a limited contribution the following year (2015) to eliminate the excess. The CRA never responded to that letter and Mr. McFadden chose the latter of the two options he proposed even if, in his words, "it may not meet with your requirements" (AR at 58).

[15] During a telephone conversation with the CRA on March 5, 2015, Mr. McFadden stated that a portion of the 2009 contribution was made in error. He chose not to have the RRSP contribution corrected and instead opted to allow the excess amount to remain in his RRSP until

such time that he could benefit from the next annual RRSP contribution limit. Mr. McFadden took no steps to correct the error, other than to not contribute in 2015 so that the annual limit in 2015 could absorb by attrition the excess contribution that remained existent.

III. Decision of the CRA

[16] Mr. McFadden applied to the CRA, under subsection 204.1(4) of the *ITA*, for the Minister to waive the Part X.1 tax assessed by the CRA.

[17] The delegate of the Minister refused Mr. McFadden's request. Relying on the notes on the file as well as Mr. McFadden's correspondence with the CRA, the delegate held that the excess contribution did not result from a reasonable error and that Mr. McFadden did not take immediate steps to address the excess contributions.

[18] The delegate opined that while the error occurred during a major change in Mr. McFadden's compensation plan, the excess contribution was a result of the 2008 RRSP contribution by the employer of $32,475, and the 2009 RRSP contribution of $21,000. The delegate rejected Mr. McFadden's argument that he was unaware of the 2009 $21,000 contribution and that his employer made a mistake in failing to deposit the funds in a non-registered investment account.

[19] The delegate held that the mistake was not reasonable because Mr. McFadden must have had to provide directions to his employer as to which account the funds were to be deposited. The delegate also held that Mr. McFadden ought to have been aware of the 2009 contribution because

he deducted the amount of $21,000 in his 2009 income tax return. Mr. McFadden also ought to have been aware of the excess contribution because his notice of assessment dated June 19, 2008 (AR at 97) indicated that an excess contribution had been made and that tax could be payable.

[20] Finally, the delegate held that Mr. McFadden took no steps to correct the situation and withdraw the funds from the RRSP, simply waiting until 2015 to eliminate the excess.

IV. Issues and Standard of Review

[21] The main issue in this application for judicial review is whether the Minister's decision dated September 9, 2022 not to waive tax under Part X.1 of the *ITA* is reasonable.

[22] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019] 4 SCR 653 [*Vavilov*], the Supreme Court of Canada [SCC] held that the presumptive standard of review for all administrative decisions is the deferential standard of reasonableness (*Vavilov* at para 23).

[23] To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 59). Reasonableness review is not a "rubber-stamping" exercise, it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[24] In *Mason*, the SCC explained that a decision may be unreasonable if the reviewing court identifies a fundamental flaw, either because of a lack of internal logic in the reasoning or because of a lack of justification given the factual and legal constraints affecting the decision (*Mason* at para 64).

[25] The SCC identified a series of factual and legal constraints that the decision maker must examine and justify, depending on the applicable context, in order for the decision to be sufficiently justified. The burden of justification varies, but the decision maker must be "aware" of the essential elements, "sensitive to the matter before it" and "meaningfully grapple with key issues or central arguments raised by the parties" (*Mason* at para 74; *Vavilov* at para 128). The decision maker must consider the main arguments and evidence of the parties and give reasons as to why particular arguments or the evidence were accepted or dismissed in the decision-making process (*Mason* at paras 73–74*; Vavilov* at paras 125–128).

[26] The Court must determine whether, by examining the reasoning followed and the result obtained, the decision is based on an internally coherent and rational chain of analysis that can be justified in light of the legal and factual constraints to which the decision maker is subjected (*Mason* at paras 8, 58–61; *Vavilov* at paras 12, 15, 24, 85–86). The decision will be unreasonable if it lacks internal logic or if the reviewing court is unable to follow the decision maker's reasoning without "encountering any fatal flaws in its overarching logic" (*Mason* at para 65, citing *Vavilov* at para 102).

[27] On the other hand, the reviewing court must not create its own yardstick and then use it to measure what the decision maker did (*Mason* at para 62; *Vavilov* at para 83). Accordingly, on judicial review under the standard of reasonableness, the reviewing court must assess the reasons for the decision "holistically and contextually" in light of the history and context of the proceedings, the evidence adduced, and the main arguments of the parties (*Mason* at para 61; *Vavilov* at paras 94, 97). The Court's role is not to reweigh the evidence presented to the decision maker, to question its exercise of discretion, or to make its own interpretation of the law. It is up to the decision maker to fulfil these roles. As long as the decision maker's interpretation of the law is reasonable and the reasons for its decision are justifiable, coherent and intelligible, the court must show deference (*Vavilov* at paras 75, 83, 85–86, 115–124).

V. Analysis

[28] The *ITA* provides that a taxpayer may contribute funds to an RRSP, and deduct that amount from income up to the taxpayer's deduction limit (*ITA*, ss 146(1), (5), (5.1)). However, a taxpayer's RRSP deduction limit is reduced when the taxpayer participates in a pension plan (*ITA*, s 146(1); *Income Tax Regulations*, CRC, c 945, s 8301). This explains why Mr. McFadden's contribution limits were lower for the years prior to 2009, and significantly increased thereafter when his compensation plan changed and he opted out of his employer's pension plan.

[29] If a taxpayer makes a contribution to their RRSP that exceeds their deduction limit, the excess contribution is taxed under Part X.1 of the *ITA* at a rate of one percent per month until it is withdrawn (*ITA*, ss 204.1(2.1), 204.2(1.1), 204.3). In such situations, the taxpayer is required to

file annual T1-OVP returns in respect of the excess contributions (*ITA*, s 204.3(1); see *Connolly v Canada*, 2019 FCA 161 at paras 19–22 [*Connolly*]).

[30] Under subsection 204.1(4), the Minister may waive the Part X.1 tax if the excess contribution occurred because of a reasonable error and if reasonable steps were taken to eliminate the excess. Section 204.1 provides :

Waiver of tax	**Renonciation**
(4) Where an individual would, but for this subsection, be required to pay a tax under subsection 204.1(1) or 204.1(2.1) in respect of a month and the individual establishes to the satisfaction of the Minister that **(a)** the excess amount or cumulative excess amount on which the tax is based arose as a consequence of reasonable error, and **(b)** reasonable steps are being taken to eliminate the excess, the Minister may waive the tax.	**(4)** Le ministre peut renoncer à l'impôt dont un particulier serait, compte non tenu du présent paragraphe, redevable pour un mois selon le paragraphe (1) ou (2.1), si celui-ci établit à la satisfaction du ministre que l'excédent ou l'excédent cumulatif qui est frappé de l'impôt fait suite à une erreur acceptable et que les mesures indiquées pour éliminer l'excédent ont été prises.

[31] In *Connolly*, the Federal Court of Appeal [FCA] held that under subsection 204.1(4), the Minister has discretion to waive the tax when a reasonable error was established on the facts presented by an applicant, and reasonable steps were taken to eliminate the excess. The Court of Appeal discussed the scope of subsection 204.1(4) and held :

> [59] Dealing first with the interpretation of subsection 204.1(4) of the ITA, it is my view that the delegate's interpretation is unreasonable and therefore, by definition, incorrect. In short, there is no way to equate the provision's requirement of a reasonable error with a requirement that the error result from extraordinary circumstances. Nor is it reasonable to exclude from consideration

all errors flowing from a mistake about the quantum of available contribution room or all errors caused by bad advice received from a third party. Similarly, it is unreasonable to interpret the taking of reasonable steps to withdraw an over-contribution from an RRSP to mean that a taxpayer must withdraw the over-contributions as soon as possible or within the two-month timeframe mentioned in CRA's internal "Guidelines for waiving tax – 19(23)7.23."

…

[61] Here, the text of subsection 204.1(4) of the ITA cannot reasonably support the delegate's interpretation given the wording of the provision, which requires only that the error that led to the over-contribution and steps taken to remedy it be reasonable.

…

[65] Thus, the plain meaning of the English and French versions of subsection 204.1(4) of the ITA cannot reasonably support the conclusion that the error which caused the over-contribution must arise from extraordinary circumstances or that steps must always be taken with all possible dispatch to withdraw the over-contribution from a taxpayer's RRSP. A textual analysis of the provision therefore leads to the conclusion that the delegate's interpretation was unreasonable.

[66] A review of the context and purpose of subsection 204.1(4) of the ITA also leads to the same conclusion. Subsection 204.1(4) of the ITA is part of an integrated statutory scheme regulating RRSP contributions, which, as described above, limits such contributions, penalizes those who over-contribute and offers relief to those who do so inadvertently. The purpose of subsection 204.1(4) in particular is to provide relief against the harshness that might result from applying the heavy tax on over-contributions to a taxpayer who can demonstrate that her or his over-contribution resulted from a reasonable mistake and who is taking or has taken reasonable steps to correct the mistake.

…

[69] Rather, in each case, as noted by Rennie J. (as he then was) in *Dimovski*, at paragraph 16 and *Kapil*, at paragraph 26, reasonableness will turn on an objective assessment of all the relevant evidence. However, it is important to underscore that, because the Canadian tax system is based on self-assessment, it is incumbent on tax payers to take reasonable steps to comply with the ITA, including by seeking advice where necessary: see *R. v.*

> *McKinlay Transport Ltd.*, 1990 CanLII 137 (SCC), [1990] 1 S.C.R. 627, at page 636, (1990), 106 N.R. 385; *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3, at paragraph 54; see also *Dimovski*, at paragraph 17 (making this point in the RRSP context). Given this obligation, it is difficult to see how a taxpayer's ignorance about the fact that RRSP contributions are subject to a limit could be considered reasonable. By contrast, being misinformed about the contribution limit after making reasonable inquiries might well constitute a reasonable error. Likewise, the mere fact that a taxpayer has relied on an expert third party for advice is not determinative. Rather, the circumstances of such reliance need to be analyzed to determine if it was reasonable. Thus, reliance on a third party, such as an accountant, in and of itself, neither entitles nor disentitles a taxpayer to relief under subsection 204.1(4) of the ITA.
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> …
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> [77] According to his affidavit, Mr. Connolly appears to have been aware that there was a limit on RRSP contributions and that one's contribution room bore a relationship with one's income. But Mr. Connolly does not seem to have been aware of the impact that his pension contributions could have on his contribution room; nor does he appear to have considered how the limits for his contributions to his spousal RRSP would be determined. Mr. Connolly does not appear to have made any inquiries, whether with his accountant, his bank or his employer, to confirm his contribution room. His error therefore likely cannot be said to have been a reasonable one.
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> [emphasis added] (*Connolly* at paras 59, 61, 65–66, 69, 77).

[32] In *Connolly*, the FCA opined that the Minister's refusal to waive the tax was reasonable in that case because the applicant had not provided sufficient details on the error, and did not make any inquiries with an accountant, financial institution or the employer to confirm the RRSP contribution room. The Court ultimately held that the applicant's error "likely cannot be said to have been a reasonable one" (at para 77).

[33] In *Yew v Canada (Revenue Agency)*, 2022 FC 904 [*Yew*], albeit in relation to subsection 207.06(1) concerning the Minister's discretion to also waive tax liability relating to excess contributions in tax-free savings accounts where a taxpayer establishes that liability arose, like for subsection 204.1(4), "as a consequence of a reasonable error," Justice Little relied on the principles set out by the FCA in *Connolly* and held that :

> [49] As is well known, the Canadian tax system is a self-reporting system. It relies on taxpayers to comply with the *ITA* and to honestly disclose their tax circumstances to CRA*: R v McKinlay Transport Ltd.*, 1990 CanLII 137 (SCC), [1990] 1 SCR 627, at pp. 636-37 and 648; *Guindon v Canada*, 2015 SCC 41, [2015] 3 SCR 3, at para 54; *Connolly*, at para 69; *Dimovski*, at para 17.
>
> [50] The individual taxpayer's responsibility is to understand or be informed of the law and to take reasonable steps to comply with the *ITA*: *Connolly*, at para 69; *Weldegebriel*, at para 10; *Jiang*, at paras 12-13; *Kapil*, at para 24. Given the complexity of the tax system, taxpayers are also expected to seek advice: *Connolly*, at para 69; *Dimovski*, at para 17.
>
> [51] For TFSA purposes, the taxpayer is responsible to be aware of their contribution limits and to ensure that their contributions comply with applicable rules: *Rempel v Canada (Attorney General)*, 2021 FC 337, at para 26; *Jiang*, at paras 11-13.
>
> [52] Justice Diner stated in *Weldegebriel*, at para 10:
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> > …as a self-reporting system, the onus was on [the taxpayer] to understand the law (*Kapil v Canada Revenue Agency*, 2011 FC 1373 at para 24); ignorance of the rules, particularly in a system which relies on the taxpayer, is not an excuse. As Justice O'Keefe held in *Lepiarczyk v Canada Revenue Agency*, 2008 FC 1022 at para 19, "while innocence may be a factor to consider, it is not determinative in the present case."
>
> [53] In this context, I find the decision in CRA's letter dated April 8, 2021, was reasonable. As the respondent noted, each taxpayer's circumstances must be considered objectively (*Connolly*, at para 69) and it appears that CRA did so. CRA's letter recognized and set out the facts raised in the applicant's letters. The letter showed that CRA considered the applicant's circumstances and her position on why her tax liability should be waived.

> [54] CRA's letter recognized that the applicant did not intend to make excess contributions. As a matter of law, innocent or honest errors are not determinative—they do not necessarily lead to a finding of a "reasonable error" under paragraph 207.06(1)(a): *Weldegebriel*, at paras 10 and 15; *Posmyk*, at para 16; *Gekas*, at para 27. Accordingly, CRA made no legal error in failing to waive the tax solely on that basis.
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> (*Yew* at paras 49–51, 53–54)

[34] The principles set out in *Connolly* and *Yew* apply in this case. Moreover, the burden lies with Mr. McFadden to provide the Minister with sufficient evidence and explanation in order to allow the Minister to exercise their discretion (*Dougal & Co Inc v Canada (Attorney General)*, 2017 FC 1075 at para 23).

[35] In this case, the delegate first noted the arguments submitted by Mr. McFadden in his correspondence and communications with the CRA, in which he attempted to explain the error and justify that the error was a reasonable one as well as the steps he took to remedy the excess contribution.

[36] Applying the legal test under subsection 204.1(4), the delegate complied with the FCA's decision in *Connolly* and did not require that Mr. McFadden demonstrate that the error resulted from extraordinary circumstances, or by bad advice received from a third party, or that Mr. McFadden had to withdraw the over-contributions as soon as possible or within a two-month period (*Connolly* at para 59).

[37] Rather, the delegate analyzed the arguments submitted by Mr. McFadden and concluded that the excess contribution resulted from Mr. McFadden opting out of his employer's pension

plan, but without inquiring as to how (and when) his RRSP contribution limit would be affected. In the delegate's view, "[i]t is reasonable to expect that one would consider the RRSP deduction limit calculations when making changes to pension benefits and RRSP contributions" (AR at 18). In other words, Mr. McFadden ought to have consulted an accountant or tax expert, but failed to do so, and he contributed an amount in his RRSPs that was over the limit identified in his existing notice of assessment.

[38] On the issue of the alleged error made by the employer, the delegate ruled that the error was not reasonable because the employer would have had to follow Mr. McFadden's instructions and that it was Mr. McFadden's responsibility to ensure that the correct actions were taken (AR at 18).

[39] Finally, on Mr. McFadden's submission that he was unaware of the $21,000 RRSP contribution in 2009 and that the amount was included in his T4 and taxed accordingly, the delegate concluded (and the evidence demonstrates) that a $21,000 amount was deducted in Mr. McFadden's 2009 income tax return (AR at 18–19). Moreover, in the notice of assessment for 2009, it is noted that Mr. McFadden may have to pay tax on his RRSP excess contributions which should have alerted him that there may have been an error, and the annual notices of assessments provide the annual RRSP contribution limits (AR at 19, 95).

[40] The delegate therefore concluded that the error made by Mr. McFadden is the result of his failure to understand the RRSP plan and contribution limit and to review his notices of assessments

and verify the information, or to ask for information from the CRA when needed (AR at 19). In the circumstances, the error was not reasonable.

[41] In the end, and similar to *Connelly*, Mr. McFadden was not able to clearly articulate what occurred in 2009 in relation to his RRSP contribution. He first argued that his employer made the error by depositing the funds in an RRSP while the intent was to deposit the funds in a non-registered account. Mr. McFadden also stated that he was not aware of the contribution because his bank never sent him an RRSP slip and he did not know until he was alerted by the CRA many years later (AR at 18; CTR at 70). However, the evidence demonstrates that the $21,000 amount was claimed as an RRSP deduction in Mr. McFadden's 2009 income tax return, which disputes a potential error being made by the employer or that Mr. McFadden was not aware of the RRSP contribution (AR at 19, 95). The Record also demonstrates that Mr. McFadden, in a letter dated December 14, 2021, stated that he has no record and no way of knowing if this mistake was made by him, by his spouse or by his employer (CTR at 70). That letter was also before the delegate and referred to in the reasons (AR at 19).

[42] Mr. McFadden's evidence in relation to the "error" is therefore unclear. Moreover, there is no evidence as to any action that Mr. McFadden may have taken to verify his contribution limits nor to verify whether there were excess contributions, following the receipt in June 2009 of his notice of assessment indicating that tax may be payable because it appeared that an excess contribution was made.

[43] Therefore, the delegate, as noted in the reasons, determined that Mr. McFadden was not able to discharge his burden and demonstrate that an error was indeed made, by whom and under what circumstances. He was not able to demonstrate, to the satisfaction of the delegate, that this error was reasonable in order to enable the Minister to exercise their discretion to waive the tax. Rather, the delegate concluded that the erroneous contribution was the result of Mr. McFadden's failure to understand the RRSP contribution and limits, as well as to properly review his notices of assessment (AR at 19). Those, in the view of the delegate, were not reasonable errors.

[44] The case law discussed above supports the delegate's reasons that a taxpayer who fails to understand the RRSP scheme or make any inquiries concerning their contribution limit cannot demonstrate that an error resulting in an excess contribution is reasonable (*Connolly* at paras 69, 77; *Yew* at paras 50–51, 54).

[45] As a result, the delegate properly considered the arguments presented by Mr. McFadden and properly analyzed and weighed them in relation to the other evidence that existed, such as the notices of assessments. Notably, the notice of assessment of 2009 contradicted Mr. McFadden's submission that he was unaware of the RRSP contribution made to his spouse, because the notice of assessment indicates that Mr. McFadden claimed a $21,000 RRSP deduction. Moreover, the 2009 notice of assessment clearly indicated that an excess contribution may exist and that tax may be payable. The information contained in the 2009 notice of assessment ought to have led Mr. McFadden to understand his RRSPs and their limits, review the notices of assessments and verify the information, seek additional information from the CRA, or seek advice from an expert. The delegate's reasons articulate these factual conclusions (AR at 19).

[46] On the issue of the reasonable steps taken to correct the error, the delegate relied on a telephone conversation of March 5, 2015, in which Mr. McFadden stated that he chose not to withdraw funds from the RRSP and instead apply the excess contribution to his 2015 RRSP limit (AR at 19). That communication is consistent with Mr. McFadden's letter of November 23, 2014, in which Mr. McFadden proposed two options to resolve the situation: (a) immediate withdrawal; (b) make a limited or no contribution in 2015 and allow the 2015 RRSP contribution limit to apply to the excess contribution. Mr. McFadden never received a response from the CRA as to whether these two options were acceptable. However, for the second option (applying the excess contribution on his 2015 RRSP limit), Mr. McFadden acknowledged in the letter that "[he] realise[s] it may not meet with your requirements" (AR at 58). It is important to note that two options had already been presented to Mr. McFadden by the CRA in a previous letter dated September 3, 2014. The CRA suggested that Mr. McFadden could: (a) leave the excess contribution in the RRSP and file a T1-OVP return and pay the tax; or (b) withdraw the excess contribution and not have to pay tax in the future, and include the amount as income on his tax return for the year when the withdrawal is done (AR at 172). The latter option proposed by Mr. McFadden in his letter of November 23, 2014, to keep the funds in the RRSP and apply them to the 2015 RRSP limit, was not included in the two options proposed by the CRA on September 3, 2014.

[47] It was therefore reasonable for the delegate to conclude that Mr. McFadden's excess contribution was not the result of a reasonable error, nor that he took reasonable steps to eliminate it in due course.

[48] Mr. McFadden relies on the facts in *Kerr v Canada (Attorney General)*, 2008 FC 1073 [*Kerr*] and states that those facts are similar to his case. In my view, the events in *Kerr* are distinguishable. In that case, the CRA made several errors on which Ms. Kerr replied upon. This created confusion which led to the excess contribution. Indeed, the CRA made errors on her RRSP contribution limit, and the CRA's own publications consistently affirmed that a taxpayer may rely on the RRSP limit contained in the notice of assessment. In this case, there were no errors committed by the CRA which could explain Mr. McFadden's error or create confusion on his RRSP limits as noted in his annual notices of assessments. Had Mr. McFadden properly reviewed his contributions and complied with the limits set out in his notices of assessments, he would have realized that the original January 2008 contribution of $32,475 resulted in an excess contribution for 2008, and ensured that no contribution was made in 2009 in order for any excess contribution to be absorbed through attrition in the new RRSP limit established for 2009, or proceed in a different acceptable manner to correct the error.

[49] Mr. McFadden also relies on *Kerr* to argue a breach of procedural fairness because it is not clear that the third review in his case was made by independent agents that did not participate in the earlier reviews (see *Kerr* at paras 47–53). In my view, there is no evidence in this case that would sustain Mr. McFadden's argument that the delegate was biased. The delegate involved in the final review was not the same that participated in earlier reviews (see Dunlop affidavit at para 42, Respondent's Record at 19 [RR]) and, while they relied on the entire file (including notes previously on file), the delegate properly reviewed the arguments of Mr. McFadden and came to an independent conclusion.

[50] Finally, Mr. McFadden relies on two Tax Court of Canada decisions relating to his 2008 to 2014 tax assessments, in which the Tax Court of Canada allowed Mr. McFadden's appeals on the basis that he was not liable to late-filing penalties imposed by the Minister or interest on such penalties, pursuant to sections 162 and 204.3 of the *ITA* (see Dunlop affidavit, Exhibits Q and R, RR at 176-179). Mr. McFadden relies on those decisions in support of his argument that he was diligent in managing his RRSP contributions and his income tax returns and therefore, the excess contribution was a reasonable error. Indeed, the Respondent conceded in those decisions that Mr. McFadden had fulfilled the test of due diligence under section 162 of the *ITA*.

[51] Unfortunately, this argument cannot succeed. The Tax Court of Canada decisions relate to a different issue, which was whether Mr. McFadden could demonstrate diligence in his failure to file T1-OVP returns for Part X.1 tax. While it may have been possible for Mr. McFadden to demonstrate due diligence in failing to file his T1-OVP returns on time, the issue relating to an error leading to an excess contribution is different. That issue turns on a different legal and factual assessment, as the reasons why Mr. McFadden failed to file T1-OVP returns on time are different than the factual circumstances leading to the excess contribution and the steps taken to remedy the situation.

VI. Conclusion

[52] The Court is satisfied that the delegate's conclusion falls within a range of possible and acceptable outcomes, based on the factual and legal constraints before them, and that Mr. McFadden did not discharge his burden to demonstrate that there are sufficient shortcomings warranting the Court's intervention (*Vavilov* at paras 86, 100).

[53] The Respondent has sought costs in an amount of $500. Given that Mr. McFadden is self represented and that he has presented a reasonable argument in an eloquent manner, I am exercising my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106 and, taking into account all the circumstances, make no order as to costs.

JUDGMENT in T-1984-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without cost.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1984-22
STYLE OF CAUSE:	SCOTT WILLIAM CHARLES MCFADDEN v HIS MAJESTY THE KING
PLACE OF HEARING:	TORONTO (ONTARIO)
DATE OF HEARING:	JUNE 19, 2024
JUDGMENT AND REASONS:	RÉGIMBALD J.
DATED:	JULY 15, 2024

APPEARANCES:

Scott WC McFadden	FOR THE APPLICANT (ON HIS OWN BEHALF)
Amanda De Bruyne	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto (Ontario)	FOR THE RESPONDENT