

Federal Court



Cour fédérale

**Date: 20250206**

**Docket: T-254-22**

**Citation: 2025 FC 238**

**Toronto, Ontario, February 6, 2025**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**VINCENT GALLORO**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] In separate applications, the Applicant requests that this Court review two decisions in which the Canada Revenue Agency [CRA] refused to waive the tax liability accrued from over-contributions to his Tax-Free Savings Account [TFSA]. In both matters (which relate to the 2020 and 2021 tax years), CRA Officers determined that the Applicant's reliance on inaccurate information provided by CRA did not warrant the relief sought.

[2] These matters were pursued as two separate applications (Court File Numbers T-254-22 and T-322-23), but were heard consecutively, and I have issued my decisions in both matters contemporaneously. This is the decision in Court File Number T-254-22.

[3] The application for judicial review should be dismissed. While the Applicant may have relied on information from CRA that proved to be inaccurate, he has failed to establish a reviewable error in the decision denying his request for relief [Decision].

## II. BACKGROUND

### A. *Facts*

[4] Under the *Income Tax Act* [ITA], taxpayer contributions into a TFSA are limited on a yearly basis; however, any unused contributions carry forward to later years. Excess contributions are subject to an additional tax. The Minister of National Revenue may waive this tax liability on excess TFSA contributions, pursuant to s.207.06(1) of the ITA, where certain conditions are met.

[5] The Applicant has had a difficult time navigating the TFSA regime. Mr. Galloro began contributing to a TFSA in 2009. In the 2010 and 2013 taxation years, he over-contributed to his TFSA. Both times, he requested, and was granted, the above-mentioned relief in respect of those over-contributions.

[6] For the 2019 taxation year, Mr. Galloro contributed the maximum allowable amount for that year in his TFSA, which was \$32,502.00. This would have reset his contribution limit for the

2020 year; at the time, that would have resulted in a \$6,000 contribution limit. Despite this, Mr. Galloro contributed a total of \$38,502 to his TFSA during that year, resulting in an excess of \$32,502 that was subject to the additional tax.

[7] The CRA assessed the Applicant in respect of the excess amount in July 2021. He requested cancellation of the tax on his excess contribution.

[8] The CRA denied the request and notified Mr. Galloro of this first decision by letter dated October 7, 2021. He requested a second review. In his request, the Applicant argued he had acted reasonably by relying on a document found on his online CRA account [MyAccount], which showed on January 1, 2020, that he had \$38,502 of contribution room in his TFSA.

B. *Decision under Review*

[9] By letter dated January 12, 2022, the CRA Officer assigned to conduct the second review refused the Applicant's request for tax relief. In finding that Mr. Galloro was not entitled to relief, the Officer stated:

- a) He is a repeat over-contributor to his TFSA;
- b) It is the taxpayer's responsibility to keep up-to-date records of their TFSA transactions to ensure that they do not exceed their TFSA contribution room;
- c) The CRA is not legislated to advise taxpayers of their TFSA contribution room. Nor are they obligated to advise taxpayers when excess contributions are present in their TFSA account(s);

- d) The information provided by the CRA online account or by a CRA representative may not be current, and it is an individual's responsibility to ensure they do not exceed their contribution limit;
- e) The CRA MyAccount page includes a disclaimer that states that they continue to receive TFSA information from financial institutions and the TFSA contribution room shown may not yet reflect all of the TFSA transactions made during the previous year.

### III. ISSUES

[10] The Applicant makes a number of submissions, all of which I understand to be challenging the reasonableness of the Decision.

### IV. LEGISLATIVE SCHEME

[11] As noted above, the ITA limits annual contributions to TFSAs. Contributions in excess of this limit are subject to an additional tax. Pursuant to s.207.06(1) of the ITA, the Minister may waive or cancel all or part of the additional tax, if:

- (a) The individual establishes to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error; and
- (b) One or more distributions are made without delay under a TFSA of which the individual is the holder, the total amount of which is not less than the total of
  - (i) the amount in respect of which the individual would otherwise be liable to pay the tax, and
  - (ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).

[12] The existence of a “reasonable error” is a question of fact and will turn on an objective assessment of all the relevant evidence: *Connolly v Canada (National Revenue)*, 2019 FCA 161 at para 69 [*Connolly*].

[13] The standard to establish a reasonable error is high, as, given the self-reporting nature of the Canadian tax system, taxpayers are expected to understand the law and to take reasonable steps to comply with the ITA: *Ruiz Rodriguez v Canada (Attorney General)*, 2022 FC 1617 at para 12.

[14] The taxpayer is responsible for monitoring their contribution limits and ensuring that their contributions comply with applicable rules: *Rempel v Canada (Attorney General)*, 2021 FC 337 at para 26 [*Rempel*].

[15] Innocent or honest errors are not determinative; they do not necessarily lead to a finding of a “reasonable error” under s.207.06(1)(a): *Weldegebruel v Canada (Attorney General)*, 2019 FC 1565 at paras 10, 15.

## V. STANDARD OF REVIEW

[16] The standard of review applicable to the merits of the CRA Officer’s decision not to waive the Applicant’s tax liability from over-contribution to his TFSA is reasonableness: *Howard v Canada (Attorney General)*, 2022 FC 1673 [*Howard*].

[17] In conducting a reasonableness review, a court, “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a

whole is transparent, intelligible and justified”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]. It is a deferential standard but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[18] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker” (*Vavilov* at para 85). Reasonableness review is not a “line-byline treasure hunt for error” (*Vavilov* at para 102). Any flaws or shortcoming relied upon must be sufficiently central or significant, to render the decision unreasonable (*Vavilov* at para 100).

## VI. ANALYSIS

### A. *Preliminary Matter: Style of Cause*

[19] The Respondent correctly submits that the Applicant improperly named the Canada Revenue Agency in the style of cause. The CRA, in this matter, is the delegate of the Minister of National Revenue. Pursuant to s. 303(2) of the *Federal Court Rules*, the responding party should be the Attorney General of Canada. The style of cause will be amended accordingly.

### B. *Preliminary Matter: Evidence Not Before the Decision-Maker*

[20] In the Respondent’s affidavit, the CRA Officer in question swore that the following exhibits contained in the Applicant’s Record were not before them at the time of the Decision:

- A CRA website page titled “Accounts locked on February 16” (Exhibit B);

- A TD Banking TFSA Statement for July 2021 (Exhibit D);
- A confirmation of payment to the CRA (Exhibit E);
- Handwritten notes regarding the Applicant's telephone call to the CRA (Exhibit F);
- A letter to the CRA dated October 30, 2021 (Exhibit I); and
- The Second Decision letter, dated January 12, 2022 (Exhibit J).

[21] On my review of the Record, Exhibits B, D, E, and F were not before the decision-maker and therefore should not be considered: *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 21. However, Exhibits I and J are contained in the Respondent's own Record and it would appear were therefore before the CRA Officer at the time of the Decision.

C. *The Decision was Reasonable*

[22] The Applicant makes a number of submissions, all of which I understand to be challenging the reasonableness of the Decision. However, with respect, the Applicant has failed to raise a reviewable error. None of the arguments raised disclose a basis upon which to find that the Decision unreasonable.

[23] Recall that, statutorily, the Minister may waive taxes accrued by TFSA over-contributions, where the Minister is satisfied the over-contribution occurred as a result of "reasonable error". This Court and the Federal Court of Appeal have held, drawing from internal CRA guidelines, that "reasonable error" is intended to cover unintentional over-contributions that happened because of "extraordinary circumstances outside of [a taxpayer's] control": *Connolly* at para 17; *Howard* at para 28.

[24] There is simply no basis upon which to conclude that extraordinary circumstances such as these arise in the Applicant's case. Mr. Galloro submits that the error came from his reliance on a CRA MyAccount screenshot that indicated he still had contribution room in his TFSA. However, this argument was addressed (reasonably, in my view) in the CRA Officer's reasons for decision. As noted above, the Officer did not deny that the MyAccount page may have contained inaccurate information, but found that it is an individual's responsibility to ensure that they do not exceed their TFSA contribution room limit. In my view, the disclaimer that is clearly listed below the MyAccount calculation of the Applicant's contribution room is fatal to this application. The disclaimer is as follows:

To see how we calculated your TFSA contribution room, click the link above.  
This amount does not consider the TFSA contributions you have made this year.

The CRA is still receiving information from financial institutions and the TFSA contribution room shown may not yet reflect all of the TFSA transactions you made during the previous year. You should compare the TFSA transaction information we have with your own records to make sure your contribution room is accurate.

[25] This disclaimer is consistent with the self-reporting nature of Canada's tax system. As was the case here, taxpayers typically possess the personal information necessary to comply with tax requirements, and they are expected to understand the law and take reasonable steps to comply with it: *Rempel* at para 26. That fact is particularly germane to this case, because the Applicant appears to have known his TFSA limit from the prior year and maximized that contribution. As such, it was plainly clear that the Applicant's TFSA limit for the following year would drop down to the annual limit, which at the time was \$6,000.



[26] The Applicant argues that the language contained in the CRA disclaimer has, in subsequent years, become more specific as to the delays in calculating contribution limits on the MyAccount site. As far as I can gather, he relies on this fact (which I take to be true) to suggest that he should have been afforded relief for the 2020 taxation year. Respectfully, I disagree. Once again, it was the Applicant's responsibility to avoid over-contributions to his TFSA. He had the information necessary to comply with this requirement. On two previous occasions, he had exceeded his TFSA contribution limits, but been relieved of the consequences of those over-contributions. Given these circumstances, I see nothing unreasonable in the CRA Officer's determination that such relief was not warranted for the 2020 taxation year.

[27] That reasoning is further justified in relation to the applicable jurisprudence. In *Rempel* (at para 26), this Court held that, for TFSA purposes, a taxpayer is responsible for being aware of their contribution limits and ensuring that their contributions comply with the rules. In *Yew v Canada (Revenue Agency)*, 2022 FC 904 [*Yew*], the Honourable Mr. Justice Little considered a similar fact scenario and found that an error based on the applicant's reliance on the CRA MyAccount contribution room did not constitute a "reasonable error" sufficient to warrant tax relief. Justice Little considered the applicant's argument that she was misled by the CRA because the MyAccount information did not reflect her actual contribution room. In dismissing the application, Justice Little found:

That is not quite the case in a self-reporting tax system: the applicant was the underlying source of the information on her MyAccount page because the displayed contribution limits (at the start and the end of tax years) must have been based on what she had provided to CRA.

...

In any event, it was the applicant's responsibility in law to ensure her contributions complied with the ITA.

[28] Justice Little went on to distinguish that case from *Gekas v Canada (Attorney General)*, 2019 FC 1031 [*Gekas*], which is relied on by the Applicant in this matter. He found in *Yew* (at para 59) that:

This is not a circumstance in which the applicant's over-contributions were outside her control, as occurred in *Gekas*, at paras 5 and 30-31. In that case, a miscommunication between the taxpayer and his financial institution caused an employee to make an erroneous deposit into his TFSA instead of another account. The mistake was not in the taxpayer's control because someone else made the mistake. In the present case, the applicant made the mistakes herself and in law was responsible for them.

[29] I agree with the Respondent that *Gekas* is distinguishable on the facts, and is not helpful to the Applicant's case.

[30] As a result of the above, it was reasonable for the CRA Officer to refuse to waive tax liability for Mr. Galloro's over-contribution to his TFSA.

## VII. CONCLUSION

[31] This application for judicial review should be dismissed, as the Applicant has failed to raise a reviewable error. The Respondent has asked for costs in these proceedings. While the Applicant has not been successful in this application, I recognize that he took some good faith

steps to try and comply with his contribution obligations. As such, and in the exercise of my discretion, there will be no award of costs in this matter.

**JUDGMENT in T-254-22**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is amended to replace the Canada Revenue Agency with the Attorney General of Canada as the Respondent.
2. This application for judicial review is dismissed.
3. No costs.

"Angus G. Grant"

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Judge

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

**DOCKET:** T-254-22

**STYLE OF CAUSE:** VINCENT GALLORO v CANADA REVENUE  
AGENCY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 22, 2025

**JUDGMENT AND REASONS:** GRANT J.

**DATED:** FEBRUARY 6, 2025

**APPEARANCES:**

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