Federal Court Cour fédérale

Date: 20250206

Docket: T-322-23

Citation: 2025 FC 239

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-322-23.

[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 [the 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 are carried 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. Mr. Galloro's application for judicial review in Court File Number T-254-22 relates to the levying of tax for this taxation year.

[7] This brings us to January 2021. With the new year, Mr. Galloro received the yearly $6,000 contribution space, bringing his excess TFSA contribution down to $26,502. However, on February 9, 2021, he contributed $12,000 to his TFSA, and then withdrew $26,502 on June 29, 2021. This resulted in an excess amount of $12,000 in his TFSA as of December 31, 2021.

[8] The Canada Revenue Agency [CRA] assessed the Applicant in respect of the excess amount in July 2022. Mr. Galloro again requested cancellation of the tax on his excess contribution. In requesting the cancellation, Mr. Galloro indicated that he had contacted a CRA representative upon notification of his (ongoing) TFSA excess balance. Mr. Galloro stated that the representative advised him to withdraw $26,502 immediately, to "pay the said fine," and to leave $6,000 in the account as this would be carried forward to 2022 without penalty, provided he did not make any further contributions in 2021 or 2022. Mr. Galloro indicates that he followed these instructions.

[9] The CRA denied the request and notified Mr. Galloro of this first decision by letter dated August 25, 2022. He requested a second review.

B. *Decision under Review*

[10] The CRA Officer assigned to conduct the second review refused the Applicant's request for tax relief by letter dated January 25, 2023. The Officer acknowledged Mr. Galloro's claim that he had contacted the CRA, that he provided a "full and accurate" summary of his TFSA account to the CRA, and that he was provided with incorrect information. However, the Officer found that Mr. Galloro was not entitled to the cancellation of tax on his excess balance because:

a) He is a repeat over-contributor to his TFSA;

b) It is the taxpayer's responsibility to withdraw any excess amounts present in their account, and to keep up-to-date records of their TFSA transactions to ensure that they do not exceed their TFSA contribution room.

c) The information provided by the CRA online account or by a CRA representative may not be accurate, and it is an individual's responsibility to ensure they do not exceed their contribution limit.

d) The Applicant's MyAccount profile includes a disclaimer that states that CRA continues 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

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

IV. LEGISLATIVE SCHEME

[12] 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).

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

[14] 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 [*Ruiz Rodriguez*].

[15] 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 [*Rempel*].

[16] 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): *Weldegebriel v Canada (Attorney General)*, 2019 FC 1565 at paras 10, 15.

V. STANDARD OF REVIEW

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

[18] 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).

[19] 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*

[20] 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*

[21] In the Respondent's affidavit, the CRA Agent 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 webpage dated February 15, 2020 showing the Applicant's TFSA contribution room (Exhibit A);
- A CRA website page titled "Accounts locked on February 16" (Exhibit B);
- A CRA TFSA Notice of Assessment dated July 20, 2021 (Exhibit C);
- 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);
- An Access to Information and Personal Information Request (Exhibit I); and
- A screenshot of a webpage entitled "Tax-Free Saving Account" showing a 2023 TFSA contribution room on $500.00 as of January 1, 2023 (Exhibit J).

[22] On my review of the Record, it appears that most of these documents were not before the decision-maker. Therefore, they should not be considered on the application for judicial review: *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 21. The one exception relates to Exhibit "C," which is the CRA's TFSA Notice of Assessment in respect of the Applicant's over-contributions for the 2020 taxation year, which I find was likely before the decision-maker, or ought to have been if it was not. While I did therefore consider this document in my review, nothing turns on it, as it is not controversial that the Applicant had contributed in excess of his contribution limit for that year.

C. *The Decision was Reasonable*

[23] As I understand it, the Applicant primarily submits that the Decision was unreasonable because it failed to consider that his TFSA over-contribution occurred as a result of his reliance on incorrect information received in a phone call with a CRA representative, who advised him to leave $6,000 in his TFSA account as a "carry-over" for 2022. While he has not used these words, I take the Applicant's position to be that this reliance resulted in a "reasonable error," for which the imposed taxes should have been cancelled. I respectfully disagree.

[24] First, there is little clarity regarding what, precisely, was communicated over the course of the telephone call. The Applicant argues that he called the CRA and provided a CRA representative with a "full and accurate summary" of his TFSA account and investments so that the representative could advise him correctly, and that the representative advised him to withdraw all but $6,000 from his TFSA. However, it is difficult to confirm this claim, as there is apparently no record of the call.

[25] Mr. Galloro has submitted a copy of handwritten notes from that telephone call to this Court; however, (as noted above) these notes were not before the decision-maker, and are therefore not admissible on this application for judicial review. While I do not doubt the sincerity of the Applicant's recollection of the phone call, it is impossible to confirm with any precision what was said during the call. Absent such information, I do not find that I have a sufficient evidentiary basis on which to conclude that the Applicant's over-contributions resulted from the CRA call and could therefore be construed as a reasonable error.

[26] But, irrespective of the specifics of the Applicant's conversation with the CRA representative, I find that the CRA Officer's decision was reasonable. In its decision, the CRA considered the Applicant's telephone conversation with the CRA representative. However, the Officer concluded that, due to Mr. Galloro's repeat over-contributions, coupled with his responsibility as a taxpayer to understand the law and to comply with the ITA, and the disclaimers on the CRA website, the over-contribution in question did not arise from a reasonable error. This finding was open to the CRA Officer.

[27] Recall that 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* at para 12.

[28] With respect, even taking into account the possibility that Mr. Galloro received incorrect advice from a CRA representative, it was nevertheless within a range of reasonable alternatives for the CRA Officer to find that, given the Applicant's circumstances, his reliance on this information did not constitute a reasonable error. CRA Officers are not tax advisors. Moreover,

the Applicant is not without means, as evidenced by his repeated over-contributions into his TFSA. It was firmly within Mr. Galloro's knowledge that he had made previous TFSA contributions, and indeed, that he had previously *over-contributed* to his TFSA account. In such circumstances, it was incumbent on the Applicant to ascertain for himself his contribution limits, or to retain a tax advisor to provide him with this information: *Rempel* at para 26; *Dimovski v Canada (Revenue Agency)*, 2011 FC 721 at para 17 [*Dimovski*]. In *Dimovski*, this Court also affirmed that a taxpayer's reliance on poor advice does not necessarily constitute a reasonable error warranting tax relief: *Dimovski* at paras 15-16.

VII. Conclusion

[29] This application for judicial review should be dismissed. The CRA Officer's decision was justified, transparent, and intelligible and contains no reviewable errors. The Respondent has asked for costs in these proceedings. While the Applicant has not been successful in this application, I recognize that he took good faith, if insufficient, 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-322-23

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"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-322-23
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.
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APPEARANCES:

Vincent Gallaro	FOR THE APPLICANT (Self-Represented)
Randy Ramoodit Andrea Jackett	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT