Federal Court  Cour fédérale

Date: 20250725

Docket: T-2712-24

Citation: 2025 FC 1319

Edmonton, Alberta, July 25, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

LEONARD WOROBEC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Leonard Worobec, the Applicant, seeks the judicial review of a Minister of National Revenue [Minister] decision dated September 12, 2024, denying the waiver or cancellation of tax assessed on his overcontribution to his Tax-Free Savings Account [TFSA] in the 2018, 2019, 2020 and 2021 tax years [Decision]. In their Decision, the Minister found there were no circumstances supporting the cancellation of the tax on Mr. Worobec's excess TFSA contributions pursuant to Part XI.01 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*].

[2] Mr. Worobec submits that the Minister failed to adequately consider his circumstances, failed to adequately explain the reasons for the Decision, and made significant errors of facts and mixed fact and law in concluding that he had not withdrawn the overcontributions within a reasonable timeframe.

[3] In summary, Mr. Worobec submits that in 2019, when he opened a Qtrade account, he had not realised that it was a TFSA, as he had intended to open a regular, non-registered trading account. When Mr. Worobec understood he had overcontributed to his TFSA, he would have taken immediate steps to obtain advice and withdraw the overcontribution. However, at that time, the value of his investments had been significantly reduced, and he was therefore unable to liquidate his portfolio and realize sufficient proceeds to withdraw the overcontribution. Mr. Worobec ultimately moved the portfolio out of the TFSA into a regular account; this, however, took some time due to administrative roadblocks with Qtrade.

[4] After having reviewed Mr. Worobec's file, the Minister determined that Mr. Worobec had not met either of the two necessary conditions set out in subsection 207.06(1) of the *ITA* for the Minister to exercise their discretion to waive or cancel tax liability resulting from TFSA overcontributions, namely that the overcontributions were the result of a reasonable error and that they were removed without delay.

[5] The Attorney General of Canada [AGC] responds that the Decision ought not to be disturbed as it was reasonable. It was transparent, intelligible, and justified in view of the facts and the law constraining them.

[6] The AGC submits that Mr. Worobec was first informed of his TFSA overcontributions in July of 2019. Throughout 2019 and 2020, he did not withdraw any amounts from his TFSAs and he continued to contribute to his TFSAs in 2021, while exceeding the TFSA contribution limit.

[7] In support of his judicial review application, Mr. Worobec filed his own affidavit dated November 21, 2024, to which he attached six exhibits. He was not cross-examined.

[8] For the reasons that follow, and while the Court empathizes with Mr. Worobec's situation, his application for judicial review will be dismissed. Given the legislative dispositions, the record before this Court, and the reasons indicated in the Decision, the Court has not been convinced that the Decision is unreasonable.

II. Context

A. *TFSA Overcontribution and the Minister Discretionary Power*

[9] TFSAs are registered plans governed by Part XI.01 of the *ITA*. An eligible individual may open a TFSA and contribute to the TFSA up to the amount of his or her unused TFSA contribution room calculated in accordance with the formula set out in subsection 207.01(1) of the *ITA*. Income and capital gains earned in a TFSA are not subject to tax unless the individual has contributed more than their unused TFSA contribution room. Withdrawals made from a TFSA in a year will not be added to the individual's TFSA contribution room until the beginning of the following year.

[10] Pursuant to section 207.02 of the *ITA*, an individual who has excess TFSA amounts in a calendar month is required to pay tax equal to 1% of the highest amount of excess for the month.

[11] Subsection 207.06(1) of the *ITA* provides the Minister's discretion to grant the remedy sought by Mr. Worobec but only if two cumulative conditions are met: (1) the individual satisfies the Minister that the liability arose as a consequence of a reasonable error; and (2) the excess TFSA amounts are removed from the TFSA by the individual without delay. To the extent that one of the conditions is not met, the Minister cannot grant the remedy sought (*Messenger v Canada (Attorney General)*, 2021 FC 95 at paras 3, 14-15, 20 [*Messenger*]; *Ifi v Canada (Attorney General)*, 2020 FC 1150 at paras 15-16 [*Ifi*]).

[12] That said, even in cases where these two conditions are met, the Minister retains the discretion to refuse to grant the waiver requested by an individual (*Ifi* at paras 15-16).

B. *Facts*

[13] In December 2017, Mr. Worobec opened a Qtrade TFSA and contributed $6,000. His portfolio consisted largely of penny stocks. In 2018, Mr. Worobec also contributed to a separate Sun Life Canada TFSA. Accordingly, while he had room for contributions of $45,280.71 in 2018, he contributed a total of $182,999.89 to his TFSA accounts. His overcontributions were therefore $131,719.18.

[14] On July 16, 2019, the Minister issued a TFSA Notice of Assessment [NOA] for the 2018 taxation year to Mr. Worobec, which indicated that he had overcontributed to his TFSA and

assessed a 1% tax on the highest excess amount for each month in 2018. The 2018 TFSA NOA assessed $6,101.92 in tax on excess TFSA amounts, as well as penalties and interest for a total balance owing of $6,423.89.

[15] Mr. Worobec claims that he misunderstood the NOA and thought that it applied to unpaid income tax. He therefore simply paid the assessed amount.

[16] In 2019, Mr. Worobec did not withdraw the overcontributions and instead contributed an additional $70,561.52 to his TFSAs. Thus, by the end of 2019, he had overcontributed $196,280.70 to his TFSAs.

[17] On July 14, 2020, the Minister issued a TFSA NOA for the 2019 taxation year to Mr. Worobec, which again indicated that he had overcontributed to his TFSA and assessed a 1% tax on the highest excess amount for each month in 2019. The 2019 TFSA NOA assessed $22,086.63 in tax on excess TFSA amounts, as well as penalties and interest for a total balance owing of $22,086.63.

[18] Once again, Mr. Worobec claims that he misunderstood the NOA and thought that it applied to unpaid income tax.

[19] In 2020, Mr. Worobec contributed $33,894.21 to his TFSAs and did not withdraw any amounts. Thus, by the end of 2020, he had overcontributed $224,174.91 to his TFSAs.

[20] On July 20, 2021, the Minister issued a TFSA NOA for the 2020 taxation year to Mr. Worobec, which once again indicated that he had overcontributed to his TFSA and assessed a 1% tax on the highest excess amount for each month in 2020. The 2020 TFSA NOA assessed $26,521.95 in tax on excess TFSA amounts, as well as penalties, interest and a previous unpaid account balance ($16,189.85) for a total balance owing of $44,114.30.

[21] According to Mr. Worobec, it is only after receiving this July 2020 NOA, in July 2021, that he understood the nature of the overcontribution issue. However, by that time, the value of his Qtrade account had fallen below the amount necessary to withdraw the excess and therefore, according to him, he could not simply liquidate his portfolio to the required amount. The record however shows that Mr. Worobec's Qtrade account had a value of $122,956.63 in August 2021.

[22] Mr. Worobec states in his affidavit that he attempted to liquidate and transfer his Qtrade TFSA holding to a non-registered account. However, he was unable to do so prior to January 2023 given administrative delays caused by Qtrade. There is no evidence in the record as to when Mr. Worobec made this or these attempts. Further, Mr. Worobec claims that this process was prolonged by Qtrade's internal administrative delays and roadblocks, but again, except for his affidavit, there is no evidence in the record supporting this claim.

[23] What the record indicates is that in 2021, Mr. Worobec still made further contributions to his TFSAs, including in another TFSA account he opened on July 13, 2021, with Industrial Alliance Financial Group [IA Account]. For instance, the record shows that in August 2021, after he admits being aware of the overcontribution issue, Mr. Worobec continued to contribute to his

Sun Life TFSA. And while the record shows that he made some withdrawals, he nonetheless had, by the end of 2021, overcontributed $210,072.17 to his TFSAs.

[24] In his affidavit, Mr. Worobec explains that he opened what he thought was a registered retirement savings plan [RRSP] account with Industrial Alliance Financial Group, which, unbeknownst to him, turned out to also be a TFSA. In his Memorandum of Fact and Law, he submits this is why he would have mistakenly contributed to a TFSA even after having understood the problem of overcontribution in his Qtrade account. However, the record shows this information was not put in front of the decision-maker.

[25] On July 26, 2022, the Minister issued a TFSA NOA for the 2021 taxation year to Mr. Worobec, which once again indicated that he had overcontributed to his TFSA and assessed a 1% tax on the highest excess amount for each month in 2021. The 2021 TFSA NOA assessed $27,363.94 in tax on excess TFSA amounts, as well as penalties, interest and a previous unpaid balance ($43,696.52) for a total owing of $72,551.71.

[26] On January 12, 2023, Mr. Worobec closed his Qtrade account and transferred all its remaining assets to his non-registered account. Although he had deposited a total of $288,500 into this account over time, the value of his TFSA portfolio had plummeted to $21,810.26.

[27] On February 27, 2024, Mr. Worobec's accountant reviewed his account and informed him that the IA Account was also designated as a TFSA, resulting in overcontributions. The following day, Mr. Worobec closed his IA Account and transferred all its remaining assets of $51,636.61 to

his non-registered account. Once again, the record shows this information was not in front of the decision-maker.

C. *CRA Decisions*

(1) First Decision

[28] On April 14, 2023, Mr. Worobec requested a waiver and cancellation of the taxes payable resulting from his overcontribution to his TFSAs. He explained that the overcontribution was inadvertent because when he opened the Qtrade account, he had intended to open a regular trading account and did not realise that it was a TFSA. He further indicated that by the time he realised it was a TFSA, the value of his investment had been depleted more than the overcontribution.

[29] On August 29, 2023, the Canadian Revenue Agency [CRA] issued a decision letter denying Mr. Worobec's request for a waiver or cancelation of tax [First Decision], explaining that he had been advised of the situation by way of the NOAs issued in July 2018, 2019, 2020 and 2021, and had not immediately removed the excess contributions.

(2) Decision under review

[30] On October 12, 2023, Mr. Worobec made a second request for a waiver and cancellation of the taxes payable resulting from his overcontribution to his TFSA accounts, suggesting that the First Decision did not adequately consider his "specific circumstances which prevented, and continue to prevent, him from withdrawing the excess contribution." This included the fact that

his investments into penny stocks went to zero and, consequently, the overcontributed money no longer existed, making it impossible for him to fully comply with the CRA's notice to withdraw the entire amount immediately.

[31] On September 12, 2024, the CRA issued the Decision denying Mr. Worobec's request. The Decision states that a separate CRA official, not involved with the First Decision, had carefully considered the circumstances and facts of Mr. Worobec's case. The Decision then summarizes the arguments made by Mr. Worobec, namely:

> In your letter, you state that your client was unaware of the excess contribution that occurred in their TFSA. You state that your client intended to deposit funds into a regular trading account and was not aware that the deposit was made to a TFSA. You state that your client discovered the error when he received the notice from CRA and intended to remove the excess, he could not remove the full excess due to losses. Your client proceeded to pay down the tax balance in as a means of rectifying the situation. Your client sought legal counsel, under the advice of legal counsel, your client transferred the portfolio out of the TFSA on January 12, 2023.

[32] The Decision goes on to state that not only Mr. Worobec did not remove the excess contributions in a reasonable time frame, notwithstanding the receipt of numerous NOAs for the 2018, 2019, 2020 and 2021 tax years, he continued contributing to his TFSAs even after receiving notices about the excess contributions, creating further excess in his TFSAs. On this issue, the Decision further reminds Mr. Worobec of his obligations as a taxpayer, namely:

> Upon notice, it is [his] responsibility to immediately remove any excess contributions present in his TFSA and keep accurate records going forward to ensure they remain within their contribution room limit. [Mr. Worobec] is also responsible for making sure that they

> make all contributions within the guidelines set out in the legislation for TFSA contributions.

[33] As for Mr. Worobec's argument that the Decision did not grapple with his "specific circumstances, which prevented, and continue to prevent, him from withdrawing the excess contribution", given that the value of his portfolio has plummeted, and that it would be unfair for him "to be subject to Part XI.01 tax for the next several decades, which is how long it would take the annual contribution room increases to catch up with the overcontribution", the Decision states as follows:

> Depending on the type of investment held in [Mr. Worobec]'s TFSA, they may incur a loss in their original investment. Any investment losses within a TFSA are not considered a withdrawal and therefore are not part of [Mr. Worobec]'s TFSA contribution room.
>
> If [Mr. Worobec] was unable to remove the full amount of the excess due to losses in the fair market value in their TFSA, upon notice they must have removed all available funds from any active TFSA account.
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> According to our records as of December 31, 2023 all funds have not been removed from all active TFSA accounts. Our records show that as of December 31, 2023 [Mr. Worobec] has $46,537.40 held in a TFSA with Industrielle Alliance, TFSA contract number 1433200176.
>
> Losses are not account specific. Funds must be removed from any active TFSA account.
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> …
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> [Mr. Worobec] will need to review their own records to ensure all funds have been removed. It is to the taxpayer's advantage to close all the TFSA account and provide CRA with proof that all TFSA account values are nil and that all TFSA accounts are closed.

[34] Given the above, the CRA reached the conclusion that no circumstances supported the cancellation of the tax on Mr. Worobec's excess TFSA contribution.

III. Analysis

A. *Applicable Standard of Review*

[35] The applicable standard of review is well summarised by Justice Walker (as she was then) in *Messenger*:

> [11] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*), the majority of the Supreme Court of Canada (SCC) established reasonableness as the presumptive standard of review of the merits of administrative decisions, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Vavilov* at para 10). There is no basis for departing from the presumptive standard of review in this case (*Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27 (*Canada Post*)). A review of the Decision for reasonableness is also consistent with the pre-*Vavilov* jurisprudence (*Bonnybrook Park Industrial Development Co. Ltd. v Canada (National Revenue)*, 2018 FCA 136 at para 22; *Weldegebriel v Canada (Attorney General)*, 2019 FC 1565 at para 5 (*Weldegebriel*)).
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> [12] The majority in *Vavilov* reviewed in detail the content of reasons a reviewing court may expect in an administrative decision and cautioned that a review for reasonableness must consider the decision maker's reasoning and the outcome of the decision (*Vavilov* at paras 86-87). A reviewing court must determine whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision is one based on an internally coherent and rational chain of analysis and justified in relation to the relevant facts and applicable law (*Vavilov* at paras 105-106). In this application, the scheme of the *ITA* and the requirements of subsection 207.06(1) of the *ITA* are central to my review of the Decision (*Vavilov* at para 108; *Entertainment Software Association v Society of*

> *Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at paras 34-35).

[36] Further, "reasonableness review is a deferential but robust form of review" (*Ifi* at para 14). This is even more true in the context of the exercise by the Minister of a discretionary power provided for in subparagraph 207.06(1) of the *ITA* (*Ifi* at para 12; *Weldegebriel v Canada (Attorney General)*, 2019 FC 1565 at para 8 [*Weldegebriel*]).

[37] That said, the Court is also well aware that the impact of a decision on an individual may require enhanced responsive justification, which is a key element to consider for a court conducting a reasonableness review. As the Supreme Court of Canada stressed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*]:

> [76] *Vavilov* also explained that "[w]here the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (para. 133). The principle of "responsive justification" means that if a decision has "particularly harsh consequences for the affected individual", then "the decision maker must explain why its decision best reflects the legislature's intention" (para. 133). An administrative decision may be unreasonable if it fails to grapple with particularly severe or harsh consequences for the affected individual (para. 134). An administrative decision maker's reasons must "demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law" (para. 135).
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> (See also *Onex Corporation v Canada (Attorney General)*, 2024 FC 1247 at para 46)

[38] That said, the party challenging the decision has the burden of proving that it is unreasonable and satisfy the Court that the decision has "sufficiently serious shortcomings" (*Vavilov* at para 100).

B. *Submissions of the Parties*

[39] Mr. Worobec submits the Minister failed to meaningfully grapple with his arguments as the Decision offers little beyond a conclusory statement that he failed to meet the "reasonable error" and "without delay" thresholds. In Mr. Worobec's view, the Minister's reasons do not address his pivotal argument that, by the time he learned of the overcontribution, the assets were no longer available to withdraw at anything near their contributed value, nor is there any discussion of whether Qtrade's and Industrial Alliance's administrative missteps or the CRA's own notices contributed to the delay.

[40] Mr. Worobec refers to the decision *Sangha v Canada (Attorney General)*, 2020 FC 712 [*Sangha*] in which, he submits, this Court found that the Minister's reasoning was unduly simplistic and did not grapple with the key factual and legal considerations presented by the applicant. He adds that the Court specifically criticized the Minister's delegate for failing to address whether the taxpayer's excess TFSA contributions resulted from a reasonable error and whether his remedial steps were sufficient to warrant relief.

[41] In his view, the deficiencies identified in *Sangha* are directly applicable here as the Minister (1) mischaracterized his actions by failing to recognize that he misunderstood the nature of his Qtrade and IA accounts; (2) failed to address his unique circumstances which include his honest misunderstanding and his investment's catastrophic losses thereby making it practically impossible to withdraw the excess contributions; and (3) lacked justification for rejecting discretionary relief as only a conclusory rejection of his arguments is made without addressing key

statutory factors, including whether his misunderstanding constituted a “reasonable error” under subsection 207.06(1) of the *ITA*.

[42] Further, Mr. Worobec argues that he opened two TFSA accounts (the Qtrade Account and IA Account) under the mistaken assumption they were, respectively, a non-registered account and a RRSP, and that this inadvertence is the type of misunderstanding recognized by the Federal Court of Appeal in *Connolly v Canada (National Revenue)*, 2019 FCA 161 [*Connolly*]. He adds that he acted promptly once he understood the overcontribution problem but faced two significant hurdles in (i) the substantial losses of his portfolio and (ii) the administrative obstacles he encountered with Qtrade. Mr. Worobec submits that despite these hurdles, he did remove or transfer all that was feasible once the error became apparent, thus making a sincere attempt to comply without delay. The Minister’s cursory dismissal of these mitigating factors is contrary to both the statutory language and the remedial intent of subsection 207.06(1).

[43] Lastly, Mr. Worobec stresses that as of the date of his affidavit, the remaining TFSA overcontribution is over $110,000. Absent relief, his only means of reducing the overcontribution is therefore to await incremental annual TFSA limit increases, currently set at $7,000, which would require him to wait approximately 16 years until the ongoing Part XI.01 tax is fully eliminated. He highlights that during this period, he would be assessed additional monthly tax, even though (1) he no longer holds any substantial assets in the TFSA; (2) he has realized no net tax-free gains or other benefit; and (3) he has already paid substantial Part XI.01 taxes and related penalties.

[44] In his view, this cannot be reconciled with the remedial purpose of the TFSA regime, which is to remove the benefit of any excessive tax-free growth. Mr. Worobec stresses that the Federal Court of Appeal held that adopting an interpretation of the overcontribution waiver provisions that "virtually extinguishes the Minister's discretion" is an error in law (*Connolly* at para 67).

[45] In response, the AGC submits that the Minister's Decision to deny Mr. Worobec's request for a waiver or cancellation of taxes assessed was reasonable as it fell within the range of acceptable outcomes and was arrived at in a justifiable, transparent, and intelligible manner.

[46] The AGC notes that the *ITA* limits the amount a taxpayer may contribute to a TFSA. If a taxpayer exceeds their TFSA contribution limit, the taxpayer may be liable for a tax on the amount of excess contributions, as well as arrears interest if the tax is not paid by the statutory deadline. If at any time in a calendar month, an individual has overcontributed to their TFSA, they are required to pay a tax of 1% on the amount of the overcontribution. The AGC further stresses that for the Minister to exercise their discretion, each criterion of subsection 207.06(1) of the *ITA* must be met.

[47] In response to Mr. Worobec submission that he "misunderstood" the NOA issued in July 2019 and July 2020, believing they related to unpaid personal income tax, the AGC submits that misreading notices issued by the CRA does not constitute a reasonable error and "[i]gnorance of the law is not a reasonable error or mistake." (*Badesha v Canada (Attorney General)*, 2021 FC 215 at paras 19-20 [*Badesha*])

[48] Moreover, the AGC points out that the first page of each notice plainly states that the notice is a “Tax-free savings account (TFSA) notice of assessment”. Further, on the second page of the 2018 NOA, it is indicated “we determined that you contributed too much to your TFSA.” A similar message is included in each of the TFSA NOA for 2019, 2020, and 2021. The AGC also submits that there is no evidence in the record demonstrating that Mr. Worobec sought or relied on third party advice regarding these notices issued by the CRA until retaining counsel.

[49] The AGC also contests Mr. Worobec’s claims that he did not know he was contributing to a TFSA rather than a non-registered account, and this, in spite of the monthly Qtrade statements dating back to December 2017 describing the type of investment as “TFSA”.

[50] The AGC further highlights that in determining if the error was reasonable, the Decision noted that Mr. Worobec “is responsible for making sure [he] make[s] all contributions within the guidelines set out in the legislation for TFSA contributions.” As held in *Badesha*, the “Canadian tax system is based on self-assessment. It is up to each individual to ensure they conduct their affairs in accordance with the Act.” (*Badesha* at para 20)

[51] Moreover, the AGC submits that the Minister reasonably concluded that Mr. Worobec failed to arrange, without delay, for the overcontributions to his TFSA to be withdrawn. This conclusion was determinative in the Minister’s Decision not to exercise discretion to waive or cancel the tax on the excess TFSA contributions, as a necessary precondition was not met.

[52] The AGC also stresses that Mr. Worobec was notified in July 2019, 2020, 2021, and 2022 that he had overcontributed to his TFSA. Mr. Worobec did not withdraw any amount from his TFSA until August 2021, more than two years after the 2018 NOA was issued. The AGC submits that even after Mr. Worobec acknowledges becoming aware of the overcontribution in July 2021, he did not withdraw the excess of contribution without delay. It is only in January 2023, approximately 3.5 years after receiving the 2018 NOA and 1.5 year after being "unquestionably" aware of the overcontributions, that he transferred all amounts out of his Qtrade TFSA.

[53] Lastly, the AGC submits that the Decision did grapple with Mr. Worobec's personal circumstances and his inability to remove all overcontributions due to a loss in value but determined that this did not prevent him from removing all that he could without delay and comply with his obligations under the *ITA*.

C. *The Decision is Reasonable.*

[54] As previously stated, Mr. Worobec bore the burden of proving that the Minister made a reviewable error when rendering the Decision (*Vavilov* at para 100). He did not meet this burden.

(1) Reasonable Error

[55] The unfortunate situation of Mr. Worobec appears to result from a series of mistakes on his part:

i. not realising that his Qtrade account was a TFSA (and not a non-registered trading account), notwithstanding the clear indication on his various statement of accounts;

ii. not realising that the various NOAs he received were for overcontributing to his TFSA, notwithstanding that the NOAs clearly explains what they pertain to;

iii. not removing his excess contributions or at the very least, the remaining value "without delay";

iv. not realizing that his IA Account was also a TFSA (and not a RRSP); and

v. when he realized it, not informing the Minister of this fact, prior to the Decision being rendered.

[56] On this last point, as discussed at the hearing, the Court notes that Mr. Worobec submission that he did not realize his IA Account had been improperly opened as a TFSA until February 27, 2024, was not provided to the Minister in his letter requesting a second review nor thereafter. This information could have been provided to the CRA prior to them rendering the Decision in September 2024, and there is no explanation on the record as to why this information was not provided to them. The Court is therefore not in a position to consider this argument at this time, specially considering the Minister's expertise (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-25).

[57] Thus, while it may very well be that the overcontribution to his TFSA resulted in various errors of good faith, the Court is of the view that it was not unreasonable for the Minister to consider that Mr. Worobec had been properly advised of the situation, by way of yearly NOA, from 2018 to 2021. The Court agrees with the AGC that failure to properly read the NOA received is not something that falls into the category of "reasonable error".

[58] In *Lepiarczyk v Canada (Revenue Agency)*, 2008 FC 1022 [*Lepiarczyk*], a case involving a request for waiver of overcontributions to an RRSP pursuant to subsection 204.1(4) of the *ITA*, the applicant submitted that he had misunderstood the NOA such that the specific amount stated therein was his RRSP deficit and therefore made RRSP contributions to remedy the deficit. He further argued that "if he had known that he would be taxed, this action would have made no sense as it would only have exacerbated the situation." (at para 8)

[59] The Court in *Lepiarczyk* took note that the applicant was adamant that the error was an honest mistake and that he did not knowingly intend to overcontribute to his RRSP. However, it stressed that the test to meet under subsection 204.1(4) of the ITA is "not the innocence of the applicant, but yet reasonability of the error made." (at para 19) At paragraph 10 of *Weldegebriel*, the Court reiterated this principle in the context of TFSA overcontribution.

[60] Further, as the Federal Court of Appeal stressed in *Connolly*, taxpayers have an obligation to take reasonable measures to comply with the *ITA*:

> [69] … 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.

[61] In *Yew v Canada (Revenu Agency)*, 2022 FC 904, these principles were reiterated in the context of TFSA:

> [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] 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."
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> [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.
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> [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.

[62] In the present matter, while the Decision does not specifically state that the CRA did not consider Mr. Worobec's error to be a "reasonable error" under subsection 207.06(1) of the *ITA*, the Court finds that the Decision, when read holistically, reasonably addresses Mr. Worobec key arguments and specific circumstances. The reasons given cannot be assessed to a standard of perfection (*Mason* at para 61 citing *Vavilov* at para 91).

[63] More specifically, the Decision addresses Mr. Worobec's circumstances, noting that due to a loss in TFSA fair market value, it may not be possible to remove the full amount of the excess, but the CRA notes that upon notice, all available funds must have been removed from any active TFSA. The Decision notes that as of December 31, 2023, all funds had not been removed from his TFSAs as he still had $46,537.40 in a TFSA with Industrielle Alliance.

[64] Further, the evidence in the record assessed by the CRA also shows that even after July 2021, i.e., when he admits having understood his error, Mr. Worobec did not remove the TFSA overcontributions that were available for him to withdraw, and this for many months afterwards. Therefore, given the number of NOAs received by Mr. Worobec, it was not unreasonable for the Minister to determine that Mr. Worobec's circumstances did not meet the requirement under paragraph 207.06(1)(a).

[65] The Court agrees with the AGC that the tax on excess TFSA contributions is imposed as a matter of law by operation of the *ITA* and not from any discretionary decision of the Minister. The discretionary power of the Minister is limited to providing exceptional relief from the operation of the *ITA*, where the necessary requirements of subsection 207.06(1) are met and where the Minister believes that such relief is warranted (*Messenger* at paras 14-15; *Ifi* at para 16).

(2) Without Delay

[66] Based on the record in front of the Minister, and without knowing the potential additional issue with the IA Account, it was not unreasonable for the Minister to determine that Mr. Worobec continued to make contributions to his TFSAs instead of taking all possible steps to withdraw the excess contributions without delay.

[67] The "without delay" criterion has been defined in a number of decisions as being a period of 30 days after the moment when the tax payer has been informed of the overcontribution (*Fang v Canada (Attorney General)*, 2024 FC 1399 at para 38; *Ossai v Canada (Attorney General)*, 2023 FC 313 at para 24 citing *Posmyk v Canada (Attorney General)*, 2021 FC 393 at para 4).

[68] In this case, Mr. Worobec had been informed of the situation as early as July 2018. He received further NOAs in 2019, 2020 and 2021. Yet, the record before the CRA showed that not only did he not take steps to resolve the situation, but he also continued to overcontribute to his TFSAs. Thus, even if the Court was to determine that the Minister should have started calculating the delay from July 2021, when Mr. Worobec claims he understood the NOA and became aware

of the TFSA overcontribution, his delay to act would still fall outside of what this Court has determined to be “without delay”.

[69] Further, and as previously noted, there is little evidence in the file, save Mr. Worobec’s affidavit, that show the alleged administrative delays or roadblocks from Qtrade when he began taking steps to close this account. Thus, based on the record that was before the Minister, their conclusion that Mr. Worobec did not meet the second criteria is not unreasonable.

[70] Moreover, the Decision acknowledged that even if Mr. Worobec was “unable to remove the full amount of their excess due to losses in the fair market value in their TFSA, upon notice they must have removed all available funds”. The fact that Mr. Worobec may not have been able to fully remove all excess contributions did not relieve him of the requirement to remove what he could without delay.

[71] While the Court is sensitive to the circumstances of Mr. Worobec regarding the loss of value of his portfolio and the impact that this had on his ability to withdraw the excess contributions, the Court is of the view that the Minister did grapple with this issue but that given that the record before it showed that Mr. Worobec still had amounts in his TFSA, it did not demonstrate on his part that he took all required steps to attempt to comply with the *ITA*.

[72] Moreover, the Court highlights that the CRA has previously provided the following technical interpretation on this issue:

> PRINCIPAL ISSUES: 1. How can a taxpayer reduce an excess TFSA amount where the value of all of the taxpayer's TFSAs are zero? 2. Will the Minister consider waiving or cancelling the 1% tax under subsection 207.06(1)?
>
> POSITION: 1. Only new TFSA contribution room that becomes available to the taxpayer in future years will serve to reduce the excess TFSA amount. 2. No.
>
> REASONS: 1. The taxpayer is unable to withdraw any amounts from their TFSAs therefore the taxpayer would be unable to reduce the excess TFSA amount in this manner. 2. The taxpayer is unable to withdraw any amounts from their TFSAs so the conditions of subsection 207.06(1) would not be met and the Minister would have no ability to waive or cancel the tax.
>
> (2021-0883221C6 STEP 2021 - Q11 - excess TFSA amount)

[73] Although this interpretation is not binding on this Court (*Prudential Steel Ltd v Bell Supply Company*, 2016 FCA 282 at para 12), it can provide further guidance on the reasonableness of the Decision.

[74] The Court also notes the *Sangha* case referred to by Mr. Worobec is distinguishable. In that case, the Court found the decision to be unreasonable as solely two paragraphs were responsive to the applicant's submissions and the reason for the refusal to waive the TFSA tax was explained in one statement. Moreover, the delegate had not referred to the subsection 207.06(1) conditions or their application to the applicant's circumstances in that case (at paras 25-27).

[75] Here, the Decision is clearly responsive to Mr. Worobec's submissions. A paragraph summarizes his counsel's representations, including Mr. Worobec's specific circumstances. A distinct paragraph specifically addresses the reasonable time frame criterion, and several other paragraphs outline that Mr. Worobec had not removed all available funds from his active TFSAs.

IV. Conclusion

[76] The Court cannot conclude that the Decision was unreasonable. While the Court agrees with Mr. Worobec's counsel that more detailed reasons would have been helpful, the Court is nonetheless of the view that the Minister's analysis was logical and coherent in consideration of the factual and legal constraints applicable. The Decision "bears the hallmarks of reasonableness – justification, transparency and intelligibility" (*Vavilov* at para 99).

[77] As Justice Gascon reminds us in *Mailloux c Canada (Procureur général)*, 2025 CF 583 (available in French only):

> [Translation by the Court.]
>
> [43] …except in exceptional circumstances, it is not the duty of a reviewing court to reweigh the evidence in the record or to interfere with the CRA's findings of fact and substitute its own (*Vavilov* at para 125; *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). Rather, the court must consider the reasons as a whole, in light of the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53), and simply consider whether the findings are irrational or arbitrary.

[78] Here, given that the criteria provided in subsection 207.06(1) of the *ITA* are not discretionary, that the Minister could only exercise their discretion if these criteria were met, and that based on the record before it, Mr. Worobec did not meet either of the criteria, the Court is satisfied that the CRA could not exercise their discretion solely based on Mr. Worobec's argument that refusing to exercise their discretion would result in a situation that cannot be reconciled with

the remedial purpose of the TFSA regime, which is to remove the benefit of any excessive tax-free growth.

[79] Moreover, Mr. Worobec has not shown that the Decision is flawed or that it has sufficiently serious shortcomings that it would justify this Court's intervention (*Vavilov* at paras 100–101). Therefore, further to the review of the Minister's reasons and of the evidence in the file, the Court is of the view that the Decision is reasonable.

[80] In light of the reasons above, the application for judicial review will be dismissed, with costs.

V. Obiter

[81] Although the Court is satisfied the Decision is not unreasonable considering the evidence before the Minister and the criteria provided in subsection 207.06(1) of the *ITA*, the Court shares Mr. Worobec's concern that, in certain circumstances, prolonged and ongoing liability to remedy overcontributions appears to be inconsistent with the legislator's intent. More specifically, the Court agrees that section 207.02, as it currently stands, operates as a perpetual tax trap for taxpayers who made a good faith but mistaken overcontribution, even when they acted to unwind it to the best of their ability but cannot do so because the value of their TFSA is no longer sufficient to do so. As the Federal Court of Appeal described in *Connolly*, a case involving subsection 204.1(4) of the *ITA*:

> [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.
>
> [Emphasis added.]

[82] As stated at the hearing, the Court notes that the Decision indicates that "[i]t is the taxpayer's advantage to close all the TFSA accounts and provide the CRA with proof that all TFSA account values are nil and that all TFSA accounts are closed". While this may not assist Mr. Worobec with respect to past taxes and penalties, it may be interpreted as an invitation from the CRA for him to present a clean record and seek relief for future Part XI.01 tax.

JUDGMENT in T-2919-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs are awarded to the Respondent.

"Danielle Ferron"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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