Federal Court Cour fédérale

Date: 20250521

Docket: T-2969-24

Citation: 2025 FC 926

Ottawa, Ontario, May 21, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

VALERIE NAUGLE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a senior assessment processing and resource officer [the Officer] of the Canada Revenue Agency [CRA] dated August 14, 2024 [the Decision] that, following a second review, denied the Applicant's request for relief regarding taxes assessed on excess contributions made to her tax-free savings account [TFSA] for the 2021 and 2022 tax years [the Excess Contributions].

[2] In the Decision, the Officer addressing the requested second review declined to exercise her discretion under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended [ITA] to cancel all or part of any tax on excess TFSA contributions, because the Officer found the removal of the Excess Contributions from the Applicant's TFSA did not occur within a reasonable period.

[3] In this application for judicial review, the Applicant maintains that the Excess Contributions were an honest mistake and that she had not been advised by the CRA of the Excess Contributions until the spring of 2023, when she called CRA to inquire about an anticipated income tax refund related to the 2022 taxation year. The Applicant seeks an order from the Court allowing her request for cancellation of the tax assessed on the Excess Contributions.

[4] As explained in further detail below, this application is granted, because the Decision relied materially on the CRA having provided to the Applicant her TFSA Notice of Assessment for the 2021 taxation year [the 2021 NOA], representing notice of her TFSA overcontributions in 2021, but failed to engage with conflicting evidence in the record before the Officer related to the provision of the 2021 NOA. My Judgment will set the Decision aside and return it to the CRA for redetermination by a different CRA officer.

II. **Background**

[5] The Applicant is a clerk at Nova Scotia Health who, for the 2021 and 2022 taxation years, exceeded her allowable contribution to her TFSA. She submits that, following her sister's death in 2019, she inherited money from her sister's estate, which she deposited in her TFSA, while unaware of her contribution limit. The Applicant states that she remained unaware of the

overcontribution to her TFSA until the spring of 2023, when she phoned the CRA regarding an anticipated tax refund for the 2022 taxation year and a CRA agent informed her that she owed taxes due to overcontribution to her TFSA.

[6] The Certified Tribunal Record [CTR] includes the 2021 NOA, dated July 26, 2022, which states that the Applicant owed $3,657.80 in TFSA taxes and related penalties and interest, due to excess amounts in her TFSA in 2021. The 2021 NOA included the following explanation:

> Based on the records received from your financial institution(s), we determined that you contributed too much to your TFSA. As a result, we assessed a 1% tax on the highest excess amount for each month in the year that the amount stayed in your TFSA.

[7] The 2021 NOA also indicated that the Applicant's TFSA contribution room as of January 1, 2022, was -$10,617.83 and included the following statement:

> If there is currently an excess amount in your TFSA, you should withdraw it immediately to limit any future tax.

[8] By letter addressed to the CRA TFSA Processing Center, dated April 12, 2023, following the phone call with the CRA in which the Applicant learned that she had overcontributed to her TFSA, she requested that the CRA waive the tax assessed on excess amounts in her TFSA. In this letter, the Applicant asserted that the overcontribution was due to an innocent mistake and that she had removed all funds from her TFSA. In a further letter dated April 13, 2023, the Applicant informed the CRA that she had paid the amount owing of $3,678.90. (While this figure differs slightly from the $3,657.80 figure identified in the 2021 NOA, neither of the parties has provided any explanation for the discrepancy, which does not in any event appear to be material to the issues in this application.)

[9] The CTR in this matter also includes a TFSA Notice of Assessment dated July 18, 2023, for the 2022 tax year [the 2022 NOA], which states that the Applicant owed $874.93 in TFSA taxes and related penalties and interest, due to excess amounts in her TFSA in 2022.

[10] The Applicant also sent the CRA a letter bearing the date July 26, 2003 (understood to be typographical error and intended to read July 26, 2023), requesting relief against the obligations she had incurred as a result of the Excess Contributions and providing documentation intended to support her request [the First Review Request]. The Applicant also paid the $874.93 owing pursuant to the 2022 NOA.

[11] An assessment processing officer [the First Reviewer] denied the First Review Request by letter dated February 22, 2024. The First Reviewer declined to exercise their discretion to cancel tax owed by the Applicant on the Excess Contributions, because the First Reviewer did not find that the Applicant's circumstances constituted a reasonable error. Specifically, the First Reviewer noted that the Applicant continued to make excess contributions to her TFSA in 2022, despite the CRA notifying the Applicant of her TFSA overcontribution made in 2021 via the 2021 NOA received by the Applicant on July 26, 2022.

[12] By letter dated February 27, 2024, the Applicant requested a second review by the CRA [the Second Review Request]. In the Second Review Request, the Applicant asserted that she did not receive any documents from the CRA in 2021 or 2022 regarding overcontribution to her TFSA. The Applicant further stated that she was advised by CRA agents to empty her TFSA and to write a letter of explanation to the CRA and that, where an honest mistake had occurred, she

would get her funds back (which I interpret to refer to the amounts the Applicant paid pursuant to the 2021 NOA and the 2022 NOA).

[13] By letter dated August 14, 2024 [the Decision Letter], the Officer conveyed the Decision on the Second Review Request that is the subject of this application for judicial review.

III. **Decision under Review**

[14] In the Decision Letter, the Officer refused the Applicant's request for cancellation of tax assessed on the Excess Contributions. The Officer explained that the ITA grants the CRA the discretion to cancel all or part of any tax on excess TFSA contributions where that tax arose because of a reasonable error and the taxpayer acted right away to remove the excess contributions. Upon reviewing the documents sent by the Applicant and information in the CRA's possession, the Officer declined to exercise her discretion in favour of the Applicant, because the Officer found that the removal of excess contributions from the Applicant's TFSA did not occur within a reasonable time frame.

[15] In arriving at that conclusion, the Officer acknowledged the Applicant's submissions that she was unaware of the TFSA contribution limit when the excess funds were deposited, that she did not receive any documents from the CRA in 2021 or 2022, and that she was unaware there was an excess amount in her TFSA until the spring of 2023, after which the funds were removed.

[16] The Officer then analysed the Applicant's situation, including the following paragraphs that are material to the Decision to deny the requested relief:

> A review of your situation and our records show that the removal of excess TFSA contribution(s) did not occur within a reasonable time frame. According to our records we sent you notices of assessment for the 2021 and 2022 tax years dated July 26, 2022 and July 18, 2023 respectively. Our records show the excess was not removed from your TFSA in 2022 and your TFSA remained in excess throughout 2023. Upon notice, it is your responsibility to immediately remove any excess contributions present in your TFSA and keep accurate records going forward to ensure you remain within your contribution room limit. You are also responsible for making sure that you make all contributions within the guidelines set out in the legislation for TFSA contributions.
>
> At the time of review, the CRA sends correspondence to the individual's current address on file and also takes into consideration their delivery preference. At the time of the review your preference was electronic mail as such the 2021 Notice of Assessment dated July 26, 2022 was sent to you electronically.
>
> The email address you provide is the one we will use to tell you that you have new mail to view or that important changes were made on your account.
>
> All CRA mail available in My Account and/or My Business Account will be presumed to have been received on the date that the mail notification is sent. Any mail that is eligible for electronic delivery will no longer be printed and mailed.
>
> ….

[17] Based on the analysis set out in the Decision Letter, the Officer concluded that no circumstances supported exercising her discretion to cancel the taxes assessed on the Excess Contributions.

IV. Issue and Standard of Review

[18] In her written materials and oral submissions, the Applicant did not expressly identify any particular breaches of procedural fairness or issues with the reasonableness of the Decision. Rather, the Applicant repeats her submissions in support of the First Review Request and the Second Review Request, reiterating her position that prior to 2023 she did not receive any communications from the CRA related to overcontribution to her TFSA.

[19] The Respondent frames the sole issue in this application as whether the Decision is reasonable. I agree with this characterization. As is implicit therein, the Court's review of the merits of the Decision is subject to the standard of reasonableness, as informed by the guidance in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

V. Law

[20] Subsection 207.06(1) of the ITA grants the CRA the discretion to waive or cancel all or part of tax payable under subsection 207.02 of the ITA due to overcontributions to a TFSA:

Waiver of tax payable	**Renonciation**
207.06 (1) If an individual would otherwise be liable to pay a tax under this Part because of section 207.02 or 207.03, the Minister may waive or cancel all or part of the liability if	207.06 (1) Le ministre peut renoncer à tout ou partie de l'impôt dont un particulier serait redevable par ailleurs en vertu de la présente partie par l'effet des articles 207.02 ou 207.03, ou l'annuler en tout ou en partie, si, à la fois :
(a) the individual establishes to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error; and	**a)** le particulier convainc le ministre que l'obligation de payer l'impôt fait suite à une erreur raisonnable;
(b) one or more distributions are made without delay under a TFSA of which	**b)** sont effectuées sans délai sur un compte d'épargne libre d'impôt dont le

the individual is the holder, the total amount of which is not less than the total of	particulier est titulaire une ou plusieurs distributions dont le total est au moins égal au total des sommes suivantes :
(i) the amount in respect of which the individual would otherwise be liable to pay the tax, and	**(i)** la somme sur laquelle le particulier serait par ailleurs redevable de l'impôt,
(ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).	**(ii)** le revenu, y compris le gain en capital, qu'il est raisonnable d'attribuer, directement ou indirectement, à la somme visée au sous-alinéa (i).

[21] Subsection 146.2(1) of the ITA defines "distribution" as, under an arrangement of which an individual is the holder, a payment out of or under the arrangement in satisfaction of all or part of the holder's interest in the arrangement.

[22] Subsection 244(14.1) of the ITA, which concerns the CRA proving notice to taxpayers by electronic means, is also relevant to this application. This subsection provides as follows:

Date when electronic notice sent	**Date d'envoi d'un avis électronique**
244 (14.1) If a notice or other communication in respect of an individual, other than a notice or other communication that refers to the business number of a person or partnership, is made available in electronic format such that it can be read or perceived by an individual or a computer system or other similar device, the notice or other communication is presumed to be sent to the individual and received by the individual on the date that an electronic message is sent, to the electronic address most recently provided by the individual to the Minister for the purposes of this subsection, informing the individual that a notice or other communication requiring the individual's immediate attention is available in the individual's secure electronic account. A	**244 (14.1)** Tout avis ou autre communication concernant un particulier, autre qu'un avis ou une autre communication qui indique le numéro d'entreprise d'une personne ou d'une société de personnes, qui est rendu disponible sous une forme électronique pouvant être lue ou perçue par une personne ou par un système informatique ou un dispositif semblable est présumé être envoyé au particulier, et être reçu par lui, à la date où un message électronique est envoyé — à l'adresse électronique la plus récente que le particulier a fournie au ministre pour l'application du présent paragraphe — pour l'informer qu'un avis ou une autre communication nécessitant son attention immédiate se trouve dans son compte électronique sécurisé. Un avis ou une autre

notice or other communication is considered to be made available if it is posted by the Minister in the individual's secure electronic account and the individual has authorized that notices or other communications may be made available in this manner and has not before that date revoked that authorization in a manner specified by the Minister.

communication est considéré comme étant rendu disponible s'il est affiché par le ministre sur le compte électronique sécurisé du particulier et si celui-ci a donné son autorisation pour que des avis ou d'autres communications soient rendus disponibles de cette manière et n'a pas retiré cette autorisation avant cette date selon les modalités fixées par le ministre.

VI. **Analysis**

[23] My decision to allow this application for judicial review turns on the Officer's treatment of the question whether the CRA notified the Applicant in 2022 that she had overcontributed to her TFSA. It is clear from the Decision Letter that the Decision turned on the Officer's conclusion that the Applicant did not remove excess TFSA contributions within a reasonable timeframe after receiving notice of the overcontribution situation and, therefore, on the Officer's conclusion that the Applicant had received such notice in July 2022 in the form of the 2021 NOA.

[24] As the Officer acknowledged in the Decision Letter, the Applicant disputes having received both the 2021 NOA and the 2022 NOA. While the Decision Letter refers to CRA's records indicating that it sent both the 2021 NOA and the 2022 NOA to the Applicant, the Officer's analysis focused upon whether the Applicant received the 2021 NOA. The Officer noted that the Applicant's delivery preference was electronic mail and states that the 2021 NOA was therefore sent to her electronically at the email address she had provided. Consistent with the effect of subsection 244(14.1) of the ITA, the Officer relied on the presumption that mail available in a taxpayer's "My Account" is received on the date that an email notification is sent

to the taxpayer. The Officer also noted that any mail that is eligible for electronic delivery will not be printed and mailed by post.

[25] This analysis does not explain how the Officer concluded, based on the record before the Officer, that the 2021 NOA had been sent to the Applicant electronically. However, the absence of such an explanation would not necessarily undermine the reasonableness of the Decision, if the basis for the Officer's conclusion could be derived from the record.

[26] In support of such an analysis, the Respondent's counsel has referred the Court to a spreadsheet included both in the CTR and as an exhibit to an affidavit sworn by the Officer in response to this application [the Officer's Affidavit]. The Officer's Affidavit describes this spreadsheet as a CRA printout of the Correspondence History of the Applicant, which the Officer states formed part of the material she reviewed in arriving at the Decision [the Correspondence History]. The Correspondence History includes reference to what appears to be the 2021 NOA, an "Effective Date" of July 26, 2022, an entry that is truncated but may relate to an "Activity Status" of "Sent", and a "Medium Type" of "Electronic". This set of references could reasonably be interpreted as reflecting electronic transmission of the 2021 NOA to the Applicant on July 26, 2022.

[27] However, the CTR also includes (and the Officer's Affidavit attaches) a document that the Officer's Affidavit describes as a CRA printout detailing the Case Information (which again the Officer states formed part of the material she reviewed in arriving at the Decision) [the Case Information]. The Case Information includes an entry that reads "2021 NOA sent by paper no RMF", which on its face appears inconsistent with the Officer's analysis and conclusion that the

CRA sent the 2021 NOA to the Applicant by her preferred delivery method of email transmission.

[28] At the hearing of this application, the Court asked the Respondent's counsel if she was in a position to provide submissions, based on the record before the Court, on the apparent inconsistency between the Case Information and the Correspondence History and how that inconsistency might impact the reasonableness of the Decision. Counsel explained that she had also identified the Case Information and had sought input on it from the Respondent but had not yet received any response. As such, counsel was not in a position to provide any submissions in response to the Court's inquiries.

[29] In my view, this inconsistency in the evidentiary record before the Officer, combined with the absence of any analysis in the Decision that addresses the inconsistency or, indeed, identifies at all the evidence underlying the conclusion that the 2021 NOA was sent to the Applicant electronically in July 2022, necessarily undermines the reasonableness of the Decision.

[30] In so concluding, I have considered the Respondent's submission that the Decision Letter notes not only that the Applicant's overcontribution to her TFSA was not removed in 2022 but also that her TFSA remained in excess throughout 2023. The Respondent draws the Court's attention to a document that the Officer's Affidavit describes as a copy of the CRA printout detailing the Applicant's Contribution Room for 2021, 2022, and 2023. This document identifies that, even in the latter months of 2023, the Applicant's TFSA still showed an overcontribution, albeit in the relatively nominal amount of $71.76.

[31] I accept the Respondent's submission that the Officer's analysis included the conclusion, apparently supported by the evidentiary record, that the Applicant's TFSA remained in excess throughout 2023. I further accept that the length of time the TFSA remained in excess is relevant to the question whether the Applicant removed the overcontributions without delay. Moreover, the Applicant acknowledges that she was aware of the overcontribution situation by the spring of 2023, and indeed she subsequently paid the amounts owing pursuant to the 2021 NOA and the 2022 NOA.

[32] However, even in relation to the excess that persisted throughout 2023, the analysis in the Decision is premised on the Applicant receiving notice of the overcontribution situation through the 2021 NOA in July 2022. The Decision Letter does not include an analysis to the effect that the request should be denied based on undue delay in addressing the 2023 excess following whatever notice the Applicant received in the course of that year. As judicial review must be conducted based on the reasons actually provided by the administrative decision-maker (*Vavilov* at paras 15, 83), the Decision cannot be sustained based on an analysis that is not set out in the Decision Letter.

[33] The Respondent also notes that the test under subsection 207.06(1) of the ITA, governing the discretion to cancel tax payable due to an overcontribution to a TFSA, is conjunctive, in that a taxpayer must demonstrate both a reasonable error and withdrawal of the excess without delay. The Respondent therefore argues that a reasonable conclusion on the first element of this test, i.e. that a taxpayer had not made a reasonable error, would be sufficient to sustain a negative decision under subsection 207.06(1).

[34] I agree with the Respondent's submission as a matter of law. However, in the case at hand, the Decision does not include a finding on the reasonable error element of the test. I accept that, in the excerpt from the Decision Letter set out earlier in these Reasons, the Officer states that the Applicant is responsible for making sure that she makes all contributions within the guidelines set out in the legislation for TFSA contributions. Later in the Decision Letter, the Officer also notes that the Applicant must keep records about her TFSA transactions to ensure that she does not exceed her TFSA contribution room. However, these observations do not represent an analysis or finding that the Applicant has not established that the liability for tax payable due to the Excess Contributions arose as a consequence of a reasonable error.

VII. **Conclusions and Costs**

[35] For the reasons explained above, my conclusion is that the Decision is unreasonable and that this application for judicial review must be allowed.

[36] By way of remedy, I note that the Applicant seeks return of her funds (which I interpret to refer to the amounts the Applicant paid pursuant to the 2021 NOA and the 2022 NOA). This amounts to a request for an order from the Court granting her request to the CRA for cancellation of the tax assessed on the Excess Contributions.

[37] However, the general rule is that a successful application for judicial review results in the Court quashing the administrative decision and returning the matter to the decision-maker to be redetermined, rather than the Court deciding the question that Parliament has entrusted to the administrative decision-maker (*Vavilov* at paras 140–142). While, as *Vavilov* notes, there are

limited circumstances where it can be appropriate for the Court to decide the relevant question, no such circumstances apply in the case at hand.

[38] Therefore, my Judgment will set aside the Decision and order that the Applicant's Second Review Request be referred back to the CRA for redetermination by a different CRA officer.

[39] The Applicant explained at the hearing of this application that, in the event of her success, she is seeking recovery of costs in the amount of $75, as compensation for filing fees paid to the Registry of the Court in connection with her Notice of Application and request for a hearing. The Respondent takes no position on this request. I consider the Applicant's costs claim to be reasonable, and my Judgment will award costs in that amount.

JUDGMENT IN T-2969-24

THIS COURT'S JUDGMENT is that:

1. The Decision is set aside and the Applicant's Second Review Request is referred back to the CRA for redetermination by a different CRA officer.

2. The Applicant is awarded costs of this application in the amount of $75.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2969-24
STYLE OF CAUSE:	VALERIE NAUGLE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HALIFAX, NOVA SCOTIA
DATE OF HEARING:	MAY 15, 2025
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	MAY 21, 2025

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