Federal Court Cour fédérale

Date: 20241210

Docket: T-1386-23

Citation: 2024 FC 1995

Ottawa, Ontario, December 10, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

CHRISTOPHER VERRICO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Christopher Verrico, brings this application for judicial review of the May 31, 2023 decision of the Canada Revenue Agency [CRA] refusing his request that the Minister of National Revenue reconsider a decision refusing to cancel taxes owed on excess Registered Retirement Savings Plan [RRSP] contributions. Mr. Verrico represents himself on this Application.

II. Background

[2] The record indicates Mr. Verrico over contributed to his RRSP account in 2006 after failing to report contributions in 2004 and 2005. He also late filed income tax returns for the 2005, 2015, 2016, and 2018 taxation years. Currently, the Applicant owes in excess of $75,000 in taxes, late-filing penalties, and interest resulting from these circumstances.

[3] Mr. Verrico reports that he did not become aware of the over contribution until 2014 or 2015. At that time, he engaged professional assistance, and the CRA was contacted; efforts were made to resolve the issue. It appears that, in July 2016, this resulted in the reassessment of Mr. Verrico's income tax and benefit returns for tax years 2004, 2005, 2008, 2009, 2010, 2011, 2012 and 2014.

[4] Mr. Verrico advises that he received notice of a remaining over contribution in late 2018 and, after receiving advice, he withdrew the reported amount of the over contribution in early 2019. He believed the matter was resolved, although he reports that he received notices on a number of occasions relating to an outstanding balance. He contacted the CRA, was told no outstanding balance showed on his account and that the notices were provided in error or were fraudulent. On this basis, Mr. Verrico continued to believe the matter was resolved.

[5] In September 2021, Mr. Verrico received a statement indicating a large balance was owed; inquiries were made and Mr. Verrico reports that he was advised that "there are actually 2 types of tax returns, a T1 return and a separate T1OVP return, and all other Agents prior couldn't

see this the [*sic*] TV1OVP part." Paper copies of the relevant documents were then sent to Mr. Verrico.

[6] In April 2022, the Applicant submitted a request to cancel or waive the tax on the excess contribution.

[7] In a letter dated March 2, 2023, the Minister's Delegate [MD] refused Mr. Verrico's request. Mr. Verrico was advised that the request, as it related to the 2007-2011 tax years, could not be considered because it had been received more than ten years after the end of the tax years in issue. The MD also refused the request as it related to taxation years 2012-2019, finding the Applicant's over contributions were not the result of a reasonable error, and that the Applicant had also failed to take reasonable steps to remove the excess contributions.

[8] By letter dated March 21, 2023, Mr. Verrico requested reconsideration of the March 2, 2023 refusal decision. On May 31, 2023, the reconsideration request was denied and it is that decision that is before me on this Application.

III. Decision under review

[9] On the reconsideration request, the MD only addressed the request for cancellation or waiver of taxes and penalties as they related to the 2012 to 2019 tax years.

[10] After setting out Mr. Verrico's submission in support of the reconsideration request, the MD noted:

A. Subsection 204.1(4) of the *Income Tax Act,* RSC 1985, c 1 (5th Supp), [ITA] provides the Minister with the discretion to waive the Part X.1 tax if (1) the taxpayer made excess contributions due to a reasonable error, and (2) the taxpayer took, or is taking, reasonable steps to remove the excess.

B. That in Canada's self assessment tax system the taxpayer is responsible for ensuring that their tax returns are completed correctly, filed on time, and that payments are made when they are due. The taxpayer is expected to have a general knowledge of their obligations and they are expected to comply with tax regulations.

C. With respect to deferred income plans such as an RRSP, participating individuals are expected to verify the information provided on their Notice of Assessments [NOA] with regard to unused RRSP contribution amounts, deduction limits and to comply with contribution limits – the taxpayer is responsible for information where needed.

[11] The MD then noted Mr. Verrico's failure to report RRSP contributions on his 2004 and 2005 tax returns, and the late filings in 2005, 2015, 2016 and 2018; from this, the MD stated that the CRA cannot be responsible for erroneous RRSP information indicated in any subsequent NOAs. The MD also noted that Mr. Verrico was informed of the over contribution situation through his T1 NOAs (since 2009), by way of RRSP compliance letters (in 2014, 2015 and 2016), and multiple T1-OVP NOAs (starting in September 2015). The MD also noted that the Applicant's objection in September 2015, which was partially granted in July 2016, indicated

that the Applicant was aware of the excess RRSP contributions prior to 2018. The MD also noted that the excess contributions were not withdrawn until 2019.

[12] The MD conceded that the CRA's records include a telephone record demonstrating that Mr. Verrico was told, in September 2020, that he had no balance owing. However, in light of all the written notices given to the Applicant, and the Applicant's 2015 objection, the MD concluded that with greater vigilance, the Applicant could have acted in accordance with the rules governing RRSPs.

[13] The MD therefore declined to cancel the Part X.1 tax for the 2012-2019 taxation years.

IV. Relevant Legislation

***Income Tax Act,* RSC 1985, c 1 (5th Supp)**	***Loi de l'impôt sur le revenu*, LRC 1985, c 1 (5 e supp)**
Tax payable by individuals	**Impôt payable par les particuliers**
204.1 (1) Where, at the end of any month after May, 1976, an individual has an excess amount for a year in respect of registered retirement savings plans, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of that portion of the total of all those excess amounts that has not been paid by those plans to the individual before the end of that month.	**204.1 (1)** Le particulier qui, à la fin d'un mois donné postérieur au mois de mai 1976, a un excédent pour une année relativement à des régimes enregistrés d'épargne-retraite doit, pour ce mois, payer un impôt en vertu de la présente partie égal à 1 % de la partie du total de ces excédents qui n'a pas été restituée par les régimes au particulier avant la fin du mois en question.
[…]	[…]

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

V. Preliminary matter

[14] As a preliminary matter, the Respondent submits that the Applicant has incorrectly identified the Respondent in this matter. Pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the proper responding party is the Attorney General of Canada (*Kleiman v Canada (Attorney General)*, 2022 FC 762 at paras 10-11).

[15] I agree. The style of cause will be amended to identify the responding party as the Attorney General of Canada.

VI. Issues and Standard of Review

[16] The sole issue in this matter is whether the MD's reconsideration decision was reasonable.

[17] The standard of review applicable to the merits of the reconsideration decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). When applying that standard, "the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99).

VII. Position of the parties

A. *Applicant's position*

[18] Mr. Verrico argues that he has responsibly filed tax returns and engaged professional help to do so for many decades. He submits that, when notified of over contribution concerns in 2014, he sought professional assistance. An objection was filed with the CRA and his 2005 and 2006 tax returns were refiled. His tax professional upon whom he relied passed away in 2017.

[19] He submits that the CRA's mailing and notification system is confusing, especially with a dual T1 system (T1 and T1-OVP), and that it was hard to discern which T1 system the notifications he received were referring to. The Applicant explains that his taxes were current

and that the reporting he received appeared to largely indicate all was in order other than the "odd seemingly erroneous message" for which he would contact the CRA. The Applicant states that on a number of occasions, agents of the CRA informed him via telephone that the notices being received were in error or fraudulent. On this basis, he believed the issue had been resolved.

[20] In oral submissions, Mr. Verrico argued that the NOAs upon which the Respondent relies to assert he received notice were not provided to him and the documents contained in the CTR do not establish he was given notice. He further argued that, after engaging professional assistance, he was unaware of any outstanding issues until 2018, when he was advised of a continuing issue with his RRSP balance, a matter he promptly responded to. He acknowledges receiving subsequent notices but that he contacted the CRA when these notices were received and he was consistently advised no balance was owed. The CRA's records reflect the fact that this advice was given on at least one occasion.

[21] The Applicant argues that he dealt with every issue diligently and rapidly. He explains that (1) the excess contributions were made as a result of a reasonable error, (2) he took reasonable steps to remove the excess, and (3) there were no material gains within the RRSP, but rather a number of losses, which could not be used to offset real income.

B. *Respondent's position*

[22] The Respondent relies on *Connolly v Canada (National Revenue),* 2019 FCA 161 [*Connolly*] to argue that the onus is on taxpayers to take reasonable steps to comply with the

ITA, and that this includes seeking advice when required. The Respondent submits that where a taxpayer makes reasonable inquiries but is misinformed, an error may be considered reasonable.

[23] The Respondent submits that the MD reasonably concluded that the excess contributions in issue were not due to a reasonable error, because (1) the Applicant was warned of excess contributions in his NOAs as early as 2009; (2) many of his NOAs showed that he had excess RRSP contributions; (3) the CRA cannot be held responsible for erroneous RRSP information in NOAs where RRSP contributions are not reported or returns are filed late; (4) the Applicant is responsible for the errors made by third parties acting on his behalf; (5) the Applicant is responsible for ensuring the accuracy of the information he provides on his tax return; and (6) the Applicant did not make withdrawals to eliminate excess contributions until 2019.

[24] The Respondent notes that while the over contribution was perhaps not intentional, the absence of clear evidence to explain the error, the time periods involved, the apparent lack of knowledge of RRSP contribution rules, and the failure to withdraw the excess contributions are all factors that were addressed by the MD and justify the decision reached.

VIII. Analysis

[25] The circumstances underpinning the Applicant's request for a waiver of taxes are complex and span a period of more than decade.

[26] The 244 page CTR includes a series of NOAs and Notices of Reassessment [NOR], over contribution reports (T1-OVP), working papers that appear to reflect work done in support of, or

in response to, Mr. Verrico's efforts to resolve matters in the 2015-2017 period, the initial waiver request and the request for reconsideration together with the refusal decisions, and documentation that appears to have been gathered or generated in the decision making process.

[27] Beyond the NOAs and NORs, interpretation of the documentation contained in the record requires some explanation to allow the Court to confidently understand the sequence of events leading up to the Applicant's reconsideration request, and to allow the Court to determine whether the decision is reasonable based upon that record. However, the Respondent chose not to file evidence that would assist the Court in understanding the record; one of the well recognized exceptions to the general rule that fresh evidence is not to be considered on judicial review. I raised my concerns with the CTR in the course of oral submissions.

[28] Where the Court is not in a position to confidently understand and interpret the record, it cannot perform its function of ensuring the decision in issue has been rendered in a legally acceptable manner. Both the decision and the record upon which it is based must be transparently understandable to allow a reviewing court to perform its role. To hold otherwise would require the adoption of a "trust us, we got it right" approach – an approach that has been rejected (see *Catalyst Pharmaceuticals, Inc v Canada (Attorney General)*, 2021 FC 505 at para 156 citing *Leahy v Canada (Citizenship and Immigration*), 2012 FCA 227 at para 137).

[29] In my opinion, the record in this case precludes reasonableness review. That said, to the extent that I have been able to interpret the CTR with a degree of confidence, I also have concerns with the reasonableness of the decision. First, the MD's decision stated that "[e]ach of

[Mr. Verrico's] T1 Notices of Assessment since the 2009 tax year contained [an excess contribution advisory]." There appears to be no documentation in the record to support this conclusion. The NOAs for the tax years 2004, 2005, 2008, 2009, 2010, 2011, 2012 and 2014 are NORs. They are all dated 2016-07-14 and therefore cannot support a conclusion that Mr. Verrico was provided timely notice with respect to the consequences of excess RRSP contributions in each of those tax years. Timely notice is directly relevant to the issues the MD was required to consider – i.e. was the error reasonable and what steps were taken to address the error.

[30] Secondly, in requesting reconsideration, Mr. Verrico took issue with the initial finding that relief for tax years prior to 2011 was not avaible to him. The issue is ignored in the MD's reconsideration decision. The failure to address this key issue calls into question both the fairness and reasonableness of the decision (*Vavilov* at para 128).

IX. Conclusion

[31] The Application is granted.

[32] Mr. Verrico did not take a position on costs and none are awarded.

JUDGMENT IN T-1386-23

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended, replacing the Canada Revenue Agency with the Attorney General of Canada as the named Respondent.

2. The Application is granted.

3. The matter is remitted for redetermination by a different decision maker.

4. No costs.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1386-23
STYLE OF CAUSE:	CHRISTOPHER VERRICO v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MAY 6, 2024
JUDGMENT AND REASONS:	GLEESON J.
DATED:	DECEMBER 10, 2024

APPEARANCES:

Christopher Verrico	FOR THE APPLICANT (ON HIS OWN BEHALF)
Jessica Ko	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT