

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20251105**

**Docket: A-211-22**

**Citation: 2025 FCA 198**

**CORAM: WOODS J.A.  
HECKMAN J.A.  
WALKER J.A.**

**BETWEEN:**

**DAVID ZAZULA**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Saskatoon, Saskatchewan, on October 29, 2025.

Judgment delivered at Ottawa, Ontario, on November 5, 2025.

**REASONS FOR JUDGMENT BY:**

**WALKER J.A.**

**CONCURRED IN BY:**

**WOODS J.A.  
HECKMAN J.A.**

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**REASONS FOR JUDGMENT**

**WALKER J.A.**

I. **Background**

[1] Mr. Zazula appeals from a decision of the Federal Court dated August 2, 2022 (2022 FC 1156, *per* McVeigh J.). In its decision, the Federal Court dismissed Mr. Zazula's application for judicial review of a decision of the Canada Revenue Agency (CRA) denying his second request

for relief from the tax assessed on the excess contributions in his Tax-free Savings Account (TFSA) in 2016 and 2017. Mr. Zazula's request for relief was made pursuant to section 207.06(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp) (*ITA*).

[2] Briefly, Mr. Zazula had excess contributions in his TFSA in 2016 and 2017 as a result of a large contribution (\$46,500.00) made in 2016. On July 12, 2017 and July 24, 2018, the Minister of National Revenue assessed Mr. Zazula pursuant to section 207.02 of the *ITA* in respect of the excess contributions.

[3] Mr. Zazula withdrew \$9,000.00 from his TFSA on October 1, 2018.

[4] On October 10, 2018, Mr. Zazula submitted a first request for waiver of the excess contribution tax assessed against him. The request for waiver was made pursuant to section 207.06(1) of the *ITA*. He asserted that he was not responsible for the over-contributions because he was not informed by his bank or credit union or by the CRA that he had over-contributed. He stated that he was not responsible for third party errors. The CRA denied the first request on January 30, 2019.

[5] On April 25, 2019, Mr. Zazula submitted his second request for relief. The main focus of the second request appears to be the CRA's failure to provide information and documents Mr. Zazula had requested regarding the CRA's use of fair market value to establish the value of TFSAs, and the complexity of the TFSA rules.

[6] In a letter dated June 5, 2019, the CRA refused Mr. Zazula’s second request for waiver on the basis that he had not withdrawn his excess contributions after he was first informed of them on July 12, 2017, and again on December 21, 2017. Mr. Zazula did not make the withdrawal until October 1, 2018. It is this letter decision that was the subject of Mr. Zazula’s application for judicial review to the Federal Court and that is the subject of this appeal. I will refer to the letter in these reasons as the “CRA’s Decision”.

## II. Analysis

[7] In this appeal, the Court is required to determine whether the Federal Court selected the appropriate standard of review and correctly applied it (*Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47), in essence focusing on the CRA Decision.

[8] I find that the Federal Court made no error in reviewing the CRA’s Decision for reasonableness. I also find no reviewable error in the CRA’s Decision itself that warrants this Court’s intervention. It was reasonable for the CRA to conclude from Mr. Zazula’s lengthy delay in making his withdrawal that he had not satisfied the requirement for waiver in section 207.06(1)(b). In its Decision, the CRA framed the mandatory requirement using the words “right away” and not “without delay” but, in my view, the use of this phrase does not render the Decision unreasonable given the factual background of Mr. Zazula’s case, which the CRA set out accurately as the basis for its decision.

[9] This conclusion is sufficient to dispose of the appeal.

[10] However, and in addition, Mr. Zazula’s assertion that his TFSA investments had declined dramatically in value and that the CRA had to use the fair market value of those investments to calculate any over-contribution is not persuasive. Whether an individual’s chosen investments decline or increase in their TFSA is not relevant to the calculation of an “over-contribution” for purposes of the TFSA provisions.

[11] Further, Mr. Zazula insists in this appeal that the CRA’s failure to adequately communicate with him in accordance with the Taxpayer Bill of Rights and the information circular, or to provide the documents he requested, require the Court to order the waiver of the excess contribution tax imposed on him. Mr. Zazula emphasizes that he was operating in a “factual vacuum”.

[12] I do not agree. The fact that Mr. Zazula had pending, unanswered questions with the CRA regarding the application of fair market value to TFSA over-contributions does not render the CRA’s Decision unreasonable or procedurally unfair in this case. As the Federal Court stated, the CRA reasonably responded to Mr. Zazula’s questions that had a legal or factual basis.

[13] Finally, the Court addressed two preliminary issues at the beginning of the hearing of this appeal.

[14] First, the day before the hearing, Mr. Zazula sent to the registry an affidavit attaching four recent news articles on the subject of the CRA and issues with its taxpayer communications. The Court ruled the articles inadmissible due to their very late filing.

[15] Second, Mr. Zazula filed a brief affidavit slightly more than ten days prior to the hearing indicating that he intended to make arguments in reliance on sections 7, 11(d) and 24(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (*Charter*) and section 52 of the *Constitution Act, 1982*. He argues that the CRA's failure to provide him complete information violated his *Charter* rights.

[16] The Court refused to admit Mr. Zazula's affidavit and consider his *Charter* arguments on the basis that the affidavit had been filed too late in the proceeding and was not in proper form. Mr. Zazula objected to the Court's ruling. In the interests of moving forward, the Court heard arguments on the *Charter* from both parties and stated that it would address the arguments in its ultimate decision.

[17] The Court confirms its rulings made at the hearing.

[18] Mr. Zazula's argument that the *Charter* filing was properly made because it was served and filed more than ten days before the hearing finds no support in the *Federal Courts Rules*, S.O.R./98-106. Further, Mr. Zazula did not make *Charter* arguments before either the CRA or the Federal Court, other than to refer to section 7 in his reply to a Notice of Status Review issued by the Federal Court. Thus, his *Charter* arguments in this Court on the merits of his application for judicial review raise a new and inadmissible issue: *Sullivan v. Canada (Attorney General)*, 2024 FCA 7 at para. 8 (*Sullivan*), citing *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61.

[19] I would add that all *Charter* arguments must be supported by a full evidentiary record: *Sullivan* at para. 8, citing *Mackay v. Manitoba*, [1989] 2 S.C.R. 357, 61 D.L.R. (4th) 385 at 362; *Obazughanmwun v. Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para. 49, leave to appeal to SCC refused, 40972 (25 April 2024). Mr. Zazula supplied no evidence that could establish a breach of his rights under section 7 or 11(d) and warrant a remedy under section 24(1).

III. Conclusion

[20] Therefore, I would dismiss the appeal without costs.

"Elizabeth Walker"

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J.A.

"I agree.  
Judith Woods J.A."

"I agree.  
Gerald Heckman J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-211-22

**STYLE OF CAUSE:** DAVID ZAZULA v. ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** SASKATOON,  
SASKATCHEWAN

**DATE OF HEARING:** OCTOBER 29, 2025

**REASONS FOR JUDGMENT BY:** WALKER J.A.

**CONCURRED IN BY:** WOODS J.A.  
HECKMAN J.A.

**DATED:** NOVEMBER 5, 2025

**APPEARANCES:**

David Zazula FOR THE APPELLANT  
ON HIS OWN BEHALF

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