

Federal Court



Cour fédérale

Date: 20230609

Docket: T-2402-22

Citation: 2023 FC 820

Ottawa, Ontario, June 9, 2023

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

DAVID KEYSTONE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Minister of National Revenue [Minister] dated October 17, 2022 [the Decision]. In the Decision, made by an officer of the Canada Revenue Agency [CRA] with delegated authority [Officer], the Officer declined to exercise their discretion to cancel tax imposed upon the Applicant related to excess contributions to his Tax-Free Savings Account [TFSA].

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable.

II. Background

[3] The Applicant, Mr. David Keystone, is a Canadian taxpayer who began contributing to his TFSA in 2014.

[4] In 2015, the Applicant over-contributed to his TFSA. As a result, the CRA wrote to him in May 2016, notifying him that he had over-contributed to his TFSA and that he was required to withdraw the excess contribution immediately to avoid related tax liabilities [Education Letter].

[5] More recently, the Applicant over-contributed to his TFSA for the 2021 taxation year. In July 2022, CRA notified the Applicant of this over-contribution by way a notice of assessment [2021 Assessment]. The 2021 Assessment identified that the Applicant had over-contributed to his TFSA, resulting in an amount owing to the CRA of \$2,710.69. This figure was composed of an over-contribution tax amount of \$2,570.60 plus a penalty fee of \$128.53 plus interest. The Applicant ultimately paid this amount to avoid incurring further fees.

[6] On July 25, 2022, the CRA received the Applicant's first request to have the tax and penalties outlined in the 2021 Assessment cancelled [First Cancellation Request]. In that request, the Applicant explained that he had consulted his profile on CRA's website, which identified his TFSA contribution room as "\$18,459.99". He explained that he interpreted this information as identifying that he had \$18,459.99 in available contribution room, not realizing that the brackets

around that figure indicated that he actually had a negative contribution limit, as a result of previous over-contribution. The Applicant advised that he was taking steps to remove the excess amount.

[7] The CRA responded to the First Cancellation Request by letter dated August 25, 2022. That letter advised that the Applicant's request was being denied, because the Applicant's circumstances did not constitute a reasonable error. It explained that the Applicant had received the Education Letter in 2016 due to a previous over-contribution to his TFSA and that, upon notice, it is the taxpayer's responsibility to withdraw any excess contributions and to keep and review accurate records to ensure they remain within their TFSA contribution room. The letter also notified the Applicant of his right to request a second independent review.

[8] The Applicant exercised that right by submitting a letter received by the CRA on September 9, 2022 [Second Cancellation Request]. In that letter, the Applicant expressed his view that he was not at fault for his over-contribution. He reiterated that he was not aware that a contribution limit displayed in brackets signifies a negative amount (i.e., an excess) and that, upon learning of his over-contribution, he promptly removed the excess amount from his TFSA account. The Applicant noted that, when he called the CRA to resolve the issue, the recipient of his call admitted that there is nowhere on the CRA website regarding TFSA contribution room that states that a value in brackets means a negative number. The Applicant also stated that he could not recall the excess contribution that resulted in the Education Letter but that it must have been a mistake, because he is an honest taxpayer.

[9] By letter dated October 17, 2022, the CRA responded to the Applicant's Second Cancellation Request, again denying it. That denial is the Decision under review in this application.

III. Decision under Review

[10] In the Decision, the Officer explained that the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act] gives the Minister the discretion to cancel all or part of any tax on excess TFSA contributions. However, for such a cancellation to be granted, the tax must have arisen because of a reasonable error by the taxpayer and the taxpayer must have acted right away to remove the excess contributions from their TFSA.

[11] The Officer further explained that it is the responsibility of a TFSA account holder to be aware of the rules and regulations concerning TFSAs and to manage their TFSA accordingly. Such rules include that amounts shown in brackets represent negative contribution room.

[12] After noting that the Applicant had previously over-contributed in 2015 and that the CRA had advised him of this, the Officer stated that the CRA does not consider misinterpreting the rules of a TFSA to be a reasonable error. The Officer also stated that taxpayers are responsible for understanding their TFSA plans and limits and that a lack of knowledge of taxation rules cannot be considered beyond the taxpayer's control, as information is readily available on the CRA's website and through their General Enquiries telephone line.

[13] As such, the Officer denied the Applicant's request.

IV. Issue and Standard of Review

[14] The Respondent submits that the standard of review to be applied by the Court, in considering the Applicant's arguments challenging the Decision, is the presumptive standard of review, which is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25 and 32). I agree with this submission. Consistent with that standard of review, the sole issue raised for the Court's adjudication in this application for judicial review is whether the Decision is reasonable.

V. Analysis

[15] As a starting point, I note the Respondent's submission at the hearing of this application that the \$2,710.69 assessed against the Applicant in the 2021 Assessment relates to TFSA over-contributions made in relation to the 2021 taxation year. The Applicant submits that he was misled by the brackets in the (\$18,459.99) figure, shown for his TFSA contribution room on his profile on the CRA website when he consulted it in 2022, and that he then made a \$18,459.99 contribution as a result. However, the Respondent submits that the Applicant has not been assessed taxes or penalties related to his 2022 contribution, which he withdrew after receiving the 2021 Assessment. In other words, the Respondent submits that the (\$18,459.99) figure shown on the CRA website in 2022 was not causative of the over-contribution that resulted in the \$2,710.69 assessment.

[16] At the hearing, the Applicant responded to this submission by arguing that he has always relied on the information shown on his profile on the CRA website to identify the amount

available to him as TFSA contribution room and that, if he made over-contributions in 2021, this must have been in reliance on whatever information was shown on the website.

[17] The record before the Court does not include evidence that would allow me to assess the information available to the Applicant on the CRA website related to his TFSA contribution room when he made contributions in 2021. Moreover, the Respondent's argument, that the \$2,710.69 assessment was unrelated to the Applicant's 2022 contribution, did not form part of the Officer's analysis in the Decision. The Court's role in judicial review is to consider the reasonableness of the justification provided in the Decision itself (see *Vavilov* at para 15). As such, I will make no finding on this particular argument by the Respondent.

[18] However, I agree with the Respondent's position that the reasonableness of the Decision must be assessed in the context of the particular evidence and arguments presented by the Applicant to the Officer (see *Vavilov* at para 94). The Applicant's arguments focused upon his reliance on the bracketed figure shown on his profile on the CRA website, and the Decision therefore similarly focused upon those arguments. The question for the Court to consider is whether the Officer's analysis in response to those arguments withstands the reasonableness standard of review.

[19] I also agree with the Respondent's submission that, in conducting this judicial review and assessing the reasonableness of the Decision, the Court must restrict itself to consideration of the record that was before the Officer when making the Decision. The evidence before the Court indicates that four of the exhibits to the Applicant's affidavit in support of this application

(Exhibits C, D, E, and I) were not part of the record before the Officer, and I will not take those exhibits into account in conducting my review.

[20] Turning to that review, I note first the Applicant's submission, made both to the Officer and to the Court, that he is an honest taxpayer and that any over-contribution he made was based on a genuine misunderstanding as to the TFSA contribution room available to him. I do not understand the Respondent to take issue with this position. Indeed, the Respondent's counsel emphasized at the hearing that neither the 2021 Assessment nor the Decision not to cancel that assessment is based on any allegation or finding of dishonesty on the part of the Applicant.

[21] Rather, as the Respondent argues, a decision to cancel tax liability (under the applicable statutory provision, subsection 207.06(1) of the Act) requires that the taxpayer establish to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error, and a reasonable error includes an objective characteristic (see *Kapil v Canada Revenue Agency*, 2011 FC 1373 at para 26).

[22] The Decision in the case at hand turned on this objective assessment. The Officer acknowledged the Applicant's submission that his over-contribution resulted from him not understanding the meaning of the brackets around the amount shown on the CRA website. However, the Officer reasoned that it is the responsibility of each TFSA account holder to be aware of the rules and regulations governing TFSAs and to manage their TFSA accordingly, including understanding that the use of brackets represents negative contribution room. The

Officer reasoned more broadly that, under Canada's self-assessment taxation system, individuals are responsible for understanding their TFSA plans and limits.

[23] Consistent with the Respondent's submission, I read the Decision as turning significantly on the fact that a taxpayer's TFSA contribution room, and in particular whether a taxpayer is in an over-contribution situation, is a function of contributions and withdrawals made by that taxpayer or by their advisors on their behalf. This information is therefore within the knowledge, or the means of knowledge, of the taxpayer. This reasoning is intelligible and therefore withstands the reasonableness standard of review.

[24] In the absence of a conclusion that the Decision is unreasonable, this application for judicial review must be dismissed. While the Respondent's Memorandum of Fact and Law requests that this application be dismissed with an award of costs against the Applicant, the Respondent made no submissions in support of a claim for costs or their quantification at the hearing of this application. The Court exercises its discretion to award no costs against the Applicant.

[25] As a purely procedural point, the Respondent refers the Court to Rule 303(2) of the *Federal Courts Rules*, which provides that, where there are no persons directly affected by the order sought in an application for judicial review, other than a tribunal in respect of which the application is brought, the application shall name the Attorney General of Canada as a respondent. I agree with the Respondent's submission that the style of cause in this application should be changed in accordance with Rule 303(2), and my Judgment will so provide.

JUDGMENT IN T-2402-22

THIS COURT'S JUDGMENT is that:

1. The style of cause in this matter is changed to name the "Attorney General of Canada" as the Respondent.
2. This application is dismissed.
3. No costs are awarded.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2402-22

STYLE OF CAUSE: DAVID KEYSTONE v. CRA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 8, 2023

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JUNE 9, 2023

APPEARANCES:

David Keystone

REPRESENTING HIMSELF

George Lin
Andrea Jackett

FOR THE RESPONDENT

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