Federal Court  Cour fédérale

Date: 20240725

Docket: T-2132-23

Citation: 2024 FC 1183

Ottawa, Ontario, July 25, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

JODI ROADKNIGHT-AMER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant over-contributed to her Registered Retirement Savings Plan (RRSP) for the 2020–2021 taxation years and was taxed on the excess contributions by the Minister of National Revenue (Minister), pursuant to section 204.1 of Part X.1 (Part X.1 tax) of the *Income Tax Act*, RSC 1985, c1 (5th Supp.) [*ITA*].

[2] The Applicant requested that the Minister exercise their discretion pursuant to subsection 204.1(4) of the *ITA* to waive the Part X.1 tax on the RRSP over-contributions. The request was

denied following both a first and second level review. On this application, the Applicant seeks judicial review of the Minister's refusal to waive the Part X.1 tax.

[3] For the reasons that follow, I find the Minister's decision to be reasonable. This application for judicial review is dismissed.

II. Background

[4] The Applicant over-contributed $41,291 to her RRSP in the 2020 tax year. However, the over-contribution was not addressed; accordingly, the over-contributions accumulated in subsequent tax years. The cumulative over-contribution amounts for the 2021 and 2022 tax years amounted to $50,891 and $51,671, respectively.

[5] By letter dated May 18, 2022, the Minister informed the Applicant that its records showed she had over-contributed to her RRSPs starting in the 2019 taxation year. The Minister also advised the Applicant that Part X.1 tax applied to the over-contribution amounts and noted that the Applicant had not filed a T1-OVP Individual Tax Return for RRSP, PRPP and SSP Excess Contributions (T1-OVP Return) in respect of the over-contributions.

[6] The Applicant requested the Minister waive the Part X.1 tax by letter dated October 7, 2022 (First Level Request).

[7] In a letter from the Minister's delegate dated January 19, 2023, the First Level Request for waiver was denied. The letter acknowledges that the Applicant indicated in her First Level Request that the over-contribution was "an honest mistake," that she did not benefit from the over-contribution, and that she was taking steps to remove the excess contributions to rectify the situation. The Minister's delegate's letter indicates that they have discretion to cancel or waive

Part X.1 tax "if you made excess contributions because of a reasonable error and you took or are taking reasonable steps to remove the excess."

[8] However, the letter also notes that based on a review of the Applicant's records, she failed to report RRSP contributions when filing her returns for the 2018 and 2020 taxation years. Therefore, when assessing the tax returns for the 2018–2021 years, they were unable to give accurate information regarding her unused RRSP contributions. The letter states that "[u]nder the self-assessment tax system, it is your responsibility to reconcile the documentation received from us with your personal documents and to let us know of any discrepancies." In the next paragraph, the letter confirmed that "[d]ue diligence must always be exercised. Not understanding the regulations governing RRSPs, or not understanding or following up on the information we give you on your Notices of Assessment, are not reasons generally considered for cancelling Part X.1 tax" (my emphasis).

[9] Finally, the Minister's delegate acknowledges in the letter that the value of the investments may have dropped, resulting in no gain from the over-contribution, and that the Applicant took steps to remove the excess contributions. However, the Applicant did not specify what prevented her from making the necessary verifications before investing in her RRSPs. Accordingly, they could not justify cancelling the assessed Part X.1 tax.

[10] By letter dated March 23, 2023, the Applicant submitted a second request to waive the Part X.1 tax, in respect of her 2020 and 2022 tax years (Second Level Request).

[11] By letter dated September 29, 2023, the Second Level Request was denied. In the letter, the Minister's delegate states:

> Even though I do not minimize the impact of the Covid-19 pandemic and inflation on your living expenses along with increased family responsibilities, you did not specify what prevented you from making the necessary verifications before investing in your RRSPs. Ignorance of the law cannot be considered for a request to cancel the tax on excess RRSP contributions.
>
> Our records show that each year, you received a Notice of Assessment giving you all the necessary information regarding your RRSP contributions and your RRSP deduction limit for the following year. The Notice of Assessment indicates the amount of unused contributions carried forward from previous years as well as your RRSP deduction limit. You must take into consideration the deduction limit and the amount of unused contributions before contributing to your RRSP account.
>
> Under Canada's self assessment taxation system, you are responsible for understanding your RRSP plans and your limits, for reviewing your Notice of Assessment or Reassessment to verify the information we provide, and for requesting information from CRA when needed. Misinterpreting the RRSP deduction limit statement is not a reasonable error.
>
> …
>
> Therefore, although I understand that the excess contributions were unintentional, you were responsible for making sure that all RRSP contributions were made within the guidelines…
>
> No cancellation of tax can be given for the circumstances described. In addition, I believe that with greater vigilance, you could have acted in accordance with the various rules governing RRSPs…

[12] On October 10, 2023, the Applicant filed an application with this Court to judicially review the decision of September 29, 2023.

III. Issues and Standard of Review

[13] The issues in this application for judicial review are:

A. Is the Respondent properly named in this application;

B. Can the Court consider new evidence in this judicial review; and

C. Is the Minister's decision dated September 29, 2023, not to waive the Part X.1 tax of the *ITA* reasonable?

IV. Analysis

A. *Proper name for Respondent Party*

[14] The Respondent noted that pursuant to subsection 303(2) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], the Respondent in this proceeding should be the Attorney General of Canada. The Applicant did not make submissions on this issue.

[15] I agree that the style of cause ought to be amended in this case.

B. *New evidence*

[16] In her Memorandum of Argument, the Applicant set out additional facts that were not included in her affidavit filed in February of this year, nor were the facts brought to the attention of the Minister in the First or Second Level Reviews. Specifically:

a) The Applicant began using the TD Direct Investing Platform in 2018 to manage her own investment portfolio; and

b) A possible explanation for the over-contribution was an error by her in moving funds into the wrong account, when choosing from the TD Direct Investing drop down list for her accounts.

[17] Generally, only evidence that was before the decision-maker is admissible on an application for judicial review (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 86). There are exceptions to this general rule but I do not find that the Applicant has

demonstrated that any of these exceptions would apply in relation to this evidence, as she did not address the new evidence issues further in oral argument.

[18] Accordingly, the new facts will not be considered in respect of this application.

C. *Reasonableness of Minister's Decision*

[19] The Respondent submits, and I agree, that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[20] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[21] To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[22] Subsection 204.1(4) of the *ITA* provides for discretionary relief against any Part X.1 tax payable in respect of an over-contribution to an RRSP. Tax payers seeking waiver of Part X.1 tax must establish to the satisfaction of the Minister that: (a) the excess amounts or cumulative excess amount to which the tax is applicable arouse as a result of a reasonable error; and (b) that reasonable steps are being taken to eliminate the excess amount. In *Connolly v Canada (National*

Revenue), 2019 FCA 161 [*Connolly*], the Federal Court of Appeal considered the application of subsection 204.1(4) of the *ITA* in respect of the first branch of the test, reasonable error.

> … reasonableness will turn on an objective assessment of all the relevant evidence. 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 p. 636, 106 N.R. 385; *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3 at para. 54; see also *Dimovski* at para. 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*.
>
> [*Connolly* at para 69].

[23] In *Froehling v Canada (Attorney General)*, 2021 FC 1439 at para 26 [*Froehling*], Madame Justice Mandy Aylen similarly found "[t]he onus was on the Applicant to ensure that [they] did not over-contribute to [their] RRSP and if there was any lack of clarity or understanding as the contribution room available to [them], the Applicant was expected to seek advice [see *Connolly*, *supra* at para 69; *Dimovski v Canada (Revenue Agency)*, 2011 FC 721 at paras 16-17; *Perinpanayagam*, *supra* at para 38]."

[24] Of note in both *Connolly* and *Froehling*, the applicants did not provide evidence as to how they made the mistake that lead to the over-contribution in their respective RRSPs; there was no evidence that they had made inquiries or sought advice to confirm their available RRSP contribution limits.

[25] Similarly, in the case at bar, the Applicant did not provide evidence of steps taken to verify her RRSP contribution limits, and in oral submissions confirmed that she did not take any such steps.

[26] Further, in oral submissions the Applicant acknowledged that she did not have a reasonable explanation for the RRSP over-contribution.

[27] Accordingly, I find the Minister's conclusion—that the Applicant had not established that the over-contribution to her RRSP was a result of a reasonable error, therefore, she was not entitled to relief under subsection 204.1(4) of the *ITA*—to be reasonable. The reasons provided by the Minister are clear and demonstrate a rational chain of analysis and a full consideration of the facts and information provided to them in respect of the First and Second Level Requests to waive the Part X.1 tax.

V. Conclusion

[28] The Minister's denial of the request to waive the Part X.1 tax was reasonable. The decision was justified, transparent, and intelligible.

[29] The Respondent seeks their costs for this application. I see no reason to depart from the general principle that the successful party should recover their costs of an application. The Respondent did not provide submissions with respect to the quantum of costs nor did they provide the Court with a specific amount.

[30] In consideration of the circumstances of this application, and after considering the *Rules* Tariff B, I am satisfied that an award of $1,000.00 is reasonable.

JUDGMENT in T-2132-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The style of cause for this proceeding is hereby amended with immediate effect to correctly name the Respondent as the Attorney General of Canada

3. The Applicant shall pay to the Respondent costs of this application in the amount of $1,000.00, inclusive of disbursements and taxes.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2132-23
STYLE OF CAUSE:	JODI ROADKNIGHT-AMER v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JULY 18, 2024
JUDGMENT AND REASONS:	BLACKHAWK J.
DATED:	JULY 25, 2024

APPEARANCES:

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Amanda De Bruyne	FOR THE RESPONDENT

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