

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250613

Docket: A-299-23

Citation: 2025 FCA 117

**CORAM: BOIVIN J.A.
LEBLANC J.A.
ROUSSEL J.A.**

BETWEEN:

JASON M. CLOTH

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Montréal, Quebec, on June 11, 2025.
Judgment delivered at Ottawa, Ontario, on June 13, 2025.

REASONS FOR JUDGMENT BY:

ROUSSEL J.A.

CONCURRED IN BY:

**BOIVIN J.A.
LEBLANC J.A.**

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] Mr. Cloth appeals from a judgment of the Federal Court (2023 FC 1327), which dismissed his application for judicial review of a decision of the Minister of Finance (the Minister) refusing to recommend a remission order to the Governor in Council pursuant to subsection 23(2) of the *Financial Administration Act*, R.S.C. 1985, c. F-11 (FAA).

[2] From 2001 to 2003, Mr. Cloth participated in a leveraged donation program, the details of which are set out more fully in *Markou v. The Queen*, 2018 TCC 66 at paras. 9-24; aff'd 2019 FCA 299, leave to appeal to SCC refused, 39050 (7 May 2020). For the purposes of this appeal, it is sufficient to mention that the program was designed to provide the participants with charitable donation tax credits in excess of their cash contributions. The Canada Revenue Agency (CRA) denied the tax credits in their entirety, and the donors, including Mr. Cloth, appealed their reassessments to the CRA and later to the Tax Court of Canada. In the context of the litigation, the CRA entered into a settlement agreement and granted the donors partial relief for the cash portion of the donations made after December 20, 2002, and interest accrued. The relief was granted based on legislative amendments to the *Income Tax Act*, R.S.C., 1985 c. 1 (5th Supp.) (ITA) enacted in 2013 as part of the *Technical Tax Amendments Act 2012*, which included split-receipting rules, made effective retroactively to gifts made after December 20, 2002.

[3] Since their donations made prior to December 21, 2002, were not included in the settlement agreement, Mr. Cloth, along with other taxpayers, applied for remission based on the argument that equal treatment should be granted to all donors who participated in the same leveraged donation program, regardless of the date on which the donations were made. In a letter dated April 5, 2017, the Minister advised that he would not be recommending to the Governor in Council the requested remission. Amongst the reasons provided, he stated that all legislative amendments have a coming-into-force date which means that some people or circumstances will be covered by the amended legislation and others will continue to be bound by the previous law.

[4] Mr. Cloth sought judicial review challenging the reasonableness of the Minister's decision. In detailed reasons issued on October 4, 2023, the Federal Court concluded that the Minister's decision was reasonable. In particular, the Federal Court found that the Minister did not misapprehend the state of the law in 2002 and understood the effect of the retroactive coming-into-force date of the legislation. Furthermore, it found the Minister's decision addressed Mr. Cloth's arguments that the differential treatment of donations made prior to and after the amendments coming into force, was unfair and arbitrary. In this regard, it found that the release of a package of proposed technical amendments to the ITA on December 20, 2002, which included the split-receipting provisions, undermined the appellant's argument relating to the alleged arbitrariness of the retroactive coming-into-force date. In the Federal Court's opinion, the Minister acknowledged, but ultimately rejected the proposition that the pre-December 21, 2002, and post December 20, 2002, donors should be treated the same.

[5] The parties agree that the applicable standard of review is that set out in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47, confirmed in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12. They also agree that the Federal Court correctly identified reasonableness as the standard to be applied to the Minister's decision.

[6] I am of the view that Mr. Cloth has not met his burden of demonstrating that the Minister's decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 100). Mr. Cloth's submissions are substantially the same as those he advanced in the Federal Court, and I reject them for essentially the same reasons as those

given by the Federal Court. Although this Court must step into the shoes of the Federal Court and focus on the Minister's decision under *Agraira*, when the Federal Court appears to have given a complete answer to all the arguments that it advances, as is the case here, an appellant bears a strong tactical burden to show on appeal that the Federal Court's reasoning is flawed and justifies appellate intervention (*Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189 at para. 4, leave to appeal to SCC refused 39899 (7 April 2022)). Mr. Cloth certainly expressed his profound disagreement with the Federal Court decision, as with the Minister's decision, but he has not demonstrated any such flaw.

[7] As the Federal Court duly noted, a remission order attracts a high level of deference given the highly discretionary and exceptional nature of the power under subsection 23(2) of the FAA (FC decision at paras. 30, 55). Upon review of the record and after considering the submissions of the parties, I am satisfied that the Minister's decision not to recommend a remission order was reasonable.

[8] For these reasons, I would dismiss the appeal with costs fixed at \$3,500 all-inclusive.

"Sylvie E. Roussel"

J.A.

"I agree.

Richard Boivin J.A."

"I agree.

René LeBlanc J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-299-23
STYLE OF CAUSE:	JASON M. CLOTH v. THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JUNE 11, 2025
REASONS FOR JUDGMENT BY:	ROUSSEL J.A.
CONCURRED IN BY:	BOIVIN J.A. LEBLANC J.A.
DATE:	JUNE 13, 2025

APPEARANCES:

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