

Federal Court



Cour fédérale

**Date: 20220831**

**Docket: T-349-22**

**Citation: 2022 FC 1247**

**Toronto, Ontario, August 31, 2022**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**PATRICK GORDON DAVIS**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of a Benefits Compliance Officer [Second Review Officer] of the Canada Revenue Agency [CRA], dated January 24, 2022 [Decision]. The Officer found that the Applicant was not eligible to receive the Canada Recovery Benefit [CRB] provided under the *Canada Recovery Benefit Act*, SC 2020, c 12, s 2 [CRBA].

[2] The Applicant argues that he should receive the CRB because the attestation he completed did not expressly state that the self-employment income requirement was based on

“net” income. However, the Applicant’s argument that the attestation creates a binding contract cannot overcome the statutory foundation and mandatory statutory requirements for the CRB. As found by the Second Review Officer, and as explained to the Applicant during the review process, he does not meet the income requirement for the CRB (a fact not disputed by the Applicant).

[3] For the reasons that follow, the application is dismissed.

I. Background

[4] The Applicant, Mr. Davis, is a self-employed brand development consultant. He first applied for the CRB on October 21, 2020 and received a \$1,000 payment for the two-week period from September 27, 2020 to October 10, 2020. He subsequently applied for and received five more CRB payments between October 2020 and January 2, 2021.

[5] In January 2021, the CRA selected the Applicant’s file for review to determine his eligibility.

[6] In February 2021, the Applicant submitted financial information to a first review officer, including invoices documenting that he received \$6,088 gross revenue from his business (\$5,375 excluding taxes) between September 1, 2019 and August 31, 2020. However, Mr. Davis’ documents also revealed that he incurred \$10,910 in business expenses in the same time-period, rendering his self-employment income negative.

[7] On May 26, 2021, the first review officer determined that the Applicant was not eligible for the CRB because he did not earn at least \$5,000 (before taxes) of net self-employment income in the qualifying time-period. The Applicant was sent a decision letter [First Decision Letter] outlining the decision and its reasons. The First Decision Letter also informed the Applicant that he could request a second review.

[8] On June 15, 2021, the Applicant requested a second review and the CRA assigned the Applicant's file to the Second Review Officer.

[9] On January 20, 2022, the Second Review Officer talked to the Applicant by phone and informed him that CRB eligibility is based on net self-employment income. Mr. Davis stated that if the application had indicated eligibility was based on *net* income then he would not have applied as he had a negative net self-employment income.

[10] Following the call, the Applicant provided the Second Review Officer with a screenshot of the attestation he completed for CRB eligibility, which stated the following with respect to the criteria for income:

You earned a minimum of \$5,000 in 2019, in 2020, or in the 12 months preceding your first application from one or more of the following sources: Employment Income, Self-employment income, Employment Insurance (EI) maternity or parental benefits, or Quebec Parental Insurance Plan (QPIP) benefits.

[11] Upon receiving the screenshot, the Second Review Officer talked again with the Applicant by phone. During this second call, the Applicant again confirmed that he “made a negative net income” and noted that his negative net income is reflected in his tax return. At the

end of the call, the Second Review Officer informed the Applicant that he was not eligible for the CRB because he did not make the minimum net income.

[12] On January 24, 2022, the Second Review Officer sent the Applicant the Decision advising the Applicant that he was not eligible for the CRB because he “did not earn at least \$5,000 (before taxes) of [...] net self-employment income” in the qualifying period.

## II. Issues and Standard of Review

[13] The following two issues arise from this application:

- A. Was it unreasonable for the Second Review Officer to rely on the CRBA instead of contract law?
- B. Was the Decision procedurally unfair because the attestation gave the Applicant a legitimate expectation that the \$5,000 self-employment income was based on gross income?

[14] In evaluating the reasonableness of a decision, the Court must determine whether the decision is “based on an internally coherent and rational chain of analysis” that is “justified in relation to the facts and law that constrain the decision maker”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 85-86; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31. A decision will be reasonable if when read as a whole and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at paras 91-95, 99-100.

[15] Questions of procedural fairness are not strictly speaking subject to a standard of review analysis. Instead, the issue for determination is whether the procedure followed by the

decision-maker was fair and just: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Sangha v Canada (Citizenship and Immigration)*, 2020 FC 95 at para 13.

### III. Preliminary Matter – Style of Cause

[16] As a preliminary matter, I note that the style of cause for this proceeding has been amended to reflect the correct Respondent — the Attorney General of Canada.

### IV. Analysis

A. *Was it unreasonable for the Second Review Officer to rely on the CRBA instead of contract law?*

[17] The Applicant provides a screenshot of the attestation he was required to complete at the time of his last successful CRB application, on January 4, 2021. The income criterion does not refer to self-employment income being a “net” income.

[18] The Applicant characterizes the attestation as a contractual agreement between the Applicant and CRA. He argues that the Decision should be based on the language used in the attestation and he should not be denied eligibility because during the qualifying period he earned greater than \$5,000 in revenue, or gross self-employment income.

[19] The Respondent asserts that the CRBA, not contract law, governs CRB eligibility. Therefore, the principles of contract law cited by the Applicant are not relevant to the Decision.

The Respondent asserts that the Second Review Officer made their Decision in accordance with the CRBA.

[20] The CRB is a benefit created by statute. The CRB was introduced on October 2, 2020 by the CRBA. As stated in the preamble to the CRBA, it is “[a]n Act establishing the Canada recovery benefit...”.

[21] Subsection 3(1) of the CRBA outlines who is eligible to receive the CRB.

Paragraph 3(1)(d) provides the income criteria. Under subparagraph 3(1)(d)(ii), a person is eligible for the CRB if “they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from [...] self-employment.”

Subsection 3(2) of the CRBA defines “income from self-employment” as “revenue from the self-employment less expenses incurred to earn that revenue”.

[22] Subsection 5(1) of the CRBA provides that “a person must, in their application, attest that they meet each of the eligibility conditions referred to in paragraphs 3(1)(a) to (n).” Thus, the attestation is not a separate basis for eligibility. Rather, it is part of the application process and the means by which a person confirms that they have met the statutory requirements of paragraphs 3(1)(a) to (n). For self-employment, by definition, the requirement is for a total net income of at least \$5,000 for the qualifying time-period.

[23] While Mr. Davis criticizes the clarity and completeness of the language in the attestation, the language of the attestation does not supersede the statutory requirements established by the CRBA.

[24] As noted in *Flock v Canada (Attorney General)*, 2022 FC 305 [*Flock*] at paragraph 23, “[t]he eligibility criteria established by s 3(2) of the CRBA are statutory and non-discretionary.”

[25] Under the definition provided in subsection 3(2) of the CRBA, the Applicant’s income from self-employment in the qualifying time period was negative and did not meet the criteria set out in subparagraph 3(1)(d)(ii) of the CRBA. The Applicant does not dispute that his income does not meet the statutory requirement.

[26] As the CRB is and has only ever been administered in accordance with the statutory scheme of the CRBA, it was not unreasonable for the Second Review Officer to rely solely on this criterion when determining CRB eligibility. Nor was it unreasonable for the Second Review Officer to find that the Applicant was not eligible for the CRB, as he had not met the income criterion.

[27] The Applicant has not identified any reviewable error in the Decision.

B. *Was the Decision procedurally unfair because the attestation gave the Applicant a legitimate expectation that the \$5,000 self-employment income was based on gross income?*

[28] The Applicant argues that his expectation from the language of the attestation was that his eligibility would be determined based on gross self-employment income. The fact that it was not, renders the review process unfair.

[29] However, as the Respondent notes, the doctrine of legitimate expectations is limited to procedural relief and a legitimate expectation cannot be invoked to ensure a particular substantive outcome: *Flock* at para 23. As the eligibility criteria established by the CRBA are statutory and non-discretionary, the Second Review Officer had no choice but to apply it: *Flock* at para 23. Even if Mr. Davis reasonably believed he would be eligible for the CRB based on the attestation, there could be no legitimate expectation that eligibility was met where the statutory requirements of subparagraph 3(1)(d)(ii) of the CRBA were not satisfied (and the attestation was not made in accordance with section 5 of the CRBA).

[30] Further, the Applicant should have been fully aware that net self-employment income was the variable used.

[31] The Applicant was advised by the first review officer during the first review that he would have to provide documentation on his business expenses as well as revenues. I agree with the Respondent at that point the Applicant knew, or ought to have known, that the income requirement was a net concept.



[32] Even if the Applicant did not realize that eligibility was based on net self-employment income during the first review, the Applicant was later expressly advised that the requirement was based on net self-employment multiple times, including by:

- a) the First Decision Letter, which explicitly stated that the Applicant's ineligibility was based on him not earning \$5,000 "net self-employment income" in the qualifying period; and
- b) each of the two phone calls with the Second Review Officer, in which he advised the Applicant that the review was based on net self-employment income.

[33] As found in *Flock* at paragraph 26, any procedural shortcomings that may have preceded the initial decision were remedied by the subsequent review and discussions. The Second Review Officer's decision was procedurally fair and any procedural shortcomings arising from the attestation were remedied by the First Review Decision and the second review process.

[34] Further, Mr. Davis was given a full and fair opportunity to make submissions to the CRA and to ask any clarifying questions relating to the documents to be submitted. There is no basis to doubt that the Second Review Officer took Mr. Davis' comments into account in rendering the Decision.

[35] The Applicant refers to the *Electronic Commerce Act, 2000*, SO 2000, c 17 and *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A and appears to argue that the CRA should have provided or otherwise made a copy of the Applicant's CRB application available to him, as it appeared online at the time it was completed. I agree with the Respondent that these statutes have no bearing on whether the Applicant was eligible for the CRB and are not applicable to the Court's analysis.

[36] The Applicant has not demonstrated that there has been a breach of procedural fairness.

V. Conclusion

[37] The application is accordingly dismissed.

[38] As the Respondent confirmed in oral argument that it does not seek costs, no costs are awarded in this case.

**JUDGMENT IN T-349-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There shall be no order as to costs.

"Angela Furlanetto"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-349-22

**STYLE OF CAUSE:** PATRICK GORDON DAVIS v. THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** AUGUST 29, 2022

**JUDGMENT AND REASONS:** FURLANETTO J.

**DATED:** AUGUST 31, 2022

**APPEARANCES:**

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FOR THE APPLICANT  
(ON HIS OWN BEHALF)

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FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT