

Federal Court



Cour fédérale

**Date: 20221205**

**Docket: T-1539-21**

**Citation: 2022 FC 1670**

**Ottawa, Ontario, December 5, 2022**

**PRESENT: Mr. Justice McHaffie**

**BETWEEN:**

**DAVID CROOK**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] David Crook applied for the Canada Recovery Benefit (CRB) for two two-week periods in late 2020. The Canada Revenue Agency (CRA) initially accepted the claims without review, but subsequently undertook a review of Mr. Crook's eligibility. During the CRA review, Mr. Crook provided evidence of his self-employment income through invoice summaries printed from his accounting system, showing he had billed clients for various small jobs such as gardening, cutting wood, and machine repair and maintenance. He says he was paid for these

jobs in cash and, since the amounts were small and used for daily living, he did not deposit the payments into a bank.

[2] Following two separate reviews of his file, a benefits compliance officer with the CRA concluded Mr. Crook was not eligible for the CRB. The officer found that since Mr. Crook did not have bank statements or receipts for materials to support the amounts in the invoices, he had not established that he had income of at least \$5,000 in 2019, 2020, or during the 12 months prior to his application. The CRA demanded reimbursement of the CRB payments made, and Mr. Crook's third request for a two-week period in January 2021 was denied on the same basis.

[3] For the reasons that follow, I find the officer's decision unreasonable. The officer did not adequately explain why the invoice documentation provided was insufficient to prove Mr. Crook's income, why bank statements were necessary in the circumstances, or why the officer did not follow the guidance in a CRA guideline that invoices for services rendered may constitute acceptable proof of self-employment income.

## II. Issue and Standard of Review

[4] The sole issue on this application for judicial review is whether the officer's decision finding Mr. Crook ineligible for the CRB was reasonable. This Court has confirmed in a number of recent decisions that decisions on CRB eligibility are reviewable on the reasonableness standard: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15; each applying *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23. A reasonable decision is one that is internally

coherent, justified in light of the relevant legal and factual constraints, and “bears the hallmarks of reasonableness – justification, transparency and intelligibility”: *Vavilov* at paras 85, 99.

### III. Analysis

#### A. *Mr. Crook’s application for Canada Recovery Benefits*

[5] Mr. Crook retired a number of years ago, but says he has done various jobs occasionally since that time when financial circumstances required. He says he did some work in 2015 and 2016, and then starting working again in March 2020 when he needed additional income. Based on his records, Mr. Crook performs a variety of jobs for several clients, usually around the exterior of homes. This includes gardening, cutting and splitting wood, installing and fixing fences, and maintaining and repairing chainsaws, lawn mowers, and generators. He bills on an hourly basis and the jobs typically generate a few hundred dollars, paid in cash.

[6] Mr. Crook says that while he had enough jobs over the summer of 2020, the quantity of work available decreased thereafter because of the COVID-19 pandemic. On December 15, 2020, Mr. Crook requested the CRB for two two-week periods covering November 8 to December 5, 2020 (known as periods 4 and 5). The CRB was a temporary benefit implemented by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*] designed to provide income support for individuals affected by the COVID-19 pandemic. The legal framework of the *CRB Act* has been described elsewhere by this Court and that exercise need not be repeated here: *Walker* at paras 2–3; *Aryan* at paras 2, 12; *Sid Seghir v Canada (Attorney General)*, 2022 FC 466 at paras 15–16. For present purposes, it is sufficient to note that one of

the eligibility requirements for the CRB was for the applicant to have had total income of at least \$5,000 in 2019, in 2020, or in the 12-month period before the date of application: *CRB Act*, s 3(1)(d)–(e).

[7] As was typical, the CRA initially accepted Mr. Crook’s claims and paid them prior to a substantive review. However, as it is entitled to, the CRA subsequently undertook a review of the claims and Mr. Crook’s eligibility: *CRB Act*, s 30.

B. *CRA review of Mr. Crook’s claims*

[8] On December 17, 2020, Mr. Crook’s file was selected for a first examination. Mr. Crook was contacted by a CRA officer, and on December 22, Mr. Crook sent five pages of invoice summaries to the CRA, showing, for each of five clients, the client’s name, address, and phone number; itemized descriptions of the work done; the date, hours worked, hourly rate, and total amount invoiced; and the date payment was made. The invoice summaries, which represent Mr. Crook’s own financial records regarding his self-employment, showed gross revenue of \$6,272 earned between March 13 and September 8, 2020.

[9] On January 26, 2021, the officer conducting the first review contacted Mr. Crook by phone. During this call, Mr. Crook explained he was paid in cash and did not deposit these amounts in the bank, so the only evidence he could provide were the invoice summaries he had sent. The officer’s notes of this call indicate she decided Mr. Crook was not eligible for periods 4 and 5 because of the lack of supporting documents, namely a lack of proof of deposits or tangible proof of earnings. Two days later, on January 28, 2021 the CRA informed Mr. Crook by letter

that he was not eligible for CRB because he had not earned \$5,000 before taxes in employment income or net self-employment income in 2019, 2020, or the 12 months prior to his first application.

[10] Mr. Crook contested this decision and requested a second review on February 3, 2021. He sent the same five pages of invoice summaries with a letter explaining that he had minimal costs associated with the \$6,272 in income. He noted that his small business did not justify him employing an accountant, and that his sales were in cash because cheques could be returned for non-sufficient funds and required more time to run to the bank. Mr. Crook submitted that he seemed to have met the criteria necessary to request the CRB benefits.

[11] On February 9, 2021, Mr. Crook sent a further nine pages of invoice summaries for other clients for small amounts (between \$10 and \$192, totalling \$1,105) earned in the period between September 14 and October 28, 2020. On February 24, 2021, he explained to the CRA that he submitted the additional invoices when he learned that net income, and not gross income, was the criteria for the \$5,000 threshold. Shortly thereafter, on March 9, 2021, Mr. Crook applied for CRB for a further two-week period in January 2021 (known as period 8), which was denied. Mr. Crook filed his 2020 income tax return in April 2021 and advised a CRB compliance officer of this. The return declares net income for 2020 of \$6,978.

[12] Given the high volume of cases, the second review of Mr. Crook's benefits did not occur until September 2021. A different CRA compliance officer conducted a preliminary analysis, setting out the basic facts of Mr. Crook's application, the initial denial, the information filed, and

his tax return history. The officer then called Mr. Crook to confirm his understanding of the situation and the correctness of his notes. During this call, Mr. Crook advised the officer that after his retirement, he thought his benefits would be sufficient to support him until he reached 65 years of age, but that he had realized he needed to rely on work income, and started working again in March 2020. He had enough jobs in the summer of 2020, but after September, the quantity of work declined because of COVID. The officer's notes show he considered Mr. Crook's "version of his situation is plausible but not possible to verif[y] with the documents on hand."

[13] After the call, the officer concluded Mr. Crook was not eligible because he had no work income in 2019 and 2020. The analysis set out in his notes indicates that the \$5,000 income criterion was considered unconfirmed because Mr. Crook had not deposited his work income in his bank account. The officer prepared a Second Review Report setting out the basis for his decision. That report recognized that Mr. Crook had filed "detailed invoices" regarding the jobs he did. However, it concluded the eligibility criteria were not met, with the following explanation:

For proof of \$5,000 taxpayer provided invoices. Taxpayer has not previously claimed self-employed incomes before 2020. During our phone call, he confirmed not having any documents to support the amounts on the invoices provided (no bank statement, receipts for materials, etc.) unable to substantiate that taxpayer earned \$5,000 in employment/self-employment income before first application.

[14] A decision letter, dated September 23, 2021, again advised Mr. Crook that he was not eligible for CRB because he had not earned \$5,000 before taxes in employment income or net self-employment income in 2019, 2020, or the 12 months prior to his first application. It is this

second decision that is the subject of this application for judicial review. As this Court has previously noted, the officer's reasons for decision include his Second Review Report and the notepad entries made by CRA officers during the course of review: *Aryan* at para 22; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 9.

C. *The decision is unreasonable*

[15] In my view, the officer's decision does not meet the standards of justification, transparency, and intelligibility required of a reasonable decision. I reach this conclusion primarily because of the lack of explanation by the officer as to why the "detailed invoices" provided by Mr. Crook were insufficient in the context to substantiate his having earned at least \$5,000 in self-employment income in the 12-month period prior to his application for CRB. Although the officer accepted the plausibility of Mr. Crook's statements, and made no adverse findings as to his credibility, he appears to have concluded that bank statements showing cash deposits, receipts for materials, or some other documentation were necessary to establish Mr. Crook's income. This conclusion was reached despite the nature of Mr. Crook's work, which on its face would not generate documents such as receipts, and Mr. Crook's explanation why he did not deposit each cash payment of a few hundred dollars in the bank, an explanation that was not questioned by the officer.

[16] The Attorney General of Canada filed evidence on this application that compliance officers conducting review of CRB eligibility use a guideline document prepared by the CRA entitled [translation] *Confirmation of eligibility for the Canada Recovery Benefit (CRB), the Canada Recovery Caregiving Benefit (CRCB), and the Canada Recovery Sickness Benefit*

(*CRSB*) [Guideline]. The Guideline, like other guidelines issued by government authorities to assist in the administration of legislation, is not legally binding, but may be “useful in indicating what constitutes a reasonable interpretation of a given provision” and provide “useful insight on the background, purpose and meaning of the legislation”: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 32; *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at para 15.

[17] As the Federal Court of Appeal has recently explained, a decision maker may depart from non-binding guidelines, but any departure from such guidelines must be (a) reasonable, in the sense that they are not inconsistent with a reasonable interpretation of the statute; and (b) explained through a reasoned explanation: *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 at paras 39, 58; see also *Merck Canada inc c Procureur général du Canada*, 2022 QCCA 240 at para 166; *Centre Québécois du droit de l’environnement v Canada (Environment)*, 2015 FC 773 at para 73. An unexplained departure from guidelines can be indicative of an unreasonable decision: *Alexion* at para 58; *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 at para 59, citing *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 at para 23; *Ryan v Canada (Attorney General)*, 2016 FC 1246 at para 45.

[18] The Guideline includes a section dealing with applicants providing proof of having \$5,000 in income. With respect to self-employment, the Guideline recognizes that owners of small businesses may receive income in various ways, and contemplates a variety of forms of potential evidence to show that income. In particular, the Guideline sets out a series of elements



that must be considered for small business owners. One of these is “[i]f they are always paid in cash, do they have proof they keep track of hours and payments?” [Note: The record in this application contained the French version of the Guideline. These reasons use as a translation the English version of the Guideline as reproduced in *Aryan* at para 33, which I am satisfied reasonably represents a fair translation of the French document.]

[19] The Guideline goes on to provide two examples of cash businesses (dog-walking and child care), indicating that the applicant must be able to provide invoices showing information such as the date of the service, the name of the client, the cost of the service, and the payment received. It then sets out a list of “acceptable proof” of self-employment income that includes the following :

- Invoice for services rendered, for self employed individuals or sub contractors. For example an invoice for painting a house or a cleaning service etc. Must include the date of the service, who the service was for, and the applicant’s or company’s name.
- Documentation for receipt of payment for the service provided, e.g. statement of account, or bill of sale showing a payment and the remaining balance owed.

[...]

- Any other documentation that will substantiate \$5,000.00 in self employment income.

[20] Situations where small businesses take cash payments are clearly contemplated in the Guideline, which shows a number of ways that can be used to prove income without necessarily requiring bank deposits or other receipts, including, notably, invoices generated by the business. Nonetheless, the officer in this case gave no explanation why Mr. Crook’s “detailed invoices” were not acceptable, and no explanation for his departure from the Guideline’s description of

such documents as acceptable proof of income. Absent such an explanation, I conclude the decision does not bear the hallmarks of reasonableness: *Alexion* at para 58. I note that while the officer stated that Mr. Crook had not claimed self-employed income before 2020, there is no indication of what the officer drew from this, or whether or why he rejected Mr. Crook's statements that he had started working again in 2020 because of his financial circumstances.

[21] The Attorney General makes three primary arguments as to why the officer's decision was nonetheless reasonable despite this lack of explanation. For the following reasons, I do not find these arguments persuasive.

[22] First, the Attorney General points to the statement in the Guideline that officers must use their judgment and experience to determine if a piece of evidence is required. Relying on this Court's decisions in *Hayat*, *Walker*, and *Aryan*, the Attorney General argues that an applicant's own self-reporting is insufficient proof of revenue in respect of a cash business and that it is reasonable to require bank deposit records: *Hayat v Canada (Attorney General)*, 2022 FC 131 at paras 16–22; *Walker* at paras 30–37, 55; *Aryan* at paras 29–35. In my view, these decisions do not stand for such a broad proposition.

[23] In *Hayat*, the officer explained that the invoices were missing information and that he had tried but failed to match the names and addresses on the applicant's invoices to those in the CRA's computer system. The applicant also told the CRA he had additional information but was "not prepared to share it." In light of these unsuccessful attempts at verification and the applicant's interactions with the CRA, the Court concluded the officer's refusal to accept the

invoices without further evidence was justified: *Hayat* at paras 19–21. Justice Walker noted that the inquiry was necessarily fact-specific and that “[i]nvoices may substantiate a claim to income in some situations but not in every situation”: *Hayat* at para 22.

[24] Similarly, in *Walker*, the officer determined that the applicant’s invoices were issued in the name of a business that had closed, to a client for whom a search revealed nothing: *Walker* at para 8. The applicant was asked to provide bank statements, but failed to do so, and provided no explanation: *Walker* at paras 21, 24, 33, 37. Justice Elliott found that the applicant’s failure to provide documents that were requested was a reasonable basis to deny entitlement: *Walker* at paras 34–35.

[25] In *Aryan*, the applicant relied on tax assessments and bank statements, but these did not show the source of the amounts deposited nor when they were earned: *Aryan* at paras 9, 28. The applicant did not have receipts or invoices: *Aryan* at para 23, 25. Justice Strickland expressly pointed to the Guideline and its list of acceptable proof in rejecting Ms. Aryan’s argument that the Officer was obliged to accept her tax assessment as conclusive proof of income: *Aryan* at paras 33–35.

[26] Unlike the foregoing cases, the officer in the present case did not raise any concerns with the contents of Mr. Crook’s invoice evidence. To the contrary, the officer appears to have accepted the “detailed invoices,” but then did not explain why those invoices, which appear to meet the CRA’s requirements to prove self-employment income, were unsatisfactory or insufficient. Unlike the applicant in *Hayat*, Mr. Crook did provide an explanation as to why his

bank records would not show the deposits, namely that he used the small cash payments for ongoing expenses. The officer does not question the credibility of this explanation, yet still refers to the absence of bank records as a ground for his finding.

[27] I note at this stage that while the Attorney General's memorandum of fact and law alleged that the officer made an adverse credibility finding, counsel withdrew that allegation at the hearing. In my view, counsel was right to do so. There is no indication in the record that the officer made any adverse credibility finding with respect to Mr. Crook, still less one that was justified or explained. To the contrary, as noted, the officer expressly found Mr. Crook's statements plausible.

[28] Second, the Attorney General argues Mr. Crook was asked to provide bank statements but refused to do so and that, as in *Walker*, this was sufficient to dispose of both his application for CRB and this application for judicial review: *Walker* at paras 34, 37; *CRB Act*, s 6. The difficulty with this submission is that, on my review of the record, Mr. Crook was not asked to provide his bank statements. He was asked whether he had bank statements that would show deposits; he responded that he did not and explained why; and that was the end of the matter. Mr. Crook did not refuse to provide bank statements that the CRA required of him. Where there has been no refusal to provide information required by the Minister, there can be no non-compliance with section 6 of the *CRB Act* justifying rejection.

[29] Third, the Attorney General argues Mr. Crook is simply disagreeing with the weight the officer gave to his supporting documents, citing the decision of Justice Roussel, then of this

Court, in *Santaguida v Canada (Attorney General)*, 2022 FC 523 at para 31. I disagree. The issue, in my view, is whether the officer reasonably and adequately explained his decision in the context of the evidence and factual circumstances, particularly in the face of an apparent departure from the Guideline: *Vavilov* at paras 125–126, 131; *Alexion* at para 58. It is worth noting that in *Santaguida*, as in *Aryan*, Justice Roussel cited the Guideline and the applicant’s failure to provide evidence that met the requirements of the guideline, as justifying the request for further information and the reasonableness of the decision: *Santaguida* at paras 26–31. Indeed, Justice Roussel noted that in following the Guideline, “[w]here an individual was unable to provide any of the documents suggested, the officers would work with the applicant to see what other acceptable documents they may have” [emphasis added]: *Santaguida* at para 28. In the present case, and without explanation, the officer appears to have sought other documentation even though Mr. Crook was able to provide the documents suggested in the Guideline.

#### IV. Conclusion

[30] For these reasons, the application for judicial review is allowed and the issue of Mr. Crook’s eligibility for the CRB is referred back to the CRA for redetermination by another officer. I note for clarity that the initial eligibility assessment considered only the \$5,000 income requirement, the officer deeming it “not wise” in the circumstances to ask for further details about other criteria. In the event that the CRA on redetermination is satisfied as to the income requirement, it is not precluded from ensuring that the other eligibility requirements for the CRB were met.

[31] In accordance with the agreement between the parties, Mr. Crook will, as the successful party, be awarded costs in the amount of \$1,120.

[32] For completeness, I observe that shortly after the hearing of this application, Justice Furlanetto issued her decision in *Sjogren v Canada (Attorney General)*, 2022 FC 951. As the parties did not have the opportunity to make submissions on *Sjogren*, I did not rely on that decision in reaching my own. However, I note that Justice Furlanetto and I appear to have independently reached similar conclusions based on similar factual situations.

[33] Finally, at the request of the Attorney General, with the consent of Mr. Crook, and in accordance with Rule 303 of the *Federal Courts Rules*, SOR/98-106, the title of proceedings shall be amended to name the Attorney General of Canada as the respondent in this application.

**JUDGMENT IN T-1539-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is allowed, and the issue of the applicant's eligibility for the Canada Recovery Benefit is referred back to the Canada Revenue Agency for redetermination by another officer.
2. The respondent shall pay the applicant his costs in the amount of \$1,120.
3. The title of proceedings shall be amended to identify the respondent as the Attorney General of Canada.

**"Nicholas McHaffie"**

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Judge

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

**DOCKET:** T-1539-21

**STYLE OF CAUSE:** DAVID CROOK v CANADA (ATTORNEY  
GENERAL)

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 7, 2022

**JUDGMENT AND REASONS:** MCHAFFIE J.

**DATED:** DECEMBER 5, 2022

**APPEARANCES:**

David Crook ON HIS OWN BEHALF

Alice Zhao Jiang FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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