



Date: 20231221

Docket: T-271-23

Citation: 2023 FC 1730

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 21, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

SERGE LAFLAMME

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Serge Laflamme, claims to have had an atypical professional background. He had a career as a professional stuntman and martial artist, including roles in film and television. He received the highest rank in Budo. He subsequently obtained his doctorate in natural medicine. He is furthermore an author and lecturer, having written nine books. During

the periods at issue, alongside income from his book *Sensi: The Mystical Experience*, he worked on coaching and lecturing—notably in Budo, Dharma Do, and Synergology.

[2] Mr. Laflamme requested and received the Canada Recovery Benefit (CRB). The CRB was part of a package of measures introduced by the Government of Canada in response to the impact of the COVID-19 pandemic. This benefit was available for any two-week period between September 27, 2020, and October 23, 2021, to eligible employees and self-employed persons who suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]).

[3] Eligibility criteria for the Canada Recovery Benefit are set out and explained in subsection 3(1) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2. These criteria require, among other things, the employee or self-employed person to have earned at least \$5,000 in net employment income or net self-employment income in 2019, 2020, or in the 12 months before the date he or she applied.

[4] Mr. Laflamme is seeking judicial review of the decision of an officer [the Officer] of the Canada Revenue Agency [CRA], dated January 13, 2023 [decision], by which, following a third review, the Officer concluded that Mr. Laflamme was not eligible for the CRB. The CRA denied his claim on the grounds that he had not earned at least \$5,000 in net employment income or net self-employment income in 2019, 2020, or in the 12 months before the date he applied. The Officer concluded that Mr. Laflamme's net self-employment earnings have been negative or less than \$5,000 since 2014.

[5] For the reasons that follow, and despite the strong arguments made by the respondent's counsel, I conclude that the Officer's decision was unreasonable. Accordingly, Mr. Laflamme's application must be allowed.

II. Standard of review

[6] It is well established that the standard of review applicable in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Aryan* at paras 15–16).

[7] To be reasonable, a decision must be justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). The onus was on Mr. Laflamme, the party challenging the decision, to demonstrate its unreasonableness (*Vavilov* at para 100).

[8] Reviewing courts must adopt an attitude of restraint and intervene only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). To be able to intervene, a reviewing court must be satisfied that there are “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency”, and that any alleged flaws or shortcomings “must be more than merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100).

[9] In the absence of exceptional circumstances, a reviewing court must not alter findings of fact. The Court must focus its attention on the actual decision rendered by the administrative

decision maker, including its rationale, and not on the decision it would have rendered in the decision maker's place. In that sense, in the context of a judicial review application, it is not for the Court to reassess or reweigh the evidence taken into account by the decision maker (*Vavilov* at para 125; *Clark v Air Line Pilots Association*, 2022 FCA 217 at para 9).

III. Analysis

[10] As a preliminary matter and with the consent of the parties, the style of cause is amended to correctly designate the Attorney General of Canada as the respondent.

[11] Although Mr. Laflamme raised a number of arguments, I find that the determinative issue is the intelligibility of the decision. The Officer set out her reasons for the decision in her CRB Second Review Report. That report reads as follows:

[TRANSLATION]

Considering the fact that it is clear from the documents provided and [Mr. Laflamme's] story that Covid had an impact on [Mr. Laflamme's] work. However, it is impossible to prove beyond a doubt that [Mr. Laflamme] did in fact earn \$5,000 in net income in 2019.

[Emphasis added.]

[12] Although the written reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at para 91), they must nevertheless be intelligible and justified (*Vavilov* at para 96). I agree with the respondent that the appropriate standard of proof for an administrative decision maker, including the CRA in its role as an administrative decision

maker determining eligibility for the CRB, is proof on a balance of probabilities (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 55).

[13] The respondent argues that the reference to [TRANSLATION] “beyond a doubt” was an error of language that had no impact on the Officer’s decision, as she applied the balance of probabilities standard of proof instead. The respondent points out that in *Vavilov* the Supreme Court stated that administrative decision makers cannot always be expected to deploy the same array of legal techniques that might be expected of a lawyer or judge (at para 92).

[14] It is not for the Court to presume that the Officer applied the appropriate standard of proof, especially when there is nothing to indicate that she did so in the decision in this case. In some cases, an error is insufficient to render an entire decision unreasonable. Nevertheless, given the record in this matter and the fact that the only reason the Officer concluded that Mr. Laflamme was not eligible for the CRB was because he had not earned at least \$5,000 in net income in 2019, I am not prepared to conclude that the issue of the applicable standard of proof was not sufficiently central so as to prevent the entire decision from being unreasonable.

[15] Having concluded that the decision was unreasonable, it is not necessary to address the other issues raised by Mr. Laflamme.

IV. Conclusion

[16] For the foregoing reasons, this application for judicial review is allowed. The analysis made by the Officer with regard to the CRB does not possess the requisite attributes of transparency, justification and intelligibility.

[17] Given all the circumstances, Mr. Laflamme is entitled to costs, and the lump sum of \$500 agreed upon by the parties is reasonable and justified.

JUDGMENT in T-271-23

THIS COURT'S JUDGMENT is as follows:

1. The applicant's application for judicial review is allowed.
2. The style of cause is amended to designate the Attorney General of Canada as the proper respondent.
3. The decision dated January 13, 2023, by which an officer of the Canada Revenue Agency [CRA] determined that Mr. Laflamme was ineligible for the Canada Recovery Benefit [CRB] is set aside.
4. Mr. Laflamme's CRB claim is returned to the CRA for reconsideration by a new officer, on the basis of the present reasons.
5. The respondent shall pay costs to Mr. Laflamme in the amount of \$500.

"Vanessa Rochester"

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-271-23

STYLE OF CAUSE: SERGE LAFLAMME v CANADA REVENUE
AGENCY

PLACE OF HEARING: MONTREAL, QUEBEC

DATE OF HEARING: DECEMBER 5, 2023

JUDGMENT AND REASONS: ROCHESTER J.

DATED: DECEMBER 21, 2023

APPEARANCES:

Serge Laflamme

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Claudia Desgroseilliers

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montreal, Quebec

FOR THE RESPONDENT