

Federal Court



Cour fédérale

**Date: 20240124**

**Docket: T-723-23**

**Citation: 2024 FC 117**

**Ottawa, Ontario, January 24, 2024**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**GIUSEPPE MONCADA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Giuseppe Moncada, is a self-represented individual seeking judicial review of the Canadian Revenue Agency's ("CRA") decision finding him ineligible for the Canada Recovery Benefit Program ("CRB"). Based on a subsequent second review of the Applicant's eligibility for the CRB, a Benefits Compliance Officer ("Subsequent Second

Reviewer”) determined that he was ineligible as he failed to demonstrate that he met the \$5,000 requirement in employment or net self-employment income (the “Decision”).

[2] Mr. Moncada submits that the Decision is procedurally unfair and unreasonable.

[3] For the reasons that follow, I find that the Decision is reasonable and procedurally fair. This application for judicial review is dismissed.

[4] I am mindful of the fact that Mr. Moncada is a self-represented litigant and I have kept in due regard the Canadian Judicial Council *Statement of Principles on Self-represented Litigants and Accused Persons* (2006), which the Supreme Court endorsed in *Pineta v Johns*, 2017 SCC 23 at paragraph 4.

## II. **Facts**

### A. *Background*

[5] The CRB was implemented through the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (“*CRB Act*”). The CRB was created to provide income support for any two-week period beginning on September 27, 2020 and ending on October 23, 2021, to eligible employed and self-employed individuals who were directly affected by the COVID-19 pandemic (*Kleiman v Canada (Attorney General)*, 2022 FC 762 (“*Kleiman*”) at para 2).

[6] Mr. Moncada applied for and received CRB payments in the amount of \$1,000 for four two-week periods beginning on September 27, 2020, and ending on November 21, 2020.

[7] Subsequent to the payout periods, Mr. Moncada's applications were subject to validation by the CRA. On December 15 and 17, 2020, and February 10, 2021, Mr. Moncada provided submissions to the CRA confirming his eligibility for the CRB, allegedly having made \$5,380.

[8] In a decision dated February 19, 2021, the CRA informed Mr. Moncada that he was ineligible for the CRB. The CRA found that he did not reside in Canada and had not made at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of her first application.

[9] On March 12, 2021, Mr. Moncada requested a second review of the CRA's initial decision. His submissions contained proof of Canadian residency and alleged proof of earned income in 2019, including a tax assessment providing that he made \$5,380 in total income in 2019. On March 26, 2021, Mr. Moncada provided further submissions in support of this review.

[10] In a decision dated November 4, 2021, the CRA found upon second review that Mr. Moncada was ineligible for the CRB. In a decision dated January 24, 2023, the Court allowed Mr. Moncada's application for judicial review and referred the matter back to CRA for redetermination (*Moncada v Canada (Attorney General)*, 2023 FC 114 ("Moncada FC")).

B. *Decision under Review*

[11] In a decision dated March 10, 2023, the Subsequent Second Reviewer found that Mr. Moncada was ineligible for the CRB, having concluded that he had not provided information or documents demonstrating that he had earned at least \$5,000 in employment or net self-employment income in 2019, 2020, or the 12 months prior to his first CRB application, nor had he provided any information or documents demonstrating that he was not working for reasons related to COVID-19.

[12] It is this Decision that is at issue in this application for judicial review. An officer's reasons for a decision includes the second review report and the notepad entries made by CRA officers throughout the course of review (*Crook v Canada (Attorney General)*, 2022 FC 1670 at para 14, citing *Aryan v Canada (Attorney General)*, 2022 FC 139 (“*Aryan*”) at para 16 and *Kleiman* at para 9).

[13] The Subsequent Second Reviewer's notepad entry concluded that:

1) Tp did not meet \$5K in 2019 or 12 months prior to October 27, 2020 with employment or Self-employment income. Tp claimed 2019 \$5,380 net SE income, file date 2020-12-17, however there is no proof that this income was paid to the tp.

Tp has submitted three handwritten notes (see description and details above- Documents Received) stating they completed work in 2019. TP stated that these were cash jobs and there are no bank statements. TP stated he had little to no expenses. Tp submitted a handwritten receipt dated Jan 28, 2021 signed by tp indicating that the amount of \$1,150 was charged to David Roth. Tp also submitted an email dated Feb 5, 2021 from David Roth to Tp confirming that they just received the receipt of payment for work completed by Tp in 2019 however the email did not state the

amount of the payment and how they paid the Tp. The receipt was issued 17 months after the work was said to be completed. Tp did not submit further documentation showing that they completed work for Qinou Sayyah (Handwritten Note #31 2019-08-12 Qinou Sayyah \$2300 Management fees for Reno) or Sophie Roth (Handwritten note #34 2019-11-06 Sophie Roth \$1930. Misc works and Trades Management). Tp does not have any correspondence or documents regarding the agreement of employment, their management duties, hiring other trades people, equipment rental agreements etc.

2) Tp did not stop working for reasons due to Covid-19. The last Note submitted states they completed work 2019-11-06 therefore covid-19 did not effect their employment when applying for CRB 1, September 27, 2020.

[14] In coming to the Decision, the Subsequent Second Reviewer relied on various handwritten notes from Mr. Moncada indicating funds he received from his work and other statements and letters from his previous requests.

### III. Preliminary Issues

[15] The Respondent raises the issue of the CRA being the named Respondent in this matter, the proper party being the Attorney General of Canada. I agree. The style of cause is amended effective immediately to name the Attorney General of Canada as the proper Respondent.

[16] The Respondent raises the issue of documents in Mr. Moncada's record not being before the Second Reviewer, thus being inadmissible in this application for judicial review. I agree that Exhibits C-D and S of Mr. Moncada's affidavit, as well as Exhibits B-G to Exhibit R of Mr. Moncada's affidavit, do not meet the exceptions to the general prohibition against providing evidence on judicial review that was not before the decision maker (*Association of Universities*

*and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 (“*Access Copyright*”) at para 20).

[17] However, the Applicant has made submissions that could be characterized as challenging the CRA’s procedure, with phone records being evidence of the CRA allegedly having not called him prior to rendering the Decision. In my view, such evidence falls within the exception in *Access Copyright* of bringing this Court’s attention to procedural defects not found in the record (at para 20).

#### IV. **Issues and Standard of Review**

[18] The issues in this application are whether the Decision is reasonable and procedurally fair.

[19] Mr. Moncada does not address the applicable standard of review for the merits of the Decision. The Respondent submits that it is reasonableness. I agree (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 16-17, 23-25; *Hu v Canada (Attorney General)*, 2023 FC 1590 at para 16).

[20] Although not pled specifically, Mr. Moncada’s submissions raise, and I therefore address, the issue of procedural fairness. The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration,*

*Refugees and Citizenship*), 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole 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). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[23] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and*

*Immigration*), 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

V. **Analysis**

A. *Procedural Fairness*

[24] Mr. Moncada states that the Decision was made without prior notification to him, there being no evidence of incoming calls from the CRA regarding his case.

[25] The Respondent submits that Mr. Moncada knew the case to be met and had the opportunity to present his case fairly and fully. The Respondent maintains that the initial second reviewer had requested further documents to corroborate that Mr. Moncada had worked for the clients in his handwritten invoices, which Mr. Moncada did not provide. The Respondent maintains the Subsequent Second Reviewer attempted to contact Mr. Moncada numerous times, but never received a call back from him. Mr. Moncada had the opportunity to submit further information but chose not to.

[26] I agree with the Respondent. In my view, the Subsequent Second Reviewer provided Mr. Moncada with the opportunity to know the case against him and have the right to be heard (*Canadian Pacific Railway Company* at para 56, cited in *Mahmoud v Canada (Attorney General)*, 2023 FC 1066 at para 35). The Decision is procedurally fair, as explained below.



[27] The evidence in the record reflects that the Subsequent Second Reviewer attempted to contact Mr. Moncada numerous times. The evidence also demonstrates that the Subsequent Second Reviewer had the following queries for Mr. Moncada in her “action plan” for calling Mr. Moncada to inform him about the eligibility criteria for CRB:

Requesting Tp submit documentation showing that they were completing work for Qinou Sayyah and Sophie Roth. Does Tp have any correspondence or documents regarding the agreement of employment, their management duties, hiring other trades people, equipment rental agreements etc.?

Did Tp stop working for reasons due to Covid-19? The last Note submitted states they completed work 2019-11-06. How did covid-19 affect your employment when applying for CRB?

[28] Accepting Mr. Moncada’s evidence about whether he received the call on January 27 and two calls on January 31, 2023, or not, there is no evidence contradicting that Mr. Moncada was called on February 23, 2023. In this call, the Subsequent Second Reviewer stated:

I am calling from the Canada Revenue Agency, I am calling to speak to you in regard to the Canada Recovery Benefit...Prior attempts at contact have been unsuccessful. Please call me back by EOD Wednesday, March 1, otherwise I will proceed with your case based on the information I have available. Thank you and I look forward to hearing from you by Mar 1. [emphasis added]

[29] The Subsequent Second Reviewer also left a phone number so Mr. Moncada could return the call. This Court has omitted the telephone number from the statement above out of respect for the Subsequent Second Reviewer’s privacy.

[30] I am bound by this uncontroverted evidence in finding that the Applicant was afforded with the *opportunity* to know his case. This is buttressed by previous requests from CRA agents for corroboration, including, for example, communications dated September 17 and 22, 2021 (respectively), requesting that Mr. Moncada obtain corroborating evidence from Qinou Sayyah in support of Mr. Moncada's application. Further corroborating evidence was also at issue in Mr. Moncada's previous application for judicial review (*Moncada FC* at para 5).

[31] Mr. Moncada was therefore aware that providing corroborating evidence was an issue in his case. The Subsequent Second Reviewer attempted to (at least) once more put this to Mr. Moncada in calling, asking that the Subsequent Second Reviewer be called back, and informing him that the decision would be made with the available information should he not be in contact with the CRA. As counsel for the Respondent rightly put it, the issue of corroborating evidence has long been an issue with Mr. Moncada's proceedings. Mr. Moncada claims that he was not involved with his case, but the evidence shows that the CRA provided Mr. Moncada with many opportunities at every avenue to tend to the concerns surrounding his documentation. I further do not accept Mr. Moncada's insinuations at the hearing that he received a deficient record from counsel for the Respondent, there being a two-page numbering difference between what he had before him and what counsel for the Respondent relied upon at the hearing. His claims in this case that he has not been sufficiently involved in the CRA proceedings are unfounded. Mr. Moncada has been provided with the opportunity to know the case against him and have the right to be heard.

[32] Furthermore, Mr. Moncada requests as remedy that he be involved in the CRA's decision-making process. In my view, it is clear that he wants the procedure in this matter bent such that a decision will be made in his favour. The CRA can accommodate him. It did so here. But that accommodation does not imply obligation. Mr. Moncada does not have a right to have a decision made on his terms. This would unduly elevate the procedural fairness requirements in this CRB decision, requirements which are "generally on the low end of the spectrum" (*Ramanathan v Canada (Attorney General)*, 2023 FC 1029 at para 46).

B. *Reasonableness*

[33] Mr. Moncada submits that the conclusion that he did not meet the minimum threshold of income for the CRB is incorrect. He relies upon a tax assessment demonstrating that he made \$5,380 in total income for the 2019 tax year and submits that the Subsequent Second Reviewer did not take into account *Moncada FC*.

[34] The Respondent submits that Mr. Moncada simply disagrees with the Second Reviewer's factual finding that he did not meet the income requirement for CRB, this Court being prohibited from interfering with this factual finding on judicial review (*Vavilov* at para 125). The Respondent maintains that the Subsequent Second Reviewer did not misapprehend or fail to account for the documents Mr. Moncada submitted, the Subsequent Second Reviewer's finding that Mr. Moncada had provided insufficient corroborating documents being reasonable.

[35] I agree with the Respondent. Mr. Moncada relies upon his tax assessment as evidence that the Decision's conclusion stating he did not meet the income threshold is incorrect. But as

my colleague Justice Turley held, “[t]his Court has determined that while tax assessments can provide income information to the CRA about an applicant’s eligibility, they neither prove that the applicant actually earned the income reported in their income tax return nor prove that their income was earned from an eligible source” (*Rehman v Canada (Attorney General)*, 2023 FC 1534 at para 30, citing *Hussain v Canada (Revenue Agency)*, 2023 FC 1382 at para 21 and *Aryan* at para 25). The Decision demonstrates that the Subsequent Second Reviewer acknowledged Mr. Moncada’s tax assessment.

[36] Moreover, there is no indication the Subsequent Second Reviewer ignored evidence, nor, as in this Court’s previous decision, failed to justify why Mr. Moncada’s evidence was insufficient for meeting the eligibility requirements (*Moncada FC* at paras 11-12). The issues in *Moncada FC* was that the decision-maker made “no mention of the three invoices filed by Mr. Moncada” and failed “to explain any concerns with the invoices Mr. Moncada provided” (at para 12). Here, however, the Subsequent Second Reviewer explicitly and demonstrably considered Mr. Moncada’s handwritten notes. The Subsequent Second Reviewer found that there was insufficient corroborative evidence for two of these handwritten notes, as Mr. Moncada “does not have any correspondence or documents regarding the agreement of employment, their management duties, hiring other trades people, equipment rental agreements etc.” There is thus no issue in this Decision regarding the transparency and justification of the reasons regarding why the evidence provided by Mr. Moncada was insufficient to meet the eligibility requirements. The Subsequent Second Reviewer’s Decision is reasonable.

VI. **Conclusion**

[37] This application for judicial review is dismissed without costs. The Decision finding that Mr. Moncada does not meet the income eligibility criteria for the CRB is reasonable and procedurally fair.

**JUDGMENT in T-723-23**

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

1. The application for judicial review is dismissed without costs.
2. The style of cause is amended effective immediately to name the Attorney General of Canada as the proper Respondent.

“Shirzad A.”

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Judge

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

**DOCKET:** T-723-23

**STYLE OF CAUSE:** GIUSEPPE MONCADA v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 15, 2024

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 24, 2024

**APPEARANCES:**

Giuseppe Moncada  
(on his own behalf)

FOR THE APPLICANT

Jacky Chiu

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT