



**Date: 20240709**

**Docket: T-1658-22**

**Citation: 2024 FC 1073**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 9, 2024**

**PRESENT: The Honourable Madam Justice Ngo**

**BETWEEN:**

**JEAN CARON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Background

[1] Jean Caron [applicant] is seeking judicial review of a decision of an officer of the Canada Revenue Agency [CRA] dated July 21, 2022, in which it was determined that the applicant was not eligible for the Canada Emergency Response Benefit [CERB] or the Canada Recovery Benefit [CRB] [Decision].

[2] I sympathize with the applicant's position. Nevertheless, I cannot conclude that the Decision was unreasonable. The application for judicial review is dismissed, for the reasons that follow.

## II. Issues and Standard of Review

[3] The issues that the applicant proposes are, first, whether the CRA make an unreasonable decision on July 21, 2022, in determining that he was ineligible for the CERB and the CRB; and, second, whether his right to procedural fairness or natural justice was breached.

[4] An allegation on a matter of procedural fairness attracts a standard close to that of correctness. The question is whether the applicant knew the case to be met and had a full and fair opportunity to respond (*Canadian Pacific Railway Limited v Canada (Attorney General)*, 2018 FCA 69 at para 56).

[5] The Court is interested in the process the decision-maker followed to reach his conclusion. Procedural fairness includes the right (1) to be heard and (2) to have the opportunity to respond to the case to be met (*Therrien (Re)*, 2001 SCC 35 at para 82). It is settled law that the principles of the duty of procedural fairness are "eminently variable", inherently flexible and context-specific (*Baron v Attorney General of Canada*, 2023 FC 1177 at paras 19, 24).

[6] In addition, there is consensus that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]).

[7] The reasonableness standard applies in the context of a judicial review of a CRA decision denying a benefit (*Roussel v Canada (Attorney General)*, 2024 FC 809 [*Roussel*]; *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 15–16 [*Aryan*]).

[8] A reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable decision in a given case always depends on the relevant factual and legal constraints affecting the decision under review (*Vavilov* at para 90). A decision could be qualified as unreasonable if the administrative decision-maker has misinterpreted the evidence on the record (*Vavilov* at paras 125, 126). The party challenging the decision has the burden of showing that the decision was unreasonable (*Vavilov* at para 100).

### III. Facts

[9] The applicant received CERB benefits between March 15, 2020, and September 26, 2020, and CRB benefits between September 27, 2020, and October 9, 2021. The applicant’s file was subject to an initial review to verify his eligibility for the CERB and the CRB. On January 20, 2022, the applicant sent the CRA documents which included invoices and statements.

[10] On February 28, 2022, a first CRA review officer contacted the applicant by telephone. The file included several documents and log entries of notes recorded by CRA officers (or automated systems) [Notes].

[11] Before the Court, the applicant described being asked a number of personal questions. He explained that he refused to identify himself because he first wanted to know the identity of the officer to ensure that he was really speaking to a CRA officer. According to the first review officer's Notes, at the beginning of the call, the officer explained that the applicant could call the CRA's general line to verify whether he was being called by a real CRA officer. Eventually, the applicant mentioned that he was a consultant for two companies for which he provided accounting services. The applicant explained that he was unable to perform his work because he could not meet with his customers.

[12] The officer advised the applicant that the purpose of the review was to verify that his gross income was at least \$5,000 in order to determine his eligibility. The officer asked the applicant to provide additional documents such as bank deposits. According to the applicant, he had already provided supporting documents such as invoices for the period of November and December 2021. The applicant asked that any request to send documents be a formal request made in writing. The officer made inquiries and called the applicant back to inform him that CRA procedures and guidelines did not allow him to proceed in the manner the applicant had proposed. The applicant expressed his intention to file a complaint. The first review officer provided him with his name, the name of his team leader and his employee number, as had been requested by the applicant. The first review officer reminded the applicant that it was necessary for him to provide evidence in order to qualify for benefits.

[13] The applicant did not submit any additional evidence. The first review officer escalated his review of the file. On March 3, 2022, a letter confirmed that the applicant was ineligible for the

CERB and the CRB on the grounds that he had not met the income test of having earned at least \$5,000.

[14] On March 28, 2022, the applicant sent written submissions to the CRA. He complained that the first review officer had not provided him with his identity, and emphasized his dissatisfaction with the officer's incompetence. Among other things, he confirmed that he had not worked during his CERB and CRB benefit periods; that he had earned \$6,600 between January 1 and March 14, 2020; and requested that he be contacted in writing. The CRA treated this letter as a request for a second review.

[15] On June 28, 2022, a second review officer [decision-maker] contacted the applicant by telephone. According to this officer's Notes, the applicant had refused to provide any information over the telephone. He wanted communications to be solely in writing. The decision-maker explained that he was an employee of the Canada Emergency Response Benefits validation service. He informed the applicant what the call was about, and that CRA procedures and guidelines required contact by telephone to gain an understanding of the applicant's employment history and the impact of the pandemic on his work. The decision-maker informed the applicant that additional documents were required to process the file. The applicant ended the call.

[16] On July 21, 2022, the decision-maker sent a letter to the applicant notifying him that he was not eligible for the CERB or the CRB on the grounds that the applicant did not meet the \$5,000 minimum income criterion. The decision under judicial review includes the letters sent on

July 21, 2022, and the Notes which form an integral part of the decision rendered (*Aryan* at para 22; *Roussel* at para 17).

IV. Analysis

[17] As a preliminary matter, the respondent contends that the applicant is improperly introducing new evidence in his affidavit filed with the Court. The new evidence consists of two exhibits, namely T2125 forms for the 2019 and 2020 taxation years. These documents were not before the decision-maker and the Court ought not consider them.

[18] As a general rule, documents and information that the decision-maker did not have before it are not admissible before the Court on judicial review, with a few exceptions (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20), specifically, either they (1) provide background information likely to help the reviewing court understand the issues relevant to the judicial review; (2) point to procedural defects or breaches of procedural fairness in the administrative process; or (3) highlight the complete absence of evidence before the administrative decision-maker.

[19] These exceptions do not apply to the applicant's new documents. Therefore I cannot consider them. I accept the respondent's argument that, in any event, these documents are not in themselves proof that the applicant earned the amounts through self-employment income.

A. *The CRA's decision was not unreasonable*

[20] The applicant applied for the CRB for the two-week periods between October 13, 2020, and October 11, 2021. The CRB stems from the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act], in which the eligibility requirements are found.

[21] The CRB Act stipulates that a person is eligible if, in the case of an application in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make their application, a total income of at least \$5,000 from employment or self-employment. In the case of an application in respect of two-week periods beginning in 2021, they had to earn, for the year 2019 or 2020 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.

[22] The applicant applied for the CERB for the periods between April 7, 2020, and August 31, 2020. The CERB stems from the *Canada Emergency Response Benefits Act*, SC 2020, c 5, s 8 [CERB Act], in which the eligibility requirements are found. The CERB Act stipulates that applications must be made by workers who can demonstrate an income of \$5,000 for the year 2019 or in the 12-month period preceding the day on which they make an application.

[23] With respect to COVID-19 benefits, this Court has repeatedly held that the onus is on applicants to inform themselves of the eligibility criteria for each benefit, and to prove that those criteria have been met (*Walker v Canada (Attorney General)*, 2022 FC 381 at para 55). The respondent argues that the applicant did not provide sufficient evidence to allow the decision-maker to reach a conclusion that he met the minimum income threshold of \$5,000.

[24] Given that the requirement to meet the minimum income threshold is clear, I am of the opinion that in the absence of sufficient evidence to support the applicant's position, the officer reasonably concluded that the applicant was unable to demonstrate having earned an income of at least \$5,000.

[25] I also note that the applicant was advised that additional documentation was required in order for the CRA to determine whether the applicant met the \$5,000 minimum income threshold. There is no error that would warrant judicial intervention (*Vavilov* at para 10).

B. *Allegations of breach of applicant's right to procedural fairness*

[26] The applicant's main argument is that, in the absence of written communications, he was unable to present his case and defend himself during the CRA reviews. However, there are no references or circumstances in the record that would require written communications.

[27] I note that the applicant was notified that the documents he had already provided were insufficient. CRA officials repeatedly explained that he was required to provide more documentation to prove the income claimed and to demonstrate that he met the minimum threshold, which he did not do. The applicant also had an opportunity to interact with the CRA to address concerns about his file. In letters from the CRA dated March 3, 2022, the applicant received written instructions on how to request a second review. In those letters, the CRA mentioned that such a request required the following information: [TRANSLATION] "why you disagree with the decision", and to provide [TRANSLATION] "any relevant new documents, new facts or correspondence".



[28] In this case, the applicant has not been able to satisfy me that this is a matter of procedural fairness or natural justice. I am of the opinion that he had a full and fair opportunity to present his submissions and any additional documentation during his second review. I find that there was no breach of procedural fairness.

[29] With all due respect, while the applicant disagreed with the CRA's conclusion and I recognize the financial hardship that resulted from that decision, the facts do not give rise to a finding of a breach of procedural fairness or a finding that the decision was unreasonable.

V. Costs

[30] The parties agreed to a lump sum of \$500 in costs for the successful party.

[31] Despite this agreement, I am of the opinion that an award of costs is not appropriate in this case. The applicant represented himself and his written materials and oral submissions at the hearing were concise. He demonstrated civility at the hearing and a costs order would be unduly punitive given his personal circumstances. The case at hand is similar to the analysis of Pallotta J in *Showers v Canada (Attorney General)* 2022 FC 1183 at paragraph 32 and Southcott J in *Broughton v Canada (Attorney General)* 2023 FC 1693 at paragraph 34. I will exercise my discretion and no costs will be awarded.

**JUDGMENT in T-1658-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. There is no award as to costs.

“Phuong T.V. Ngo”

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Judge

Certified true translation  
Sebastian Desbarats

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

**DOCKET:** T-1658-22

**STYLE OF CAUSE:** JEAN CARON v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** JUNE 26, 2024

**JUDGMENT AND REASONS** NGO J

**DATED:** JULY 9, 2024

**APPEARANCES:**

Jean Caron

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Jean Bonin

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Montreal, Quebec

FOR THE RESPONDENT