

Federal Court



Cour fédérale

**Date: 20220603**

**Dockets: T-835-21  
T-845-21**

**Citation: 2022 FC 817**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, June 3, 2022**

**PRESENT: Mr. Justice Pamel**

**BETWEEN:**

**NICK MALTAIS**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Nick Maltais, is an octogenarian working as a real estate broker who received the Canada Emergency Response Benefit [CERB] and the Canadian Recovery Benefit [CRB] in 2020. Mr. Maltais was reviewed by the Canada Revenue Agency [CRA], and a CRA benefits processing officer [officer] concluded on December 15, 2020, that Mr. Maltais was

ineligible for the CERB and the CRB and that he should repay the payments he had already received. Following a second review of his CERB and CRB applications, the CRA confirmed Mr. Maltais's ineligibility on April 16, 2021.

[2] Mr. Maltais has made two applications for judicial review of the April 16, 2021, decisions as to his ineligibility for the CERB (T-835-21) and the CRB (T-845-21). I have heard these applications together and this decision applies to both applications for judicial review. Mr. Maltais argues that he meets the various eligibility criteria for the CERB and the CRB and that CRA officials did not respect Parliament's intent by applying the eligibility criteria too strictly. He adds that the CRA failed to observe the principles of procedural fairness by not giving him the opportunity to speak with officers about the decisions made in his regard.

[3] In my opinion, the CRA's decisions are reasonable and the CRA has not failed to observe the principles of procedural fairness. Accordingly, and for the reasons that follow, I dismiss the applications.

## II. Background

[4] In 1997, Mr. Maltais purchased a saw manufacturing company that was forced to close in the wake of the softwood lumber dispute of the 2000s; Mr. Maltais had to assume the total loss of his capital, approximately \$400,000, in the form of a debt owed to directors. Subsequently, in 2009, the company, now known as Groupe Conseil Immobilier Québec Inc [the company], began operating as a real estate agency with four real estate brokers. Over the years, and when the agency's revenues allowed it, Mr. Maltais withdrew from the company amounts as partial

refunds of past losses that he could carry forward for 20 years and that were owed to him as non-taxable income, thereby reducing his current losses. In addition, Mr. Maltais states that he had to perform brokerage contracts himself to make up for the clearly insufficient income from the 10% sales commission he received on transactions performed by his agency's real estate brokers.

[5] Mr. Maltais reported no work-related income for the 2016, 2017, and 2018 tax years, having been satisfied that his corporate income was being reported as reimbursed losses rather than taxable salary. However, according to his tax return filed on June 30, 2020, Mr. Maltais received \$6,000 in income for 2019, having paid himself \$500 per month in three \$2,000 payments, for a total of \$6,000 for the year.

[6] Given his age (he was 81 at the time), the COVID-19 pandemic in 2020 was a concern for Mr. Maltais, who did not leave his home for fear of becoming infected. As a result, Mr. Maltais was no longer able to continue his duties as a real estate broker, which largely consists of showing properties to potential buyers, and so he stopped taking brokerage contracts. Taking advantage of the lockdown, Mr. Maltais took a refresher course offered to real estate brokers to obtain his mortgage broker's license.

[7] Following the government's announcement of emergency assistance for workers directly affected by the COVID-19 pandemic, Mr. Maltais applied for the CERB on April 8, 2020, and received payments for the seven four-week periods from March 15, 2020, through September 26, 2020, for a total of \$14,000. Mr. Maltais also submitted an application to obtain the CRB in October 2020 for the two two-week periods from September 27, 2020, through October 24,

2020, for a total of \$2,000. Mr. Maltais claims that although he applied for the CRB, he did not actually receive any payments. The Minister challenges these statements, but whether or not Mr. Maltais did receive any CRB payments is not determinative of the applications for judicial review.

[8] On November 5, 2020, a CRA officer began a review of Mr. Maltais's CERB and CRB applications. In a telephone conversation between the officer and Mr. Maltais, Mr. Maltais stated that he had been working as a real estate broker at the beginning of 2020 and continued to work thereafter, but that his company's sales had declined significantly. These are the officer's notes from the telephone conversation:

[TRANSLATION]

Discussion: The [applicant] stated that he was working in early 2020, he is a real estate broker. He owns a small real estate agency; Groupe Conseil Immobilier Qc. His work office is at home. He stated that 4 brokers work for his agency. He stated that he is paid about \$500.00 per month. I asked him if he has always been paid. He stated that he has. He gets paid when the company makes money, otherwise he was making withdrawals on the company's losses. He repeated that he reported \$6,000.00 in 2019. I told him that he has no other such entries on his other tax returns, even though he says he was paid. He stated that he took it whenever he wanted. In 2020, he continued to work, but sales were down significantly. I asked him about the real estate market. He mentioned that there was a misperception in Quebec City, people were buying, but there were fewer houses for sale.

[9] The officer asked Mr. Maltais to send her his bank statements to show that he had received at least \$5,000 from his company in 2019 as well as his bank statements for 2020. The officer called Mr. Maltais back on December 3 and December 9, 2020, to warn him that the documents he had submitted were not sufficient and gave him additional time to send the

required documents. On December 12, 2020, the officer confirmed that she had received all the documents and proceeded to analyze his file.

[10] On December 17, 2020, the officer sent two letters to Mr. Maltais notifying him that he was ineligible for the CERB and the CRB because he had not earned at least \$5,000 in employment or self-employment income in 2019 (or 2020 for the CRB) or in the 12 months prior to the date of his first application. Here are the officer's notes dated December 15, 2020, regarding her decision:

[TRANSLATION]

The [applicant] reported \$6,000.00 of income on line 104 of his 2019 return filed in June 2020.

The [applicant] [did] not report any employment-related income in 2018, 2017, 2016.

So, it is not reasonable for the [applicant] to decide to pay himself an amount to qualify for the CERB/CRB. Also, since the [applicant] was not paying himself before, it is not possible to say that he had a drop in income. I should refer the [applicant] to the CEWS [Canada Emergency Wage Subsidy]. Also the [applicant] mentioned that he was paying his brokers before himself and he was not paid in 2020, so that is his personal choice to not pay himself, the company had liquidities during the periods requested.

[11] Essentially, the officer's decision is based on the fact that Mr. Maltais made a strategic decision to allocate a portion of the funds he derived from his company in 2019 as taxable salary as well as a future partial deduction of his available losses, simply to meet the 2019 income threshold necessary to meet the requirements of the CERB and CRB programs, when in the past he would have allocated these funds only as a refund of pending losses.

[12] On January 4, 2021, Mr. Maltais submitted a request for a second review of his file. On April 16, 2021, another CRA officer sent Mr. Maltais two letters notifying him that he was ineligible for the CERB because he had not ceased working or had his hours reduced as a result of COVID-19 and that he was also ineligible for the CRB because he was not working for a reason other than COVID-19. As a result, the CRA required Mr. Maltais to repay the CERB and CRB payments he had received. The officer detailed the reasoning for his decisions in a report:

[TRANSLATION]

THE [APPLICANT] SAYS HE WAS UNABLE TO PAY HIMSELF A SALARY IN 2020 BECAUSE OF COVID, BUT HE DID NOT PAY HIMSELF IN THE PREVIOUS YEARS EITHER, SO WE CANNOT SAY IT WAS DUE TO THE PANDEMIC.

THE REAL ESTATE BROKERAGE INDUSTRY DID NOT CEASE DURING THE PANDEMIC.

OFFICIALLY, THE [APPLICANT] WAS NOT WORKING WHEN THE PANDEMIC HIT (LAST SALARY HE PAID HIMSELF WAS IN AUGUST 2019), SO WE CAN'T SAY HE STOPPED WORKING BECAUSE OF COVID. EVEN IF HE PAID SALARIES TO HIS BROKERS AND THAT POSSIBLY HAD AN IMPACT ON THE FACT THAT HE DID NOT PAY HIMSELF A SALARY IN 2020, THAT WAS ULTIMATELY HIS OWN CHOICE, AS AN EMPLOYER, SO HE DID THIS VOLUNTARILY.

[13] On May 16, 2021, Mr. Maltais filed two applications for judicial review of the two April 16, 2021, decisions. His applications seek the following declarations and orders:

1. A declaration that the CRA's determinations of ineligibility for the CERB and the CRB are patently unreasonable and unenforceable;
2. An order setting aside the CRA's decisions of April 16, 2021;

3. An order to restore Mr. Maltais to the situation he was in prior to the April 16, 2021, decisions;
4. An order directing the CRA to analyze Mr. Maltais's file according to the applicable law and the facts of the case;
5. An order directing the CRA to send any future decision in Mr. Maltais's file, noting the existence of a right of review, if any, and the applicable time limit for appealing the decision; and
6. An order directing the CRA to remit to Mr. Maltais the amounts to which he would be entitled if he made a retroactive application for the CRB.

### III. Legislative framework

#### A. *The Canada Emergency Response Benefit*

[14] The CERB was established by the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERBA], assented to on March 25, 2020, to provide financial support to employed and self-employed workers directly affected by the COVID-19 pandemic. Under subsection 5(1) of the CERBA, the CERB was made available for the period of March 15, 2020, to October 3, 2020. Subsections 6(1) and 6(2) provided the eligibility criteria for receiving the CERB:

#### **Eligibility**

6(1) A worker is eligible for an income support payment if

#### **Admissibilité**

6(1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :

(a) the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and

(b) they do not receive, in respect of the consecutive days on which they have ceased working,

(i) subject to the regulations, income from employment or self-employment,

(ii) *benefits*, as defined in subsection 2(1) of the *Employment Insurance Act*,

(iii) allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children or one or more children placed with them for the purpose of adoption, or

(iv) any other income that is prescribed by regulation.

#### **Exclusion**

(2) An employed worker does not cease work for the purpose of paragraph (1)(a) if they quit their employment voluntarily.

[Emphasis added.]

a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;

b) il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte :

(i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,

(ii) de *prestations*, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*,

(iii) d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption,

(iv) tout autre revenu prévu par règlement.

#### **Exclusion**

(2) Pour l'application de l'alinéa (1)a), un travailleur ne cesse pas d'exercer son emploi s'il le quitte volontairement.

[Je souligne.]



[15] Section 2 of the CERBA defines “worker”:

<p><b>worker</b> means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least \$5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:</p> <p>(a) employment;</p> <p>(b) self-employment;</p> <p>(c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the <i>Employment Insurance Act</i>; and</p> <p>(d) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption.</p>	<p><b>travailleur</b> Personne âgée d’au moins quinze ans qui réside au Canada et dont les revenus — pour l’année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l’article 5 — provenant des sources ci-après s’élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :</p> <p>a) un emploi;</p> <p>b) un travail qu’elle exécute pour son compte;</p> <p>c) des prestations qui lui sont payées au titre de l’un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la <i>Loi sur l’assurance-emploi</i>;</p> <p>d) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d’un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption.</p>
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B. *The Canada Recovery Benefit*

[16] The CRB was introduced by the *Canadian Recovery Benefits Act*, SC 2020, c 12, s 2

[CRBA], assented to on October 2, 2020, to provide financial assistance to employed and self-employed workers directly affected by the COVID-19 pandemic and not entitled to

Employment Insurance benefits. The CRB was offered for the period from September 27, 2020, to October 23, 2021. Subsection 3(1) of the CRBA provided the eligibility criteria for receiving the CRB, as follows:

### **Eligibility**

3(1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

- (a) they have a valid social insurance number;
- (b) they were at least 15 years of age on the first day of the two-week period;
- (c) they were resident and present in Canada during the two-week period;
- (d) in the case of an application made under section 4 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 the application, a total income of at least \$5,000 from the following sources:
  - (i) employment,
  - (ii) self-employment,
  - (iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of

### **Admissibilité**

3(1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

- a) elle détient un numéro d'assurance sociale valide;
- b) elle était âgée d'au moins quinze ans le premier jour de la période de deux semaines;
- c) elle résidait et était présente au Canada au cours de la période de deux semaines;
- d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :
  - (i) un emploi
  - (ii) un travail qu'elle exécute pour son compte
  - (iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1),

the *Employment Insurance Act*,

(iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and

(v) any other source of income that is prescribed by regulation;

...

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on

152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*,

(iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,

(v) une autre source de revenu prévue par règlement;

...

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article

which they make the  
application,

...

4 vise une période de deux  
semaines qui débute en 2020,

...

#### IV. Issues

[17] The applications for judicial review raise three issues:

1. Is the new evidence that Mr. Maltais submitted to the Court admissible?
2. Are the April 16, 2021, determinations that Mr. Maltais is ineligible to receive the CERB and the CRB unreasonable?
3. Did the CRA breach the principles of procedural fairness by failing to provide Mr. Maltais with an opportunity to respond to the officer's concerns?

#### V. Standard of review

[18] The appropriate standard of review for a review of a CRA officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]). The Court's role is to examine the administrative decision maker's reasoning process and the outcome to determine whether the decision is “based on an internally coherent and rational chain of analysis and . . . is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[19] Regarding the issue of procedural fairness, the Court is required to ask “whether the procedure was fair having regard to all of the circumstances”, and the ultimate question is “whether the applicant knew the case to meet and had a full and fair chance to respond”

(*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56; *Fortier v Canada (Attorney General)*, 2022 FC 374 at para 15 [*Fortier*]).

VI. Analysis

A. *The new evidence submitted by Mr. Maltais to this Court is not admissible*

[20] In support of his applications for judicial review, Mr. Maltais filed two affidavits accompanying the same exhibits that were not submitted to the administrative decision maker as part of the adjudication process. The respondent objects to the admission of these exhibits on the basis that they constitute inadmissible new evidence. The exhibits in question are as follows:

- Schedule 4 (“Corporation Loss Continuity and Application”) to the income tax return of Groupe Conseil Immobilier Québec Inc. for the taxation year ending August 31, 2018, constituting Exhibit “A” to the affidavits submitted by Mr. Maltais;
- The document entitled “Continuité des pertes autres qu’en capital” [non-capital loss continuity] of Groupe Conseil Immobilier Québec Inc., constituting Exhibit “B” to the affidavits submitted by Mr. Maltais;
- The T4A slip for the year 2020 in the name of Mr. Maltais, constituting Exhibit “I” to the affidavits submitted by Mr. Maltais.

[21] It is well known that when an application for judicial review is made to the Court, the Court must limit itself to the evidentiary record before the administrative decision maker. There are three exceptions to this general rule: where the new evidence (1) provides general background

that might assist the Court in understanding the issues relevant to the judicial review; (2) is necessary to bring to its attention procedural defects; and (3) highlights the complete absence of evidence before the administrative decision maker (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98). The documents in question were not before the officer who made the April 16, 2021, decisions. Further, Mr. Maltais has not shown me that the new exhibits he attached to his affidavits fall within any of the exceptions set out by the Federal Court of Appeal in *Tsleil-Waututh Nation*. Accordingly, I will not consider these documents on judicial review of the officer’s decisions. In any event, it seems to me that these documents would have had no bearing on those decisions. First, Mr. Maltais notes in his affidavit that the \$2,000 in line 202 of the T4A slip is an amount that the CRA added to his taxable income without first notifying him and discussing it with him. However, line 202 of the T4A is actually the amount he received for the CRB. Secondly, Mr. Maltais explains in his affidavit that for the past several years, when the company’s liquidities have permitted it, he has been using the non-capital losses of his saw manufacturing company to [TRANSLATION] “pay himself back for the advances” of money he made to the latter company. This information has no impact on Mr. Maltais’s eligibility for the CERB and the CRB.

B. *The April 16, 2021, determinations that Mr. Maltais is ineligible to receive the CERB and the CRB are not unreasonable*

[22] Mr. Maltais raises the point that the intent of the CERB and the CRB was to provide a flexible program to financially assist all workers affected by the COVID-19 pandemic and that the officers did not respect Parliament’s intent by applying the eligibility criteria too strictly. He adds that the officers did not believe he was working because of his advanced age.

[23] I am not convinced by Mr. Maltais's arguments. The criteria for obtaining the CERB and the CRB are clearly set out in the CERBA and the CRBA, and the officer assessed Mr. Maltais's file against these criteria and against the evidence submitted by Mr. Maltais, namely personal and company bank statements, screenshots of a transaction system and copies of cheques. The evidence shows that Mr. Maltais informed the CRA that he did not stop working in 2020, but that he changed the way he worked. Before me, he stated that because of COVID-19, he had to work strictly from home and could not show properties to clients, and that he therefore suffered a reduction in income because of the forced limitation on his ability to make a living.

[24] The problem appears to be that Mr. Maltais decided, for his own reasons, to take funds from the company in prior years, making it difficult, if not impossible, for the CRA to link any change in the way Mr. Maltais worked in 2020 to a reduction in his employment income. After all, the CERB and CRB are supposed to be income support allowances for loss of income for reasons related to COVID-19. If a person cannot link their loss of income to the pandemic, I don't see how they can qualify for the program. I am not satisfied, on the basis of the evidence provided, that Mr. Maltais, whether employed or self-employed, ceased working for reasons related to COVID-19 and, as a result, did not receive income from employment or self-employment.

[25] It makes perfect sense that when there was money left in the company, Mr. Maltais preferred reimbursing himself for his outstanding debt in the form of non-taxable income rather than using the funds from the corporation to pay himself a salary. When asked about this, he told me that for 2019, he preferred reporting the funds he was taking out of the corporation as

“income from employment or self-employment” because he wanted to retain a portion of the losses for future tax purposes. He is certainly free to do this as a small business owner, but it is not possible to then conclude that when he, whether employed or self-employed, ceases working, he is not receiving income from that employment or self-employment because of the arrival of the pandemic. The officer determined that Mr. Maltais was ineligible for the CERB because he did not cease working for reasons related to COVID-19 and that he was ineligible for the CRB because he did not work for reasons other than COVID-19. The officer detailed his reasoning in his report: he noted that, according to Mr. Maltais’s tax returns, Mr. Maltais had not paid himself a salary in previous years (with the exception of 2019) and that he therefore could not conclude that Mr. Maltais had been unable to pay himself a salary for 2020 because of COVID-19. Further, he noted that the real estate brokerage industry did not pause during the pandemic. As the boss of the company, his decision not to pay himself a salary in 2020 had therefore been voluntary, and I see nothing unreasonable in the officer’s decision.

[26] In fact, Mr. Maltais appears to be claiming that any salary he decided to pay himself from the corporation was not supposed to be directly related to his work as a real estate agent. He stated the following in his affidavit filed in support of these applications, clarifying his statement to the CRA that he was not seeking employment: [TRANSLATION] “When I say I am not seeking employment, it is because I have a job that is not gainful employment, but it is also employment and I could no longer show properties, a significant part of my job”. Before me, Mr. Maltais argued that it is sufficient for him to show a reduction in his work, without necessarily linking that reduction to a loss of income. I do not agree.



[27] The officer's reasoning, in my view, is coherent and based on the evidence in the record, namely, the tax returns for the years 2016 to 2019 and the bank statements submitted by Mr. Maltais. The burden was on Mr. Maltais to demonstrate the unreasonableness of the CRA's decisions by persuading the Court that there are sufficiently serious shortcomings in the decisions such that they cannot be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100). Given the evidence on the record and the reasons above, I am not satisfied that he has met his burden.

C. *The CRA did not fail to observe the principles of procedural fairness*

[28] Although he did not argue this point before me, Mr. Maltais argues in his Notice of Application that the April 16 decisions [TRANSLATION] "made no reference to the existence of a right of review" and that [TRANSLATION] "at no time was [he] given the opportunity to discuss [the] decision made, no information was requested of him, and no request based on any analysis was made of him".

[29] I do not believe that the CRA failed to observe the principles of procedural fairness. First, the letters of April 16, 2021, clearly mention a right of review, stating that if Mr. Maltais disagreed with the outcome of the second review, he could [TRANSLATION] "apply to the Federal Court for judicial review", a right that Mr. Maltais availed himself of and which is the subject of these judicial reviews. Second, the ultimate question to be asked is whether Mr. Maltais was heard and had the opportunity to know the case to meet (*Fortier* at paras 15–16). I am of the view that, unlike the situation in *Fortier*, Mr. Maltais was given an opportunity to address the CRA's concerns about his ineligibility for the CERB and the CRB. In *Fortier*, the applicant was

not given an opportunity to explain to the officer conducting the second eligibility review after the officer contacted his employer to obtain the reason for the termination of his employment contract. In this case, Mr. Maltais spoke with the CRA officer who issued the December 15, 2020, decisions on several occasions, the CRA officer asking him to demonstrate that he had received at least \$5,000 from his company in 2019 and asking questions about his employment status. Mr. Maltais was also given the opportunity to provide evidence to demonstrate that he met the eligibility requirements. The officer conducting the second review of his applications did not seek any outside evidence to which Mr. Maltais did not have an opportunity to respond.

VII. Conclusion

[30] I dismiss the applications.

**JUDGMENT in T-835-21 and T-845-21**

**THE COURT orders** that the applications for judicial review are dismissed.

\_\_\_\_\_  
"Peter G. Pamel"

Judge

Certified true translation  
Johanna Kratz

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

**DOCKETS:** T-835-21 AND T-845-21

**STYLE OF CAUSE:** NICK MALTAIS v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HEARD VIA VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 21, 2022

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** JUNE 3, 2022

**APPEARANCES:**

Nick Maltais

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Emmanuel Jilwan

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Montréal, Quebec

FOR THE RESPONDENT