

Federal Court



Cour fédérale

**Date: 20230105**

**Docket: T-1652-22**

**Citation: 2023 FC 24**

**Ottawa, Ontario, January 5, 2023**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**JUDY SJOGREN**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Sjogren applied for and obtained the Canada Recovery Benefit [CRB] and the Canada Recovery Sickness Benefit [CRSB]. However, an officer of the Canada Revenue Agency [CRA] later determined that she was not eligible for these benefits and had to repay the amounts received, because the documents she provided were insufficient to establish that she had earned at least \$5,000 in self-employment income in the twelve months before her application. She now seeks judicial review of this decision.

[2] I am dismissing Ms. Sjogren’s application. The officer reasonably found that the documents provided by Ms. Sjogren were insufficient to establish her alleged income. Moreover, this Court’s earlier decision allowing Ms. Sjogren’s application for judicial review against a previous decision to the same effect did not require the officer to make a decision in her favour.

I. Background

A. *The CRB and CRSB*

[3] In March 2020, the COVID-19 pandemic forced provinces to implement lockdowns preventing many people from working. To alleviate the economic impacts of the COVID-19 pandemic, Parliament enacted the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [the Act]. The CRB is aimed at persons who were not employed or endured a reduction in their income “for reasons related to COVID-19.” The CRSB is aimed at persons who were unable to work because they contracted COVID-19 or were asked to isolate because of COVID-19.

[4] Sections 3 and 10 of the Act, respectively, set forth the conditions to become eligible to the CRB or CRSB. Only one of them is at issue in this case, and it is common to both benefits. Pursuant to paragraphs 3(1)(d) and (e) and 10(1)(d), (e) and (e.1), an applicant must have had a total income of at least \$5,000 from certain sources, which include “self-employment,” for a calendar year or a 12-month period preceding the application.

B. *Ms. Sjogren's Application for the CRB and CRSB*

[5] Ms. Sjogren lives in Northern Saskatchewan where she worked as an emergency room nurse for several years before obtaining employment in 2007 as an X-ray and laboratory technician. In May of 2009, she stopped working, allegedly because of a spinal injury. Ms. Sjogren's claim for disability benefits was ultimately denied by the Federal Court of Appeal: *Sjogren v Canada (Attorney General)*, 2019 FCA 157. Therefore, Ms. Sjogren neither receives disability benefits nor employment income.

[6] Since 2019, Ms. Sjogren has been making various drawings and paintings with pencils, charcoal and paint. She started to advertise her artwork on Facebook and managed to sell some in December 2020. She states that she sold enough paintings or drawings to earn \$5,225. She received all of these earnings in cash payments, which she did not deposit in a bank.

[7] In March 2021, Ms. Sjogren applied for the CRB. On July 28, 2021, a benefits compliance officer decided that Ms. Sjogren was not eligible to receive the CRB because she had not proved that she had earned at least \$5,000 in eligible income in the twelve months before applying. Ms. Sjogren asked for a second review and on January 10, 2022, she was again found inadmissible.

[8] Ms. Sjogren applied for judicial review of the January 10, 2022 decision. My colleague Justice Angela Furlanetto granted the application: *Sjogren v Canada (Attorney General)*, 2022 FC 951. The matter was remitted to the CRA for redetermination.

[9] At this time, Ms. Sjogren also submitted an application for the CRSB. Therefore, on redetermination of her CRB application, the officer also determined her eligibility for the CRSB. In both of these matters, the officer found that Ms. Sjogren had not provided sufficient documentation to prove that she had earned self-employment income from selling her art.

[10] The officer considered all the evidence that the previous officers had before them, which includes six handwritten receipts for the sale of her art, for a price totalling \$5,525, another handwritten receipt for the purchase of artistic supplies for \$300, and her 2020 notice of assessment, which shows that she declared \$5,225 in self-employment income. Ms. Sjogren also submitted screenshots of her Facebook page on which she advertised her paintings and an affidavit in which one of her friends, Ms. Fotheringham, attests to buying one of her paintings.

[11] In June 2022, Ms. Sjogren filed COVID-19 tests and a letter from the Saskatchewan Health Authority attesting to the fact that she had caught COVID-19 from March 20 to April 10, 2022.

[12] In July 2022, the officer called Ms. Sjogren to discuss her file and to ask her some questions about her declared income. During this call, the Ms. Sjogren refused to answer any questions and directed the officer to send any questions he might have in writing to Ms. Nicolls, who was counsel for the Attorney General in the matter before Justice Furlanetto and in the present matter.

[13] In an email dated July 12, 2022, Ms. Nicolls informed Ms. Sjogren that the officer needed further proof of her income in order to process her application. She suggested that Ms. Sjogren provide the officer with the contact information of some of her customers so the officer could verify the information contained on the hand-written receipts she had already submitted. Ms. Sjogren replied that none of her customers wished to talk to the CRA. She attached a picture of a “happy customer” and stated that she had no further documents to submit to the officer.

[14] In his decision rendered on July 22, 2022, the officer found that Ms. Sjogren did not provide sufficient evidence to the effect that she had earned at least \$5,000 in self-employment income in the twelve months before applying for the CRB or CRSB. In reaching this decision, the officer noted that Ms. Sjogren had never declared any business or other income until her 2020 tax return. The only written evidence of the sale of artwork is handwritten receipts that are all dated December 2020. Further, the officer notes that Ms. Sjogren was unable to provide any other evidence of her income such as a ledger, e-transfers, copies of cashed cheques, banking slips, credit card statements to show expenses, receipts from stores for artistic materials, letters from clients detailing the sale of the art. Ultimately, the officer found the evidence insufficient to demonstrate that Ms. Sjogren earned more than \$5,000 from self-employment.

[15] Ms. Sjogren now seeks judicial review of this decision.

## II. Analysis

### A. *Relevant Legislation*

[16] I earlier alluded to sections 3 and 10 of the Act, which set out the eligibility conditions for the CRB and the CRSB, respectively. Sections 5 and 12 provide that applicants must “attest that they meet each of the eligibility conditions.” Thus, in appropriate cases, the CRB and CRSB may be paid on the basis of an applicant’s attestation. Nonetheless, the Minister is entitled to conduct additional inquiries into eligibility. In this regard, sections 6 and 13 require applicants to “provide the Minister with any information that the Minister may require in respect of the application.”

[17] The CRA has issued guidelines, entitled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [the Guidelines], which set out the information that may be required of an applicant in various categories of circumstances.

[18] According to the Guidelines, if the applicant did not report employment or self-employment income of at least \$5,000 on their 2019 tax return, the officer must require further proof. For self-employment income, the Guidelines list the following documents as acceptable proof:

- 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
- Documentation showing income is earned from carrying on a “trade or business” as a sole proprietor, an independent contractor, or some form of partnership
- Contracts
- A list of expenses to support the net result of earnings
- Proof of advertising
- Any other documentation that will substantiate \$5,000.00 in self employment income

[19] While they are not legally binding, the Guidelines “are useful in indicating what constitutes a reasonable interpretation” of sections 6 and 13 of the Act: *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 32, [2015] 3 SCR 909; *Crook v Canada (Attorney General)*, 2022 FC 1670 at paragraph 16 [*Crook*]; see also *Aryan v Canada (Attorney General)*, 2022 FC 139 at paragraph 43; *Walker v Canada (Attorney General)*, 2022 FC 381 at paragraph 35.

B. *Role of the Court on Judicial Review*

[20] Parliament decided that there would be no right of appeal of the Minister’s decision to grant or refuse the CRB or CRSB. In contrast, the legislation creating other benefits often provides for a right of appeal. For example, decisions regarding employment insurance may be appealed to the Social Security Tribunal. Such an appeal allows for a full review of questions of fact and law. The record does not disclose why Parliament failed to provide a similar right of appeal with respect to the CRB and CRSB.

[21] This means that the only recourse afforded to a person who is not satisfied with a decision made by the Minister regarding the CRB or CRSB is to apply for judicial review to this Court. Judicial review, however, is different from an appeal. On judicial review, the Court is not stepping into the shoes of the administrative decision maker, in this case the Minister. The Court's only role is to ensure that the Minister made a decision according to the law. Where reasonable people may disagree about an issue, the Court will not impose its view of the matter. This is because Parliament has entrusted the decision-making power to the Minister, not the Court. These principles, which have been developed over the last 50 years, were synthesized by the Supreme Court of Canada in the seminal case of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*].

[22] One consequence of this framework must be emphasized. Where the Court finds a decision unreasonable, it usually does not substitute its own view of the matter: *Vavilov*, at paragraphs 139–142. Rather, the usual remedy is to remit the matter to the initial decision maker for reconsideration. This feature of judicial review may be surprising to those who do not have legal training and who expect the Court to be able to settle their grievances. However, we must adhere to the *Vavilov* framework and recognize that Parliament entrusted the Minister, not this Court, with the power to decide a person's eligibility for the CRB and CRSB.

### C. *The Impact of Justice Furlanetto's Judgment*

[23] Ms. Sjogren's main argument is based on Justice Furlanetto's judgment. It is therefore necessary to briefly review Justice Furlanetto's findings and the decision under review in that case.



[24] As explained above, Ms. Sjogren alleges that she received her earnings in cash payments that were not deposited in a bank. She clearly stated this fact to the benefits compliance officer. Nonetheless, the decision maker reviewing Ms. Sjogren's file found that she was not eligible for the CRB because she had not produced a bank statement as proof of her self-employment income.

[25] After reviewing the Guidelines, Justice Furlanetto found that there was no absolute requirement for CRB applicants to submit bank statements. The officer's singular focus on bank statements was therefore unreasonable:

Imposing such a mandatory requirement for bank statements effectively precludes the Applicant from obtaining CRB if she does not deposit the cash received in the bank and does not appear to recognize the varied information that could be provided as proof of income per the CRB Guidelines.

[26] However, Justice Furlanetto declined to decide herself on Ms. Sjogren's eligibility, because she was "unable to conclude that an Officer would inevitably find that the Applicant was eligible for CRB" (at paragraph 34). Rather, she remitted the matter to a different officer to be redetermined.

[27] Ms. Sjogren's argues that upon "redetermination," an officer cannot reconsider the file, but must rather make the decision that the Court explicitly or implicitly considered correct. This argument is premised on a supposed distinction between "redetermination" and "reconsideration."

[28] With respect, I cannot follow Ms. Sjogren. Justice Furlanetto’s use of the word “redetermination” simply mirrors the wording of paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7, which states that on judicial review the Court has the power to “refer [a decision] back for determination.” The remedy she ordered is the one that the Supreme Court said in *Vavilov* would be appropriate in most cases. While Justice Furlanetto used the word “redetermination” and the Supreme Court referred to “reconsideration,” the two words are synonyms and mean the same thing. In *Vavilov*, at paragraph 141, the Supreme Court recognized that a decision maker, when redetermining a file, “may arrive at the same, or a different, outcome.” Therefore, the officer was entitled to review Ms. Sjogren’s file and arrive at the same conclusion.

[29] Irrespective of the choice of words, it is clear from her judgment that Justice Furlanetto did not prescribe an outcome upon redetermination. Her decision focused on the officer’s reasons. It was the reasoning and not the outcome that she found to be unreasonable. Justice Furlanetto could not have mandated an outcome since she explicitly stated that she was “unable to conclude that an Officer would inevitably find that the Applicant was eligible for CRB” (at paragraph 34).

#### D. *The Officer’s Treatment of the Evidence*

[30] Ms. Sjogren also submits that the officer’s decision was unreasonable because it was based on erroneous findings of fact. According to Ms. Sjogren, the evidentiary record before the officer was sufficient to establish that she had earned more than \$5,000 of self-employment income and therefore was eligible for the CRB and the CRSB.

[31] In *Vavilov*, at paragraph 125, the Supreme Court reminded reviewing courts that it is only in exceptional circumstances that they may overturn the factual conclusions of a decision maker. Further, the officer is presumed to have taken into account all of the evidence before him: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 16, [2011] 3 SCR 708. For this reason, it is important to read the reasons in light of the evidentiary record before the officer: *Vavilov*, at paragraph 94.

[32] Ms. Sjögren's challenge to the decision can be divided into two sub-issues: first, whether the officer could require her to provide documentation and second, whether the officer's assessment of the documents she submitted was reasonable.

(1) Requiring Documentary Evidence

[33] The Guidelines state that officers must require documentary evidence where an applicant did not report at least \$5,000 in employment or self-employment income in their 2019 income tax return. They also instruct officers as follows: "Using your judgement, experience and expertise, decide if proof is required."

[34] This is consistent with the self-reporting principle underlying our tax system. While taxpayers must declare their income to the CRA, they must also keep "records and books of account" sufficient to enable the determination of the taxes payable: *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 230(1). In tax litigation, courts may find that a taxpayer's testimony is sufficient, but they may also, depending on the circumstances, require written evidence. The

Federal Court of Appeal explained this principle in *House v Canada*, 2011 FCA 234 at paragraph 72:

There is, in my respectful view, no principle to the effect that oral evidence must necessarily be supported by source documents. Whether documents are required to establish a point will depend on the particular circumstances of the case. However, whether documents are required or not, a judge must nonetheless assess the oral evidence and determine whether it is credible. The requirement for documents, or not, will often turn on such an assessment.

[35] In this case, the officer noted that Ms. Sjogren “does not have any history of reporting business income or other income on their tax return until 2020.” Requiring documentary evidence in these circumstances was consistent with the Guidelines, which say that such evidence is needed when no self-employment income was reported in 2019. The officer’s decision in this respect was reasonable.

(2) Assessing Documentary Evidence

[36] This, however, does not end the matter. While the officer could reasonably require documentary evidence, his assessment of the documents provided by Ms. Sjogren is a separate issue.

[37] I begin the analysis by summarizing certain principles that can be inferred from recent decisions of this Court regarding the CRB and CRSB.

[38] First, small businesses are not forbidden from taking cash payments: *Crook*, at paragraph 20. Such payments need not be deposited in a bank account. However, taxpayers who resort to

cash transactions must keep sufficient records if they want to rely on such income to qualify for the CRB or CRSB: *Cantin c Canada (Procureur général)*, 2022 CF 939 at paragraph 15; *Mathelier-Jeanty c Canada (Procureur général)*, 2022 CF 1188 at paragraph 24; *Desautels c Canada (Procureur général)*, 2022 CF 1774 at paragraph 53 [*Desautels*].

[39] Second, a notice of assessment is not determinative of income for the purposes of eligibility to the CRB or CRSB: *Aryan v Canada (Attorney General)*, 2022 FC 139 at paragraph 35; *Konlambigue c Canada (Procureur général)*, 2022 CF 1781 at paragraph 22.

[40] Third, handwritten receipts may not be sufficient evidence of a payment: *He c Canada (Procureur général)*, 2022 CF 1503 at paragraph 29; *Desautels*, at paragraph 47.

[41] In this case, the officer gave the following reasons for finding Ms. Sjogren's documents insufficient:

The TP [Ms. Sjogren] stated, in their own words that they are not able to provide any new documentation, other than what they have already provided; therefore, the TP is not able to provide: Ledger, e-transfers, copies of cashed cheques, banking slips, credit card statements to show expenses, receipts from stores for artistic materials, letters from clients detailing the sale of the art. All of these documents are used to show that someone is actively running a business. These documents are used to track the money that a business uses to purchase materials to create whatever product the business will sell. These documents also track the sale of the products whether paid in cash or in other fashions: e-transfers, cheques, credit cards, bank slips, copies of cheques. This TP is not able to provide any of these documents to prove that this money was earned or spent in the process of running a business.

[42] The officer obviously did not accept that the handwritten receipts provided by Ms. Sjogren were sufficient evidence of her income. This is consistent with the principles outlined above. The officer explains what kind of evidence would have been sufficient.

[43] It is for the officer to assess the sufficiency of the evidence. This is an integral part of his fact-finding mission. On judicial review, courts do not intervene in this assessment, unless there is a fundamental misapprehension of the evidence: *Vavilov*, at paragraph 126. While I understand that Ms. Sjogren disagrees with the outcome, I have not been persuaded that the officer fundamentally misapprehended the evidence.

[44] One particular aspect of the officer's reasons must be emphasized. He noted that Ms. Sjogren failed to provide "letters from clients detailing the sale of the art." A look at the record helps understand the significance of this. After Justice Furlanetto rendered her judgment, Ms. Sjogren had email communications with counsel for the Attorney General. On July 12, 2022, counsel wrote:

I understand from my client that in order to reconsider your eligibility to the CRB, the CRA kindly requests you provide additional documentation to support your reported self-employment income in 2020. This documentation could include, for example, the contact information of the individuals who purchased your artwork that year.

[45] On July 15, however, Ms. Sjogren replied that she had contacted her former clients and that "none want anything to do with calls from Revenue Canada." That information was passed on to the officer. In these circumstances, it was reasonable for the officer to rely on the lack of

confirmation from Ms. Sjogren's clients for his finding that she had not proved her self-employment income.

[46] To be sure, the record contains an affidavit sworn by a friend of Ms. Sjogren, who states that she purchased her art in 2020. The officer is presumed to have considered this evidence, even though he does not specifically mention it in his brief decision. Moreover, according to the handwritten receipt, the price of the piece sold to that friend was \$1,525. The officer could reasonably find that the evidence of the friend was insufficient to prove \$5,000 in self-employment income.

[47] At the hearing of this application, Ms. Sjogren argued that it is unusual to require businesses to submit contact information for their clients. That may be so. However, this is because businesses usually keep sufficient records to prove their income. It is only because Ms. Sjogren was unable to provide such records that the CRA suggested obtaining evidence from the clients as an alternative. There was nothing untoward in this request.

[48] I also wish to underline that the officer did not make the same error that led Justice Furlanetto to find the first decision unreasonable. It is clear that the officer did not focus on a single category of documents (bank statements) without which Ms. Sjogren could not establish her eligibility. Quite the opposite, the officer was prepared to consider other kinds of evidence, but Ms. Sjogren failed to provide any.

[49] Finally, at the hearing Ms. Sjogren argued that the real reason she was denied the CRB and the CRSB was her inability to earn an income because of her presumed invalidity. It is unfortunate that Ms. Sjogren feels this way. However, she was unable to direct the Court to any evidence that this was one of the reasons for the officer's decision. In fact, the officer does not raise Ms. Sjogren's presumed invalidity as a reason for doubting her declared income in either his notes or in the decision letter sent to her.

E. *Procedural Fairness*

[50] Ms. Sjogren also raised a procedural fairness argument. According to her, the officer said on the phone that he was instructed to find her ineligible.

[51] There is no evidence in the file that the officer was not the decision maker. The officer's notes are extensive. He summarized the evidence before him, he reviewed and commented on the notes the previous officers took during their interactions with Ms. Sjogren. He provided a set of internally coherent reasons as to why he found her ineligible. Therefore, there is no indication in the officer's notes that he received instructions nor that he did not independently reach the decision he rendered.

[52] I would add that the Minister of Employment and Social Development is the decision maker identified in the Act. Therefore, it was entirely open to the officer to consult other members of his team to receive advice on how to weigh the evidence Ms. Sjogren provided. Consultation with other benefits compliance officers who also represent the Minister does not constitute a breach of procedural fairness.



F. *Other Remedies*

[53] Ms. Sjogren also claims aggravated damages and costs with respect to the proceeding before Justice Furlanetto. As she has failed to show that the officer's decision is unreasonable, it follows that these claims must be dismissed. In any event, damages cannot be obtained on an application for judicial review: *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 at paragraph 26, [2010] 3 SCR 585; *Brake v Canada (Attorney General)*, 2019 FCA 274 at paragraph 26. Moreover, Justice Furlanetto dealt with the issue of costs in the proceeding before her. Absent a motion pursuant to rule 399 of the *Federal Courts Rules*, SOR/98-106, I do not have jurisdiction to change or vary her judgment.

III. Disposition

[54] As Ms. Sjogren has failed to show that the officer's decision was unreasonable, her application for judicial review will be dismissed.

[55] The Attorney General does not seek costs and none will be awarded.

**JUDGMENT in T-1652-22**

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

1. The application for judicial review is dismissed.
2. No costs are awarded.

"Sébastien Grammond"

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Judge

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

**DOCKET:** T-1652-22

**STYLE OF CAUSE:** JUDY SJOGREN v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 28, 2022

**JUDGMENT AND REASONS:** GRAMMOND J.

**DATED:** JANUARY 5, 2023

**APPEARANCES:**

Judy Sjogren

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Melissa Nicolls

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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