

Federal Court



Cour fédérale

**Date: 20230330**

**Docket: T-1746-21**

**Citation: 2023 FC 449**

**Vancouver, British Columbia, March 30, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**BRIGETTE DEMERAIS**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Brigitte Demerais (“Ms. Demerais”), is challenging a decision made by the Canada Revenue Agency [CRA] that found her ineligible for the Canada Recovery Benefit [CRB]. The Respondent admits that the decision was procedurally unfair and asks the Court to remit the matter for reconsideration by a different decision maker at the CRA. The Respondent sought to settle the matter on this basis prior to the judicial review hearing. Ms. Demerais did not accept this offer of settlement. Ms. Demerais does not want the matter remitted. Instead, she

requests that this Court bar the CRA from requiring her to repay the CRB amounts she has received and to award costs against the Respondent.

[2] I grant the application for judicial review but cannot provide the remedy Ms. Demerais is seeking. As I explain below, the matter, namely Ms. Demerais' eligibility for the CRB, has to be sent back to be redetermined by a different decision maker at the CRA.

## II. Issue

[3] The sole issue in dispute between the parties is the nature of the remedy I can order, having agreed that the decision was procedurally unfair.

[4] I note that Ms. Demerais sought remedies in relation to two other decisions made by the CRA: entitlement to Canada Emergency Student Benefit [CESB] and interest relief. Neither of these issues is properly before me. The only decision under review in this judicial review is the CRA's determination that Ms. Demerais was not eligible for the CRB.

## III. Background

[5] The CRB provided direct financial support to eligible people residing in Canada and affected by the COVID-19 pandemic for any two-week period between September 27, 2020, and October 23, 2021. Residents had to meet the eligibility requirements for each of the two-week periods. The eligibility requirement at issue in this judicial review is the Income Reduction Requirement set out in paragraph 3(1)(f) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s

3(1)(f). It requires an applicant to demonstrate that during the two-week period, for reasons related to COVID-19, they were not employed or self-employed or they had a reduction of at least 50 per cent in their average weekly income relative to their average income for 2019, 2020, or in the 12-month period preceding the application date.

[6] Ms. Demerais applied for and received CRB for two periods: December 6-10, 2020 and December 20, 2020, to January 2, 2021. She received \$900 for each period, for a total of \$1,800.

[7] In January 2021, Ms. Demerais attempted to apply for another CRB period but was told to contact the CRA. She spoke to a CRA agent in January 2021 who said that she was ineligible for the CRB because she had only worked part-time in October 2020 and left her job for reasons unrelated to COVID-19. This CRA agent requested income validation documents. On March 2, 2021, the CRA officer found that Ms. Demerais was ineligible for CRB because she had not demonstrated: i) that she had met the minimum income criterion; or ii) that she had stopped working or had her hours reduced because of reasons related to the COVID-19 pandemic.

[8] Ms. Demerais challenged this decision, requesting a second review. In support of her request, Ms. Demerais provided a 2019 T4 employment income slip and bank account statements for January, February, March, April, May, and June 2019. The CRA decision maker tried to contact Ms. Demerais on two occasions but could not reach her. On the second attempt, the person who answered the phone told the CRA decision maker that this was not Ms. Demerais' phone number. The CRA decision maker left a note in the database requesting that CRA officers update the contact information for a subsequent call. The CRA decision maker did not attempt to

call Ms. Demerais again. The CRA made a final decision finding Ms. Demerais ineligible because the decision maker had not been able to reach Ms. Demerais to confirm her eligibility. Both parties agree that this was unfair and that Ms. Demerais should have had an opportunity to explain her eligibility.

#### IV. Analysis

[9] Ms. Demerais asks this Court to bar the CRA from requiring her to repay the CRB amounts she has received. In effect, Ms. Demerais asks this Court to find that she was eligible for the CRB payments she has received. The Court's power of indirect substitution is exceptional and only used where sending the case back for redetermination would be pointless, or where there is only one possible outcome (*Canada (Minister of Citizenship and Immigration) v Tennant*, 2019 FCA 206 at paras 79-82; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 142). Neither of these circumstances apply here.

[10] In oral submissions, Ms. Demerais explained that her communications with CRA officers and the CRA guidelines themselves create confusion as to the eligibility requirements. None of her submissions on this point were before the CRA decision maker. Ms. Demerais can provide these submissions and/or present other submissions and evidence to demonstrate her eligibility on redetermination by a different decision maker.

[11] Given that the Respondent took a conciliatory approach to the matter, conceding that the CRA erred, and provided an early offer to settle the matter without the need for a hearing, and

considering the factors in awarding costs in Rule 400(3) of the *Federal Courts Rules*, SOR/98-106, I do not find that this is an appropriate case to award costs.

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

1. The application for judicial review is allowed;
2. The matter is referred back for redetermination by a different decision maker;
3. The Applicant will be given an opportunity to make further submissions and provide additional documentation on redetermination; and
4. No costs are awarded to either party.

"Lobat Sadrehashemi"

---

Judge

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

**DOCKET:** T-1746-21

**STYLE OF CAUSE:** BRIGETTE DEMERAIS v THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 27, 2022

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** MARCH 30, 2023

**APPEARANCES:**

SELF-REPRESENTED	FOR THE APPLICANT
Melissa Nicolls	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

SELF-REPRESENTED	FOR THE APPLICANT
Department of Justice Canada Saskatoon, Saskatchewan	FOR THE RESPONDENT