

Federal Court



Cour fédérale

**Date: 20230425**

**Docket: T-350-22**

**Citation: 2023 FC 600**

**Ottawa, Ontario, April 25, 2023**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**RICHARD NADLER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Richard Nadler has brought an Application for Judicial Review of a decision by the Canadian Revenue Agency [CRA] Officer to deny him the Canada Recovery Benefit [CRB] for seven two-week periods from September 27, 2020, to January 2, 2021. For the reasons outlined below, the Application is dismissed.

I. Background

[2] In April 2021, Mr. Nadler applied for and received CRB for periods 10 to 14. On April 27, 2021, the CRA suspended Mr. Nadler's access to apply for CRB to verify his eligibility [First Review]. From May to August 2021, Mr. Nadler applied for CRB for periods 15 to 22, but these applications were pending the results of the First Review.

[3] On September 27, 2021, CRA informed Mr. Nadler of the results of the First Review: he was not eligible for CRB, because he did not earn at least \$5000 (before taxes) of employment or net self-employment income in 2019, 2020 or in the 12 months before the date of his first application.

[4] On October 23, 2021, Mr. Nadler requested a Second Review. Throughout the autumn of 2021, Mr. Nadler had a few calls with CRA (i) to discuss his eligibility and submit further supporting documents; and (ii) to file CRB applications for periods 23 to 28.

[5] On January 5, 2022, Mr. Nadler received a letter informing him of the Second Review decision. The letter read in part "[w]e have accepted your application based on the information you provided to support your CRB eligibility. However, if for any reason you are later determined not eligible for any period, you will be required to repay that amount." The letter did not specify the periods for which Mr. Nadler was eligible. He subsequently called the Second Review Officer [Officer] to apply for periods 1 to 7.

[6] On January 28, 2022, Mr. Nadler received a second letter from the Officer, informing him of the decision to refuse his January 5, 2022 application for CRB for periods 1 to 7 [Decision], because he did not apply for these periods within the 60-day timeframe set out by subsection 4(2) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2:

Limitation	Restriction
<b>4(2)</b> No application is permitted to be made on any day that is more than 60 days after the end of the two-week period to which the benefit relates.	<b>4(2)</b> Aucune demande ne peut être présentée plus de soixante jours après la fin de la période de deux semaines à laquelle la prestation se rapporte.

[7] The application deadline for periods 1 to 7 are as follows:

Period	Application deadline
Period 1: Sept 27, 2020 – Oct 10, 2020	December 10, 2020
Period 2: Oct 11, 2020 – Oct 24, 2020	December 24, 2020
Period 3: Oct 25, 2020 – Nov 7, 2020	January 7, 2021
Period 4: Nov 8, 2020 – Nov 21, 2020	January 21, 2021
Period 5: Nov 22, 2020 – Dec 5, 2020	February 5, 2021
Period 6: Dec 6, 2020 – Dec 19, 2020	February 19, 2021
Period 7: Dec 20, 2020 – Jan 2, 2021	March 2, 2021

## II. Judicial Review at the Federal Court

[8] There were challenges in holding this judicial review. Originally, the hearing was scheduled for November 16, 2022. A joint request for an adjournment was submitted on behalf of the Parties by Mr. Nadler's former counsel on November 10, 2022, and granted by the Court. The next hearing was set for February 8, 2023.

[9] On January 26, 2023, upon Motion from Mr. Nadler's former counsel, this Court ordered that the latter was authorized to be removed as the solicitor of record for Mr. Nadler.

[10] On February 1, 2023, Mr. Nadler requested an adjournment of the hearing that had previously been adjourned until February 8, 2023, in order to find new counsel. The hearing was adjourned once again, until March 30, 2023. In accepting this second adjournment request, I provided the following Direction:

The informal request for adjournment in the communications received from Mr. Nadler, and corresponding consent from counsel for the Respondent received by the Court on February 3rd will be accepted. The matter is set down on a peremptory basis (meaning with no further adjournments) on Thursday March 30 at 10 a.m. at the Montreal Courthouse at 30 McGill Avenue. For Mr. Nadler, given the history of this litigation, this means that he must attend at Court or via videoconference if the in-person venue creates any further issues. He may also appoint counsel to appear for him. If he and/or counsel cannot attend, then I will render a decision based on the existing submissions and record. [Court Direction dated February 3, 2023]

[11] Despite this Direction, Mr. Nadler requested yet another adjournment on March 27, 2023, citing amongst many reasons in a single-spaced 9-page letter, the difficulty to retain new counsel, as well as the inability to attend the hearing due to his poor health. Through the Registry Officer, I reminded Mr. Nadler of the Court's February 3, 2023 Direction, in which I indicated that the matter was set down on a peremptory basis. Mr. Nadler ultimately agreed to appear at a virtual hearing on March 30, 2022, instead of attending at the hearing in-person.

[12] The Court encountered further difficulties on March 30 at the time that the hearing was to commence. At first, Mr. Nadler was unable to connect to the Zoom platform for the hearing. After over an hour of various failed efforts to connect with Mr. Nadler over the phone and electronically, the Court and the Department of Justice [DOJ] were eventually able to hear

Mr. Nadler but not see him, and he, in turn, was unable to hear or see the participants at the Zoom hearing (i.e., DOJ and the Court).

[13] Therefore, I advised DOJ – the sole party that I was able to communicate with – that for reasons of procedural fairness, and in keeping with my February 3, 2023 Direction, I would not hear any legal submissions. However, what I did communicate was simply an observation that the Decision contained an inconsistency that had not been addressed by either Party, namely that while Mr. Nadler had filed for periods 1-7 late, which DOJ was now reclaiming, he had also applied for periods 8 and 9 late, but DOJ had not reclaimed that amount (see paragraphs 22-24 of these Reasons).

[14] DOJ commented that they too had noticed this error, but did not raise it in their submissions, but nonetheless, commented that should the matter be sent back on account of this inconsistency, their client CRA had advised that it would simply correct the error and claim repayment for periods 8 and 9 as well, leaving Mr. Nadler in a worse position.

[15] I asked at the close of the March 30 hearing that the Registry Officer communicate a Direction to Mr. Nadler, outlining three options, namely that (i) the Parties attempt to work out a settlement between themselves online; or (ii) the Parties attempt to work out a settlement between themselves in the Courthouse (and that I would be willing to attend either (i) or (ii) to assist and explain the situation to Mr. Nadler); or (iii) I could simply issue my decision based on the written record.

[16] The Parties responded to the Registry Officer that they would attempt to come to a settlement. The Parties then advised the Court on April 3, 2023 that they had agreed to settle the case.

[17] However, upon failing to receive a Notice of Discontinuance, and after requesting an update from the Registry Officer, I was advised that the settlement appeared to be in jeopardy. Indeed, by letter dated April 18, 2023, DOJ confirmed the Parties' failure to settle the matter. The DOJ letter further reiterated its original position, asking the Court not to set aside the Decision and not to return the matter for redetermination. DOJ stated that doing so may cause further prejudice to Mr. Nadler given that it would leave him in a worse position than he would be should the matter be returned for readjudication (see above). Further, they noted that returning the matter would not serve any practical end, relying on *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at paras 44-45 [*Stemijon*].

### III. Analysis

[18] The only issue in this Application for Judicial Review is to determine whether the Officer's Decision denying Mr. Nadler's request for CRB for periods 1-7 is reasonable (*Aryan v Canada (Attorney General)*, 2022 139 at para 16 [*Aryan*]). In *Canada (Minister of Citizenship and Immigration) Vavilov*, 2019 SCC 65 at paragraphs 102 and 105 [*Vavilov*], the Supreme Court of Canada explains that reasonableness review assesses whether an administrative decision demonstrates a reasoning that is rational and logical and whether it is "justified in relation to the constellation of law and facts that are relevant to the decision".

[19] Mr. Nadler argues that the Officer's Decision was unreasonable for periods 1-7 because: (i) he had tried to contact CRA in November 2020 and February 2021 (within the 60-day application timeframe) via a payphone to file an application for CRB, but never received a follow-up from CRA; (ii) CRA had already determined that he was eligible to receive CRB after the First Review since he had earned \$5000 of net income in 2019, 2020 or in the last 12 months prior to his first application for CRB; and (iii) the January 28, 2022 letter, which stated he was not eligible to receive CRB for periods 1 to 7, contradicted the January 5, 2022 letter, which stated he was eligible to receive CRB.

[20] Mr. Nadler's first argument has no merit, as CRA records show that the first call between him and CRA was on April 10, 2021, when he applied for CRB for periods 10 to 13. During this call, he did not apply for CRB for periods 1 to 7, nor did he inquire about his alleged November 2020 and February 2021 attempts to call CRA. It was reasonable for the Officer to conclude that the first time Mr. Nadler had contacted CRA was on April 10, 2021, after the 60-day application timeframe for periods 1 to 7.

[21] Second, CRA's finding that Mr. Nadler had earned \$5000 of net income in 2019, 2020 or in the last 12 months following the First Review does not preclude the Officer from concluding that Mr. Nadler's application for periods 1 to 7 was made after the 60-day application timeframe had ended. It is not unreasonable for the Officer to have refused Mr. Nadler's application for CRB based on a different eligibility criteria, after having first confirmed his income (*Lussier v Canada (Attorney General)*, 2022 FC 935 at para 20).

[22] Third, while I disagree with Mr. Nadler’s argument that the January 28, 2022 letter contradicted the January 5, 2022 letter, indicating that the CRA had unreasonably “changed their mind” about his eligibility, there is a contradiction in the Officer’s reasons, vis-à-vis his late application for (i) periods 1-7 and (ii) periods 8-9. With respect to the latter (item (ii)), both the Eligibility Overview Table and the Officer’s notes from a December 31, 2021 telephone conversation with Mr. Nadler indicate that he had applied for periods 8 and 9, from January 3, 2021 to January 30, 2021, during that call. The application deadlines for these periods were as follows:

Period	Application deadline
Period 8: Jan 3, 2021 – Jan 16, 2021	March 16, 2021
Period 9: Jan 17, 2021 – Jan 30, 2021	March 30, 2021

[23] Accordingly, the Officer found that Mr. Nadler was eligible for CRB for periods 8 and 9, even though he applied for these periods more than nine months after the 60-day application deadlines. Thus, it is inconsistent and unreasonable for the Officer to have found Mr. Nadler eligible to receive CRB for periods 8 and 9, but ineligible for periods 1 to 7, even though he applied for all of these periods well after their respective 60-day deadlines.

[24] While I find that this particular, peripheral point of Decision to be unreasonable, setting the Decision aside and returning it for redetermination would serve no practical end. As held by the Federal Court of Appeal at paragraph 52 of *Stemijon*:

I accept that the normal remedy for an unreasonable decision is to set it aside and return the matter back to the decision-maker for redetermination. I also accept that this Court should be reluctant to wade into the merits of administrative decision-making. But there are cases, perhaps rare, where no practical end would be served by returning the matter back to the decision-maker. This is just such a case.



[25] In short, I find that the Decision was unreasonable only on a peripheral point – indeed one neither raised by Mr. Nadler nor DOJ in their memoranda of fact and law – regarding periods 8 and 9. However, the fact that these two periods were approved despite their late underlying application made by Mr. Nadler for both, does not render unreasonable the primary Decision made: on those seven periods challenged by him in this Judicial Review (periods 1-7), the Officer’s decision was entirely reasonable. Returning the matter for redetermination would not change this fact. It would be an exercise in futility (*Stemijon* at para 46), and would likely place him in a worse position.

#### IV. Costs

[26] DOJ requested costs in the amount of \$500. Considering that a peripheral portion of the Decision was unreasonable, and noting that Mr. Nadler did not bring his Application in an improper, vexatious or unnecessary manner (Rule 400(3)(k) of the *Federal Courts Rules*, SOR/98-106), as well as taking into account all Mr. Nadler’s circumstances, I exercise my discretion not to award costs.

#### V. Conclusion

[27] For the reasons outlined above, the Application for Judicial Review is dismissed, and no costs are awarded.

**JUDGMENT in file T-350-22**

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

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

"Alan S. Diner"

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Judge

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

**DOCKET:** T-350-22

**STYLE OF CAUSE:** RICHARD NADLER v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 30, 2023

**JUDGMENT AND REASONS:** DINER J.

**DATED:** APRIL 25, 2023

**APPEARANCES:**

Richard Nadler ON HIS OWN BEHALF

Mr. Félix Desbiens-Gravel FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

None FOR THE APPLICANT

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