

Federal Court



Cour fédérale

Date: 20230524

Docket: T-667-22

Citation: 2023 FC 723

St. John's, Newfoundland and Labrador, May 24, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

JACK SOUCY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND JUDGMENT

I. INTRODUCTION

[1] Mr. Jack Soucy (the “Applicant”) seeks judicial review of a decision made on February 28, 2022, by Ms. Donna Boivin, Manager, Canada Emergency Benefits Validation (the “Manager”), with the Canada Revenue Agency (the “CRA”). In the decision, the Manager determined that the Applicant was ineligible to receive benefits under the Canada Recovery

Benefit (the “CRB”) program, established by the *Canada Recovery Benefits Act*, S.C. 2020, c. 12 (the “Act”).

[2] The Applicant named the CRA as the “Respondent” in his Notice of Application. Pursuant to Rule 303 of the *Federal Courts Rules*, S.O.R./98-106 (the “Rules”), the Attorney General of Canada is the Respondent (the “Respondent”) in this application, and the style of cause is hereby amended accordingly.

II. BACKGROUND

[3] The evidence upon this application for judicial review consists of the Certified Tribunal Record (the “CTR”), the affidavit of the Applicant, and the affidavit of Ms. Virginia McLaughlin, a Benefits Validation Officer with the CRA.

[4] The Applicant swore his affidavit on April 28, 2022. He deposed that he is a self-employed house painter. He further deposed that he earned \$5,278.00 in 2019 and was paid either in cash or by e-transfer.

[5] Ms. McLaughlin was employed as a Benefits Validation Officer with the CRA in Sudbury at the time relevant to this application. In her affidavit affirmed on May 26, 2022, she described the CRB program and the process for validating an application for benefits.

[6] Ms. McLaughlin also deposed to her involvement with the Applicant in the course of validating his claim for the CRB benefits. She deposed to the preparation and retention of notes about the Applicant's claim for benefits.

[7] Upon an application, the Applicant received the CRB benefits for the period of September 27, 2020, up to January 16, 2021. Although he applied for the benefits for the period January 17, 2021, to October 23, 2021, no payments were made.

[8] The CRA undertook a validation review of the Applicant's eligibility for the CRB benefits. It gave the Applicant the opportunity to submit documents to show that he met the criteria of having earned a minimum income of \$5000.00 in 2019, 2020, or in the 12 months preceding his application for the benefits.

[9] On March 2, 2021, the CRA advised the Applicant by telephone to provide invoices, proof of payment, bank statements, letters, or other documents that would support his claimed income. On March 15, 2021, the Applicant provided letters from three clients, by facsimile, confirming that they paid him for painting work in 2019.

[10] By a voicemail left on May 28, 2021, an employee of the CRA asked the Applicant to provide his bank statements for 2019.

[11] On June 10, 2021, a CRA employee spoke with the Applicant on the telephone. Again, the Applicant was asked to provide invoices or bank statements to verify his claimed income.

[12] The Applicant did not submit any more documents, after sending in the three letters on March 15, 2021.

[13] Upon review of the documents provided, an employee of the CRA determined that the Applicant was not eligible for the benefits. In a letter dated July 19, 2021, the CRA advised as follows:

You did not meet the following criteria:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

[14] The Applicant was advised that he could seek a second review to be reviewable by an officer who did not participate in the initial review and decision.

[15] By letter dated August 16, 2021, the Applicant requested the second review. That review led to the negative decision that is the subject of this application for judicial review.

III. PRELIMINARY OBJECTION

[16] The Respondent objects to the inclusion of certain materials in the Applicant's affidavit filed in support of this application for judicial review, on the grounds that the material was not before the decision-maker. This material consists of affidavits from three customers for whom he provided painting services, invoices to those clients, and bank statements, covering the period from January 2, 2019, to April 20, 2020.

[17] The Respondent also objects to the inclusion of “CRB Guidelines from CRA Website” in the Applicant’s Application Record and submits that they should not be considered since these Guidelines were not before the decision-maker.

[18] Relying on the decision in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency* (2012), 428 N.R. 297 (Fed. CA.), the Respondent argues that, generally, an application for judicial review proceeds on the basis of the evidence that was before the decision-maker and nothing else.

[19] The Applicant submits that the “affidavits” were provided to “validate” the letters that he had already provided in response to the validation review.

[20] I largely agree with the position of the Respondent on this issue of the affidavits. I will consider the exhibit attached to the affidavit of Ms. Margot Soucy. The exhibit is a letter but the version of that letter as contained in the CTR, is illegible.

[21] I see no material difference between the versions of the Guidelines found in the CTR and the version included in the Applicant’s Application Record. I note that in the section dealing with validation of an application or benefits, the following guidance is provided:

We may ask you to provide the following items to validate your application. The CRA may verify the authenticity of any documents you provide:

[...]

If you were self-employed

- Invoices for services rendered that includes:

- the service date
- who the service was for
- the name of the individual or company
- Receipt of payment for the service or services provided (a statement of account or bill of sale showing a payment and the remaining balance owed)
- Documents showing income earned from a “trade or business” as a sole proprietor, an independent contractor, or a partnership
- Any other document that will confirm you earned \$5,000 in employment or self-employment income

IV. SUBMISSIONS

A. *The Applicant*

[22] The Applicant argues that the decision is unreasonable. He submits that there is no explanation for the request that he provide bank statements to support his claim for self-employment income. He argues that the Court found in *Sjogren v. Canada (Attorney General)*, 2022 FC 951, that the request to provide bank statements effectively precluded the applicant from obtaining the benefits if the income was not deposited in the bank and that this request did not recognize the different information that could be provided as proof of income pursuant to the CRB Guidelines.

[23] As well, the Applicant contends that the decision does not disclose a line of reasoning.

[24] The Applicant also submits that the process followed in the validation review was not reasonable.

B. *The Respondent*

[25] The Respondent submits that the facts in this case differ from those in *Sjogren, supra*. In this case, the Applicant was asked to provide bank statements. In *Sjogren, supra*, there was no such request but the absence of bank statements was cited as a reason for denying the benefits.

[26] The Respondent, relying on the decision in *Aryan v. Canada (Attorney General)*, 2022 FC 139, submits that the income tax assessment form provided by the Applicant is not “proof” that he earned the income he reported. He argues that there is no suggestion that the CRA misapprehended or ignored evidence, and that the decision is reasonable.

V. DISCUSSION AND DISPOSITION

[27] The first matter to be addressed is the standard of review.

[28] Issues of procedural fairness are reviewable upon the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[29] The decision of the Officer is reviewable on the standard of reasonableness, following the directions in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[30] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[31] The Act does not contain a purpose clause. However, its purpose can be inferred from its long title, that is “An Act establishing the Canada recovery benefit, the Canada recovery sickness benefit and the Canada recovery caregiving benefit to support Canada’s economic recovery in response to COVID-19”. In my opinion, this “long title” suggests that the Act is meant to have an ameliorative purpose.

[32] The decision of the CRA is fact-driven, according to the framework of the Act.

Paragraphs 3(1)(a) to (d) of the Act provide 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

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 :

<p>(a) they have a valid social insurance number;</p>	<p>a) elle détient un numéro d'assurance sociale valide;</p>
<p>(b) they were at least 15 years of age on the first day of the two-week period;</p>	<p>b) elle était âgée d'au moins quinze ans le premier jour de la période de deux semaines;</p>
<p>(c) they were resident and present in Canada during the two-week period;</p>	<p>c) elle résidait et était présente au Canada au cours de la période de deux semaines;</p>
<p>(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:</p>	<p>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 ciaprès, 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 :</p>
<p>(i) employment,</p>	<p>(i) un emploi,</p>
<p>(ii) self-employment,</p>	<p>(ii) un travail qu'elle exécute pour son compte,</p>
<p>[...]</p>	<p>[...]</p>

[33] Sections 4, 6, and 7 are also relevant and provide as follows:

Application

4 (1) A person may, in the form and manner established by the Minister, apply 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.

Demande

4 (1) Toute personne peut, selon les modalités — notamment de forme — fixées par le ministre, demander une 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.

Limitation

(2) 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.

[...]

Obligation to provide information

6 An applicant must provide the Minister with any information that the Minister may require in respect of the application.

Payment of benefit

7 The Minister must pay a Canada recovery benefit to a person who makes an application under section 4 and who is eligible for the benefit.

Restriction

(2) 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.

[...]

Obligation de fournir des renseignements

6 Le demandeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

Versement de la prestation

7 Le ministre verse la prestation canadienne de relance économique à la personne qui présente une demande en vertu de l'article 4 et qui y est admissible.

[34] The effect of these provisions is to identify who may apply for the CRB benefit.

[35] The operative part of the decision under review provides as follows:

We are writing to advise you of our decision regarding your request dated August 5, 2021, for a second review of your Canada Recovery Benefit (CRB) application.

We have completed your request and have carefully considered all the information to support your CRB edibility.

Based on our review, you are not eligible.

You did not meet the following criteria:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

As you did not meet the eligibility criteria to qualify for CRB, any future CRB applications will be denied unless you can provide proof that you are able to satisfy the eligibility criteria.

If you received a CRB payment that you were not eligible for, you will be required to repay the amount.

[...]

[36] The Manager, in conducting the second review, was not satisfied with the documents provided by the Applicant in support of his claim that he earned \$5000.00 within the relevant time frame.

[37] It is clear from the contents of the CTR that the CRA was looking for supporting documents, including invoices and bank statements, since the validation review for eligibility began in 2021. The request for supporting documents was made as early as March 2021. The nature of the supporting documents was identified as bank statements and invoices, as per the Notepad Entry made on March 2, 2021, appearing at Tab 1 of the CTR.

[38] It appears that the Applicant provided letters from three clients on March 15, 2021, showing payments for work completed in 2019. The second document appearing at Tab 6 of the CTR is illegible, but in paragraph 5 of his affidavit filed in support of this application for Judicial Review, the Applicant deposed that he invoiced Ms. Margo Soucy \$1500.00 in October 2019.

[39] When this amount is added to the amounts of \$2625.00 and \$1300.00 that appear on two legible invoices in the CTR, the total amount is \$5425.00 collected by the Applicant for painting services in 2019.

[40] In the letter dated July 19, 2021, an employee of the CRA noted that the documents requested had not been received by the CRA, and based on the review of the available material, the Applicant was not eligible for the benefits.

[41] In the letter dated February 28, following a second review of eligibility, the Manager confirmed the ineligibility finding. This letter did not specifically refer to the information submitted by the Applicant; however, in her affidavit, Ms. McLaughlin deposed that she conducted the second review and at paragraph 16 she referred to the documents and information that she reviewed. This material included the documents on hand prior to the first determination of eligibility, communicated in the letter dated July 19, 2021.

[42] The Applicant challenges the process followed by the CRA in validating his claim. He submits that the process was not reasonable, since he had provided the necessary information.

[43] Although the Applicant did not directly raise any issue of procedural fairness, this argument “hints” at a breach of procedural fairness.

[44] According to the decision in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 (S.C.C.), a critical element of any argument about a lack of procedural fairness turns on whether an interested person knows the “case to be met”.

[45] In *Canadian Pacific Railway Company v. Canada (Attorney General)*, [2019] 1 F.C.R. 121 at paragraph 56, the Federal Court of Appeal said the following about the basic requirements of the duty of procedural fairness:

No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. [...]

[46] I am satisfied that there was no breach of procedural fairness arising from the manner in which the employees and agents of the CRA assessed the Applicant’s eligibility for the CRB benefits. The Applicant was aware that he had to show that he earned at least \$5000.00 before taxes, within a certain period, in order to qualify for the benefits.

[47] The sole question for determination in this application is whether the CRA reasonably determined that the Applicant did not qualify for the CRB, relative to the purpose of the Act.

[48] I reject the Applicant’s argument that the CRA adopted an unreasonable process to validate his eligibility. Section 6 of the Act requires a person seeking benefits to provide information.

[49] The Guidelines published on the website identify the kind of information and documents that may satisfy questions about eligibility.

[50] According to the notes maintained by employees and agents of the CRA about various interactions with the Applicant, the kind of information and documents requested was clearly communicated: the Applicant was asked to provide invoices and bank statements after he sent in the letters from three of his clients.

[51] The Guidelines do not mention bank statements. However, in my opinion, this silence does not prohibit the CRA from requesting bank statements, as part of its efforts to determine eligibility for the CRB benefits.

[52] While the utility of bank statements to support eligibility for benefits may be questionable, that inquiry lies beyond the role of this Court.

[53] The Applicant was on notice since at least March 2021 that the CRA was looking for “back-up” information and documents. He was aware since June 2021 that the letters from three clients were insufficient.

[54] The Applicant subsequently produced invoices and bank statements, as exhibits to the affidavit he filed in support of this proceeding. This material may be relevant to the eligibility validation process. However, this material was not before the decision-maker.

[55] It is the CRA, as the decision-maker, not the Court, that is mandated to assess evidence in the validation process. The Court does not weigh evidence in an application for judicial review.

[56] I am satisfied that the process followed by the CRA respected the procedural fairness owed to the Applicant.

[57] As noted above, the merits of the decision are reviewable on the standard of reasonableness.

[58] I am equally satisfied that the Applicant has failed to show that the decision of February 28, 2022, is “unreasonable” within the meaning of *Vavilov, supra*.

[59] The CRA assessed the evidence that was available to it. It assessed the documents provided by the Applicant. The employees and agents were not satisfied with the sufficiency of those documents.

[60] According to the affidavit of Ms. McLaughlin, the Manager made the decision of February 28, 2022, on the basis of the material contained in the CTR. The decision is supported by the evidence and the reasons meet the standard of reasonableness: they are transparent, intelligible and justified. There is no basis for judicial intervention.

[61] It follows that this application will be dismissed. A Direction will issue addressing costs.

JUDGMENT in T-667-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

A Direction will issue addressing costs.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-667-22

STYLE OF CAUSE: JACK SOUCY v. ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: St. John's, Newfoundland

DATE OF HEARING: November 24, 2022

REASONS AND JUDGMENT: HENEGHAN J.

DATED: May 24, 2023

APPEARANCES:

Jacob Elyk FOR THE APPLICANT

Maeve Baird FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rogers Rogers Moyse FOR THE APPLICANT
St. John's, Newfoundland

Attorney General of Canada FOR THE RESPONDENT
Halifax, Nova Scotia