

Federal Court



Cour fédérale

**Date: 20230724**

**Docket: T-2731-22  
T-2732-22**

**Citation: 2023 FC 1011**

**Ottawa, Ontario, July 24, 2023**

**PRESENT: The Honourable Mr. Justice Régimbald**

**BETWEEN:**

**SILVIA DUMBRAVA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Ms. Silvia Dumbrava brings this application for judicial review of two decisions [the Decisions] dated November 30, 2022 in which her claims for the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB] were denied.

[2] The decision-maker found that the Applicant was not eligible to receive the CERB and the CRB payments because she did not meet the minimum income requirement of at least \$5,000 (before taxes) of employment or self-employment income in 2019, 2020 or in the 12 months prior to the date of this first application.

[3] For the following reasons, the judicial review is dismissed.

[4] The Court is not satisfied “that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] at para 100). Based on the reasons, the evidence and record before me, I am not satisfied that the Applicant has met her burden to demonstrate that the decision is unreasonable. The CRA’s decisions finding the Applicant ineligible to the CERB and CRB are reasonable.

## II. Background

[5] Ms. Dumbrava was a student at the University of Concordia at the time she applied to receive CERB and CRB payments. She also worked for her father who is a real estate agent in Dorval, Québec.

[6] She sought CERB for seven four-week periods between March 15, 2020 and September 26, 2020. The Applicant also sought the CRB for 16 two-week periods between September 27, 2020 and September 25, 2021 and 15 payments were issued.

[7] On or about September 8, 2022, the Applicant's CERB and CRB applications were selected by the CRA for an eligibility review [the First Review].

[8] On October 25, 2022, after considering the documents that had been provided by the Applicant, the First Review officer found that the Applicant did not qualify for the CERB nor the CRB as she had failed to demonstrate that she met all the cumulative eligibility criteria for those programs. The Applicant had not provided any tangible proof that she had earned \$5,000 in income, had not demonstrated that she had stopped working because of COVID-19, nor had she experienced a 50% reduction in her average weekly income compared with the previous year for reasons related to COVID-19.

[9] On November 7, 2022, the Applicant requested that the First Review decisions be reviewed by another CRA officer for a Second Review.

[10] In support of this Second review, the Applicant submitted:

- i. An invoice prepared by the Applicant dated March 31, 2019, of an amount of \$1,000;
- ii. An invoice prepared by the Applicant dated June 30, 2019, of an amount of \$500;
- iii. An invoice prepared by the Applicant dated September 30, 2019, of an amount of \$2, 000;
- iv. An invoice prepared by the Applicant dated December 30, 2019, of an amount of \$1,500;
- v. A T4A slip from Mr. Viorel Tiberiu Dumbrava, the father of the Applicant, for the 2019 taxation year.

[11] In conducting this Second Review, the CRA officer also considered:

- a) The notes made by the CRA officers documenting their prior involvement in attempting to validate the applications;
- b) The information found on the CRA's computer systems with respect to the Applicant's income for the 2019, 2020 and 2021 taxation years;

	2019	2020	2021
<b>Revenu d'emploi</b>	1 963 \$	78 \$	0 \$
<b>Revenu de commission brut</b>	5 000 \$	0 \$	0 \$
<b>Revenu de commission net</b>	5 000 \$	0 \$	0 \$

- c) The fact that the Applicant amended her tax return for the 2019 taxation years on November 10, 2022 after the First Review decisions were made, in order to report a net commission income of \$5,000 instead of \$0 as previously declared;
- d) The Applicant's tax assessment summary for the 2019, 2020 and 2021 taxation years.

[12] In an oral discussion for the Second Review conducted on November 28, 2022, the Applicant indicated that she had worked as an assistant for her father, Tiberiu Dumbrava, a real estate broker, that she was paid in cash and that she had stopped working in March 2020 as a result of the pandemic and had not returned to work ever since.

[13] By letter of November 30, 2022, the decision-maker provided the CRA's negative decisions regarding the Applicant's November 7, 2022 request for a Second Review of the CERB and CRB applications [the Second Decision].

[14] According to the decision-maker's notes, the Applicant was asked to provide further evidence to demonstrate that she had earned the alleged amount of \$5,000 in 2019 because the invoices provided had been made for a payment by a member of her close family. The decision-maker also asked the Applicant to provide evidence of that amount being deposited in a bank account to demonstrate that it had been paid. The Applicant was unable to demonstrate that those funds were deposited.

[15] The Officer concluded that the Applicant was therefore not eligible for the CERB nor the CRB because she was unable to provide sufficient reliable evidence that she had earned at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months prior to the date of her first application, which consisted in one of the cumulative eligibility criteria.

III. Preliminary issues: the filing of new affidavits

[16] On the day of hearing, the Applicant filed two affidavits that were not submitted to the decision-maker as part of the adjudication process. The Respondent objects to these affidavits on the basis that they were filed improperly.

[17] The affidavits are as follows:

- A. The first affidavit is signed by the Applicant's father, Mr. Viorel Tiberiu Dumbrava, a real estate broker, stating that as a self-employed worker, he had hired the Applicant in 2019 as a secretary on a contractual basis and that her income for this period was \$5,000.

- B. The second affidavit is signed by the Applicant's accountant, Ms. Raluca Lapadat. In this affidavit, Ms. Lapadat states that in 2019 the Applicant received \$1,963.11 from Numeris Call Center and \$5,000 from real estate broker Tiberiu Dumbrava. Her total income for 2019 was therefore \$6,963.11. She states in her affidavit that "due to an oversight" the sum of \$5,000 from her father was erroneously marked on line 13 000 of the 2019 T4 as "Other income". This was subsequently corrected to "Self-employment commissions" on the T4A/020.

[18] The filing of affidavits is subject to rules 306 and onwards of the *Federal Courts Rules*, SOR/98-106 [the Rules]. It is also subject to a consistent line of jurisprudence of the Court of Appeal: (*Canada (Attorney General) v Canadian North Inc.*, 2007 FCA 42 at paras 3-5, 7-9, 12; *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268 at paras 17-22; *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128 at paras 92-100). In an application for judicial review, the Court's role is to examine the legality or reasonableness of the administrative decision-maker's decision, in the legal and factual context presented to the decision-maker. Generally, documents that were not available to the decision-maker are not admissible on judicial review, and the Court should not consider them (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Association of Universities*] at para 19).

[19] Nevertheless, the Federal Court of Appeal has recognized three (3) exceptions to this general rule: (1) the new evidence contains general contextual information; (2) the new evidence responds to questions of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision-maker (*Association of Universities* at para 19-20).

[20] In the context of judicial reviews of CRA decisions under the CERB and CRB, the Court has already ruled that it should not consider additional documents provided in an affidavit in support of the application and not previously submitted to the administrative decision-maker (*Datta v Canada*, 2022 FC 973 at paras 29-30; *Lussier v Canada*, 2022 FC 935 at para 2, *Maltais v. Canada (Attorney General)*, 2022 FC 817 [*Maltais*] at paras 20-21).

[21] The two affidavits submitted by the Applicant were not before either CRA officers. Further, the Applicant has not demonstrated that these affidavits fall within any of the exceptions set out by the Federal Court of Appeal.

[22] As a result, I will not consider these documents on judicial review of the Officer's decisions. In any event, these documents would not have had any impact on those decisions.

[23] The fact that the Applicant received \$5,000 in "autres revenus" or in "commission" does not change the fact that she was unable to provide further evidence to prove the source of this amount. She was also unable to demonstrate that this sum had been paid and deposited in a bank account, especially given the relationship between the Applicant and her employer – her father.

[24] Moreover, the affidavit made by the Applicant's accountant is not material because it also does not provide any response to the decision-maker's question as to whether the funds were actually paid and deposited in a bank account.

[25] The information provided in both affidavits are therefore not responsive to the decision-maker's questions regarding Ms. Dumbrava's eligibility for the CERB and CRB.

#### IV. Issues and Standard of Review

[26] The appropriate standard of review of a decision of a CRA officer is reasonableness (*Vavilov* at paras 16-17; *Maltais* at paras 18-19). The role of this Court is to examine the reasoning of the administrative decision-maker and the result reached to determine whether the decision is "based on an inherently coherent and rational analysis and is justified in light of legal and factual constraints" (*Vavilov* at para 85). The burden of proof to show that a decision is unreasonable is on the party challenging the decision (*Vavilov* at para 100 (see also *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 45 [*Aryan*]; *Hayat v Canada (Attorney General)*, 2022 FC 131 [*Hayat*] at para 14; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 29).

#### V. Analysis

##### A. *The Decisions are reasonable*

[27] The CERB and CRB were introduced by the Government of Canada as part of a set of measures in response to the consequences caused by the COVID-19 pandemic.

[28] In order to receive the CERB, an eligible Canadian resident had to submit an application for any four-week period falling between the period beginning on March 15, 2020 and ending on September 26, 2020. One of the eligibility requirements included having a total income of a least



\$5,000 from employment or self-employment for the 2019 taxation year or in the 12-month period preceding the day on which they made the application.

[29] Subsequently, in October 2020, the CRB came into effect. The CRB was available to provide income support, for any two-week period beginning on September 27, 2020, and ending on October 23, 2021, to eligible employed and self-employed individuals who were directly affected by the COVID-19 pandemic.

[30] Similarly to the eligibility requirements for the CERB, the CRB applications required eligible applicants to have a total income of at least \$5,000 from employment or self-employment for the 2019 or 2020 taxation year or in the 12-month period preceding the day on which they made the application in respect of a two-week period beginning in 2020 or in 2021.

[31] As set out by Justice Diner in *Ntuer v. Canada (Attorney General)*, 2022 FC 1596 at paragraph 24, the eligibility criteria for the CERB and CRB are cumulative. An applicant must meet all the criteria to be eligible to receive benefits under the programs.

[32] In order to receive any of these benefits, the Applicant had to demonstrate to the CRA that she satisfied on a balance of probabilities all of the established criteria of those programs. To do so, the Applicant had to provide enough evidence to support her claim (*Payette c. Canada (Procureur général)*, 2023 CF 131 at para 35).

[33] For instance, in the situation where an applicant was being paid in cash, Justice Elliot held that one must “have records that reflect the full details of the transaction and that the funds received be contemporaneously deposited to an account at a financial institution” (*Walker v. Canada (Attorney General of Canada)*, 2022 FC 381 [*Walker*] at para 55).

[34] In seeking judicial review, Ms. Dumbrova has the burden to demonstrate that the Officer’s decisions were unreasonable. The essence of the Applicant’s submission is that it is unreasonable for the CRA to request a refund of the money that was paid to the Applicant through the CERB and the CRB as she had demonstrated that her revenue was \$6,963.11 before taxes in 2019 and was therefore eligible to receive the benefits. The Applicant submits that she has provided documents proving that she received enough income in 2019 therefore “filling out” all the requirements of the benefits program.

[35] The Respondent submits that the Decisions to refuse the applications for the CERB and for the CRB are reasonable as they are based on a consistent analysis and are justified in light of the evidence and legal constraints applicable to the decision-maker. The Respondent further purports that the onus was on the Applicant to establish that she did meet the requirements of the Act. However, she submitted that she was paid in cash and had no sufficient records that reflected the full details of the transactions. The funds were not contemporaneously deposited to an account at a financial institution.

[36] In my view, the record demonstrates that the Officer considered all of the documents submitted by the Applicant. The Officer’s role was to validate the Applicant’s CERB and CRB

applications on behalf of the Minister of Employment and Social Development. It is important to note that the Second Review Report (the Officer's notes) forms part of the reasons for the Officer's decision (*Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431 at para 36; *Aryan* at para 22; *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251 at para 17; *McClintock's Ski School & Pro Shop Inc. v. Canada (Attorney General)*, 2021 FC 471 at para 26; *Vavilov* at paras 94-98).

[37] The decision-maker carefully considered the Applicant's supporting documents and representations to come to her conclusion that the Applicant did not qualify, as she did not demonstrate conclusively and to the satisfaction of the decision-maker that she earned \$5,000 (before taxes) in employment or self-employment income in 2019, in 2020 or in the 12 months prior to the date of her first application. The Officer considered:

- a) That the Applicant claimed to be paid in cash and did not deposit any amount in a bank account;
- b) That the Applicant only had invoices that she prepared herself as a proof of revenue. These invoices were also made to a member of her immediate family, her father;
- c) That the Applicant amended her tax return for the 2019 taxation year on November 11, 2022, after the first decision of CRA, to add a net commission income of \$5,000;
- d) Since the Applicant is not dealing at arm's length with the employer, more documents were requested to demonstrate that the work had been performed and remunerated;
- e) The documents provided by the Applicant are insufficient to demonstrate that she meets the \$5,000 criterion.

[38] The decision-maker found that the Applicant's written receipts and tax returns were not sufficient evidence to prove the alleged income considering that the Applicant was not dealing at arm's length with the employer, who was her father.

[39] There is no indication that the decision-maker failed to account for all the documents and representations that were provided by the Applicant (*Vavilov* at para 126-127). In fact, the Second Review Report shows that the decision-maker considered the Applicant's supporting documents and representations.

[40] As stated above, for the Second Review, the decision-maker considered the Applicant's submissions as well as the four invoices and the T4A slip provided for the taxation year of 2019.

[41] In addition to these documents, the decision-maker also considered the following information and documents:

- The Claimant's tax return for the tax year amended on November 10, 2022 to declare a net self-employed income of self-employed net income of \$5,000 instead of \$0 as previously declared;
- The information contained in the tax returns of the Applicant for the years 2019, 2020 and 2021 indicating that the Applicant has declared the following income:

	2019	2020	2021
<b>Revenu d'emploi</b>	1 963 \$	78 \$	0 \$
<b>Revenu de commission brut</b>	5 000 \$	0 \$	0 \$
<b>Revenu de commission net</b>	5 000 \$	0 \$	0 \$

- A copy of the summary of the Applicant's tax assessment for the 2019, 2020 and 2021 tax years;
- The "Bloc-notes" communications log of the systems for the Applicant's file. Entries in this are recorded by CRA agents from several work areas (or various work areas (or automated systems)) in the course of their interactions with the Claimant in relation to various subjects and programs. A copy of the log entries relating to the Applicant's ECP and ECRP applications;
- The "Observations" communication log in the CRA systems for the Applicant's ECP and ECRP files. The entries in this log are recorded by CRA agents (or automated (or automated systems)) as part of the review of ECP and Applicant's ECP and ECRP applications.

[42] In the context of the Applicant's situation, requiring additional proof that the income was earned and received is consistent with the CERB and CRB Acts' purposes. Section 3 of the CERB Act and section 6 of the CRB Act explicitly state that an applicant must provide the Minister of Employment and Social Development with any information that the Minister may require with respect of the application.

[43] As found in *Walker*, an applicant must be able to provide further evidence if they have been paid in cash:

[37] With the responsibility of self-reporting, comes an obligation, as set out in section 6 of the *CRBA*, to provide any information that the CRA may require to confirm compliance with the legislative provisions. This requirement compels an applicant to provide documents and information requested by CRA or explain why it is not possible to comply. It does not restrict what an applicant may submit to support their claim.

[...]

[55] My finding does not mean that I believe the Applicant was in any way trying to 'scam' or 'cheat' the system. It is only a finding that the evidence put forward by the Applicant and her husband to

the Officer was not enough to prove on a balance of probabilities that the CRB claim met the criteria set out in the CRBA. It also underscores that when being paid in cash by customers it is important to have records that reflect the full details of the transaction and that the funds received be contemporaneously deposited to an account at a financial institution.

[Emphasis added.]

[44] Moreover, as held in *Cantin v Canada (Attorney General)*, 2022 FC 939:

[15] Although it is not illegal to take payment in cash, a taxpayer who opts for this mode of payment must take all the more care to be able to provide proof of the payment to obtain benefits under the Act. Section 10 of the Act provides that the Minister may “for any purpose related to verifying compliance or preventing non-compliance with this Act . . . require that any person provide any information or document within the reasonable time that is stated in the notice.” The onus is on the applicant to establish for the agency responsible for administering the benefits that he meets, on a balance of probabilities, the requirements of the Act (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55.

[45] Providing an income tax return is not sufficient to prove eligibility to the CERB and CRB, especially when someone is paid in cash. As Justice Diner held in *Ntuer*:

[27] In addition, a Notice of Assessment is insufficient to establish that an applicant earned a net income of at least \$5,000 (*Aryan* at para. 35). The Officer was required to assess not only the Notices of Assessment submitted by Mr. Ntuer but also the other evidence on file, including invoices and client payment receipts submitted by Mr. Ntuer, as well as the information available through the CRA’s internal records, to verify that Mr. Ntuer had indeed earned a net income of at least \$5,000.

[46] Further, as found by my colleague Justice Strickland in *Aryan*:

[34] Given this, it was open to the first CRA agent to request additional documentation from the Applicant to establish an earned minimum income of \$5000, in the relevant period, as an eligibility

requirement for the CRB. Further, as is apparent from the record, the requests made to the Applicant for supporting documentation were in keeping with those suggested by the CRB Guideline and the Common Question and Answer “Script” found in the CTR.

[35] There is no evidence to support the Applicant’s position that the Officer was obliged to accept her 2020 income tax assessment as sole and conclusive proof of her income. And while tax assessments are one document that could provide income information to CRA with respect to CRB eligibility, they do not “prove” that the Applicant actually earned the income that she reported in filing her income tax return, or that her income was earned from an eligible source prior to September 27, 2020, pursuant to ss. 3(1)(d)(i-v) of the *CRB Act*.

[...]

[37] When asked why the Officer asked the Applicant for proof of income, the Officer answered that documented proof of income was needed to complete the review. The Officer was also asked, if she considered the Applicant’s income and deductions from income for the 2017 to 2020 taxation years as recorded on CRA’s computer system as part of her review, then what was the basis of her conclusion? The Officer responded that after considering the Applicant’s tax return filing history for those years (the CTR documents indicate that the Applicant had reported nominal employment income in 2017, 2018 or 2019 (\$31, \$1 and \$273, respectively)) and the fact that she could not provide the appropriate documents (i.e. bank statements with corresponding invoices and or receipts) to support her 2020 income, that the Officer could not confirm that the Applicant did in fact receive those funds in 2020. The Officer again states that the decision was not solely based on the Applicant filing her tax return. CRA needed documents to support her income claimed in the CRB document driven preview process.

[47] As the Court explained in *Aryan*, it was reasonable for the officer not to consider an income tax return as conclusive of qualifying income, and to draw their conclusions from other evidence before them. Consequently, the second Officer’s decision on the \$5,000 qualifying income criterion was reasonable.

[48] Here, the decision-maker concluded that the Applicant's invoices and tax return were not sufficient evidence to prove that the Applicant indeed earned the alleged income, considering that the Applicant was not dealing at arm's length with her employer, that she was paid in cash, and had not deposited the monies in a bank account.

[49] The decision-maker was entitled to ask the Applicant for more evidence to prove her eligibility to the CERB and CRB. The Applicant was not able to satisfy the decision-maker and provide further documentary evidence to prove her source of income to qualify for the programs (*Hayat* at para 20).

## VI. Conclusion

[50] The Decisions on the Applicant's eligibility for the CERB and CRB are therefore based on a consistent and rational chain of analysis. In these circumstances, the Decisions are reasonable. The application for judicial review is therefore dismissed.

[51] Rule 400 gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." Having considered the factors listed in sub rule 400(3) of the Rules, as well as the calculation made by the respondent, and all other circumstances of this case, I find that no award for costs is warranted in this matter.



**JUDGMENT in T-2731-22 and T-2732-22**

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

1. The application for judicial review is dismissed, without costs.

"Guy Régimbald"

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Judge

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

**DOCKET:** T-2731-22  
T-2732-22

**STYLE OF CAUSE:** SILVIA DUMBRAVA v ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

**DATE OF HEARING:** MAY 29, 2023

**JUDGMENT AND REASONS:** RÉGIMBALD J.

**DATED:** JULY 24, 2023

**APPEARANCES:**

Silvia Dumbrava

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Christophe Tassé-Breault

FOR THE RESPONDENT

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