Federal Court Cour fédérale

Date: 20230830

Docket: T-1704-22

Citation: 2023 FC 1177

[ENGLISH TRANSLATION]

Montréal, Quebec, August 30, 2023

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

TOMMY BARON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Tommy Baron, is a small-business owner who manufactures and sells electric bicycles and scooters out of his home. As a result of the COVID-19 pandemic and the lockdown measures that were imposed, Mr. Baron had fewer clients and experienced a decrease in business activity. Mr. Baron therefore applied for the Canada Emergency Response Benefit

[CERB], the Canada Recovery Benefit [CRB] and the Canada Worker Lockdown Benefit [CWLB] for various periods between March 15, 2020, and January 22, 2022. As was the case for most claims for benefits related to COVID-19, the Canada Revenue Agency [CRA], which was responsible for administering these programs on behalf of the Minister of Employment and Social Development, initially accepted Mr. Baron's claims and paid the benefits.

[2] The CRA subsequently reviewed Mr. Baron's eligibility for the benefits claimed. Following a first review, the CRA informed Mr. Baron that he was not eligible for any of the benefits because he did not satisfy the eligibility criterion requiring earnings of at least $5,000 in employment or self-employment income in the relevant periods.

[3] Mr. Baron requested the second review provided for under the procedure established by the CRA, and provided several invoices to demonstrate his business income. Following that review, the CRA informed Mr. Baron that he had to repay his CERB, CRB and CWLB benefits for an entirely different reason, namely that he had not stopped working for a reason related to COVID-19 and had not experienced a reduction of at least 50% in his average weekly income relative to the previous year. Specifically, the CRA denied Mr. Baron's claims for the CERB because he was not working for reasons unrelated to COVID-19, and his claims for the CWLB because he had failed to demonstrate that he was not working for reasons considered reasonable or related to a COVID-19 lockdown.

[4] Mr. Baron is now seeking judicial review of the two CRA decisions [Decisions] dated July 14, 2022, finding him ineligible for the CERB and the CWLB. The respondent, the Attorney

General of Canada [AGC], agreed that the CRA decision with regard to the CRB, also rendered on July 14, 2022, was unreasonable. As such, that matter was already referred back to the CRA for reconsideration, and Mr. Baron has filed a notice of partial discontinuance with respect to the application for judicial review in relation to the CRB benefits. The CRB benefits are therefore not at issue in this judgment.

[5] Mr. Baron is asking the Court to refer his case back to the CRA for reconsideration of his CERB and CWLB claims. He argues that the CRA erroneously concluded that he had not been unable to work because of COVID-19. Mr. Baron further submits that the CRA failed in its duty to act fairly by denying his CERB and CWLB benefits on grounds that were not brought to his attention following the first review of his claims.

[6] For the following reasons, Mr. Baron's application for judicial review will be allowed. After reviewing the CRA's reasons, the evidence on the record and the applicable law, I am of the opinion that in the circumstances, the Decisions on Mr. Baron's CERB and CWLB benefits do not respect the rules of procedural fairness. In light of this finding, I need not consider the other arguments put forward by Mr. Baron to challenge the reasonableness of the Decisions.

II. Background

A. *Facts*

[7] The CERB, the CRB and the CWLB were among numerous measures introduced by the federal government beginning in 2020 to address the economic impacts of the COVID-19

pandemic. They were targeted monetary payments designed to provide financial support to workers who had experienced a loss of income due to the pandemic and were not entitled to benefits from the regular employment insurance plan. The CRA is the federal agency responsible for administering the CERB, the CRB and the CWLB.

[8] The CERB was available for any two-week period between March 13, 2020, and September 26, 2020, to eligible employed and self-employed individuals who had experienced a loss of income due to the COVID-19 pandemic. The legislative framework for the CERB is set out in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act], being section 8 of the *COVID-19 Emergency Response Act*, SC 2020, c 5. To be eligible for CERB payments, applicants were required to demonstrate that they had earned at least $5,000 (before taxes) in employment or self-employment income in 2019 or in the 12 months prior to their first application. Whether employed or self-employed, applicants must have stopped working for reasons related to COVID-19.

[9] The CRB succeeded the CERB, and was available for any two-week period between September 27, 2020, and October 23, 2021, to eligible employed and self-employed individuals who had experienced a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 [*Aryan*] at para 2). Eligibility criteria for the CRB, as set out in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, include the requirement for employed or self-employed individuals to have earned at least $5,000 (before taxes) in employment or net self-employment income in 2019, 2020, or within the 12 months prior to the date of their first application.

[10] The CWLB, meanwhile, was available for any one-week period between October 24, 2021, and May 7, 2022, to employed and self-employed individuals who could not work due to a COVID-19 lockdown. The CWLB eligibility criteria were set out in the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [CWLB Act]. Among other things, they required employed or self-employed individuals to have earned at least $5,000 (before taxes) in employment income or net self-employment income in 2020, 2021, or within the 12 months before the date of their first application, and to be unable to work for reasons considered reasonable or related to a COVID-19 lockdown.

[11] Mr. Baron applied for the following benefits: the CERB for 3 two-week periods from March 15, 2020, to June 6, 2020; the CRB for 27 two-week periods from September 27, 2020, to October 9, 2021; and the CWLB for 5 one-week periods from December 19, 2021, to January 22, 2022.

[12] In the context of the first review of his benefit claims, Mr. Baron submitted supporting documentation, including bank statements, to demonstrate that he had earned at least $5,000 (before taxes) in employment or self-employment income in the relevant years for the various benefits claimed.

[13] In February and March 2022, following the first review of his eligibility for benefits, Mr. Baron received letters from the CRA informing him that he was not eligible for the benefits received on the grounds that he did not earn at least $5,000 (before taxes) in employment or self-

employment income in 2019, 2020, 2021, or in the 12 months preceding the date of his applications.

[14] Mr. Baron was convinced that the CRA had erred in its assessment of his file, and therefore submitted a request for a second review of his eligibility for CERB, CRB and CWLB benefits. At the same time, he sent the CRA an explanatory letter and several documents to demonstrate that he clearly satisfied the criterion of $5,000 in net business income.

[15] On July 11, 2022, Mr. Baron received a telephone call from Josée-Anne Hudon, the CRA's second review officer [Officer]. She told him during this telephone conversation that she had received from him all the documents required to prove the $5,000 criterion. In her affidavit submitted by the AGC in response to Mr. Baron's application for judicial review, the Officer states that she also explained to Mr. Baron that her job involved not only evaluating the $5,000 criterion, but also analyzing his file to determine whether he satisfied all the eligibility requirements for the CERB, CRB and CWLB.

[16] Mr. Baron informed the Officer during that call that he had never stopped working, that he could continue his electric bicycle manufacturing business because he works from home, and that given the nature of his business, he sold fewer bikes in winter, but used the time to prepare his orders for the following summer. He added that his income had not decreased in 2020 compared with 2019.

[17] As a result of her analysis, documented in three notes dated July 11 and 12, 2022, the Officer determined that Mr. Baron was not eligible for the CERB, the CRB or the CWLB. On July 14, 2022, the CRA therefore sent its Decisions to Mr. Baron by means of three standard letters. The first letter informed Mr. Baron that he was not eligible for the CERB because he had not stopped working or had his hours reduced due to COVID-19. The letter regarding the CRB states that Mr. Baron is not eligible for these benefits because he was not working for reasons other than COVID-19 and he had not experienced a 50% reduction in his average weekly income. With respect to the CWLB, the CRA noted that Mr. Baron had not demonstrated that he could not work for reasons considered reasonable or related to a COVID-19 lockdown, and that he had not experienced a 50% reduction in his average weekly income.

[18] On August 18, 2022, Mr. Baron filed this application for judicial review of the Decisions.

B. *Standard of review*

[19] As correctly argued by the AGC, the standard of review applicable to the merits of the Officer's Decisions is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 [*He*] at para 20; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16).

[20] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). To make this determination, the

reviewing court asks “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99). The burden is on the party challenging an administrative decision to show that it is unreasonable.

[21] *Vavilov* does not deal directly with issues of procedural fairness, and the approach to be taken in this respect in the context of an application for judicial review therefore remains unchanged (*Vavilov* at para 23). It has long been recognized that correctness is the applicable standard of review for determining whether an administrative decision maker has complied with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Heiltsuk Horizon Maritime Services Ltd. v Atlantic Towing Limited*, 2021 FCA 26 at para 107).

[22] However, the Federal Court of Appeal has held that questions involving procedural fairness do not require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at paras 33–56). Rather, it is a legal question that should be assessed having regard to the circumstances to determine whether the decision maker respected the standards of fairness and natural justice (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 [*Huang*] at paras 51–54). This

assessment includes the five non-exhaustive contextual factors set out by the Supreme Court in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*], which are (1) the nature of the decision being made and the decision-making process followed by the public body in making it; (2) the nature of the statutory scheme and the terms of the statute pursuant to which the public body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the public body itself, and the nature of the deference accorded to it (*Vavilov* at para 77; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at para 5; *Baker* at paras 23–27).

[23] The reviewing court is required to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54). Therefore, the true question raised when procedural fairness and breaches of the principles of fundamental justice are the object of an application for judicial review is not so much whether the decision was "correct," but rather whether, taking into account the particular context and circumstances at issue, the process followed by the administrative decision maker was fair and offered the parties a right to be heard and a full and fair chance to know and respond to the case against them (*CPR* at para 56; *Huang* at paras 51–54). Reviewing courts owe no deference to the administrative decision maker when considering issues of procedural fairness.

[24] It should be borne in mind that issues of procedural fairness and the duty to act fairly are not concerned with the merits or the content of a decision, but rather the process followed.

Procedural fairness has two components: the right to be heard and the opportunity to respond to the case to be met; and the right to an impartial hearing before an independent tribunal (*Therrien (Re)*, 2001 SCC 35 at para 82). It is also well established that the requirements of the duty of procedural fairness are "eminently variable", inherently flexible and context-specific (*Vavilov* at para 77; *Baker* at para 21; *CPR* at para 40; *Canada (Attorney General v Sketchley*, 2005 FCA 404 at para 113; *Foster Farms LLC v Canada (International Trade Diversification)*, 2020 FC 656 at paras 43–52). They do "not reside in a set of enacted rules" (*Green v Law Society of Manitoba*, 2017 SCC 20 at para 53). The nature and extent of the duty will vary with the specific context and the different factual situations dealt with by the administrative decision maker, as well as the nature of the disputes it must resolve (*Baker* at paras 25–26). In other words, whether a decision is procedurally fair must be determined on a case-by-case basis.

III. Analysis

[25] As I mentioned at the hearing, the determinative issue in this case is procedural fairness. For the reasons that follow, I find that given all the circumstances, the Officer breached the rules of procedural fairness and prevented Mr. Baron from exercising the right to make full answer and defence.

[26] Allow me to make one thing clear from the outset. I am in no way calling into question the integrity or professionalism of the Officer responsible for Mr. Baron's file. In reaching her conclusion, the Officer determined, in good faith and with regard to the legislative provisions she is mandated to enforce, that Mr. Baron did not meet the statutory criteria. I am by no means disputing the fact that the role and duties of the CRA's first and second review officers involve

looking at the legislation as a whole and ensuring that taxpayers satisfy all eligibility criteria. Although the CRA's first refusal was based on the $5,000 criterion, the Officer had a responsibility to consider all the criteria of the CERB Act and the CWLB Act. As such, the Officer did indeed perform her duties pursuant to both acts.

[27] In view of the record, however, I am not persuaded that in the second review of his CERB and CWLB claims, Mr. Baron was fully aware of the case he was facing, nor that he had a full and fair opportunity to know the case he had to meet and to respond to it.

[28] I accept that the Officer told Mr. Baron that she had to analyze his file [TRANSLATION] "on the basis of all the criteria," and that all the criteria had to be respected. I also recognize that in the telephone calls with the Officer, Mr. Baron indicated that he had never stopped working and that his work was [TRANSLATION] "slower" in winter. But, given that the CRA had already made its bed following its first review by identifying a specific ineligibility criterion (lack of income over $5,000), it had an obligation to be more transparent in the second-review process if it switched gears and now intended to rely on new ineligibility criteria to deny Mr. Baron's claims for benefits.

[29] I would point out that this is a situation in which the CRA decided to withdraw benefits that had already been granted and that were obtained in good faith by Mr. Baron, and the Officer therefore was required to ensure that Mr. Baron was indeed heard with regard to the new criteria.

[30] Issues of procedural fairness are dealt with on a case-by-case basis, and in this case, three elements convince me that there was a breach with regard to Mr. Baron.

[31] I will begin with the first-review letters that the CRA sent Mr. Baron. These letters are dated February 25, 2022, for the CRB and the CWLB, and March 11, 2022, for the CERB. All three state that Mr. Baron did not meet the following specific eligibility criterion: [TRANSLATION] "[y]ou did not earn at least $5,000 (before taxes) in employment or net self-employment income in 2019 or in the 12 months preceding the date of your first application." In terms of the periods, [TRANSLATION] "in 2020" was added for the CRB and 2020 or 2021 for the CWLB. These first-review letters do not mention any other eligibility criteria for any of the three types of benefit. It was therefore entirely reasonable and logical for Mr. Baron to conclude that only the $5,000 eligibility criterion was at issue in his case.

[32] I should also mention that the CRA's first-review letters all use the same language regarding the process for requesting a second review. The Decisions addressed to Mr. Baron specified the following:

> [TRANSLATION]
>
> Your request [for a second review] should include the following information:
>
> – the reason you disagree with the Canada Revenue Agency's decision; for example, certain information was not considered or certain facts or details were missing, misinterpreted or considered out of context;
>
> – any relevant new documents, facts or correspondence;
>
> – your contact details, current home address and current telephone number.

[33] In my opinion, the wording of the first-review letters makes it clear that the request for a second review focuses solely on the grounds set out by the CRA in its first review. Indeed, the CRA invites the taxpayer seeking a second review to explain [TRANSLATION] "the reason you disagree with the [CRA]'s decision", and to include relevant new documents and facts. Everything in the first-review letters therefore suggests that the second review will deal only with the ineligibility criterion applied by the CRA in its first review decision. Nowhere is it mentioned that the second review may involve eligibility criteria other than those considered in the first review. Or at least, nowhere does the CRA indicate this possibility in its instructions to the taxpayer with regard to the second-review process.

[34] I am far from suggesting that in its second review, the CRA is not entitled to analyze all the statutory criteria. On the contrary, that is its mandate, and the purpose of the work performed by the first and second review officers. But given the silence of the first-review letters with regard to other eligibility criteria, and the invitation extended to Mr. Baron to provide his perspective on the ineligibility criterion that was applied, the principles of procedural fairness required the CRA to clearly indicate to Mr. Baron that the Officer would be considering other criteria during its second review, and to clearly identify those other criteria for him.

[35] That was not done in Mr. Baron's case. In my opinion, to comply with the rules of procedural fairness, it was not enough for the Officer to simply make a general comment in passing to the effect that "all the criteria" must be respected, without specifying which particular criteria were being considered or would be subject to further verification during the second review.

[36] Secondly, as I pointed out at the hearing, the certified tribunal file contains several notes from the Officer regarding the July 11 telephone conversation with Mr. Baron. Incidentally, although both the Officer in her affidavit and the AGC in his brief refer to a conversation on July 12, 2022, the Officer's notes clearly indicate that the telephone conversation with Mr. Baron took place on July 11 at 2:50 p.m., and not on July 12. It is well established that these notes form part of the reasons for the Decisions (*He* at para 30; *Aryan* at para 22). However, the content of these notes leaves me wondering what was actually said to Mr. Baron about the scope of the second review.

[37] A first note, apparently written on July 11, appears to report on the telephone conversation with Mr. Baron as it was taking place (respondent's record at 248). As the Officer states in her affidavit, these are specific notes taken by CRA officers in the course of their interactions with taxpayers. The note mentions the discussions with Mr. Baron, but is completely silent as to any reference whatsoever to a more comprehensive review of all the criteria. In a second note, this one apparently written on July 12 (respondent's record at 253), the Officer continues her observations regarding the telephone conversation of July 11 at 2:50 p.m., and it is in this note that the following statement appears: [TRANSLATION] "I told him I would analyze his file based on all the criteria, because as I explained, we don't just have to respect the $5k criterion. We have to respect them all". The note goes on to refer to Mr. Baron's statements that his business is slower in winter and that he never stopped working. The note also adds that Mr. Baron's work hours [TRANSLATION] "were not reduced as a result of COVID-19" and that Mr. Baron had never stopped selling bicycles.

[38] A third note, which also appears to be dated July 12 (respondent's record at 258 for the CERB and 262 for the CWLB) repeats the observations regarding the July 11 telephone call and Mr. Baron's comments, but like the first note, contains no reference to the Officer informing Mr. Baron that she was going to scrutinize all of the criteria, or any suggestion that the call dealt with all of the eligibility criteria for the benefits in question.

[39] It is therefore far from clear on reading the Decisions (which include the Officer's three notes) whether and how Mr. Baron was in fact informed of the other criteria that were the subject of the second review. It certainly appears that Mr. Baron was never clearly informed that the second review would specifically deal with whether he had stopped working as a self-employed person for reasons related to COVID-19 or the question of the 50% reduction in his weekly income.

[40] Finally, and it is this third element that leads me to invalidate the Officer's Decisions, I note that the CERB Decision states that Mr. Baron [TRANSLATION] "did not stop working or <u>have his hours reduced</u> as a result of COVID-19" [emphasis added], whereas there is nothing on the record to support a finding that Mr. Baron's hours of work were not reduced as a result of the pandemic. Similarly, the Officer's statement in the CWLB Decision that Mr. Baron [TRANSLATION] "did not have a 50% decrease in his average weekly income from the previous year for reasons related to COVID-19", is not supported by any evidence on the record. In fact, a note from Mr. Baron in the court record (respondent's record at 231) indicates the opposite, stating that Mr. Baron had not earned any income since early January 2022.

[41] Furthermore, with regard to the CWLB, subparagraph 4(1)(f)(ii) of the CWLB Act expressly states that a person was "unable … to perform the work that they normally performed as a self-employed person" [emphasis added]. I am not persuaded that the record supports the conclusion that despite COVID-19 and the lockdown, Mr. Baron was able to continue to perform the work he "normally" performed. On the contrary, the record shows that, while Mr. Baron did not stop working altogether, he did modify his normal work schedule as a result of COVID-19, and in particular took advantage of the slower winter periods to spend more time preparing his orders for the following summer and marketing his electric bicycles.

[42] As an aside, I am of the opinion that the AGC erred in finding that Mr. Baron made an [TRANSLATION] "admission" in his conversation with the Officer to the effect that he had never stopped working during the COVID-19 pandemic. It is clear from the Decisions that Mr. Baron made that comment in the context of his general discussion with the Officer, without realizing that the Officer was verifying (if this was the case) his compliance with an eligibility criterion for the benefits claimed.

[43] In short, the record shows that Mr. Baron had no knowledge that the eligibility criteria relating to his stopping work or his 50% decrease in weekly income were at issue in the second review. Mr. Baron was unaware of these matters at the time of the July 11, 2022, telephone conversation and could not have known that the CRA was conducting its second review on any of these grounds of ineligibility. He was therefore denied a full and fair opportunity to respond to the CRA's arguments and to demonstrate that he believed he met these eligibility criteria as well.

[44] It was not for Mr. Baron to guess what new eligibility criteria were of interest to the CRA in the second review. Rather, it was up to the CRA, in the circumstances and in a context where it had identified a failure to meet the $5,000 eligibility criterion, to properly inform Mr. Baron about the scope of its second review, so that he had a fair and reasonable opportunity to make his case.

[45] As I pointed out in a recent decision (*Radiyeh v Canada (Citizenship and Immigration)*, 2022 FC 1234 at para 29), procedural unfairness needs darkness to survive and grow. And breaches of the rules of procedural fairness more readily arise when decision-making processes lack transparency and clarity. Procedural fairness imposes a duty on decision makers, whether they be courts of law or administrative tribunals, to ensure that the litigants who appear before them are not left in the dark. Unfortunately, that is what happened with Mr. Baron in this case, and the Court's intervention in this application for judicial review is therefore warranted.

[46] It may be that following a third review, the CRA will still conclude that Mr. Baron did not meet the criteria described in the second-review letters for entitlement to CERB and CWLB benefits. But Mr. Baron will have had the opportunity to make representations on all of the eligibility criteria at issue and to file evidence in response to the CRA audit before the CRA rules on the matter. That is the very essence of procedural fairness.

[47] In his arguments, the AGC made frequent references to *Lussier v Canada (Attorney General)*, 2022 FC 935 [*Lussier*]. With respect, I am of the opinion that this precedent can be easily distinguished from Mr. Baron's case. In *Lussier*, in finding that there was no breach of

procedural fairness, the Court points out that "[t]he officer specifically raised with Mr. Lussier the criterion of declining income related to COVID-19, and gave him the opportunity to provide his explanations" [emphasis added] (*Lussier* at para 24). Here, there is nothing to establish that the eligibility criteria suddenly applied in the second-review Decisions were specifically raised with Mr. Baron and that he was given the opportunity to explain them. On the contrary, the Officer's notes make only one very general reference to the fact that [TRANSLATION] "all of the criteria must be considered", without ever identifying for Mr. Baron the specific criteria he may have failed to satisfy.

[48] Not only is it far from evident that the Officer actually advised Mr. Baron that she would be verifying all of the applicable criteria, but the record clearly establishes that the Officer did not identify the specific eligibility criteria she was verifying in the context of her second review of the CERB and CWLB benefits. As Mr. Baron points out in his affidavit, it was only when he received the Decisions that he learned of the new eligibility criteria invoked by the CRA to disqualify him from CERB and CWLB benefits.

[49] The duty of procedural fairness is intended to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the administrative decision maker prior to the decision being rendered (*Baker* at paras 21–22; *Henri v Canada (Attorney General)*, 2016 FCA 38 at para 18). This is precisely what Mr. Baron was not given.

IV. Conclusion

[50] For all these reasons, Mr. Baron's application for judicial review is allowed. The Officer's analysis with regard to the CRB and CWLB benefits is tainted by a breach of the rules of procedural fairness. The CRA must therefore re-examine Mr. Baron's claims for CERB and CWLB benefits, clearly informing him of the criteria the CRA is looking at, and allowing Mr. Baron to present evidence and submissions on these criteria.

[51] Given all of the circumstances, I agree with the parties that Mr. Baron is entitled to costs, and that the lump sum award of $2,940 they agreed upon is reasonable and justified.

JUDGMENT in T-1704-22

THIS COURT'S JUDGMENT is as follows:

1. The applicant's application for judicial review is allowed.

2. The decisions dated July 14, 2022, pursuant to which the Canada Revenue Agency [CRA] concluded that the applicant was ineligible for the Canada Emergency Response Benefit [CERB] and the Canada Worker Lockdown Benefit [CWLB] are quashed.

3. The applicant's case with respect to his CERB and CWLB claims is referred back to the CRA for redetermination by a new officer in accordance with these reasons.

4. The respondent will be required to pay $2,940 in costs to the applicant.

"Denis Gascon"
Judge

Certified true translation
Norah Mulvihill

FEDERAL COURT

SOLICITORS OF RECORD

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