Federal Court Cour fédérale

Date: 20231129

Docket: T-1601-22

Citation: 2023 FC 1571

Ottawa, Ontario, November 29, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

SAMUEL COZAK

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Samuel Cozak, seeks judicial review of four separate decisions of a Canada Revenue Agency [CRA] officer [Officer] rendered on June 13, 2022 [Decisions] finding him inadmissible for the Canada Emergency Response Benefit [CERB], the Canada Recovery Benefit [CRB], the Canada Recovery Sickness Benefit [CRSB], and the Canada Worker Lockdown Benefit [CWLB].

[2] The Officer concluded that the Applicant had not met the eligibility requirements of the legislation at issue, namely, the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act], *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act], and the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [CWLB Act]. The Applicant had informed the CRA that he [TRANSLATION] "performs legal work for various lawyers". The Officer highlighted, among other things, that in 2022, the Applicant had submitted a revised tax declaration for the year 2020, in which he amended his declared income of $4,824 to $5,314.

[3] The Officer further highlighted that the Applicant had provided no details as to the nature of his work, whether he was still working, whether he could work from home, or whether any decrease in his work was related to COVID-19. The Officer calculated that if one takes the Applicant's declared revenue in 2019 and 2020, there was a 7.2% drop in revenue, thus not a 50% drop in revenue required in order to qualify for the CRB. Regarding the CWLB, the Officer also identified that the Applicant was, for a period of time, not in a geographic region where lockdowns were taking place.

[4] The Applicant describes himself as [TRANSLATION] "a law school graduate since May 2015 [who] does legal work for various lawyers." He submits that the Officer breached procedural fairness by failing to provide him with an opportunity to provide additional documentation. The Applicant equally submits that there was no indication as to what documentation would have been satisfactory and thus, the CRA was applying arbitrary and undisclosed criteria. In the Applicant's view, the CRA ought to have written to him rather than calling him. He alleges he only became aware of what was lacking once he obtained the

Officer's notes contained in the relevant entries from the internal CRA notepad system [CRA Notepad] in the context of the present judicial reviews. The Applicant pleads that, in any event, providing his Notices of Assessment ought to have been sufficient to demonstrate income as this is the practice in other proceedings, notably family law proceedings.

[5] The Applicant further submits that the Decisions fail to meet the criteria of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*], on the basis that the Officer failed to provide reasons. The Applicant relies on paragraph 95 of *Vavilov*, where the Supreme Court of Canada stated that "[i]t would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party." The Applicant therefore submits that it is improper to rely on the CRA Notepad entries to supplement the Officer's reasons.

[6] Save for the point on his Notices of Assessment, the Applicant chose to not make submissions on whether the Officer's decision was reasonable in light of the record or the merits of his CERB, CRB, CRSB, and CWLB claims. Rather, he submits this exercise ought to be performed by the CRA upon a redetermination.

[7] The Respondent submits that there was no breach of procedural fairness because the Applicant was given multiple opportunities to substantiate his claim, which he chose not to avail himself of. The CRA was under no obligation to send him an email, rather they called him

multiple times and he refused to call them back. The Respondent further submits that the onus was on the Applicant to establish that he meets the criteria set out in the applicable legislation. Simply put, the Notices of Assessment, which are based on self-reported income, are insufficient, by themselves, to demonstrate that he actually earned the reported income. The Respondent pleads that this is particularly the case given the Applicant submitted a revised tax declaration for 2020, indicating $5,341 rather than $4,824, after he was notified that there were issues with his claims.

[8] As to the sufficiency of reasons, the Respondent relies on numerous authorities from this Court for the proposition that, similar to the Global Case Management System notes used by immigration officers, the relevant entries in the CRA Notepad by the Officer in the context of his review of the files form part of the reasons for the Decisions. Moreover, the Respondent pleads that the letters received by the Applicant set out which criteria he failed to meet and thus why he was found to be ineligible.

[9] For the reasons that follow, the Applicant's applications for judicial review are dismissed. Given the record before the Officer and the CRA Notepad entries, I am unable to conclude that the Decisions are unreasonable. Furthermore, in light of the particular facts of this case, the Applicant has failed to persuade me that there was a breach of procedural fairness.

II. Analysis

[10] The Applicant alleges that there was a breach of procedural fairness by the Officer. In the context of a judicial review, one addresses questions of procedural fairness by asking "whether a

fair and just procedure was followed" (*Canadian Pacific Railway Company v Canada (Transportation Agency)*, 2021 FCA 69 at paras 46-47). This standard involves no deference to the administrative decision maker.

[11] I have not been persuaded that the Officer breached procedural fairness. The thrust of the Applicant's argument is that he was never provided with an opportunity to provide an explanation or further documentation. Tied to this is the Applicant's contention that he was not provided with an indication as to what documentation would be satisfactory.

[12] I agree with the Respondent that the Applicant was in fact provided with multiple opportunities to discuss his claims with the Officer and ask questions if he was unsure what documentation was acceptable to submit. Rather than answer the Officer's phone calls or return the calls, the Applicant chose to not engage with the Officer. Furthermore, this was the second review of his applications. The Applicant had also previously declined to speak to the officer conducting the first review of his applications, and thus received a series of written decisions denying his claims for benefits. Upon a second review of his applications, which the Applicant requested, he ought to have been aware that to ignore the Officer's multiple attempts to contact him would be at his peril.

[13] There is no issue in the present case as to the accuracy of the Applicant's contact details or that he was unaware of the Officer's efforts to contact him. Rather, the Applicant's position is that the Officer ought to have written to him rather than telephoning him. The fact that no written

notice was sent prior to the Officer rendering the Decisions was, in the Applicant's view, a breach of procedural fairness.

[14] The Applicant relies upon section 6 of the CRB Act and section 7 of the CWLB Act, which are identical, for the proposition that the Officer was required to provide him with a written notice prior to rendering a decision: "An applicant must provide the Minister with any information that the Minister may require in respect of the application." The Applicant also relies upon section 10 of the CERB Act, which states:

Provision of information and documents	**Fourniture de renseignements et production de documents**
10. The Minister may, for any purpose related to verifying compliance or preventing non-compliance with this Act, by notice served personally or by confirmed delivery service, require that any person provide any information or document within the reasonable time that is stated in the notice.	**10** Le ministre peut, à toute fin liée à la vérification du respect ou à la prévention du non-respect de la présente loi, par avis signifié à personne ou envoyé par service de messagerie, exiger d'une personne qu'elle fournisse des renseignements ou qu'elle produise des documents dans le délai raisonnable que précise l'avis.

[15] The Respondent submits that there is nothing in the aforementioned statutes that required the CRA to communicate with the Applicant in writing when seeking to obtain further information from him concerning his benefits claims. The Respondent explains that it was within the CRA's discretion to communicate with taxpayers by telephone in order to assist them with providing documentation to substantiate their claims and answer any questions they may have.

The CRA, in the Respondent's view, made an administrative choice to proceed in this fashion when administering these benefits as it was more efficient and permits dialogue.

[16] The Respondent states that section 10 of the CERB Act provides the Minister with the power to compel documents from any person, as opposed to an applicant. It does not, in the Respondent's view, impose on the CRA the obligation to follow up in writing with a taxpayer when seeking to obtain further information about their claim for benefits. The Respondent notes that if the Applicant had actually identified the lawyers he had worked for, the CRA could have used the powers in section 10 of the CERB Act to verify with those lawyers directly. The Respondent pleads that section 6 of the CRB Act and section 7 of the CWLB Act permits the CRA to compel further information from an applicant but does not oblige them to.

[17] I agree with the Respondent that the above sections did not impose an obligation upon the Officer to provide the Applicant with written notice prior to rendering the Decisions. In addition, I am mindful that the procedural fairness obligations incumbent on the CRA are generally on the low end of the spectrum (*Ramanathan v Canada (Attorney General)*, 2023 FC 1029 at para 46). Despite the Applicant's submissions to the contrary, he had numerous opportunities to provide additional documentation and information to the CRA.

[18] The Applicant received a phone call from the CRA in the context of the first review of his applications, which he did not return, followed by letters informing him that he was inadmissible for the claimed benefits. Those letters invited him to request a second review of his applications and indicated that he should include the following information, (i) an explanation

why he disagreed with the decisions, (ii) any relevant documentation, information, or correspondence, and (iii) contact details, address, and telephone number. The Applicant replied in writing, attached his Notices of Assessment, and stated that he therefore satisfies the criteria. The Applicant noted that he would be willing to provide bank statements, thereby indicating that he was aware they would be relevant, however, he did not include them. The Officer then sought to reach him on multiple occasions in order to obtain further information. The Applicant never answered nor returned the Officer's calls, nor sought to answer the Officer's calls by following-up with the Officer in writing.

[19] I am satisfied that the process followed in the present case was not procedurally unfair. The Applicant was given a full and fair opportunity to provide additional information and documentation. I agree with the Respondent that the Applicant was on notice that there was an issue with his claims, that the information at the disposal of the CRA was insufficient to demonstrate his eligibility, and thus further information was required. The Applicant, by refusing to engage with the Officer by telephone, ran the risk that a decision may be taken without any further input on his part. This risk materialized. It is not appropriate, in my view, to now seek to fault the Officer when the fault for not engaging with the process lies with the Applicant.

[20] As to the Applicant's submission that he did not know which documents would be satisfactory, this fails for three reasons. First, by the Applicant failing to engage with the Officer, he deprived himself of the opportunity to ask any questions that he may have had. Second, the Applicant is a graduate of law school, a member of the Barreau du Québec, and is not unsophisticated. The Applicant's letter to the CRA enclosing his Notices of Assessment vaguely

referenced the nature of his work ([TRANSLATION] “legal work for various lawyers”) and noted that he was available to provide bank statements, without actually providing any. I agree with the Respondent, in that the contents of the Applicant’s letter indicate that he was not unaware that additional information could well be required. Third, the letters from the initial decision maker notifying him of his inadmissibility indicated that, for the second review, he should include additional documentation and relevant correspondence. The Applicant chose not to put his best foot forward.

[21] The applicable standard of review for the remainder of the issues raised by the Applicant is that of reasonableness as set out in *Vavilov*. A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Vavilov* at para 85). Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). As such, the approach is one of deference, especially with respect to findings of fact and the weighing of evidence. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

[22] I now turn to the Applicant’s argument that his Notices of Assessment were sufficient to demonstrate that he met the criteria. In the present case, the Applicant submitted no other evidence other than the Notices of Assessment, which the CRA already possessed. Given the evidence before the Officer, including the Applicant’s amended tax declaration in 2022 which increased his 2020 income from $4,824 to $5,314, it was not unreasonable for the Officer to

conclude that his Notices of Assessment were insufficient to demonstrate that his income was at least $5,000 during the material periods.

[23] In addition, the argument that an income tax assessment is conclusive proof of threshold income for the purposes of COVID-19 benefits has been rejected on numerous occasions by this Court (*Sjogren v Canada (Attorney General)*, 2023 FC 24 at para 39; *Walker v Canada (Attorney General)*, 2022 FC 381 at paras 29-38; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 35 [*Aryan*]; *Mathelier-Jeanty v Canada (Attorney General)*, 2022 FC 1188 at para 25; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 27; *Hu v Canada (Attorney General)*, 2022 FC 1678 at para 25; *Loeb c Canada (Procureur général)*, 2023 CF 1463 at para 23). In *Hussain v Canada (Revenue Agency)*, 2023 FC 1382, Associate Chief Justice Jocelyne Gagné stated:

> [21] The Canadian tax system is based on the principles of self-reporting and self-assessment. A Notice of Assessment does not prove that the Applicant actually earned the income they reported in filing their income tax return (*Aryan v Canada (Attorney General)*, 2022 FC 139, para 35).

[24] Turning to the Applicant's argument that the Decisions are unreasonable on the basis that the Officer failed to provide reasons, I disagree. The Applicant focuses solely on the letters received from the CRA. He has, however, failed to appreciate that the Officer's reasons for the Decisions include the report of the second review and CRA Notepad entries. While the Applicant may disagree that these form part of the reasons underlying the Decisions, the jurisprudence from this Court on this issue is clear (*Sun v Canada (Attorney General)*, 2023 FC 1225 at para 23; *Crook v Canada (Attorney General)*, 2022 FC 1670 at para 14; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 9; *Aryan* at para 22; *Cozak v Canada (Attorney General)*, 2022 FC 1351 at para 23; *Labrosse v Canada (Attorney General)*, 2022 FC 1792 at para 21). Having

reviewed the reasons provided by the Officer, I have not been persuaded that they are lacking, insufficient or unreasonable in light of the record before the Officer.

III. Conclusion

[25] Having reviewed the record before the Officer and having considered the parties' submissions at the hearing, I have not been persuaded that the Officer committed a reviewable error. The Applicant has been unable to point to a sufficiently serious shortcoming or flaw that would render the Decisions unreasonable. Moreover, the Applicant has not established that the Officer's review of his eligibility for the claimed benefits was procedurally unfair.

[26] The Respondent seeks costs if successful and submitted a prepared draft bill of costs in the amount of $3,910.00 calculated in accordance with Column III of Tariff B. The Respondent also prepared a draft bill of costs for the Applicant calculated in accordance with Column III of Tariff B, in the event that the Applicant was successful.

[27] The Applicant submits that if successful, he should be awarded costs calculated in accordance with Column III of Tariff B. If unsuccessful, the Applicant pleads that no costs should be awarded. The Applicant submits that this Court is bound by *Bastien c Canada (Procureur général),* 2023 CF 222 at paragraph 25, where Justice Sébastien Grammond declined to award costs where the applicant's litigation was based on a legitimate concern regarding the CRA website.

[28] The Respondent highlights that the jurisprudence of this Court is not unanimous on issues of costs, and amounts have ranged from none, $250, $500, and upwards to costs in accordance with the Tariff.

[29] Given that costs are discretionary and based on the particular circumstances of the case, it would be wholly expected that cost awards in the context of judicial review of decisions by CRA officers on the entitlement to COVID-19 benefits would vary.

[30] Rule 400 of the *Federal Courts Rules*, SOR/98-106 [Rules] gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." I have considered the factors listed in subsection 400(3) of the Rules, the circumstances of this case, and the submissions of the parties. I see no reason to depart from the general principle that the successful party, the Respondent, should be entitled to costs. I find, however, that costs in the amount of $3,910.00 calculated in accordance with Column III of Tariff B are excessive given the nature of the present matter. Consequently, costs in the amount of $750.00 shall be awarded to the Respondent.

JUDGMENT in T-1601-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The Applicant shall pay to the Respondent costs in the amount of $750.00.

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1601-22
STYLE OF CAUSE:	SAMUEL COZAK v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 17, 2023
JUDGMENT AND REASONS:	ROCHESTER J.
DATED:	NOVEMBER 29, 2023

APPEARANCES:

Samuel Cozak	FOR THE APPLICANT (SELF-REPRESENTED)
Alice Zhao Jiang	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT