

Federal Court



Cour fédérale

**Date: 20231213**

**Docket: T-452-23  
T-453-23**

**Citation: 2023 FC 1679**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, December 13, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**MARIE-CLAUDE BIRON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Marie-Claude Biron, is seeking judicial review of a decision of a Canada Revenue Agency [CRA] compliance officer [Officer], dated February 8, 2022, in which, following a second review, the Officer concluded that Ms. Biron was not eligible for the Canada Recovery Benefit [CRB]. The CRA denied her application on the grounds that she had not

earned at least \$5,000 in net self-employment income in 2019, 2020 or in the 12 months preceding the date of her first application and that she was capable of working but was not seeking employment.

[2] Ms. Biron is also seeking judicial review of a second decision made by the same Officer, dated February 8, 2022, in which, following a second review, the Officer concluded that Ms. Biron was not eligible for the Canada Emergency Response Benefit [CERB]. The CRA denied her application on the grounds that she had not earned at least \$5,000 in net self-employment income in 2019 or in the 12 months preceding the date of her first application. The Officer noted that Ms. Biron had no history of self-employment prior to 2019.

[3] Ms. Biron contends that both decisions [Decisions] are unreasonable because, in her view, the criteria of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act] and the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act] have been met. In particular, Ms. Biron argues that, contrary to the Officer's conclusions, the documentation submitted, namely, her invoices and tax returns, shows that she earned an income of more than \$5,000 and is sufficient to demonstrate that she has met the established criteria. Furthermore, she argues that the Officer did not consider the personal reasons why she was unable to seek employment during the periods in question. In fact, the reasons given by Ms. Biron constitute a justified unavailability that made her unable to seek employment or self-employment.

[4] For the reasons that follow, these applications for judicial review are dismissed. Having considered the CRA's reasons, the evidence on the record and the applicable law, I am not persuaded that the CRA's decisions can be characterized as unreasonable.

## II. Background

[5] The CERB and CRB are part of a package of measures introduced by the Government of Canada in response to the impact of the COVID-19 pandemic. Under subsection 5(1) of the CERB Act, the CERB was provided for any four-week period falling within the period beginning on March 15, 2020, and ending on October 3, 2020. To be eligible to receive the CERB, an applicant was required to demonstrate at least \$5,000 of income from prescribed sources (which included income from self-employment) in 2019 or in the 12 months prior to their first application (*Hayat v Canada (Attorney General)*, 2022 FC 131 at para 2).

[6] The CRB was available for any two-week period between September 27, 2020, and October 23, 2021, to eligible employed and self-employed individuals who suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]). Eligibility criteria for the CRB are set out and explained in subsection 3(1) of the CRB Act. Among other things, these criteria require the employee or self-employed person to have earned at least \$5,000 in employment income or net self-employment income in 2019, 2020 or in the 12 months preceding the date of their last application.

[7] Ms. Biron began working as a self-employed worker for real estate brokers in the spring of 2019. She submits that she could no longer go to the office because of the pandemic, and she was not equipped to work remotely.

[8] Ms. Biron applied for and received the CERB for seven periods, that is, periods 1 to 7 (March 15, 2020, to September 26, 2020), and subsequently the CRB for 27 two-week periods, that is, periods 1 to 27 (September 27, 2020, to October 9, 2021).

[9] On October 18, 2022, the CRA sent a letter to Ms. Biron indicating that she had been selected for a review of her eligibility for the CERB and the CRB to determine whether she met the eligibility criteria. Ms. Biron then submitted 15 invoices for services rendered to various clients between June 17, 2019, and February 21, 2020, as evidence that she met the eligibility criteria. The submitted invoices totaled \$5,520.

[10] On January 6, 2023, following the first review of Ms. Biron's CERB and CRB applications, the validation officer issued two ineligibility decisions against her after taking note of her tax returns for 2019 to 2021, which were before the CRA and in which she had reported net business income of \$2,360 in 2019, \$3,260 in 2020 and \$680 in 2021.

[11] On January 17, 2023, Ms. Biron sent a letter to the CRA contesting the ineligibility decisions and requesting a second review of the CERB and CRB applications. In her request, Ms. Biron stated, among other things, that she did not understand why the first officer concluded

that she had earned less than \$5,000 when she had a gross income of \$2,360 in 2019 and of \$3,150 in 2020, totalling \$5,520. Ms. Biron did not submit any additional documents.

[12] According to the notes on record, during a call that took place on February 3, 2023, between the Officer and Ms. Biron, the latter stated that she had not worked since February 21, 2020, and that she did not want to equip herself to work remotely during the pandemic. Ms. Biron also stated that she had been paid in cash and was unable to show that she had received those amounts since she had not deposited them in a bank account. Ms. Biron explained that this was casual work paid at \$20 per hour and that she indicated the days that suited her on the invoices; however, those dates did not necessarily reflect the hours she worked. Ms. Biron also said that a family member had cancer and that stopping work gave her the time to help her family.

[13] On February 6, 2023, the Officer prepared a second review report with case analyses and concluded that Ms. Biron was ineligible for the CERB and the CRB since she had not met the criteria. In particular, she did not earn at least \$5,000 in net self-employment income in 2019, 2020 or in the 12 months preceding the date of her first application, and she was capable of working but did not seek employment.

[14] On March 6, 2023, Ms. Biron filed an application for judicial review of the two Decisions.

### III. Standard of review

[15] It is well established that the standard of review applicable in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Aryan* at paras 15–16).

[16] To be reasonable, a decision must be justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]). A reasonable decision is one that is internally coherent, that is justified in relation to the factual and legal constraints and “that bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at paras 85, 99; *Crook v Canada (Attorney General)*, 2022 FC 1670 at para 4 [*Crook*]).

[17] The burden is on Ms. Biron, the party challenging the Decisions, to show that they are unreasonable (*Vavilov* at para 100).

[18] The reviewing court must adopt a posture of restraint and intervene only where “it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). In order to intervene, the reviewing court must be satisfied by the party challenging the decision 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”, and that any alleged flaws or shortcomings “[are not] ... merely superficial or peripheral to the merits of the decision” (*Vavilov* at para 100).

[19] The Court must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the decision the Court would have reached in

its place. Absent exceptional circumstances, a reviewing court must not interfere with the factual findings. Furthermore, in an application for judicial review, the Court must refrain from reweighing and reassessing the evidence considered by the decision maker (*Vavilov* at para 125; *Clark v Air Line Pilots Association*, 2022 FCA 217 at para 9).

#### IV. Analysis

[20] By way of preliminary matter and with the consent of the parties, the style of cause in this matter is amended to reflect the correct respondent, the Attorney General of Canada.

[21] In her written submissions to this Court, Ms. Biron is attempting to present new documents (Applicant's Record, Exhibit P-2) to show that she meets the eligibility requirements for the CERB and the CRB. These new documents are invoices that were not submitted to the Officer during the decision-making process. The Officer had 15 invoices before her during the eligibility review. As part of this application, Ms. Biron enclosed 21 invoices with her affidavit, 8 of which were among those before the Officer and 13 are new. The total number of invoices enclosed with the affidavit significantly exceeds the number of invoices initially presented to the Officer. Also enclosed with her affidavit are bank statements and a document regarding Interac e-transfers sent.

[22] Generally, documents and information that were not before the decision maker are not admissible on judicial review before the Court. As pointed out by Justice Denis Gascon in *Lavigne v Canada (Attorney General)*, 2023 FC 1182 [*Lavigne*], it is well established that, on judicial review, the general rule is that the reviewing court can only consider the documents that

were before the administrative decision maker, with some exceptions (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20 [*Access Copyright*]; *Aryan* at para 42; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at paras 25–26; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 12; *Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at para 23). The exceptions apply in particular to documents that (1) provide general information that might assist the reviewing court in understanding the issues; (2) bring attention to procedural defects or breaches of procedural fairness in the administrative process or (3) highlight the complete absence of evidence before the decision maker (*Tseil-Wautuh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23–25; *Access Copyright* at paras 19–20; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16–18).

[23] In my view, the new documents submitted by Ms. Biron do not meet any of the exceptions listed in *Access Copyright* and the other decisions cited above. Since the new documents were not submitted to the Officer, the Court cannot examine them on judicial review to determine the reasonableness or the legality of the Decisions (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 17; *Lavigne* at para 24).

[24] In any event, I do not consider that the new documents would have changed the outcome of this judicial review. In addition, I note that the new documents contradict what was presented to the Officer, both in terms of amounts and what was reported on tax returns.



[25] As discussed above, in this application for judicial review, the burden of proof is on Ms. Biron to demonstrate that the Officer's Decisions are unreasonable.

[26] Ms. Biron argues that the Decisions are unreasonable since she meets the established eligibility criteria and the Officer did not explain why the detailed invoices and tax returns were not acceptable. She submits that the fact that the dates on the invoices do not necessarily reflect when the work was done is irrelevant since the invoices fall within the periods in question for the CERB and CRB applications.

[27] Ms. Biron affirms that she never refused to provide information and states that the Officer never requested bank statements. Ms. Biron alleges that the Officer should have asked more questions and explicitly requested bank statements. I note that Ms. Biron admitted that she had not submitted her bank statements and informed the Officer that she had not deposited the money in question into her bank account, but argues that this omission was due to the false belief that she had not deposited her clients' payments.

[28] The respondent argues that the reasoning behind the Decisions is reasonable and based on three elements: (1) the applicant's earned income could not be validated since the applicant could not provide tangible evidence to demonstrate the receipt of income; (2) the applicant has no history of self-employment prior to 2019; and (3) the income earned in the 12 months preceding the date of her first application could not be validated since the dates on the invoices provided by the applicant do not correspond to the dates on which the work was performed.

[29] I have carefully reviewed the Decisions and the record on which the Decisions are based, and I conclude that Ms. Biron was unable to identify any flaws or shortcomings that were sufficiently significant or serious to render the Decisions unreasonable.

[30] The Officer noted that the dates on the invoices did not allow her to determine when the work had been performed, and without further documentation or proof, she could not validate Ms. Biron's income for the 12 months preceding her application. The Officer noted Ms. Biron's assertion that she had not deposited the payments received into her account. Given that the invoices and tax returns were the only documents submitted by Ms. Biron, it was reasonable for the Officer to conclude that it was not possible to validate that Ms. Biron's income was \$5,000 in 2019, 2020 or in the 12 months preceding her application.

[31] As for Ms. Biron's argument that the Officer did not ask her to provide bank statements when she should have done so, in my view, this does not constitute a reviewable error. The Officer asked Ms. Biron whether she had deposited the money received, and she replied that she had not. Accordingly, it is not unreasonable for the Officer to conclude that Ms. Biron's bank statements were irrelevant.

[32] Ms. Biron is relying on *Crook* to demonstrate that the invoices submitted constituted acceptable proof of income. I agree with the respondent that this case is not equivalent. In this case, the invoices were not adequate to determine the date of the service or work performed, and there were no other documents than the tax returns, which showed a net business income of \$2,360 in 2019 and \$3,260 in 2020.

[33] The Officer then determined that Ms. Biron was able to work but was not seeking employment and therefore did not meet this eligibility criterion under the CRB Act. Ms. Biron argues that her unavailability was justified and that the Officer did not give reasons for her Decisions in this regard. I disagree. The Officer noted that, when she asked Ms. Biron whether she had looked for work during these periods, Ms. Biron stated that she had not looked for work, did not want to equip herself to work remotely, had simply hoped her work would resume and wanted to help her daughter with her grandson's health challenges. Although I sympathize with Ms. Biron's situation, she has not demonstrated a reviewable error on the part of the Officer.

[34] I am not persuaded of the unreasonableness of the Officer's conclusion that Ms. Biron did not demonstrate that she had earned at least \$5,000 (before taxes) in employment or net self-employment income in 2019, 2020 or in the 12 months preceding the date of her first application and that she was capable of working but was not seeking employment. The Decisions comply with the requirements of *Vavilov*: indeed, upon reading the record, one can discern the underlying logic and reasoning behind the Decisions. The logic and reasoning are coherent and based on the evidence. Accordingly, the Officer's Decisions are reasonable.

#### V. Conclusion

[35] Ms. Biron has not met her burden of establishing that the Officer's Decisions are unreasonable. Accordingly, these applications for judicial review are dismissed.

[36] The respondent is seeking the costs he is entitled to following the dismissal of the application. I am of the view that the amount of \$500 is reasonable and justified.

**JUDGMENT in T-452-23 and T-453-23**

**THE COURT’S JUDGMENT is as follows:**

1. The applications for judicial review are dismissed.
2. Costs in the amount of \$500 are awarded to the respondent.

“Vanessa Rochester”

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Judge

Certified true translation  
Margarita Gorbounova

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

**DOCKET:** T-452-23 AND T-453-23

**STYLE OF CAUSE:** MARIE-CLAUDE BIRON v ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** SEPTEMBER 25, 2023

**JUDGMENT AND REASONS:** ROCHESTER J

**DATED:** DECEMBER 13, 2023

**APPEARANCES:**

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