

Federal Court



Cour fédérale

**Date: 20240102**

**Docket: T-979-23**

**Citation: 2024 FC 2**

**Ottawa, Ontario, January 2, 2024**

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

**BETWEEN:**

**MICHAEL IAN CAMERON**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Michael Ian Cameron (Mr. “Cameron”), is a self-represented individual who seeks judicial review of the Canada Revenue Agency’s (“CRA”) decision finding him ineligible for the Canada Emergency Response Benefits (“CERB”), Canada Recovery Benefit Program (“CRB”), and Canada Worker Lockdown Benefits (“CWLB”). Based on the second review of the Applicant’s eligibility for these program, a Benefits Compliance Officer (the

“Reviewer”) determined that he was not eligible as he failed to demonstrate that he met the \$5,000 requirement in employment or net self-employment income (the “Decision”).

[2] The Applicant submits that the Decision is unreasonable because the Reviewer failed to review the relevant evidence and explain why the Applicant was not eligible for the benefits. He also raises allegations of procedural unfairness and submits that his taxpayer rights were violated.

[3] For the reasons that follow, I find that the Decision is procedurally unfair. I therefore grant this application for judicial review.

## II. **Facts**

### A. *Background*

[4] Mr. Cameron is an IT analyst who has worked in Calgary for a number of years. In 2019, he was self-employed as an IT consultant/sub-contractor. He states that when the COVID-19 pandemic began in March 2020, all work opportunities were halted.

[5] The CRB is a benefit program introduced by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (“*CRB Act*”). The CERB is a benefit program introduced by the *Canada Emergency Response Benefit*, SC 2020, c 5, s 8 (“*CERB Act*”). The CWLB is a benefit program introduced by the *Canada Worker Lockdown Benefit*, SC 2021, c 26, c 5 (“*CWLB Act*”). All three are administered by the CRA.

[6] The CRB was created 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 adversely affected by the COVID-19 pandemic (*Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 2). The CERB provided income support for any four-week period beginning on March 15, 2020, and ending on October 3, 2020 (*Ganesh v Canada (Attorney General)*, 2023 FC 1405 at para 35). The CWLB provided income support for any week that falls within the period beginning on October 24, 2021, and ending on May 7, 2022 for individuals who lost or were unable to work owing to a COVID-19 lockdown (*CWLB Act*, s 4).

[7] The benefits require an applicant have earned at least \$5,000 from approved income sources in 2019, 2020, or in the 12 months prior to the application date (*CERB Act*, s 2; *CRB Act*, s 3(1)(e); *CWLB Act*, s 4).

[8] Beginning on September 27, 2020, Mr. Cameron applied for and received CRB benefits for 27 two-week periods until October 9, 2021. Beginning on March 15, 2020, Mr. Cameron applied for and received CERB benefits for seven four-week periods until September 26, 2020.

[9] On June 16, 2022, the CRA called Mr. Cameron and asked him to provide evidence he made \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of his first CRB application.

[10] On August 25, 2022, Mr. Cameron informed the CRA he was paid \$20,000 by his father for IT work. On September 2, 2022, the CRA received a cash receipt from Mr. Cameron dated

December 31, 2019 for “IT services” in the amount of \$20,000. This receipt did not state from whom and when this receipt was received.

[11] In a decision dated September 7, 2022, the CRA informed Mr. Cameron that he was ineligible for the benefits. For the CRB and CERB, he had not earned at least \$5,000 in employment or self-employment income in 2019, 2020, or the 12 months prior to the first application. For the CWLB, he had not earned at least \$5,000 and he was not working for reasons considered to be unreasonable or unrelated to a COVID-19 lockdown, nor did he live, work, or provide a service in a COVID-19 lockdown region.

[12] On September 11, 2022, Mr. Cameron requested a second review. In a decision dated November 21, 2022, the CRA upheld its initial determination. Mr. Cameron filed for judicial review at this Court and the CRA entered a Notice of Discontinuation, rendering Mr. Cameron eligible for a further review of his file.

[13] On January 31, 2023, Mr. Cameron informed the CRA on a call that he would prefer that the CRA to speak with his agent (his sister-in-law) while he remained on the call. Mr. Cameron states that he has epilepsy, which causes seizures and memory problems. He states that the medication he takes causes him side effects like brain fog, anxiety, and lack of concentration and memory issues. He states he has difficulty retaining verbal instructions and accurately documenting written instructions.

[14] On this call, the CRA explained why the invoice for \$20,000 was insufficient for the benefits claims, stating further documentation was needed. In February 2023, Mr. Cameron, his sister-in-law, and the CRA had further telephone calls where Mr. Cameron sought accommodation from the CRA, requesting the CRA send questions to him and a list of requirements for eligibility.

[15] On a February 7, 2023, call, the CRA informed Mr. Cameron and his sister-in-law that they are not required to provide this request in writing, but could provide them the requirements over the phone.

[16] Based on these interactions, Mr. Cameron states that he came to believe that the CRA reviewer was unable to demonstrate knowledge of his file, including not knowing the contents of the file, not knowing the timelines, and not knowing which documents had been submitted. Mr. Cameron therefore sought to escalate the matter and began speaking with a CRA supervisor about his file.

[17] In discussions with this supervisor, Mr. Cameron maintains that he expressed concerns about the CRA agent reviewing his file, including that the agent did not know about his file, was untruthful about knowledge of the file, that the agent would deny his request, and that the agent had denied requests for accommodation based on his disability.

[18] On March 2, 2023, Mr. Cameron and the CRA supervisor spoke for a final time before the Decision was rendered. Mr. Cameron states he made two requests: first, that the CRA

explore his concerns around the CRA's disability policies and provide the policy in writing; and second, to escalate and further explore reassigning his file. Mr. Cameron maintains the call ended with the supervisor stating she would look into these requests.

B. *Decision under Review*

[19] In a decision dated April 14, 2023, the CRA informed Mr. Cameron of its decision advising him that that he was ineligible for the benefits. For the CRB and CERB, he did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months prior to the date of his first application and was therefore ineligible. For the CWLB, he had not earned at least \$5,000 and he was not working for reasons considered to be unreasonable or unrelated to a COVID-19 lockdown, nor did he live, work, or provide a service in a COVID-19 lockdown region.

[20] In the CRB and CERB applications, the Reviewer found that the only remaining income that would render the Applicant eligible was his professional income. For 2019, the Reviewer considered Mr. Cameron's cash receipt, a letter from him and his father, and his father's 2019 T1 tax return summary and concluded:

The cash receipt is missing important details; it does not indicate who it is from (name, address, phone #), it only states a total (no break down of an hourly wage, amount per job or frequency/time of payment(s)). The letter from Ian Cameron (TP's father) does not show a breakdown of when and how much income that the TP earned nor does it show that TP has actually received any of this income. Ian Cameron's 2019 T1 return summary, line 9270 (Other expenses) does not include who specifically the amount is for other than "sub-contractor-Michael". A first name does not provide enough support that it was to our TP. Further, TP did not receive

any tax slip (such as a T4A) to show sub-contracting tasks were performed. In a previous review, it was noted that TP was working for his father and was paid in cash and did not deposit any of the cash. During the call on 2023-01-31 I asked if there were no documents keeping track of the hours and payments then how did TP know they made \$20k in 2019; in which TP's sister-in-law stated that it was between TP and his employer. It could not be confirmed that TP received the self-employment income claimed for 2019 as TP did not keep records and was not providing services to non-related people. For these reasons the professional income is not being accepted.

[21] For 2020, the Reviewer found that Mr. Cameron had not provided any eligible form of income, including rental and retirement income and COVID benefits. The Reviewer therefore found the Applicant had no eligible income for the periods he applied for the benefit.

[22] In the CWLB applications, the Reviewer found that there were no eligible sources of income for the same reasons as the CRB and CERB applications, and further found that Mr. Cameron:

has no employment or self employment income in 2020 or 2021. With no employment or self-employment claimed, it can be concluded that TP was already not working and the lockdown measures did not reduce TP's hours or result in a job loss. Region was not in a COVID lockdown - TP's postal code is T3H 5T1 in which was in a designated lockdown for periods 9-19 (2021-12-19 to 2022-03-05). TP applied for period 1 (2021-10-24 to 2021-10-30) which was not in a lockdown at that time.

### III. **Preliminary Matter**

[23] The Respondent submits that the Mr. Cameron's affidavit contains information protected by settlement privilege; namely, a letter between the Department of Justice regarding settlement

of his earlier application for judicial review and a summary of communications related to settlement. I agree. The Respondent has demonstrated that these communications are *prima facie* protected by settlement privilege as these communications were prepared for the purposes of settling the earlier application for judicial review, and Mr. Cameron has not demonstrated an exception should be made to this privilege (see *Buck v Canada (Attorney General)*, 2022 CanLII 19523 (FC) at paras 18-21; *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 at paras 2, 12, 17, 19).

[24] The Respondent submits that the style of cause should be amended to identify the Respondent as the Attorney General of Canada in place of the Minister of National Revenue. I agree (Rule 303(2) of the *Federal Courts Rules*, SOR/98-106). The style of cause is amended effective immediately.

#### IV. **Issues and Standard of Review**

[25] This application raises the following issues:

- A. *Is the Decision procedurally fair?*
- B. *Is the Decision reasonable?*

[26] The merits of the Decision are reviewed on a standard of reasonableness (*Hu v Canada (Attorney General)*, 2022 FC 1678 at para 15; *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 16-17, 23-25).



[27] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (“*Canadian Pacific Railway Company*”) at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada’s decision in *Vavilov* (at paras 16-17).

[28] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[29] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

[30] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

V. **Analysis**

[31] Mr. Cameron submits the Decision fails to adequately explain why he was ineligible for the benefits and improperly reviewed the submitted documentation. Additionally, he submits that the CRA breached procedural fairness in refusing to inquire about his concerns and request for accommodations. I agree. The Decision is procedurally unfair. I therefore find it unnecessary to address the Decision's reasonableness.

[32] Mr. Cameron makes a number of arguments about the CRA's conduct in this matter. The two most germane to the issue of procedural fairness are the CRA failing to act on its representations and failing to accommodate his disability.

[33] The Respondent maintains that Mr. Cameron had the opportunity to know the case against him and had the opportunity to respond to it. The Respondent notes that Mr. Cameron was asked on numerous occasions to provide documentation to support his claim, was allowed to have an agent speak on his behalf, and provide additional submissions on his eligibility for the benefits. The Respondent submits that the CRA offered Mr. Cameron the opportunity to take notes in response to questions he may have, an offer that was rejected. The Respondent

maintains that Mr. Cameron was in possession of all relevant documents needed for his claim and that the CRA accommodated their requests to speak to a supervisor, and that a different reviewer made the Decision than the initial decisions.

[34] I agree with the Applicant. The evidence demonstrates that Mr. Cameron sought an accommodation owing to his disability—specifically, that he required communications provided to him in writing. The record reflects that the CRA knew explicitly of the Applicant’s disability by, at the very least, March 2, 2023. But the record also reflects that the Applicant requested accommodations on earlier occasions. A call on January 31, 2023, shows that the Applicant’s sister-in-law raised that questions “needed to be answered in writing” and that “accommodations should be made.” Two further phone calls on February 6 and 7, 2023, demonstrate similar requests for accommodation. Taken cumulatively and before rendering the Decision, the CRA knew, or should have known, that the Applicant’s disability and requests for accommodation demonstrated that he did not know the case to meet. I find that this establishes that the CRA failed to provide the Applicant with the opportunity to know his case and respond to it (*Canadian Pacific Railway Company* at para 56).

[35] This finding is buttressed by, in my view, a breach of the doctrine of legitimate expectations. By telephone call dated March 2, 2023, the supervisor stated she would inquire about the Applicant’s requests for accommodation owing to his disability and for a new agent to review his file. At the hearing, counsel for the Respondent conceded that the supervisor never followed up on this request. I agree. No evidence in the record supports that the supervisor did. Having reviewed the evidence, I find that the supervisor made “clear, unambiguous and

unqualified” representations that a particular procedure—namely, inquiring into assigning a new agent and the CRA’s written accommodation policy—would be followed (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 96). The CRA’s failure to do so establishes a breach of procedural fairness.

[36] I am mindful that the question in procedural fairness is not whether an individual is given the procedure of their choosing, but whether the procedure provided, assuming the duty of fairness applies, accords with the “simple overarching requirement” of fairness (*Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 42). As shown, the procedure did not.

## VI. **Conclusion**

[37] The Decision is procedurally unfair. This application for judicial review is granted without costs.

**JUDGMENT in T-979-23**

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

1. The style of cause is amended to identify the Respondent as the Attorney General of Canada effective immediately.
2. The application for judicial review is granted without costs.

“Shirzad A.”

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Judge

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

**DOCKET:** T-979-23

**STYLE OF CAUSE:** MICHAEL IAN CAMERON v THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 6, 2023

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 2, 2024

**APPEARANCES:**

Michael Ian Cameron  
(On his own behalf)

FOR THE APPLICANT

Yetunde Akinyinka

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT