

Federal Court



Cour fédérale

Date: 20240419

**Dockets: T-1412-22
T-1413-22**

Citation: 2024 FC 602

Vancouver, British Columbia, April 19, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

GRIGORE VETRICI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Grigore Vetrici, applied for the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. On March 28, 2022, an Officer at the Canada Revenue Agency [Officer] rejected the applications. A second review was requested, and on May 30, 2022, the applications were again refused. The Applicant seeks judicial review of the May 30, 2022 decisions.

[2] The Respondent concedes that the decisions were arrived at in a procedurally unfair manner, that the decisions should be quashed, and matters redetermined. The Applicant, citing the passage of time, the impact of the refusals, and the sufficiency of the evidence, submits the Court should exercise its discretion to instruct the decision-maker that the Applicant is eligible for CERB and CRB benefits. The Respondent objects.

[3] The Respondent argues that the Applicant has included material in the Application Records that was not before the decision-maker, that this evidence is improperly before the Court on judicial review and should not be considered.

[4] I am satisfied that, in considering and determining the applications for CERB and CRB, there was a breach of procedural fairness and the decisions are also unreasonable. Evidence of income was not considered and addressed. However, I am not persuaded that it is an appropriate case for the Court to grant the rare remedy of directing a specific outcome. My reasons follow.

II. Preliminary Issue

[5] Subject to the exceptions recognized in the jurisprudence, the evidentiary record before a court on judicial review is restricted to that which was before the tribunal (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19). This principle is of application where judicial review is sought of a Canada Revenue Agency decision relating to CERB and CRB benefits (*Dumbrava v Canada (Attorney General)*, 2023 FC 1011 at para 20, citing *Datta v Canada (Attorney*

General), 2022 FC 973 at paras 29-30, *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 2, and *Maltais v Canada (Attorney General)*, 2022 FC 817 at paras 20-21).

[6] In this instance, new evidence has been included in the Applicant's Records. It has not been argued that one of the exceptions warranting departure from the general rule arises, or that there are other exceptional circumstances requiring the Court to consider the new evidence. I have therefore not considered paragraphs 2, 4, 5, 6 and 8, or exhibits "A", "C", "D", "E" and "G" of the Applicant's Affidavit affirmed on May 15, 2023.

[7] Although the above noted evidence is not properly before the Court on these Applications, the Applicant may place the new evidence before the decision-maker responsible for redetermining these matters.

III. Remedy

[8] In requesting that the Court direct a result, the Applicant relies on *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 142 where the Supreme Court has held:

- a. That the legislature's intention to entrust a matter to an administrative decision-maker "cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations";
- b. That in exercising discretion as to whether to refer a matter back to the decision-maker, a reviewing court should consider whether the decision-maker had a genuine opportunity to weigh in on the issue in question; and

- c. That, where a particular outcome is inevitable, remitting a matter to the decision-maker serves no useful purpose.

[9] The Applicant takes the position that the outcome is inevitable relying on a letter setting out an in-kind lodging arrangement as proof of income. The Applicant submits the Respondent had the opportunity to consider this letter in which the author reports the Applicant had been provided lodging in payment for childcare services.

[10] The discretionary power to decide a matter on judicial review or direct a specific outcome on redetermination is a discretion that should be exercised in rare cases, and with restraint (*Labrosse v Canada (Attorney General)*, 2022 FC 1792 at paras 39-40 [*Labrosse*]).

[11] Despite the Applicant's very capable submissions on this point, I am not convinced that the evidence before me unequivocally establishes income. The decisions are unreasonable and unfair because the Respondent failed to consider evidence of income and to take steps that might have been available to them to corroborate the reported income. Those means of corroboration are not available to the Court. In addition, the Applicant has identified additional evidence in this Application (see paragraphs 6 and 7 above) that the Respondent must be given the opportunity to consider. Thus, I am not persuaded that the outcome is inevitable.

[12] Nor is this a circumstance where the Applicant finds themselves on an endless merry-go-round. There is nothing on the record to suggest continuing and seemingly unending rounds of engagements between the Court and the administrative decision-maker. These matters are before

this Court for the first time on judicial review and the Respondent has conceded a breach of fairness.

[13] As noted above, the discretionary power to instruct a result or to not return a matter to an administrative decision-maker for reconsideration is to be exercised with restraint, and only in rare cases (*Labrosse* at paras 39-40). This is not one of those cases.

[14] However, in reconsidering the applications, the decision-maker shall:

- a. Provide the Applicant with the opportunity to provide new documents, evidence or submissions and consider any such material;
- b. Consider any evidence relevant to the Applicant's eligibility to receive retroactive benefits at the time those CRB benefits were applied for; and
- c. In recognition of the time that has passed, the purpose of the benefits and the fact that the process undertaken to consider the Applicant's eligibility for CERB and CRB was procedurally unfair, reconsider the applications as expeditiously as the circumstances permit.

IV. Costs

[15] The Applicant seeks significant costs relying on *Richardson v Canada (Attorney General)*, 2023 FC 548 and citing the work and research he has done to advance the Applications.

[16] Unlike *Richardson*, the Respondent has conceded the decisions were unreasonable in this instance. The Applicant argues that the Respondent only conceded because the Applications were commenced.

[17] This matter has progressed to a hearing because the Applicant sought a directed result. Although unsuccessful, the Applicant's arguments were not without merit, and he has been substantially successful on the Applications. I am satisfied that a nominal award of costs in the amount of \$150 to cover disbursements is warranted.

V. Conclusion

[18] This Applications for Judicial Review are allowed in part.

[19] The Applicant shall have his costs in the fixed amount of \$150.

JUDGMENT IN T-1412-22 AND T-1413-22

THIS COURT’S JUDGMENT is that:

1. The Applications for Judicial Review are allowed in part.
2. The decisions, dated May 30, 2022, declaring the Applicant ineligible for the Canada Emergency Response Benefit and the Canada Recovery Benefit [CRB] are set aside.
3. The matters are returned for redetermination by another decision-maker in accordance with the above reasons and taking into account:
 - i. Any new documents, evidence or submissions that the Applicant may provide regarding the calculation and determination of net income;
 - ii. Any evidence that, at the time the Applicant applied for CRB benefits, the Applicant was also eligible to be considered for CRB periods that had ended; and
 - iii. The need for an expeditious reconsideration of the Applications.
4. The Applicant shall be awarded costs in the all-inclusive amount of \$150.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-1412-22
T-1413-22

STYLE OF CAUSE: GRIGORE VETRICI v ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 15, 2024

JUDGMENT AND REASONS: GLEESON J.

DATED: APRIL 19, 2024

APPEARANCES:

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FOR THE APPLICANT
(ON HIS OWN BEHALF)

Zakiyya Karbani

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT