

Federal Court



Cour fédérale

Date: 20220622

Docket: T-1649-21

Citation: 2022 FC 935

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 22, 2022

PRESENT: Mr. Justice McHaffie

BETWEEN:

BERTRAND LUSSIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Bertrand Lussier is seeking judicial review of the decision of a Canada Revenue Agency officer who determined that he was not eligible for the Canada Recovery Benefit (CRB). He alleges that he was eligible for the CRB because his income as a self-employed worker in the real estate investment field decreased by more than 50% because of reasons relating to COVID-

19. He argues that the officer who rejected his application did not consider his evidence and arguments reasonably or follow a fair process.

[2] On judicial review, the role of the Court is not to make a new decision on CRB eligibility or to consider new arguments and evidence on eligibility. It is simply to determine, in light of the evidence and the arguments before the officer, whether the decision is reasonable and whether the process was in accordance with the principles of procedural fairness. Having taken on this role, I conclude that, for the reasons that follow, the officer's decision is reasonable and the process was fair.

[3] Mr. Lussier explained to the officer that he receives a commission when referring clients in the real estate investment field and that his income decreased due to (1) the lack of real estate projects during the pandemic and (2) the impact of provincial and federal laws in force at the time on his ability to view properties. The officer concluded that Mr. Lussier's explanations did not demonstrate a reduction related to COVID-19 because (1) he had a gap in his pre-pandemic employment relating to the lack of projects and (2) her research revealed that property viewings were permitted in accordance with the health guidelines. Although Mr. Lussier provided additional explanations as to the impact of the pandemic on his work during this judicial review, I must assess the reasonableness of the decision on the basis of the record before the officer. In light of what was before the officer, the decision is reasonable and there was no breach of procedural fairness.

[4] To be clear, this does not mean that Mr. Lussier was dishonest in submitting a CRB application, but only that he did not establish his eligibility for benefits to the officer's satisfaction and that the officer's decision was reasonable in the circumstances.

[5] The application for judicial review is therefore dismissed.

II. Issues and standard of review

[6] Mr. Lussier's application raised the following issues:

- A. Did the officer err in concluding that Mr. Lussier was not eligible for the CRB?
- B. Did the officer's decision follow the principles of procedural fairness?

[7] The first issue is subject to the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. A reasonable decision is based on an internally coherent reasoning and is justified in light of the legal and factual constraints that bear on the decision: *Vavilov*, at paras 102–107. The Court, in reviewing on the standard of reasonableness, must focus on the decision made by the administrative decision-maker, including its transparency, intelligibility, and justification, and not on the conclusions that the Court would have made in its place: *Vavilov* at para 15. The burden is on the party challenging the decision to show that it is unreasonable: *Vavilov* at para 100.

[8] The second question must be reviewed on a standard of correctness or, rather, by determining whether a fair and equitable process has been followed under all the

circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

III. Analysis

A. *The decision is reasonable*

(1) Legislative and factual framework

[9] The CRB was part of a package of measures the Government of Canada introduced in response to the impacts of the COVID-19 pandemic. Introduced by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA], the CRB provided financial support to Canadian employees and self-employed workers who were directly affected by the impacts of the pandemic and who were ineligible for EI benefits.

[10] The eligibility criteria are listed in subsection 3(1) of the CRBA. The relevant provisions of the CRBA are set out in Appendix A to these reasons. They include (1) the requirement to have income of at least \$5,000 in the year 2019, 2020 or the year preceding the application and (2) the requirement to have not worked or to have experienced a reduction of at least 50% in average weekly income for reasons related to COVID-19: CRBA, ss 3(1)(d), (f).

[11] Mr. Lussier works as a self-employed, independent consultant in the sale of various products and services and does referrals for a company specializing in real estate investment. He applied for benefits for 28 two-week periods between September 27, 2020 and March 13, 2021.

He received benefits for the first 12 periods. Benefits for the periods from March 14 to September 25, 2021 were put on hold pending verification of his identity and eligibility.

[12] A Canada Revenue Agency officer conducted an initial review of Mr. Lussier's file. The officer telephoned Mr. Lussier on June 14, 2021, to inform him that he was ineligible for the PCRE because he had not earned at least \$5,000 (before tax) of employment income or net self-employment income in 2019, 2020, or within the 12 months preceding the date of his first application. Mr. Lussier challenged this decision in writing and requested reconsideration. He attached to his request for reconsideration a copy of the T1 adjustment and T4A form to confirm the income reported in his taxes.

[13] The reviewing officer rendered her decision on November 15, 2021. In the November 15 decision letter, the officer stated that Mr. Lussier is not eligible for the CRB because he (1) is not working for reasons other than COVID-19 and (2) has not had a 50% decrease in his average weekly income from the previous year for reasons related to the COVID-19.

[14] The notes in the "Second Review Report" are part of the reasons for the refusal: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22. The officer summarized the telephone call with Mr. Lussier on October 7, 2021 and concluded that the explanations provided did not demonstrate a link between his reduced income and COVID-19. Mr. Lussier explained that the pandemic had an impact on his work, because there were no projects and because provincial and federal laws prevented visits to properties. The officer determined that the latter explanation was inconsistent with her research, which showed that property visits were permitted during the

pandemic in accordance with health guidelines, regardless of the level of alert in place. Mr. Lussier also told the officer that there was a gap in his work between 2015 and 2019, with the exception of a \$5,000 commission in 2019, because he had no properties for sale. In addition, he had not had any additional income since 2019 due to the lack of projects. Mr. Lussier did the same work before and after the pandemic, and the officer found that his explanations for the lack of projects were inconsistent with the argument that he was forbidden to show properties. The officer stated:

[TRANSLATION]

The taxpayer's argument about access during the pandemic is inconsistent with his other argument that real estate developers have not had any projects since 2019. The taxpayer replied the same for the "gap between 2015 and 2019", meaning that he had no projects. Moreover, the taxpayer stated that he needed the CRB to eat, that this is a gift that Justin Trudeau gave to Canada to help people in trouble and that he could no longer enter people's homes to make visits. He also stated he has had no income since 2019 because the developers had no projects. These statements do not agree. The taxpayer added that he did the same work before the pandemic and during the pandemic. Then he stated that it is not full-time work. He stated that he is retired, that he does not punch in at 9:00 in the morning, that he does a substantive job even if he had no income between 2015 and 2019 or from 2019 to the present.

[15] On November 19, 2021, Mr. Lussier filed his application for judicial review of the decision following the second officer's reconsideration.

(2) The decision is reasonable

[16] Mr. Lussier filed several documents in support of his application for judicial review to show that he has active contracts and that he had submitted job applications. In the case of an

application for judicial review, the role of the Court is to examine the legality of the administrative decision maker's decision, including its reasonableness in the legal and factual context before the decision maker. It is not for the Court to render a new decision on the merits: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 18. When the Court deals with an application for judicial review, it is generally limited to the evidentiary record that was before the decision maker: *Access Copyright* at para 19. Exceptions to this general principle are limited and none exist in this case: *Access Copyright* at para 20. Therefore, I cannot rely on these documents to make my decision. I would like to note that paragraphs 17 and 23 of the affidavit submitted by the Attorney General are also inadmissible as they might add reasons to the decision: *Sid Seghir v Canada (Attorney General)*, 2022 FC 466 at paras 13–14.

[17] Mr. Lussier argued that he had no opportunity to present these documents to the officer because the officer refused permission to send them, saying that she did not need them to make her decision. In reply, the affidavit filed by the Attorney General states that the officer never prohibited Mr. Lussier from submitting additional documents. I do not need to rule on this issue because I find that the additional documents would have no effect on the reasonableness of the decision. I note in particular that the decision was not based on the absence of applications for employment or the absence of agency contracts.

[18] The question before the officer was whether the reduction of at least 50% of Mr. Lussier's weekly income was because of COVID-19. Mr. Lussier explained that he did not work because there were no projects and he was unable to visit the housing units according to the

municipal and provincial directives in place. As for the first explanation, Mr. Lussier was doing the same job before and after the pandemic, and the reason why he did not work from 2015 to 2019 was also attributed to the lack of projects. In these circumstances, it was reasonable for the officer to conclude that the lack of income was related to the absence of projects rather than COVID-19 and that the absence of projects was also not related to COVID-19.

[19] As for the second explanation, the alleged ban on visits, it was refuted by the officer's research. In this application, Mr. Lussier tried to further explain the link between health restrictions and the difficulty of earning income in his industry. However, these explanations were not before the officer. On the contrary, Mr. Lussier explained that people [TRANSLATION] "were not allowed to go to other people's homes" because of federal and provincial laws. Based on the explanations provided to the officer, it is not unreasonable for her to conclude that there was an inconsistency and that Mr. Lussier's decrease in income was not related to COVID-19.

[20] Mr. Lussier also argued that it was unreasonable for the officer to base her decision on new grounds that were not raised during the first review. As stated above, the first refusal of his file was based on the failure to earn at least \$5,000 in income. In his request for reconsideration, Mr. Lussier filed additional documents to effectively establish that he met this test. The officer acknowledged that he met the minimum income requirement, but concluded that he did not meet the requirement of an income cut of at least 50% for reasons related to COVID-19. Contrary to Mr. Lussier's arguments, it is not unreasonable for the officer to have considered the balance of eligibility criteria once Mr. Lussier's previous income was established and to refuse the claim for benefits on another ground.

[21] In light of the above and the evidentiary record before the officer at the time of her decision, I find that the decision is justified, intelligible and transparent.

B. *There was no breach of procedural fairness.*

[22] Mr. Lussier argued that the principles of procedural fairness were not respected in two aspects of the process leading up to the decision. These two aspects were also discussed above as part of the analysis of the reasonableness of the decision.

[23] First, Mr. Lussier claimed that the officer denied him the opportunity to file [TRANSLATION] “copies of contracts and/or agency agreements that adequately validate and justify what I do to earn my self-employed income”. As I explained, I do not have to determine whether there was such a denial, because the documents that Mr. Lussier identified in the context of this application could not have affected the reasoning for the decision.

[24] Second, Mr. Lussier argued that the officer failed to observe the principles of natural justice in formulating a [TRANSLATION] “different version” of the analysis, that is, a decision based on the criterion of the 50% reduction in income caused by COVID-19 and not on the criterion of establishing an income of \$5,000 in previous years. This does not constitute a breach of the principles of natural justice or procedural fairness. All of the criteria in subsection 3(1) of the CRBA must be met and the officer was responsible for considering all of these criteria, even if the first refusal was based on the \$5,000 test. The officer specifically raised with Mr. Lussier the criterion of declining income related to COVID-19, and gave him the opportunity to provide

his explanations. I conclude that this was a fair and equitable process in all the circumstances: *Canadian Pacific Railway* at para 54.

IV. Conclusion

[25] For these reasons, the application for judicial review is dismissed. Given the issues raised and the amounts at issue, I find that an award of \$500 for costs is warranted in the circumstances.

[26] Finally, I note that at the request of the respondent, with the applicant's consent and in accordance with section 303 of the *Federal Courts Rules*, SOR/98-106, the style of cause is amended so that the Attorney General of Canada is designated as respondent.

JUDGMENT in T-1649-21

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. The respondent is entitled to costs in the amount of \$500.
3. The style of cause is amended so that the Attorney General of Canada is the respondent.

“Nicholas McHaffie”

Judge

Certified true translation
Janna Balkwill

**Appendix A—Relevant Provisions of the
Canada Recovery Benefits Act, SC 2020 c 12, s 2.**

PART 1**Canada Recovery Benefit****Eligibility**

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

...

(d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from the following sources:

(i) employment,

(ii) self-employment,

...

PARTIE 1**Prestation canadienne de relance économique****Admissibilité**

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

...

d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :

(i) un emploi,

(ii) un travail qu'elle exécute pour son compte,

...

(e) in the case of an application made under section 4 by a person other than a person referred to in paragraph (e.1) in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 or in the 12- month period preceding the day on which they make the application, a total income of at least \$5,000 from the sources referred to in subparagraphs (d)(i) to (v);

e) dans le cas d'une demande présentée en vertu de l'article 4, par une personne qui n'est pas visée à l'alinéa e.1), à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (v) pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande s'élevaient à au moins cinq mille dollars;

...

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

...

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f)(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application, and

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020,

(ii) in the case of an application made under section 4 in respect of a two-week period beginning in 2021, their total average weekly employment income and self-employment income for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application;

(ii) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2021;

...

...

(i) they sought work during the two-week period, whether as an employee or in self-employment;

i) elle a fait des recherches pour trouver un emploi ou du travail à exécuter pour son compte au cours de la période de deux semaines;

...

...

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Bertrand Lussier SELF-REPRESENTED

Mathieu Tanguay FOR THE RESPONDENT

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