Federal Court  Cour fédérale

Date: 20230215

Docket: T-118-22

Citation: 2023 FC 222

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, February 15, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

JONATHAN BELLEROSE BASTIEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Bellerose was denied the Canada Emergency Response Benefit [CERB] because he had not earned income of at least $5,000 in the twelve months preceding the day of his application. He is now seeking judicial review of this denial. Relying on information on the Canada Revenue Agency [CRA] website, he argues that this 12-month period ended at the beginning of the period for which he is requesting benefits, and not on the date of his application.

[2] I am dismissing Mr. Bellerose's application. The eligibility requirements for the CERB are established by statute, not by the CRA website. The denial of Mr. Bellerose's application was based on a reasonable interpretation of the law. If the situation gives rise to an injustice, Mr. Bellerose may pursue other remedies.

I. Background

[3] During 2019, Mr. Bellerose was occasionally employed to carry out construction or maintenance work. His employment continued into the early months of 2020, but measures taken in response to the COVID-19 pandemic prevented him from getting to work.

[4] On May 25, 2020, Mr. Bellerose filed a CERB application for the period from March 15 to April 11, 2020. He received the benefit for the requested period and for three subsequent periods. However, his file was reviewed. To demonstrate his eligibility, Mr. Bellerose filed receipts and a table outlining the income he earned between March 2019 and March 2020. This income totalled $5,300. A CRA officer determined that Mr. Bellerose was ineligible to receive CERB. Mr. Bellerose requested a second review of his file.

[5] The second review officer refused Mr. Bellerose's request. She noted that he had not earned eligible income of at least $5,000 in 2019. She then verified whether Mr. Bellerose had earned such income during the 12-month period preceding the application. She noted that this period ended at the time the application was filed, in this case, on May 25, 2020. She therefore calculated the income declared by Mr. Bellerose between May 25, 2019 and May 25, 2020 and

arrived at a total of $3862.50. Since this amount was less than $5,000, she concluded that Mr. Bellerose was ineligible to receive CERB.

[6] Mr. Bellerose is now seeking judicial review of that decision.

II. Analysis

[7] On judicial review, the Court's role is not to reassess the case from scratch, but rather to ask whether the administrative decision maker—in this case, the second review officer—has rendered a reasonable decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*].

[8] In this case, the determinative issue is the end point of the 12-month period during which a CERB applicant must have earned income of at least $5,000. Is it the beginning of the first benefit period, as Mr. Bellerose contends, or is it the day on which the application was filed, as the Attorney General contends?

[9] In this regard, Mr. Bellerose's submissions are based on the information that appeared on the CRA website at the time he filed his application. It stated the following:

> To be eligible for the $2,000 CERB payment, you were required to meet the following conditions during the period covered by your application:
>
> . . .
>
> - You earned at least $5,000 (before taxes) in the last 12 months or in 2019, from one or more of the following sources . . .

[Emphasis added]

[10] According to Mr. Bellerose, the expression “in the last 12 months” necessarily refers to the “period covered by your application”. He deduces that the 12-month period ended on the first day of the period for which he is requesting benefits, i.e. March 2020, and not on the day his application was submitted, in May 2020. By way of comparison, the phrase [TRANSLATION] “in the 12-month period prior to the date of your first application”, which appears in the decision letter sent to him in December 2021, is not found in the excerpt from the CRA website that was filed in evidence.

[11] The Attorney General, for his part, supports his position with the text of the *Canada Emergency Response Benefit Act*, SC 2020, c. 5, s. 8 [the Act]. Section 2 of the Act defines the notion of worker/*travailleur* as follows:

worker means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least $5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:	**travailleur** Personne âgée d’au moins quinze ans qui réside au Canada et dont les revenus — pour l’année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l’article 5 — provenant des sources ci-après s’élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :
(a) employment;	**a)** un emploi;
(b) self-employment;	**b)** un travail qu’elle exécute pour son compte;
[…]	[…]

[Emphasis added] [Je souligne]

[12] How does one resolve a conflict between a statute and a document intended to inform the public about the content of that statute?

[13] It is generally accepted that such a document constitutes an administrative interpretation that a court may take into consideration when interpreting a statute: *Harel v Deputy Minister of Revenue (Quebec),* [1978] 1 SCR 851 at 858–859 [*Harel*]; *Nowegijick v The Queen*, [1983] 1 SCR 29 at 37; *FN (Re),* 2000 SCC 35 at paragraph 26, [2000] 1 SCR 880. Justice Robert Décary of the Federal Court of Appeal eloquently summarizes the application of this principle to interpretation bulletins issued by the CRA, in *Vaillancourt v Deputy MNR*, [1991] 3 FC 663 (CA) at 674 [*Vaillancourt*]:

> . . . I note that the courts are having increasing recourse to such Bulletins and they appear quite willing to see an ambiguity in the statute — as a reason for using them — when the interpretation given in a Bulletin squarely contradicts the interpretation suggested by the Department in a given case or allows the interpretation put forward by the taxpayer. When a taxpayer engages in business activity in response to an express inducement by the Government and the legality of that activity is confirmed in an Interpretation Bulletin, it is only fair to seek the meaning of the legislation in question in that bulletin also.

[14] However, it is firmly established that documents published by the government cannot have the effect of amending or setting aside a statute. As the Supreme Court stated in *Harel,* at page 858: “Clearly, this policy could not be taken into consideration if it were contrary to the provisions of the Act”. Indeed, the expectations that may be arise from administrative statements do not create substantive legal rights: *JP Morgan Asset Management (Canada) Inc v Canada*

(National Revenue), 2013 FCA 250 at paragraph 75, [2014] 2 RCF 557. This is why, in *Vaillancourt*, Justice Décary reiterated that an interpretation bulletin is not binding on the CRA and can only be taken into consideration "in the event of doubt as to the meaning of the legislation" (at 674). In other words, recourse to an administrative interpretation is a secondary method of interpretation that will only be used if the three primary methods, i.e., consideration of the text, context and purpose of the legislation, do not lead to a firm conclusion.

[15] The issue at the heart of the present case is therefore, in the final analysis, one of interpretation. As this is an application for judicial review, I must show deference to the decision that is the subject of the review, including with regard to the interpretation of the law: *Vavilov*, at paragraph 115. In other words, I can only overturn the second review officer's decision if she has adopted an unreasonable interpretation of the Act. The interpretation of a statutory provision may be unreasonable if the administrative decision maker has "failed entirely to consider a pertinent aspect of its text, context or purpose": *Vavilov*, at paragraph 122. These three elements—text, context and purpose—constitute the primary methods of interpretation that Canadian courts usually employ to establish legislative intent.

[16] Two factors make my task more complex. First, the second review officer did not explicitly state the reasons that led her to conclude that the 12-month period ended on the day the application was submitted and not at the beginning of the period for which benefits were claimed. Nevertheless, as the Supreme Court stated in *Vavilov* at paragraph 123, the record enables me to discern the interpretation adopted and determine whether that interpretation was reasonable. Secondly, I do not know whether Mr. Bellerose brought his submissions regarding

the website and the interpretation of the Act to the attention of the officers who ruled on his eligibility for the CERB. However, given the manner in which I am deciding the case, I do not need to resolve this issue.

[17] I have carefully reviewed Mr. Bellerose's written submissions and listened to his eloquent argument at the hearing. He has put forward no grounds on which I can conclude that the interpretation adopted by the second review officer disregarded the text, context or purpose of the definition of worker.

[18] In fact, this interpretation was based on the ordinary meaning of the text of this definition, in particular the phrase "in the 12-month period preceding the day on which they make an application". The phrase "day on which they make an application" clearly refers to the filing of the application and not to the beginning of the period for which benefits are claimed. The interpretation proposed by Mr. Bellerose can hardly be reconciled with the wording of the Act.

[19] Moreover, the wording of section 5 of the Act, and more specifically subsection 5(2), shows that the date on which an application is made and the beginning of the period for which a benefit is claimed are two different dates.

[20] Since primary methods of interpretation allow a firm conclusion to be reached as to the meaning of the provision of the Act in question, it was reasonable to disregard the information

on the CRA website. In the words of the Supreme Court in *Harel*, the website, or at least Mr. Bellerose's reading of it, "were contrary to the provisions of the Act".

[21] Having adopted a reasonable interpretation of the Act, the second review officer reasonably applied it to the facts of the present case. Indeed, it is not seriously disputed that the documents provided by Mr. Bellerose did not prove eligible income of at least $5,000 if the reference period extended from May 25, 2019, to May 25, 2020.

[22] I note, moreover, that the second review officer concluded that the documents presented by Mr. Bellerose were insufficient to establish his income, given that he had not provided evidence that the amounts received had been deposited in a bank account. I find it difficult to see how such a requirement can be reconciled with the recent decisions of this Court: *Sjogren v Canada (Attorney General)*, 2022 FC 951 at paragraphs 28 and 29; *Crook v Canada (Attorney General)*, 2022 FC 1670 at paragraph 20; *Sjogren v Canada (Attorney General)*, 2023 FC 24 at paragraph 38. Since the issue relating to the interpretation of the Act is sufficient to decide the matter, nothing further need be said.

[23] Nonetheless, the outcome I have arrived at raises a suspicion of injustice. Mr. Bellerose maintains that he applied for the CERB based on information that appeared on the CRA website, but which turned out to be inaccurate. As a result, he now finds himself obliged to reimburse benefits he received and to which he believed he was legitimately entitled. Unfortunately, the powers granted to our Court in an application for judicial review do not allow me to remedy this situation. In addition, the evidence concerning the content of the website is limited and the

Attorney General did not address this issue in his submissions. If there is injustice, other measures can be taken to remedy it, such as an application for debt remission under section 23 of the *Financial Administration Act*, RSC 1985, c. F-11. Such remission may be granted, for example, where CRA officials have given erroneous advice: *Ontario Addiction Treatment Centres v Canada (Attorney General)*, 2022 FC 393 at paragraph 32; *Jefferson v Canada (Attorney General)*, 2021 FC 658 at paragraph 34.

III. Decision and Costs

[24] Since the second review officer's decision was based on a reasonable interpretation of the Act, Mr. Bellerose's application for judicial review will be dismissed.

[25] The Attorney General is claiming costs in the amount of $500. I am aware that costs have been awarded in that amount in some cases involving the CERB or the Canada Recovery Benefit. Insofar as one can generalize, it seems to me that costs have been awarded in cases in which the applicant was arguing an indefensible position. This is not the case with Mr. Bellerose. Although I dismiss his application, it was based on a legitimate concern about the CRA's website. I will therefore make no order as to costs.

JUDGMENT in T-118-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There is no order as to costs.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	JONATHAN BELLEROSE BASTIEN v ATTORNEY GENERAL OF CANADA
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