

Federal Court



Cour fédérale

**Date: 20230414**

**Docket: T-718-22**

**Citation: 2023 FC 548**

**Ottawa, Ontario, April 14, 2023**

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

**BETWEEN:**

**STEWART RICHARDSON**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] The Applicant, Stewart Richardson, is an unrepresented litigant. He describes himself as a “legitimate business owner whose business was greatly affected by COVID-19”. He applied for, and was denied, the Canada Recovery Benefit (the “CRB”) under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA], which was established to support Canada’s economic recovery in response to the COVID-19 pandemic. The CRA administers the CRB on behalf of

the Minister of Employment and Social Development. On April 6, 2022, after a third review of Mr. Richardson's eligibility, the CRA denied his request for the CRB.

[2] Mr. Richardson now asks this Court to conduct a judicial review of this final CRA decision, pursuant to section 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7. Specifically, he seeks a determination by this Court that he is indeed eligible for CRB benefits and that he should therefore be able to keep the CRB payments already made to him between October 2020 and March 2021. He also seeks a determination that he is entitled to the benefits to which he has been denied since March 2021.

[3] For the reasons that follow, I would allow his application for judicial review in part. I decline to provide the remedy requested; namely, a declaration that Mr. Richardson is eligible for the CRB. I refer that issue back to the CRA for redetermination.

## II. Facts and Decision under Review

### A. *The first CRA Review and Decision*

[4] The Applicant initially applied for the CRB for twenty-eight (28) two-week periods from September 27, 2020 to October 23, 2021. After conducting a review in or around June 2021, in an effort to validate Mr. Richardson's claim, the CRA concluded he was not eligible for the CRB. This, because he had not earned at least \$5,000 of employment income or net self-employment income in tax year ("TY") 2019, in TY 2020, or in the 12 months before the date of

his first application. The CRA informed Mr. Richardson of its decision (the first decision) by letter dated June 24, 2021.

[5] Mr. Richardson disagreed with the CRA's assessment. In his opinion, the \$11,700 of income he had earned through the YWCA/Work BC program – \$3,600 in TY 2019 and \$8,100 in TY 2020 – met and surpassed the \$5,000 qualifying income threshold. In support of his eligibility assessment, Mr. Richardson provided the reviewing officer with Statements of Earnings (T4As) for TY2019 and TY2020 as well as an undated and unsigned letter of support from an official at the YWCA/Work BC program. It is through this program that Mr. Richardson received the \$11,700 of income. I note that the T4A slips provided by the YWCA/Work BC program for TY 2019 and TY 2020, do not show any employment or self-employment business income, but only “other income” in box 28; \$3600 in TY 2019 and \$8,100 in TY 2020.

[6] The internal tax records provided by CRA show that the Applicant had earnings reported on a T4 form of \$972 and Employment Insurance earnings of \$20,232 in TY 2019. The parties agree that Employment Insurance is not “qualifying income” for purposes of the CRBA in the circumstances.

*B. The Second CRA Review and Decision*

[7] As part of the second review, CRA invited Mr. Richardson to submit additional documentation to demonstrate his earnings and eligibility. He uploaded additional material via his CRA My Account online portal on June 29, 2021. On September 2, 2021, he advised CRA

that he had additional information regarding the YWCA/Work BC income. Because his second review had not yet occurred, CRA invited him to upload those documents as well.

[8] On multiple occasions, Mr. Richardson called CRA to inquire about the status of his CRB application. A CRA agent even added the caption “Regular caller” to his file. While reaching out to CRA, Mr. Richardson made it clear that he was “falling on hard times” and that he needed this to be resolved. He was advised to contact the Canada Emergency Benefits Validation section, that “processing times has (sic) been extended due to current volumes”, that there was “unfortunately no timeframe on second reviews” and that he “remain patient”. Such a bureaucratic response was small comfort to Mr. Richardson.

[9] When the Second Reviewer conducted his assessment, he considered internal CRA documents, the existing evidence as well as the new documents provided by Mr. Richardson. Without elaboration, the Second Reviewer determined that Mr. Richardson was not eligible to receive the CRB for the same reasons as the First Reviewer; namely, because he had not earned at least \$5,000 of employment income or net self-employment income in 2019, 2020, or in the 12 months before the date of his first application. The CRA informed Mr. Richardson that he would be denied benefits for any future periods unless he could provide additional proof of eligibility. The CRA communicated the second decision to Mr. Richardson by letter dated January 12, 2022. The CRA further advised, in that same letter, that he could apply to this Court for a judicial review of the decision.

C. *Application for Judicial Review and Notice of Discontinuance*

[10] On February 1, 2022, Mr. Richardson filed an application for judicial review. The Respondent agreed to refer the matter for a “fresh review” based upon Mr. Richardson’s assertion that he had new information. Mr. Richardson, still self-represented, filed a Notice of Discontinuance on February 15, 2022.

D. *Third CRA Review and Decision*

[11] After considering Mr. Richardson’s written submissions and the information that was before her, the Third Reviewer determined that Mr. Richardson was not eligible to receive the CRB for substantially the same reasons as the first two reviewers. The Third Reviewer observed that the issue arose from the fact that the YWCA/Work BC income declared at box 028 (other income) in the T4A was not “employment” income. Relying on the information provided in a letter by the YWCA/Work BC Program Director, the Third Reviewer concluded this “income” was for “living expenses”. The CRA notified Mr. Richardson of the Third Decision by letter dated April 6, 2022. The letter made no mention of the fact that the reporting of income at Box 028 of the T4A tax slip was the basis of Mr. Richardson’s ineligibility for CRB benefits.

Instead, the refusal letter once again used boilerplate language as set out below:

You did not meet the following criteria:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

[12] Immediately upon receipt of the third refusal, the Applicant filed a Notice of Application for Judicial Review in respect of that decision.

### III. Relevant Statutory Provisions

[13] The relevant statutory provisions are subsections 3(1) and 3(2) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA] as set out below:

#### **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
- (iii) benefits paid to the person under any of subsections 22(1), 23(1),

#### **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,
- (iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1),

152.04(1) and 152.05(1)  
of the *Employment  
Insurance Act*,

23(1), 152.04(1) et  
152.05(1) de la *Loi sur  
l'assurance-emploi*,

(iv) allowances, money or  
other benefits paid to the  
person under a provincial  
plan because of pregnancy  
or in respect of the, care by  
the person of one or more  
of their new-born children  
or one or more children  
placed with them for the  
purpose of adoption, and

(iv) des allocations,  
prestations ou autres  
sommes qui lui sont  
payées, en vertu d'un  
régime provincial, en cas  
de grossesse ou de soins à  
donner par elle à son ou  
ses nouveau-nés ou à un  
ou plusieurs enfants placés  
chez elle en vue de leur  
adoption,

(v) any other source of  
income that is prescribed by  
regulation;

(v) une autre source de  
revenu prévue par  
règlement;

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;

[...]

...

### **Income from self- employment**

### **Revenu – travail à son compte**

(2) For the purpose of  
paragraphs (1)(d) to (f),  
income from self-  
employment is revenue from  
the self-employment less

(2) Le revenu visé aux  
alinéas (1)d) à f) de la  
personne qui exécute un  
travail pour son compte est  
son revenu moins les

expenses incurred to earn that revenue. dépenses engagées pour le gagner.

IV. Issues

[14] The following issues are raised in this matter:

- A. Did the CRA Third Reviewing Officer breach the requirements of procedural fairness by failing to inform the Applicant of the case to be met to prove his CRB eligibility?
- B. Was the decision by the Third Reviewer unreasonable due to a lack of transparency and justification?

V. Standard of Review

[15] When considering the issue of procedural fairness, the correctness standard best reflects the standard of review (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). As Gleeson J recently wrote in *Khansari v Canada (Citizenship and Immigration)*, 2023 FC 17 at para 11, “In considering the issue of fairness, a reviewing court must ask whether the procedure was fair having regard to all of the circumstances. The focus is on the nature of the rights involved and the consequences for the affected parties. Ultimately, a reviewing court must consider whether a party knew the case to be met and had a full and fair chance to respond”.

[16] The presumptive standard of review on the merits of the administrative decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23). None of the exceptions to the presumptive standard apply in the



circumstances (*Vavilov*, at paras 17 and 25). The question is whether the reasoning of the administrative decision-maker and the outcome of the decision are based on an inherently coherent and rational analysis that is justified in light of legal and factual constraints (*Vavilov* at para 85). To set aside a decision, a reviewing court must be convinced that there are sufficiently serious shortcomings in the decision, such that any superficial or peripheral flaw will not suffice to overturn the decision (*Vavilov* at para 100). Importantly, a reviewing court must consider the decision as a whole, and must refrain from conducting a line-by-line search for error (*Vavilov* at paras 85, 102).

## VI. Analysis

### A. *Did the CRA Third Reviewing Officer breach the requirements of procedural fairness by failing to inform the Applicant of the case to be met in order to prove his CRB eligibility?*

[17] The Applicant makes no submissions regarding the issue of procedural fairness except to say that “[t]he onus is on the granting agency (Federal Government) to approve or not approve benefits at the time of application, to secure needed documents and so forth before making a single CRB payment”.

[18] The Respondent contends that the Third Reviewer arrived at her decision in a procedurally fair manner and after a careful consideration of Mr. Richardson’s submissions. The Respondent contends Mr. Richardson was provided the opportunity to be heard, knew the case against him and was afforded multiple opportunities to provide further documentation in support of his application.

[19] Internal CRA notes show that the main issue centered on the income that Mr. Richardson received from the YWCA/Work BC. In Mr. Richardson's attempt to clarify the nature of the payments, he submitted a letter from the YWCA/Work BC Program director. That letter, summarized as follows, advised that:

- (a) Mr. Richardson was sponsored by YWCA/Work BC;
- (b) YWCA/Work BC had a "Self-Employed agreement" with him;
- (c) The payments made were for his living expenses;
- (d) The payments were conditional upon Mr. Richardson actively participating in the program; and
- (e) Mr. Richardson successfully completed the program in September 2020.

[20] Mr. Richardson also submitted banking records, which identified all the monies received from the YWCA as "PAYROLL DEPOSIT – YWCA, METRO VAN".

[21] It is trite law that the duty of procedural fairness includes the right to be heard. As *Vavilov* reminds us, the concept of responsive reasons is inherently bound up with this principle. This, because reasons are the primary mechanism by which decision makers demonstrate they have actually *listened* to the parties (*Vavilov* at para 127 [emphasis in the original], citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 28).

[22] The reasons given to Mr. Richardson in every refusal letter that he received from the CRA were that he was not eligible because he had not earned at least \$5,000 of employment

income or net self-employment income in 2019, in 2020, or in the 12 months before the date of his first application. Yet, Mr. Richardson provided the CRA with a letter from his employer, which stated that he had a self-employment agreement with them, that he was required to actively participate in the program to receive those funds and that he completed the program. Furthermore, his bank statements showed regular deposits by the YWCA/Work BC program, labelled as a “payroll deposit”. In my view, it was understandable for Mr. Richardson to conclude that “payroll” is synonymous with “wages and salaries” and/or “earnings”.

[23] Given the above, it is understandable that Mr. Richardson did not relent upon being advised on three occasions that he did not meet the requirements for employment or net self-employment income of at least \$5,000 in 2019 and 2020 or in the 12 months prior to the date of his application.

[24] In my view, the duty on the CRA to explain a refusal of benefits is much higher than the duty, if any, to explain why one qualifies for benefits. An explanation of the “why” is clearly owed in the former. By failing to respond to the additional materials filed by Mr. Richardson, the CRA demonstrated it failed to listen to him. As a result, he could not know the case he had to meet.

[25] The failure by the CRA to advise Mr. Richardson that he was ineligible due to his income being identified in box 028 of the T4A form put him at a distinct disadvantage. It was incumbent upon the CRA to communicate *in writing* the reasons for the exclusion of the Box 028 T4A income from the calculation of benefits. This would have given Mr. Richardson the opportunity

to verify whether those who completed the form had made an erroneous entry. He could not make any such verification without knowing the nature of the CRA's concern.

[26] Furthermore, I note the CRA has made available to the public at large, a publication titled "Taxpayer Bill of Rights Guide: Understanding your rights as a taxpayer", RC17(E) Rev. 22. This publication describes sixteen rights and builds upon the CRA's corporate values of professionalism, respect, integrity, and collaboration. It also describes the treatment to which taxpayers are entitled when interacting with the CRA.

[27] Right #6 is the right to "complete, accurate, clear, and timely information". The publication states: "You can expect us to provide you with complete, accurate, and timely information in plain language explaining the laws and policies that apply to your situation". The CRA never, in plain language, provided Mr. Richardson with an explanation of the laws and policies that applied to him. Despite his best efforts to provide CRA with the information they required to properly assess his application, every refusal letter he received and telephone communication he had with CRA agents, simply stated that he did not show earnings of \$5,000 for the relevant time periods. Absent a meaningful response by the CRA setting out the inadequacies of his materials, Mr. Richardson could not marshal the information sought by the CRA.

[28] In summary, I am satisfied Mr. Richardson's right to be heard included the requirement that the CRA advise him of the ineligibility factors (exclusion of employed/self-employed income from box 028 of the T4A) that would affect the outcome of his CRB application. This

was not done. Through their own conduct and reasons, the CRA denied Mr. Richardson the opportunity to know the case he had to meet and, as a consequence, the opportunity to marshal the evidence CRB was expecting him to provide. Mr. Richardson was effectively denied the right to be heard, by the very people called upon to decide his future.

B. *Was the decision by the Third Reviewer reasonable?*

[29] Mr. Richardson makes no submissions regarding the contemporary concept of reasonableness as defined in the jurisprudence previously cited. That said, he contends that he is a business owner and that the income he received from the YWCA/Work BC program makes him eligible for the CRB. He contends that this meets the requirements of employment or net self-employment income of at least \$5,000 in 2019 and 2020 or in the 12 months prior to the date of his application, needed to be eligible to receive the CRB. Mr. Richardson does not deny that the income he received was included in Box 028 of his T4A tax slips. However, he believes that the income he received, and deposited into his account under the title “payroll”, qualifies as eligible income in accordance with the income requirements under the *CRBA*.

[30] The Respondent contends that the impugned decision should not be disturbed as it meets the applicable reasonableness standard of review. The Respondent submits that the Applicant simply disagrees with the eligibility criteria set out in the *CRBA*.

[31] Given my conclusion regarding the right to be heard, it is unnecessary to deal with the reasonableness issue. However, in the event I am incorrect in my assessment of the procedural fairness issue, I am not convinced the decision meets the test of reasonableness. The principles of

justification and transparency – which are two of the core elements of a reasonable decision – require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties (*Vavilov* at para 127). As previously stated, the Officer failed to provide any reasons why the income claimed in box 028 of Mr. Richardson’s T4A did not meet the eligibility requirement.

[32] A boilerplate statement that stipulates that an individual does not meet the eligibility criteria to qualify for the CRB, because that person “did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of [a] first application” is insufficient justification in the post-*Vavilov* era. This, particularly given Mr. Richardson’s assertion, supported by at least some evidence, that his earnings constituted income, which met the definition. It appears that the CRA never seriously considered that the entry in Box 028 of the T4A could have been erroneous. While it is not CRA’s duty to correct any such error, it is their duty to furnish, through their reasons, adequate information to enable Mr. Richardson to make the necessary enquiries. Given the arguments advanced by Mr. Richardson, the CRA could not, in my view, blindly rely upon the accuracy of forms completed by a party other than Mr. Richardson. At the very least, their reasons should have grappled with his pretensions and should have been sufficiently clear to permit Mr. Richardson the opportunity to investigate with his employer about whether some mistake had been made. People can “tick” the wrong boxes. Mistakes do happen.

## VII. Conclusion

[33] In my view, the CRA's approach to Mr. Richardson's concerns lacked procedural fairness. In addition, the decision is unreasonable given its' lack of transparency and justification. I therefore grant the application for judicial review and remit the matter to the CRA for redetermination. Costs will also be awarded in favour of Mr. Richardson in the amount of \$3,000. I consider \$3,000 a minimal amount, in the circumstances, given the protracted nature of these proceedings and the considerable effort by Mr. Richardson to obtain a remedy.

**JUDGMENT in T-718-22**

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

1. The Application for Judicial Review is allowed. The matter is remitted to a different CRA officer for redetermination.
2. Costs are payable by the Respondent to the Applicant, in the amount of \$3,000.00, inclusive of taxes and disbursements.

**"B. Richard Bell"**

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Judge



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

**DOCKET:** T-718-22

**STYLE OF CAUSE:** STEWART RICHARDSON v THE ATTORNEY  
GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** NOVEMBER 17, 2022

**JUDGMENT AND REASONS:** BELL J.

**DATED:** APRIL 14, 2023

**APPEARANCES:**

Stewart Richardson

FOR THE APPLICANT,  
ON HIS OWN BEHALF

Zakiyya Karbani

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT