

Federal Court



Cour fédérale

**Date: 20230607**

**Docket: T-955-22**

**Citation: 2023 FC 800**

**Ottawa, Ontario, June 7, 2023**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**JADE HOMMERSEN**

**Applicant**

**and**

**THE ATTORNEY GENERAL**

**Respondent**

**REASONS AND JUDGMENT**

**I. INTRODUCTION**

[1] Ms. Jade Hommersen (the “Applicant”) seeks judicial review of a second review level decision made on April 21, 2022 by Ms. Donna Boivin, Manager, Canada Emergency Benefits Validation (the “Manager”), with the Canada Revenue Agency (the “CRA”). In that decision, the Officer determined that the Applicant is not eligible to receive benefits under the Canada

Recovery Benefit (“CRB”) program created by the *Canada Recovery Benefits Act*, S.C. 2020, c. 12 (the “Act”).

[2] In her application for judicial review, the Applicant seeks the following relief [sic throughout]:

The applicant makes application for her case to be brought back with respect of receiving CRB Covid Relief payments. The applicant has collected documents and is requiring an additional review to prove she has made \$5000 that year.

## II. BACKGROUND

[3] The facts are taken from the affidavits filed by the parties, that is the Applicant and the Attorney General (the “Respondent”).

[4] The Applicant filed three affidavits. In the first affidavit, sworn on May 26, 2022, she described herself as the owner of Pro-Star Painters, in Hamilton, Ontario. She deposed that on May 25, she served “The social Tribunal of Ontario Legal Services”, located at 655 Bay Street, Toronto, Ontario, with an “Affidavit of the Application for Judicial [sic] Review”, together with supporting bank statements.

[5] In the second affidavit, sworn on June 5, 2022, the Applicant again deposed about service of an “Affidavit [sic] of the Application”, together with “all relevant [sic] receipts”.

[6] In the third affidavit, the Applicant deposed that she served her “Factum of Law” on June 16, 2022.

[7] The third affidavit included copies of the Applicant's Business Account statements for the periods of March 14, 2019 to April 12, 2019; May 14, 2019 to June 14, 2019; and August 14, 2019 to September 13, 2019. Copies of personal bank statements were submitted for the periods of April 12, 2019 to May 10, 2019; and September 12, 2019 to October 11, 2019.

[8] The third affidavit also included, as an attachment, a copy of a handwritten note purporting to be an acknowledgment that a customer had paid the Applicant the sum of \$170.00 on April 9, 2019 for painting a hallway.

[9] The Respondent filed the affidavit of Ms. Kelly Coghill who is employed by the CRA as a Benefits Validation Officer (the "Officer"). She affirmed her affidavit on September 14, 2022. The affidavit includes exhibits.

[10] In her affidavit, Ms. Coghill described the process followed by the CRA in validating eligibility for the CRB benefits; see paragraphs 3 to 7. She deposed to the efforts she made to communicate with the Applicant and the manner in which she electronically recorded her notes from telephone conversations; see paragraphs 8 to 19.

[11] Ms. Coghill deposed that she advised the Applicant to submit bank statements and invoices to show that she had earned at least \$5,000.00 in 2019, 2020 or in the 12 months preceding her application for benefits.

[12] Ms. Coghill deposed that on September 3, 2021, the Applicant submitted an invoice dated November 5, 2018. On September 27, 2021, the Applicant submitted a screenshot of a bank statement dated March 15, 2019 to September 12, 2019.

[13] According to Ms. Coghill, the Applicant was advised in a telephone conversation on November 4, 2021, that her net income was too low to meet the eligibility requirement. When asked if she had any other source of income for 2019, 2020 or in the 12 months before applying for the benefits, the Applicant replied in the negative, according to notes kept about that telephone conversation.

[14] Following review of the documents submitted by the Applicant and her tax returns for 2019 and 2020 that were available to the CRA, an employee of the CRA determined that the Applicant did not meet the requirements of showing the minimum amount of earned income, before the date of first applying for the benefit.

[15] By letter dated November 8, 2021, the CRA informed the Applicant that she did not meet the eligibility requirements for the CRB benefits. The Applicant was advised, in this letter, that she could seek a review of the decision by a CRA employee who did not participate in the first decision.

[16] The Applicant availed of this opportunity, by a letter that was received by the CRA on November 23, 2021. In her letter, the Applicant submitted that the Act did not refer to net income and that the income requirements were unclear.

[17] According to the notes attached as exhibit B to the affidavit of Ms. Coghill, the Officer spoke with the Applicant by telephone on April 13, 2022. The Officer advised that the net income reported by the Applicant in her 2019 and 2020 income tax assessments was below \$5,000.00. When the Applicant said that she thought the requirement was for gross employment income, the Officer advised that net self-employment income is required and invoices and bank statements are required to support the claimed income, for either 2019, 2020 or the 12 months before the first application for the CRB benefits.

[18] On April 13, 2022, the CRA received an invoice from the Applicant. The invoice, dated April 8, 2019, was from Pro-Star Painters to Jamie Scott, in the amount of \$170.00.

[19] On April 14, 2022, the CRA received a document from the Applicant, purporting to be a cheque, dated April 9, 2019, in the amount of \$170.00. The document was signed by J. Scott. The Applicant said this cheque was a “receipt”.

[20] On April 14, 2022, the Officer advised the Applicant by telephone that only income in the amount of \$4,838.13 could be verified. The Officer asked the Applicant to provide a bank statement showing the deposit of the amount of \$170.00 in her bank account.

[21] According to the Officer’s notes, on April 19, 2022, the Officer advised the Applicant that it was necessary for the amount of \$170.00 to appear on a bank statement. The Officer further advised that if that amount was paid in cash, a bank statement showing a deposit in that amount would be acceptable.

[22] In reply, according to the Officer's notes, the Applicant said that she did not deposit that specific amount. The Officer repeated that without a transaction record about that money, the application for benefits would not be approved.

[23] By letter dated April 21, 2022, the CRA advised the Applicant that she was not eligible for the CRB benefits since she had not shown that she met the income requirements.

### III. SUBMISSIONS

#### A. *The Applicant*

[24] The Applicant submits that the eligibility requirements for the CRB, both online and in the Act, are unclear, particularly the requirement for net self-employment income. She argues that she provided the necessary documents. She refers to her affidavit, affirmed on August 17, 2022, filed in support of this application for judicial review, as providing more details.

#### B. *The Respondent*

[25] The Respondent raises a preliminary objection that the Court should not consider any evidence that is referenced in the Applicant's affidavit, that was not before the decision-maker, relying on the decision of the Federal Court of Appeal in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)* (2012), 428 N.R. 297.

[26] Otherwise, the Respondent submits that the decision meets the applicable standard of review, that is reasonableness. He argues that the Officer considered the available evidence and concluded that the conclusion about the Applicant's failure to establish her eligibility to the CRB benefits, was reasonable.

#### IV. DISCUSSION AND DISPOSITION

[27] The first issue to be addressed is the applicable standard of review.

[28] Issues of procedural fairness are subject to review on the standard of correctness; see the decision in *Canada (Minister of Citizenship and Immigration v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[29] The merits of the decision are reviewable on the standard of reasonableness, following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653.

[30] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”; see *Vavilov, supra* at paragraph 99.

[31] The Act does not contain a purpose clause. However, its purpose can be inferred from its long title, that is “An Act establishing the Canada recovery benefit, the Canada recovery sickness

benefit and the Canada recovery caregiving benefit to support Canada’s economic recovery in response to COVID-19”. In my opinion, this “long title” suggests that the Act is meant to have an ameliorative purpose.

[32] The decision of the CRA is fact-driven, according to the framework of the Act.

Paragraphs 3(1)(a) to (d) of the Act provide as follows:

### **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

**(a)** they have a valid social insurance number;

**(b)** they were at least 15 years of age on the first day of the two-week period;

**(c)** they were resident and present in Canada during the two-week period;

**(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

### **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 :

**a)** elle détient un numéro d’assurance sociale valide;

**b)** elle était âgée d’au moins quinze ans le premier jour de la période de deux semaines;

**c)** elle résidait et était présente au Canada au cours de la période de deux semaines;

**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



\$5,000 from the following sources:

(i) employment,

(ii) self-employment,

[...]

demande, s'élevaient à au moins cinq mille dollars :

(i) un emploi,

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

[...]

[33] Sections 4, 6, and 7 are also relevant and provide as follows:

### **Application**

**4 (1)** A person may, in the form and manner established by the Minister, apply 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.

### **Demande**

**4 (1)** Toute personne peut, selon les modalités — notamment de forme — fixées par le ministre, demander une 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.

### **Limitation**

**(2)** No application is permitted to be made on any day that is more than 60 days after the end of the two-week period to which the benefit relates.

[...]

### **Restriction**

**(2)** Aucune demande ne peut être présentée plus de soixante jours après la fin de la période de deux semaines à laquelle la prestation se rapporte.

[...]

### **Obligation to provide information**

**6** An applicant must provide the Minister with any information that the Minister

### **Obligation de fournir des renseignements**

**6** Le demandeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

may require in respect of the application.

**Payment of benefit**

7 The Minister must pay a Canada recovery benefit to a person who makes an application under section 4 and who is eligible for the benefit.

**Versement de la prestation**

7 Le ministre verse la prestation canadienne de relance économique à la personne qui présente une demande en vertu de l'article 4 et qui y est admissible.

[34] The effect of these provisions is to identify who may apply for the CRB benefit.

[35] Although the Applicant did not advance an argument about a breach of procedural fairness in plain terms, her submissions about the alleged lack of clarity about the eligibility requirements in online information and in the Act may raise an issue of procedural fairness. Since the Applicant is self-represented, a brief word on the issue is appropriate.

[36] According to the decision in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 (S.C.C.), a critical element of any argument about a lack of procedural fairness turns on whether an interested person knows the “case to be met”.

[37] In *Canadian Pacific Railway Company v. Canada (Attorney General)*, [2019] 1 F.C.R. 121 at paragraph 56, the Federal Court of Appeal said the following about the basic requirements of the duty of procedural fairness:

No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. [...]

[38] I am satisfied that there was no breach of procedural fairness arising from the manner in which the employees and agents of the CRA assessed the Applicant's eligibility for the CRB benefits. The Applicant was aware that she had to show that she earned at least \$5,000.00 before taxes, within a certain period, in order to qualify for the benefits.

[39] I will next address the arguments raised by the Respondent about the "new" evidence introduced by the Applicant in this application for judicial review, that is certain exhibits attached to and forming part of her affidavit.

[40] I agree with the arguments of the Respondent on this issue. Only the exhibits to the affidavit of Ms. Coghill will be considered to be the "evidence" in this application for judicial review, in assessing the reasonableness of the decision in question.

[41] It is the CRA, as the decision-maker, not the Court, that is mandated to assess evidence in the validation process. The Court does not weigh evidence in an application for judicial review.

[42] The sole question for determination in this application is whether the CRA reasonably determined that the Applicant did not qualify for the CRB, relative to the purpose of the Act.

[43] I am satisfied that the Applicant has failed to show that the decision of April 21, 2022, is "unreasonable" within the meaning of *Vavilov, supra*.

[44] The Officer reviewed the evidence submitted by the Applicant. Upon review, she was not satisfied that the Applicant had provided sufficient evidence to show that she met the eligibility requirements to qualify for the CRB payments.

[45] The Officer could only consider what the Applicant provided, as well as the information that was available about her income tax returns for 2019 and 2020.

[46] The “new” evidence that the Applicant attached to her affidavit filed in support of this application for judicial review was not before the Officer. It cannot be considered by the Court in this application for judicial review.

[47] Only the CRA can determine eligibility. The Court cannot.

[48] I am satisfied that the Officer reviewed the documents submitted by the Applicant. In view of those documents, the Officer’s conclusion about the proof of income is reasonable. The decision is transparent, intelligible and justified.

[49] There is no basis for judicial intervention and the application for judicial review will be dismissed.

[50] In the exercise of my discretion pursuant to Rule 400 of the *Federal Courts Rules*, SOR/98-106, there will be no Order as to costs.

**JUDGMENT in T-955-22**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

In the exercise of my discretion, there is no Order as to costs.

“E. Heneghan”

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Judge

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

**DOCKET:** T-955-22

**STYLE OF CAUSE:** JADE HOMMENSEN v. THE ATTORNEY GENERAL

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

**DATE OF HEARING:** NOVEMBER 29, 2022 AND DECEMBER 12, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** JUNE 7, 2023

**APPEARANCES:**

Jade Hommersen

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Andrew Stuart

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT