Federal Court Cour fédérale

Date: 20231023

Docket: T-89-23

Citation: 2023 FC 1405

Ottawa, Ontario, October 23, 2023

PRESENT: Madam Justice Azmudeh

BETWEEN:

SHARON GANESH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Sharon Ganesh, brings this application for judicial review of two decisions. The first, a decision dated December 2, 2022, when after an initial assessment by Canada Revenue Agency, a second officer ("**Officer**") also found that the applicant was not eligible to receive payments under the Canada Emergency Response Benefit ("**CERB**"). The second, a preliminary decision dated August 4, 2022, in which a first assessor at Canada Revenue Agency found that she was also ineligible for the Canada Worker Lockdown Benefit

("**CWLB**"). The Applicant never initiated the internal process available to her to have the preliminary decision to deny the CWLB reviewed by a second assessor.

[2] All decisions were made because the evidence and information provided by the Applicant had not satisfied the decision-maker that she had met the minimum income requirement of at least $5,000 (before taxes) of employment or self-employment income in 2019, 2020, 2021 or in the 12 months prior to the date of this first application.

[3] I am sympathetic to the Applicant's situation, and have no reason to doubt that she honestly believed she was eligible for CERB. I also understand that she found it frustrating to navigate the multitude of programs and information provided to her through various sources. Nevertheless, I find the only decision for consideration on this judicial review is the Officer's decision on the CERB.

[4] For reasons that follow, I find the Officer's decision to determine the Applicant ineligible for CERB to be reasonable without any breach of procedural fairness. I therefore dismiss the Applicant's judicial review application.

II. Preliminary Issues

[5] There are three preliminary issues in this case:

A. The Style of cause;

B. The Respondent's motion to strike the Applicant's record; and

C. The Applicant's submission of evidence not before the decision-maker.

A. *The Style of Cause*

[6] The Applicant is self-represented and has filed her application naming the "Minister of National Revenue" as the Respondent.

[7] The Respondent submits that as the Applicant is challenging a decision made by the CRA on behalf of the Minister of Employment and Social Development, the proper Respondent is the Attorney General of Canada.

[8] The Applicant agreed with the Respondent on this point. The style of cause shall hereby be amended to note the "Attorney General of Canada" as the Respondent, in accordance with Rule 303 (2) of the Federal Courts Rules:

Federal Courts Rules, SOR/98-106

Respondents	**Défendeurs**
303 (1) Subject to subsection (2), an applicant shall name as a respondent every person (a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or (b) required to be named as a party under an Act of Parliament pursuant to which the application is brought.	**303 (1)** Sous réserve du paragraphe (2), le demandeur désigne à titre de défendeur : a) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande; b) toute autre personne qui doit être désignée à titre de partie aux termes de la loi fédérale ou de ses textes d'application qui prévoient ou autorisent la présentation de la demande.
Application for judicial review (2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the	Défendeurs — demande de contrôle judiciaire (2) Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1),

Attorney General of Canada as a respondent.	le demandeur désigne le procureur général du Canada à ce titre.
Substitution for Attorney General (3) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of which the application is made, as a respondent in the place of the Attorney General of Canada.	Remplaçant du procureur général (3) La Cour peut, sur requête du procureur général du Canada, si elle est convaincue que celui-ci est incapable d'agir à titre de défendeur ou n'est pas disposé à le faire après avoir été ainsi désigné conformément au paragraphe (2), désigner en remplacement une autre personne ou entité, y compris l'office fédéral visé par la demande.

B. *The Respondent's motion to strike the Applicant's record*

[9] The Respondent filed a motion to strike the Applicant's record on the grounds that it contained settlement communications between the parties. Alternatively, the Respondent asked that the problematic evidence to be struck down.

[10] For reasons outlined below, I will not strike the Applicant's entire record. However, I agree that privileged communication, such as all correspondence and evidence in relation to settlement discussions should not be before the Court and is therefore not admissible.

[11] Settlement privilege is a common law rule of evidence that protects communications exchanged by parties as they try to settle a dispute. This rule, which is based on public policy considerations, enables the parties to participate in settlement negotiations without fear that the information they disclose will be used against them in litigation. It not only promotes transparent discussions between the parties, but it also serves the interests of proper administration of justice

for parties to try to resolve their own disputes before resorting to litigation (*Union Carbide Canada Inc. v Bombardier Inc.*, 2014 SCC 35 (CanLII), [2014] 1 SCR 800 [**Union**], at paras 23 and 31. See also, *Sable Offshore Energy Inc. v Ameron International Corp.*, 2013 SCC 37 (CanLII), [2013] 2 SCR 623 [**Sable**], at paras 11-13). It has also been codified in Rule 422 of the *Federal Courts Rules*:

Disclosure of offer to Court 422 No communication respecting an offer to settle or offer to contribute shall be made to the Court, other than to a case management judge or prothonotary assigned under rule 383(c) or to a judge or prothonotary at a pre-trial conference, until all questions of liability and the relief to be granted, other than costs, have been determined.	**Divulgation de l'offre** **422** Aucune communication concernant une offre de règlement ou une offre de contribution ne peut être faite à la Cour — sauf au juge chargé de la gestion de l'instance ou au protonotaire visé à l'alinéa 383c) ou sauf au juge ou au protonotaire lors de la conférence préparatoire à l'instruction — tant que les questions relatives à la responsabilité et à la réparation à accorder, sauf les dépens, n'ont pas été tranchées.

[12] The Respondent claims that the Applicant's Record contains information subject to settlement privilege and should be struck, in totality or as determined by the Court. The particular material the Respondent argues should be struck is as follows:

	Reference to Applicant's Record	Description of Privileged Information
1.	Tab 4 titled Written Correspondence of Cross-Examination of Affidavits, pages 88-96	The Respondent's settlement offer letter, draft Minutes of Settlement, draft Notice of Discontinuance, the Applicant's counter-offer and email correspondence between the

		parties related to settlement of the judicial review
2.	Tab 6 titled Applicant's Memorandum of Fact and Law, page 111, paragraph 31	Describes information shared during oral settlement discussions.
3.	Tab 6 titled Applicant's Memorandum of Fact and Law, page 112, paragraphs 38 and 39	Describes the exchange of the Respondent's settlement offer and the Applicant's counter-offer.
4.	Tab 6 titled Applicant's Memorandum of Fact and Law, page 112, paragraph 40	Describes the exchange of the Respondent's settlement offer and the Applicant's counter-offer.
5.	Tab 6 titled Applicant's Memorandum of Fact and Law, page 113 paragraph 42.e)	Describes contents of settlement offer letter.
6.	Tab 6 titled Applicant's Memorandum of Fact and Law, page 114, paragraph 43	Describes contents of settlement offer letter.

[13] In my view, I agree that the above-referenced evidence is protected by the privileged communication between the parties and should not be included in the record. At the hearing, the Applicant did not argue why or how exceptional circumstances exist that would allow the disclosure of the protected documents (*Association de médiation familiale du Québec v Bouvier*, 2021 SCC 54 (CanLII), at paras 96-99; *Sable*, at paras 12, 18-20; *Union*, at paras 34 and following). She submitted that the settlement letter should be included in the record on the grounds that it contained little details on the content of the offer.

[14] I do not accept the Applicant's argument. I will therefore not consider the privileged documents listed above.

C. *The Applicant's submission of evidence not before the decision-maker*

[15] On new evidence not before the Officer, the Respondent argues that the evidentiary record is restricted to that which was before the decision-maker, otherwise, the evidence is inadmissible.

[16] More specifically, the Respondent opposes the Applicant's submission of the following exhibits :

a. Exhibit "A", which contains a printout from the CRA's website titled Eligibility Criteria for CERB;

b. Exhibit "B", which contains a Canada Gazette announcement titled Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order: SI/2021-19;

c. Exhibit "C", which contains a printout from the CRA's website titled "Self-employment income (net vs. gross)" ;

d. Exhibit "H", which contains a letter from the Applicant to Commissioner Bob Hamilton dated January 2, 2023;

e. Exhibit "I", which contains a letter from the Applicant to S. Constantin dated January 2, 2023;

f. Exhibit "K", which contains a printout of a webpage from taxpage.com titled "CERB Repayments; What are Taxpayers Supposed to do When Even Tax Pros Aren't Sure";

g. Exhibit “M”, which contains a CRA notice of redetermination dated September 15, 2022; and

h. Exhibit “N”, which contains a printout from the CRA’s website titled Eligibility Criteria for CWLB.

[17] I agree that in an application for judicial review, the Court’s role is to examine the record before the decision-maker to determine whether the decision of the administrative decision-maker was reached in a reasonable and procedurally fair manner considering the legal and factual context before the decision-maker. Therefore, unless exceptional circumstances exists, documents that were not available to the decision-maker are not admissible on judicial review, and the Court should not consider them (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency* (Access Copyright), 2012 FCA 22 [**Association of Universities**], at para 19).

[18] In Association of Universities at paragraphs 19 and 20, the Federal Court of Appeal recognized three (3) exceptions to this general rule: (1) the new evidence contains general contextual information; (2) the new evidence responds to questions of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision-maker.

[19] The Applicant has not made any argument as to which of any of these exceptions apply. Furthermore, in the context of judicial reviews of CRA decisions under the CERB, this Court has already ruled that it should not consider additional documents in support of the application not previously submitted to the administrative decision-maker (*Datta v Canada*, 2022 FC 973 at

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

[20] As for Exhibit “B”, the Court can take judicial notice of the Remission Order SI/2021-19 that was published in the Canada Gazette, as it is an Act of Parliament, in accordance to section 18 of the Canada Evidence Act.

[21] As a result, I have not considered any of the above-mentioned documents on judicial review, with the exception of the Remission Order found in the Canada Gazette and submitted as Exhibit “B” by the Applicant in her affidavit.

III. Background

A. *CERB*

[22] The Applicant is a self-employed freelancer who offers varied services to her clients, including events/project management, administrative services, voiceovers or singing and performance.

[23] The parties do not dispute that the Applicant applied for the CERB for 14 two-week periods from March 15, 2020, to September 26, 2020. In total, the Applicant received $14,000 in CERB payments for the periods between April and September 2020. The parties also do not dispute that the Applicant applied for the CWLB for 11 one-week periods from December 19, 2021, to March 5, 2022. In total, the Applicant received $2,430 in CWLB payments for the periods between December 2021 and February 2022.

[24] On August 5, 2022, the CRA issued a first review letter to the Applicant in which it confirmed its decision that the Applicant was not eligible for the CERB because she had not earned at least $5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of the first application (Exhibit D of the Applicant's Record).

[25] The Officer was then assigned the case and asked the Applicant for additional documents to prove her income. The Applicant sent in a number of invoices and cheques totaling $5,000.75. The Officer accepted this as evidence of the Applicant's gross income amounting to at least $5,000.

[26] However, the Officer found that the Applicant's net income had not reached the required minimum of $5,000. On December 2, 2022, the CRA issued a second review letter to the Applicant in which it re-confirmed its decision that the Applicant was not eligible for the CERB.

B. *CWLB*

[27] On August 4, 2022, the CRA issued a first review letter to the Applicant in which it communicated its decision that the Applicant was not eligible for the CWLB because she had not earned at least $5,000 (before taxes) of employment or self-employment income in 2020, 2021, or in the 12 months before the date of her first application. The same letter advised the Applicant of her right to request a second review within 30 days if she disagreed (Exhibit L of the Applicant's Record).

[28] The Applicant does not dispute the fact that she never requested a second review for the CWLB. After the expiry of the 30-day period and on September 15, 2022, the CRA issued a

Notice of Redetermination for COVID-19 Benefits in which the Applicant was asked to pay back the $2,430 she had received in CWLB payments.

IV. Judicial Review Issues and Standard of Review

[29] The Applicant raises several issues that can be summarized as follows:

a. The procedural fairness of the Second CERB Decision;

b. The reasonableness of the Second CERB Decision; and

c. The reasonableness and procedural fairness of the CLWB Decision.

V. Standard of Review

[30] The standard of review applicable in this case is reasonableness (*Aryan v Canada (Attorney General),* 2022 FC 139 [**Aryan**], at paras 15-16). The parties do not dispute this.

[31] When the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to assess whether the decision was based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision-maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [**Vavilov**], at para 85). The reviewing court must therefore ask "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility" (*Vavilov,* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 47, 74). It is up to the party challenging an administrative decision to show that it is unreasonable.

[32] Review on a standard of reasonableness will involve a rigorous assessment of administrative decisions. However, as part of its inquiry into the reasonableness of a decision, the reviewing court must examine the reasons provided with "respectful attention" and seek to understand the line of reasoning followed by the decision-maker to arrive at its conclusion (*Vavilov*, at para 84). The reviewing court will adopt a posture of restraint, intervening only "where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov*, at para 13). A decision will not be overturned on the basis of merely superficial or peripheral errors. Rather, the impugned decision will have to contain sufficiently serious shortcomings, such as internally incoherent reasoning (*Vavilov*, at paras 100–101).

VI. Legislative Framework

[33] The enabling legislation of the CERB is the Canada Emergency Response Benefit Act, SC 2020, c 5, s 8. [**CERBA**]

[34] To be eligible for CERB, the Applicant must be a worker, as defined in section 2 of the CERBA:

> **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:
>
> (a) employment;
>
> (b) self-employment;

> (c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the Employment Insurance Act; and
>
> (d) 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. (travailleur)

[35] Pursuant to section 5(1) of the CERBA, "[a] worker may, in the form and manner established by the Minister, apply for an income support payment for any four-week period falling within the period beginning on March 15, 2020, and ending on October 3, 2020."

[36] Section 5(3) of the CERBA requires an Applicant to provide the Minister of Employment and Social Development [the "**Minister**"] with any information that the Minister may require in respect of the application.

VII. Analysis

A. *Issue A: There is no Breach of Procedural Fairness Breach of the CERB Decision*

[37] Even though not directly argued, the Applicant implies that the Officer failed to afford her procedural fairness because she had received mixed signals between the eligibility under different programs, such as whether CRA would use the gross or the net income as the basis for eligibility. In other words, the Applicant submits that the instructions regarding how her income was being assessed were unclear and that such unclear instructions breached the duty of procedural fairness.

[38] The Applicant also submits that it was not always easy to communicate with the Officer. I do not agree with the Applicant's characterization. In her affidavit, the Officer explains the

process by which she reached her decision, the documents she reviewed, how she accepted and relied on the evidence the Applicant had filed after the first CERB decision was made, and her efforts to communicate with the Applicant. She states that in her effort to determine whether the Applicant's reported income was correct, she called her twice on November 8, 2022, and once on November 9, 2022, but the Applicant did not answer any of her calls. Nor did the Applicant return the Officer's voicemail.

[39] The Applicant was informed of the income requirement several times during the first and second reviews. Even if the Applicant had wished to talk to the Officer, she still did not explain, what, if any, further evidence she would have provided.

[40] In any event, there is no factual dispute between the parties on the Applicant's income. The Applicant does not dispute that the Officer considered all of her documents, including her additional invoices and cheques. She does not allege that she wished she could file more documents or modify any of them.

[41] The Applicant had stated the multitude of information on various CRA websites had misled her to believe that the gross, and not the net self-employment income is measured for CERB and that she found this frustrating and unfair.

[42] The Applicant's frustration was also shared by a class of plaintiffs in the case of *Ryan v Canada (Attorney General)*, 2021 FC 825 [**Ryan**]. In this case, the plaintiff who had commenced the proceeding of a proposed class of persons had agreed to discontinue her action without cost. The action had commenced because Ms. Ryan, the proposed representative plaintiff of the class, had relied on a May 25, 2020, Department of Finance posting on a Federal Government website

on emergency relief payment during COVID-19 pandemic specifically to the self-employed individuals. According to this posting, the eligibility criteria for self-employed Applicants were as follows:

[43] In her Statement of Claim, Ms. Ryan had sought the following two remedies:

- That this Court's interpretation of "self-employment income" under the CERBA on the Government of Canada's official website describing the CERB eligibility, and

- a declaration that class members who earned (presumably gross) self-employment income of $5,000 in the last 12 months before March 2020 or in 2019 are entitled to the CERB payments received.

[44] Like in this case, the issue in the *Ryan* case was whether the gross or net self-employment income should be used as eligibility criteria. Like in this case, CRA had advised Ms. Ryan and those in the proposed class that they had interpreted the self-employment income to mean "net self-employment income" (*Ryan,* at para 2).

[45] However, CRA also introduced another program on May 12, 2021, the Remission Order, on May 12, 2021, that would let those with a gross self-employment of $5,000 to keep their CERB payments. This was the reason for the plaintiff's discontinuance of action (*Ryan,* at paras 7-9).

[46] I find that this case demonstrates that the Government has introduced several programs that may have different eligibility criteria. Each decision-maker has a duty to assess an Applicant's eligibility under the legal framework for the program they have applied.

[47] At the judicial review hearing, counsel for the Respondent referred to the Officer's notes to highlight the Officer's awareness of the availability of other programs that would allow the Applicant to keep the CERB payment.

[48] I therefore do not find that the Applicant's general frustration with the process or her disagreement with the legal criteria of CERB eligibility to amount to a breach of procedural fairness.

B. *Issue B: The Officer's Decision to find the Applicant ineligible for CERB was reasonable*

[49] The parties agree that the standard of review is one of reasonableness, as per *Vavilov*, (see paras 12-13), which is a deferential, but robust, standard of review. For a decision to be unreasonable, the Applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov*, at para 100). Not all errors or concerns about a decision will warrant intervention.

[50] The Applicant accepts that the Officer considered all of her evidence to conclude that she had made at least $5,000 gross self-employment income. Her only contention is that the Officer should have based her finding of eligibility on gross and not net income. This is the basis for which she argues the decision is unreasonable.

[51] The Applicant also argues that the Officer's decision did not contain reasons and that it was only based on "boiler plate" information that she had not made the requisite $5,000 income. I note that in addition to the letter, the record contains the CRA's agency wide notes. It is in these notes that the Officer refers to her (attempted) communications with the Applicant, the

document she had reviewed, and her consideration of the new evidence filed by the Applicant to conclude that while she had made at least $5,000 in gross income, she had not made it in net.

[52] I agree with the Respondent that the notes cannot be divorced from the letter. As the Supreme Court of Canada found in *Vavilov* at paragraph 103:

> [103] While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis: see *Wright v. Nova Scotia (Human Rights Commission)*, 2017 NSSC 11, 23 Admin. L.R. (6th) 110; *Southam*, at para. 56. A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken (see *Sangmo v. Canada (Minister of Citizenship and Immigration)*, 2016 FC 17, at para. 21 (CanLII)) or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point (see *Blas v. Canada (Minister of Citizenship and Immigration)*, 2014 FC 629, 26 Imm. L.R. (4th) 92, at paras. 54-66; *Reid v. Criminal Injuries Compensation Board*, 2015 ONSC 6578; *Lloyd v. Canada (Attorney General)*, 2016 FCA 115, 2016 D.T.C. 5051; *Taman v. Canada (Attorney General)*, 2017 FCA 1, [2017] 3 F.C.R. 520, at para. 47).

[53] The record shows that in order to conclude that the Applicant had not made at least $5,000 in net self-employment income, the Officer relied on the Applicant's negative net self-employment income of -$105 in 2019 and -$3,950 in 2020 and that the Applicant had not provided documentation to show otherwise.

[54] The Officer had a duty to apply the CERBA to assess the eligibility of the Applicant's CERB case. The Officer's interpretation of s. 2 of CERBA to mean "gross" and not "net" is consistent with the language of the provision and CRA's position on the point and therefore reasonable. The availability of other programs, such as the Remission Order discussed in Ryan,

is irrelevant to the CERB eligibility criteria. The Applicant's submission that the Remission Order modified the eligibility criteria for the CERB is without merit. The application by the Officer of the legislated criteria in the CERBA for entitlement to the CERB was reasonable (See *Flock v Canada (Attorney General)*, 2022 FC 305 (CanLII), at paras 18-29. Appeal dismissed: *Flock v Canada (Attorney General)*, 2022 FCA 187 (CanLII)).

C. *Issue C: Whether the Judicial Review of the CWLB is premature*

[55] While the Applicant did not address this issue in her memorandum, at the Judicial Review hearing, she stated that the CRA had not accepted that she made the income threshold on CERB and that she did not trust that another CRA employee would make a different decision on CWLB. She also stated that at around the time she learned of the preliminary refusal of CWLB, she was in the process of gathering her evidence for the second review on CERB and that she "needed to hustle".

[56] In *Lin v Canada (Public Safety and Emergency Preparedness)*, 2021 FCA 8 [**Lin**], cited by the Respondent, the Federal Court of Appeal specified that it is the general rule that "judicial review should not be brought until all available and adequate administrative recourses are pursued" (*Lin*, at para 5).

[57] The Court further specifies that the importance of the issues raised as well as issues of jurisdiction and procedural fairness cannot, alone, constitute exceptional circumstances (*Lin*, at para 6, citing *C.B. Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61, at para 33).

> [33] […] Exceptional circumstances are best illustrated by the very few modern cases where courts have granted prohibition or

> injunction against administrative decision makers before or during their proceedings. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, as long as that process allows the issues to be raised and an effective remedy to be granted.

[58] I find that the Applicant failed to exhaust all of her administrative recourses before requesting the CWLB decision to be heard by this Court in judicial review.

[59] I agree with the Respondent that allowing the Applicant to continue with the judicial review of the first decision of the CWLB would go against fundamental principles in public law, namely the good administration and the democratic principle. As the Federal Court of Appeal held in *Dugré v Canada (Attorney General)*, 2021 FCA 8 [**Dugré**], at para 35:

> an application for judicial review against an interlocutory administrative decision can be brought only in "exceptional circumstances" that are very rare and that the consequences of an interlocutory decision be so "immediate and radical" that they call into question the rule of law (*Wilson v. Atomic Energy of Canada Limited*, 2015 FCA 17, [2015] 4 F.C.R. 467 [*Wilson*], at paras. 31-33, set aside on a different point, 2016 SCC 29, [2016] 1 S.C.R. 770; *Budlakoti v. Canada (Citizenship and Immigration)*, 2015 FCA 139, 473 N.R. 283, at paras. 56-60 [*Budlakoti*]).

[60] The Applicant did not argue how her failure to apply for a second review could be justified as an exceptional circumstance. I therefore find that the judicial review of the preliminary decision in denying the Applicant CWLB is premature and I will not engage with the merits of that decision.

[61] The FCA further addresses the exceptions to this rule, deeming them to be "very rare" and "set at a high threshold" as to not disrupt the orderly and efficient course of administrative proceedings.

[62] I do not believe that the Applicant has demonstrated an exceptional circumstance justifying the derogation to the general administrative process. Therefore, the Applicant's judicial review of the CWLB decision should be dismissed, as allowed by the case law (*Dugré*, at para 38, citing *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245, [2015] 4 F.C.R. 75, at para 22; *Alexion Pharmaceuticals Inc. v Canada (Attorney General)*, 2017 FCA 241, at paras 47 to 56).

VIII. Cost

[63] Rule 400 gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." Having considered the factors listed in sub rule 400(3) of the Rules, as well as the calculation made by the parties, and all other circumstances of this case, I find that no award for costs is warranted in this matter.

[64] Both parties argued in favour of the costs they should be awarded. The Applicant for the hours she spent in litigating this case and for the expenses associated with it. The Respondent for how this court should calculate costs under Tariff B from the time that the Respondent had made a reasonable offer to settle the case.

[65] As the Applicant has not been successful on this matter she is not entitled to costs.

[66] I note that the Applicant is a self-represented litigant who had to navigate the multiple stages of decision-making in administrating CRA's multiple programs. These included the CERB, CWLB and the Remission Order. However that does not establish an entitlement to costs.

[67] In the circumstances also decline to order costs to the Respondent.

IX. Conclusion

[68] The application for judicial review is dismissed, without costs.

JUDGMENT in T-89-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed without cost.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-89-23
STYLE OF CAUSE:	SHARON GANESH v ATTORNEY GENERAL OF CANADA
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DATED:	OCTOBER 23, 2023

APPEARANCES:

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