

Federal Court



Cour fédérale

Date: 20240710

Docket: T-1403-22

Citation: 2024 FC 1088

Ottawa, Ontario, July 10, 2024

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

THÉRÈSE LENNERT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Dr. Thérèse Lennert is a neuroscientist who resides in Montreal. From 2012 to 2019, she worked as a post-doctoral fellow [PDF]. In 2019 she became an independent contractor.

[2] For the 2019 taxation year, Dr. Lennert declared both PDF income and self-employment income totalling more than \$5,000. Following the outbreak of the COVID-19 pandemic, she applied for and received the Canada Recovery Benefit [CRB] for 19 two-week periods.

[3] Dr. Lennert received CRB payments in the amount of \$17,700. By letter dated July 21, 2021, the CRA informed Dr. Lennert that she was not eligible to receive the CRB because she had not earned at least \$5,000 of employment income or net self-employment income in 2019, 2020, or in the 12 months prior to the date of her first application.

[4] Dr. Lennert requested a review of the determination that she was not eligible for the CRB. The CRA assigned Greg Vachon [Second Reviewer] to conduct the review.

[5] The Second Reviewer had a number of telephone calls with Dr. Lennert and her husband. They informed the Second Reviewer that:

- (a) Dr. Lennert helped her husband on a project in 2019 that ended in 2020;
- (b) due to the COVID-19 pandemic, there was not much work available;
- (c) e-mail messages between Dr. Lennert and her husband demonstrate that she was working for him during the relevant period;

- (d) in lieu of payment, Dr. Lennert's husband purchased groceries for the two of them to compensate her for the work she performed – ordinarily, they would have divided the cost of the groceries between them; and
- (e) Dr. Lennert's PDF income should also have been considered for the purposes of determining her eligibility for the CRB.

II. Decision under Review

[6] The Second Reviewer's decision was communicated to Dr. Lennert by letter dated June 8, 2022. The Second Reviewer's notes of his decision include the following:

Taxpayer did not make the \$5000 in 2019, 2020 or 2021, There are no additional slips on file to show any other income, Groceries and other purchases from husband purchased on his VISA for his wife does not count as Income. The Visa purchases could be for anything, could be for the Taxpayers husband purchasing items for himself. The Fellowship money does not count as Income, as it does not fall into Self-Employment it is not a performing art. There was no contract or letter providing the art grant or Lecture provided when I asked, Taxpayer did a reassessment for 2019 taxes to get to \$5052.84 in 2022, The husband was requesting a supervisor callback but I told him he got a call in October 2021 for the same reason regarding wife's Income, I did not request a Supervisor callback.

[sic throughout]

III. Issues

[7] Dr. Lennert says that the Second Reviewer's decision was unreasonable and procedurally unfair. She has adduced new evidence to support her position.

IV. New Evidence

[8] New evidence is not ordinarily admissible on judicial review, but there are exceptions. New evidence may be admitted where it: (a) provides general background in circumstances where that information might assist in understanding the issues relevant to the judicial review; (b) brings to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness; or (c) highlights the complete absence of evidence before the administrative decision maker when it made a particular finding. This list of exceptions is not necessarily closed (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

[9] Most of the new evidence relied on by Dr. Lennert consists of CRA policies and responses to access to information requests. These documents are intended to demonstrate that PDF income and income received from family members must be declared and is taxable. Dr. Lennert says this is general background information that may assist the Court, and illustrates that the Second Reviewer's decision was not based on relevant considerations.

[10] In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 93). The Second Reviewer was presumably aware of applicable CRA policies and procedures. To the extent that he was unaware, or misapplied them, this may tend to show that the resulting decision was unreasonable or unfair. Dr. Lennert's new evidence is admissible for this purpose.

V. Standard of Review

[11] The decision of the Second Reviewer is subject to review against the standard of reasonableness (*Vavilov* at para 23). The Court will intervene only if “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[12] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The ultimate

question is whether an applicant had a full and fair chance to be heard (*Siffort v Canada (Citizenship and Immigration)*, 2020 FC 351 at para 18).

VI. Analysis

[14] The eligibility requirements for the CRB are established by s 3 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA]. The CRBA provides in ss 3(1)(d) and (e) that an applicant must have earned at least \$5,000 of net income in prescribed periods from prescribed sources. These are defined as follows:

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|--|--|
| (i) employment, | (i) un emploi, |
| (ii) self-employment, | (ii) un travail qu'elle exécute pour son compte, |
| (iii) 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, | (iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 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; |

[15] For a two-week period beginning in 2020, a minimum of \$5,000 must have been earned in 2019 or in the 12-month period preceding the day on which the applicant applied for the CRB.

For a two-week period beginning in 2021, a minimum of \$5,000 must have been earned in 2019, in 2020, or in the 12-month period preceding the day on which the applicant applied for the CRB.

[16] Subsection 3(2) of the CRBA states that, for the purposes of the income earned in the periods described in ss 3(1)(d) and (e), “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”.

[17] According to the guidance provided to CRA officers in a document titled “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guidelines], acceptable forms of proof to establish self-employment income include invoices for services rendered, documentation for receipt of payment, a list of expenses to support the net result of earnings, and any other documentation that will substantiate \$5,000 in self-employment income.

[18] The Second Reviewer reasonably concluded that the evidence of payment submitted by Dr. Lennert, which consisted only of excerpts from her husband’s VISA bills confirming that he had purchased groceries at different times, fell short of establishing that she had received income from self-employment during the relevant qualifying periods. There were no invoices for services rendered, documentation for receipt of payment, nor itemized lists of expenses to support the net result of earnings. The Second Reviewer noted that Dr. Lennert had amended her 2019 tax return in order to “get to” \$5,052.84 in self-employment income.

[19] It is clear from the eligibility criteria of the CRBA that not all taxable income will qualify for receipt of the CRB. The CRA Guidelines specify the “boxes” on T-slips submitted with tax

returns that are eligible to establish employment or self-employment income. Box 105 on the T4A is for “Scholarships, fellowships, bursaries, and artists’ project grants”, and is not included in the categories of eligible employment or self-employment income.

[20] The CRA Guidelines nevertheless note that:

Artist project grants may be viewed as employment or self-employment income. The amounts will be reported in Box 105 on the T4A. The income qualifies if it is reported as self-employment income on the T1, otherwise client contact may be required.

[21] Dr. Lennert argues that the Second Reviewer’s reference to the absence of any “contract or letter providing the art grant” was not responsive to her submissions. However, it appears that he was merely applying the CRA Guidelines. Despite being included in Box 105 of the T4A, artist project grants were potentially eligible to establish employment or self-employment income for the purposes of the CRB. Other scholarships, bursaries or fellowships were not.

[22] The Second Reviewer’s determination that Dr. Lennert’s PDF income “does not count as Income, as it does not fall into Self-Employment [and] it is not a performing art” was therefore reasonable.

[23] Dr. Lennert had multiple opportunities to present her case to the Second Reviewer, both orally and in writing. She has not demonstrated that the resulting decision was procedurally unfair.

VII. The Conduct of this Proceeding

[24] This application for judicial review was heard in Montreal on April 29, 2024 before a judge who retired from the Court on June 1, 2024. By Order of the Chief Justice dated June 24, 2024, the application was reassigned to a different judge. During a case management conference on June 28, 2024, the parties agreed that the application would be determined based on the written record and audio recording of the hearing.

[25] The audio recording of the hearing indicates that the previous judge intended to apprise the parties of recent jurisprudence and give them an opportunity to address it in writing. It appears that the jurisprudence was never forwarded to the parties, and it is unclear from the record what jurisprudence the previous judge was referring to. It has not been necessary to resolve this question in order to decide the application. The law is sufficiently clear.

VIII. Conclusion

[26] The application for judicial review is dismissed. Dr. Lennert was unrepresented in this proceeding, and her arguments were well-considered. Having regard to all of the circumstances, no costs are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1403-22

STYLE OF CAUSE: THÉRÈSE LENNERT v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 29, 2024

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JULY 10, 2024

APPEARANCES:

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(on her own behalf)

FOR THE APPLICANT

Emmanuelle Rochon

FOR THE RESPONDENT

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