Federal Court  Cour fédérale

Date: 20250109

Docket: T-1165-23

Citation: 2024 FC 2012

Vancouver, British Columbia, January 9, 2025

PRESENT: Mr. Justice Diner

BETWEEN:

BARBARA JUDT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

PUBLIC JUDGMENT AND REASONS

(Confidential Judgment and Reasons issued December 11, 2024)

[1] This is an application for judicial review in respect of two decisions [Decisions] by Canada Revenue Agency [CRA or the Respondent] to deny Barbara Judt the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. As was done recently in *Singh v Canada (Attorney General)*, 2024 FC 51 [*Singh*] at paras 24–25, the Court heard both judicial reviews simultaneously, as they involve the same set of facts, similar legislative

provisions, and the same decision-maker. For the reasons outlined below, I am granting the judicial review.

[2] It should be noted that this Court issued a Confidentiality Order with respect to certain documentation on this file on June 30, 2023, and as a result, the censored parts of these reasons are confidential. A public version of these reasons will be released together with the confidential reasons.

I. Background

[3] The federal government introduced the CERB and CRB as measures to provide emergency aid in supporting Canadian workers in response to COVID-19. They were intended to provide financial support in the form of targeted payments to workers who had suffered a loss of income due to the pandemic, and who did not qualify for other protection or insurance plans. These income losses could be on account of sickness, self-isolation or quarantine, caring for an elderly parent, sick family member, children (during school and daycare closures), or for those furloughed or terminated because of COVID-19. The focus of the benefits was on delivering aid in a rapid and simple way, rather than on assessing eligibility (*Yates v Langley Motor Sport Centre Ltd*, 2022 BCCA 398 at para 41 [*Yates*]).

[4] The eligibility criteria for CERB and CRB are set out in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act] and *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act], respectively. To qualify for CERB, employees or self-employed workers had to have earned at least $5,000 in employment income or self-employment income in

2019 or in the 12-month period preceding their application for the program. To qualify for CRB, employees or self-employed workers had to have earned at least $5,000 in employment income or net self-employment income in 2019, 2020, or in the 12 months preceding the date of their last application.

[5] Ms. Judt applied for CERB for seven periods between March 15, 2020 and September 26, 2020, along with CRB for twenty-one periods between September 27, 2020 and July 17, 2021. CRA subsequently began a verification process for Ms. Judt's eligibility for both CERB and CRB. As part of its review, CRA considered the settlement agreement and payment [Settlement] that Ms. Judt received from her former employer in 2019, which resulted from a wrongful dismissal lawsuit.

[6] On September 23, 2021, CRA advised Ms. Judt that she did not qualify for CRB. CRA found that she failed to meet the $5,000 statutory income requirement. Ms. Judt requested a second review. On January 18, 2022, CRA determined once again that she was ineligible for CRB, given she did not meet the income requirement. Ms. Judt sought judicial review of CRA's decision, which it thereafter agreed to reconsider, and Ms. Judt discontinued the application. However, on June 8, 2022, CRA once again advised Ms. Judt that she was ineligible for CRB, again for failure to meet the income requirement. Ms. Judt sought judicial review of this CRA decision. Again, the Respondent agreed to reconsider the matter, and Ms. Judt discontinued the application before this Court.

[7] [redacted]

[redacted]

II. Decisions under Review

[8] In the two decisions [Decisions] now being considered by this Court together for this judicial review, the CRA Manager [Manager] reviewed Ms. Judt's CRB application (for the third time), and her CERB application (for the first time) on May 11, 2023. CRA considered all relevant documents relating to Ms. Judt's Settlement, including a release and indemnity waiver, cheques and statements of account, court records, and employment documents. Ms. Judt also provided information pertaining to other sources of income that she received during this period, primarily for plasma donations. However, CRA noted that money received as a donor is considered voluntary and not eligible income.

[9] Specifically, CRA informed Ms. Judt that she was ineligible for each benefit, because she did not meet the income requirements on the basis that she (i) did not earn at least $5,000 (before taxes) of employment or self-employment income in 2019, 2020 or in the 12 months before the date of her first application, and (ii) did not stop working or have her hours reduced for reasons related to COVID-19.

[10] The reasons for the ineligibility are further explained in the computer notes that form part of the reasons for the Decisions (*Singh* at para 33; see also *Lavigne v Canada (Attorney*

General), 2023 FC 1182 at para 26 [*Lavigne*]; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22 [*Aryan*]). The Manager wrote in the computer notes that expanded on the decision letters, providing the following conclusion for the Decisions (Certified Tribunal Record, pages 16 and 17):

> The TP did send in the Plaintiff statement of claim which simply states how much the plaintiff was going after when it concerns her former employer. [redacted] The bigger outline of the statement of claim is making the picture of how much she was getting paid in the different roles that she held over the years and what could contribute to her termination.
>
> [redacted] While her 2019 taxes were re-assessed, along with the letter from CRA's Processing review Section dated November 2, 2020, the only change was that the Canada Revenue Agency removed the TP's Other employment expenses from line 22900 (legal fees that were paid to collect or establish a right to salary or wages owed to you). The CRA determined the expenses were to be reported on line 23200. Declaring legal fees on line 23200 is when you are trying to collect a retiring allowance or pension benefit. Since there was a determination by the CRA section reviewing tax returns in regard to the fees that you paid to collect (or establish a right to) a retiring allowance or pension benefit I come to the conclusion that the same determination should be made in regard of [redacted] There are no notes on file stating that the TP called in to appeal the re-assessment done on her 2019 taxes. The TP did not declare [redacted] as employment or self-employment income on their T1 return. The TP's employment income has never changed from the [redacted] on their 2019 return. The TP never received a T4 slip to declare that she had received [redacted] as employment income. Even after all this time that the TP has been attempting to collect the CERB and CRB, the TP made no attempt to re-assess her taxes to add the income that she claims to of received.

> TP has no employment income from 2020 to show that her income was affected by COVID-19. TP did say that she had been sending out her resume to many jobs that fell within her scope of employment experience, but never got a call for a job. TP only received new employment in May 2021 with Statistics Canada. Based on my review of all of the information provided to me I have determined the taxpayer not eligible as she has not been able to provide sufficient documentation to support that she met the $5,000 income criteria before applying for both CERB and CRB benefits.

[11] The Manager concluded:

> [redacted]
>
> For CERB - The TP did not earn $5000 income. The TP's hours were not reduced due to COVID-19. The TP did not stop working due to COVID-19. For CRB - The TP did not earn $5000 income.

III. Parties' Positions

[12] Both parties' arguments were clearly and concisely put to the Court in their written and oral pleadings. Ms. Judt disagreed with both Decisions, claiming that the Settlement represented severance pay, and therefore, qualified her for both CERB and CRB. She argued that her previous employment led directly to the Settlement funds received. In addition, Ms. Judt

contended that the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] does not expressly bar severance amounts from qualifying as income. Moreover, given her numerous conversations and reviews, Ms. Judt argued that CRA was itself unsure about the proper classification of her Settlement funds.

[13] The Respondent countered that both Decisions were reasonable, in that CRA justifiably determined that Ms. Judt's Settlement did not constitute employment income under the ITA, making her ineligible for both CERB and CRB. The Respondent contended that the ITA expressly excludes Settlement funds from the definition of "employment income." Rather, the Settlement funds – coming from employment-related litigation – constitute a "retiring allowance," a different section of ITA, which is distinct from employment income, and thus falls outside of CERB and CRB eligibility. The Respondent argues that the Manager reasonably provided an explanation of why the Settlement did not constitute employment income but rather constituted retirement income or termination pay.

[14] During the hearing, I provided the parties the opportunity to comment on three recent cases that neither had addressed in their written submissions, namely (i) *Yates*, cited above; (ii) *Oostlander v Cervus Equipment Corporation*, 2023 ABCA 13 [*Oostlander*]; and (iii) *Dansereau c Annexair inc*, 2023 QCCQ 10222 [*Dansereau*], as to whether they were applicable to the current facts. As the parties were not aware of the three cases, I offered them an opportunity to provide post-hearing submissions, including on the interpretation of the ITA provisions relating to the tax treatment of employment-related settlement amounts.

[15] In response, the Respondent provided Further Written Submissions on September 9, 2024 [Further]. The Respondent observed that *Yates* concluded that CERB should not reduce a damages award, which has been followed by *Oostlander* and *Dansereau.* The Respondent posited that these cases are therefore distinguishable, in that they address a different issue, namely the doctrine of compensatory advantage under the law of damages (i.e. whether CERB/CRB payments are a "compensating advantage" that should reduce damages payable to a former employee).

[16] Here, by contrast, the Respondent argued that the issue is how to classify the settlement of an employment action under the ITA to determine whether the Applicant was eligible for CERB/CRB, as opposed to the above three provincial cases where the applicants clearly qualified for CERB/CRB. Rather, in those cases, the question involved whether to reduce or offset the CERB/CRB benefits received by the settlement funds from their wrongful dismissal awards. In other words, those cases did not question whether the applicants were eligible for CERB/CRB in the first place, which is the question raised in this case.

[17] The Respondent also provided further submissions on the structure of the ITA and what constitutes employment income, noting that the ITA expressly excludes funds received in respect of a loss of employment from "employment income," and rather classifies those funds as a "retiring allowance." According to the Respondent, this is based on the ITA provisions found in Division B of Part I of the ITA, which sets out the tax treatment of employment income. The Respondent contends that the Manager made the Decisions refusing Ms. Judt's eligibility, on the basis of these considerations.

[18] Ms. Judt did not provide any post-hearing submissions.

IV. Analysis

A. *Preliminary Matter*

[19] As a preliminary matter, the Respondent objected to the inclusion of documents which Ms. Judt had annexed to her submissions but were not before the decision-maker, including an email and a news article. The Respondent asserts that new evidence is inadmissible unless it meets one of three exceptions, namely that it (i) provides general background information, (ii) addresses procedural fairness issues, or (iii) highlights the lack of evidence before the decision-maker.

[20] I agree with the Respondent that none of these exceptions apply to the evidence Ms. Judt sought to include in her submissions, and this new evidence will not form part of the record given, the principles set out in *Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 (at paras 19–20).

B. *Standard of Review*

[21] I now move onto the primary issue at hand – the reasonableness of the Decisions. This is because the Court reviews CRA decisions about CERB and CRB payments on the reasonableness standard (*Komleva v Canada (Attorney General)*, 2024 FC 1562 at para 17, citing *Aryan* at para 16). In this case, I must decide whether CRA's Decisions to exclude the Settlement from Ms. Judt's employment income calculation was based on an internally coherent and rational chain of analysis, and justified under the relevant factual and legal constraints (*Canada (Minister*

of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 85 [*Vavilov*]). In this regard, the reasons must be transparent and intelligible (*Vavilov* at para 15). CRA decision-makers are constrained by the law governing CRB/CERB decisions, having "no choice but to assess entitlement to benefits or other forms of relief based on the eligibility criteria set out in the legislation" (*Devi v Canada (Attorney General)*, 2024 FC 33 at para 29, citing *Flock v Canada (Attorney General)*, 2022 FCA 187 at para 7).

[22] I also acknowledge that a reviewing Court must not "create its own yardstick" and use it to measure the decision under review, but also note that "reasonableness review is not a 'rubber-stamping process,' it is a robust form of review" (*Onex Corporation v Canada (Attorney General)*, 2024 FC 1247 at para 42 [*Onex*] citing *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 61 [*Mason*] at paras 8, 63 and *Vavilov* at paras 12–13, 83).

C. *The Decisions are Unreasonable*

[23] In my view, the Decisions are unreasonable because they: (1) fail to provide an explanation as to why a more restrictive statutory interpretation was chosen over another plausible alternative interpretation that would have been more favourable to Ms. Judt, in line with the text, context and purpose of the CERB/CRB Acts; and (2) lack responsive justification vis-à-vis the outcome deeming Ms. Judt ineligible, in light of the underlying factual and legal constraints.

(1) Statutory Interpretation

[24] When interpreting statutes one must look at the text, context and purpose of statutes (*Vavilov* at paras 117–120 citing *Rizzo and Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21). Furthermore, the principles of statutory interpretation, as recently observed by Justice Régimbald in *Onex*, "require, when possible, the preference for a remedial interpretation that best ensures the attainment of the statutory provision's object" (at para 52 citing *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 (CanLII), [2002] 2 SCR 559 at para 26, quoting Elmer A Driedger *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87; *Vavilov* at paras 117–118; *Mason* at paras 69, 83).

[25] Section 12 of the *Interpretation Act*, RSC 1985, c I-21 [*Interpretation Act*], provides as follows:

Enactments deemed remedial	**Principe et interprétation**
12 Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	**12** Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

[26] As *Vavilov* held at paragraph 121, the legislative provision in question must be interpreted:

> […] in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The decision maker's

> responsibility is to discern meaning and legislative intent, not to 'reverse-engineer' a desired outcome.

[27] As for the analysis done under the CERB/CRB constraints, I acknowledge that administrative decision-makers need not engage in a formalistic statutory interpretation exercise in each case. Most CERB cases before this Court simply turn on whether an applicant had the required income in the window of time stipulated by the statute, and thus do not require any such interpretative exercise.

[28] However, in the occasional case – such as this one – in which the decision-maker does interpret the statute, their interpretation must consider, at least briefly, the text, context and purpose of the provision (*Vavilov* paras 119–120). Furthermore, the reasons must clearly indicate the selection of a stricter interpretation as opposed to a remedial one that better reflects that statutory scheme as required under section 12 of the *Interpretation Act* (as noted above, see *Onex* at para 105 citing *Mason* at para 76; *Vavilov* at para 133).

[29] The Alberta Court of Appeal, which has since been followed by other Courts, observed that the "CERB was a short-lived exceptional benefits program designed to apply broadly, quickly, and simply. […] CERB was an emergency measure delivering financial aid during the early weeks and months of an unprecedented global pandemic. The program's goal was to mitigate harm to individuals in a moment of great uncertainty" (*Yates* at paras 61–62; *Oostlander* at para 20; *Dansereau* at paras 73–79).

[30] I acknowledge that these three decisions considered a different issue, namely whether CERB benefits should be deducted from damages resulting from wrongful dismissal claims, given arguments that had been made about the principle of compensating advantage (see above in these Reasons at paragraph 15). The three cases all effectively found, based on CERB policy goals and in the absence of rules, that CERB policy was "an income support program designed to benefit workers impacted by the COVID-19 pandemic. If a windfall is to result, it seems to better reflect the intention of Parliament that it go to the worker" (*Yates* at para 48; *Oostlander* at para 20; *Dansereau* at para 73).

[31] The ITA does not have a similar policy goal; rather, it is a self-assessment regime to provide a portion of income of taxpayers to the state (*Guindon v Canada*, 2015 SCC 41 at para 54 citing *R v McKinlay Transport Ltd*, 1990 CanLII 137 (SCC), [1990] 1 SCR 627 at 636).

[32] In this case, CRA did not discuss section 12 of the *Interpretation Act* or its application in the Decisions. The Agency also failed to consider the remedial nature of the CERB/CRB Acts. In doing so, the CRA decision-maker failed to properly consider the legal and factual constraints underlying its Decisions in the two matters at hand (see, by analogy, *Onex* at para 44).

[33] The restrictive interpretation given to the ITA vis-à-vis Ms. Judt's income in the context of the CERB/CRB Acts neither addresses the context of nor purpose for that legislation, nor considers any distinction between those COVID statutes and the ITA. Given this principle, I find that CRA erred in failing to explain why Ms. Judt's 2019 Settlement, which well exceeded $5,000 and replaced lost employment income, did not qualify as qualifying income, but rather as

retiring income, aside from a brief mention that Ms. Judt directed these funds to her RRSP account, and declared the income as such.

[34] The jurisprudence notes that the more serious the impact of the decision on the rights and interests of a party, the more the reasons must reflect the issues, be sufficient to the parties, and explain why the path chosen reflects the legislature's intention (*Onex* at para 46 citing *Mason* at para 76; *Vavilov* at paras 133–134). CRA is not required to follow the principles of statutory interpretation as established by the Courts, and is not held to a perfection standard when engaging in that exercise (*Onex* at para 45).

[35] Here, however, the issue was not a deficient or imperfect analysis. Rather, CRA failed entirely to indicate why it preferred a more restrictive interpretation when another plausible remedial interpretation existed which would have favoured Ms. Judt, namely that the Settlement was a lump sum meant to replace the income Ms. Judt would have made had she not lost her employment).

[36] In sum, the result of borrowing principles from the ITA and importing these principles into the CERB/CRB Acts assessments in a strict manner, as proposed by the Respondent, undermines a reasonable and remedial application of the CERB/CRB principles.

(2) Responsive Justification

[37] I find that CRA lacked responsive justification in finding that the Settlement fell outside of the eligibility criteria.

[38] I start from the observation that CRA was well aware of the basis for Ms. Judt's claim and subsequent Settlement, having been provided relevant documentation by the Applicant (including the originating Statement of Claim, and subsequent Terms of Agreement between Ms. Judt and her former employer). Ms. Judt's Statement of Claim made it clear that almost 100% of the funds being sought in her lawsuit were to replace her employment income, aside from a very small amount intended to replace a cell phone expense (less than 2% of the total damages sought). As with the error made on the first (statutory interpretation) issue, CRA failed to engage with these details as well in its Decisions.

[39] Ms. Judt's claim did not seek other damages, such as anything related to a human rights issue, pain and suffering, damage to her reputation, or the inability to gain future employment. It was thus apparent that the Settlement replaced employment income that Ms. Judt would have otherwise received had she not lost her job.

[40] To this point, the Manager noted the fact that Ms. Judt self-reported an income of $3,000 for the year 2019, placing the Settlement funds in her RRSP account, and did not amend her income tax return to reflect the funds as employment income. The Respondent noted that Ms. Judt's tax return is presumed to be accurate.

[41] As a basic principle, taxpayers are free to arrange their affairs and structure their income in order to pay less taxes (*Neuman v MNR*, 1998 CanLII 826 (SCC), [1998] 1 SCR 770 at paras 39, 63; see also *Canada (Attorney General) v Collins Family Trust*, 2022 SCC 26 at para 12).

[42] Ms. Judt's tax return is only one element to be considered by CRA when assessing her eligibility to CERB/CRB and is not determinative. In fact, CRA should consider the circumstances specific to each case, and in doing so they may ask for further documentation (see, for instance, *Aryan* at paras 40–41; *Brychka v Canada (Attorney General)*, 2023 FC 1062 at para 8).

[43] Therefore, while accurate that Ms. Judt directed the Settlement to her RRSP account, that fact alone cannot be conclusive of this matter. If CRA felt that the RRSP contribution was determinative, it failed to justify that conclusion for the purposes of the CERB income threshold in the Decisions. While the Respondent ably pointed out in oral arguments how the Manager arrived at the conclusion that the funds were a retiring allowance and not employment income, and while that analysis may have been appropriate, the Manager failed to provide reasons to explain that outcome and was not responsive to the documents that Ms. Judt provided regarding the basis for her Settlement.

[44] It is not the reviewing Court's role to read in or invent that analysis. Rather, the reasons must be justified: it is not sufficient that they be justifiable (*Mason* at paras 59–60; *Vavilov* paras 86 and 96). I recognize that the Court must take a contextual and holistic approach to the Manager's reasons (*Vavilov* at para 97; *Mason* at para 61). However, to justify these Decisions would require this Court to use the Respondent's arguments that were made subsequent to the Decisions to render reasonable otherwise unjustified and non-transparent decisions.

V. COSTS

[45] As this is the first time that Ms. Judt has been able to argue her judicial review on the merits, given that the two prior reviews were discontinued, I will order costs in the amount of $1000 to Ms. Judt.

[46] Having so decided, I wish to commend both sides for their assistance to the Court, and civility in these proceedings. Ms. Judt presented her position as a highly poised and eloquent self-represented litigant. She applied for CERB and CRB in good faith, and articulately explained her difficult personal circumstances in these proceedings. Counsel for the Respondent was of great assistance in providing the Court with both highly informative written submissions, and respectful yet empathetic oral arguments. The value in civility shown by the parties in these matters cannot be overstated.

VI. Conclusion

[47] The Decisions failed to explain why the Manager chose a rigid approach when interpreting the 2019 Settlement, when a remedial interpretation was available as well under the statutory scheme. The Decisions also failed to provide justification as to why Ms. Judt's income from the 2019 Settlement was ineligible for the benefits sought.

[48] This is particularly troubling given the history of this litigation – namely that the issue of Ms. Judt's eligibility had already been litigated twice previously, with CRA sending the matter

back for re-evaluation on two previous occasions, prompting the Applicant to discontinue both of her prior judicial reviews.

[49] Given that the Decisions suffered from flaws in the interpretative analysis and responsive justification, this third application for judicial review is accordingly granted, and the matter is remitted to a different officer to be reassessed in accordance with these reasons.

JUDGMENT in T-1165-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted. The matter is remitted to a different officer to be reassessed in accordance with these reasons.

2. No question for certification.

3. Ms. Judt will have costs in the amount of $1000.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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