

Federal Court



Cour fédérale

Date: 20250123

Docket: T-1715-23

Citation: 2025 FC 144

Winnipeg, Manitoba, January 23, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

VINCENZO ALESSANDRO DEROSA

Applicant

and

ATTORNEY GENERAL CANADA

Respondent

JUDGMENT AND REASONS
(Delivered from the Bench on January 23, 2025.
Edited for syntax and grammar.)

[1] The Applicant, Mr. DeRosa, seeks judicial review of a decision by an officer (“Officer”) of the Canada Revenue Agency (“CRA”) to deny his eligibility for the Canada Recovery Benefit (“CRB”) (“Decision”). The Officer determined Mr. DeRosa was not eligible to receive the CRB because he did not earn at least \$5,000 in income during the qualifying period, he was able to work but was not looking for a job, and he was eligible for and could have received Employment Insurance (“EI”) benefits.

[2] The Applicant says the Decision is not reasonable. He highlights a number of factors, including personal financial hardship, his diligent attempts to comply with the application requirements, and his ability to repay. In addition, Mr. DeRosa says that the Decision is in breach of the principles of procedural fairness; specifically, he states in his affidavit that CRA officers advised him that he was eligible for the CRB. The Applicant requests that this Court quash the Officer's Decision and order that he is relieved from any re-payment obligations.

[3] The eligibility criteria for the CRB are statutory and non-discretionary. In other words, the Officer had no choice but to apply it. As I will explain, the Officer reasonably found that the Applicant was not eligible for the CRB, and the Decision was made in a procedurally fair manner.

I. Background

[4] Mr. DeRosa is a recent graduate from the University of Saskatchewan and is currently studying for his Chartered Financial Analyst designation. In December 2019, he was a full-time student and began a part-time job at Moxies. He was laid off in March 2020 because of the COVID-19 pandemic.

[5] The Applicant applied for 26 CRB periods between September 27, 2020, and September 25, 2021. In July 2022, the CRA initiated a review of the Applicant's CRB eligibility.

[6] By a decision dated January 11, 2023, the CRA concluded that the Applicant was not eligible for the CRB because among other reasons, he did not meet the income threshold set out in the *Canada Recovery Benefits Act*, SC 2000, c 12, s 2 [*CRB Act*]. The Applicant requested a review of the CRA's decision. During the review, the CRA considered the Applicant's tax

information, including zero income in 2019 and \$1,120 in 2020, as well as his scholarship income.

[7] On June 13, 2023, the Officer spoke with the Applicant. The Applicant confirmed that he did not have any additional employment income, and the Officer advised him that scholarships do not constitute eligible income.

[8] On August 3, 2023, the Officer informed the Applicant that he was not eligible for the CRB because he did not meet the income threshold set out in the *CRB Act*.

II. Issues

[9] A preliminary issue was raised in oral argument, related to the admissibility of new evidence of the Applicant, which consists of news articles from the CBC and the National Post. The Respondent objected to the admission of this new evidence, as the Applicant had not satisfied any of the legal exceptions for admission of new evidence on a judicial review, nor had the Applicant complied with the *Federal Courts Rules*, SOR/98-106 (see *Roadknight-Amer v Canada (Attorney General)*, 2024 FC 1183). I agree. Similarly, I am also not considering the Applicant's oral submissions concerning his RESP.

[10] The issues in this application are:

- A. What is the standard of review?
- B. Was the Decision reasonable?
- C. Was the Decision procedurally fair?

A. *Standard of Review*

[11] An officer's decision is subject to review by this Court using the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 23). This Court will only intervene if it is satisfied that "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). The criteria are met if the reasons permit the Court to understand why the decision was made and determine if the decision falls within the range of acceptable outcomes in respect of the facts and law (*Vavilov* at paras 85–86).

[12] The standard of review applicable to a determining if a decision-maker complied with the duty of procedural fairness is generally described as correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The question is: did the applicant know the case to be met, and did the applicant have a full and fair opportunity to make submissions?

B. *Was the Decision reasonable?*

[13] The *CRB Act* sets out the eligibility requirements for the CRB. Paragraph 3(1)(d) notes that a person is eligible if "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." Source income that is considered for threshold eligibility for is set out at subparagraphs 3(1)(d)(i–v) and includes: employment, self-employment, and other enumerated benefits.

[14] The Applicant provided information to the Officer that illustrated he had no employment income in 2019, and \$1,120 in employment income in 2020. The Applicant argued that he received \$2,000 in scholarships in 2019 and 2020, and that this should be counted by the CRA as income, pursuant to paragraph 3(1)(d) of the *CRB Act*.

[15] The Respondent argued that the information provided by the Applicant illustrated that he did not satisfy the income threshold to qualify for the CRB. Further, the Respondent argued that the Officer reasonably excluded the scholarship money from the calculation of income. The CRA COVID-19 benefits policy guidelines set out that student loans, bursaries, and scholarships are not eligible sources of income. This is because these monies are reported as “other income” at box 105 of the T4A Form (*Lennert v Canada (Attorney General)*, 2024 FC 1088 at paras 19–22). Accordingly, this income is not considered employment income.

[16] The eligibility criteria set out in the *CRB Act* is statutory and non-discretionary. In other words, the Officer was required to apply it. Despite Mr. DeRosa’s arguments based on economic needs, his ability to repay, and his belief that he was eligible, the policy guideline explanation is reasonable and is linked to the income tax regime classifications of employment and other source income.

[17] Therefore, the Officer’s Decision that the Applicant was not eligible for the CRB is reasonable. The legislation is clear, and it is determinative of this issue.

C. *Was the Decision procedurally fair?*

[18] Mr. DeRosa also argued that the Decision was contrary to the principles of procedural fairness.

[19] The level of procedural fairness owed is on the low end of the spectrum when making a decision under the *CRB Act* (*Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 17). As noted earlier, the Applicant was given a full and fair opportunity to make submissions, which the Officer took into account in rendering the Decision.

[20] The Applicant stated in his affidavit that CRA officials verbally advised him that he was eligible for the CRB. However, there are no records or other evidence available in support of this assertion. Further, this Court has confirmed that the representations of officers regarding eligibility cannot override the CRA's duty to apply the non-discretionary legislative criteria and is determinative of an applicant's eligibility (*Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at para 22).

[21] Accordingly, the Decision was procedurally fair.

III. Conclusion

[22] While I am empathetic to the Applicant's situation and understand his grievances, this application for judicial review is dismissed without costs.

[23] I hear and understand the Applicant's arguments that highlighted his economic situation, and the hardship that the CRA demands for repayment place on him as a new graduate starting his career. Unfortunately, the *CRB Act* is clear and there is no room for discretion; the officers are required to apply the criteria for eligibility to everyone.

JUDGMENT in T-1715-23

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1715-23

STYLE OF CAUSE: VINCENZO ALESSANDRO DEROSA v
ATTORNEY GENERAL CANADA

PLACE OF HEARING: WINNIPEG, MANITOBA

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DATED: JANUARY 23, 2025

APPEARANCES:

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FOR THE APPLICANT
ON HIS OWN BEHALF

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