Federal Court Cour fédérale

**Date: 20250130**

**Docket: T-1289-24**

**Citation: 2025 FC 195**

**Ottawa, Ontario, January 30, 2025**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**MICHELLE SARAH MATTA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] This is an application for judicial review of a decision by a benefits validation officer of the Canada Revenue Agency [CRA], dated May 8, 2024 [the Decision], which found the Applicant ineligible for certain Canada Emergency Response Benefit [CERB] payments (related to four benefit periods) she had previously received.

[2] The officer found the Applicant ineligible for these payments because, for each of the applicable payment periods, either the Applicant earned more than $1,000 of employment or self-employment income or the Applicant did not stop working or have her hours reduced for reasons related to COVID-19.

[3] As explained in further detail below, this application for judicial review is allowed, as the Decision is unreasonable, because (in relation to the first two benefit periods) the reviewing officer failed to intelligibly address one of the Applicant's main submissions, that the $1,000 income threshold should be applied to her net income (after statutory deductions) rather than her gross income. While the Respondent acknowledges this reviewable error, the parties disagree on the resulting relief that should be awarded by the Court. My Judgment will adopt the Respondent's position, quashing the Decision and returning the matter for redetermination by another CRA officer with the benefit of the Court's reasons, after the Applicant is afforded an opportunity to provide further evidence and submissions to the CRA, rather than determining the Applicant's benefits eligibility as she proposes.

[4] In relation to the latter two benefit periods, for which the Officer found the Applicant ineligible for CERB payments, based on her not having stopped working or having had her hours reduced for reasons related to COVID-19, the Decision is reasonable. However, consistent with the Respondent's position at the hearing of this application, the effect of my Judgment will be to quash the Decision in its entirety, such that the Applicant's eligibility for payments related to the latter two benefit periods will also be re-determined with the benefit of any further evidence and submissions she may provide to the CRA.

## II. **Background**

[5] The Applicant is a teacher. During the 2019-2020 school year, she worked as a long-term occasional [LTO] teacher one day per week and as an on-call teacher, the latter representing most of her income. In March 2020, due to the COVID-19 pandemic, classrooms moved online. The Applicant continued working as an LTO teacher while school was held online, but on-call work was not available to her during this period.

[6] The CERB payments that are the subject of the Decision under review formed part of the Canadian government's suite of benefits provided in response to the COVID-19 pandemic. During the pandemic, the CRA released CERB payments on an attestation basis. However, an applicant's eligibility for CERB and other COVID-19-related benefits was subject to potential verification by the CRA. The Applicant applied for and received CERB payments related to periods from March 15, 2020, to August 29, 2020.

[7] By letter dated March 23, 2022 [the Initial Request], the CRA informed the Applicant that information on file suggested that she may have earned over $1,000 during the periods she received CERB payments, which would have affected her eligibility for those payments. As such, the CRA required the Applicant to submit supporting documents to validate her income and verify her eligibility for the CERB payments she received.

[8] By letter sent October 18, 2023, the CRA found the Applicant ineligible for CERB in the four payment periods between March 15, 2020, and July 4, 2020 [the First Decision]. (I note that the First Decision assessed the Applicant's eligibility for only four of the six periods that were

subsequently assessed in the Decision now under review.) In notes dated October 16, 2023, corresponding to the First Decision, a CRA officer [the First Reviewer] concluded the Applicant was ineligible because the paystubs she had provided showed earnings of more than $1,000 per period for three of the four payment periods reviewed. In relation to the fourth payment period reviewed, the First Reviewer found the Applicant ineligible because her reduction in work was due to the end of the school year rather than COVID-19.

[9] The CRA initiated a second review of the First Decision, and between April 24, 2024, and May 1, 2024, the Applicant had multiple phone conversations with a different CRA officer who was assigned to the second review [the Second Reviewer].

[10] During these phone calls, the Applicant asked the Second Reviewer for clarification on whether the $1,000 limit on employment or self-employment income earned during a particular CERB payment period [the Income Limit] was calculated using an individual's gross or net income. The Applicant submitted to the Second Reviewer a screenshot from the CRA's website dated April 22, 2020, regarding CERB eligibility, which did not indicate whether the Income Limit referred to gross or net income. The Applicant further argued that the Initial Request did not specify whether the Income Limit meant gross or net income.

[11] The Second Reviewer's notes dated May 1, 2024, include the following note from a phone call between the Second Reviewer and the Applicant:

> The Benefit recipient once again questioned the use of Gross income vs net income and referenced the screen shot she had provided. I advised that as the screen shot did not reference either gross or net I would have to base the review on our documented

> procedures. The BR asked for a copy of the procedures and I advised they were internal documents and could not be distributed.

[12] By letter dated May 8, 2024 [the Decision Letter], the CRA conveyed the Decision that is the subject of this application for judicial review.

## III. **Decision under Review**

[13] In the Decision Letter, the Second Reviewer again found that the Applicant was not eligible for CERB during certain payment periods (described as payment periods 2, 3, 5, and 6), either because the Applicant earned more than $1,000 in employment or self-employment income during the applicable payment period or because the Applicant did not stop work or have her hours reduced for reasons related to COVID-19.

[14] In an entry in the Second Reviewer's notes dated May 3, 2024, and entitled "Second Review Report" [the Second Review Report], the Second Reviewer summarized the Applicant's arguments regarding her eligibility, including her concern about the ambiguity of whether the Income Limit would be assessed using the Applicant's gross or net employment income. The Second Reviewer then calculated the Applicant's gross earnings for each of the six payment periods being reviewed.

[15] The Second Reviewer concluded the Second Review Report as follows:

> Based on the documents provided and additional information provided during phone contact with the Benefit Recipient, their earnings and work situation have been considered when determining eligibility.

In Mar 2020 the Benefit Recipient was working for the Peel District School Board as a part time teacher under a contract that provided her with hours based on 20% of a full time work week (Defined in her contract as Long Term Occasional (LTO) 20%). Under normal circumstances she would work the equivalent of 1 teaching day per week.

When COVID restrictions closed schools she was able to maintain her position and provided regular teaching on-line until the end of the school year.

In addition to her LTO contract the Benefit Recipient was also part of a casual pool which provided her additional teaching opportunities on an on-call basis as a casual substitute teacher. When teaching switched to on-line the casual opportunities were eliminated.

While the Benefit recipients overall hours were not significantly impacted there were periods during when there was a transition to online learning (CERB Period 1) and near the end of the school year (CERB Period 4) when her earnings were less than $1000 Per CERB period.

As of Jun 26, 2020, coinciding with the end of the school year, the Benefit Recipient was laid off and a Record of Employment (ROE) was issued with reason A Shortage of work.

Because the Benefit Recipients employment term was determined by the school year, the reason she was not working after Jun 26, 2020 was not related to COVID but was a normal end of work term and therefore she would not be eligible for CERB periods 5 and 6.

In summary, based on the earnings details provided and the circumstances related to her employment, the Benefit Recipient is deemed ELIGIBLE for CERB Periods 1 and 4 and NOT Eligible for CERB Periods 2, 3, 5 and 6.

## IV. **Legislative Framework**

[16] CERB benefits are governed by the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERBA]. The requirements for a "worker" (as defined in section 2 of the CERBA) to be eligible for an income support payment are set out in subsection 6(1) of the CERBA as follows:

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| **Eligibility**<br>**6 (1)** A worker is eligible for an income support payment if | **Admissibilité**<br>**6 (1)** Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes : |
| **(a)** the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and | **a)** il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation; |
| **(b)** they do not receive, in respect of the consecutive days on which they have ceased working, | **b)** il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte : |
| **(i)** subject to the regulations, income from employment or self-employment, | **(i)** sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte, |
| **(ii)** *benefits*, as defined in subsection 2(1) of the *Employment Insurance Act*, or an employment insurance emergency response benefit referred to in section 153.7 of that Act, | **(ii)** de *prestations*, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, ou la prestation d'assurance-emploi d'urgence visée à l'article 153.7 de cette loi, |
| **(iii)** allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children | **(iii)** d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un |

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| or one or more children placed with them for the purpose of adoption, or | ou plusieurs enfants placés chez lui en vue de leur adoption, |
| **(iv)** any other income that is prescribed by regulation. | **(iv)** tout autre revenu prévu par règlement. |

[17] Section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90 states that:

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| **Nominal income** | **Revenu nominal** |
| **1** Any income received by a worker for employment or self-employment is excluded from the application of subparagraph 6(1)(b)(i) of the *Canada Emergency Response Benefit Act* if the total of such income received in respect of the consecutive days on which they have ceased working is $1000 or less. | **1** Sont soustraits à l'application du sous-alinéa 6(1)b)(i) de la *Loi sur la prestation canadienne d'urgence* les revenus du travailleur provenant d'un emploi ou d'un travail qu'il exécute pour son compte, à condition que le total de tels revenus soit de mille dollars ou moins pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte. |

## V. **Issues**

[18] The Applicant's arguments raise the following issues:

1. Is the Decision reasonable?
2. What is the appropriate remedy, if any?

[19] The standard of review for the Court's consideration of the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16–17).

[20] The Respondent also raises as a preliminary issue its position that the Court should disregard certain screenshots from the CRA's website dated May 23, 2024, regarding CERB

benefits [the Disputed Evidence], which are attached as exhibits to the Applicant's affidavit dated June 24, 2024, filed in support of this application. The Respondent submits that the Disputed Evidence was not before the Second Reviewer and therefore presumptively cannot be considered on judicial review.

## VI. **Analysis**

### A. *Preliminary issue*

[21] The documentary evidence exhibited to the Applicant's affidavit includes not only the Disputed Evidence but also screenshots from an earlier version of the CRA's website dated April 22, 2020, regarding CERB benefits. The Applicant wishes to rely on this combination of evidence to demonstrate differing information the website provided regarding whether the Income Limit was to be based on a CERB claimant's gross or net income.

[22] It is trite law that, in reviewing the reasonableness of an administrative decision, the Court is typically required to restrict its review to consideration of evidence that was before the administrative decision-maker. However, there are exceptions to this requirement, including where new evidence provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review, but where that information does not represent new evidence on the merits of the issues (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 20).

[23] The Applicant argues that the general background exception applies, because the CRA's website information in the Disputed Evidence represents background to the decision that the Second Reviewer was required to make. She submits that this information does not represent new evidence on the merits of the issues before the Court, as it is unrelated to the proof of her employment income.

[24] I agree with the Respondent's position that the Disputed Evidence does not fall within the general background exception identified by *Access Copyright*. The Applicant seeks to rely on this evidence to support her arguments on the merits of the issue as to whether the Decision reasonably addressed the question of whether the Income Limit is to be determined based on gross or net income. As such, the Court will disregard the Disputed Evidence in assessing the reasonableness of the Decision.

B. *Is the Decision reasonable?*

(1) Income Limit

[25] As previously explained, the issue surrounding the Income Limit relates to the first two CERB benefit periods that are in dispute (periods 2 and 3), both of which occurred while the Applicant was still employed but with a reduction in her hours. Both parties agree that the Second Reviewer's treatment of this issue is unreasonable, and I concur. While there is no dispute on this point, I will provide brief reasoning as to why this aspect of the Decision is unreasonable, as that reasoning informs in part the Court's determination (later in these Reasons) as to the appropriate remedy for the Court to impose.

[26] As explained in *Vavilov*, reasonableness review is concerned with determining whether an administrative decision is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker (at para 85). Such constraints include the requirement that the decision-maker's reasons meaningfully account for the central issues and arguments raised by the parties (at paras 127–128).

[27] In the case at hand, it is clear from the Second Reviewer's notes in the Second Review Report that the question whether the Income Limit was to be determined based on the Applicant's gross or net income was central to the position that the Applicant advanced before the CRA. It is apparent from the figures referenced therein that the Second Reviewer based his CERB eligibility determinations on the Applicant's gross income. However, based on the Decision Letter, the Second Review Report, the Second Reviewer's other notes, and other materials in the record before the Court, it is not possible to identify any analysis underlying the Second Reviewer's decision to use the gross figures. As the record does not disclose an intelligible analysis of one of the Applicant's central arguments, the Decision cannot withstand reasonableness review.

[28] As noted earlier in these Reasons, the Second Reviewer's notes dated May 1, 2024 (a week before the Decision) reflect that, in a call with the Applicant, she questioned the use of gross income versus net income, and the Second Reviewer advised that he would have to base the review on the CRA's documented procedures. When the Applicant asked for a copy of those procedures, the Second Reviewer responded that they were internal documents and could not be distributed.

[29] Based on those notes, it is possible that the Second Reviewer approached the Income Limit issue based on guidance provided in some internal CRA document. However, there is no such document in the record before the Court that speaks to whether the Income Limit should be assessed based on gross or net income. Regardless, the Respondent concedes that reliance on an internal document of this nature, that is not available to the party concerned, is contrary to the guidance in *Vavilov* (at para 95) related to the requirement for transparent decision-making.

[30] As such, the Decision's treatment of the Income Limit issue is unreasonable and the Decision will be set aside. I will turn to the issue of which further remedies the Court should grant later in these Reasons.

(2) Ceasing work

[31] The issue surrounding the Applicant ceasing work or experiencing a reduction in her hours, as a result of the COVID-19 pandemic, relates to the second two CERB benefit periods that are in dispute (periods 5 and 6), both of which occurred after the Applicant was laid off from her employment for the summer. The Applicant's principal argument is that the Second Reviewer failed to reasonably analyse the fact that, due to the reduction in her hours attributable to the pandemic while she was still employed, she was ineligible to apply for employment insurance [EI] benefits for periods 5 and 6 after her employment ended. The Respondent in turn argues that, based on the statutory requirements for CERB eligibility, it was reasonable for the Second Reviewer to conclude that the circumstances the Applicant experienced and explained to the Second Reviewer did not support her eligibility.

[32] However, the Respondent also takes the position that the Court should decline to assess the reasonableness of this aspect of the Decision. The Respondent submits that, as the Decision is unreasonable and should be quashed based on the reviewable error related to the Income Limit issue, adjudication of this additional issue either is moot (with concerns about judicial economy militating against a discretionary decision to address the issue) or simply unnecessary for the determination of this application for judicial review. The Respondent argues that there would be little benefit in having the Court address the reasonableness of the Decision's treatment of the Applicant's eligibility in periods 5 and 6 based on the record currently before the Court, when a redetermination following this judicial review will be based on a different record.

[33] As neither party made any detailed submissions on the application of the principles governing a Court's determination that a matter is moot, I decline to perform a formal mootness analysis. I appreciate that the outcome of the Income Limit issue will result in the Decision being set aside. I also note the Respondent's explanation that, in a redetermination of the Applicant's CERB eligibility, the CRA will entertain further evidence and submissions in relation to all of periods 2, 3, 5 and 6, such that, regardless of the Court's decision on the argument the Applicant now advances related to periods 5 and 6, she will have a further opportunity to establish eligibility for those periods based on a new record. However, I remain unconvinced that the parties would not benefit from adjudication of that argument.

[34] In my view, that adjudication turns on the eligibility requirements in subsection 6(1) of the CERBA (cited earlier in these Reasons), which represents a statutory constraint on the authority of the Second Reviewer as an administrative decision-maker. In particular, paragraph

6(1)(a) provides that a worker is eligible for an income support payment only if the worker ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect to which they apply for the payment.

[35] The Applicant notes that the Decision Letter states the conclusion that the Applicant was not eligible for benefits because she did not stop working or have her hours reduced for reasons related to COVID-19. As such, it appears that the CRA has interpreted paragraph 6(1)(a) of the CERBA such that a reduction in hours is sufficient to support eligibility for benefits. In other words, the CRA has adopted an interpretation of paragraph 6(1)(a) that is more favourable to a claimant than a requirement that they have stopped working altogether.

[36] The Applicant argues that the Second Reviewer failed to reasonably analyse the fact that, due to the reduction in her hours attributable to the pandemic, she was ineligible to apply for EI benefits for periods 5 and 6. The difficulty with the Applicant's argument is that it disregards the eligibility requirements in paragraph 6(1)(a). The reduction in the Applicant's hours occurred in the period before her employment ended at the conclusion of the school year on June 26, 2020. That reduction did not occur within period 5 (July 5 to August 1, 2020) or period 6 (August 2 to August 29, 2020). That is, referencing the language in paragraph 6(1)(a), the reduction in the Applicant's hours did not occur in the period in respect of which she applied for payment.

[37] Against the backdrop of that statutory constraint upon the Second Reviewer's authority, as well as the factual record presented by the Applicant, the Decision's analysis of the Applicant's eligibility in periods 5 and 6 is intelligible. The Second Review Report states that, as

of June 26, 2020, coinciding with the end of the school year, the Applicant was laid off and a Record of Employment was issued, stating the reason as a shortage of work. The Second Review Report concludes that, because the Applicant's employment term was determined by the school year, the reason she was not working after June 26, 2020 was not related to COVID-19. The Applicant has not advanced any compelling argument as to how the fact that COVID-19 caused a reduction in her hours during the school year, disentitling her to receive EI benefits in periods 5 and 6, could have altered the analysis the Second Reviewer was required to perform.

[38] In summary, I find this aspect of the Decision's analysis to be reasonable.

[39] Before leaving the subject of the Applicant's eligibility for benefits during periods 5 and 6, I note that, at the hearing of this application, the Applicant referred to the First Reviewer's notes of an August 30, 2023 call with her, in which the Applicant stated that she did not work in the summer of 2020, as it was the end of her contract for the summer, but that she was looking for work. It is not apparent from the record before the Court that the Applicant provided any evidence to that effect to either the First Reviewer or the Second Reviewer. Nor was this point the subject of the Applicant's submissions to the Second Reviewer, which focused upon her eligibility for EI benefits. As such, this point does not undermine the reasonableness of the Decision's treatment of periods 5 and 6.

[40] I express no opinion on whether evidence of unsuccessful efforts to seek work in the summer of 2020 might affect the Applicant's eligibility for CERB benefits in periods 5 and 6. Rather (and here I telegraph my conclusion later in these Reasons that the appropriate remedy in

this application is for the Court to refer the matter back to the CRA for redetermination), if the Applicant provides such evidence and related submissions to the CRA officer who is tasked with such redetermination, it will be that officer's role to consider such submissions.

[41] Finally, I note that the Applicant's Memorandum of Fact and Law includes an assertion that the Second Reviewer failed to balance in a proportionate way the evidence provided by the Applicant and her rights to equality and freedom from discrimination, under subsection 15(1) of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], against the relevant statutory objectives. This assertion appears intended to request that the Court review the Decision employing the analysis prescribed by *Doré v Barreau du Québec*, 2012 SCC 12, for the assessment of *Charter*-compliant administrative decision-making.

[42] However, the Respondent argues that the Court should not entertain the Applicant's *Charter* argument, both because the Applicant has failed to particularize the alleged *Charter* issue and because she did not raise this argument before the Second Reviewer.

[43] I agree with the Respondent that the *Charter* argument is not properly before the Court. The Applicant's written materials do not particularize a *Charter* claim, and the Applicant made no reference to such a claim in the course of her oral submissions. Moreover, there is no indication in the record before the Court that the Applicant argued before the Second Reviewer that the decision the Second Reviewer was to make would engage her subsection 15(1) *Charter* rights. The Court will generally not consider an issue on judicial review where it could have

been, but was not, raised before the administrative decision-maker (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 23).

C. *What is the appropriate remedy, if any?*

[44] As I have found that the Decision is unreasonable, because of its treatment of the Applicant's eligibility for benefits during periods 2 and 3, my Judgment will set the Decision aside. However, the parties disagree on which further remedies the Court should impose. As explained earlier in these Reasons, the Respondent submits that the matter (including the Applicant's eligibility for benefits during all of periods 2, 3, 5 and 6) should be returned to another CRA officer for redetermination. The Applicant takes the position that the Court should make a decision as to her eligibility.

[45] Both parties rely on the guidance in *Vavilov* as to how the Court should select the appropriate remedy when it finds an administrative decision to be unreasonable (at paras 140–142):

> 140. Where the reasonableness standard is applied in conducting a judicial review, the choice of remedy must be guided by the rationale for applying that standard to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide: see *Delta Air Lines*, at para. 31. However, the question of remedy must also be guided by concerns related to the proper administration of the justice system, the need to ensure access to justice and "the goal of expedient and cost-efficient decision making, which often motivates the creation of specialized administrative tribunals in the first place": *Alberta Teachers*, at para. 55.
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> 141. Giving effect to these principles in the remedial context means that where a decision reviewed by applying the reasonableness standard cannot be upheld, it will most often be

> appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons. In reconsidering its decision, the decision maker may arrive at the same, or a different, outcome: see *Delta Air Lines*, at paras. 30-31.
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> 142. However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167, at paras. 18-19. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at pp. 228-30; *Renaud v. Quebec (Commission des affaires sociales)*, [1999] 3 S.C.R. 855; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772, at para. 161; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1, at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175, at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, 138 O.R. (3d) 52, at paras. 54 and 88. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, at paras. 45-51; *Alberta Teachers*, at para. 55.

[46] Consistent with this guidance, as the Respondent submits, the general rule is that a successful application for judicial review results in the Court quashing the administrative decision and returning the matter to the administrative decision-maker to be redetermined, rather

than the Court deciding the question that Parliament has entrusted to the administrative decision-maker. However, as *Vavilov* notes, there are limited circumstances where it can be appropriate for the Court to decide the relevant question.

[47] The Applicant argues that this is such a situation, in part to avoid the sort of endless merry-go-round of judicial reviews and administrative reconsiderations of which *Vavilov* warns. The Applicant is also concerned that a new CRA decision-maker will simply rely upon the undisclosed internal CRA procedures to which the Second Reviewer referred in his notes, inevitably resulting in a redetermination that is the same as the Decision that has been overturned.

[48] Notwithstanding the Applicant's able arguments in support of her position, this is not a situation where the Court should depart from the general rule of respecting Parliament's intention to have CERB eligibility decisions made by the CRA. As the Respondent emphasizes, the question of whether the Income Limit should be considered on a gross or net basis is ultimately a question of statutory interpretation. The Decision is unreasonable precisely because the Second Reviewer failed to perform the required interpretive exercise in an intelligible manner. As such, the Court is without the benefit of any interpretive analysis performed by the designated administrative decision-maker to inform a similar interpretive exercise by the Court.

[49] Nor can the present situation be characterized at this juncture as raising the specter of an endless merry-go-round of litigation. While I appreciate that the question of the Applicant's eligibility has been the subject of two rounds of review by the CRA, this is the process

contemplated by the governing legislation, and this present application for judicial review is the first time that the matter has been brought before the Court.

[50] In relation to the Applicant's concern about the CRA relying upon the internal documented procedure referenced by the Second Reviewer, the Court's Reasons have identified such reliance as unreasonable, at least to the extent that such procedure has not been disclosed to the Applicant.

[51] As such, in keeping with *Vavilov* (at para 141), my Judgment will refer the matter back to another CRA officer to be re-determined, this time with the benefit of the Court's Reasons.

## VII. **Costs**

[52] Each of the parties claims costs related to this application. At the hearing, each of the parties also identified that there had been efforts to settle this matter. While I presume those efforts were unsuccessful, the Court otherwise has no details surrounding the parties' settlement discussions and should not receive such details until it has made its decision on the merits, after which it is possible that such details may influence the adjudication of costs.

[53] At the hearing, the Respondent's counsel suggested a process for the parties to provide written submissions in support of their respective positions on costs, potentially supported by affidavit evidence, following release of the Court's decision. The Applicant does not take issue with that suggestion. I agree that such a process is appropriate, and my Judgment will so provide. The parties are also encouraged to discuss the issue of costs in an effort to reach an agreed result.

**JUDGMENT IN T-1289-24**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is allowed, the Decision is set aside, and the matter is returned to a different CRA officer for redetermination, with the benefit of the Court's Reasons, after the Applicant is afforded an opportunity to provide further evidence and submissions to the CRA.

2. The Court's decision on costs of this application is reserved, pending the completion of the following process:

    a. Within 30 days of the date of this Judgment, the Respondent shall serve and file written submissions in support of its position on costs, limited to five pages in length, with any affidavit evidence necessary to support its position;

    b. Within 30 days of the Respondent's service of its submissions and evidence upon the Applicant, the Applicant shall serve and file written submissions in support of her position on costs, limited to five pages in length, with any affidavit evidence necessary to support her position;

    c. Within 10 days of the Applicant's service of her submissions and evidence upon the Respondent, the Respondent shall serve and file written reply submissions, limited to three pages in length.

"Richard F. Southcott"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-1289-24 |
| **STYLE OF CAUSE:** | MICHELLE SARAH MATTA v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 27, 2025 |
| **JUDGMENT AND REASONS:** | SOUTHCOTT J. |
| **DATED:** | JANUARY 30, 2025 |

**APPEARANCES:**

| | |
|---|---|
| Michelle Sarah Matta | FOR THE APPLICANT (ON THEIR OWN BEHALF) |
| Jesse Epp-Fransen | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|---|---|
| Attorney General of Canada | FOR THE RESPONDENT |