Federal Court Cour fédérale

Date: 20250131

Docket: T-2387-24

Citation: 2025 FC 202

Ottawa, Ontario, January 31, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

STEPHEN DUGANDZIC

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Stephen Dugandzic, seeks judicial review of a decision of the Canada Revenue Agency ("CRA") dated August 15, 2024, in which the Applicant was found ineligible for the Canada Recovery Caregiving Benefit ("CRCB") pursuant to subsection 17(1) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the "Act").

[2] The Applicant submits that the CRA's decision is unreasonable and was rendered in a procedurally unfair manner. Bringing evidence of serious health concerns allegedly worsened by delays in this matter, the Applicant asserts that "[t]he CRA had no interest in discharging" its procedural obligations and that the CRA's decision is unintelligible "in light of the facts, submissions, and evidence" before it.

[3] I recognize the significance of this matter to the Applicant and the challenging circumstances of this compliance review. However, I find no basis in law for disturbing the CRA's decision. The denial decision is reasonable. There was no breach of the Applicant's procedural rights. This application for judicial review is dismissed.

II. **Background**

A. *Statutory Framework*

[4] The CRCB was a social benefit intended to alleviate the economic impact of COVID. For self-employed individuals to be eligible for the CRCB, they were required to have "reduced the time devoted to their work as a self-employed person by at least 50% of the time they would have otherwise worked…because" they cared for a child or family member requiring supervised care for reasons related to COVID (the Act, s 17(1)(f)). To receive the benefit, individuals were required to apply for the CRCB in each weekly payment period (the Act, s 18(1)).

[5] If a recipient of the CRCB is selected for a compliance review by the CRA, they must retroactively prove their eligibility for the benefit. If an individual disagrees with the outcome of

the compliance review, they may request a second review. If an individual disagrees with the outcome of the second review, they may seek judicial review of the CRA's decision.

B. *Facts*

[6] The Applicant is a lawyer. He has an autoimmune condition which caused him to be at an elevated risk of becoming seriously ill from COVID.

[7] Due to the medical conditions of the Applicant and his spouse, the Applicant's son was unable to attend daycare during the pandemic. On the advice of his doctor, the Applicant stopped working and cared for his children after March 14, 2020.

[8] Between March 15, 2020 and December 18, 2021, the Applicant received three COVID-related social benefits: the Canada Emergency Response Benefit ("CERB"), the Canada Recovery Benefit ("CRB"), and the CRCB. The Applicant received the CRCB from September 27, 2020 to July 17, 2021 and from December 5 to December 18, 2021.

[9] In February 2023, the CRA initiated a compliance review of the Applicant's eligibility for all three benefits. During the review process, the Applicant requested that the CRA contact him in writing. The CRA declined to do so. The Applicant was found ineligible for all three benefits on both the first and second reviews.

[10] The Applicant sought judicial review of the second review decision. The Respondent agreed that the second review decision should be remitted to the CRA, as the Applicant's financial documents had been overlooked and the Applicant's request for reasonable

accommodation had been denied. Shortly afterward, the CRA commenced a fresh review of the Applicant's eligibility.

[11] On June 4, 2024, the Applicant spoke on the phone with the Canada Emergency Benefits Validation Agent (the "First Agent") assigned to his file (the "June 4 Call"). The First Agent explained that, although the CRA is unable to initiate reviews or pose questions in writing, the Applicant may respond in writing or authorize a support person to conduct a phone call on his behalf. The First Agent provided the Applicant with a list of questions concerning his eligibility. The First Agent and the Applicant then discussed the documents submitted by the Applicant and the Applicant's reasons for applying for the CERB, CRB, and CRCB.

[12] Following the June 4 Call, a new agent was assigned to the Applicant's file (the "Second Agent"). The Second Agent called the Applicant throughout July 2024, but received no response.

[13] On July 13, 2024, the Applicant responded in writing to the questions provided by the First Agent during the June 4 Call (the "Written Response"). In the Written Response, the Applicant stated: "Given the extent of the [June 4 Call]…nothing further will be provided."

[14] On August 12, 2024, the Second Agent determined that the Applicant was eligible for the CERB and CRB but ineligible for the CRCB, as "[his] scheduled work week was not reduced by at least 50% because [he was] caring for a family member for reasons related to COVID-19" (the "CRCB Denial"). The CRCB Denial is the decision that is presently under review.

III. **Preliminary Issue**

[15] The Applicant sought to adduce fresh evidence in this application, including medical documents, a pleading from a separate legal proceeding, and email correspondence from the Applicant's initial judicial review application. These materials are not contained in the Certified Tribunal Record ("CTR") and were not before the CRA at the time of the CRCB Denial.

[16] The Respondent submits that the Applicant's fresh evidence should not be considered as, "materials that were not before the decision maker are not admissible on judicial review" (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 42, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 ("*Access Copyright*")). The Respondent further submits that the Applicant's new evidence is not relevant to this proceeding, as the procedural unfairness alleged could not have had a bearing on the CRCB Denial.

[17] The Applicant submits that his new evidence should be admitted, as it falls under the procedural fairness exception outlined at paragraph 20 of *Access Copyright*. Relying on his new evidence, the Applicant alleges that the CRA initiated his compliance review after receiving documents disclosed in breach of the implied undertaking rule by a party to another legal matter. The Applicant further alleges that the compliance review has been marked by procedural defects that have worsened his health conditions and caused him severe harm.

[18] I agree with the Respondent. The Applicant's new evidence does not fall under the procedural fairness exception, as there is insufficient evidence that the CRA initiated his

compliance review for an improper purpose. I find the Applicant's allegations on this point to be speculative, as the only basis for his claims were statements made in a separate legal matter that were not placed before the Court in this proceeding. Even if these allegations were true, they would not be of assistance to the Applicant. The Applicant relies on these statements to demonstrate that the CRA was informed of the simple fact that he had received certain amounts in COVID benefits. The CRA already held this information, as these benefits were distributed by the CRA. The Applicant's medical conditions are not in dispute. Furthermore, the CRA in this proceeding cannot be faulted for procedural defects of the previous compliance review – defects which were addressed at the Respondent's initiative in the prior judicial review application. As a result, the procedural fairness exception does not apply. The Applicant's new evidence is not accepted.

IV. **Issues and Standard of Review**

[19] The two issues in this application are whether the CRCB Denial is reasonable and was rendered in a procedurally fair manner.

[20] The parties submit that the applicable standard of review for the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 86-87 ("*Vavilov*")). I agree.

[21] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 at paras 37-56 ("*Canadian Pacific Railway Company*");

Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35). I find that this conclusion accords with the Supreme Court of Canada's decision in *Vavilov* (at paras 16-17).

[22] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[23] For a decision to be unreasonable, the applicant must establish 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. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[24] Correctness, by contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and*

Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817 (at paras 21-28; see also *Canadian Pacific Railway Company* at para 54).

V. **Analysis**

A. *The CRCB Denial is Reasonable*

[25] The Applicant submits that the CRCB Denial is unreasonable given his "uncontested evidence" that, "were it not for the COVID-19 pandemic and the medical risk it posed to the Applicant's children, the Applicant would have been working at the time of the CRCB application." By disregarding the Applicant's submissions on this issue, the CRA rendered a decision that is unreasonable.

[26] The Respondent submits that the CRCB Denial contains no reviewable error. According to the Respondent, the Second Agent reasonably determined that "[the Applicant's] scheduled work week was not reduced by at least 50%," as the Applicant in this case "was not working and did not have work scheduled at all for any of the weeks he applied for [the] CRCB."

[27] I agree with the Respondent. Paragraph 17(1)(f) of the Act clearly states that, in order to be eligible for the CRCB, a self-employed individual's "time devoted to their work" must be reduced compared to "the time they would have otherwise worked" during the relevant payment period. As determined by this Court in *Levesque v Canada (Attorney General)*, 2023 FC 997 ("*Levesque*"), "[i]n order for someone to have otherwise worked, they would have necessarily planned to work or had a scheduled work week" (at para 37; see also *Deol v Canada (Attorney*

General), 2024 FC 1507 at para 26 and *Williams v Canada (Attorney General)*, 2024 FC 960 at para 31).

[28] A mere capacity or intention to work is not sufficient to meet this requirement. The onus lies with CRCB recipients to demonstrate that they "would have otherwise worked" – not that they could have otherwise worked – if not for care obligations related to COVID (the Act, s 17(1)(f)).

[29] Although the Applicant in this case did fulfill care obligations stemming from the pandemic, there was no evidence that, were it not for these care obligations, "[he] would have…worked" during the payment periods at issue (the Act, s 17(1)(f)). The Applicant stated in the June 4 Call, the Written Response, and his previous correspondence to the CRA that he stopped working after March 14, 2020. He did not demonstrate that he "planned to work or had a scheduled work week" from September 27, 2020 to July 17, 2021 or from December 5 to December 18, 2021, when he received the CRCB (*Levesque* at para 37). The Second Agent rightly determined that there could not be a 50% reduction in [the Applicant's scheduled work week in this case, as "it [could] not be confirmed if [the Applicant] was working or running [his] business during the time [he] applied for [the] CRCB."

[30] Citing *Al Absi v Canada (Attorney General)*, 2023 FC 1701 ("*Al Absi*"), the Applicant asserts the Second Agent unreasonably narrowed eligibility criteria to exclude him (at para 33). However, the applicant in *Al Absi* was scheduled to return to work from maternity leave at the time she received the Canada Recovery Sickness Benefit (at para 30). In other words, there was evidence that she "would have otherwise worked in the week" she received the benefit at issue

(the Act, ss 10(1)(f), 17(1)(f)). In this case, the Applicant stopped working in March 2020 and did not bring evidence of work scheduled to take place during the periods he received the CRCB.

[31] The Applicant contests the Second Agent's findings on this point, stating in a sworn affidavit that he told the First Agent during the June 4 Call he "had secured work opportunities during the CRCB periods and that but for the medical advice received regarding [his] caregiving responsibilities to [his] children…[he] would have realized them and been working. [The First Agent] expressly agreed" [emphasis in original]. As the CRA declined to cross-examine him on his affidavits, the Applicant asserts that, pursuant to the rule in *Browne v Dunn*, (1893), 1893 CanLII 65 (FOREP), 6 R 67 (HL) ("*Browne v Dunn*") [emphasis in original]:

> The Respondent is prevented from arguing against any of the Applicant's evidence filed in this Application, or taking any contrary position. To the extent that the Respondent does take a contrary position in its submissions, it ought to be given no weight by this court. Simply put, there is no contrary or contested evidence on record before the court.

[32] I do not find this to be the case. Although the CRA did not cross-examine the Applicant, the CTR contains evidence that contradicts the Applicant's account – most of which was provided by the Applicant himself. For instance, when asked in the June 4 Call about the hours he worked while receiving the CRCB, the Applicant stated he was unable to work in public due to COVID and "was unable to find space within his home to work and did not have opportunities at that time to be working from home, in a private setting." These notes from the First Agent repeat almost verbatim a letter sent by the Applicant on April 2, 2023 stating, "[f]or the period" [of] September 27, 2020 to December 18, 2021," the Applicant "did not have opportunities…to be working from home" and was unable to engage with members of the public due to "a serious

autoimmune disease" and "the medical risk of contracting COVID-19 to [his] family unit." In the Written Response dated July 13, 2024, the Applicant reiterated that "[he] was advised to drastically limit [his] exposure to the public" due to his autoimmune condition. He also "could not pivot and take on alternative or modified work." The consistent refrain in the Applicant's submissions to the CRA was that he had no opportunity to work, either in public or in private, during the payment periods at issue. Consequently, the rule in *Browne v Dunn* does not apply. There is contrary evidence on record. The "challenge[s]" to the affiant's "integrity" in this case originate from the affiant himself (*Thambiah v Maritime Employers Association*, 2014 FCA 91 at para 15).

[33] In oral submissions, the Applicant argued that the Respondent cherrypicked his evidence by highlighting a paragraph from an affidavit dated February 20, 2024, in which the Applicant stated that he has not worked "since mid-March 2020." The Applicant asserts that the full statement reads: "I have not <u>practised law</u> since mid-March 2020" [emphasis in original]. According to the Applicant, he told the First Agent during the June 4 Call that he had secured non-legal self-employment opportunities related to marketing and client-generation while receiving the CRCB.

[34] I do not accept the Applicant's submissions on this issue. I first note that the non-legal opportunities alleged by the Applicant were raised for the first time at the hearing. This information was not before the CRA and was not argued in the Applicant's written materials. I further note that the Applicant has himself engaged in a selective review of the evidence, omitting the very next paragraph of his affidavit which states [emphasis in original]:

> Further, I have not worked in any capacity since mid-March 2020, and between March 2020 and December 2021, despite otherwise intending to, I was prevented from working in alternative non-legal capacities due to factors directly related to [COVID].

In any event, the mere existence of alleged opportunities does not demonstrate that the Applicant accepted and acted on these opportunities, such that he had "planned to work or had a scheduled work week" pursuant to section 17 of the Act (*Levesque* at para 37).

[35] Given the materials on the record, I find no error in the Second Agent's determination that "it [could] not be confirmed if [the Applicant] was working or running [his] business during the time [he] applied for [the] CRCB." The CRA's findings are justified and intelligible in light of the factual matrix of the compliance review (*Vavilov* at para 126).

B. *There was No Breach of Procedural Fairness*

[36] The Applicant submits that the CRA seriously and repeatedly infringed his procedural rights. The Applicant submits that he was unaware of any dispute concerning his hours worked, believing based on the June 4 Call that "[t]he only issue for further determination was whether [he] had satisfied the income eligibility criteria" pursuant to paragraphs 17(1)(d) and 17(1)(e) of the Act. The Applicant submits that he was unaware the CRA had reassigned his file, and therefore "had no opportunity to be heard and participate in the [Second Agent]'s decision-making process." The Applicant further asserts that he held "a legitimate expectation that he would be contacted should further information be required prior to a decision being made" [emphasis in original] and that "[his] legitimate expectations were not complied with in this case."

[37] The Respondent submits that there was no infringement of the Applicant's procedural rights. The Applicant was aware that the CRA would be conducting a fresh review of his eligibility. The Second Agent attempted to contact the Applicant and duly considered his submissions. Consequently, the CRA did not breach its duty of procedural fairness.

[38] I agree with the Respondent.

[39] In compliance reviews, the onus lies with the benefit recipient to prove their eligibility (the Act, s 20; *Walker v Canada (Attorney General),* 2022 FC 381 at paras 37; *Zhang v Canada (Attorney General),* 2023 FC 1761 at para 35). Recipients are not released from this obligation based on questions the CRA does or does not pose during the review process. The Second Agent was therefore not required to ask [the Applicant to prove specific eligibility criteria or alert the Applicant in advance of which eligibility criteria may form the basis of a denial, as the Applicant contends.

[40] The Applicant's submissions concerning the reassignment of his file are similarly meritless. The Second Agent made several attempts to contact the Applicant, even after receiving the Written Response stating "nothing further" would be provided. The Applicant asserts that the alleged calls do not appear on his phone records and the Second Agent failed to leave a voicemail. However, the CTR indicates that the Second Agent called the Applicant on July 3, 2024 and "left a voicemail including [their] name, [their] section, the date, the time, [their] phone number, [their] badge number," and "[their] work hours." The Second Agent "advised [the Applicant] that [they are] now assigned" to his case and invited him to "please call" with "any questions or concerns." The Second Agent called the Applicant again on July 17,

22, and 23, but received no response. I note that the phone number dialled by the Second Agent is the same as the one dialled in the June 4 Call. I therefore cannot fault the CRA for the Applicant's unawareness of the reassignment of his file.

[41] I also find the Second Agent's reasons clearly account for both the June 4 Call and the Applicant's prior submissions. In compliance reviews, CRA notepad entries form part of an Agent's reasons (*Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 9 [citations omitted]). The CRA notepad entries in this case include the First Agent's notes about the June 4 Call. The Second Agent's eligibility analysis clearly these notes, in addition to the Applicant's financial documents, his previous letters to the CRA, and the Written Response. I therefore do not find that the Applicant "had no opportunity to be heard and participate in the [Second Agent]'s decision-making process." The Second Agent considered the Applicant's submissions and provided opportunities for the Applicant to participate, despite his stated intention to not provide materials after July 13, 2024.

[42] Furthermore, the CRA's conduct did not give rise to a legitimate expectation that the Applicant would be contacted prior to a decision being made. The Applicant relies on *Ramanathan v Canada (Attorney General)*, 2023 FC 1029 ("*Ramanathan*"), *Komleva v Canada (Attorney General)*, 2024 FC 1562 ("*Komleva*"), and *Kohli v Canada (Attorney General)*, 2024 FC 1706 ("*Kohli*") for this argument. However, these decisions are distinguishable from the present case. The applicants in *Ramanathan* and *Kohli* were promised by a CRA supervisor that they would be contacted prior to a decision being made on their file (*Ramanathan* at para 25; *Kohli* at para 34). No such promise was made to the Applicant in this proceeding. In *Komleva*, the applicant was found ineligible due to credibility issues (at paras 30, 32). The Second Agent

in this case did not doubt the truthfulness of the Applicant's materials. They simply found the evidence proved the Applicant was ineligible for the CRCB. The Applicant submits that he was denied an opportunity to disabuse the Second Agent of their concerns (*Komleva* at para 38). However, I find no indication that the Second Agent had evidentiary concerns to disabuse.

[43] Instead, the Second Agent's concerns in the present proceeding flowed directly from the eligibility requirements in paragraph 17(1)(f) of the Act. The Applicant was not denied "a full and fair chance to rebut [the CRA's] concerns" or "left in the dark about [a] critical aspect of the case [he] had to meet," since "[t]here is no duty to provide an applicant the opportunity to address concerns arising directly from legislative requirements" (*Komleva* at paras 35, 32).

[44] I therefore do not find that the Applicant's procedural rights were breached. In my view, the Applicant was adequately – and rightfully – accommodated during the compliance review process. Unlike the first compliance review, where the CRA unreasonably denied the Applicant medical accommodations, the CRA in this review process provided accommodations, clearly explaining that, although "[it does] not have the means to initiate reviews via letter correspondence and must speak on the phone to conduct the review," the Applicant may "answer…questions in writing" or appoint "a support provider" to "conduct the phone call on his behalf." The Applicant wished to receive all correspondence in writing. The CRA's inability to acquiesce to this request due to resource constraints does not constitute a breach of procedural fairness. In my view, the accommodations put in place provided the Applicant the opportunity to know the case he had to meet and provide a response.

VI. **Costs**

[45] The Applicant sought costs on the basis of his procedural fairness allegations. As I have not found that the CRA breached the Applicant's procedural rights, costs are not awarded in this matter.

VII. **Conclusion**

[46] For these reasons, I find that the CRCB Denial is reasonable and was rendered in a procedurally fair manner. The CRCB Denial is justified, transparent, and intelligible in light of the Act and the factual matrix of the compliance review (*Vavilov* at para 99). The CRA did not deprive the Applicant of the chance to "[know] the case he had to meet" or provide a full response (*Kohli* at para 40). This application for judicial review is dismissed.

JUDGMENT in T-2387-24

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

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2387-24
STYLE OF CAUSE:	STEPHEN DUGANDZIC v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	JANUARY 14, 2025
JUDGMENT AND REASONS:	AHMED J.
DATED:	JANUARY 31, 2025

APPEARANCES:

Stephen Dugandzic (on his own behalf)	FOR THE APPLICANT
Daniel Segal	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT