Federal Court Cour fédérale

Date: 20250227

Docket: T-396-24

Citation: 2025 FC 375

Ottawa, Ontario, February 27, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

ROSANNA MONTOUTE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Rosanna Montoute seeks judicial review of a decision by an officer with the Canada Revenue Agency [CRA], finding she was ineligible for the Canada Emergency Response Benefit [CERB] in each of the seven four-week periods she had received CERB payments. The CRA officer found that Ms. Montoute (a) earned more than $1,000 of employment or self-employment income in each benefit payment period; and (b) did not stop working or have her

hours reduced for reasons related to COVID-19, and that she therefore did not meet the eligibility requirements set out in section 6 of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*].

[2] Ms. Montoute argues the CRA did not adequately tell her what information or documents she needed to provide or give her enough time to obtain and provide those documents. She also argues the CRA officer's decision was unreasonable, asserting that she did not earn over $1,000 of employment or self-employment income in each of the benefit payment periods, which span from March 15 to September 26, 2020. She says the only income she earned in the relevant period after she was laid off from Air Canada was a bursary from a training program offered by the Ministry of Health and Social Services of the Government of Quebec. The Attorney General responds that Ms. Montoute was given adequate notice and time to provide information and simply failed to do so, and that the officer's conclusions were reasonable on the evidence Ms. Montoute had provided.

[3] For the following reasons, I find the process leading to the CRA officer's decision was fair, and the decision was reasonable with respect to CERB Periods 1, 4, 5, 6, and 7. The CRA officer's conclusion that Ms. Montoute earned more than $1,000 in each of these periods was justified and supported on the record, which showed that Ms. Montoute earned employment income in connection with the training program in addition to the bursary amount. With respect to CERB Periods 2 and 3, however, the CRA officer's conclusion that Ms. Montoute earned more than $1,000 in each of these periods was not justified on the record, which showed only $1,250 in income received at the end of CERB Period 3. Regardless of when this income was

earned in those periods (likely during CERB Period 3), it cannot have reflected earnings of at least $1,000 in both periods. The CRA officer's decision also shows no analysis of whether Ms. Montoute had had her hours reduced in these periods, such that their conclusion that Ms. Montoute did not stop working or have her hours reduced for reasons related to COVID-19 was unreasonable.

[4] The application for judicial review is therefore granted in part. The CRA officer's decision that Ms. Montoute was ineligible for CERB benefits in both CERB Period 2 and CERB Period 3 is set aside, and that aspect of their decision is remitted for redetermination.

II. Issues

[5] The arguments presented by Ms. Montoute on this application for judicial review raise two issues:

A. Was the CRA officer's decision procedurally fair?

B. Did the CRA officer err in concluding that Ms. Montoute was ineligible for the CERB in each of the periods that she received payment?

III. Analysis

A. *The process was procedurally fair*

[6] Ms. Montoute's arguments about whether she had enough information and opportunity to present her case to the CRA relate to the process leading to the CRA officer's decision. She

effectively argues that the CRA and/or the CRA officer breached the duty of fairness, *i.e.*, that the decision was reached in a procedurally unfair manner. The Court considers such arguments by asking whether the process was fair in all the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Ghukasyan v Canada (Attorney General)*, 2025 FC 140 at para 20.

[7] Applying this standard, I cannot accept Ms. Montoute's fairness arguments. Ms. Montoute was given sufficient information about what she had to provide and adequate time to provide it.

[8] The record indicates that at the outset of the process, the CRA sent Ms. Montoute a letter dated March 16, 2022, telling her she would have to provide bank statements, pay stubs, a letter from her employer, and an amended T4 slip. During the course of the CRA's first and second review, Ms. Montoute either contacted the CRA by telephone or was contacted by them on a number of occasions. During these calls, the CRA explained the need to provide documents, including pay stubs, asked for additional documents regarding the bursary, and gave Ms. Montoute an opportunity to provide them. There is no evidence that she asked the CRA for more time or told them she had further documents and just needed more time to send them in.

[9] I have no doubt that, as Ms. Montoute submitted, 2020 was a difficult year for her, as it was for many Canadians. It is not surprising that her record-keeping may have been less than perfect in this time. However, the CRA provided numerous occasions between 2022 and 2024

for Ms. Montoute to locate or obtain documents that would be relevant to her statements about her employment and bursary income and provide them to the CRA.

[10] As for Ms. Montoute's assertion that she was not told which periods the requests for information related to, there is again no indication she was confused or uncertain about the relevant period, which spanned only seven months. The initial March 16, 2022, letter requesting documents stated that the relevant period was from March 15, 2020, to September 26, 2020. When Ms. Montoute provided banking records, she provided them for the relevant period of March to September 2020. Further, the CRA's process for handling CERB eligibility includes an initial decision together with an opportunity to request a second review, which may be accompanied by new documents. Ms. Montoute took advantage of this opportunity, requesting a second review and filing documents, which ultimately led to the second review and the decision being challenged in this application. Again, she expressed no confusion about the relevant period and did not request any additional time or clarification.

[11] Ms. Montoute also raises concerns about being contacted by telephone rather than in writing. I agree with the Attorney General that in the absence of any request for accommodation owing to a disability, the duty of procedural fairness does not impose a general obligation for all communications between the CRA and a CERB claimant to be in writing: *Ghukasyan* at para 23; *Cameron v Canada (Attorney General)*, 2024 FC 2 at paras 34–35.

[12] I therefore conclude that the process leading to the CRA's decision was a fair one in all the circumstances.

B. *The decision was reasonable in respect of CERB Periods 1, 4, 5, 6, and 7, but unreasonable in respect of CERB Periods 2 and 3*

(1) Standard of review and new evidence

[13] When looking at the CRA officer's decision itself, the Court applies the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Ghukasyan* at para 18. When applying this standard of review, the Court does not undertake its own assessment of the matter or make its own decision, acting in place of the CRA officer: *Vavilov* at paras 83, 125–126. Rather the Court only determines whether the decision of the CRA officer and the reasons given for it are reasonable in light of the evidence that was before them and the applicable law. The Court must uphold the decision unless the person challenging it, here Ms. Montoute, shows it is unreasonable in the sense of being incoherent, unintelligible, or unjustified in relation to the facts and law: *Vavilov* at paras 15, 85, 99–101, 105–107, 125–126.

[14] Because of the Court's role on judicial review, parties challenging a decision are generally not allowed to file new evidence going to the merits of the matter that was not before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20; *Ghukasyan* at para 22. While there are limited exceptions to this general rule, none of them apply in this case. Most of the additional evidence that Ms. Montoute filed on her application for judicial review, consisting of communications in respect of the training program and bursary, is therefore inadmissible and the Court cannot consider them in assessing whether the CRA officer's decision was reasonable.

[15] I would exclude from this conclusion two documents that Ms. Montoute filed on this application. The first is a screenshot of a T4 for the 2020 tax year. As discussed further below, the information in this T4 was in front of the CRA officer when they made their decision. I cannot accept the Attorney General's submission that simply because this information is in a different format in Ms. Montoute's document (*i.e.*, the format it was available to her rather than the format it was available to the CRA), it is rendered inadmissible.

[16] The second is a screenshot of a webpage published by the Government of Canada about the eligibility criteria for the CERB. While the CRA officer's affidavit said that this webpage was not in front of them, I find it difficult to conclude that an agency that decides individuals' eligibility for benefits can contend that the very information it conveys to the public about that eligibility is "not in front of" the decision maker at the time of the decision. In this regard, the webpage Ms. Montoute filed is very different from the documents "available on the Internet" at issue in the *Loeb* decision cited by the Attorney General: *Loeb v Canada (Attorney General)*, 2023 FC 1463 at para 7.

[17] The foregoing being said, I agree with the Attorney General that none of the new documents, including the T4 and the webpage, are determinative of any issue as to the reasonableness of the CRA officer's decision. In particular, the reason Ms. Montoute relies on the webpage is that it states that bursary income is not included in the relevant income calculation for purposes of CERB eligibility. This is not contested by the Attorney General.

(2) The relevant eligibility criteria

[18] As noted above, the CRA officer concluded that Ms. Montoute did not meet two of the eligibility criteria for the CERB. Paragraph 6(1)(a) of the *CERB Act* requires an applicant to have "ceased 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." The CRA officer found that this requirement was not met since Ms. Montoute did not stop working or have her hours reduced for reasons related to COVID-19.

[19] Subparagraph 6(1)(b)(i) of the *CERB Act* requires that the applicant not receive income from employment or self-employment in respect of the consecutive days on which they have ceased working. This requirement is modified by section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90, which states that income is excluded from subparagraph 6(1)(b)(i) if the total income received is $1,000 or less. The CRA officer found that this requirement was not met since Ms. Montoute had earned more than $1,000 during each of the applicable payment periods.

[20] Three aspects of these requirements are worth highlighting. First, they are cumulative. As with the other eligibility requirements of the *CERB Act*, an applicant for the CERB must meet all of them to be eligible. Second, the requirement in subparagraph 6(1)(b)(i) is that a worker cannot have received income "in respect of" the relevant days in the four-week period. As was explained to Ms. Montoute in the initial March 16, 2022, letter, this means that what is relevant is when the income was earned, *i.e.*, when the work was performed, rather than when payment

for it was received. Third, student bursary income is not considered income from employment or self-employment.

(3) The CRA officer's decision

[21] The above two grounds for ineligibility were set out in the decision letter sent to Ms. Montoute on January 26, 2024. The CRA officer's more detailed reasons for finding these eligibility criteria were not met are set out in a "Second Review Report," in the internal system maintained by the CRA, which forms part of the CRA officer's decision: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22.

[22] It is clear from the Second Review Report that the CRA officer reviewed the information in the CRA's files and the documents Ms. Montoute had filed, including:

(a) her Record of Employment [ROE] from Air Canada, which showed the last day she was paid was March 31, 2020, the reason for issuing the ROE being "Shortage of work/End of contract or season";

(b) an email dated June 11, 2020, from the Centre intégré universitaire de santé et de service sociaux [CIUSSS] du Centre-Ouest de l'Île de Montréal, referring to a "conditional offer" related to the training program, together with a blank "commitment form" that would allow Ms. Montoute to benefit from a study bursary/scholarship for the duration of the training program;

(c) information about the training program that indicated that candidates would receive a study bursary in the amount of $9,210;

(d) a T4A slip from CIUSSS showing the amount of $9,210 in box 105 (“Scholarships, bursaries, fellowships, artists’ project grants, and prizes”); and

(e) Ms. Montoute’s bank account statements from March to September 2020, which show a number of payments from CIUSSS, each marked as “CIUSSS COMTL PAY,” in various amounts and on various dates between June 4, 2020, and September 24, 2020.

[23] The CRA officer noted that there was T4 income on Ms. Montoute’s file, both from Air Canada and from the CIUSSS. They considered Ms. Montoute’s argument that all of her earnings from the CIUSSS were bursary income and not employment income, as the CIUSSS had reported and the bank statements suggested. However, they found Ms. Montoute had not filed documents to support her argument, such as bursary pay stubs and/or a letter from the CIUSSS stating that it was in fact bursary income. The CRA officer therefore concluded that they would validate Ms. Montoute’s employment income based on the reported T4 earnings from the CIUSSS.

[24] In 2020, because of the CERB program, employers reported income on T4 slips in connection with the CERB benefit periods, in addition to reporting income on an annual basis. The T4 filed by the CIUSSS included around $5,100 in employment income in the period from May 10 to July 4, 2020 (*i.e.*, Periods 3 and 4), and around $5,300 in employment income in the period from August 30 to September 26, 2020 (*i.e.*, Period 7). The CRA officer noted that these T4 amounts showed employment income “was much greater than $1,000 during the CERB application periods.” Since Ms. Montoute had not provided paystubs (despite being asked for them on a number of occasions), the CRA officer was unable to determine her gross earnings

during each CERB period. They therefore decided to make their decision based on the information available on file. They concluded Ms. Montoute was ineligible for CERB Periods 1 to 7 (*i.e.*, from March 15, 2020, to September 26, 2020) because she earned over $1,000 of employment income during each applicable payment period. They also concluded that Ms. Montoute worked throughout the applicable period, and therefore did not stop working or have hours reduced related to COVID-19.

(4) The CRA officer's decision was mostly reasonable, but unreasonable in one respect

[25] As noted above, the role of this Court on judicial review is to assess whether the CRA officer's decision is reasonable, that is, whether it is coherent, transparent, intelligible, and justified in light of the law and the evidence that was before them, and it meaningfully accounts for the central issues and concerns raised by the parties: *Vavilov* at paras 15, 85, 99–101, 105–107, 125–128.

[26] I find that the CRA officer's decision amply meets this description, except in respect of one aspect. I will explain.

[27] The CRA officer clearly addressed Ms. Montoute's submissions regarding bursary income, finding she had not demonstrated that the income reported on the CIUSSS T4 was bursary income. This was entirely reasonable. Indeed, it appears from the record that the CIUSSS reported bursary income of $9,210 on a T4A slip *as well as* employment income on a T4 slip. This is consistent with the program documents Ms. Montoute filed, which (a) indicate

that participants would receive a study bursary in the amount of $9,210, and (b) describe the program as a [TRANSLATION] “work-study” training program, suggesting that there was a work component to the program as well as the study component.

[28] It may well be that Ms. Montoute understood or believed that all of the money she received from the CIUSSS was bursary funds. However, her bank account statements show that between June and September 2020, she received well in excess of $9,210 from the CIUSSS. Indeed, those statements show that during this period, in addition to a series of other payments, she received two deposits in the amount of $3,070. The fact that this amount is exactly one-third of $9,210 cannot be a coincidence.

[29] In any event, the CRA officer only relied on the $5,100 and $5,300 amounts reported by the CIUSSS as employment income, and not on the $9,210 amount reported on the T4A as bursary income. In my view, in the absence of any documentation from Ms. Montoute demonstrating that these additional amounts were also bursary income, it was reasonable of the CRA officer to conclude that Ms. Montoute earned these amounts as employment income.

[30] It was also reasonable for the CRA officer to conclude, as a general matter, that in the absence of pay stubs, she could not determine when the amounts received from CIUSSS had been earned. However, the CRA officer had other evidence in front of them in addition to the T4 information provided by CIUSSS, namely Ms. Montoute’s bank account statements and the conditional offer from the CIUSSS dated June 11, 2020. The bank statements show that the first date Ms. Montoute received money from CIUSSS was June 4, 2020, when she received two

payments: one of about $50 and a second of around $1,200. Further payments were then made on June 18, 2020, and various dates thereafter.

[31] Given this evidence and their general conclusion that they could not determine when the amounts received had been earned, the CRA officer's conclusion that Ms. Montoute had not established that her income was less than $1,000 in CERB Periods 4, 5, 6, and 7 was reasonable. However, for the following reasons, I conclude it was unreasonable on the evidence for the CRA officer to conclude that Ms. Montoute earned employment income of at least $1,000 in each of CERB Periods 2 and 3.

[32] CERB Period 1 ran from March 15 to April 11, 2020. Ms. Montoute had employment income from Air Canada in excess of $1,000 in CERB Period 1, with her last paid day being March 31, 2020. It was therefore not unreasonable for the CRA officer to conclude she was not eligible for CERB Period 1.

[33] However, CERB Period 2 ran from April 12 to May 9, 2020, while CERB Period 3 ran from May 10 to June 6, 2020. There was no evidence before the CRA officer that Ms. Montoute received any income from CIUSSS before the $1,250 paid on June 4, 2020, at the tail end of Period 3. These payments were made one week prior to the conditional offer email on June 11, 2024, so Ms. Montoute was clearly earning at least some income from CIUSSS before that conditional offer. Nonetheless, for any of the income paid on this day to have been earned in CERB Period 2, it had to have been earned before May 9, 2020, and therefore had to have been (a) earned more than a month before CIUSSS sent Ms. Montoute a conditional offer, and (b) paid

almost a month after the last of it was earned. In any event, regardless of when in the period prior to June 4, 2020, that income was earned, it cannot mathematically have reflected over $1,000 in earnings in *each* of CERB Periods 2 and 3, even accounting for differences between gross and net pay, since it totaled only $1,250. There was therefore no evidence to support the CRA officer's implicit conclusion that Ms. Montoute had earned $1,000 in both of these CERB periods. At most, she can have been ineligible on this ground in only one of the two periods. The mere reference to a lack of pay stubs and to Ms. Montoute's onus to demonstrate eligibility does not justify the reasonableness of a conclusion that is contrary to the evidence that was before the CRA officer.

[34] In this regard, it is to be recalled that the CRA officer was called upon to determine whether Ms. Montoute had shown her eligibility for a CERB income support payment in respect of none, some, or all, of the four-week periods for which she had applied: *CERB Act*, s 6(1). In many cases, an applicant's situation or position may be the same throughout, such that a single determination in respect of all periods may be sufficient and reasonable. However, where the evidence dictates different eligibility conclusions, a blanket conclusion that is reasonable in respect of some periods may not be reasonable in respect of others.

[35] I therefore conclude that the CRA officer's conclusion that Ms. Montoute did not meet the $1,000 eligibility criteria for both of CERB Periods 2 and 3 was unreasonable.

[36] With respect to the second stated ground of ineligibility, the CRA officer's interpretation of paragraph 6(1)(a) of the *CERB Act* was apparently that the eligibility criterion was met if

Ms. Montoute had stopped working *or* had her hours reduced for reasons related to COVID-19. This interpretation, which is more favourable to CERB applicants than limiting the criterion to simply "ceasing work […] for at least 14 consecutive days within the four-week period," has been upheld as reasonable by this Court: *Matta v Canada (Attorney General)*, 2025 FC 195 at paras 35, 38.

[37] The CRA officer's reasons for finding Ms. Montoute did not meet this criterion is limited to a single sentence: "The applicant worked throughout the applicable periods, therefore the applicant did not stop working or have hours reduced related to covid-19" [emphasis added]. While the CRA officer's reasons for concluding that Ms. Montoute "worked" throughout the applicable periods is evidently related to their findings on the $1,000 employment income threshold, she presented no analysis of whether she had had her hours reduced.

[38] It is clear from the ROE prepared by Air Canada that Ms. Montoute left Air Canada on March 31, 2020, for reasons of "Shortage of work/End of contract or season." Both the ROE and the context of the airline industry in March 2020 are consistent with Ms. Montoute's statement that she was laid off from Air Canada due to the pandemic, and the CRA officer does not appear to contest this. This being so, even if Ms. Montoute had "worked" for CIUSSS throughout the applicable period, this does not answer the question of whether her hours were reduced for reasons related to COVID-19. Even without pay stubs, the evidence before the CRA officer required a greater analysis than simply the statement that Ms. Montoute "worked" in order to determine whether she stopped working or had her hours reduced for reasons related to COVID-19.

[39] For CERB Periods 1, 4, 5, 6, and 7, when the CRA officer reasonably concluded that Ms. Montoute had earned more than $1,000 in the period, any concern about the reasonableness of the CRA officer's analysis of the "stop working or have hours reduced" criterion is essentially irrelevant, since the eligibility criteria are cumulative. However, the CRA officer's finding that Ms. Montoute earned more than $1,000 in both of CERB Periods 2 and 3 was unreasonable. Given the evidence regarding her income in these periods and the absence of any analysis of whether that evidence showed a reduction in hours for reasons related to COVID-19, I conclude that the CRA officer's conclusion on this eligibility criteria is unreasonable for these periods as well.

IV. Conclusion

[40] I will therefore grant the application for judicial review in part, setting aside the CRA officer's determination of ineligibility in respect of CERB Periods 2 and 3. Ms. Montoute's eligibility for CERB payments in those periods will be remitted for redetermination by a CRA officer with the benefit of the Court's reasons and after Ms. Montoute is afforded an opportunity to provide further evidence and submissions: *Matta* at paras 3, 51.

[41] At the hearing, the Attorney General withdrew his request for costs. As neither party sought costs, Ms. Montoute represented herself, and success was mixed, no costs are awarded.

JUDGMENT IN T-369-24

THIS COURT'S JUDGMENT is that

1. The application is granted in part.
2. The decision of an officer with the Canada Revenue Agency [CRA] dated January 26, 2024, denying the applicant's eligibility for the Canada Emergency Recovery Benefit [CERB] is set aside as it relates to CERB Period 2 (April 12 to May 9, 2020) and CERB Period 3 (May 10 to June 6, 2020). The applicant's eligibility for CERB payments in those periods is remitted for redetermination by a different CRA officer with the benefit of the Court's reasons and after the applicant is afforded an opportunity to provide further evidence and submissions.
3. No costs are awarded.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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