

Federal Court



Cour fédérale

Date: 20250304

Docket: T-1286-24

Citation: 2025 FC 399

Ottawa, Ontario, March 4, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

FUPAN YAO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by a Canada Emergency Benefits Validation Officer [Officer] of the Canada Revenue Agency [CRA], dated April 25, 2024 [Decision]. The Officer found the Applicant was ineligible for the Canada Recovery Benefit [CRB] because he did not meet the minimum \$5,000 net self-employment income requirement for the relevant periods under the CRB legislation.

[2] The Applicant claimed eligibility, i.e. that he earned more than \$5,000 net self-employment income, when he applied for the CRB benefits then paid to him. He claimed these benefits under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*].

[3] However, his original filings under the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) for the relevant periods reported net self-employment income of only \$692 in 2019 (later revised to \$915). For 2020 he reported a *loss* on account of his net self-employment income of -\$2,550.

[4] These amounts are seriously less than the minimum \$5,000 required by the *CRB Act*. As a result and to get the CRB, the Applicant refiled his tax returns with substantial revisions to his tax information and did so not because of mistake in reporting his net income, but to qualify for CRB funds.

[5] To do this he asked the CRA to amend his Notices of Assessment under the *Income Tax Act*. Based on this substantially revised self reporting and without audit, the CRA issued amended Notices of Assessment showing net self-employed income of \$915 in 2019 and \$6,375 in 2020. He also claimed gross self-employment income of \$1350, all under the *Income Tax Act*.

[6] Notably, when CRA in the audit now under review asked why he requested amendments to his original tax returns, and Amended Notices of Assessment, he “confirmed that they changed their taxes to qualify for CRB and not because of a mistake was made on their taxes.”

[7] This motive was admitted during the course of the audit by CRA discussed in this case, which was established to verify the Applicant met the minimum required net self-employment income of \$5,000.

[8] The CRA found he failed to do so, which Decision is the subject of this judicial review. For the reasons that follow the application will be dismissed.

II. Facts

[9] The Applicant applied for and received the CRB for periods 1 to 7 (September 27, 2020, to January 2, 2021) [Benefit Period]. He also applied for but was denied CRB between January 3 to September 11, 2021, and September 26 to October 23, 2021.

[10] The Respondent summarizes the facts of the Applicant's relevant taxation years as follows, which are not disputed by the Applicant who filed an affidavit and a two-paragraph, two-sentence memorandum. I accept that:

8. The Applicant's 2019 taxation year was initially assessed as-filed on June 4, 2020. For the 2019 taxation year, the Applicant initially claimed gross self-employment income in relation to his business of repairing computers of \$7,000, with expenses of \$6,308, resulting in a net self-employment income of \$692.

9. On January 26, 2021, the Applicant provided the CRA with a T1 Adjustment Request for his 2019 taxation year, requesting that various expenses be removed from his deductions that year, including office expenses (\$250), rent (\$3,000), maintenance and repairs (\$560), and utilities (\$650) [a total of \$4,460].

10. The Applicant's 2019 taxation year was re-assessed on December 8, 2022, which added \$2,828 in employment income and no changes to the self-employment income. The Applicant's 2019 taxation year was reassessed again on July 27, 2023, which increased the Applicant's net self-employment income to \$915.

11. The Applicant's 2020 taxation year was initially assessed as-filed on May 13, 2021. In this return, the Applicant claimed gross self-employment income of \$1,350 and a net self-employment loss of \$2,550.7 The Minister reassessed the Applicant on May 25, 2021, wherein the Applicant claimed a gross professional income of \$1,350, but a net professional income of \$6,375. The Applicant was reassessed again in regards to his 2020 taxation year again on December 19, 2022, but there was no change to his gross or net self-employment income.

A. *Legislative scheme*

[11] The CRB was implemented by as a response to COVID-19: *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*]. Parliament limited its availability to those who satisfy certain requirements, including relevant to this case, a minimum qualifying net self-employment income of \$5,000 for the relevant periods:

Eligibility

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

...

(d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a

Admissibilité

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

...

d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa

<u>total income of at least \$5,000 from the following sources:</u>	<u>demande, s'élevaient à au moins cinq mille dollars :</u>
(i) employment,	(i) un emploi,
(ii) <u>self-employment</u> ,	(ii) <u>un travail qu'elle exécute pour son compte</u> ,
[Emphasis added]	[Je souligne]

[12] Subsection 3(2) specifies that “self-employment” income is limited to net self-employment income, that is, employment income less expenses:

Income from self-employment	Revenu — travail à son compte
(2) For the purpose of paragraphs (1)(d) to (f), income from self-employment is <u>revenue from the self-employment less expenses</u> incurred to earn that revenue	(2) Le revenu visé aux alinéas (1)d) à f) de la personne qui exécute un travail pour son compte est son <u>revenu moins les dépenses engagées</u> pour le gagner.
[Emphasis added]	[Je souligne]

[13] The *CRB Act* grants the Minister of Employment and Social Development powers to recover CRP payments income support payments made to those not entitled to them:

Return of erroneous payment or overpayment	Restitution du trop-perçu
28 (1) If the Minister determines that a person has received a benefit under this Act to which they are not entitled, or an amount in excess of the amount of a benefit under this Act to which they are entitled, the person must repay the amount of the payment or the excess	28 (1) Si le ministre estime qu'une personne a reçu une prestation prévue par la présente loi à laquelle elle n'avait pas droit ou une telle prestation dont le montant excédait celui auquel elle avait droit, la personne doit, dans les meilleurs délais, restituer le trop-perçu..

amount, as the case may be, as soon as is feasible.

Recovery as debt due to Her Majesty

(2) The amount of the erroneous payment or overpayment, as determined by the Minister, constitutes a debt due to Her Majesty as of the day on which the amount was paid and the debt is payable and may be recovered by the Minister as of the day the Minister determined the amount of the erroneous payment or overpayment.

Recouvrement

(2) Les sommes qui, selon le ministre, sont versées indûment ou en excédent constituent, à compter de la date du versement, des créances de Sa Majesté qui sont exigibles et dont le recouvrement peut être poursuivi à ce titre par le ministre à compter de la date à laquelle le ministre a estimé qu'elles ont été versées indûment ou en excédent.

[14] The legislation also authorizes the CRA to obtain additional information from recipients, as it took place in the audit (verifying compliance) under review in this case:

Obligation to provide information

6 An applicant must provide the Minister with any information that the Minister may require in respect of the application.

...

Provision of information and documents

26 (1) The Minister may, for any purpose related to verifying compliance or preventing non-compliance with this Act, by a notice served personally or by a

Obligation de fournir des renseignements

6 Le demandeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.

...

Fourniture de renseignements et documents

26 (1) Le ministre peut, à toute fin liée à la vérification du respect ou à la prévention du non-respect de la présente loi, par avis signifié à personne ou par service de

confirmed delivery service, require that any person provide any information or document within the reasonable time that is stated in the notice.

messagerie fournissant une preuve de livraison, exiger d'une personne qu'elle fournisse des renseignements ou qu'elle produise des documents dans le délai raisonnable que précise l'avis.

B. *Procedural history*

(1) First Decision

[15] On March 2, 2021, the Applicant called the CRA about an error code on his account.

During this call, the CRA indicated it wished to validate his CRB application. The Applicant was told to submit documents proving he earned the minimum \$5,000.

[16] During this first review, the Applicant submitted:

- On March 2, 2021, an invoice from Raptor Bioinformatics Group (the Applicant's company) to P & T Computer for \$7,000 dated December 21, 2019 [Invoice];
- On March 8, March 16, March 26, and April 6, 2021, another copy of the Invoice;
- On March 31, 2021, a T1 Adjustment Record for the Applicant's 2019 taxation year dated January 26, 2021 [T1 Adjustment];
- On April 30, 2021, the T1 Adjustment and a copy of the Invoice;
- On May 4, 2021, a Statement of Business or Professional Activities; and
- On June 3 and July 5, 2021, another copy of the Invoice with an accompanying explanation.

[17] The first reviewing officer noted the Applicant provided no documentation to substantiate receipt of the claimed \$7,000 income covered by the Invoice. Further, his net self-employment was only \$692, far less than the minimum \$5,000. The officer's notes (which are part of the Decision) state:

RCF249 June 3/21

1:00 pm tried to contact - rec'd v/m that said the customer is not available and the voice mail system has not been initialized. T/P [tax payer] is not eligible with documentation provided. There is one receipt/invoice for \$7,000 that has been sent numerous times but no bank deposit corroboration the \$\$ was rec'd / deposited. Will try again to contact

RCF249 June 8/21

tried again - same message

RCF249 June 14/21

Same message. June 15/21 - t/p continues to send the same document. If nothing else is forthcoming within 30 days

RCF249 July 15/21

I checked the documentation again, and the t/p continues to send the same invoice (has sent it 14 times) with nothing to substantiate it. He did claim \$7,000 gross [self-employment] income on his 2019 T1, but with a NET s/e income of \$692. Can not contact for further documentation. T/P is not eligible for benefits."

[Emphasis added]

[18] By letter dated July 19, 2021, the CRA informed the Applicant he was not entitled to the CRB because he "did not earn at least \$5,000 (before taxes) of employment or net self-employment income" in the relevant timeframe [First Decision].

(2) Second Review Decision

[19] On July 19, 2021, the Applicant submitted another copy of the Invoice with an accompanying explanation. His file was opened automatically for a Second Review. The Applicant submitted the following additional material to support his CRB application:

- On July 28, 2021, another copy of the Invoice with an accompanying explanation and a copy of the first page of the T1 Adjustment; and
- On August 16, September 16, and November 28, 2021, another copy of the same Invoice as before.

[20] The second officer was again unable to reach the Applicant by phone.

[21] The second officer's report concludes:

TP has filed 2019 net business income of \$692, has reassessed 2020 T1 return to include gross professional income of \$1,350 and net professional income of \$6,375 from previous net professional income filed of \$-2,550.

2020 net income filed being higher than the gross income does not make sense. TP has previous history of filing self employment income, and has submitted 2019 invoice totaling \$7,000 dated December 31, 2019. Invoiced amount matches 2019 gross business income filed. TP has submitted 2019 T2125 with net business income reported as \$6,375. T2125 submitted does not match TP 2019 T1 filing. TP has not provided documentation to validate 2020 net business income filed. As the amounts listed for 2020 does not make sense (net income > gross income) require invoices/receipts with corresponding proof of payment to verify income earned. TP does not meet income requirement in 2019 based on 2019 T1 filing. As 2019 T2125 and 2019 T1 do not match up, unable to determine TP actual net earnings for 2019. Documentation insufficient, unable to confirm \$5,000 requirement earned in 2019, 2020, or the 12 month period preceding date of application.

[Emphasis added]

[22] By letter dated June 1, 2022, the CRA considered the objection and new evidence filed by the Applicant. Once again CRA found he was not entitled to the CRB [Second Review Decision].

[23] The Applicant applied for judicial review by this Court of the Second Review Decision, which was ultimately discontinued in November 2023. His file was remitted for a further second review.

[24] On April 25, 2024, the CRA once again found the Applicant was not entitled to CRB. [the Further Second Review Decision] because he had not established the minimum \$5,000 net self-employment income in the relevant periods.

[25] The Applicant seeks judicial review of the Further Second Review Decision.

III. Decision under review

[26] The Further Second Review Decision found the Applicant was not eligible for the CRB.

It states:

We have completed your request and have carefully considered all the information to support your CRB eligibility.

Based on our review, you are not eligible.

You did not meet the following criteria:

You did not earn at least \$5,000 (before taxes) of employment and/or net self-employment income in 2019, 2020, or in the 12 months before the date of your application.

[27] The Officer's notes indicate after several attempts to reach the Applicant by phone, they eventually spoke to him on January 25 and again on February 1, 2024. The Officer asked the Applicant a number of questions about his income, expenses, and tax filings. The Officer's notes report:

Do you have any other income to report for 2019, 2020 or 2021?
No, I do not think so.

Why did TP do reassessments on their taxes for 2019, 2020 and 2021 taxes? Because TP made \$5000 of income at the time and then I had to get it adjusted

One of them was filed incorrectly, and we submitted the readjustment request. Filed it for 2019 and 2020 and was inappropriately addressed for 2021 and then had to file two of them.

Is the current information on TP's taxes correct? I believe so.

...

How much gross and net for 2019 - \$7000 gross and net was \$915.00

So I think I recall when submitting T1 adjust was applied incorrectly.

Explained \$5000 of net self employment income eligibility criteria.

We submitted T1 adjustments to get the net up to \$5000.

Yeah so that would be my mistake. I did not factor in the T1 adjustment submitted.

What are your gross and net amounts for 2019? - Gross and net amounts \$915 was before adjustment

Why was adjustment made? To meet the CRB requirement or a mistake was made? TP stated they changed their expenses so that they met the eligibility requirement for CRB.

...

What does TP do for self employment? TP fixes computers and does software, analysis for software.

...

How was TP typically paid? Mostly cash

Do you deposit any cash amounts? TP stated they do not.

How do you keep track of earnings and hours worked? Just on paper, write down the hours, most of the stuff is with family so hours are not counted. TP stated they are paid on contract from their father and they do the tracking.

...

Advised TP that as they stated the income amounts are incorrect on TP's taxes that I will need TP to send documentation for 2019 to October 23, 2021 so that agent is able to see that TP earned \$5000 of net self employment income and employment income in 2019, 2020 or in the 12 month period before TP's first application for CRB: TP's bank statements, pay slips, ROE, invoices, receipts, log books (stating when TP was working or was supposed to work for self employment income but was cancelled because of Covid), employment verification letter stating the specific dates TP worked and how much TP earned, a list of expenses and when they occurred, proof of advertising for business, any signed contracts, accounting software printouts, any documentation TP sent for judicial review as agent does not have access to those documents and any other documentation that TP may have for review for 2020 or the 12 month period before TP's first application for CRB (October 13, 2019 to October 12, 2020) to show TP earned \$5000 to reference number IC0064253635-001-45. Advised TP that once documentation is received they will be reviewed; advise TP if they are unable to send documentation by February 22, 2024 to call agent back.

Awaiting allotted time period for documentation from TP.

[Emphasis added]

[28] The Officer's Further Second Review Report is lengthy and detailed. It totals seven pages and summarizes the Applicant's evidence and information provided by phone. The Report in part concludes:

BR [benefit recipient] stated and confirmed during conversation on February 01, 2024 that they changed their taxes to be eligible for benefit however the changes made to BR's 2019 taxes still do not show BR earned \$5000 of net self employment income in 2019. BR's 2020 taxes show an amount of \$6375 in net self employment income and a gross amount of self employment income of \$1350. It is not possible for BR's net self employment income to be higher than BR's gross self employment income. A person's expenses are subtracted from the gross amount of self employment income earned to equal a person's net self employment income. Therefore even if a person did not claim expenses in a year the amount of net self employment income would be equal to the amount of gross self employment income and if any expenses are claimed the amount of net self employment income should be less than the amount of gross employment income.

BR stated during conversation on February 01, 2024 that they reassessed their taxes to be eligible for CRB. The first submission of BR's statement of business and professional activities for 2020 shows BR earned \$1350 in gross professional income and a negative amount of \$-2550 in net professional income as BR's expenses were a total of \$3900 and reflects the same amounts that BR originally claimed on their initial assessment of their 2020 taxes. During conversation on February 01, 2024 BR stated that there was a mistake on their 2020 taxes as the gross amount of self employment income is lower than the net amount of self employment income claimed. BR confirmed that their net self employment income earned in 2020 was a negative amount of \$-2550 (the amount claimed on BR's initial assessment of their 2020 taxes). A negative amount of self employment income is counted as \$0 and is under \$5000.

...

Even if the amount of net self employment income claimed on BROs 2019 taxes was added to the amount of employment income earned the amount of BR's employment and net self employment income earned would still be under \$5000 ($\$2828 + 915 = 3743$). BR's T1 adjustment request with the date of January 2021 was received before the first or second reassessments were done on BR's 2019 taxes and BR did not change their gross self

employment amounts claimed on their 2019 taxes in either the first or second readjustment to their 2019 taxes. There was a change made to BR's 2019 net self employment income from \$692 to \$915 on their second reassessment of their 2019 taxes. However the changes made to BR's 2019 net self employment income is not over \$5000 and does not reflect the amounts the applicant indicates should be reflected. BR stated that they changed their taxes to be eligible for the CRB and did not send any further documentation to show that they were receiving amounts claimed on their 2019 or 2020 taxes. The second submission of BR's statement of business and professional activities for 2019 does also show that the amount of net business income claimed on BR's 2019 taxes was \$915 of net self employment income. The amount of \$0 of net self employment income will be used for 2020 as BR's self employment income can not be confirmed and BR stated during phone conversation on February 01, 2024 the net self employment amount earned was a negative amount of \$-2550.00 and BR did not send documentation to show how much self employment income they earned in 2020. The amount of \$0 will be used for 2021 as BR's self employment income can not be confirmed and the amount claimed on BRDs 2020 taxes is a negative amount of \$-737, the first submission of BR's statement of business and professional activities for 2021 does also show that BR earned a negative amount of net self employment income (\$-737). BR did not send any other documentation to show how much BR earned in 2021 and BR's 12 month period does not fall in 2021.

...

Therefore with documentation sent by BR, information on file and BRDs answers to questions BR did not earn \$5000.00 of net self employment income in 2019, 2020 or the 12 month period (October 13, 2019 to October 12, 2020) before BR's first application for CRB. BR stated they changed their taxes to be eligible for CRB, BR did not send any further documentation to show that BR was receiving amounts claimed on their 2019-2021 taxes and the documentation sent by BR does not show that BR earned \$5000 of net self employment income in 2019, 2020 or the 12 month period before BR's first application for CRB (October 13, 2019 to October 12, 2020). BR is ineligible for CRB periods 1-25 and 27-28, created second review denial letter and redeterminations were completed.

[Emphasis added]

IV. Issues

[29] At issue is whether the Decision is reasonable.

V. Standard of review

[30] The Respondent submits, and I agree, the standard of review is reasonableness. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued contemporaneously with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

[31] 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). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[Emphasis added]

[31] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker’s reasoning “adds up”:

[104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker’s reasoning “adds up”.

[105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[106] It is unnecessary to catalogue all of the legal or factual considerations that could constrain an administrative decision maker in a particular case. However, in the sections that follow, we discuss a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely: the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context. They are offered merely to highlight some elements of the surrounding context that can cause a reviewing court to lose confidence in the outcome reached.

[Emphasis added]

[32] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, “it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies.” *Vavilov* provides further guidance that a reviewing court decide based on the record before them:

[126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker’s approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.

[Emphasis added]

[33] Moreover, *Vavilov* requires the reviewing court to assess whether the decision is subject to judicial review meaningfully grapples with the key issues:

[127] The principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the

primary mechanism by which decision makers demonstrate that they have actually listened to the parties.

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

VI. Submissions of the parties

[34] The Applicant is self represented. His memorandum is brief and says only:

According to CRA rules: You need to earn at least \$5000 (before taxes) of employment and/or self-employment income in 2019 or in the 12 months before the date of your first application.

After modification of my 2019 income tax return, I meet this requirement and so am qualified to apply for CRB.

[35] The Applicant also swore an Affidavit stating he was qualified to apply for the CRB and CERB with his modified income tax return and attached a copy of said tax return.

A. *Preliminary issues*

[36] The Respondent submits the proper responding party is the Attorney General of Canada. Respectfully, I agree. The Applicant consents, but even if he had not, I would order the style of

cause amended to name the Attorney General of Canada as the sole Respondent with immediate effect and do so now.

[37] The Respondent also submits the Court should disregard new evidence submitted by the Applicant on judicial review, namely his Affidavit and attached copy of his revised 2019 tax return. The Officer's sworn Affidavit states this document was not before her when she made her Decision. The Respondent submits this evidence does not meet any of the recognized exceptions to the general rule against the Court receiving such evidence on judicial review, as outlined by the Federal Court of Appeal in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22.

[38] I agree with the Respondent. In this case the Applicant has had almost innumerable opportunities (through three reviews) to submit whatever documents he wanted or needed to file and I am not persuaded he should be permitted at this late date and in the circumstances of this case to file any new evidence.

B. *Was the Further Second Review Decision reasonable?*

[39] The Respondent submits the Decision is reasonable. The Respondent submits the Applicant failed to submit sufficient evidence to the CRA to support his assertion that he earned \$5,000 of net self-employment income in 2019, 2020, or in the 12 months before his CRB application.

[40] I agree, and find the Decision on the merits is transparent, intelligible and most fully justified by the record in this case.

[41] As I understand matters, income tax returns are self-reported and may be initially accepted by CRA at face value, with resulting Notices of Assessment issued which simply reflect information provided by the taxpayer. It is trite to observe information in self-reported income tax returns is accepted subject to audit and or reassessment by CRA. It is also well-established and undisputed law in this Court that Notices of Assessment under the *Income Tax Act* are not conclusive proof of income: *Aryan v Canada (Attorney General)*, 2022 FC 139 at paragraph 35 [per Strickland J]. See also *Hussain v Canada (Revenue Agency)*, 2023 FC 1382 at paragraph 22 citing *Virani v Canada (The Attorney General)*, 2022 FC 1480 at paragraph 16; *Singh v Canada (Attorney General)*, 2024 FC 51 at paragraph 36 [*Singh*, per Gascon J]. I am unable to see how it could be otherwise given Notices of Assessment are issued subject to audit under the *Income Tax Act* even given *Vatankhah v Canada (Attorney General)*, 2025 FC 235 [per Zinn J].

[42] The Applicant says his invoices must be accepted as proof of income earned and received by him. I was given no authority for that proposition. In fact, as just noted, that is not the law again even accepting *Vatankhah v Canada (Attorney General)*, 2025 FC 235. Proof an invoice was sent is simple proof someone sent an invoice to a recipient. I appreciate some income taxes are by statute payable on an accrual basis, that is, without or not payment is received or otherwise. But we are not dealing with income tax legislation, but instead the *CRB Act* as noted above and I need not consider this point further.

[43] On the issue of whether an invoice constitutes proof of payment in the CRB context I note *Guillemette v Canada (Attorney General)*, 2025 FC 250. There my colleague Justice Battista held the CRA may reasonably ask for more than simply a bare invoice to establish

income was earned and received by a CRB recipient, which is what CRA reasonably did in this case:

[23] This statutory interpretation argument was not placed before the decision maker and therefore no interpretation of the statute on this point appears in the reasons. Nevertheless, it is reasonable to interpret the statute as referring to income actually received rather than income which is expected to be received (*Imbewa v Canada (Attorney General)*, 2024 FC 1495 at paras 17-18). The Second Reviewer applied a reasonable interpretation of the statute, given that the statute is not “overwhelmingly” in favour of only one reasonable interpretation (*Vavilov* at para 124).

[24] The Respondent is correct in pointing out that even if the Applicant’s interpretation were to be accepted, the Applicant was given the opportunity to provide bank statements for 2020 to substantiate that she had been paid amounts owed in 2019. She did not avail herself of that opportunity. As mentioned, CRA is empowered by statute to ask for any information required to determine eligibility. It did not have to merely accept the Applicant’s invoices as determinative of income.

[Emphasis added]

[44] The Respondent also points out that while an Applicant is entitled to amend deductions for income tax purposes, that does not apply in the case at bar, where the Applicant requested an amendment not to correct a mistake, but to rejig earnings and expenses to make themselves eligible for benefits they were not otherwise eligible to receive: “an amendment made for the sole purpose of being eligible for the CRB does not have the effect of altering the fact that the net income of [an Applicant] did not exceed the \$5,000 threshold”: *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at paragraph 37 [per Gascon J]. I agree with Justice Gascon and apply this finding to this case.

[45] At the hearing the Applicant indicated he could obtain evidence from the company he invoiced that it paid him cash as he alleges. That may or may not be the case. This is judicial review of the record which contains no such evidence.

[46] Respectfully, I agree with the Respondent that in light of the lack of evidence for the Applicant's income, the Officer's Decision is reasonable. The Decision transparently and meaningfully grapples with the issues, is justified by the record and constraining law, and is intelligible and adds up.

VII. Conclusion

[47] Therefore this application for judicial review must be dismissed.

VIII. Costs

[48] I will not order costs in this case.

JUDGMENT in T-1286-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended with immediate effect to show the Attorney General of Canada as Respondent.
2. The application is dismissed.
3. There is no order as to costs.

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1286-24

STYLE OF CAUSE: FUPAN YAO v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 27, 2025

JUDGMENT AND REASONS: BROWN J.

DATED: MARCH 4, 2025

APPEARANCES:

Fupan Yao

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Janice Calzavara

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT