Federal Court Cour fédérale

Date: 20250722

Docket: T-2919-24

Citation: 2025 FC 1302

Edmonton, Alberta, July 22, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

SHANEL HIGHAM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Shanel Higham, the Applicant, seeks judicial review of a Canadian Revenue Agency [CRA] decision dated June 25, 2024, which deemed her ineligible to receive Canada Emergency Response Benefit [CERB] following a second review by a CRA officer [Officer]. The Officer found that Ms. Higham earned more than $1,000 of employment or self-employment income during the applicable CERB periods, and that she did not stop working or have her hours reduced for reasons related to COVID-19 [Decision].

[2] In her Notice of Application, Ms. Higham submitted that the Decision is unreasonable, does not take all the facts and hardship she suffered into consideration, is based on errors of fact and is an improper exercise of the CRA's discretion.

[3] In summary, Ms. Higham submits that the CRA (1) unreasonably failed to consider that she lost one of her two full time jobs (as well as another part-time job) due to COVID-19 restrictions; (2) erred in fact and in law in concluding that her circumstances were not "extenuating" or otherwise such that re-appropriation should be granted; and (3) unreasonably failed to properly consider her circumstances.

[4] She further submits that "In making the Decision, the CRA has been unlawful, reprehensible, and outrageous and the Applicant is accordingly entitled to her CERB benefits from March 2020 to Sept 2020. The CRA's actions in this matter have unreasonably wasted the time and resources of Ms. Higham and this Honorable Court, and the application should be granted compensation by removing any interest occurred, or payments made and reverse the decision of ineligibility".

[5] However, in the context of her Memorandum of Fact and Law, she now adds that there were no clear eligibility guidelines until two years after she received CERB, that the CRA did not contact her as they stated they would and requests and that the Decision be set aside based on her work and financial situation, as well as the lack of clear eligibility criteria at the time she applied for CERB.

[6] Ms. Higham seeks more than a simple judicial review of the Decision. She requests that this Court declares her eligible for CERB for the period from March 15, 2020, to September 26, 2020. Moreover, she wants the Court to direct the CRA to remove the debt classification and any associated penalties related to CERB payments.

[7] Regarding the merits of Ms. Higham's application, the Attorney General of Canada [AGC] submits that the Decision ought not to be disturbed as it was reasonable and arrived at in a procedurally fair manner.

[8] Ms. Higham filed her own affidavit, sworn on February 27, 2025, and appending six exhibits. She was not cross-examined.

[9] For the reasons that follow, and while the Court empathizes with Ms. Higham's situation, her application for judicial review will be dismissed. Given the legislative dispositions and the record before this Court, including the CRA Notepad entries, the Court has not been convinced that the Decision is unreasonable, nor that it was arrived at unfairly.

II. Context

A. *The Canada Emergency Response Benefit*

[10] The CERB was part of a package of measures introduced by the Government of Canada in response to COVID-19. It provided direct financial support ($2,000 for four-week periods) to

eligible employed and self-employed Canadian residents who were directly affected by the COVID-19 pandemic. The CRA is responsible for administering the CERB.

[11] Amongst the CERB eligibility requirements found at sections 2, 6(1)(a) and 6(1)(b)(i) of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*], the Court notes that the CERB applicant must have (i) earned at least $5,000 of income from employment or self-employment income in 2019 or in the 12-month period preceding the day on which they make their CERB application; (ii) stopped working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period they have applied for CERB; and (iii) not received any income from employment or self-employment during that period. However, section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90 [*Regulations*] provides an exception and allows workers to receive some income from employment or self-employment, if the total of such income received in respect of the consecutive days on which they have ceased working is $1000 or less [$1,000 Income Threshold].

[12] These requirements are cumulative, meaning that if the person applying for CERB does not meet any one of these criteria, that person will be ineligible. They are also non-discretionary (*Alhusaini v Canada (Attorney General),* 2024 FC 2033 at paras 22, 30; *Duchesneau v Canada (Attorney General),* 2023 FC 1632 at para 21; *Flock v Canada (Attorney General),* 2022 FC 305 at para 23 [*Flock FC*], aff'd 2022 FCA 187 [*Flock FCA*]).

B. *CERB Application by Ms. Higham and Decisions of the CRA*

[13] It is not contested that Ms. Higham applied for and received CERB for the periods of March 15, 2020, to September 26, 2020, inclusive, totalling $14,000.00.

[14] The CRA decided to validate Ms. Higham's CERB application. On March 2, 2022, the CRA sent a letter to Ms. Higham requesting that she submit documents to support her eligibility. This letter specifically stated "[y]ou were not eligible to receive CERB if during your application period you earned over $1,000".

[15] On April 8, 2022, Ms. Higham submitted banks statements to the CRA.

[16] Ms. Higham submits that she never received any communication from the CRA from March 4, 2022, to August 2023.

[17] However, according to the CRA Notepad entries, the CRA attempted to contact Ms. Higham on several occasions but was unable to reach her. Therefore, based on the available information, the CRA found that Ms. Higham was not eligible for CERB because she earned more than $1,000 of employment or self-employment income during the applicable payment period, and that she did not stop working or have her hours reduced for reasons related to COVID-19 [First Decision].

[18] On August 31, 2023, Ms. Higham was notified of the First Decision.

[19] On September 22, 2023, Ms. Higham requested a second review of her application. Furthermore, she submitted three follow up letters received by the CRA on January 9, April 5 and June 17, 2024.

[20] The Officer was assigned to proceed to a second review Ms. Higham's application. In this context, the Officer spoke with Ms. Higham on June 20, 2024. During this call, she acknowledged that she had earned more than $1,000 and that she had continued to work in one of her three jobs. However, she submitted that due to COVID-19, she had lost her other two jobs and that she needed to work three jobs to support her family and living expenses.

[21] After reviewing her submissions and the information received, the Officer also determined that Ms. Higham was not eligible to receive CERB, for the same reasons [Decision].

[22] By letter dated June 25, 2024, the Decision was communicated to Ms. Higham.

III. Analysis

A. *Preliminary Questions*

(1) New Evidence

[23] The AGC opposes the admission into evidence of Exhibit 5 attached to Ms. Higham's Affidavit as these documents, namely her phone records, were not previously part of the record

and were not considered by the Officer when they completed their second review that led to the Decision.

[24] It is well established law that in the context of a judicial review, the Court should normally not examine evidence which was not previously examined by the administrative decision maker (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14 citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*]; *Tsleil-Waututh Nation c Canada (Attorney General)*, 2017 FCA 128 at paras 97–98 [*Tsleil-Waututh*]; *Lapointe v Canada (Attorney General)*, 2024 FC 172 at para 12 [*Lapointe*]; *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at paras 21-23 [*Lavigne*]). As stated at paragraph 19 of *Access Copyright*, citing the Federal Court of Appeal in *Gitxsan Treaty Society v Hospital Employees' Union*, 1999 CanLII 7628 (FCA) at paras 14-15: "the essential purpose of judicial review is the review of decisions, not the determination, by trial de novo, of questions that were not adequately canvassed in evidence at the tribunal or trial court."

[25] There are a few exceptions to this rule. New evidence can be received by the Court if it (1)°provides general information and background susceptible to assist the Court to understand the issues raised by the judicial review; (ii) shows procedural vices or violation of procedural fairness principles; or (iii) shows the complete absence of evidence in front of the decision-maker when they made a particular finding (*Tsleil-Waututh* at paras 97–98; *Access Copyright* at para 20; *Lapointe* at para 12).

[26] In this case, given that Exhibit 5 was not presented to or considered by the Officer when they made their second review of Ms. Higham's application, this exhibit is not admissible. It would be unfair to oppose to the Officer with information that was not brought to their attention. Further, these documents do not meet any of the exception criteria recognized by the case law to be admitted into evidence. Therefore, the Court will not consider these documents in the judicial review of the Decision.

[27] In any event, these documents would not have impacted the Court's review of the reasonableness of the Decision. While Ms. Higham submits that the first CRA Officer did not communicate with her contrary to what the CRA Notepad entries state, it does not change the fact that Ms. Higham did not meet the eligibility criteria to receive CERB.

(2) New argument

[28] The AGC asserts that in her Memorandum, Ms. Higham raises a new issue that was not before the Officer, namely that there were no clear guidelines for eligibility until two years after CERB was received. The AGC submits that it is generally inappropriate for this Court to consider, on judicial review, an issue that could have been but was not raised before the administrative decision maker (citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 23 [*Alberta Teachers*]).

[29] The Court agrees with the AGC that the issue raised by Ms. Higham was not raised before the Officer, although it could have been, and should therefore not be considered by the Court.

There are multiple justifications to the general rule that an issue must first be raised to the decision maker. As stated by the Supreme Court of Canada: "This is particularly true where the issue raised for the first time on judicial review relates to the tribunal's specialized functions or expertise." (*Alberta Teachers* at paras 24-25; see also *Manneh v Unifor*, 2022 FCA 107 at para 9; *Brown v Canada (Attorney General)*, 2024 FC 458 at para 19).

[30] In any event, this argument is not sufficient to render the Decision unreasonable or the process unfair.

B. *Applicable Standard of Review*

[31] The applicable standard of review is well summarised by Justice Gascon in *Devi v Canada (Attorney General)*, 2024 FC 33:

> [14] It is now well established that the standard of review applicable to the merits of the CRA's decisions regarding CERB and CRB payments is reasonableness (*Flock v Canada (Attorney General)*, 2022 FC 305 at para 15; *He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [*He*]; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16). This is in line with the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*])".
>
> [15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that

> constrain the decision-maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).
>
> [16] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention", seeking to understand the reasoning process followed by the decision-maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).
>
> [17] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[32] Further, when conducting a reasonableness review, the Court must show deference towards administrative decision makers considering their expertise (*Lavigne* at para 50).

[33] With respect to procedural fairness, although no standard of review is applied, the Court's exercise of review is "best reflected in the correctness standard" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]; see also *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57). The Court must ask whether the process was fair in view of all the circumstances and, as stated by the Federal Court of Appeal: "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond." (*Canadian Pacific Railway* at paras 54, 56)

C. *Submissions of the Parties*

[34] Ms. Higham acknowledges that she received employment income of more that $1,000 but submits that, given that she was living in Victoria, British Columbia at the time, she needed to work three jobs to be able to support her family and cover her living expenses. Unfortunately, due to COVID-19, she lost her second job (and a third part-time job), making it impossible for her to pay all her bills and feed her family.

[35] In her view, the $1,000 Income Threshold was ill-conceived and poorly implemented. Since the CERB received was used to cover her basic needs, she asks that the CRA use their discretion and re-evaluates their decision. She further submits that she is unable to pay back the CERB.

[36] She confirms that further to the June 25, 2024, phone call with the CRA Office, she understood that she was not eligible for CERB. However, she decided to ask for a judicial review when she became aware that her personal financial situation would not be considered as criteria for eligibility.

[37] In essence, Ms. Higham argues that:

i. The CRA failed to consider the overall financial impact and job loss on her eligibility for CERB;

ii. The CRA's application of the $1,000 Income Threshold during the applicable payment period was overly rigid and did not consider her unique circumstances; and

iii. The CRA did not provide timely and adequate communication during the review process, leading to prolonged uncertainty and financial stress, which demonstrates a failure to adhere to principles of procedural fairness.

[38] In response, the AGC submits that the Officer reasonably concluded the $1,000 Income Threshold was exceeded based on the information provided by Ms. Higham. The Decision was based on the documents and letters she submitted and on the phone conversation the Officer had with her. The Decision was intelligible, transparent, and justifiable, and Ms. Higham has failed to demonstrate any flaws or shortcomings with it.

[39] More specifically, Ms. Higham applied for CERB when her employment was terminated with two of her three employers. During the CERB periods, she continued working with the Government of British Columbia earning more than $1,000. The Officer found that she was not eligible for CERB because she did not cease working, for reasons related to COVID-19, for at least 14 consecutive days.

[40] The AGC adds that CERB legislation does not contain fairness or relief provisions, and courts have found in COVID-19 benefit matters that the decision-makers have no ability to make a decision based on fairness. The Officer could not consider financial hardship when determining whether Ms. Higham was eligible for CERB.

[41] The AGC further submits that the Decision was made in a procedurally fair manner since Ms. Higham was aware of the eligibility criteria and was afforded the opportunity to provide documents and submissions to address her eligibility on several occasions. Moreover, the delays incurred in this matter do not render the Decision unfair.

D. *The Decision is Reasonable and was arrived at in a procedurally fair manner*

[42] As previously mentioned, Ms. Higham bore the burden of proving that the Officer made a reviewable error when rendering the Decision (*Vavilov* at para 100). She did not meet this burden.

[43] Instead, Ms. Higham attempts to re-write the *CERB Act* and the *Regulations*, as she finds them unfair and not adapted to her financial circumstances.

[44] While the Court has much empathy for Ms. Higham personal circumstances, the Court in the context of a judicial review cannot substitute itself to the legislator. The *CERB Act* and the *Regulations* were enacted by the government and had to be applied by the CRA (*Flock FCA* at para 4). While it is true that the CRA does have some discretion in certain circumstances, the legislator did not provide the CRA with the power to circumvent the law to address personal financial hardship of tax payers (*Flock FCA* at para 7; *Devi* at paras 29-30). Accordingly, the Court is bound by the same law that the CRA was tasked to apply.

[45] Moreover, the Court cannot find any reasons supporting Ms. Higham's claims that the process followed by the Officer would be unfair. As highlighted by the AGC, Ms. Higham was

aware of the eligibility criteria and afforded the opportunity to provide documents and submissions to address her eligibility. The certified tribunal record shows she availed herself of this opportunity by providing letters and supporting documents.

[46] More importantly, the CRA Notepad entries confirm the Officer read the eligibility criteria of CERB and explained to Ms. Higham that she needed to meet all the criteria to be eligible. According to the Notepad entries, she agreed that she was not eligible and stated she would pursue a judicial review after receiving the decision letter.

[47] Lastly, while it is true that the delays to respond to her were long, it does not render the process unfair. In this regard, the Court shares Justice Turley's conclusions in *Olivet v Canada (Attorney General)*, 2024 FC 1452:

> [41] Delay may adversely affect the fairness of a process where: (a) it impairs a party's ability to answer a complaint against them; or (b) it has caused a party "significant prejudice": *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at paras 41-42. As discussed above, however, the Applicant had sufficient opportunity to make his case. In addition, the Applicant did not allege any significant prejudice. Consequently, the Applicant has not demonstrated that any delay caused procedural unfairness.

[48] In sum, the Court understands that Ms. Higham may find the applicable criteria of the *CERB Act* and the *Regulations* to be unfair given her personal circumstances; however, that does not render the Decision unfair or unreasonable.

[49] As mentioned during the hearing and as stated by Justice Gascon, in *Devi*:

> [31] Given Ms. Devi's precarious financial situation, there is nothing preventing her from attempting to conclude a repayment plan with the CRA, tailored to her particular situation. While this is a process to be handled and decided by the CRA, and not this Court, Ms. Devi may be able to conclude a repayment plan that could potentially alleviate some of the financial strain of having to repay the entirety of the sum she now owes to CRA, or allow her to do so in several instalments.

IV. Conclusions

[50] While the Court is sympathetic to Ms. Higham's circumstances, the Court cannot conclude that the Decision was unreasonable. On the contrary, the Officer's analysis was logical and coherent in consideration of the factual and legal constraints applicable. The Decision "bears the hallmarks of reasonableness – justification, transparency and intelligibility" (*Vavilov* at para 99).

[51] Moreover, Ms. Higham has not shown that the Decision is flawed or that it has sufficiently serious shortcomings that it would justify this Court's intervention (*Vavilov* at paras 100–101). Therefore, further to the review of the Officers reasons and of the evidence in the file, the Court is of the view that the Decision is reasonable.

[52] Furthermore, as previously mentioned, the Court is of the view that the Decision was arrived at in a procedurally fair manner.

[53] In light of the reasons above, the application for judicial review will be dismissed.

[54] The AGC did not request costs. The Court agrees that no costs should be granted against Ms.°Higham, who is self represented and made very professional representations before the Court

(Rule 400(1) of the *Rules*; *Showers v Canada (Attorney General)*, 2022 CF 1183 at para 32; *Hu v Canada (Attorney General)*, 2023 FC 1590 at para 36, aff'd 2024 FCA 215; *Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at para 97).

JUDGMENT in T-2919-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"Danielle Ferron"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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