Federal Court  Cour fédérale

Date: 20250917

Docket: T-3115-24

Citation: 2025 FC 1532

Ottawa, Ontario, September 17, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

JENNIFER DOHENEY

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 second Canada Emergency Benefits Validation officer [Second Officer] from the Canada Revenue Agency [CRA] dated October 18, 2024 [Second Decision]. The Officer found the Applicant was ineligible for the Canada Recovery Benefit [CRB] because she did not earn at least $5,000 of employment and/or net self-employment income in 2019, 2020, or in the 12 months preceding the date of her

application [Income Requirement]. This application deals with her 2019 income although other years were at issue earlier.

[2] For the reasons that follow, this application will be granted.

II. Facts

[3] The Applicant is a wellness consultant and yoga instructor who, in 2019, was re-entering the workforce as an entrepreneur. At the time, she was recovering from health challenges.

[4] In 2019, she earned $6,389.02 for three short-term contracts, including consulting, teaching, and providing virtual yoga and coaching sessions. In her filing under the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [*Income Tax Act*] prepared by a third party, she deducted expenses that reduced her net income to minus $414.

[5] The Applicant applied for and was paid CRB from September 27, 2020 to October 9, 2021. The Applicant also applied for the Canada Emergency Response Benefit [CERB] from March 15, 2020 to September 26, 2020. Given a remission order regarding CERB, the Applicant's application for CRB in 2019 is the only issue.

[6] When applying for CRB, the Applicant reported a gross business income of $5,814 and a net self-employment income loss of $414 for 2019.

[7] The Applicant received an Initial Contact Letter from the CRA dated February 6, 2023. The CRA decided to audit the Applicant's eligibility for CRB payments and requested documents to support her eligibility, particularly to establish she had met the Income Requirement.

[8] On February 17, 2023, the Applicant replied to the CRA and provided invoices, receipts, and letters to support her reported income. The invoices show the Applicant received $6,389.02 in 2019 and $6,512.73 in 2020. However, she reported a net self-employment income of minus $414 in 2019 and minus $18,217 in 2020, both of which are below the $5,000 threshold to satisfy the Income Requirement.

[9] On March 7, 2023, the Applicant spoke with a CRA representative who requested additional documents.

[10] The Applicant provided the following documents on March 9, 2023:

- A letter explaining her supporting documents to the CRA representative;
- The Applicant's Master Business Licence;
- A document prepared by the Applicant proving she earned over $5,000 in income in 2019; and
- The Applicant's bank statements for the months of March 2019 to July 2019, and January 2020 to January 2021.

[11] The Applicant received the decision of the first Canada Emergency Benefits Validation officer [First Officer] dated September 27, 2023 [First Decision]. The First Officer assessed the

Applicant's eligibility and found her ineligible to receive the CRB because she did not meet the Income Requirement. Given what she had reported for 2020, this decision was completely reasonable and is not challenged.

[12] On October 27, 2023, the Applicant's representative, lawyers allegedly with expertise in CRB matters [Lawyer], submitted a letter enclosing the following documents:

- The Applicant's bank statements from April 2019 to July 2019, and 2020;
- Payment receipts for services provided by the Applicant in 2019;
- The Applicant's Business Licence;
- The Applicant's 2020 employment letters;
- Invoices for Welloga for 2020 and 2021;
- A list of expenses incurred in 2020 and 2022;
- Summary of bank deposits for 2020;
- Summary sheet of income for 2021; and
- A letter to the CRA Representative.

[13] On July 22, 2024, the Second Officer contacted the Applicant to request further documents but was directed to contact the Lawyer. The Second Officer contacted the Lawyer on July 25, 2024, and was told the Applicant's 2019 T1 return on file was incorrect. The Lawyer informed the Second Officer they would file an amended T1 for 2019.

[14] The Second Officer provided a deadline of August 8, 2024, allowing for the resubmission of the Applicant's documents, including the amended 2019 T1 and the amended T2125 Statement of Business or Professional Activities [T2125].

[15] On August 2, 2024, the Lawyer called the Second Officer to advise of a delay in submitting these documents. However, the Second Officer missed their call.

[16] On August 27, 2024, the Lawyer sent a letter to the CRA providing the following documents for the second review:

- The Applicant's amended 2019 T1 Adjustment Request which now reported a gross and net business income of $6,389.02 instead of minus $414 previously claimed;
- The amended T2125; and
- The Applicant's original 2019 tax return.

[17] On September 25, 2024, the Lawyers and the Applicant had a telephone call with the Second Officer to discuss the second review.

[18] The Applicant put her faith in the Lawyers. After introductions, she left the call.

[19] The Second Officer again, and quite properly, asked the Lawyers for proof of the expenses claimed in the amendment of the 2019 Adjustment Request then being relied on by the Lawyers. The issue was whether they were eligible deductions as either personal expenses or non-eligible start up expenses or otherwise.

[20] Quite erroneously and without legal justification – as will be seen and as conceded by the Applicant and Respondent – the Lawyers told the Second Officer that no proof or receipts would be provided because the Applicant was not being audited.

[21] The Officer's notes state that the Lawyers stated they "…. will not provide a copy of the receipts. Not being audited." This was a legally incorrect position because, as noted in paragraph 7 above, this entire process was an audit. In any event, s. 6 of the CRB legislation also enacts (as will be seen) that those in the position of the Applicant "must" comply with a request for documents as here.

[22] The Lawyers reiterated that the expenses raised the issue of personal expenses and, per the Second Officer's notes, that "the year under inquiry is tax year 2019 and agent cannot use a following year (i.e., 2020-2021) to correlate the circumstances of tax year 2019," referring to non-eligible or non-deductible start up expenses.

[23] The Lawyer submitted further documents on October 8, 2024 reiterating that the amended 2019 T1 Adjustment and T2125 should be sufficient proof of the expenses being of a personal nature.

[24] The Lawyer did not provide the requested proof of expenses for 2019. As noted, this decision was contrary to law, and it is not disputed the Lawyer gave this same bad advice to the Applicant which she relied upon.

[25] The Applicant noted the Lawyer charged her $10,000 for their advice and services.

[26] The Second Officer reviewed the materials and confirmed the First Decision. The CRA issued the Second Decision on October 18, 2024.

[27] I emphasize the Second Officer, as with the First Officer, proceeded entirely properly and without fault or error. The Lawyers for the Applicant and the Applicant were given multiple opportunities to file proof of expenses originally claimed but later disclaimed in the 2019 filing.

[28] The Applicant seeks judicial review of the Second Decision.

III. Decision under review

[29] The Second Officer considered the following in their assessment:

- The relevant Agency Wide Notepad Entries, which contain findings, notes and interactions with the Applicant recorded by the Second Officer, First Officer, and any other CRA employee involved in validating the Applicant's CRB applications;
- The Case Specific Notepad Entries, which contain findings, notes and interactions with the Applicant recorded by the Second Officer, First Officer and any other CRA employee involved in validating the Applicant's CRB applications;
- The procedure document that instructs CRA agents on how to determine eligibility for the CRB;
- The Applicant's First, Second, Third, Fourth and Fifth Submissions; and
- The Applicant's income and the deductions from income for the 2019, 2020 and 2021 taxation years as recorded on the CRA's computer system.

IV. Issues

[30] The Applicant raises the following issues:

1. Did the Canada Revenue Agency (CRA) err in determining that the Applicant did not meet the $5,000 net income requirement for CRB eligibility for the 2019 tax year?

2. Did the CRA fail to properly consider the amended T1 return, the completed Statement of Business or Professional Activities (Tab C), and the Applicant's business banking records, all of which were submitted to support the Applicant's eligibility?

3. Was the CRA's decision unreasonable or procedurally unfair, given that the Applicant followed CRA instructions, provided the requested documents, and received inconsistent information during the review process?

[31] The Respondent raises the following issues:

1. The issues in this application for judicial review are:

   a. whether the Applicant improperly named the Respondent in the application;

   b. what is the applicable standard of review;

   c. whether the Second Decision is reasonable; and

   d. whether the Second Decision was reached in a procedurally fair manner.

[32] Respectfully, the issue for this Court to decide is whether the Second Decision was reasonable and whether there was a breach of procedural fairness.

V. Standard of review

[33] The parties agree, and I concur, the standard of review for the Second Officer's Decision in this case is reasonableness. On the issue of procedural fairness, neither party addresses the standard of review. For procedural fairness, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond.

A. *Reasonableness*

[34] 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]

B. *Procedural fairness*

[35] The Federal Court of Appeal conclusively determines, and I agree, that on procedural fairness "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond": see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 55-6 [per Rennie JA]):

> [55] Attempting to shoehorn the question of procedural fairness into a standard of review analysis is also, at the end of the day, an unprofitable exercise. Procedural review and substantive review serve different objectives in administrative law. While there is overlap, the former focuses on the nature of the rights involved and the consequences for affected parties, while the latter focuses on the relationship between the court and the administrative decision maker. Further, certain procedural matters do not lend themselves to a standard of review analysis at all, such as when bias is alleged. As Suresh demonstrates, the distinction between substantive and procedural review and the ability of a court to tailor remedies appropriate to each is a useful tool in the judicial toolbox, and, in my view, there are no compelling reasons why it should be jettisoned.
>
> [56] No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. It would be problematic if an *a priori* decision as to whether the standard of

> review is correctness or reasonableness generated a different answer to what is a singular question that is fundamental to the concept of justice—was the party given a right to be heard and the opportunity to know the case against them? Procedural fairness is not sacrificed on the altar of deference.
>
> [Emphasis added]

[36] In addition to the foregoing, the law also recognizes a decision may breach natural justice or be procedurally unfair in extraordinary circumstances where the Applicant is the victim of incompetent representation by legal counsel. In such cases, the test set out in the jurisprudence places the onus on the Applicant to establish extraordinary circumstances, and there must also be a reasonable probability the outcome would have been different but for the incompetence. See for example *Satkunanathan v Canada (Citizenship and Immigration)*, 2020 FC 470 at paragraph 33 (granted) [*Satkunanathan*]; *Nik v Canada (Citizenship and Immigration)*, 2022 FC 522 at paragraphs 22-24 (dismissed) [*Nik*]; *Ahuja v Canada (Citizenship and Immigration)*, 2025 FC 33 at paragraphs 16-18 (dismissed) [*Ahuja*]; and *Kandiah v Canada (Citizenship and Immigration)*, 2021 FC 1388 at paragraphs 47, 50, 56, 58 (granted) [*Kandiah*].

[37] As well, and impacting all judicial review applications, it is the Court's duty to hear and determine cases "without delay and in a summary way" per s. 18.4(1) of the *Federal Courts Act*, RSC 1985, c F-7, [*Federal Courts Act*].

VI. Relevant legislation

[38] Section 3(1)(d)-(e) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB legislation*] outlines the eligibility criteria:

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

Admissibilité

(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) 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 total income of at least $5,000 from the following sources:

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 demande, s'élevaient à au moins cinq mille dollars :

(i) employment,

(i) un emploi,

(ii) self-employment,

(ii) un travail qu'elle exécute pour son compte,

(iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*,

(iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*,

(iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more

(iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un

children placed with them for the purpose of adoption, and	ou plusieurs enfants placés chez elle en vue de leur adoption
(v) any other source of income that is prescribed by regulation;	**(v)** une autre source de revenu prévue par règlement;
(e) in the case of an application made under section 4 by a person other than a person referred to in paragraph (e.1) in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 or in the 12- month period preceding the day on which they make the application, a total income of at least $5,000 from the sources referred to in subparagraphs (d)(i) to (v);	**e)** dans le cas d'une demande présentée en vertu de l'article 4, par une personne qui n'est pas visée à l'alinéa e.1), à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (v) pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande s'élevaient à au moins cinq mille dollars;

[39] Section 6 of the *CRB legislation* requires applicants to provide the Minister with any requested information – notably Parliament uses the word "must":

Obligation to provide information	**Obligation de fournir des renseignements**
6 An applicant must provide the Minister with any information that the Minister may require in respect of the application.	**6** Le demandeur fournit au ministre tout renseignement que ce dernier peut exiger relativement à la demande.
[Emphasis added]	[Je souligne]

VII. Submissions of the parties

A. *Improper party named as Respondent*

[40] The Applicant names the Canada Revenue Agency/Canada Emergency Benefits Validation as the Respondent. The Respondent submits the proper party to be named as the Respondent is the Attorney General of Canada.

[41] The Applicant consents and I agree with the Respondent. This change is made to the style of cause with immediate effect.

B. *Reasonableness*

[42] As a preliminary note, the Applicant who was self-represented before me, provided minimal details in her Memorandum of Fact and Law, submitting only a few short paragraphs. She conceded the advice of her Lawyers not to produce her 2019 expenses was wrong, and that they and she should have forwarded the requested documentation concerning expenditures in 2019 to the CRA when asked.

[43] She noted she hired the Lawyers based on claimed expertise in CRB matters.

[44] To make matters worse, she paid the Lawyers $10,000 for their bad advice that she should refuse to comply with the Second Officer's request for proof of her 2019 expenditures in her original filing under the *Income Tax Act*.

[45] As noted already, I find no error, let alone reviewable error, on the part of CRA or any of the reviewing officers. They all decided the matter on a record that not only resulted in a reasonable decision, but also a decision that is correct.

[46] The problem was the record was inadequate, which was caused by the legal error of the Lawyers.

[47] Indeed, as the Respondent submits, the Second Officer did review the Applicant's updated T1 Adjustment Request, T2125, and each submission made by the Applicant. The Respondent further notes it was during the Second Officer's review of the file when they requested the Applicant provide proof the business expenses from the original 2019 T1 were entirely personal in nature. The Second Officer applied the criteria from the statute and considered the Applicant's representations fully and carefully. The Second Officer concluded the Applicant did not meet the Income Requirement:

> [The Second Officer] found that while the Applicant had provided supporting documents like bank statements, invoices and explanations to support her proof of self-employment income, she did not provide proof that she did not incur any business related expenses for the 2019 taxation year, therefore, the Second [Officer] found that the Applicant did not meet the income requirement.

[48] With respect, it was the Lawyers' advice to and the Applicant herself who refused to provide these documents and told the Second Officer to rely on the updated T1 Adjustment and T2125. Notably, the Applicant was, in my view, legally obliged under s. 6 of the *CRB legislation* to provide the Minister with requested documents.

[49] Compliance with this section of the *CRB legislation* is not optional. Failure to comply constitutes a reasonable basis for an officer to deny an applicant's entitlement to CRB. I note the following paragraphs from *Aryan v Canada (Attorney General),* 2022 FC 139 at paragraph 35 [*Aryan*] where Strickland J. states "tax assessments are one document that could provide income information to CRA with respect to CRB eligibility, they do not "prove" that the Applicant actually earned the income that she reported in filing her income tax return, or that her income was earned from an eligible source." And see also *Walker v Canada (Attorney General),* 2022 FC 381 at paragraphs 34-37.

[50] I further note *Latourell v Canada (Attorney General),* 2024 FC 44 at paragraph 28 per Favel J. builds on *Aryan,* noting there is "no obligation for the CRA to accept a person's tax return and subsequent assessment as conclusive proof of income."

[51] With respect, I agree with the Respondent. I am satisfied it was reasonable for the Second Officer to request additional documents to prove the expenses previously claimed as business expenses were not eligible deductions. Whether the expenses were deductible, be they start up or personal or otherwise, is the core issue and is determinative of whether the Applicant has satisfied the Income Requirement. I am also satisfied the Applicant had a statutory duty to provide these documents but did not.

C. *Procedural Fairness*

[52] The record in this case establishes the Lawyers gave the Applicant inaccurate legal advice with the result that all decisions makers below had no option but to find she was not

entitled to CRB for 2019. She was not even on the conference call when her Lawyers told CRA they would not comply with CRA's (lawful) request for proof of her 2019 expenses and their eligibility to be deducted from income.

[53] In my view, this is an exceptional case of incompetent representation, a species of procedural unfairness enabling the Court, in its discretion, to set aside the Second Decision. I have already noted the jurisprudence from this Court as to when incompetent representation constituting professional incompetence may give rise to a breach of procedural fairness in extraordinary circumstances, which I find is the case here.

[54] The jurisprudence establishes the onus is on the Applicant to show extraordinary circumstances, which she has done in this case. There must be incompetence by the professional, which I find occurred when the Lawyers told CRA officers they would not comply with a direct request for production of the 2019 documents, and the Lawyers' underlying advice to the Applicant that she disobey the legislated requirement to produce set out in s. 6 of the *CRB legislation*. I also find but for the Lawyer's incorrect legal advice, which the Applicant had no reason to doubt, there is a reasonable probability the outcome would have been different, given the expenses were for advertising, her business license, office expenses, her home use for a business purpose, etc. While I appreciate this issue arose during the hearing of this matter, given the Court's duty to hear and determine this issue "without delay and in a summary way" per s. 18.4(1) of the *Federal Courts Act*, and noting the issues here go back 6 years, and the clear and unambiguous nature of the requirement to produce upon request per s. 6 of the *CRB legislation* and the use of the word "must," the Court may hear and will determine this matter based on the

record as it stands. See *Satkunanathan* at paragraph 33; *Nik* at paragraphs 22-24; *Ahuja* at paragraphs 16-18; and *Kandiah* at paragraphs 47, 50, 56, 58.

VIII. Conclusion

[55] The Applicant has established a breach of procedural fairness / natural justice in this extraordinary instance of incompetent representation by the Lawyers. This application for judicial review will be granted.

IX. Costs

[56] Neither party requests costs. This is not a case for costs.

JUDGMENT in T-3115-24

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted, the Decision is set aside, the matter is remanded to a different decision maker for redetermination.

2. The Applicant shall provide reviewing officers with any requested information per s. 6 of the *CRB legislation*, and in any event, proof of expenses incurred in 2019 as requested by the First and Second Officers.

3. There is no order as to costs.

4. The name of the Respondent is changed to Attorney General of Canada with immediate effect.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3115-24
STYLE OF CAUSE:	JENNIFER DOHENEY v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 9, 2025
JUDGMENT AND REASONS:	BROWN J.
DATED:	SEPTEMBER 17, 2025

APPEARANCES:

Jennifer Doheney	FOR THE APPLICANT (ON HER OWN BEHALF)
Princess Okechukwu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT