

Federal Court



Cour fédérale

**Date: 20250516**

**Docket: T-1404-23**

**Citation: 2025 FC 903**

**Toronto, Ontario May 16, 2025**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**JERRY BROWNE**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Jerry Browne, seeks judicial review of the June 1, 2023 decisions [Decisions] of a Benefits Compliance Officer of the Canada Revenue Agency [CRA] regarding whether he was eligible to receive the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. The officer found the Applicant had not provided sufficient documentation to establish the income criterion for the CERB and CRB and that the CERB and CRB he had received should be repaid.

[2] The Applicant takes issue with the CRA's finding but has not raised a reviewable error with the Decisions. While I have great sympathy for the Applicant's situation, it is my view that the application must be dismissed.

I. Background

[3] The Applicant, Jerry Browne, is a medical retiree who receives a disability pension and old age pension. He augments his income by operating an informal service where he repairs cellphones, tablets, and other electronics. He claims that he typically averages about \$100/week from these activities and is paid by cash or by e-transfer.

[4] He asserts that the COVID-19 pandemic severely impacted his income activities, prompting him to apply for the CERB and the CRB. Mr. Browne received the CERB from March 15, 2020 to September 26, 2020, and received the CRB from September 27, 2020 to June 5, 2021.

[5] The CERB was implemented through the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*]. To qualify for the CERB, an applicant had to earn at least \$5,000 of eligible income in 2019 or the 12-months preceding their application and had to have ceased working for reasons related to COVID-19 for at least 14 days within the four weeks in respect of which they applied (*CERB Act*, ss 2 and 6(1)(a)).

[6] The CRB was implemented through the *Canada Recovery Benefits Act*, SC 2021, c 12, s 2 [*CRB Act*]. To qualify for the CRB, an applicant had to receive \$5,000 in eligible income in

2019, 2020, or the 12-months preceding their application and had to experience a 50% reduction in income due to COVID-19 (*CRB Act*, ss 3(1)(d), (f), (g), (i), (k)(i) and (l)(i)).

[7] In each case, eligible income could be earned through self-employment.

[8] Under each of the *CERB Act* and *CRB Act*, an applicant is required to provide the Minister with any information that may be required for verifying their compliance to receive the benefit (*CERB Act*, s 10; *CRB Act*, s 6). This includes documentation in support of the income criterion.

[9] On November 26, 2020, the Applicant received a letter from the CRA requesting documentation to confirm that he had met the income eligibility criteria to receive the CERB. The letter outlined the income criteria and identified the types of income that could and could not be included in the calculation of eligible income. The letter indicated that the Applicant's 2019 tax return would be considered along with any other information provided.

[10] On July 8, 2022, the Applicant received a further letter, this time requesting documentation in connection with his CRB payments. Like the earlier letter, this letter set out the income criteria and identified the types of income that could and could not be included in the calculation of eligible income. It also provided examples of the types of documents that could be submitted to prove self-employment, such as invoices for services rendered, receipt of payment for services, documents showing income earned, and any other documents that could confirm

that \$5,000 was earned. The letter was later updated on August 8, 2022 to refer to the payments made under both the CRB and the CERB.

[11] On September 20, 2022, the Applicant submitted a response letter describing his background and the nature of his self-employment business. The Applicant indicated that he could not provide proof of his self-employment income and that it had not been declared on his income tax return as it was his understanding that he could make up to \$5,600 in self-employment income per year without making an income tax declaration. He stated that for the most part, he was paid in cash, with the occasional payment by e-transfer, and therefore did not have appropriate records. The Applicant provided an electronic listing of the e-transfers he asserted were received in 2019, which totalled \$1,895, and a copy of his business card.

[12] In December 2022, a CRA officer [First Reviewer] reviewed the Applicant's file and determined that the submitted documentation was insufficient to establish eligibility for the CERB and CRB. The First Reviewer made a note to contact the Applicant and request further documentation.

[13] In January 2023, the First Reviewer attempted to contact the Applicant by phone on three separate occasions. As the First Reviewer could not reach the Applicant, they rendered a determination based on the available documentation, finding the Applicant ineligible for the CERB and the CRB because he had not established that he earned at least \$5,000 in income during the relevant period. The CRA informed the Applicant of their decision by letters dated January 16, 2023.

[14] On February 13, 2023, the Applicant requested a second review of his eligibility for the CERB and the CRB. He submitted an updated letter and listing of his alleged mobile cheque deposits and e-transfer payments from his bank account for the period between March 15, 2019 and March 14, 2020. The Applicant indicated that the amounts totalled \$3,650 and that the rest of his income was in cash.

[15] The CRA assigned a new officer [Second Reviewer] to review the file.

[16] On April 16, 2023, after a phone call with the Second Reviewer, the Applicant submitted an additional letter and banking documents. The letter stated that the Applicant had “a phone call with a very helpful person from the CRA” after which he realized that he made cash deposits to another bank account and that this information should be included. The letter attached bank deposit listings from a Royal Bank of Canada [RBC] bank account (for the period between April 11, 2019 and March 13, 2020) and a Bank of Montreal [BMO] bank account (for the period between April 2, 2019 and March 9, 2020), which together totalled \$5,705. The listings did not include full account information, nor did they indicate the source of the deposits.

[17] On May 10, 2023, the Second Reviewer spoke with the Applicant by phone and asked the Applicant if he had any additional documents to submit, including invoices and receipts to confirm the amounts of the deposits on the bank statements, and whether they were from work performed from his self-employment. However, the Applicant indicated that he did not invoice clients for the work he completed and did not have receipts.

[18] The Second Reviewer concluded that the Applicant was ineligible for the CERB and the CRB as he had not met the income eligibility criterion. By letters dated June 1, 2023, the CRA informed the Applicant of the Decisions.

[19] The notes of the Second Reviewer state *inter alia*, the following reasons for the decision relating to the CERB. A similar explanation was provided for the decision relating to the CRB:

Decision explanation: TP does not have any employment or self employment slips on file for 2019 or 2020 and has not reported any business income for 2019 or 2020. In telephone conversation on April 3, 2023, TP stated that he did not declare the income because he is a retiree and could make up to \$5,600. before he had to report it. TP does not have any invoices or receipts to prove income was earned and does not have any proof of work done for cash.

Additional documents sent in show e-transfers and deposits to RBC account from April 11, 2019 to Mar 13, 2020 totalling \$3,650. and e-transfers and deposits to BMO account from Apr 02, 2019 to Mar 09, 2020 totalling \$2,055. Deposits and e-transfers do not show who they are from. Documents provided do not confirm \$5,000 income requirement.

## II. Preliminary Issue

[20] As a preliminary matter, the Respondent asserts that additional documents submitted by the Applicant in his Application Record (Exhibits A and B to the Applicant's affidavit) are inadmissible as they provide information that was not before the Second Reviewer. The documents include e-statements from BMO and RBC accounts in the Applicant's name of transactions covering the periods from April 2, 2019 to April 6, 2020 and April 3, 2019 to April 3, 2020, respectively. On each of the e-statements, the Applicant highlights in yellow deposits that he asserts pertain to his self-employment.

[21] Absent exceptional circumstances, the evidentiary record before the Court on judicial review is restricted to the evidentiary record that was before the administrative decision maker (*Datta v Canada (Attorney General)*, 2022 FC 973 at paras 29-30, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22).

[22] The Applicant has not made any arguments as to exceptional circumstances that would apply here, and I find that none apply. As a result, the documents attached to the Applicant's Affidavit are inadmissible and will not be considered.

### III. Analysis

[23] There are two issues for determination. First, whether the CRA erred in finding the documentation that was before the CRA insufficient to establish the income eligibility criteria for the CERB and the CRB; and second, whether there was a breach of procedural fairness.

[24] On the first issue, the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 25. The role of a reviewing court is to examine the reasons given by the administrative decision-maker and to assess whether the decision was 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. A decision will be reasonable if when read as a whole, and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at para 99.

[25] On the second issue, the ultimate question is whether the applicant knew the case they had to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55.

[26] With respect to the first issue, the Applicant asserts that the bank statements from the RBC and BMO accounts collectively show deposits of over \$5,000 during the requisite period of time from his self-employment. He asserts that this establishes the income criterion. However, as reasonably noted by the CRA, the Applicant did not provide any documentation to the CRA to establish the source of the deposits into the accounts, nor full account details. Without more, the CRA could not conclude that the deposits were from the Applicant's self-employment income.

[27] As stated in the CRA's guidance document, "Confirming CERB, CRB, CRSB and CRCB Eligibility" [Guidelines] and in the July 8, 2022 and August 8, 2022 letters from the CRA to the Applicant, in order to support self-employment earnings of \$5,000 in 2019, 2020, 2021 or in the 12 months before the date of the Applicant's application for benefits, the Applicant was required to provide documentation to establish his self-employment income. This includes establishing both the quantum and the source of the earnings.

[28] The letters set out the types of documents identified in the Guidelines, which serve as acceptable proof, including:

- Invoice(s) for services rendered that include the service date, who the service was for, and the name of the individual or company
- receipt of payment for the service or services provided (a statement of account or bill of sale showing a payment and the remaining balance owed)

- documents showing income earned from a “trade or business” as a sole proprietor, an independent contractor, or a partnership
- any other document(s) that will confirm you earned \$5,000 in employment or self employment income

[29] In this case, the Second Reviewer’s notes demonstrate that they considered all the documents and information provided by the Applicant. However, the documents and information provided were lacking sufficient information to establish the income criterion. While the bank statements provided by the Applicant established deposits of over \$5,000 between the two accounts, they did not provide full account information, nor establish the source of the funds. Thus, the Second Reviewer could not conclude that the deposits were from the Applicant’s self-employment income.

[30] As the Applicant did not declare income on his income tax return, and did not provide any other documentation such as that prescribed by the Guidelines (*i.e.*, invoices or receipts to prove income was earned or to establish proof of work done for cash) to supplement the bank statements, the Second Reviewer reasonably found it was not possible to establish that the Applicant had earned \$5,000 in self-employment income. I see no error with this analysis.

[31] The Applicant’s disagreement with the CRA’s finding does not constitute a reviewable error. The Applicant must show that the decision has sufficiently serious shortcomings such that it cannot be said to exhibit the requisite degree of justification, transparency and intelligibility: *Vavilov* at para 100. He has not done so here.

[32] Further, while the Applicant asserts that he was not aware that more substantial proof of income was required, this is not the fault of the CRA. The Applicant bears the responsibility to keep proper records and the burden to demonstrate on a balance of probabilities to the CRA that he meets the criteria established by the *CERB Act* and *CRB Act* to receive the benefits: *Desautels v Canada (Attorney General)*, 2022 FC 1774 at para 41, citing to *Walker v Canada (Attorney General)*, 2022 FC 381 at para 55.

[33] I similarly find the Applicant has not established that there was any breach of procedural fairness. Both the letters and the Second Reviewer's notes indicate that the document requirements were conveyed to the Applicant, both in writing and orally. The notes detail concerns addressed with the Applicant, including that the Applicant did not have any employment or self-employment declared on his income tax returns for 2019 and 2020 and that he did not have any receipts or invoices to prove income was earned. The Applicant was provided multiple opportunities to supplement his documentation with any document means available, but did not sufficiently do so.

[34] The Applicant has not established any reviewable error and the application for judicial review must accordingly be dismissed.

**JUDGMENT IN T-1404-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. There shall be no award of costs.

"Angela Furlanetto"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1404-23

**STYLE OF CAUSE:** JERRY BROWNE v CANADA REVENUE AGENCY

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MARCH 10, 2025

**JUDGMENT AND REASONS:** FURLANETTO J.

**DATED:** MAY 16, 2025

**APPEARANCES:**

Jerry Brown

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Steven Stechly

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT