Federal Court Cour fédérale

Date: 20251106

Docket: T-748-25

Citation: 2025 FC 1795

2025 FC 1795 (CanLII)

Vancouver, British Columbia, November 6, 2025

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

TIMOTHY BRUCE HEWITT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application for judicial review has its roots in the Covid-19 pandemic. Mr. Hewitt received relief in the form of the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. The government has determined that he was not eligible for the CRB and has requested repayment. Mr. Hewitt, who is representing himself in this matter, challenges

the third review of his eligibility, dated February 6, 2025 [Decision], arguing that he surpassed the requisite income threshold.

[2] The Respondent counters that the decision-maker reasonably concluded that Mr. Hewitt was not eligible for the CRB he received because he did not meet the minimum net self-employment income threshold of $5,000 before taxes in 2019, 2020, or the 12-month period preceding his application for the benefit. The Respondent states that Mr. Hewitt has failed to meet his onus of showing that the Decision was unreasonable or procedurally unfair. I agree.

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[3] Having reviewed the parties' written material and heard their oral arguments, I determine that the judicial review application will be dismissed. More detailed reasons follow.

II. Analysis

[4] At the outset of the hearing, I explained to Mr. Hewitt that judicial review is not an appeal. Except in limited circumstances which do not apply here, the reviewing court generally does not step into the shoes of the administrative decision-maker and does not make a determination that the decision-maker could have made. Instead, if the court is satisfied that the decision was unreasonable or that it was procedurally unfair, the court will overturn the decision and send the matter back for redetermination by a different decision-maker, which is the remedy Mr. Hewitt seeks in his Notice of Application.

[5] A reasonable decision is one that is transparent, intelligible and justified, based on an internally coherent and rational chain of analysis having regard to the facts and law that constrain

the decision-maker. The party challenging an administrative decision has the burden of showing that it is unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*] at paras 85, 99-100.

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[6] Questions of procedural fairness attract a correctness-like standard of review; the focus of the reviewing court is whether the process was fair and just in all the circumstances: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Vavilov,* above at para 77.

[7] As a preliminary issue, the Respondent submits that the Attorney General of Canada is the proper Respondent, having regard to subrule 303(2) of the *Federal Courts Rules*, SOR/98-106. I agree. Accordingly, the style of cause will be amended, with immediate effect, to replace the Canada Revenue Agency [CRA] with the Attorney General of Canada as the Respondent. This step does not have any material effect on the Court's consideration of the merits of Mr. Hewitt's case.

[8] Under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRBA*], a self-employed person whose net income was at least $5,000 in 2019, 2020 or the 12 months preceding their application date was eligible for the CRB for any two-week period between September 27, 2020, and October 23, 2021. In contrast, the CERB was calculated based on gross income of at least $5,000 by reason of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERBA*], in conjunction with the *Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order*, SI/2021-19 [*CERB Remission Order*]. This is

explained in the CRA's procedure document "Confirming Covid-19 benefits eligibility" contained in the Respondent's record before the Court in this proceeding. In other words, the CERB and CRB were different benefits involving different eligibility requirements.

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[9] In February 2023, the CRA sent a letter to Mr. Hewitt questioning his eligibility to both CERB and CRB payments. In response to the CRA's request for proof of earnings over $5,000 in 2019, 2020 or the 12 months before Mr. Hewitt's applications for CERB and CRB respectively, Mr. Hewitt submitted several invoices related to his self-employment as a musician. The CRA determined that Mr. Hewitt was not eligible for CRB because he did not earn $5,000, before taxes, of employment or net self-employment income in 2019, 2020 or the 12 months before the date of his application (i.e. on October 16, 2020).

[10] The first reviewer's reasons note that Mr. Hewitt's net income was reported as less than $5,000 for 2019 and 2020 but his gross income was over that amount. The first reviewer thus concluded that while Mr. Hewitt was ineligible for the CERB, they would not ask him to repay because the gross income threshold was met. I find this conclusion is consistent with the way in which the *CERB Remission Order* operates with the *CERBA*, namely to relieve the taxpayer of the requirement to remit "overpayment" in cases where they did not meet the $5,000 net income threshold but did earn this amount in gross income.

[11] In light of this refusal, and in anticipation of his second review request, Mr. Hewitt refiled his income tax return for the 2019 tax year, adjusting his net income from $0 to $6,000,

and requested reassessment. The Notice of Reassessment issued in December 2023 and showed a net income exceeding $5,000.

[12] Mr. Hewitt requested a second review which resulted in the same outcome; so he sought judicial review of the second review decision. To settle the matter, the CRA agreed to a fresh third review which again resulted in the same outcome (i.e. the Decision); hence, the instant judicial review application.

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[13] During the first and second review processes, repeated calls from the CRA to Mr. Hewitt were unanswered. The third reviewer also made several calls to Mr. Hewitt, but they eventually spoke before the Decision issued. When the reviewer questioned Mr. Hewitt about the differences between the original and adjusted 2019 returns, Mr. Hewitt described adjusting his income to exceed the net $5,000 threshold by refraining from claiming certain business expenses.

[14] According to the reviewer's notes, Mr. Hewitt noted that, aside from the adjustment, both versions of the return are essentially identical. When the reviewer asked for further clarification, Mr. Hewitt confirmed that the initial tax filing for 2019 was completed accurately, and that he made the adjustments, in terms of the expenses he chose to claim, to qualify for CERB and CRB. In other words, by not claiming certain expenses, his adjusted net income was more than $5,000. The reviewer asked Mr. Hewitt one more time to confirm that he adjusted his 2019 income tax return to qualify for CERB and CRB; according to the reviewer's notes, Mr. Hewitt agreed.

[15] I find that the Decision reflects the above discussion between the reviewer and Mr. Hewitt. Further, the reviewer reasonably concluded, in my view, that because the adjustment to Mr. Hewitt's 2019 return was aimed exclusively at meeting the eligibility criteria for the CRB and does not demonstrate adequately the obligatory nature of business expenses, his 2019 tax adjustment (and, by implication, the 2019 reassessment) would not be considered in the review.

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[16] The jurisprudence of this Court supports the reasonableness of the reviewer's conclusion regarding the 2019 adjustment. Justice Sébastien Grammond recently held that the strategy of amending one's income tax return to waive deductions to try to meet the $5,000 threshold is not effective: *James v Canada (Attorney General)*, 2025 FC 187 at para 8, citing *Lavigne v Canada (Attorney General)*, 2023 FC 1182 [*Lavigne*] at paras 37, 53–58; *Cozak v Canada (Attorney General)*, 2023 FC 1571 [*Cozak*] at paras 22–23; *Singh v Canada (Attorney General)*, 2024 FC 51 [*Singh*] at paras 35–36.

[17] In answer to Mr. Hewitt's argument that the 2019 reassessment showing net income exceeding the CRB threshold of $5,000 is sufficient, I note the observation in *Lavigne* (above, at para 43) that, "in terms of eligibility for the … CRB, a notice of assessment does not constitute conclusive evidence that an applicant earned and received the amount shown on his or her tax return for a taxation year, and this income does not determine eligibility for benefits…" The Court expressed a similar sentiment in *Cozak* (above, at para 23) and *Singh* (above at paras 35–36).

[18] Based on the above jurisprudence, I find that Mr. Hewitt has not shown the Decision was unreasonable. The reasons are internally coherent and contain a rational chain of analysis.

[19] At the hearing, Mr. Hewitt also noted, for the first time before this Court, that he relied on information given to him by the CRA that CERB eligibility was based on gross income, as opposed to net income. It thus is unfair, says Mr. Hewitt, that he was found ineligible for the CRB. As noted above, however, the CERB and the CRB are different benefits with different requirements further to Parliament's intention expressed in the *CERBA* and the *CERB Remission Order* versus the *CRBA*.

[20] Mr. Hewitt also argued it was unfair that the reviewer did not consider his adjusted 2019 tax return when determining his eligibility. He asserts that a CRA employee told him in a phone conversation that filing a tax adjustment along with a reconsideration request could be sufficient to overturn the first ineligibility finding. I note that there is no evidence on the record before this Court of this phone call having taken place, nor was this argument made in Mr. Hewitt's memorandum of argument.

[21] Regardless, I find that no unfairness arises from these facts. To create a legitimate or reasonable expectation (in the legal sense), the conduct or representation must be "clear, unambiguous and unqualified": *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 95 (citations omitted). In this case, even if I were to accept Mr. Hewitt's statements that such representations were made to him, he noted that the asserted CRA representations, on which he relied, were qualified (i.e. with wording to the effect, "I cannot tell

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you what to do but…”). More to the point, Justice Simon Fothergill recently observed that “there can be no estoppel in the face of an express provision of a statute: the legislation is paramount”: *Flock v Canada (Attorney General)*, 2022 FC 305 at para 23 (citation omitted).

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[22] I determine that Mr. Hewitt was given ample opportunity to respond to the CRA’s concerns and to submit documents in support of his application, which he did, and there is no question that the third reviewer considered them. The Decision informed Mr. Hewitt of the reasons underlying the third refusal of the CRB and the requirement to repay. I thus am unable to find any breach of procedural fairness.

III. Conclusion

[23] For the above reasons, this judicial review application thus will be dismissed.

[24] At the hearing of this matter, the Respondent indicated that no costs are sought. In the circumstances, no costs will be awarded.

JUDGMENT in T-748-25

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended, with immediate effect, to replace the Canada Revenue Agency with the Attorney General of Canada as the Respondent.
2. The judicial review application is dismissed.
3. No costs are awarded.

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"Janet M. Fuhrer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-748-25
STYLE OF CAUSE:	TIMOTHY BRUCE HEWITT v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 5, 2025
JUDGMENT AND REASONS:	FUHRER J.
DATED:	NOVEMBER 6, 2025

APPEARANCES:

Timothy Bruce Hewitt	FOR THE APPLICANT (ON THEIR OWN BEHALF)
Lilian Mai Potvin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT

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