Federal Court  Cour fédérale

Date: 20260317

Docket: T-3102-25

Citation: 2026 FC 360

Ottawa, Ontario, March 17, 2026

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

HEATHER SINCLAIR

Applicant

and

CANADA REVENUE AGENCY
CANADA EMERGENCY BENEFITS VALIDATION

Respondent

JUDGMENT AND REASONS

[1] Mrs. Sinclair, the Applicant, is a litigant-in-person; she is not represented by counsel. The Applicant purports to challenge the decision made by the Respondent according to which Mrs. Sinclair was not eligible for the payments she received on account of the Canada Emergency Response Benefits ("CERB"). The Benefits received were for periods of March 15, 2020 to April 11, 2020, and May 10, 2020 to September 26, 2020.

[2] The Applicant challenges the decision on the basis of a judicial review made pursuant to s.18.1 of the *Federal Courts Act* (R.S.C., 1985, c. F-7). However, she frames her recourse as

seeking a "third review", following the unsuccessful second review. As we shall see, Mrs. Sinclair hopes to introduce more evidence to support her contention that she is eligible to the CERB's she has received.

I. The facts

[3] The Applicant applied for and received emergency response benefits for two periods: from March 15, 2020 to April 11, 2020 and May 10, 2020 to September 26, 2020. These benefits were made available pursuant to the *Canada Emergency Response Benefit Act* (SC 2020, c. 5, s. 8). The *Act* requires that an applicant have before tax income from employment or self-employment totaling at least $5,000.00, in 2019 or in the twelve months before the date of the first application for CERB.

[4] As the legislation's title indicates, the benefits were for emergency purposes. They were delivered rapidly to millions of Canadians. As stated in a letter, dated November 23, 2023, sent to the Applicant, the Canada Revenue Agency ("CRA"), which administers the CERB on behalf of the Minister of Employment and Social Development, conducts *ex post facto* verification activities in order to protect the integrity of the system. Thus, where eligibility is in question reviews are conducted to ensure that the person was entitled to the payments made.

[5] The letter of November 2023 advised the Applicant that a review was to be conducted in her eligibility for the CER benefits she had already received. The proof of earnings satisfying the requirement of the *Act* was required. What kind of documentation might be used to satisfy the legal

requirement? The letter provides information about the type of documents that could be used by a self-employed person in the following terms:

> If you are or were self-employed:
>
> - Invoice(s) for services rendered that includes 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.

[6] The documentation supplied by the Applicant to establish her eligibility was not deemed sufficient by a first CRA reviewer. The decision letter of May 28, 2024, indicated that the Applicant was not eligible because she "did not earn at least $5,000 (before taxes) of employment and/or self-employment income in 2019 or in the 12 months before the date of your first application". The letter goes on to state that the Applicant may seek a second review, to be completed by an officer other than the one who conducted the first one, if a request is made within 30 days of the date of the decision letter. Mrs. Sinclair made such request within a few days from the decision letter, on June 2, 2024.

[7] The second decision reached the same result. By letter dated July 28, 2025, the decision maker was not satisfied either that the Applicant has established income of $5,000 in 2019 or in the twelve months preceding the date of the application.

II. The decision under review

[8] The first reviewer having found the Applicant non eligible to the CER benefits because the minimum income from self-employment did not attain the $5,000 threshold, the Applicant sought a second review. The only recourse from a second review is a judicial review application before the Federal Court. That constitutes the only decision before the Court.

[9] The second decision letter came on July 28. We learn from the examination of the record before the decision maker (certified tribunal record) that the Applicant offered evidence of her eligibility on four occasions; December 5, 2023, February 23, 2024, June 2, 2024 and July 2025.

[10] Mrs. Sinclair attempted to justify her eligibility (that she earned at least $5,000 of self-employment income during 2019 or the preceding twelve months before the date of her first application) using her bank account statements. The said bank accounts covered the period from January 1, 2019 to April 30, 2020. They are heavily redacted, leaving only some e-transfers identified with a number, and only for amounts that were deposited. I have counted 54 pages with most of the entries blacked out, including all of the withdrawals. The deposits are generally for small amounts ($50, $60, $80 for instance) with no indication of provenance.

[11] When faced with indications that either the period chosen (year 2019) or the twelve months before her first application would not generate income at the level mandated by legislation, the Applicant would offer an explanation, such as having chosen the wrong period (from March 15, 2019 to March 15, 2020) or having missed some payments received from clients, in order to bring the amount to at least $5,000.

[12] Mrs. Sinclair was claiming conducting business in two areas throughout her discussions with CRA. First, she was involved in the music industry, “High Entertainment Services”, where she was involved in stage management, bookings and promotion. Second, under “Taxes Done Right”, she did some bookkeeping and filed taxes on behalf of clients. Due to the COVID-19 pandemic, her sources of self-employment income dried up in March 2020.

[13] The gist of the decision on second review is found in the notes generated by the decision maker. These notes are kept in the CRA’s T1 case Specific Notepad (Tab 1 of the certified tribunal record). The notes form part of the decision made (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at par 44; *Aryan v Canada (Attorney General)*, 2022 FC 139, para 22).

[14] Thus, we find the reasons in the specific Notepad. The decision maker confirms that the 12-month period goes from April 6, 2019 to April 5, 2020, and not from March 15, 2019 to March 15, 2020. For that period, the amounts reach a total of $4,546. In an attempt to bolster her claim that $5,000 of income were earned between April 6, 2019 to April 5, 2020, the Applicant sought to send her bank statements for April 2020 that did not originally reflect services rendered. That was no avail.

[15] But there is more. It is confirmed in the notes that the Applicant was to attempt to gather records, books or invoices which would reflect the amounts deposited through e-transfers. That is because the decision maker had advised that supporting documentation was required to validate income earned through self-employment. We read: “Advised the BR (benefit recipient) that

income is considered earned when the work is completed and the amounts deposited throughout their statement sent is showing amounts received but does not validate when income was earned or services provided". The decision maker reports on the effort made to have the information submitted correspond to amounts deposited in these terms: …"while the BR submitted their copy and pasted information of email correspondence between themselves and their clients reflecting first names, dates, reviews and totals, using this information only able to align this information with highlighted e-transfers deposited throughout their [bank] statements sent, am only able to substantiate $413.09 of gross business income earned within the 12 months (April 6, 2019 to April 5, 2020)". In other words, the documentation generated by the Applicant fell well short of the amount mandated by legislation.

[16] The additional information to explain what are the multiple e-transfers, which supposedly constituted income from self-employment was needed, and it was not provided. The decision maker lists the various pieces of information supplied by the Applicant before writing that "am unable to validate that the BR earned al least $5,000 of gross or net self-employment income in 2019 or the 12 months before the date of their first CERB application from April 6, 2019 to April 5, 2020. The BDR's email correspondence they state was sent to represent their invoices submitted from April 30, 2019 to April 23, 2020 only correspond / validate $413.09 of gross business income earned from April 6, 2019 to April 5, 2020". It follows that, being unable to prove earnings of $5,000, the Applicant was ruled to be ineligible.

III. The arguments

[17] The notice of application is supposed, pursuant to rule 301 of the *Federal Courts Rules* (SOR/98-106), to set out the precise statement of the relief sought. Here the Applicant is asking for a third review. There is no such thing. As we shall see, Mrs. Sinclair wishes once again to supplement the record by adding considerable new documentation. That is not possible in view of the nature of judicial review and the jurisprudence of the Federal Court of Appeal, which is of course binding on this Court. Put simply, a judicial review considers the decision rendered for its legality, whether that be on a standard of reasonableness or connectness (depending on the grounds raised on judicial review). The reviewing court assesses the decision made and, if it is not up to the standard of review applicable, the matter is generally sent back for redetermination *(Canada (Minister of Citizenship and Immigration) v. Valivov*, 2019 SCC 65, [2019] 4 SCR 653, para 139 to 142). It is the decision reached on the basis of the record put before the administrative decision maker that is the subject of the judicial review. I will therefore deem the remedy to be sought to be the Applicant asking that the matter be sent back to CRA for a redetermination of the matter on the sole basis of the record as accumulated before the decision maker at second review.

[18] Rule 301 also requires that there be "a complete and concise statement of the grounds intended to be argued." In this case, the Applicant believes "that the agent relied solely on the "in the twelve months prior" qualification for CERB and did not realize that the initial amended income for March 2019 actually made the qualification of $5,000 income in 2019 apply".

[19] The Applicant produced two affidavits, one sworn and one unsworn. The unsworn affidavit is not an affidavit (see rules 80 to 85, and Form 80A). It should not have been filed, and no consideration shall be given to it.

[20] As for the sworn affidavit, it seeks to establish that after the decision under review had been rendered, the Applicant realized that more income than previously stated had now been found. The Applicant explains that she had declared income of $4,835 for 2019, but there was more income.

[21] The memorandum of fact and law seems to revert to using year 2019 as the reference period for the calculation of the required $5,000 of earned income. That is done well after the decision under review in July 2025. In other words, the decision under review was made on the basis of evidence presented. That is the decision under review, which does not include obviously the new information the Applicant now wants to submit.

[22] The Applicant claims that the standard of review is correctness, or reasonably correct (memorandum of fact and law, para 19). The memorandum goes on to contend that the decision was wrong to conclude that Mrs. Sinclair had not established having earned $5,000 of income. The contention is based on an “insufficient review of the official banking/income documents” (memorandum of fact and law, para 23). There appears to be some argument around client information that should be made available. It will be remembered that the Applicant referred to bank statements without any indication of the provenance of the e-transfers.

[23] The Applicant seems to argue that, somehow, s.231.2 of the *Income Tax Act* could have found application. She seeks "an order to authorize the Minister to impose on a third party a requirement under the *Income Tax Act* 231.2 (3), relating to an unnamed person… if the judge is satisfied by the information on oath that (a) the person or group is ascertainable, and (b) the requirement is made to verify compliance by the person or persons in the group with any duty or obligation under the *Act*". It is unclear what use should have been made and how s.231.2 finds application.

[24] Even if the standard of review is reasonableness, the Applicant states her "comprehensive explanation for the correct and reasonable interpretation of the rules pertaining to client disclosure by Registered E-filers and Authorized Representatives" would make the decision unreasonable (memorandum of fact and law, para 25). That appears to be an attempt at explaining the lack of documentation establishing the services allegedly rendered and to whom.

[25] The Attorney General argues that the standard of review is reasonableness, and that the decision is reasonable. The decision maker considered the documentary evidence. Only $413.07 of income were matched with invoices submitted by the Applicant. It is the failure of the Applicant to keep appropriate records, as mandated by law, that is the cause of the incapacity to match e-transfers with amounts paid for services rendered.

[26] Was also submitted that supplementary information offered by the Applicant after the decision under review had been rendered is not admissible. Only the material before the decision maker is admissible on judicial review.

IV. Analysis

[27] This judicial review application must be dismissed.

[28] To my knowledge, the Court's jurisprudence is unanimous that the standard of review on the merits of decisions pursuant to the *CERB Act* is that of "reasonable decision" (*Aryan, supra* para 16). That is in line with the presumption that the review of the merits of administrative decisions is governed by the standard of reasonableness (*Vavilov, supra*).

[29] It follows that an applicant bears the burden to satisfy a reviewing court that there are sufficiently serious shortcomings that it cannot be said that the decision exhibits the hallmarks of what constitutes reasonableness: justification, transparency and intelligibility (*Vavilov*, para 100).

[30] There are two types of fundamental flaws that will make a decision unreasonable. There is the failure of rationality internal to the reasoning process. There is also the case where the decision is "in some respect untenable in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, para 101).

[31] Here, the Applicant fails her burden to show any shortcoming in the decision under review.

[32] I start with the new information the Applicant sought to place before the Court. That is not permitted unless the attempt falls within narrow exceptions. Contrary to what some litigants assume, the role of a review court is not to seek or address the merits of a case. That is the job of the administrative decision maker. The reviewing court does not seek to reach its own conclusion,

the one "the court itself would have reached in the administrative decision maker's place" (*Vavilov*, para 15). Thus, the starting point is the principle of restraint, demonstrating respect for the distinctive role of administrative decision makers. That takes the reviewing court to take a posture of respect. The reviewing court must be satisfied by an applicant that the administrative decision made, on the basis of the record put before the decision maker, suffers from serious shortcomings.

[33] Since the court of review is not a court of first view, it considers the decision as taken and assesses if it has the features of reasonableness, not what might be a preferred solution. Follows from that fundamental principle that only that which was before the decision maker is to be considered on judicial review. As succinctly stated in *Bernard v, Canada Revenue Agency,* 2015 FCA 263:

> [13] The general rule is that evidence that could have been placed before the administrative decision-maker, here the Board, is not admissible before the reviewing court: *Connolly v. Canada (Attorney General),* 2014 FCA 294, 466 N.R. 44 at paragraph 7; *Access Copyright*, above.

[34] That is definitely the case here. The exceptions to that general rule which are outlined and explained in *Bernard* do not find application.

[35] Thus, on the basis of the sole record before the decision maker, has it been established that the decision is unreasonable? The answer is no.

[36] First the conclusion sought by the Applicant that the Court orders to authorize the Minister to impose on a third party a requirement under the *Income Tax Act* 231.2(3) cannot be considered since the section applies on its face only to verify compliance with any duty or obligation under

the *Income Tax Act*. Such is simply not the case in the matter. It should not be forgotten that the statute under consideration is the *CERB Act* and that CRA is merely administering a statute under the authority of a Minister other than the Minister of National Revenue. I add that s.231.2 is for a particular purpose not found in the *CERB Act*.

[37] The ultimate question remains whether the decision to deny eligibility to the Applicant is reasonable in view of the framework developed in *Vavilov* and applied thousands of times since.

[38] As noted before, the Applicant bears the burden. That burden has not been discharged. It is for the Applicant to demonstrate that the decision does not bear the hallmarks of reasonableness. Mrs. Sinclair must articulate why the decision maker had to be satisfied that notations on bank statements of e-transfers are sufficient to establish that these transfers, without more, constitute self-employment income earned for services rendered.

[39] As the decision under review explains, there is a need to validate that such is the reality. The Applicant does bookkeeping, yet there are no books; there are very few invoices and no records. The decision maker was able to validate $413 worth of services rendered.

[40] The Applicant was only able to rely on heavily redacted bank statements as if that was sufficient. The bank statements, to say the least, do not speak for themselves. Many opportunities were afforded the Applicant to offer evidence that could validate the claim. The Applicant was incapable to offer something because, as she is reported as having said in one of the conversations with CRA personnel, nothing exists.

[41] It has not been shown that the requirement that the indication of e-transfers on bank statements be validated, with some evidence that these e-transfers reflect and constitute income of at least $5,000, was unreasonable. Indeed, it seems to me such validation stands to reason. The initial letter advising the Applicant that the eligibility was under review (November 23, 2023) makes that point vividly (see para. 5, hereinbefore). After all, e-transfers without more constitute only evidence of deposits and withdrawals of funds. Their source and the purpose of the transfers are unknown. That is at the heart of the decision under review and that is what had to be challenged. Nothing of the sort happened in this case.

[42] At the end of the day, the Applicant relied on her bank statements and the alleged difficulty of identifying clients because of some alleged confidentiality. What was needed was a demonstration that the e-transfers were for services rendered. The absence of basic documentation was seen as being fatal by the decision maker. It has not been demonstrated how that can be unreasonable.

V. Conclusion

[43] The judicial review application must be dismissed.

[44] The Respondent sought costs initially. However, counsel for the Respondent advised the Court that she would not be seeking costs if the judicial review were dismissed.

JUDGMENT in T-3102-25

THE COURT JUDGMENT is that:

1. The judicial review application is dismissed.

2. There is no costs award.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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