

Federal Court



Cour fédérale

Date: 20260430

Docket: T-2604-25

Citation: 2026 FC 582

Vancouver, British Columbia, April 30, 2026

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

FRANK SUH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Frank Suh seeks judicial review of a decision by an officer [Officer] with the Canada Revenue Agency [CRA]. The Officer found him ineligible to receive the Canada Recovery Benefit [CRB], one of the temporary income support measures provided by the Government of Canada for workers who were adversely affected by the COVID-19 Pandemic.

[2] Mr. Suh is a self-employed kinesiologist affiliated with the British Columbia Association of Kinesiologists. Public health restrictions imposed during the pandemic prevented him from providing in-person services. He applied for the Canada Emergency Response Benefit [CERB] and CRB, and received both.

[3] The CRA subsequently initiated a review of Mr. Suh's eligibility for both benefits. On January 24, 2023, the CRA sent him a letter explaining the eligibility criteria and the documents he should submit to prove his eligibility. The letter explained that Mr. Suh needed to show he had earned "at least \$5,000 of employment and/or net self-employment income in 2019, 2020, or in the 12 months before his application". On March 6, 2023, Mr. Suh provided several documents to the CRA in response.

[4] On his 2019 income tax return, Mr. Suh reported \$19,196 in gross professional income and a net professional income of \$4,608. On his 2020 tax return, he reported \$9,241 in gross professional income and a net professional income of \$4,036. One of the reasons for the discrepancy between his gross and net income was that Mr. Suh chose to deduct capital cost allowance [CCA] from his self-employment income.

[5] On January 28, 2024, following several telephone calls with Mr. Suh, the CRA determined that he was ineligible to receive either the CERB or CRB because he did not meet the \$5,000 requirement. Mr. Suh requested a second review. He submitted additional documents to the CRA on January 29, 2024 and June 3, 2025.

[6] The second reviewer found that Mr. Suh had earned more than \$5,000 in gross income, but less than \$5,000 in net income. By virtue of s 1(1)(a) of the *Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order*, SI/2021-19 [Remission Order], Mr. Suh was not required to repay the CERB benefits.

[7] However, the Remission Order did not apply to the CRB. Accordingly, the second reviewer considered Mr. Suh's net self-employment income for the purpose of the CRB, as required by s 3(2) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2. The second reviewer found that Mr. Suh's net self-employment income was below the \$5,000 threshold, and he was therefore ineligible to receive the CRB.

[8] Mr. Suh challenges both the procedural fairness and the reasonableness of the Officer's decision concerning his ineligibility for the CRB.

[9] Procedural fairness is subject to a reviewing exercise best reflected in the correctness standard, although strictly speaking no standard of review is being applied. The Court must examine the process followed by the decision maker and determine whether the procedure was fair having regard to all of the circumstances (*Jagadeesh v Canadian Imperial Bank of Commerce*, 2024 FCA 172 at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 44-56).

[10] The scope of the duty of procedural fairness varies according to the context and nature of the administrative decision maker and the matter before it. The level of procedural fairness owed by the CRA to an applicant for pandemic benefits is at the low end of the spectrum (*Ghukasyan v*

Canada (Attorney General), 2025 FC 140 at para 21, citing *Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 17).

[11] Mr. Suh says that the Officer repeatedly failed to respond to his telephone calls. He also maintains that the Officer should have contacted him if the information he submitted was not sufficient to prove his eligibility. He argues that he was deprived of a meaningful opportunity to be heard.

[12] The record does not support Mr. Suh's position. The Officer attempted to contact Mr. Suh on a number of occasions before speaking to him on May 1, 2025. The Officer's affidavit explains her procedure for recording missed telephone calls, and affirms that she did not miss any from Mr. Suh before making her decision. Mr. Suh claims that he has records that show the opposite, but he did not include them in his application record. Regardless, he had a sufficient opportunity to explain his position to the Officer and submit any documentation that he considered relevant.

[13] Mr. Suh says that he did not understand the Officer was concerned about his net self-employment income until he received the decision on the second review. This assertion is unconvincing at best.

[14] The initial contact letter sent to Mr. Suh on January 24, 2023 specified the eligibility requirements for the CRB, and noted that self-employment income was assessed on a net basis. In a telephone call with the CRA on October 30, 2023, Mr. Suh was given an explanation of the

eligibility criteria and the supporting documents he should provide. Mr. Suh said he believed the information he provided on his tax returns was accurate.

[15] During his telephone conversation with the Officer on May 21, 2025, Mr. Suh was asked to provide any additional information before June 5, 2025. He submitted some further documentation on June 3, 2025.

[16] Mr. Suh knew the case to meet and was given an opportunity to be heard. He was made aware of the eligibility requirements to receive the CRB, particularly relating to net self-employment income. He was informed of the documents he should submit to satisfy the eligibility criteria, and he submitted the documents he considered relevant. The Officer's decision was procedurally fair.

[17] The merits of the CRA's decision are subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (Vavilov at para 100).

[18] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (Vavilov at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[19] In oral submissions, Mr. Suh said that his arguments respecting reasonableness were closely tied to his arguments respecting procedural fairness. He says the Officer did not explain why the documentation he submitted was not sufficient to prove his eligibility for the CRB.

[20] The onus was on Mr. Suh to provide sufficient documentation to demonstrate his eligibility for the CRB. The Officer was not required to advise him that the information he had provided was deficient. Nor was she required to provide Mr. Suh with a “running tally”, or indicate that more evidence was necessary. The Officer was not required to contact him again to determine whether there was any additional evidence available (*D’Almeida v Canada (Citizenship and Immigration)*, 2019 FC 308 at para 67).

[21] Mr. Suh notes that his declared net income of \$4,608 in 2019 was only slightly below the \$5,000 threshold. He says that the Officer’s decision to find him ineligible for the CRB was disproportionate, considering the remedial purpose of pandemic benefits. However, the \$5,000 net income threshold is strict: there is no discretion for a CRA officer to depart from the eligibility requirements in the interest of fairness (*Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at paras 27-28; *Flock v Canada (Attorney General)*, 2022 FCA 187 at para 7).

[22] Mr. Suh advised the Officer that he believed his tax returns were accurate. It was reasonable for the Officer to rely on the revenue and expenses he claimed on his tax returns (*James v Canada (Attorney General)*, 2025 FC 187 at para 4). Even if Mr. Suh had amended his tax returns to reduce the amount of CCA he claimed (which he did not do), this Court has found that it is reasonable for the CRA to rely on a taxpayer’s net income as originally reported, taking into account CCA deductions (*Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 37).

[23] Mr. Suh relies on Justice Elizabeth Walker's decision in *El Harim v Canada (Attorney General)*, 2023 FC 1689, in which she found that the CRA officer failed to explain why he had disregarded certain documentation submitted by the applicant. The case is distinguishable. Here, there is no suggestion that the Officer ignored or misapprehended any of the information provided by Mr. Suh.

[24] Mr. Suh was made aware of the eligibility criteria for the CRB, both in writing and during his telephone call with the Officer. He is clearly familiar with the difference between gross and net income, having successfully claimed CCA to reduce his tax liability in 2019 and 2020. Unfortunately, this also had the effect of making him ineligible to receive the CRB.

[25] The Officer's decision was justified, intelligible and transparent. It was therefore reasonable.

[26] The application for judicial review is dismissed. The Respondent does not seek costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Simon Fothergill"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2604-25

STYLE OF CAUSE: FRANK SUH v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 29, 2026

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: APRIL 30, 2026

APPEARANCES:

Frank Suh

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Jessye Kilburn

FOR THE RESPONDENT

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Vancouver, British Columbia

FOR THE RESPONDENT