

Federal Court



Cour fédérale

**Date: 20220815**

**Docket: T-1795-21**

**Citation: 2022 FC 1196**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, August 15, 2022**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**BENOIT MATTE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Benoit Matte, is a music teacher who received the Canada Recovery Benefit [CRB]. After the Canada Revenue Agency [CRA] first reviewed Mr. Matte's application, a benefits processing officer [first officer] concluded, on August 20, 2021, that Mr. Matte was ineligible for the CRB because he had not shown that he had earned at least \$5,000 in employment or net self-employment income in 2019, 2020 or the 12 months before the date of

his first application. Following a second review of his CRB application, on October 19, 2021, another CRA officer [second officer] confirmed that Mr. Matte was ineligible for the same reason as the first officer.

[2] Mr. Matte applied for judicial review of the decision on October 19, 2021. He submits that he meets the various CRB eligibility criteria and that the CRA's decision is perverse and unacceptable because he has provided the documents needed to show that he earned an income of at least \$5,000 in 2019. He also submits that the first officer was insensitive, disrespectful and unsympathetic toward him in asking him to send documents while he was in the hospital.

[3] In my view, the CRA's decision is not unreasonable and there has been no breach of procedural fairness. Therefore, I will dismiss the application.

## II. Background

[4] Mr. Matte is a self-employed music teacher who teaches piano. He experienced a drop in his activities because of the COVID-19 pandemic. Mr. Matte received Canada Emergency Response Benefit [CERB] payments. His CERB eligibility was also reviewed by the CRA. On November 26, 2020, it informed Mr. Matte that, on the basis of his file, it was unable to confirm that he had earned at least \$5,000 in 2019. Mr. Matte states that he contacted the CRA to confirm that he had indeed earned at least \$5,000 in 2019, as shown by the T1 Adjustment Request made on June 4, 2020, to correct an error in his 2019 income tax return. In the Adjustment Request, he indicated that he had earned \$5,600 under "Other Income" instead of the \$3,220 that he had

originally indicated in his income tax return. According to Mr. Matte, he had a conversation with a CRA officer, who concluded that he was eligible to receive the CERB.

[5] In February 2021, because he was unable to apply for the CRB online, Mr. Matte contacted a CRA officer, who asked him to send some documents showing that he had earned at least \$5,000. On February 26, 2021, Mr. Matte sent copies of all his self-employment receipts for 2019. He was then able to apply for the CRB for periods 8 to 26, that is, the two-week periods starting on January 3, 2021, and ending on September 25, 2021. His applications for periods 8 to 19 were accepted, and Mr. Matte received the payments for those periods.

[6] On July 6, 2021, Mr. Matte's file was selected for a review of his eligibility for the CRB. On July 12, 2021, the first officer tried to reach Mr. Matte, but his spouse told him that he had been hospitalized. On July 20, 2021, the first officer was able to reach Mr. Matte, who was still in his hospital room, to ask him to send his bank statements dating back to January 2019. Mr. Matte informed the first officer that he was in the hospital and that he would call him back when he was discharged, but that he believed that the receipts he had sent in February 2021 were sufficient to show that he had earned at least \$5,000 in 2019. After failing to obtain the bank statements requested, the first officer rendered a decision dated August 20, 2021, concluding that Mr. Matte was not eligible for the CRB because he had not shown that he had earned at least \$5,000 in 2019, 2020, or the 12 months before the date of his first application. This is regrettable as, unbeknownst to the officer, Mr. Matte left the hospital only in August and was home recovering until September.

[7] In any case, on September 7, 2021, Mr. Matte applied for a second review of his file. On October 14, 2021, Mr. Matte sent the CRA copies of his bank statements dating back to 2019. The second officer communicated with Mr. Matte again on October 15, 2021, to ask him to identify the amounts on his bank statements corresponding to the amounts found on the receipts from his clients. The conversation did not go well, and Mr. Matte ended up hanging up on the officer.

[8] On October 19, 2021, the second CRA officer concluded that Mr. Matte was ineligible for the CRB because he had not shown that he had earned at least \$5,000 in employment or net self-employment income in 2019, 2020, or the 12 months before the date of his first application. Accordingly, the CRA required Mr. Matte to pay back the CRB amounts he had already received.

[9] On November 19, 2021, M. Matte applied for judicial review of the October 19, 2021, decision.

[10] Mr. Matte states that, on December 8, 2021, he repaid to the CRA the CRB amounts he received to comply with the decision and to avoid suffering reprisals.

### III. Legislative framework

[11] The CRB was introduced in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act], assented to on October 2, 2020, to provide financial assistance to employees and self-employed workers directly affected by the COVID-19 pandemic who were not entitled to Employment

Insurance benefits. The CRB was provided from September 27, 2020, to October 23, 2021.

Subsection 3(1) of the Act sets out the eligibility criteria for receiving the CRB, including the following:

### **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

...

(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:

(i) employment

(ii) self-employment

(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*,

(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

### **Admissibilité**

3(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) 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) un emploi,

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

(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) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à

person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and	donner par elle à son ou ses nouveau-nés ou à un 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;

#### IV. Issues

[12] This application for judicial review raises three issues:

1. Is the new evidence adduced by Mr. Matte before the Court admissible?
2. Did the CRA violate the principles of procedural fairness?
3. Is the second officer's decision dated October 19, 2021, finding Mr. Matte ineligible to receive the CRB, unreasonable?

V. Standard of review

[13] The appropriate standard of review for a CRA officer’s decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]; *Maltais v Canada (Attorney General)*, 2022 FC 817 at paras 18–19 [*Maltais*]). This Court’s role is to consider the administrative decision maker’s rationale and the outcome to determine whether the decision is “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).

[14] With respect to the issue of procedural fairness, the Court is required to ask “whether the procedure was fair having regard to all of the circumstances”, and the ultimate question is “whether the applicant knew the case 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, 56; *Fortier v Canada (Attorney General)*, 2022 FC 374 at para 15 [*Fortier*]).

VI. Analysis

A. *The new evidenced adduced by Mr. Matte before the Court is not admissible*

[15] In support of his application for judicial review, Mr. Matte filed an affidavit containing documents that were not filed with the CRA as part of the decision-making process as well as some documents that were not appended to his affidavit. The respondent disputes the admissibility of these documents because they constitute new inadmissible evidence. The documents in question are as follows:

- Confirmation of registration with the CRA's online services, marked as Exhibit "A" of Mr. Matte's affidavit
- His income tax return for 2019, marked as Exhibit "B" of Mr. Matte's affidavit
- Confirmation of the electronic filing of his bank statements dated October 14, 2021, marked as Exhibit "I" of Mr. Matte's affidavit
- Proof of electronic repayment dated December 8, 2021, marked as Exhibit "N" of Mr. Matte's affidavit
- Copy of a CRA web page in support of the CRB eligibility criteria, dated December 23, 2021
- Auto-generated emails from the CRA confirming that the CRB applications had been processed
- An email from Micheline Caron that includes a photo of a T4A slip for 2020

[16] As a general rule, in an application for judicial review, the Court must be restricted to the evidentiary record that was before the administrative decision maker. There are three exceptions to this general rule: where the new evidence (1) provides general information to assist the Court in understanding the issues relevant to the judicial review; (2) is necessary to bring the Court's attention to procedural unfairness; and (3) establishes the complete lack of evidence before the administrative decision maker (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98). Since the documents disputed by the respondent were not before the second officer when he rendered his decision and since Mr. Matte did not raise any of the exceptions



stated by the Federal Court of Appeal in *Tsleil-Waututh Nation*, I cannot take these documents into consideration in this judicial review. Furthermore, it seems to me that these documents would not have influenced the second officer's decision in any case.

B. *The CRA did not violate procedural fairness principles*

[17] Mr. Matte submits that the first officer was insensitive, disrespectful and unsympathetic toward him in asking him to send documents while he was in the hospital.

[18] Although the first officer may have been insensitive to him, it should be noted that the decision under judicial review is that resulting from the second review of his application, dated October 19, 2021. In addition, Mr. Matte had the opportunity to submit a complaint against the first officer on September 10, 2021. The fundamental issue here is whether Mr. Matte was heard and whether he had the chance to know the case to meet (*Fortier* at paras 15–16; *Maltais* at para 29). Since Mr. Matte had the opportunity to submit additional documents during the second review and to communicate with the second officer, I am of the view that there was no breach of procedural fairness.

C. *The decision dated October 19, 2021, finding Mr. Matte ineligible to receive the CRB is not unreasonable*

[19] Mr. Matte argues that he meets the criterion set out in paragraph 3(1)(e) of the Act, since the documentary evidence he provided shows that he earned at least \$5,000 in 2019. In his view, the T1 Adjustment Request filed on June 4, 2020, in which he indicated that he had earned \$5,600 under “Other Income” is sufficient to show that he earned at least \$5,000 in 2019.

[20] I cannot accept Mr. Matte's position. Under section 6 of the Act, he was obliged to provide the officer with any information he could require in respect of the application.

Paragraph 3(1)(e) of the Act provides that a person is eligible to receive the CRB if they had a total income of at least \$5,000 from employment or self-employment, among other sources, for 2019 or 2020 or in the 12-month period preceding the day on which they made the application.

As the respondent stated before me, it was impossible for the officer to know whether the amount entered under "Other Income" was from self-employment, and Mr. Matte had to confirm the source of his income to determine his CRB eligibility.

[21] The second officer stated in his report that he had tried to obtain the information he needed to confirm the sources of Mr. Matte's income.

[TRANSLATION]

I asked TP to identify the amounts corresponding to his invoices. TP explained to me that the invoices correspond to several payments, which were made the way it is done at all music schools. TP stated that he is paid in cash, by Interac or sometimes by cheque. TP began by showing me amounts from January 2019 (4 amounts of \$55), then explained that all amounts with a + sign correspond to payments for services. The amounts in question have no explicit labels. There are amounts with the + sign in January that TP did not mark as invoice payments. TP cites the deposit of \$1,070, dated April 15, 2019, and says he is not certain whether this is only one payment for piano lessons. I asked him for more details. TP lost his temper and called me some names, insulted me and said that I don't need him to identify the self-employment amounts. I told him that if he continued to insult me, I would have to end our conversation so that he can calm down. TP continued to insult me, called me a stupid public servant and hung up on me. I continued to analyze the application with the documents received. The sum of the amounts with a + sign was over \$9,000 in 2019, while TP reported only \$5,600, thus creating the need to separate his piano lessons income from other deposits. The documents provided by TP failed to establish that TP had over \$5,000 in self-employment income. TP's returns do not provide a history of

business income. TP was not available to provide me with the necessary explanations.

[Emphasis added.]

[22] Before me, Mr. Matte explained that the deposits made into his bank account in 2019 include income he earned as a self-employed worker and that the difference resulted from [TRANSLATION] “personal income from other sources”. As the officer’s notes show, Mr. Matte did not provide these explanations to the officer.

[23] Thus, the second officer concluded that Mr. Matte’s bank statements did not show that he had earned an income of at least \$5,000 because the amounts deposited in his account did not match up with the receipts that he had submitted and Mr. Matte did not wish to provide details about those amounts.

[24] I am of the view that the second officer’s reasoning is coherent and based on the evidence on the record. The second officer raised some inconsistencies in the amounts deposited into his bank account. He was unable to identify the origin of those amounts and to confirm that Mr. Matte had indeed earned at least \$5,000 in employment or net self-employment income in 2019, 2020 or the 12 months before the date of his first application. The burden was on Mr. Matte to show that the CRA’s decision was unreasonable by satisfying the Court that there were sufficiently serious shortcomings in the decision such that it could not be said to exhibit the requisite degree of justification, intelligibility and transparency (*Vavilov* at para 100). Given the evidence on the record and the above reasons, I am not satisfied that he has discharged his burden.

[25] Since Mr. Matte did not show that the decision dated October 19, 2021, was unreasonable, it is not necessary for me to consider the issue of moral damages claimed by Mr. Matte.

VII. Conclusion

[26] I will dismiss the application with costs in the amount of \$500.

**JUDGMENT in T-1795-21**

**THE COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. Costs in the amount of \$500 are awarded to the respondent.

“Peter G. Pamel”

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Judge

Translation certified true  
Margarita Gorbounova

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

**DOCKET:** T-1795-21

**STYLE OF CAUSE:** BENOIT MATTE v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HEARD VIA VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 14, 2022

**JUDGMENT AND REASONS:** PAMEL J

**DATED:** AUGUST 15, 2022

**APPEARANCES:**

Benoit Matte

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Mathieu Lamontagne

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT