

Federal Court



Cour fédérale

Date: 20220928

Docket: T-569-21

Citation: 2022 FC 1351

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 28, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

DANIEL COZAK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Daniel Cozak, is a retired chemist who received the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB] in 2020. Mr. Cozak was reviewed by the Canada Revenue Agency [CRA]. Following this first review, a benefits processing officer [the first officer] concluded on December 10, 2022, that Mr. Cozak was ineligible for the CERB and the CRB and that he had to repay the payments he had already

received. Following a second review of his applications for the CERB and CRB, a second officer [the second officer] confirmed Mr. Cozak's ineligibility on March 4, 2021 [the decisions].

[2] Mr. Cozak applied for judicial review of the decisions of March 4, 2021. He submits that he satisfies all the eligibility criteria established for the CRA program. In particular, Mr. Cozak argues that he has clearly proven that he earned self-employment income totalling at least \$5,000 for the 2019 taxation year or in the 12 months prior to his first applications. He is of the view that the facts provided to the CRA were ignored or misinterpreted, and that the second officer's reasons for refusing his applications for benefits are ill founded.

[3] For the reasons that follow, I find that the second officer's decisions are not unreasonable and that Mr. Cozak's application must be dismissed.

I. Preliminary issue

[4] Mr. Cozak failed to attend the hearing of his application set for September 12, 2022, in-person in Quebec City. Fifteen minutes after the start of the hearing, the clerk attempted to reach Mr. Cozak at the number in the file. The clerk was only able to speak with his wife, who informed the clerk that she did not know where her husband was, that she was not aware that he had to attend a hearing, that Mr. Cozak did not have a cell phone and that it was therefore impossible to reach him.

[5] In addition, it seems that on August 30, 2022, after several reminders from the clerk, Mr. Cozak did indeed confirm receipt of the Court's direction dated August 10, 2022, which

peremptorily scheduled this in-person hearing before our Court, in Quebec City, for Monday, September 12, 2022, at 9:30 a.m. for a duration of up to four hours. I am therefore of the view that Mr. Cozak was indeed aware of this hearing and the details concerning the hearing.

[6] It was Mr. Cozak's responsibility to be present for the hearing of his application and to inform the Court should he become unavailable. As of the date of this decision, Mr. Cozak has not been in contact with the Court in any way whatsoever regarding this matter. As I informed the Attorney General of Canada at the hearing, I therefore intend to issue my decision on the basis of the parties' written submissions (*Nault v Canada (Public Service Commission)*, 2002 FCT 1297 at para 2).

II. Legislative framework and background

A. *Canada Emergency Response Benefit*

[7] The CERB was established by the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERBA], assented to on March 25, 2020, to provide financial support to employed and self-employed workers directly affected by the COVID-19 pandemic. Under subsection 5(1) of the CERBA, the CERB was made available for the period of March 15, 2020, to October 3, 2020. Subsections 6(1) and 6(2) provided the eligibility criteria for receiving the CERB:

Eligibility

6(1) A worker is eligible for an income support payment if

Admissibilité

6(1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :

(a) the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and

(b) they do not receive, in respect of the consecutive days on which they have ceased working,

(i) subject to the regulations, income from employment or self-employment,

(ii) benefits, as defined in subsection 2(1) of the *Employment Insurance Act*,

(iii) allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children or one or more children placed with them for the purpose of adoption, or

(iv) any other income that is prescribed by regulation.

Exclusion

(2) An employed worker does not cease work for the purpose of paragraph (1)(a) if they quit their employment voluntarily.

[Emphasis added.]

a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;

b) il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte :

(i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,

(ii) de prestations, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*,

(iii) d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption,

(iv) tout autre revenu prévu par règlement.

Exclusion

(2) Pour l'application de l'alinéa (1)a), un travailleur ne cesse pas d'exercer son emploi s'il le quitte volontairement.

[Je souligne.]

[8] Section 2 of the CERBA defines “worker”:

<p>worker means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least \$5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:</p> <p>(a) employment;</p> <p>(b) self-employment;</p> <p>(c) 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; and</p> <p>(d) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption.</p>	<p>travailleur Personne âgée d’au moins quinze ans qui réside au Canada et dont les revenus — pour l’année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l’article 5 — provenant des sources ci-après s’élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :</p> <p>a) un emploi;</p> <p>b) un travail qu’elle exécute pour son compte;</p> <p>c) 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;</p> <p>d) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d’un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption.</p>
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B. *Canada Recovery Benefit*

[9] The CRB was introduced by the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2

[CRBA], assented to on October 2, 2020, to provide financial assistance to employed and self-employed workers directly affected by the COVID-19 pandemic and not entitled to Employment Insurance benefits. The CRB was offered for the period from September 27, 2020, to

October 23, 2021. Subsection 3(1) of the CRBA provided the eligibility criteria for receiving the CRB, which are as follows:

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

- (a) they have a valid social insurance number;
- (b) they were at least 15 years of age on the first day of the two-week period;
- (c) they were resident and present in Canada during the two-week period;
- (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*,

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 :

- a) elle détient un numéro d'assurance sociale valide;
- b) elle était âgée d'au moins quinze ans le premier jour de la période de deux semaines;
- c) elle résidait et était présente au Canada au cours de la période de deux semaines;
- 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) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and

(v) any other source of income that is prescribed by regulation;

...

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application,

(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 donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,

(v) une autre source de revenu prévue par règlement;

...

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020,

...

[...]

C. *Background*

[10] Mr. Cozak has been a self-employed professional for more than 30 years and is a member of the Ordre des chimistes du Québec [OCQ]. He has a sole proprietorship, named “daniel cozak consultant”, which is registered on the Quebec Enterprise Register [QER]. In his income tax return for the 2019 taxation year, Mr. Cozak declared that he earned \$5,221 in business income for professional services provided to the MDevTech Corporation [MDevTech] and produced an invoice in support of this income.

[11] Mr. Cozak requested the payment of the CERB for the seven four-week periods running from March 15, 2020, to September 26, 2020, as well as the payment of the CRB for the four two-week periods running from September 27, 2020, to November 21, 2020. These benefits were subsequently paid to him on the basis of his applications.

[12] On December 8, 2020, the CRA conducted a verification of Mr. Cozak’s eligibility for the benefits that he had claimed. On the basis of the available information in the CRA’s computer records, the first officer concluded that Mr. Cozak had not earned at least \$5,000 of employment or self-employment income in 2019 or in the 12 months prior to the date of his first application. On December 10, 2020, the first officer sent a letter to Mr. Cozak to inform him of his ineligibility for the payments claimed from the CERB.

[13] On February 9, 2021, Mr. Cozak left a voicemail message with the CRA, specifically with the Canada Emergency Benefits Validation and Identity Protection Service, requesting that a second review of his eligibility be conducted. On February 15, a second officer began a second review of Mr. Cozak's eligibility. In the context of her review, the officer consulted the following information and documents:

- a) The notes of the first CRA officer, who performed the initial review of the applicant's eligibility for the CERB and the CRB, contained in the CRA's internal report;
- b) The CRA's computer records setting out the applicant's income tax returns for the years 2017 to 2020;
- c) The profile of the applicant's sole proprietorship on the QER;
- d) The profile of MDevTech on Canada's business registry;
- e) CRA's computer records setting out MDevTech's income tax returns since its incorporation in 2018;
- f) Various documents submitted by the applicant to the CRA by fax on December 15, 2020, including:
 - i. A copy of an invoice in the amount of \$5,221 addressed to MDevTech in exchange for the applicant's consulting services and dated September 1, 2019;
 - ii. A copy of the applicant's T1 income tax return for the year 2019, accompanied by a copy of the applicant's GST370 form for the year 2019.

[14] On March 4, 2021, after a second review of the applicant's eligibility for the CERB and the CRB, the second officer confirmed to the applicant that he was not eligible for the benefits.

The reasons cited by the second officer in the decision letters are the following:

[TRANSLATION]

- a) With respect to the CERB:

You did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months prior to the date of your first application.

b) With respect to the CRB:

You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019 or 2020 or in the 12 months prior to the date of your first application.

The reason for which you are not working is not related to COVID-19.

[15] To arrive at this conclusion, the second officer relied on the following facts, which were documented in the report of the second review [Report] as part of the decision-making process:

- a) Mr. Cozak states that he earned business income of \$5,221 in 2019 from MDevTech in exchange for consulting services.
- b) Mr. Cozak declares that this constitutes his only business income for the year 2019.
- c) Mr. Cozak states that the amount of \$5,221 in business income was received in cash and that he never deposited the money in a bank account; Mr. Cozak has therefore not provided any evidence to the CRA of the receipt of the \$5,221 of business income.
- d) Mr. Cozak declares that he received the business income of \$5,221 from MDevTech. This corporation has only two directors, who are Mr. Cozak's sons.
- e) For the two years prior to 2019, those being the years 2017 and 2018, Mr. Cozak did not declare any business income.
- f) With respect to his income tax return for the year 2019, in which he states that he earned \$5,221 in business income:
 - i. Mr. Cozak did not file this income tax return with the CRA until December 18, 2020, that being more than seven months after the deadline of April 30, 2020, and a penalty for late filing was imposed by the CRA;
 - ii. In addition, on that date, December 18, 2020, Mr. Cozak was filing his income tax return for the year 2019 eight days after the CRA provided him its first decision, which informed him of his ineligibility for the CERB and the CRB.

- g) As of September 13, 2021, Mr. Cozak had not yet filed his income tax return for the year 2020; he was therefore more than four months late in filing his income tax return for 2020.
- h) Mr. Cozak's sole proprietorship did not file an annual updating declaration with the QER as required by the *Act respecting the legal publicity of enterprises* in either 2019 or 2020.
- i) Mr. Cozak states that he received \$5,221 of income in 2019 from MDevTech; said corporation has never filed an income tax return with the CRA since its incorporation in 2018.

[16] On April 1, 2021, Mr. Cozak filed an application for judicial review of the CRA's decisions issued on March 4, 2021, which found him to be ineligible for the CERB and the CRB.

III. Issues and standard of review

[17] This is a judicial review of an administrative decision of the CRA in the context of the administration of the *Canada Emergency Response Benefit Act*, SC 2020, c 5 and the *Canada Recovery Benefits Act*, SC 2020, c 12. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*], the Supreme Court of Canada established a presumption that reasonableness is the applicable standard whenever a court is reviewing the merits of an administrative decision. As for the substantive issues in this application, the role of the Court is therefore to examine the administrative decision maker's rationale for the decision and the outcome to which it led to determine whether the decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[18] Mr. Cozak also submits that the second officer breached her duty of procedural fairness by not providing reasons for her decisions. On this issue, the Court must ask "whether the

procedure was fair having regard to all of the circumstances” and the fundamental 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).

IV. Analysis

[19] Mr. Cozak asserts that the decisions are unreasonable since they do not take into account the evidence provided to the CRA. He maintains that he did indeed earn business income of more than \$5,000 in 2019 from MDevTech in exchange for consulting services and that he provided satisfactory evidence to establish that he met all of the eligibility criteria, that evidence being an invoice for professional fees. Mr. Cozak also asserts that the decisions only contain the second officer’s conclusions, which prevents him from analyzing the logical and rational process used to arrive at these conclusions. Mr. Cozak also objects to the production of unsigned internal reports submitted by the CRA in this application. He asserts that the words and statements attributed to him are inaccurate and sometimes contrary to reality and that they constitute hearsay. When he mentions the unsigned internal reports, I am assuming that Mr. Cozak is referring to the Report, which includes the notes that the two CRA officers recorded in his file as part of the verification process, including after various telephone conversations with Mr. Cozak.

[20] I note that Mr. Cozak did not submit a notice of motion within the period required in order to have the evidence at issue struck, in compliance with section 359 and subsection 362(1) of the *Federal Courts Rules*, SOR/98-106. In addition, Mr. Cozak’s arguments do not refer to any specific passage of the Report that would support his assertions, nor does he offer the Court

a valid reason to doubt the veracity of the information that it contains. It was not enough for Mr. Cozak to rely on the general wording contained in his memorandum of fact and law for his application to be considered, just as he was not free to object to the existence of this evidence in the file during the hearing on the merits. Accordingly, I consider that the facts documented by the two officers in the Report legitimately form part of this record, just as they are evidence of the information Mr. Cozak submitted during his interactions with the CRA.

[21] I also note that Mr. Cozak is alleging, for the first time before this Court, that he has a medical condition that exposes him to a greater health risk than average from the COVID-19 virus, which allegedly forced him to isolate himself from others since the month of February 2019 and deprived him of his source of income. In support of these assertions, Mr. Cozak filed a hospitalization summary form dated May 21, 2021, and his cardiology medical record dated August 23, 2016. I note that in both cases, these documents are not in the Certified Tribunal Record and were not before the second officer when she made her decisions of March 4, 2021, as one of the documents was issued after that date and the other was not provided to the officer by the applicant.

[22] In principle, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). In the present case, Mr. Cozak is seeking to introduce a new argument that would support his eligibility for the CERB and the CRB on the basis of his inability to work due to COVID-19. However, the essential purpose of judicial review is the review of decisions, not

the determination, by trial *de novo*, of questions that were not adequately canvassed in evidence before the relevant decision maker (*Access Copyright* at para 19). Accordingly, Mr. Cozak's arguments on this point and the evidence that relates to them will not be considered in my analysis of this application.

[23] In his memorandum, Mr. Cozak also states that the decisions only contain the second officer's conclusions and do not provide any reasons in support of those conclusions. It is true that the letters received on March 4, 2021, by Mr. Cozak informing him of his ineligibility for the benefits requested did not set out the reasoning that led to the conclusion that he had not earned at least \$5,000 in income during the period in question and that the reason for which he was not working was not due to COVID-19. However, as the Federal Court recently reaffirmed in *Laroque v Canada (Attorney General)* 2022 FC 613, the report of the second review prepared by the CRA officers during the review of applications for benefits forms part of the reasons for the decision (*McClintock's Ski School & Pro Shop Inc v Canada (Attorney General)*, 2021 FC 471 at para 26; *Vavilov* at paras 94–98). In any event, I share the opinion of Madam Justice Walker in *Hayat v Canada (Attorney General)*, 2022 FC 131 [*Hayat*], in which she found that it is reasonable for the officer to simply indicate in the refusal letter that the applicant does not satisfy the eligibility criteria and specify which requirements are not satisfied (*Hayat* at para 16). In other words, the decision maker was not required to provide more information in her letter to the taxpayer.

[24] In this case, the Report was sent to Mr. Cozak and filed in the court file on April 20, 2021. As such, Mr. Cozak was informed several months before filing his

memorandum, on October 21, 2021, of the facts and the evidence that the second officer took into account as well as the reasons that led to her decisions. Mr. Cozak was free to challenge the reasonableness of the second officer's decisions in his memorandum based on this information, which he did not do. Mr. Cozak's argument that no reasons were provided in support of the decisions is therefore baseless.

[25] Mr. Cozak also claims that the second officer did not take into account the evidence that he submitted, that being the invoice for professional fees. This assertion is contradicted by the Report itself, which confirms in the section entitled [TRANSLATION] "Documents submitted" that an invoice for a consultation was submitted, in addition to recounting the telephone conversations on this subject between Mr. Cozak and the CRA officers.

[26] A reading of the Report also reveals that the second officer identified aspects of the evidence submitted by Mr. Cozak that were improbable and inadequate, which led her to conclude that he had not earned the alleged sum of \$5,221. Indeed, the second officer noted that the corporation that provided the sum belonged to Mr. Cozak's sons, that it was based in New Brunswick and that it had not declared any income since its incorporation in 2018. In this context, the second officer also noticed that the amount of \$5,221 paid in cash in Quebec City constituted a significant sum, in addition to noting that Mr. Cozak had not provided any documentary evidence to show that he had indeed received this sum in 2019, which was allegedly never deposited.

[27] Furthermore, on the basis of the evidence in the file, the second officer noted that Mr. Cozak had not filed a tax return for 2019 when the CRA contacted him on December 8, 2020, and that it was only after having been found ineligible on December 10, 2020, that he filed one. Mr. Cozak had not declared business income in 2017 or 2018, and his sole proprietorship “daniel cozak consultant” had not filed annual updating declarations in both 2019 and 2020.

[28] Considering all of the evidence, it was not unreasonable for the second officer to conclude that the invoice submitted by Mr. Cozak did not constitute sufficient documentation to support his claims with respect to the existence of the alleged self-employment income. Mr. Cozak may not agree with the second officer’s conclusions, but that fact alone is not enough to justify judicial review.

[29] In this case, Mr. Cozak has not put forth any argument that would allow this Court to identify an error on the part of the second officer in her analysis with respect to the first eligibility criterion. Since the CERBA and the CRBA require that both criteria be satisfied in order for an applicant to be eligible, it is not necessary for me to make a determination on the second eligibility criterion, that being whether the self-employment ceased for reasons related to COVID-19.

V. Conclusion

[30] The application for judicial review will be dismissed.

JUDGMENT in T-569-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. Costs are awarded in favour of the Attorney General of Canada.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-569-21

STYLE OF CAUSE: DANIEL COZAK v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 12, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: SEPTEMBER 28, 2022

APPEARANCES:

Failed to appear

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Simon Dufour

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Montréal, Québec

FOR THE RESPONDENT