Federal Court  Cour fédérale

Date: 20230831

Docket: T-439-23

Citation: 2023 FC 1182

[ENGLISH TRANSLATION]

Montréal, Quebec, August 31, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

KAROLYNE LAVIGNE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Karolyne Lavigne, is seeking judicial review of a decision dated February 16, 2023, [Decision] in which the Canada Revenue Agency [CRA] determined that she was ineligible for the Canada Recovery Benefit [CRB]. The CRA denied Ms. Lavigne's application on the grounds that she had not earned at least $5,000 in net self-employment income

for 2019, for 2020 or in the 12-month period preceding the day of her first application, and that she had not experienced a 50% reduction in her average weekly income from the previous year for reasons related to COVID-19.

[2] Ms. Lavigne contends that the Decision was unreasonable because, in her view, the CRA failed to properly calculate her net income and did not request relevant information regarding the reduction in her income. Ms. Lavigne further maintains that, contrary to the CRA's conclusion, she met both of the criteria noted in the Decision for 15 of the 27 periods for which she claimed income replacement benefits. She also argues that the CRA failed to comply with the rules of procedural fairness in its handling of her case.

[3] For the reasons that follow, Ms. Lavigne's application for judicial review will be dismissed. After reviewing the CRA's reasons, the evidence in the record and the applicable law, I am not persuaded that the CRA's Decision can be characterized as unreasonable or that the CRA breached its duty of procedural fairness. While I understand Ms. Lavigne's frustration with the contradictory treatment she appears to have received from the CRA in amending her tax return for the 2019 taxation year, the evidence before me is insufficient to conclude that the Decision was unreasonable.

II. Background

A. *Facts*

[4] The CRB was part of an arsenal of measures introduced by the federal government starting in 2020 to alleviate the economic repercussions caused by the COVID-19 pandemic.

These were targeted monetary payments intended to provide financial support to workers who had experienced a loss of income due to the pandemic, and who may not have benefited from the protection offered by the usual employment insurance plan. The CRA is the federal agency responsible for administering the CRB, on behalf of the Minister of Employment and Social Development.

[5] The CRB was available for any two-week period between September 27, 2020, and October 23, 2021, to eligible employees and self-employed persons who had experienced a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 [*Aryan*] at para 2). Eligibility criteria for the Canada Recovery Benefit are set out and explained in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRBA]. One of the requirements, among others, was that employees or self-employed persons earned at least $5,000 in employment income or net self-employment income in 2019, 2020, or in the 12 months prior to the date of their most recent application. In addition, employees or self-employed individuals must have experienced a 50% reduction in their average weekly income compared with the previous year for reasons related to COVID-19.

[6] Ms. Lavigne operates a bridal and ball gown boutique of which she is the sole owner. Given that the COVID-19 pandemic significantly slowed down her company's operations, Ms. Lavigne applied to the CRA for the CRB in 2021. She received the CRB for 27 two-week periods from September 27, 2020, to October 9, 2021. The benefits were paid to her on the basis of her applications.

[7] In October 2022, Ms. Lavigne was selected for a review of her eligibility for the CRB. On November 1, 2022, following the first review of her eligibility, Ms. Lavigne received a letter

from the CRA stating that she was not eligible for the benefits she had received. The letter notified Ms. Lavigne that she failed to meet the minimum income criterion of $5,000 earned in 2019, 2020, or in the 12-month period prior to the date of her most recent application, and that she had not experienced a 50% reduction in her average weekly income relative to the previous year for reasons related to COVID-19.

[8] On or about November 11, 2022, Ms. Lavigne sent the CRA a written request for a second review, as authorized by the CRBA. She expressed her disagreement with the way the CRA had calculated her net self-employment income to determine whether she was eligible for the CRB. Ms. Lavigne submitted documents and a letter of explanation in support of her request for review.

[9] On November 28, 2022, the CRA sent the result of the second review to Ms. Lavigne, in a letter that stated once again that she was not eligible for CRB benefits because she had not earned at least $5,000 in net self-employment income in 2019, 2020, or in the 12-month period prior to the day of her first application. The letter failed to mention, however, that Ms. Lavigne had not experienced a 50% reduction in her average weekly income compared to the previous year for reasons related to COVID-19.

[10] On December 5, 2022, the CRA received new documentation from Ms. Lavigne, and a new officer [Officer] conducted a third review of her application for benefits. In that third review, Ms. Lavigne mentioned to the CRA that she had filed an amended tax return for the 2019 taxation year, which now reported net self-employment income in excess of $5,000. The difference between the two versions of her 2019 tax return stemmed from an amendment to the capital cost allowance claimed for the purchase, in 2019, of a commercial building to house her

company. In her initial return, filed in May 2020, prior to her application for CRB benefits, Ms. Lavigne had reported gross business income of $72,560 and a net business loss of $94, resulting in particular from a capital cost allowance claim in the amount of $11,878. In her amended return filed in January 2023, Ms. Lavigne's net business income was reduced to $6,525, due to her choice to claim a lower capital cost allowance, namely $5,258 instead of $11,878.

[11] Ms. Lavigne further confirmed to the CRA that she had experienced no reduction in income for 12 of the 27 periods for which she had sought CRB benefits. Her claim for CRB benefits was therefore reduced to 15 weeks. With regard to her amended tax return for the 2019 taxation year, Ms. Lavigne told the third review Officer that she had amended her return in order to qualify for the CRB, by amending the capital cost allowance she had the discretion to request on her business income.

[12] On February 16, 2023, following the third review of her eligibility, Ms. Lavigne received the CRA's Decision, which again concluded that Ms. Lavigne was not eligible for the CRB benefits she had received. The Decision notified Ms. Lavigne that she still failed to meet the minimum income criterion of $5,000 earned in 2019, 2020, or in the 12 months prior to the date of her most recent application, and that she had not experienced a 50% reduction in her average weekly income compared to the previous year for reasons related to COVID 19.

[13] On March 6, 2023, Ms. Lavigne filed the present application for judicial review of the Decision.

B. *Standard of review*

[14] It is clear that the standard of review applicable to the merits of CRA decisions regarding CRB benefits is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 [*He*] at para 20; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16).

[15] Where the applicable standard of review is reasonableness, the role of a Court of Appeal is to review the reasons given by the administrative decision maker and determine whether the decision was based on "on an internally coherent and rational chain of analysis" and that it was "justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85). A reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is not enough for the decision to be justifiable. In cases where reasons are required, the decision "must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies" [italics in original] (*Vavilov* at para 86). Thus, review according to the standard of reasonableness is concerned with both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87).

[16] The exercise of review according to the standard of reasonableness must involve a rigorous assessment of administrative decisions. However, in analyzing the reasonableness of a decision, a reviewing court must examine the reasons provided with "respectful attention" and seek to understand the reasoning process followed by the decision maker in reaching its conclusion (*Vavilov* at para 84). A reviewing court must adopt an attitude of restraint, intervening only "where it is truly necessary to do so in order to safeguard the legality,

rationality and fairness of the administrative process" (*Vavilov* at para 13). The standard of reasonableness is rooted in the principle of judicial restraint and deference, and it requires reviewing courts to show respect for the distinct role that Parliament has chosen to assign to administrative decision makers rather than to the courts (*Vavilov* at paras 13, 46, 75). A decision cannot be overturned on the basis of mere superficial or incidental errors; rather, to be invalidated, a decision must contain serious flaws, such as internally incoherent reasoning (*Vavilov* at paras 100–101).

[17] The onus is on the party challenging an administrative decision to demonstrate its unreasonableness.

[18] With regard to issues of procedural fairness, however, the Federal Court of Appeal has repeatedly held that such matters do not require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPR*] at paras 33–56). It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54). Consequently, when an application for judicial review concerns procedural fairness and breaches of the principles of fundamental justice, the real issue is not so much the "correctness" of the decision; rather, it is whether, given the particular context and circumstances at issue, the process followed by the administrative decision maker was fair

and offered the parties concerned a right to be heard and a full and fair opportunity to know and respond to the case against them (*CPR* at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54). Reviewing courts are not required to show deference to the administrative decision maker on issues of procedural fairness.

III. Analysis

[19] In her application for judicial review, Ms. Lavigne claims that the Decision was unreasonable and asks the Court to consider certain documents that were not submitted to the CRA's administrative decision makers during the first, second or third reviews of her application for benefits. She further submits that the reasons for the Decision are inadequate and that the third review Officer breached the rules of procedural fairness in rendering the Decision.

[20] None of Ms. Lavigne's arguments are sufficiently satisfactory to me to warrant the Court's intervention.

A. *Admissibility of new evidence*

[21] Ms. Lavigne is attempting to submit new evidence to the Court which, in her opinion, establishes that she met the eligibility criteria for the CRB. It is not disputed that those documents were not before the CRA when the Decision was rendered. Ms. Lavigne is now asking that the Court accept them and consider them as part of her application for judicial review.

[22] As I explained at the hearing, the Court cannot accept such documents in a judicial review. Indeed, it is well established that, on judicial review, the general rule is that a reviewing

court can only consider documentation that was in the possession of the administrative decision maker, with few exceptions (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*AUCC*] at paras 19–20; *Aryan* at para 42). These exceptions apply in particular to documents that (1) provide background information that may help a reviewing court understand the issues; (2) bring attention to procedural defects or breaches of procedural fairness in the administrative proceeding; or (3) highlight the complete absence of evidence before the decision maker (*Tsleil Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23–25; *AUCC* at paras 19–20; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16–18). In my opinion, it is clear that the documents that Ms. Lavigne is seeking to file with the Court do not meet any of these exceptions.

[23] I would emphasize that the primary purpose of a judicial review is to review administrative decisions, not to decide, through a trial *de novo*, issues that have not been adequately considered on the evidence before the appropriate administrative decision maker (*Cozak v Canada (Attorney General)*, 2022 FC 1351 [*Cozak*] at para. 22). An application for judicial review is not an appeal (*Paiani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 514 at para 1).

[24] Given that Ms. Lavigne's documents were not submitted to the third review Officer, the Court, in its judicial review, cannot examine them to determine the reasonableness or legality of the Decision (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 17). They are not part of the case under review. In any event, I would add that this would not change the outcome of

the Decision, because even if I was to consider those documents, I am not convinced that Ms. Lavigne has demonstrated the unreasonableness of the Decision.

B. *Reasoning behind Decision*

[25] In her other written submissions, Ms. Lavigne complains about the terseness of the CRA's letter of February 16, 2023, which amounts to a succinct statement of the eligibility criteria that Ms. Lavigne failed to meet.

[26] However, it is well established that reports prepared by a CRA review officer in the context of a request for a review of CRB eligibility form part of the reasons for CRB decisions (*He* at para 30; *Aryan* at para. 22). For example, in *Cozak*, the Court concluded that, even if the decision letters did not spell out the reasoning that led to the conclusion that the applicant was ineligible, the second review report prepared by CRA officers during the reconsideration of benefit applications formed part of the reasons for the decision rendered and that it was reasonable for the CRA to simply mention, in its refusal letter, that the applicant failed to meet the eligibility criteria by clarifying which requirements were not met (*Cozak* at para 22).

[27] In Ms. Lavigne's case, it is clear from the record that the third review Officer's notes outlined all of the facts and reasoning that led to the Decision. I therefore share the opinion of the Attorney General of Canada [AGC] to the effect that, when the Decision is read with the Officer's notes, the CRA has sufficiently justified the Decision rendered against Ms. Lavigne.

C. *Reasonableness of Decision*

[28] The crux of Ms. Lavigne's arguments concerns the unreasonableness of the Decision. Ms. Lavigne maintains that the CRA's Decision was unreasonable given that the conclusions on her ineligibility for CRB benefits erroneously disregarded the evidence provided in connection with her net business income for 2019 and the reductions in her income for 15 CRB periods. Ms. Lavigne added that she met all of the eligibility criteria for the CRB and argued that the CRA had erred when it failed to consider the evidence provided by her accountant with regard to her net business income for 2019.

[29] With respect, I do not share Ms. Lavigne's view.

[30] In the Decision, the CRA denied Ms. Lavigne's eligibility for the CRB for two reasons: (1) failure to have earned at least $5,000 in employment income (before tax) or net self-employment income in 2019, 2020 or in the 12-month period prior to the date of her first application; and (2) not having experienced a 50% reduction in her average weekly income compared to the previous year for reasons related to COVID 19.

[31] The Certified Tribunal Record contains the notes of the three CRA officers who analyzed and reviewed Ms. Lavigne's case. These notes were recorded by the CRA officers in the course of their duties and form part of the Decision. They show that the third review Officer was well aware of Ms. Lavigne's initial tax return for 2019 and her amended return under which she declared net company income of $6,525, following her choice to claim a reduced capital cost allowance of $5,258. The Officer specifically took into account Ms. Lavigne's amended return and considered it in her notes of February 7 and February 14, 2023.

[32] The Officer's notes further state that Ms. Lavigne's tax returns for the 2019, 2020 and 2021 tax years showed that her gross business income had never been higher compared to her tax return history. The Officer also noted the very candid admission, made twice by Ms. Lavigne during the telephone interview of February 9, 2023, to the effect that the amendment to her tax return for 2019 was intended to make her eligible for the CRB and to have the $5,000 in net income required by the eligibility criteria.

[33] For her part, the CRA's second review officer had also noted, on November 24, 2022, that Ms. Lavigne's tax return history showed that she had not declared any net business income in excess of $5,000 since she began operating her bridal gown boutique in 2015, except for in 2021.

[34] In such circumstances, I must determine whether it was unreasonable for the third review Officer, relyingon the evidence before her, to conclude that Ms. Lavigne had not demonstrated that she had met the minimum net income threshold for purposes of the eligibility criteria for CRB benefits.

[35] The CRBA does not define the term "income", but subsection 3(2) of the Act provides that the income from self-employment referred to in paragraphs 3(1)(d) to (f) is revenue "less expenses incurred to earn that revenue". This is what establishes the taxpayer's actual situation, and what must be considered for purposes of eligibility for the CRB.

[36] The capital cost allowance initially taken by Ms. Lavigne against her income for the 2019 taxation year resulted from an expense incurred to purchase a commercial building used to house her company's operations. The expense was therefore incurred to earn her business income for

the year in question. Ms. Lavigne claimed a capital cost allowance when she filed her tax return, given that this deduction reflected her company's actual net income for the 2019 taxation year. That said, Ms. Lavigne acted lawfully when she amended her 2019 tax return by reducing that capital cost allowance, as it is a deduction that anyone can take in the current year or carry forward to future years.

[37] However, even if Ms. Lavigne was entitled to amend her capital cost allowance for tax purposes, I am not persuaded that it was unreasonable for the Officer to conclude that an amendment made for the sole purpose of being eligible for the CRB does not have the effect of altering the fact that the net income of Ms. Lavigne's company did not exceed the $5,000 threshold. In other words, it was not unreasonable, in the particular circumstances of Ms. Lavigne's case, for the Officer not to countenance Ms. Lavigne's tax choice and to conclude, on the basis of all the evidence before her, that Ms. Lavigne had failed to demonstrate that she met the $5,000 eligibility criterion.

[38] On reading the Decision and the third review Officer's notes, I note that the CRA considered Ms. Lavigne's arguments as well as the business income and expense information she submitted. Furthermore, the Officer remained faithful to the text of the CRBA, which defines self-employment income as "revenue from self-employment less expenses incurred to earn that revenue". What must guide the CRA in calculating the income of a self-employed person giving rise to the CRB is, first and foremost, this definition established by Parliament.

[39] And it is not disputed that failure to meet the $5,000 criterion alone was sufficient to deny the CRB benefits sought by Ms. Lavigne.

[40] To be clear, this does not at all mean that Ms. Lavigne was dishonest in submitting her CRB applications or amending her 2019 tax return in an attempt to qualify for the CRB. It only means that she had not established her eligibility for benefits to the satisfaction of the Officer.

[41] I recognize that it may seem contradictory and inconsistent for the CRA not to recognize the $5,000 net income for CRB benefit purposes, while allowing it at the level of an amended tax return and the associated additional tax assessment. I note that Ms. Lavigne's amended tax return for 2019 was accepted by the CRA and reassessed on January 9, 2023, in the amount of just over $731.

[42] I should mention in passing that nothing would prevent Ms. Lavigne from trying to have this reassessment reversed by submitting a new amendment to her 2019 tax return and reverting to the previous situation with respect to her capital cost allowance.

[43] However, as the AGC pointed out, the Court has repeatedly held that, in terms of eligibility for the Canada Emergency Response Benefit or 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 (*Aryan* at para 35).

[44] The onus was on Ms. Lavigne to establish, on a balance of probabilities, that she met the criteria of the CRBA (*Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15; *Walker v Canada (Attorney General)*, 2022 FC 381 at paras 37, 55). The third review Officer concluded that the documents and explanations provided by Ms. Lavigne failed to establish her eligibility for the CRB.

[45] I am satisfied that the reasons provided in the Officer's letter and notes justify the Decision in a transparent and intelligible manner. They enable the Court to understand the basis on which the Decision was rendered and confirm that no relevant facts were omitted. The third review notes are rigorous and consistent, demonstrating in particular that the CRA carefully reviewed Ms. Lavigne's documents and gave her an opportunity to respond and provide evidence of her self-employment income. The Officer's notes establish that she did not disregard the documents provided by Ms. Lavigne, but that she deemed them insufficient and unsatisfactory to rely on in support of her application.

[46] The CRA had a duty to explain its Decision, and I conclude that it has properly done so in this case. Since *Vavilov*, particular attention must now be paid to the decision-making process and the justification of administrative decisions. One of the objectives advocated by the Supreme Court in applying the standard of reasonableness is to "develop and strengthen a culture of justification in administrative decision making" (*Vavilov* at para 2, 143). Ultimately, a reviewing court must "develop an understanding of the decision maker's the reasoning process" and determine "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99).

[47] In Ms. Lavigne's case, the record suggests that the Officer relied on the very language of the CRBA with respect to net income, that she followed rational, coherent and logical reasoning in her analysis, and that she considered Ms. Lavigne's arguments and documentation. Although Ms. Lavigne would have preferred a different outcome, the Decision is consistent with the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 105–107).

[48] I would reiterate that the reasons for an administrative decision do not have to be exhaustive or perfect. Indeed, the standard of review for reasonableness is not the degree of perfection of the decision, but rather its reasonableness (*Vavilov* at para 91). It is sufficient that the reasons are intelligible and justify the administrative decision. That is the case here.

[49] Moreover, in the context of an application for judicial review, it is not the role of a reviewing court to reweigh the evidence (*Vavilov* at para 125). Ms. Lavigne has certainly demonstrated her disagreement with the conclusion reached by the Officer and with the weight given to her documents in support of her net income; but that is not a reason for the Court to intervene. The Officer's reasons illustrate a straightforward internal logic, and it is not up to the Court to substitute a conclusion it might find preferable. All in all, there are no serious shortcomings in the Decision that would hamper the analysis and that would be likely to undermine the requirements of justification, intelligibility and transparency.

[50] In a judicial review such as this, reviewing courts must always examine the conclusions of an administrative decision maker in terms of reasonableness and deference, with respectful attention to the decision maker's reasons and expertise. It is not appropriate for a reviewing court to conclude that an administrative decision maker's decision was unreasonable simply because the outcome displeases it, seems generally unjust, or could have been disposed of otherwise. Even in situations in which the factual context of an application may prompt a degree of sympathy, as in Ms. Lavigne's case, a reviewing court must resist the temptation to rule on the application for judicial review on the basis of the conclusion it might itself have reached had it been in the position of the decision maker (*Braud v Canada (Citizenship and Immigration)*, 2020 FC 132 at paras 51–52).

[51] In *Trigonakis v Sky Regional Airlines Inc*, 2022 FCA 170, the Federal Court of Appeal recently reiterated the limits of a reviewing court's role. It is useful to reproduce what it said at paragraph 9:

> [9] In oral argument, the appellant emphasized, with passion and eloquence, what he personally viewed as the general injustice of this situation, especially in light of his background and motives and his employer's conduct and motives. However, when conducting reasonableness review, the task of the Federal Court and this Court is limited: in cases like this, we can only vet the acceptability and defensibility of an administrative decision, such as the decision of the adjudicator here, based on the legal standards set in the legislation, any other legal documents such as contracts, and the facts found in the evidentiary record. We cannot operate outside of these constraints. We cannot do whatever might strike someone—or us—as right or just in a general sense.

[52] I can only adopt the principles enunciated by the Federal Court of Appeal. The standard of reasonableness imposes a discipline on the courts, which must respect Parliament's choice and not usurp the decision-making authority that Parliament has entrusted to administrative decision makers.

[53] I add the following remarks. Ms. Lavigne's case reminds us that we must not confuse the tax measures that govern tax returns with the economic and social support measures such as the CRB benefits and other benefits put in place by the federal government following the COVID-19 pandemic. Admittedly, both types of measures are administered by the CRA. However, this does not mean that they respond to the same imperatives.

[54] In her submissions, counsel for the AGC relied on the Supreme Court of Canada's decision in *Canada (Attorney General) v Collins Family Trust*, 2022 SCC 26 [*Collins*], to argue that Ms. Lavigne could not use tax reorganizations to [TRANSLATION] "get around" the CRB

criteria. I would approach the issue differently, as I am not convinced that these principles of tax law may necessarily be imported into the analysis of the treatment of CRB applications or other benefits provided by the federal government to compensate for the pandemic's negative economic impact.

[55] In my opinion, the logic of *Collins* cannot extend to the facts of the present case. At paragraph 21 of Collins, the Supreme Court stated that " . . . courts do not look with favour upon attempts to rewrite history in order to obtain more favourable tax treatment". This conclusion was based on the principle "that tax liability is based on what was actually agreed upon and done, not on what, in retrospect, a taxpayer should have done or wished it had done" [emphasis added] (*Collins* at para 21, citing *771225 Ontario Inc. v Bramco Holdings Co* (1995), 21 OR (3d) 739). However, the retrospective analysis of tax treatment discussed in *Collins* does not apply to Ms. Lavigne's situation in the context of a CRB application.

[56] Indeed, the CRB cannot be considered a "tax liability", since it is not a tax measure, a tax benefit or a tax obligation. Even if the program is administered by the CRA, this is not enough to assign it the status of a tax measure. Rather, it is, first and foremost, an economic and social assistance measure, designed to overcome the limitations of the employment insurance program in the difficult context of the COVID-19 pandemic. Counsel for the AGC herself stated that the CRB was not a tax measure, but rather a government assistance program. However, it is clear that *Collins* deals with a "tax liability" arising from the ordinary operation of a tax statute (*Collins* at para 22) and does not concern the context of a government economic support measure such as the CRB.

[57] To be clear, in reorganizing her capital cost allowance as she did in her amended tax return for 2019, Ms. Lavigne failed to take steps to avoid a tax liability. Instead, she opted to reorganize her tax return in an attempt to meet the eligibility criteria of a government support program. In my opinion, it is incorrect to equate an amendment to one's income in an attempt to meet the eligibility criteria of an economic support measure such as the CRB with a reorganization to (lawfully) avoid a tax liability. The two situations are quite different and must not be conflated. Furthermore, the fact that the CRB is added to the taxable income of the recipients of these benefits is a further indication that this benefit is not a tax payable or a tax liability, but rather a source of income that may itself give rise to a tax liability.

[58] In the same vein, the principle established in *Commissioners of Inland Revenue v Duke of Westminster*, [1936] AC 1 (HL Eng) [*Duke of Westminster*] that "taxpayers are entitled to arrange their affairs to minimize the amount of tax payable" (*Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54 at para 11, citing *Duke of Westminster*; *Canada v Alta Energy Luxembourg SARL*, 2021 SCC 49 at para 29) cannot be extended to CRB cases such as Ms. Lavigne's. CRB benefits are not taxable benefits. CRB benefits are not taxes payable and therefore do not fall within the scope of *Collins* and *Duke of Westminster*. It is therefore incorrect to claim, under cover of the principle established by *Duke of Westminster*, that taxpayers have the legal right to organize their tax returns in order to be able to benefit from the advantages of an economic and social support measure such as the CRB.

D. ***Breach of procedural fairness***

[59] Lastly, in her memorandum of fact and law, Ms. Lavigne criticizes the third review Officer for having rendered her Decision without first having contacted Ms. Lavigne's accountant, as Ms. Lavigne had reportedly requested.

[60] It is true that the third review Officer had a telephone conversation with Ms. Lavigne on February 9, 2023, but I must note that there is nothing in the evidence in the record to suggest that the CRA Officer made a commitment to contact Ms. Lavigne's accountant. I understand that this is Ms. Lavigne's recollection or contention, but there is nothing in the Certified Tribunal Record to support Ms. Lavigne's assertions to that effect. Rather, I note that Ms. Lavigne was given multiple opportunities to present her documents and send her information to the third review Officer during the telephone conversation of February 9, 2023, as well as at the other stages of the first, second and third reviews. Those documents included, in particular, the documents prepared by Ms. Lavigne's accountant, her explanation of the amendments to capital cost allowances for 2019 and her weekly income table for the various CRB periods.

[61] I would further add that nowhere in the CRA's file is there any indication whatsoever that a CRA officer told or even suggested to Ms. Lavigne or her accountant that an amendment to her tax return for 2019 would be sufficient for her to qualify for the CRB.

[62] I am therefore satisfied that Ms. Lavigne was provided with a fair and equitable opportunity to discuss her case with the third review Officer, that she was aware of the evidence to be rebutted and had an opportunity to respond to it, and that no breach of procedural fairness occurred in the CRA's handling of her case.

IV. Conclusion

[63] For the foregoing reasons, the applicant's application for judicial review of the CRA's Decision is dismissed. Under the standard of reasonableness, the reasons for the Decision were required to demonstrate that the CRA's conclusions were based on an internally coherent and rational analysis and were justified in light of the legal and factual constraints to which the administrative decision maker was subject. That is the case here. The analysis conducted by the CRA has all the requisite attributes of transparency, justifiability and intelligibility, and the Decision is not tainted by any reviewable error. In addition, there was no breach of the rules of procedural fairness in the process followed by the CRA. There is therefore no reason for the Court to intervene.

[64] The parties agreed that there would be no award as to costs.

JUDGMENT in T-439-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. The is no award as to costs.

"Denis Gascon"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-439-23
STYLE OF CAUSE:	LAVIGNE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	AUGUST 21, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	AUGUST 31, 2023

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Noémie Vespignani	FOR THE RESPONDENT

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