Federal Court Cour fédérale

Date: 20220926

Docket: T-611-22

Citation: 2022 FC 1335

Ottawa, Ontario, September 26, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

ROBERT DAVID KNIGHT

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Canada Revenue Agency [CRA], dated March 16, 2022, which found that the Applicant was not eligible for the Canada Recovery Benefit [CRB] because he did not meet the "Income Requirement". To succeed, the Applicant must show that the Officer's decision was unreasonable.

II. Facts

[2] The following facts are not contested.

[3] The CRB was implemented by legislation enacted by the Parliament of Canada as a response to the COVID-19 pandemic: *Canada Recovery Benefits Act*, S.C. 2020, c. 12. Parliament limited its availability to those who satisfy certain requirements. One of these criteria required that an applicant earned at least $5,000 in 2019, 2020 or in the 12 months before the date of an application. Secondly, Parliament decided that only earnings from the following sources qualified as earnings:

- employment income (total or gross pay)
- net self-employment income (after deducting expenses)
- maternity and parental benefits from EI or similar QPIP benefits
- regular or special benefits from EI if your EI claim began on or after September 27, 2020

[4] In 2019 and 2020, the Applicant's income was as follows:

a) In 2019, the Applicant earned employment income of $4,672.00.

b) In 2020, the Applicant earned employment income of $3,674.00.

c) The Applicant also received income from a registered retirement income fund (as indicated on the "T4RIF" slip) of approximately $30,000 for each of 2019 and 2020. T4RIF income, however is not considered an eligible source for the purpose of the CRB.

[5] On September 7, 2020, the CRA [the First Decision] found that the Applicant was not entitled to the CRB because he did not earn at least $5,000 in employment or self-employment in the relevant timeframe. In addition he did not satisfy an additional precondition of receiving CRB, which is not in issue here, because he did not have a 50% reduction in his average weekly income compared to the previous year.

[6] On September 23, 2021, the Applicant objected to the First Decision and raised several issues, including:

- A violation of the Applicant's *Charter* rights, namely sections 7, 12, and 15
- The CRA's failure to considering income that the Applicant received by way of withdrawing "pension funds"
- Other unrelated allegations concerning "torture" by CN Rail, victimisation by the "Masons", and bias against him as an "old white male"

[7] On March 16, 2022, the CRA considered the objection and once again found that the Applicant was not entitled to the CRB [the Second Decision].

[8] The Applicant seeks judicial review of the Second Decision. The Respondent has noted the Applicant has raised issues not previously addressed, including that the Applicant made "$5057.50" in the 12 months prior to making his application, and that the CRA incorrectly considered his net income, rather than his gross income.

III. Decision under review

[9] Both decisions were communicated through a series of notes provided by CRA officers. I will focus on the Second Decision, dated March 16, 2022, because it is the one the Applicant seeks to have judicially reviewed.

[10] The Officer notes the Applicant did not have the required employment or self-employment income of $5,000 in either 2019 or 2020. The Officer's notes suggest the Applicant was under the impression his "T4RIF" income was eligible as self-employment income. This was not the case because it was not income eligible for the purposes of determining CRB eligibility.

[11] Additionally, the notes points out that the Applicant did not provide any documents supporting his income eligibility. The Applicant's claim was therefore denied.

IV. Issues

[12] The only issue in this matter is whether the CRA's decision is reasonable.

V. Standard of Review

[13] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada's decision in

Vavilov, the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable 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). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added]

VI. Analysis

[14] I will first address a preliminary matter posed by the Respondent, who seeks an order amending the style of cause such that the Attorney General of Canada is the proper respondent in this case. This request is granted effective immediately.

[15] Moving to the substantive portions of this application, the Applicant who is self-represented, has not submitted a traditional memorandum of fact and law. Instead he filed a one paragraph submission:

> Memorandum of fact and law. I am making this application for Judicial review under the authority of the March 16, 2022, Second Review letter of no adjustment sent to be by the Canada Revenue Agency, on the Authority of Donna Boivin, Manager, Canada Emergency Benefits Validation, who was granted said authority under the *Canada Revenue Agency act*, the *income tax act* and the *employment insurance act*. Thus I am making the this application for Judicial Review, under any and all applicable Federal, Provincial, laws, and that gave force to the second review letter of Canada Revenue Agency of Donna Boivin of March 16th, 2022, under but not limited then, the *Canada Revenue Act*, the *Charter of rights and freedoms*, the *Income tax act*, the *Employment Insurance act*.

[16] At the hearing, the Applicant made a number of factual and legal submissions, essentially to the effect the legislation enacted by Parliament governing the eligibility to CRB was too rigid, and failed to support him in his circumstances. He has spent a long time in the work force and paid taxes. He notes while those who received more than $5000.00 got the CRB, but those who earn just less received no CRB benefit because of this cut off. He also noted that while employment income is considered eligible, so too is income received as maternity benefits and EI. But the qualifying income excludes withdrawals from savings as occurred in his case.

[17] The difficulty with his submissions is that this Court must live within the thresholds established by Parliament, including the $5000.00 income thresholds, and the definitions of income for entitlement purposes.

[18] I agree with the Applicant that there is rigidity in respect of both the $5,000.00 cut off and the definition of income for entitlement purposes.

[19] However, Parliament's decision to place limits of who may receive CRB is not a matter I may remedy on this application for judicial review.

[20] Any change in the legislation of Parliament, must come from Parliament.

[21] I agree with the Respondent this Court is unable to grant the *Charter* relief the Applicant seeks. As presently advised and on the record before me, I am not satisfied the Applicant has established the provisions of the CRB legislation infringe rights under sections 7, 12 and 15 of the *Charter*. The Applicant has also not followed the requirements of section 57 of the *Federal Courts Act* to give notice of constitutional issues to the various attorneys general, which is an additional barrier to the relief he seeks.

[22] The Respondent submitted the CRA was bound to follow the CTB legislation as enacted by Parliament, namely *Canada Recovery Benefits Act*, S.C. 2020, c. 12, and subsection 2 thereof. I agree.

[23] Parliament has not given any discretion in the CRA to grant relief from the rigidity of the CRB legislation either in terms of its $5,000.00 minimum threshold, or in terms of the definitions of income for the purposes of CRB eligibility.

[24] It is reasonably established on the record that as CRA found, the Applicant did not meet the $5,000.00 income thresholds for 2019, 2020, or in the 12 months prior to his CRB application.

[25] It is also reasonably established as a factual matter, again as CRA found, that the Applicant does not meet Parliament's definition of qualifying income for CRB purposes. Pension funds may not reasonably be considered in the eligibility assessment.

[26] I also accept as reasonable the fact finding by CRA that the Applicant made less than $5,000 in the 12 months prior to his application. The Applicant's assertion that he made "$5057.50" in the required 12-month period may not be reasonably entertained because it is factually incorrect. Even if this Court were to pick a deemed day of his application as the date most favourable to the Applicant, his income would still fall under the $5,000 threshold on the evidence before the Court.

[27] The Respondent also submits CRA properly considered the Applicant's gross income in its assessment, contrary to the Applicant's objection. The amounts calculated by the CRA, in the Respondent's submissions, are based on the "total insurable" earnings indicated on the

Applicant's Record of Employment [ROE]. These total insurable earnings reflect the Applicant's gross income. I am unable to find any unreasonableness in this respect.

[28] Similarly, on this point, I also conclude the CRA accurately and therefore reasonably considered the Applicant's gross income in its assessment of eligibility. This is clear in the second review letter sent to the Applicant, which notes that the income being considered is that "before taxes". This is also noted in the Record of Employment.

[29] The Supreme Court of Canada requires me to respect both constraining law and constraining facts. I am not permitted to make findings that go against the law, nor may I make findings that are not supported by evidence.

[30] Given the constraints found in the CRB legislation and the constraints found in the facts of this case concerning the Applicant's income in the relevant time periods, I am required to and do find the Decision reasonable. It is justified on the facts and law, and is transparent and intelligible.

[31] That said, counsel for the Respondent will provide the Applicant with the coordinates of a local victim services organization that might be able to assist him, as he submits he is the victim of crime. The Court appreciates this. The Court also raised the possibility of the Applicant making an application for social assistance.

VII. Conclusion

[32] In my respectful view, the Applicant has not established the CRA's Second Decision is unreasonable. The CRA reasonably assessed and applied the eligibility requirements enacted by Parliament. Therefore, the Application for judicial review is dismissed.

VIII. Costs

[33] The Respondent did not request costs and no costs are awarded.

JUDGMENT in T-611-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended with immediate effect to show the Attorney General of Canada as Respondent.
2. The application for judicial review is dismissed.
3. There is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-611-22
STYLE OF CAUSE:	ROBERT DAVID KNIGHT v THE ATTORNEY GENERAL OF CANADA
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APPEARANCES:

Robert David Knight	FOR THE APPLICANT (ON HIS OWN BEHALF)
Alexander Millman	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT