

CANADA / JUDGMENT

Li v. Canada (Attorney General)

2025 FC 346

COURT
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21 February 2025

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Dockets: T-2055-24 T-2060-24 Citation: 2025 FC 346 Ottawa, Ontario, February 21, 2025 PRESENT:
The Honourable Madam Justice Turley Docket: T-2055-24 BETWEEN: BAOZHONG LI Applicant
and ATTORNEY GENERAL OF CANADA Respondent Docket: T-2060-24 AND BETWEEN:
BAOZHONG LI Applicant and ATTORNEY GENERAL OF CANADA Respondent JUDGMENT AND
REASONS I. Overview [1] The Applicant seeks judicial review of two decisions made by an
Emergency Benefits Validation officer [Officer] of the Canada Revenue Agency [CRA],
determining that he was not eligible for the Canada Emergency Response Benefit [CERB] and the
Canada Recovery Benefit [CRB] because he had not demonstrated net self-employment income of
at least \$5,000 in the 12 months prior to his benefits applications. I heard both applications for
judicial review at the same time as the Officer's decisions were based on the same reasoning.

[2] I am dismissing these judicial review applications as the Applicant has failed to demonstrate
any reviewable errors in the Officer's decisions. The Officer reasonably concluded that the
Applicant had failed to establish his eligibility for the benefits due to a lack of
documentation. Further, I am unable to find any procedural unfairness in the Officer's
decision-making process. The Applicant was given ample opportunity to provide supporting
documentation to establish his eligibility. II. Background [3] The Applicant is a licensed
realtor in Toronto. He received seven CERB payments between March 15, 2020, and
September 26, 2020. He then received 27 CRB payments between September 27, 2020, and
October 9, 2021. In total, the Applicant received \$14,000 in CERB payments and \$24,600 in
CRB payments.

[4] During the relevant time period, the Applicant co-owned two rental properties with his wife
and received a share of the rental income. According to the Applicant, part of that income
was compensation for his work managing both properties.

- [5] In March 2023, the Applicant was advised that his eligibility for the CERB and the CRB was being reviewed. He was asked to provide documents to prove his eligibility. In response, the Applicant submitted listing information for his rental properties, as well as a letter setting out his calculations of the amount paid to him as management fees in 2019 and 2020. Based on these management fees, the Applicant asserted that he had the required \$5,000 in net self-employment income.
- [6] In June 2023, a CRA officer requested proof of payment (such as bank statements) for the Applicant's management work. The Applicant explained that management and rental incomes were paid as one combined lump sum, and so bank statements would not show distinct payments for his different income sources. By letters dated June 19, 2023, the CRA officer determined that the Applicant was not eligible for the CERB nor the CRB based on a lack of proof of net self-employment income over \$5,000.
- [7] The Applicant requested a second review of these decisions on June 26, 2023. He submitted the following documents in support of his reconsideration request: the rental property listings, correspondence between him and the tenant of one of the properties regarding outstanding rent, an eviction notice, e-transfers for the outstanding rent, a property value assessment notice, and an Assessment Review Board decision. According to an accompanying letter of explanation, these documents were meant to prove the Applicant's management work. On July 15, 2024, the Applicant submitted statements of real estate rentals for each property.
- [8] During telephone conversations with the Applicant on July 16 and 17, 2024, the Officer advised the Applicant that the CRA required documents that proved his self-employment income. The Applicant advised that he had no documentary proof of payment, but that his letter explained how he took his self-employment income from the rental income payments.
- [9] The Officer determined that the Applicant had failed to prove his eligibility because there were no documents, such as bank statements, to support what he "actually made" nor any documentation to show that self-employment income was earned. By letters dated July 25, 2024, the Officer confirmed that the Applicant was ineligible for the CERB and the CRB. These are the decisions under review. III. Issues and Standard of Review
- [10] As a preliminary matter at the hearing, I raised the issue of the proper respondent. In his Notices of Application, the Applicant named both the Minister of National Revenue (Canada Revenue Agency) and the Attorney General of Canada as Respondents. In accordance with Rule 303(2) of the Federal Courts Rules, SOR/98-106, however, the only proper respondent is the Attorney General of Canada. As a result, I ordered that the style of cause be amended to remove the Minister of National Revenue as a respondent.
- [11] The Applicant argues that the Officer's decisions are not justified, misapprehended his evidence, ignored attribution rules, and was procedurally unfair.

- [12] The standard of review applicable to determinations of eligibility for benefits administered by the CRA is reasonableness: *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16. 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”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: Vavilov at para 100; Mason at paras 59–61.
- [13] Where breaches of procedural fairness are alleged, no standard of review is applied but the Court’s reviewing exercise is “best reflected on a correctness standard”: *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]. When assessing whether procedural fairness was met, a reviewing court asks whether the “procedure was fair having regard to all of the circumstances”: CPR at para 54.
- IV. Analysis [14] The CERB and the CRB are federal government measures that were introduced in response to the COVID-19 pandemic, to offer financial support to employed and self-employed Canadians. The CERB was implemented through the Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 [CERB Act]. The enabling legislation for the CRB is the Canada Recovery Benefits Act, SC 2020, c 12, s 2 [CRB Act]. Both Acts require a total income earned of at least \$5,000 during the relevant time period to obtain the benefits: CERB Act, s 2; CRB Act, ss 3(1)(d), 3(1)(e).
- A. The Officer’s decision is reasonable [15] I do not agree with the Applicant that the Officer’s decisions are not justified and that they misapprehended his evidence. Based on the record, the Officer reasonably determined that there was no documentary evidence to demonstrate that the Applicant had earned the requisite self-employment income as prescribed by the legislation.
- [16] While the Applicant asserted that he had earned self-employment income from managing the rental properties he co-owned with his wife, he had no documentation proving such an agreement or the receipt of such income. Indeed, he told the Officer that bank statements would not show payment of any management fees as they were deposited as part of his rental income. In his submissions before the Court, the Applicant stated that there was no written agreement; only an oral agreement as to what would be paid as property management fees. He stated that he did not know that he would be required to show some kind of agreement.

- [17] During the CRA's review process, the Applicant submitted documentation showing the breakdown of his rental income for each year and what was paid as management fees. The Applicant acknowledged that this documentation was, however, created "after-the-fact" for the purposes of the CRA review. As the Applicant put it, this documentation was meant to show how his arrangement worked "behind the scenes". However, it was reasonable for the Officer to not accept this documentation as sufficient and to require proof of payment.
- [18] The CRA review process is document-driven and the onus is on applicants to prove their eligibility with evidence. This Court has consistently held that refusing applications because there is no proof of the income in question actually being paid is reasonable: *Palmer v Canada (Attorney General)*, 2024 FC 518 at para 22; *Singh v Canada (Attorney General)*, 2024 FC 51 at paras 37–38; *Zhang v Canada (Attorney General)*, 2023 FC 1761 at para 25; *Dumbrava v Canada (Attorney General)*, 2023 FC 1011 at para 48.
- [19] Furthermore, the Applicant has failed to establish that the Officer's reasoning violates the attribution rules set out in the Income Tax Act, RSC, 1985, c 1 (5th Supp) [ITA]. I agree with the Respondent that the Applicant does not specify how the attribution rules impacted the Officer's decision. This argument also does not dispel the issue discussed above regarding a lack of documentation. In addition, the ITA, the CERB Act, and the CRB Act are distinct pieces of legislation with different definitions. As such, the income attribution rules from the former have no bearing on the operation of the latter two.
- [20] While I have sympathy for the Applicant's situation, I am unable to find that the Officer's decision was unreasonable. It is transparent, justified, and intelligible. B. There was no breach of procedural fairness [21] The Applicant argues that the Officer's decision was procedurally unfair. In that regard, he relies on the Court's decision in *Komelva v Canada (Attorney General)*, 2024 FC 1562 [Komleva]. As the Supreme Court has made clear, determining whether procedural fairness has been breached depends on the particular circumstances of each case: *R v Nahanee*, 2022 SCC 37 at para 53; *Vavilov* at para 77.
- [22] In *Komelva*, the CRA decision was procedurally unfair because the applicant was not given an opportunity to address the officer's concerns with her evidence. As a result, the applicant did not know the case she had to meet: *Komleva* at paras 28–38. Here, however, the Applicant was fully apprised of the Officer's concerns about the lack of documentation and what was required to prove his eligibility for benefits. Indeed, as the record shows, at both review levels, the Applicant was asked to submit documentation (such as banking records) that would show the actual payment of property management fees. Here, the Applicant knew the case he had to meet. As such, there was no procedural unfairness. V. Conclusion [23] For these reasons, these two applications for judicial review are dismissed. The Respondent advised at the hearing that they would not be seeking costs. I agree that, in the circumstances, no costs should be payable by the Applicant. JUDGMENT in T-2055-24 and T-2060-24 THIS COURT'S JUDGMENT is that: The style of cause is amended to remove the Canada Revenue Agency as a respondent. The applications for judicial review are dismissed without costs. "Anne M. Turley" Judge FEDERAL COURT SOLICITORS OF RECORD Dockets:

T-2055-24 AND T-2060-24 DOCKET: T-2055-24 STYLE OF CAUSE: BAOZHONG LI v ATTORNEY GENERAL OF CANADA AND DOCKET: T-2060-24 STYLE OF CAUSE: BAOZHONG LI v ATTORNEY GENERAL OF CANADA PLACE OF HEARING: held BY WAY OF VIDEOCONFERENCE DATE OF HEARING: February 4, 2025 JUDGMENT AND REASONS: TURLEY J. DATED: February 21, 2025 APPEARANCES: Baozhong Li FOR THE APPLICANT ON HIS OWN BEHALF Carl Venne FOR THE RESPONDENT SOLICITORS OF RECORD: Attorney General of Canada Ottawa, Ontario FOR THE RESPONDENT

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