

CANADA / JUDGMENT

Mullone v. Canada (Attorney General)

2024 FC 1999

COURT

Federal Court

DECIDED

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Mullone v. Canada (Attorney General) Court (s) Database Federal Court Decisions Date 2024-12-10 Neutral citation 2024 FC 1999 File numbers T-1581-22 Decision Content Date: 20241210 Docket: T-1581-22 Citation: 2024 FC 1999 Montréal, Québec, December 10, 2024 PRESENT: The Honourable Madam Justice Saint-Fleur BETWEEN: MATTHEW MULLONE Applicant and ATTORNEY GENERAL OF CANADA Respondent JUDGMENT AND REASONS I. Overview [1] The Applicant, Matthew Mullone [Applicant], seeks judicial review of three decisions dated July 13, 2022, rendered by a Canada Revenue Agency [CRA] officer, which found him ineligible for the following COVID-19 relief benefits: the Canada Recovery Benefit [CRB], the Canada Recovery Sickness Benefit [CRSB] and the Canada Worker Lockdown Benefit [CWLB] [together, the Benefits].

- [2] The CRA officer found the Applicant ineligible because he failed to meet the statutory requirement of having made at least \$ 5,000 in 2019, 2020, or in the 12-month periods preceding the days on which he applied for each of the Benefits.
- [3] The Applicant argues that the decisions denying him the Benefits are unreasonable because the CRA officer's calculations of his net income erroneously deducted the Workers' Compensation Benefits [WCB] he received in 2019, 2020 and 2021, causing his annual earnings to fall below \$ 5,000.
- [4] The Attorney General of Canada [AGC] submits that WCB are not an eligible source of income under the governing statutes and must therefore be deducted when determining the Applicant's net income. Accordingly, the AGC submits that the decisions denying the Benefits were reasonable. The AGC asks the Court to dismiss the application with costs against the Applicant.
- [5] For the reasons that follow, this application is dismissed without costs. II. Background Facts [6] The CRA is responsible for administering the Benefits. The Benefits were issued in intervals, based on applications made for each "application period," as defined in the Canada Recovery Benefits Act, SC 2020, c 12, s. 2 [CRB Act] and Canada Worker Lockdown Benefit Act, SC 2021, c 26, s. 5 [CWLB Act].

- [7] The application periods for each of the Benefits are defined by the statutes as follows: CRB: Two-week periods beginning on September 27, 2020 and ending on October 23, 2021 (CRB Act, s. 3(1)). CRSB: One-week periods beginning on September 27, 2020 and ending on May 7, 2022 (CRB Act, s. 10(1)). CWLB: One-week periods beginning on October 24, 2021 and ending on May 7, 2022 (CWLB Act, s. 4(1)).
- [8] The Applicant applied for each of the Benefits on different days, and for different application periods: Benefit Application Date Periods Applied For CRB April 6, 2020 4-6, 8-28 CRSB January 4, 2021 14 CWLB January 6, 2022 9-16
- [9] The Applicant received CRB and CRSB for the periods he applied for. He did not receive any CWLB because his applications for periods 9-16 were suspended pending further evaluation by the CRA.
- [10] On January 6, 2022, the Applicant was selected for review to determine his eligibility for the Benefits. His file was reviewed by a CRA Officer [First Reviewer] who concluded that the Applicant was ineligible for any of the Benefits because he did not make at least \$ 5,000 in 2019, 2020 or in the 12 months prior to the date of his first applications.
- [11] In coming to this conclusion, the First Reviewer calculated the Applicant's net income based on his tax slips and returns (T4A and T1) for 2019, 2020 and 2021. They noted that the Applicant received WCB due to a workplace ankle injury that prevented him from walking for two years. However, the First Reviewer found that the WCB could not count towards meeting the \$ 5,000 net income threshold.
- [12] Accordingly, the Applicant received three decision letters in February 2022 advising that he was not eligible for the Benefits and is liable to repay the amounts he received. In March 2022, the Applicant applied for a second review by a new CRA officer [Second Reviewer]. III. Decision Under Review [13] The Second Reviewer, after confirming that the Applicant had no new documents to submit in support of his applications, also concluded that he was not eligible to receive any Benefits because he did not meet the \$ 5,000 threshold.
- [14] Per the Second Reviewer's notes from their phone interview with the Applicant, they informed him that the WCB he received cannot count towards his net income for the purpose of meeting the \$ 5,000 statutory threshold.
- [15] Accordingly, the Applicant received three decision letters in July 2022 confirming that he is ineligible for the Benefits he received. IV. Relevant Provisions [16] Section 3 of the CRB Act governs eligibility for CRB, while section 10 governs eligibility for CRSB (see Annex A). Section 4 of the CWLB Act governs eligibility for CWLB (see Annex B). V. Issues and Standard of Review [17] This matter raises the following issue: Were the Second Reviewer's decisions finding the Applicant ineligible for the Benefits unreasonable?
- [18] The Applicant makes no submissions on the applicable standard of review.

- [19] The AGC submits, and I agree, that the applicable standard of review is reasonableness (Wahba v Canada (Attorney General), 2024 FC 858 at para 20, citing Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [Vavilov] and Aryan v Canada (Attorney General), 2022 FC 139 at paras 15-16; Latourell v Canada (Attorney General), 2024 FC 44 at para 18 [Latourell]).
- [20] Reasonableness review is deferential but robust, and requires the reasoning process and outcome of a decision to be transparent, intelligible and justified (Vavilov at paras 13, 99). VI. Analysis A. Preliminary Issue [21] The parties submitted a joint informal request that, pursuant to Rule 302 of the Federal Courts Rules, SOR/98-106 [Rules], this Court authorizes the Applicant to contest the three July 13, 2022 decisions denying him CRB, CRSB and CWLB.
- [22] I agree with the parties that this is appropriate, given that the three decisions were rendered on the same day, by the same CRA officer and are based on the same ground for refusal. I am satisfied that it is in the interest of justice to consider the three decisions together in this application (Vincent v Canada (Attorney General), 2024 FC 803 at para 9; James v Canada (Attorney General), 2024 FC 730 at paras 15-17; Rehman v Canada (Attorney General), 2023 FC 1534 at paras 15-17). B. Were the Second Reviewer's Decisions Unreasonable? (1) The Applicant's Submissions [23] The Applicant asserts that there is insufficient evidence establishing that he was ineligible for the Benefits he received. Rather, he states that he had a net income of \$ 33,714 in 2019, \$ 59,310 in 2020 and \$ 24,843 in 2021, when his WCB are included in the calculations. He submits that he therefore exceeded the \$ 5,000 threshold and was eligible to receive the Benefits.
- [24] The Applicant also notes that, when he applied for and received the Benefits, there was no clear indication on any of the CRA's application platforms that he was ineligible based on his income.
- (2) The Attorney General of Canada's Submissions [25] The AGC submits that the Applicant has not met his burden to prove that he is eligible to receive the Benefits (Cantin v Canada (Attorney General), 2022 FC 939 at para 15). Further, the AGC says that he has not met his burden to show that the decisions denying him the Benefits were unreasonable (Vavilov at para 100).
- [26] Relying on the Applicant's income and deductions based on the CRA's computer system and his T1 summary, the AGC notes the following as his total declared employment and self-employment income in 2019, 2020 and 2021: 2019 2020 2021 Employment Income \$ 0 \$ 113 \$ 1569 Self-Employment Income \$ 648 \$ 1377 \$ 0 Total income \$ 648 \$ 1490 \$ 1569
- [27] In each year, the Applicant's total income is less than \$ 5,000.

- [28] The WCB that The Applicant received from 2019 to 2021 should not be included in the above calculations, says the AGC, because it is not an eligible source of income under the CRB Act and CWLB Act. The AGC relies on the decision of Justice Diner in *Coscarelli v Canada* (Attorney General), 2022 FC 1659 [Coscarelli], where he held at paragraph 24 that Workplace Safety Insurance Benefit payments [WSIB] (Ontario's version of WCB) do not fall within the definition of income under s.3(1)(d) of the CRB Act.
- [29] Therefore, the AGC submits, the decisions are reasonable and the Court ought to dismiss the application, with costs against the Applicant.
- (3) Analysis [30] I agree with the AGC that the Second Reviewer's decisions were not unreasonable. The WCB that the Applicant received do not qualify as eligible income under the CRB Act or the CWLB Act. When the WCB are deducted from his gross income, the Applicant's net income in 2019, 2020, and 2021 respectively, falls below the \$ 5,000 threshold.
- (a) CRB and CRSB – Sources of Eligible Income [31] The sources of eligible income for the purpose of reaching the \$ 5,000 threshold are identical for both CRB and CRSB (CRB Act, ss. 3(1)(d)(i)-(v) and 10(1)(d)(i)-(v)). The CRB Act provides that the only employment insurance benefits which may be included in the calculation of an applicant's net income are parental and maternity benefits under ss. 22(1), 23(1), 152.04(1) and 152.05(1) of the Employment Insurance Act, SC 1996, c 23 [EI Act]. As noted by the AGC, this Court has held that WSIB/ WCB do not fall within these provisions (*Coscarelli* at para 24; *Devi v Canada* (Attorney General), 2024 FC 33 at para 24).
- (b) CWLB – Sources of Eligible Income [32] The eligibility requirements for CWLB differ slightly from CRB/CRSB; eligible sources of income for the purpose of reaching the \$ 5,000 threshold include "benefits" as defined under s. 2(1) of the EI Act (CWLB Act, s. 4(1)(d)(iv)). The EI Act defines "benefits" as "unemployment benefits payable under Part I, VII.1 or VIII."
- [33] Under Part I of the EI Act, s. 21(2) differentiates between unemployment benefits administered under the EI Act, and benefits received for illness or injury under provincial law: Limitation
- (2) If benefits are payable to a claimant as a result of illness, injury or quarantine and any allowances, money or other benefits are payable to the claimant for that illness, injury or quarantine under a provincial law, the benefits payable to the claimant under this Act shall be reduced or eliminated as prescribed.
- [34] WSIB/WCB are benefits payable to claimants under provincial law, and may in fact reduce or eliminate EI Act benefits. It follows that WCB are not "benefits" paid to the Applicant under the EI Act and therefore are not an eligible source of income which can be included in meeting the \$ 5,000 threshold.

- [35] Indeed, the CWLB Act further specifies that benefits payable under a provincial plan are only eligible sources of income when in respect of pregnancy or care for newborn children (i.e., parental care), which the Applicant's workplace injury compensation is not (CWLB Act, s. 4(1)(d)(v)).
- [36] Neither could the CRB nor CRSB benefits the Applicant received be included in his net income to determine his eligibility to receive CWLB; s. 4(1)(d)(iii) of the CWLB Act stipulates that only the CRB/CRSB for which an applicant was entitled may be included in net income (Latourell at para 30). The Second Reviewer determined that he was not entitled to these benefits and is in fact liable to repay them.
- (c) Costs [37] The Court has full discretionary power over the amount and allocation of costs, per Rule 400 of the Rules. As a general principle, the successful party is entitled to its costs (Cozak v Canada (Attorney General), 2023 FC 1571 at para 30 [Cozak]). Given the discretionary nature of costs awards, this Court's jurisprudence has not been unanimous on the issue of costs for judicial review of decisions by CRA officers on COVID-19 relief benefits (Cozak at paras 28-29).
- [38] In Cozak, Justice Rochester awarded costs against an unsuccessful applicant seeking judicial review of a CRA officer's decision. However in Khan v Canada (Attorney General), 2024 FC 1840, Justice Ahmed found that, although the applicant was unsuccessful in demonstrating that a CRA officer's decision was unreasonable, it was not an appropriate case for costs because the applicant was self-represented and brought the application in good faith to have his circumstances considered (at para 25, citing Lalonde v Canada (Revenue Agency), 2023 FC 41 at para 97 and Latourell at para 41). Similarly, the Applicant is a self-represented litigant who appears to have brought this application simply for a consideration of his circumstances by the Court. This is not an appropriate case for costs. VII. Conclusion [39] The Applicant has failed to identify a reviewable error in the Second Reviewer's analysis. It was not unreasonable for the Second Reviewer to deduct from their net income calculations the WCB the Applicant received. Both the CRB Act and CWLB Act exclude WCB from the eligible sources of income for the purpose of reaching the \$ 5,000 threshold required for an applicant to be eligible to receive the Benefits.
- [40] For these reasons, the application for judicial review is dismissed, without costs. JUDGMENT in T-1581-22 THIS COURT'S JUDGMENT is that: This application for judicial review is dismissed without costs. "L. Saint-Fleur" Judge ANNEX A Canada Recovery Benefits Act, SC 2020, c 12, s 2 Loi sur les prestations canadiennes de relance économique, LC 2020, ch 12, art 2 Canada Recovery Benefit 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 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;
- (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); [...] Prestation canadienne de relance économique 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 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;
- 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; [...] Canada Recovery Sickness Benefit Eligibility 10 (1) A person is eligible for a Canada recovery sickness benefit for any week falling within the period beginning on September 27, 2020 and ending on May 7, 2022 if [...]
- (d) in the case of an application made under section 11 in respect of a week 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 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; Prestation canadienne de maladie pour la relance économique Admissibilité 10 (1) Est admissible à la prestation canadienne de maladie pour la relance économique, à l'égard de toute semaine comprise dans la période commençant le 27 septembre 2020 et se terminant le 7 mai 2022, la personne qui remplit les conditions suivantes : [...]
- d) dans le cas d'une demande présentée en vertu de l'article 11 à l'égard d'une semaine 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 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; ANNEX B Canada Worker Lockdown Benefit Act, SC 2021, c 26, s 5 Loi la prestation canadienne pour les travailleurs en cas de confinement, LC 2021, ch 26, art 5 Eligibility 4 (1) A person is eligible for a lockdown benefit for any week that falls within the period beginning on October 24, 2021 and ending on May 7, 2022 and within a benefit period if [...]
- (d) in the case of an application made in respect of a week beginning in 2021, they had, 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 following sources:
- (i) employment, (ii) self-employment, (iii) benefits to which they were entitled under the Canada Emergency Response Benefit Act or the Canada Recovery Benefits Act that were paid to them, (iv) benefits, as defined in subsection 2(1) of the Employment Insurance Act, paid to them under that Act,
- (v) allowances, money or other benefits paid to them under a provincial plan because of pregnancy or in respect of the care by them of one or more of their newborn children or one or more children placed with them for the purpose of adoption, and (vi) any other source of income that is prescribed by regulation;
- (e) in the case of an application made in respect of a week beginning in 2022, they had, for 2020 or for 2021 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 (vi);

Admissibilité 4 (1) Est admissible à la prestation de confinement, à l'égard de toute semaine comprise, à la fois, dans la période commençant le 24 octobre 2021 et se terminant le 7 mai 2022 et dans une période de prestations, la personne qui remplit les conditions suivantes : [...]

- d) dans le cas d'une demande présentée à l'égard d'une semaine qui débute en 2021, ses revenus provenant des sources ci-après, pour l'année 2020 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 auxquelles elle a droit qui lui sont payées au titre de la Loi sur la prestation canadienne d'urgence ou de la Loi sur les prestations canadiennes de relance économique, (iv) des prestations, au sens du paragraphe 2(1) de la Loi sur l'assurance-emploi, qui lui sont payées au titre de cette loi,
- (v) des allocations, des 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 elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption, (vi) toute autre source de revenu prévue par règlement;
- e) dans le cas d'une demande présentée à l'égard d'une semaine qui débute en 2022, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (vi) pour l'année 2020 ou 2021 ou au cours des douze mois précédant la date à laquelle elle présente sa demande s'élevaient à au moins cinq mille dollars; FEDERAL COURT SOLICITORS OF RECORD
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APPEARANCES: Matthew Mullone FOR THE APPLICANT (ON HIS OWN BEHALF) Jean Bonin FOR THE RESPONDENT SOLICITORS OF RECORD: Attorney General of Canada
Montréal (Québec) FOR THE RESPONDENT

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