

CANADA / JUDGMENT

Phipps v. Canada (Attorney General)

2025 FC 421

COURT

Federal Court

DECIDED

6 March 2025

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Notes

A correction was made on October 6, 2025

Decision Content

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Dockets: T-808-24

T-825-24

Citation: 2025 FC 421

Ottawa, Ontario, March 6, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

SCOTT PHIPPS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] This is an application for judicial review of two decisions of a Benefits Validation Officer (“Officer”) of the Canada Revenue Agency (“CRA”) dated March 22, 2024 (“Decision”), that the Applicant was not eligible to receive the Canada Emergency Recovery Benefit (“CERB”) and the Canada Recovery Benefit (“CRB”; collectively with CERB, “Benefits”).

- [2] Dr. Scott Phipps (“Applicant”) says that the Decision is not reasonable. He argued that the Officer did not provide any explanation for the Decision, and that the Officer did not consider the Applicant’s evidence that confirmed he was eligible for the Benefits. In addition, the Applicant says that the Decision is in breach of the principles of procedural fairness; specifically, the Applicant stated that the Officer did not provide him opportunities to submit additional evidence and that it is procedurally unfair to ask him to repay the Benefits, citing contradictions between the Officer’s findings and his evidence. The Applicant requests that this Court quash the Officer’s Decision and order that he is relieved from any re-payment obligations.
- [3] This application is governed by the Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 [CERB Act] and the Canada Recovery Benefits Act, SC 2020, c 12, s 2 [CRB Act]. The aim of both these Acts was to provide financial support to workers who suffered income loss due to COVID-19 restrictions. The Minister of Employment and Social Development (“Minister”) is responsible for the Benefits (CERB Act, s 4; CRB Act, ss 2–4); however, the Benefits are administered by the CRA (CRB Act, s 41; *Vatankhah v Canada (Attorney General)*, 2025 FC 235 at paras 12–15). Parliament granted the Minister the authority to make determinations with respect to the eligibility for the Benefits (CERB Act, s 3; CRB Act, ss 3–4).
- [4] Paragraph 6(a) of the CERB Act provides that an applicant must not have been working for reasons related to COVID-19. An applicant is not eligible for the CERB unless, during the four-week period, the applicant ceases working for reasons related to COVID-19 for at least 14 consecutive days within the period.
- [5] Similarly, the paragraph 3(f) of the CRB Act provides that an applicant must not have been working or had a reduction of work for reasons related to COVID-19. The paragraph stipulates that an applicant is not eligible for the CRB unless, during the two-week period, for reasons related to COVID-19, the applicant was not employed or self employed, or had a reduction of their weekly employment or self employment income (relative to income earned in certain years or periods prior to when an application has been made).

[6] The eligibility criteria for the Benefits are statutory and non-discretionary. In other words, the Officer had no choice but to apply them. As I will explain, the Officer reasonably found that the Applicant was not eligible for the Benefits, and the Decision was made in a procedurally fair manner.

II. Background [7] On April 8, 2020, the Applicant applied for the CERB. He received CERB payments of \$2,000 for seven four-week periods from March 15 to September 26, 2020. On October 12, 2020, the Applicant applied for the CRB for twenty-one two-week periods between September 27, 2020, to October 9, 2021 (“Periods at Issue”).

[8] In July 2022, the Applicant was notified that his file had been selected for review to determine his eligibility for the CRB. In August 2022, the Applicant was notified that his eligibility for the CERB was also under review.

[9] On December 5, 2022, the first reviewing officer determined that the Applicant was not eligible for the Benefits because he had not earned at least \$5,000 of employment or self-employment income in 2019, or in the 12 months prior to the Applicant’s application (“First Decision”). The Applicant requested a second review of the First Decision.

[10] On April 4, 2023, the initial second reviewing officer determined that the Applicant was not eligible because he did not stop working or have his hours reduced for reasons related to COVID-19, and the Applicant was not working for reasons unrelated to COVID-19 (“Initial Second Decision”). The second reviewing officer’s findings were recorded in the “Second Review Report” dated March 31, 2023.

[11] On May 2, 2023, the Applicant filed an application for judicial review of the Initial Second Decision but discontinued the matter on June 22, 2023.

[12] On June 28, 2023, the Officer was assigned to conduct an additional second review (“Additional Second Review”).

[13] On March 22, 2024, the Officer determined that the Applicant was not eligible for the Benefits for the Periods at Issue because he did not stop working or have his hours reduced for reasons related to COVID-19, and he was not working for reasons unrelated to COVID-19 (“Decision”).

III. Issues [14] The issues in this application are:

What is the applicable standard of review?

Was the Decision reasonable?

Was the Decision procedurally fair?

IV. Preliminary Issues A. Proper Respondent [15] The Respondent argued that the responding party should be the Attorney General of Canada rather than the CRA, pursuant to subsection 303(2) of the Federal Courts Rules, SOR/98-106 [Rules]. The Applicant did not make submissions on this issue.

[16] I agree that the style of cause ought to be amended in this case. Accordingly, the amendment will be made forthwith and with immediate effect.

B. Settlement Privilege [17] The Respondent noted that the Applicant referred to a written communication with the Department of Justice that is protected by settlement privilege and not admissible to this Court (*Cameron v Canada (Attorney General)*, 2024 FC 2 at para 23). The Applicant did not make submissions on this issue.

[18] I agree that the document referenced by the Applicant is protected by settlement privilege. Accordingly, it has not been considered in these reasons.

C. New Evidence [19] The Respondent argued that certain news and media articles regarding claims for benefits made by employees of the CRA that were attached to the Applicant's affidavit should not be considered because it is new evidence that was not before the Officer when making the Decision. The Applicant did not make submissions on this issue.

[20] Generally, a party may not submit new evidence on an application for judicial review (*Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 13; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 42). The reviewing court is to determine if the decision was reasonable based on the evidence that was before the original decision maker (*Connolly v Canada (Attorney General)*, 2014 FCA 294 at para 7; see also *Sharma v Canada (Attorney General)*, 2018 FCA 48 [Sharma] at para 7).

[21] A court may admit new evidence on judicial review in three circumstances. One, where the new evidence provides general background information that assists the Court in its understanding of the relevant issues, without adding evidence that goes to the merits of the matter. Two, where the new evidence brings the Court's attention to procedural defects not found in the record before the decision maker. Three, where the new evidence highlights a complete absence of evidence before the decision maker on a finding (*Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at paras 23–24 citing with approval *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [Access Copyright] at para 20).

[22] While the list of exceptions is not exhaustive, the exceptions "exist only in situations where the receipt of evidence by this Court is not inconsistent with the differing roles of the judicial review court and the administrative decision-maker" (*Access Copyright* at para 20). This Court's role is to review the Decision based on the facts before the Officer and not to consider new evidence that should have been made available to the CRA in the course of the validation process (*Sharma* at paras 8–9).

- [23] The new evidence was not available to the CRA for the original or either of the subsequent reviews of the Applicant's Benefits applications. The Applicant did not make submissions concerning the admissibility of the new evidence or provide an explanation as to why this evidence was not provided to the CRA Officers reviewing his application.
- [24] I agree with the Respondent that the news articles attached to the Applicant's affidavit do not fall under any of the legal exceptions for admission of new evidence on a judicial review (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 86). Accordingly, this new evidence will not be considered in this application.

V. Analysis A. Standard of review [25] The applicable standard of review for the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 53).

- [26] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the Vavilov framework, 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).
- [27] To intervene on an application for judicial review, the court must find an error in the decision that is central or significant to render the decision unreasonable (Vavilov at para 100). The Applicant bears the burden of demonstrating that alleged flaws in the decision are sufficiently central or significant to render the decision unreasonable (Vavilov at paras 100, 125). Generally, save for exceptional circumstances, reviewing courts will not interfere with a decision maker's findings of fact, nor re-weigh or re-assess a decision maker's evidentiary findings (Vavilov at para 125).
- [28] The standard of review applicable to a determining if a decision maker complied with the duty of procedural fairness is generally described as correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] at para 34, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79). The question is: did the Applicant know the case to be met, and did the Applicant have a full and fair opportunity to make submissions?

B. The Decision was reasonable [29] The Applicant argued that the Officer was not transparent, did not prove any suitable explanation for the Decision, and did not consider his written explanations and evidence.

- [30] The Respondent argued that the Applicant has not identified any shortcomings of rationality internal to the reasons of the Decision.

- [31] I agree that the Decision was reasonable. The Applicant has failed to identify an error that warrants this Court's intervention. Rather, the Applicant's submissions focus on his disagreement with the Officer's finding that he was not working for reasons unrelated to COVID-19. It is not this Court's role "to reweigh the evidence on the record, or to reassess the decision-maker's findings of fact and substitute its own" findings (*Zhang v Canada (Attorney General)*, 2023 FC 1761 [Zhang] at para 32).
- [32] The record demonstrates that the Officer addressed each of the Applicant's main arguments, as raised before this Court, as well as the Officer's concerns. Specifically, it demonstrates that the Officer reviewed all the Applicant's evidence and explicitly informed him of what additional evidence was required to determine his eligibility. For each argument and concern, the Officer discussed the situation with the Applicant and confirmed that he understood. These were confirmed throughout the four telephone conversations between the Officer and the Applicant over the course of six months.
- [33] Ultimately, the Applicant disagrees with the Decision because it is not the decision that he believes should be made. This is not a reason for the Court to intervene (*Cantin v Canada (Attorney General)*, 2022 FC 939 [Cantin] at para 17). The Officer's reasons bear the hallmarks of reasonableness, and the Court is "able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic" (*Vavilov* at paras 99, 102).
- [34] The Applicant did not provide clear evidence to the assessing Officer that established: that any international contract, project, or work that the Applicant was engaged in was postponed or cancelled due to COVID-19 travel restrictions; that any contract, project, or work within Canada was postponed or cancelled due to COVID-19 restrictions; that any contract or work of the Applicant would have continued beyond October 2019; or that the Applicant had contracts in place for work after October 2019. In other words, the Applicant did not demonstrate that he had a reduction in work or lost work due to the COVID-19 pandemic, as required by the CERB Act and the CRB Act.

C. The Decision was procedurally fair [35] The Applicant argued there was a breach of procedural fairness because he was not provided an opportunity to make additional submissions.

- [36] The Respondent argued that the Decision was procedurally fair and pointed to the various telephone conversations between the Officer and Applicant. The Respondent argued that the Applicant was informed of the Officer's concerns and was provided with a full and fair opportunity to make submissions.
- [37] For CERB Act and CRB Act decisions, the level of procedural fairness owed is on the low end of the spectrum (*Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 17).

- [38] A review of the record illustrates that the Decision was procedurally fair. The Applicant availed himself of the opportunities to submit additional documentation (Cantin at para 18) and was repeatedly advised of the Officer's concerns and what additional documentation was required to determine his eligibility (Caron v Canada (Attorney General), 2024 FC 1073 at para 27; Lussier v Canada (Attorney General), 2022 FC 935 at para 24; CPR at para 69; Zhang at para 43).
- [39] The Applicant also stated that a CRA official verbally advised him that he was eligible for the Benefits. However, there are no records or other evidence available to support this assertion. Further, this Court has confirmed that the representations of officers regarding eligibility cannot override the CRA's duty to apply the non-discretionary legislative criteria and is determinative of an applicant's eligibility (Coscarelli v Canada (Attorney General), 2022 FC 1659 at para 22).

VI. Conclusion [40] In dismissing this application for judicial review, I note the following passage from the Decision under review: "We understand that it may not be possible for you to pay your debt immediately and in full. We're here to help. The CRA offers various solutions tailored to your personal situation."

[41] I am empathetic to the Applicant's situation and the hardship that this Decision may cause. However, the CERB Act and the CRB Act are clear and there is no room for discretion; officers are required to apply the criteria for eligibility to everyone.

[42] In my opinion, the Decision is reasonable and was made in a procedurally fair manner.

JUDGMENT in T-808-24 and T-825-24

THIS COURT'S JUDGMENT is that:

The style of cause is hereby amended to reflect the Attorney General of Canada as the proper Respondent.

The application for judicial review is dismissed.

There is no order as to costs.

"Julie Blackhawk"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:

T-808-24 and T-825-24

STYLE OF CAUSE:

SCOTT PHIPPS v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING:

TORONTO, Ontario

DATE OF HEARING:

JANUARY 27, 2025

JUDGMENT AND REASONS:

BLACKHAWK J.

DATED:

MARCH 6, 2025

APPEARANCES:

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For The Applicant

ON HIS OWN BEHALF

Ryan Hall

For The Respondent

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