

Federal Court



Cour fédérale

Date: 20250407

Docket: T-1257-24

Citation: 2025 FC 627

Ottawa, Ontario, April 7, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

SANDRA E. LYDFORD

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a second review decision by a Canada Emergency Benefits Validation Officer (the Officer) of the Canada Revenue Agency (CRA) dated April 26, 2024, which determined that the Applicant is not eligible for the Canada Emergency Response Benefit (the Decision). She also seeks an order forgiving her Canada Emergency Response Benefit (CERB) repayment debt which CRA has assessed at \$19,000, and the costs of this application.

[2] The application for judicial review is granted for the reasons that follow, notwithstanding that the Court is not empowered to forgive the Applicant's debt to the CRA. As will be seen below, the Decision is unreasonable because it is not justified and does not grapple with the argument advanced by the Applicant.

I. **The Record**

[3] The Court's function on an application for judicial review is to review the legality of a decision. The Court's review is focused on the decision under review in light of the law and the record that was before the decision-maker when the decision was made (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 (*Access Copyright* 2012); (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 (*Vavilov*)).

[4] There are different standards of review that may apply to a decision depending on the nature of the decision, the nature of the challenge to the decision, and the legislative scheme engaged (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 39). Decisions that are to be reviewed on the reasonableness standard require the Court to consider whether the decision is reasonable and justified (*Vavilov* at para 99; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 39).

[5] Although the party challenging a decision has the burden of showing that the decision is unreasonable, it remains that a reviewing court must determine whether the decision is reasonable in that it must bear the hallmarks of reasonableness – justification, transparency and

intelligibility – and is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at paras 99-100). Judicial restraint with respect to a determination by an administrative decision-maker falls away when their decision is not reasonable and must be set aside.

[6] The reviewing court begins its inquiry into the reasonableness of a decision by examining the reasons provided by the decision-maker with respectful attention while seeking to understand the reasoning process that they followed to arrive at their conclusion (*Vavilov* at para 84). Developing an understanding of the reasoning that led to the decision enables a reviewing court to assess whether the decision is reasonable as a whole (*Vavilov* at para 85).

[7] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). A decision that is in some respects untenable in light of the relevant factual and legal constraints that bear upon it is not a reasonable decision (*Vavilov* at para 101). A decision-maker's fundamental misapprehension of fact or failure to take into account evidence before it may lead to a determination that the decision under review is not reasonable. A decision may likewise be unreasonable when its conclusions are not based on the evidence that was actually before the decision-maker (*Vavilov* at para 126).

[8] A reviewing court must look to the record as a whole in order to understand the decision (*Vavilov* at para 137). This means that the evidence before the decision-maker and the facts of which the decision-maker may take notice, as well as the submissions of the parties, are

generally relevant in determining whether a decision is reasonable (*Vavilov* at paras 106, 125-128). It follows that the production of the record that was before the decision-maker at the time of the decision before the reviewing Court is often critical for the Court to carry out its function on judicial review.

[9] The record that was before an administrative decision-maker is regularly produced in a judicial review proceeding as a result of an applicant's request for a certified tribunal record pursuant to Rule 317 of the *Federal Courts Rules* (the *Rules*). Such a request may lead to the production of materials relevant to the application that are in the possession of the decision-maker and that are not in the possession of the applicant. This could lead to the production of decision-maker's notes and evidence of the decision-making process along with the disclosure and production of the materials actually considered by the decision-maker in coming to their conclusions and decision. Producing the certified tribunal record also enables the Court to review the record that was before the decision-maker and to consider whether the decision under review was justified, transparent and intelligible in light of the facts, the submissions and the law.

[10] There are nevertheless situations where no request for a certified tribunal record is made or where no certified tribunal record is produced. The absence of a certified tribunal record is not fatal to an application for judicial review. It does, however, potentially make it more challenging for the reviewing court to develop an understanding of the decision maker's reasoning process and conclusions because factors that are often determinative – the evidence filed and the submissions made – might not be made available to the reviewing court (*Vavilov* at paras 125-128).

[11] The Federal Court of Appeal has confirmed that an affidavit may be admitted to describe the record that was before the administrative decision-maker and convey that record to the Court for the purposes of judicial review (*Canada (Attorney General) v Canadian North Inc*, 2007 FCA 42 at paras 3–4; *Canadian Copyright Licensing Agency (Access Copyright) v Alberta*, 2015 FCA 268, at paras 19–22; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at para 20 (*Bernard*)).

[12] The reviewing court must nevertheless be careful. Affidavit evidence that was not before the decision-maker but goes to the merits of a decision is inadmissible on judicial review subject to a few exceptions (*Access Copyright 2012* at para 19). The exceptions are:

- a) Evidence providing general background that assists in understanding the issues, provided it does not go further and provide evidence relevant to the merits;
- b) Evidence regarding procedural fairness defects that cannot be found in the evidentiary record; and,
- c) Evidence that highlights the absence of evidence before the decision maker in respect of a particular finding: *Access Copyright 2012* at para 20; *Bernard* at paras 19–25.

[13] It follows that affidavit evidence that reflects the content of the record before the administrative decision-maker at the time of the decision may be led pursuant to Rule 306 of the *Rules* instead of or in addition to a transmitted certified tribunal record. Affidavit evidence that goes beyond adducing the content of the record that was before the decision-maker might not be

admissible evidence depending on the circumstances and whether any of the exceptions identified in *Access Copyright 2012* may apply.

[14] No request for a certified tribunal record was contained in the Applicant's Notice of Application. She also has not made a request for material consistent with Rule 317 of the *Rules*. The Respondent has not led any evidence at all.

[15] The only evidence before the Court of what was before the decision-maker at the time of the Decision is to be found in the Applicant's affidavit.

[16] The Applicant's affidavit was served in accordance with Rule 306 of the *Rules* and contains 15 exhibits consisting of various documents that are helpful to the Court in understanding the issues relevant to this judicial review. The Applicant's affidavit and its exhibits may be admitted in whole or in part, following the Court's assessment of whether the affidavit "briefly reviews in a neutral and uncontroversial way the procedures that took place below and the categories of evidence that the parties placed before the [decision-maker]" without engaging in spin or advocacy (*Delios v Canada (Attorney General)*, 2015 FCA 117 at para 21). Those parts of the Applicant's affidavit that go no further than providing the evidence relevant to the merits that was before the merits-decider are admissible (*Bernard* at para 23; *Schillaci v Canada (National Revenue)*, 2021 FC 27 at para 27).

[17] Keeping these principles in mind, and upon review of the Applicant's affidavit, I find that the Applicant's affidavit sets out background facts without argument and attaches a number of

documents that would have been in the decision-maker's possession at the time of the Decision either by their nature as documents generated by the decision-maker, or as a result of the Applicant having provided the information and/or document to the decision-maker for their consideration prior to the Decision being made. I accept the Applicant's evidence set out in her affidavit at paragraphs 1 to 18 and 20 to 22, inclusively, as admissible evidence. I also accept the documents produced by the Applicant as Exhibits A through O as admissible evidence on this application.

[18] The following exhibits to the Applicant's affidavit are documents that either were or could have been before decision-maker at the time of the decision because they are documents created by the CRA:

- a) Exhibit D - Letter from CRA to the Applicant dated July 14, 2022;
- b) Exhibit E - Letter from CRA to the Applicant dated August 19, 2022;
- c) Exhibit F - Letter from CRA to the Applicant dated January 30, 2023;
- d) Exhibit H - Letter from the CRA to the Applicant dated March 28, 2023 (the first review decision);
- e) Exhibit N - Statement of Account dated February 27, 2024; and,
- f) Exhibit O - Decision dated April 26, 2024 (the second review decision).

[19] The following exhibits to the Applicant's affidavit are documents that either were or should have been before decision-maker at the time of the Decision because they are documents submitted to the decision-maker by the Applicant for its review and consideration.

- a. Exhibit G – Applicant letter to the CRA dated February 7, 2023;
- b. Exhibit I – Applicant letter to the CRA dated April 13, 2023; and,
- c. Exhibit L – Applicant letter to the CRA dated June 19, 2023.

[20] The record before me does not contain any other notes or records that shed light on the decision-maker's reasoning process or identify the information or facts the decision-maker may have considered in concluding as he did in the Decision.

II. **The Established Facts**

[21] The Applicant represents herself in this proceeding and represented herself in her communications with the CRA with respect to CERB and CRB.

[22] The Applicant is a resident of Ontario. She is employed as a cleaner in residences and office buildings and has worked for Fresh Start Janitorial Services (Fresh Start) since 2009. The Applicant generally earned an annual income of approximately \$27,500 in this line of work until 2019.

[23] On February 19, 2019, the Applicant underwent emergency cardiac surgery after which she was advised not to return to work for 15 weeks to aid her recovery. She applied for and received an undisclosed amount of employment insurance sickness benefits during her convalescence.

[24] On June 19, 2019, the Applicant's doctor advised her that she was not yet capable of returning to work requiring physical activity. The Applicant heeded her doctor's advice and did not return to work. The Applicant continued to receive employment insurance sickness benefits during her continuing recovery until at least the end of 2019.

[25] The Applicant had recovered from her surgery by the spring of 2020 and was ready to return to work. In March 2020, all non-essential businesses in Ontario were ordered to cease operations pursuant to the Government of Ontario's Declaration of Emergency in order to prevent the spread of the COVID-19 virus. The Applicant's work with Fresh Start, and Fresh Start's business itself, did not fall within the scope of essential services that were permitted to continue operations during the early stages of the COVID-19 pandemic. Fresh Start ceased operations until further notice. The public health measures enacted by the Government of Ontario due to the COVID-19 pandemic prevented the Applicant from returning to work after her convalescence.

[26] The Applicant applied for and received CERB and Canada Recovery Benefits (CRB). She initially received CERB and, later, CRB between March 15, 2020 and July 4, 2020, and January 3, 2021, and June 5, 2021, respectively.

[27] On July 14, 2022, the CRA informed the Applicant by letter that it was reviewing her CERB/CRB eligibility. The letter informed the Applicant that the CRA was seeking documentation that established that she met the CRB's minimum income threshold eligibility requirement. The letter contained a summary of the CRB eligibility income requirements as prescribed at section 3 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the *CRB Act*), namely that the eligibility for CRB benefits requires an individual to have earned at least \$5000 in 2019, 2020 or in or the 12 months prior to their CRB application, through gross employment income, net self-employment income, or maternity and paternity benefits from employment insurance or the Quebec Parental Insurance Plan.

[28] The second page of the letter described what constitutes employment and self-employment income in a non-exhaustive manner. It also described various sources of income that are not employment or self-employment income, including “employment insurance (EI) earnings (for the Canada Recovery Benefit, Canada Recovery Sickness Benefit or the Canada Recovery Caregiving Benefit).” The description of the non-qualifying income sources was presented as an exhaustive list in that it omitted the word “include” in its description of the listed non-qualifying sources. Employment insurance sickness benefits that pre-dated the pandemic were not included in the CRA’s description of non-qualifying income in the letter.

[29] On August 19, 2022, the Applicant received another letter from the CRA. In its first sentence, that letter informed the Applicant that she could disregard the July 14, 2022, letter because it had been sent in error. The remainder of the letter, however, was to the same effect as the July 14, 2022, letter: it informed the Applicant that CRA records indicated the she had received CERB and/or CRB benefits between March 15 and July 4, 2020, and between January 3 and June 5, 2021, and that the CRA was seeking documentation that established that she met the CERB and the CRB minimum income requirement for eligibility.

[30] The letter contained a summary of the eligibility requirements set out at section 3 of the *CRB Act* as well as a summary of the eligibility requirements prescribed at section 6 of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 (the *CERB Act*). More particularly, the letter included language that the *CERB Act* requires that an individual had earned at least \$5000 in employment income, self-employment income or through the aforementioned federal or

provincial maternity and paternity benefits in 2019 or the 12 months prior to their CERB application date.

[31] The second page of the letter described what constitutes employment and self-employment income in a non-exhaustive manner like the July 14, 2022 letter. It also described various sources of income that are not employment or self-employment income, including “employment insurance (EI) earnings (for the Canada Recovery Benefit, Canada Recovery Sickness Benefit or the Canada Recovery Caregiving Benefit).” As was the case in the July 14, 2022 letter, the description of the non-qualifying income sources was exhaustive and did not include employment insurance sickness benefits that pre-dated the pandemic.

[32] The letter explicitly identified the documentation the CRA sought from the Applicant and included a warning that, “If you do not reply or do not provide the requested information by this date (45 days from the date of the letter), you may be required to repay amounts already received”.

[33] The Applicant did not immediately respond to the CRA.

[34] The CRA sent another letter to the Applicant on January 30, 2023. The letter noted that the CRA had not received a reply to its letter dated August 19, 2022, that the CRA had tried without success to contact the Applicant, and that the CRA had determined as a result that the Applicant was not eligible for the CERB. The CRA also let the Applicant know that it was “not too late” for her to send the CRA the requested documentation and information, and that the

CRA would review her account advise her of the outcome of its review if she delivered the requested documents and information at a later date.

[35] The Applicant wrote a letter to the CRA on February 7, 2023, and sent it to the CRA on February 8, 2023 (Exhibit G to her affidavit). She explained in her letter that she had discussed the first CRA letter with her bookkeeper when she had received it and wanted to make sure that she was sending the CRA the proper information. She explained that she underwent lifesaving emergency open heart surgery on February 17, 2019. She also explained that she could not work for quite a while, that her only income from employment was received between January 2019 to February 17, 2019, and that thereafter she received employment insurance sickness benefits for the remainder of 2019. No documents appear to have been attached to her February 7, 2023 letter.

[36] On March 28, 2023, the CRA communicated its review decision of the Applicant's eligibility to receive Canada Emergency, Recovery, or Lockdown Benefits. The CRA informed the Applicant that, "having carefully considered all the information available", she was not eligible for the CRB because: 1) she did not earn at least \$ 5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of her first application; and, 2) she was not working for reasons unrelated to COVID-19.

[37] The Applicant wrote to the CRA on April 13, 2023 (Exhibit I to her affidavit). She informed the CRA that she had paid more than \$2,000 in income tax on the employment insurance sickness benefits she had received. She felt "that this should be considered income" for

the CERB and/or CRB eligibility requirements because she had paid tax on the monies that she had received.

[38] The Applicant wrote to then Prime Minister Trudeau on May 8, 2023, explained the foregoing and questioned why she would not be eligible for CERB and/or CRB income assistance when her employment insurance sickness benefits were taxable as income and would, if calculated with her employment income, exceed the minimum \$5,000 threshold for eligibility. She specifically included the following in her letter to the Prime Minister:

“Therefore, since I was only working January 2019 to February 17, 2019 my earnings were \$ 3,809.76 just \$ 1,190.24 short of \$ 5,000.00 when I had to apply for E.I. Sickness benefits to replace my employer paid earnings as I was obviously unable to work.

I pay into E.I. on every paycheque and approximately \$ 2,500.00 in income tax was taken off this. They say that this cannot be used as employment earnings. I call this taxable income. What else was I supposed to do?

I am not expecting you to care about my physical misfortune but it sounds like employment income to me since I pay into it.”

[39] On June 19, 2023, the Applicant sent another letter to the CRA to explain that she had spoken with “Joseph”, a CRA representative, on June 1, 2023 (Exhibit L to her affidavit). She writes that she explained her situation and gave him the details of her appeal that her MP was helping her with. She also attached a copy of her May 8, 2023 letter to the Prime Minister. She noted in her letter that “Joseph” had assured her that all of the information contained in her letter would be put in her file.

[40] On April 26, 2024, the CRA sent the Decision to the Applicant. The CRA determined that the Applicant was not eligible for the CERB.

[41] The Applicant thereafter commenced this proceeding.

III. **The Decision Under Review**

[42] The Applicant seeks judicial review of the Decision. The Decision reads, in its salient parts, as follows:

“We are writing to advise you of our decision regarding your request dated June 22, 2023, for a second review of your Canada Emergency Benefit (CERB) application.

We have completed our review and have carefully considered all the information available. We have determined that you are not eligible for the Canada Emergency Response Benefit (CERB).

Based on our review, you are not eligible for the following reasons:

You did not earn at least \$ 5,000 (before taxes) of employment and/or self-employment income in 2019 or in the 12 months before the date of your first application.”

IV. **The Parties’ Positions and the Issues**

[43] The Applicant did not serve or file any Memorandum of Fact and Law.

[44] She argues that she is frustrated that sickness benefits were paid to her as a replacement of employment income during a temporary interruption in work that was not her choice but was the result of sickness. She questions why her sickness benefits are not eligible as income for

CERB eligibility when similar sources of income, such as employment insurance payments during parental leave and maternity leave, are also temporary interruptions of work but are considered as income for the purposes of CERB eligibility. She also argued that she would suffer undue hardship if she had to repay the \$19,000 or so the CRA has informed her she must repay. The Applicant makes no argument as to the standard of review and does not rely on any jurisprudence, statute or regulation.

[45] The Respondent argues that the Decision should be reviewed on the standard of reasonableness and that the Decision is reasonable. He argues that the Applicant did not satisfy the *CERB Act* eligibility requirements as set out in the statute itself and has not demonstrated how the Decision is unreasonable.

[46] He also argues that the Applicant's argument regarding what types of income are considered income for the purposes of CERB eligibility are set out in the *CERB Act* and are the result of government policy decisions which this Court does not have the jurisdiction to interfere with.

[47] Finally, the Respondent argues that the *CERB Act* leaves no scope for the Court to carve out an exception that is not contained within its provisions.

V. Analysis

A. *Standard of Review*

[48] I agree with the Respondent that the Decision is to be reviewed on the standard of reasonableness (*Devi v Canada (Attorney General)*, 2024 FC 33 at para 14; *He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 15); *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 15-16).

[49] Reasonableness is a deferential but robust standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible, and justified (*Vavilov* at para 15). 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). Whether a decision is reasonable depends on the administrative setting at issue, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[50] The applicant must establish that the decision under review contains flaws that are sufficiently central or significant for it to be found unreasonable (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant this Court's intervention on judicial review. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings in the decision under review must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[51] The delivery of brief reasons or the absence of reasons may make discerning the justification of the decision more challenging. In such circumstances, the court will often uncover a clear rationale for the decision within the record as a whole (*Vavilov* at para 137). In other situations, it may be that no reasons are provided and neither the record nor the larger context shed light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable (*Vavilov* at para 138).

[52] The Supreme Court of Canada teaches us in *Vavilov* that a reviewing court is required to assess whether a decision under review meaningfully grapples with the key issues as follows:

[127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: *Baker*, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39. (the emphasis is mine).

[53] A decision-maker's failure to grapple with the central arguments raised by a party does not necessarily lead to a determination that the decision under review is unreasonable. It may, however, make the reviewing court lose confidence in the reasonableness of the outcome reached in the decision. That alone would be sufficient for a determination that a decision is unreasonable (*Vavilov* at paras 122 and 194; *Rezaei v Canada (Citizenship and Immigration)*, 2025 FC 462 at para 15).

B. *The Decision is Unreasonable*

[54] The Court agrees with the Respondent that the *CERB Act* does not contain any provision that would permit this Court to make an order that forgives the Applicant's CERB repayment obligations if she is found to be obliged to repay CERB monies received without justification. The Court also agrees with the Respondent that it is not this Court's function on an application for judicial review to determine the wisdom of the policy choices that led to the *CERB Act*'s expressed eligibility requirements.

[55] I must nevertheless disagree with the Respondent on the matter of whether the Applicant has met her burden of demonstrating that the Decision is unreasonable. In my view, she has.

[56] I find the Decision to be unreasonable because the decision-maker failed to grapple with the key issue and single argument raised by the Applicant in the letters she filed with the CRA, specifically, how the employment insurance sickness benefits she received and on which she paid taxes after open heart-surgery and prior to the pandemic were considered, or not, in the determination of whether she met the CERB's eligibility requirements.

[57] The brief reasons provided in the Decision do not permit this Court to determine whether the Decision is justified in light of the facts and the law. The reasons are conclusory, refer to unidentified information that was reviewed by the decision-maker, and fail to address the Applicant's sole argument. There is an absence of a responsive justification in the Decision for the outcome that the Applicant was not eligible to receive CERB. The reasons do not provide any answer as to whether the decision-maker was actually alert and sensitive to the matter before it or that it actually listened to the Applicant who remains the subject of the Decision and its consequences (*Vavilov*, at paras 127-128).

[58] The absence of a certified tribunal record is critical in this proceeding and reinforces my conclusion that the Decision is unreasonable. There is no evidence adduced in this proceeding that permits the Court to determine whether the decision-maker considered the Applicant's arguments, which facts were considered, or how the decision-maker justifies its decision in light of the facts and the applicable law. There are no records to demonstrate any chain of analysis by the decision-maker at all other than the Decision itself. The reasons contained in the Decision are a conclusion without any analysis, comment, or acknowledgement of the Applicant's argument.

[59] The Respondent argued that he had no obligation to lead any evidence regarding the record before the decision-maker because it is the Applicant's onus to demonstrate unreasonableness. He argued that his election to not lead evidence should not be held against him and that the consequences of deficiencies in the evidentiary record should be suffered by the Applicant. While the burden of demonstrating unreasonableness lies with the applicant seeking judicial review, the Respondent's refusal or failure to lead evidence that permits the Court to

review the Decision meaningfully when an applicant, as in this case, did not request a certified tribunal record and did not produce any evidence of the decision-maker's record is a failure to address the necessary justification that underpins administrative decisions and their review.

[60] It may be that the decision-maker considered the Applicant's argument and rejected it on the basis of the decision-maker's interpretation of the *CERB Act* or on some other basis. It may be that the decision-maker had access to and considered information that was available to it but that had not been submitted to it by the Applicant. It may also be that the decision-maker rejected the Applicant's argument out of hand without considering it at all. It is not discernable from the Decision, or the record produced before the Court, which factors the decision-maker considered and how or why they were weighed, accepted or rejected in reaching the Decision.

[61] CRA decision-makers are not to be held to a standard of perfection in reaching decisions about CERB/CRB eligibility. However, considering the impact on the rights and interests of individuals subject to such decisions, this Court has recently differentiated between an "imperfect analysis" and the lack of an analysis altogether (*Judt v Canada (Attorney General)*, 2024 FC 2012 at para 34-35, citing *Vavilov* at paras 133-134).

[62] I find that the Decision is unreasonable as it does not contain the hallmarks of reasonableness. The Decision is not transparent, intelligible or justified. Its outcome cannot be considered reasonable in light of its serious shortcomings and failure to grapple with the key issue argued by the Applicant. The absence of a meaningful record that reflects the decision-maker's process is determinative in this case. It is indeed unacceptable for the decision-maker to

provide the Applicant with a Decision and too brief, conclusory reasons that do not justify the outcome and expect this Court to uphold it (*Vavilov* at para 95).

[63] The Applicant's application for judicial review will therefore be granted.

VI. **The Style of Cause**

[64] The Applicant commenced this proceeding against the Canada Revenue Agency. No order amending the style of cause was made. Various documents indicating the Attorney General of Canada as the Respondent party were served and filed by the parties at various points in time. The style of cause in those documents were irregular because the Respondent party's identity was amended without a court order. Those documents' service and filing are hereby validated notwithstanding the unauthorized amendment to the identity of the Respondent party.

JUDGMENT in T-1257-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The Canada Revenue Agency’s second review decision dated April 26, 2024, is quashed and set aside.
3. This matter is remitted to a different decision-maker for redetermination.
4. The Applicant shall be provided with an opportunity to serve and file additional documents in support of her request for a second review of her eligibility to receive benefits pursuant to the *CERB Act* in advance of any redetermination.
5. Pursuant to Rule 400 of the *Federal Courts Rules*, I decline to award costs to any party in this proceeding.

“Benoit M. Duchesne”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1257-24

STYLE OF CAUSE: SANDRA E. LYDFORD v. CANADA REVENUE
AGENCY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 31, 2025

ORDER AND REASONS: DUCHESNE, J.

DATED: APRIL 7, 2025

APPEARANCES:

Sandra Lydford	FOR THE APPLICANT (SELF-REPRESENTED)
Gerard (Kees) Westland	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT
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