Federal Court  Cour fédérale

Date: 2025-05-05

Docket: T-1289-24

Citation: 2025 FC 807

Ottawa, Ontario, May 5, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MICHELLE SARAH MATTA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

SUPPLEMENTARY JUDGMENT AND REASONS

I. Overview

[1] This Supplementary Judgment and Reasons adjudicates costs arising from an application for judicial review of a decision by a benefits validation officer [the Officer] of the Canada Revenue Agency [CRA], dated May 8, 2024 [the Decision], which found the Applicant ineligible for certain Canada Emergency Response Benefit [CERB] payments (related to four benefit periods) she had previously received.

[2] For the reasons explained in greater detail below, the Court awards costs to the Respondent, the Attorney General of Canada, quantified in the lump-sum all-inclusive amount of $1,000.

II. **Background**

[3] In the Decision under review in this application, the Officer found the Applicant ineligible for the relevant CERB payments because, for each of the four benefit periods, either the Applicant earned more than $1,000 of employment or self-employment income or the Applicant did not stop working or have her hours reduced for reasons related to the COVID-19 pandemic.

[4] On January 30, 2025, the Court released its decision on the merits of the application. In its Judgment and Reasons, the Court allowed the application for judicial review, set aside the Decision, and remitted the matter for re-determination (*Matta v Canada (Attorney General)*, 2025 FC 195) [the Judgment].

[5] The Court found that the Decision was unreasonable, because (in relation to the first two benefit periods) the Officer failed to intelligibly address one of the Applicant's main submissions, that the $1,000 income threshold applicable to assessing her eligibility for benefits should be applied to her net income (after statutory deductions) rather than to her gross income. While the Respondent had acknowledged this reviewable error, the parties disagreed on the resulting relief that should be awarded by the Court. The Judgment adopted the Respondent's position, quashing the Decision and returning the matter for redetermination by another CRA

officer with the benefit of the Court's reasons, after the Applicant was afforded an opportunity to provide further evidence and submissions to the CRA, rather than determining the Applicant's benefits eligibility as she had proposed.

[6] In relation to the last two benefit periods, for which the Officer found the Applicant ineligible for CERB payments based on her not having stopped working or having had her hours reduced for reasons related to COVID-19, the Court found that the Decision was reasonable. However, consistent with the Respondent's position at the hearing of this application, the effect of the Judgment was to quash the Decision in its entirety, such that the Applicant's eligibility for payments related to the latter two benefit periods would also be re-determined with the benefit of any further evidence and submissions she may provide to the CRA.

[7] Each of the parties has claimed costs related to this application. At the hearing of the application, each of the parties also identified that there had been efforts to settle this matter. The Judgment noted that, while presuming those efforts to have been unsuccessful, the Court otherwise had no details surrounding the parties' settlement discussions and should not receive such details until it had made its decision on the merits, after which it was possible that such details may influence the adjudication of costs.

[8] At the hearing, the Respondent's counsel suggested a process for the parties to provide written submissions in support of their respective positions on costs, potentially supported by affidavit evidence, following release of the Court's decision. The Applicant did not take issue

with that suggestion. The Court agreed that such a process was appropriate, and the Judgment so provided.

[9] Pursuant to that process, the Respondent served and filed written submissions dated March 3, 2025, the Applicant served and filed written submissions on April 4, 2025, and the Respondent served and filed written submissions in reply on April 7, 2025. Each of the parties supported its submissions with affidavit evidence and related exhibits, which included evidence of the unsuccessful settlement discussions.

III. **Issues**

[10] The parties' submissions raise the following issues for adjudication by the Court:

A. Which party should receive an award of costs?

B. How should the Court's costs award be quantified?

IV. **Parties' Arguments**

A. *Respondent's position*

[11] The Respondent argues that it should be awarded costs in this matter and requests that the Court quantify such costs as a lump sum fixed at $3,420, calculated in accordance with Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

[12] The Respondent bases its position principally upon a written offer to settle the application for judicial review that the Respondent extended to the Applicant on September 24, 2024 [Settlement Offer], by way of an email attaching proposed Minutes of Settlement. The Settlement Offer provided that the Applicant would discontinue the application and that the Respondent would set aside the Decision and refer the matter back to the relevant minister for reconsideration by CRA officers who were not previously involved in the Applicant's CERB applications, with each party to bear their own costs.

[13] The Respondent notes that the Settlement Offer was expressed to expire at the commencement of the hearing of the application, unless withdrawn in writing at an earlier date. The Respondent asserts based on the affidavit evidence of a legal assistant in the office of the Respondent's counsel (and I do not understand the Applicant to contest) that the Settlement Offer was not withdrawn by the Respondent and was not accepted by the Applicant.

[14] The Respondent argues that, despite the opportunity to settle this application without exposure to costs, the Applicant chose to proceed to a hearing and achieved a result (i.e., the Judgment) which is in substance identical to the Settlement Offer, except with an exposure to costs. The Respondent takes the position that costs should therefore be awarded against the Applicant.

[15] As for quantification, the Respondent relies on Column III of Tariff B, applied only to assessable steps taken by the Respondent after the Settlement Offer was extended to the Applicant. Employing this methodology, the Respondent calculates 19 units, applied to the unit

value of $180 identified in a Memorandum from Chief Justice Crampton dated April 1, 2024, for a calculation of $3,420.

[16] The Respondent submits that it would have been entitled to seek enhanced costs totaling $5,940, pursuant to Rule 420(2)(a), as a result of the Applicant's failure to accept the Settlement Offer, but notes that it is declining to seek enhanced costs because the Applicant was self-represented and the Respondent agreed that the application should be allowed.

B. *Applicant's position*

[17] The Applicant argues that she should be awarded costs in this matter and requests that the Court quantify such costs as a lump sum fixed at $11,000. Her written submissions break down this claim into the following components:

A. $1,000 - intended to penalize the Respondent for not providing disclosure of documents requested in the Notice of Application;

B. $3,000 - to compensate the Applicant for time and hardship and stress upon her family, as well as disbursements for court fees, parking costs, and fees paid to commission sworn evidence;

C. $5,000 - related to the first two benefit payment periods that were the subject of the application, based on conduct that she seeks to impugn on the part of the Officer in making the Decision; and

D. $2000 - related to the last two benefit payment periods that were the subject of the application, based on conduct that she seeks to impugn on the part of the Officer in making the Decision and on the part of the CRA in communicating eligibility requirements.

[18] In response to the Respondent's request for costs and reliance on the Settlement Offer in support of that position, the Applicant refers to the fact that the Judgment not only quashes the Decision and returns it to the CRA for redetermination but also provides reasons in support of that result. The Applicant references email correspondence with the Respondent's counsel, in relation to the Settlement Offer, in which the Applicant explained the importance to her of having the Court provide its conclusions as to the strength of her case. With the benefit of the reasons in the Judgment, the Applicant argues that she obtained a result in the application superior to that proposed in the Settlement Offer.

[19] The Applicant argues that she required the Court's reasons to avoid ending up in the sort of endless merry-go-round of judicial reviews and administrative reconsiderations of which *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] warns (at para 142).

[20] Finally, in her affidavit sworn in support of her costs submissions, the Applicant states that, if the Court were considering an award of costs in favour of the Respondent, she seeks financial relief because her household is experiencing financial hardship. The Applicant references having to sell her primary home due to high debt and judgments, in part due to the

impact of her CERB dispute with the CRA. As evidence of needing to sell the home, the Applicant's affidavit attaches the first page of a Listing Agreement related to a piece of real property that identifies the Applicant as one of the sellers.

V. **Analysis**

A. *Which party should receive an award of costs?*

[21] For the reasons explained below, I find that the Respondent is entitled to an award of costs in this matter.

[22] As a general rule, costs are awarded to the successful party (*Drew v Canada (Attorney General)*, 2022 FCA 218 at para 19). In the case at hand, the Judgment allowed the Applicant's application for judicial review, quashed the Decision, and returned it to the CRA for redetermination by a different officer. While on its face that result suggests that the Applicant prevailed on the application, the result must be placed in context.

[23] As reflected in the Judgment's explanation of the Respondent's position in the application, the Respondent recognized that the Officer had made a reviewable error in the Decision in relation to the first two CERB benefit periods. As such, when the application proceeded to a hearing, the remaining dispute between the parties related to those two periods was as to which remedies the Court should impose. The Respondent argued that the Decision should be quashed and the matter returned to another CRA officer for redetermination. The Applicant argued that the Court should make a decision as to her eligibility for benefits. In

accordance with the principles explained in *Vavilov* (at para 141), the Judgment adopted the Respondent's position on this issue.

[24] In relation to the second two CERB benefit periods, the Judgment found in favour of the Respondent on the merits, concluding that the Officer's analysis was reasonable.

[25] In the Applicant's favour, she cannot be faulted for having commenced her application for judicial review and having advanced the application to the stage of filing her Application Record, as she challenged a Decision that both the Respondent and the Court subsequently assessed as unreasonable. However, after the filing of the Application Record, the Respondent extended the Settlement Offer. Consistent with the Respondent's recognition in the application that the Officer had made a reviewable error in relation to the first two periods, the Respondent offered to resolve the application by having the Decision set aside and the matter referred back to the CRA for reconsideration. The Applicant failed to accept the Settlement Offer and proceeded to a hearing. Taking into account the issues that were outstanding by the time of the hearing, it was the Respondent, not the Applicant, that prevailed in the Judgment.

[26] As the Respondent submits, costs awards serve the objectives of providing compensation, promoting settlement, and deterring abusive behaviour (*Air Canada v Thibodeau*, 2007 FCA 115 at para 24). The Respondent does not argue that it was abusive for the Applicant to proceed to a hearing notwithstanding that she had been offered a result which was as favourable to her as the result she achieved in the Judgment. However, the Respondent submits that, in these circumstances, the objective of promoting settlement militates in favour of a costs award. The

Respondent argues that this objective is diminished if parties may reject settlement offers, proceed to a hearing, obtain a no more favourable result, and yet escape cost consequences.

[27] I agree with these submissions. The Court's decisions on costs should serve to motivate litigants to accept reasonable settlement offers. Where a litigant declines to do so, forces a matter to a hearing, and obtains a result that is materially the same or indeed less advantageous than an available settlement offer, it is appropriate that the litigant face a costs award.

[28] The Applicant argues that the Judgment afforded her a result more advantageous than that proposed in the Settlement Offer, because the Judgment included reasons from which she will benefit in the CRA's redetermination of her CERB eligibility.

[29] The Applicant is of course correct that the Judgment is supported by reasons. Indeed, the Judgment expressly orders that the CRA's redetermination of the Applicant's matter be performed with the benefit of the Court's reasons. However, it is not necessary for me to opine on whether a litigant's interest in obtaining the Court's analysis represents a compelling basis for rejecting a settlement offer, as I am not convinced that the Reasons of the Court that the Applicant obtained by taking this application to a hearing can be characterized as affording her a beneficial result.

[30] In relation to the first two benefit periods, the Court found the Decision unreasonable, because: (a) the Officer failed to engage with the Applicant's argument surrounding whether her eligibility for benefits required assessment of her gross income or her net income; and (b) the

Officer may have relied upon an internal CRA document that had not been disclosed to the Applicant. However, the Respondent had conceded in its Memorandum of Fact and Law that the Decision was unreasonable in these respects. The Applicant nevertheless took her application to a hearing, because she hoped the Court would make a decision on whether it was gross income or net income that was to be examined and adjudicate her eligibility based thereon. The Court declined to perform that analysis.

[31] In relation to the second two benefit periods, the Court did engage in a substantive analysis of the Applicant's argument that she was eligible for benefits because, due to a reduction in her hours attributable to the COVID-19 pandemic while she was employed, she was ineligible to apply for employment insurance benefits after her employment ended. However, the Court rejected that argument.

[32] As such, I am satisfied that the Judgment represented a result that was no more favourable to the Applicant, and indeed arguably less favourable, than the Settlement Offer that she declined to accept.

[33] Before leaving the issue of which party should receive an award of costs, I note that I have considered the Applicant's submissions in support of her position that she should receive costs. Those submissions focus significantly on the merits of the application, including the Officer's treatment of the Applicant's eligibility for the second two benefit periods that the Court found to be reasonable. The Judgment has already adjudicated the merits of the application and,

as explained above, it was the Respondent that prevailed on the issues that were outstanding as of the hearing.

[34] The Applicant's submissions also assert that she should be awarded costs because she was not provided with certain CRA documentation that she requested in her Notice of Application. On this point, I agree with the Respondent's argument in reply. The Applicant received the Certified Tribunal Record, purporting to make disclosure of relevant documents in the possession of the tribunal as required by Rule 317. If the Applicant wished to challenge the completeness of this disclosure, she could have brought a timely motion to do so, in the absence of which it is not available to her to argue this point in support of her position on costs.

[35] For the reasons explained above, I find that the Respondent is entitled to an award of costs in this matter.

B. *How should the Court's costs award be quantified?*

[36] I therefore turn to the quantification of the costs to be awarded to the Respondent.

[37] As previously noted, the Respondent asks to have costs quantified as a lump sum fixed at $3,420, based on calculations performed in accordance with Column III of Tariff B of the *Rules*. By way of observation, I note that the Applicant's ability to take issue with the reasonableness of the $3,420 figure is not particularly assisted by the fact that, if she were to be awarded costs, she would have the Court quantify that award at the much higher figure of $11,000.

[38] Analysing the Respondent's claim more rigorously, I am satisfied that the Respondent's calculations under Tariff B (taking into account the assessable services performed after the Respondent extended the Settlement Offer) are reasonable. However, other than asserting no claim for earlier stages of the litigation, the Respondent's calculations do not account for the fact that, as observed earlier in these Reasons, it was not unreasonable for the Applicant to have advanced the application to the stage at which she received the Settlement Offer. The quantification of the Respondent's costs award should in some manner take into account the costs that the Applicant reasonably incurred to that stage.

[39] As previously noted, the Respondent has not sought to rely on Rule 420(2)(a), which provides that, where a respondent makes a written offer to settle and the applicant obtains a less favourable judgment, the applicant may obtain party-and-party costs to the date of the service of the offer and the respondent may obtain such costs calculated at double that rate from the date of service of the offer to the date of judgment. Nevertheless, that Rule's approach to the quantification of costs is arguably instructive in the case at hand, in that it contemplates that a costs award on a successful application, in the context of a respondent's more favourable but unaccepted offer to settle, should still recognize the applicant's costs incurred prior to service of the offer.

[40] The Applicant also raises for the Court's consideration an argument that she should be afforded financial relief from costs exposure, because her household is experiencing significant financial hardship. The Listing Agreement attached to the Applicant's affidavit is not particularly probative, as the sale of a home is not necessarily indicative of financial hardship. However, the

Applicant attests to such hardship in her affidavit, and the Court has no reason to doubt that assertion. Moreover, the evidence adduced on the application itself supports the conclusion that during the pandemic the Applicant's employment was affected to the extent that she applied for (and, for some periods, was found eligible for) financial assistance in the form of CERB benefits. The Court is therefore prepared to accept that the Applicant has experienced some measure of financial hardship and is prepared to take that into account in quantifying the Respondent's costs award.

[41] As the Respondent submits, ultimately the award of costs is in the discretion of the Court (Rule 400(1)). In exercising that discretion, I am fixing costs in the all-inclusive lump-sum amount of $1,000. This lump-sum amount takes into account the fact that both parties incurred costs over the course of this application and, in my view, represents a just balance between the need for a costs award to reflect the objective of promoting settlement and an interest in avoiding the imposition of costs at a level that is difficult for a party to bear.

SUPPLEMENTARY JUDGMENT IN T-1289-24

THIS COURT'S JUDGMENT is that the Applicant shall pay the Respondent costs of this application in the all-inclusive lump-sum amount of $1,000.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1289-24
STYLE OF CAUSE:	MICHELLE SARAH MATTA v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 27, 2025
SUPPLEMENTARY JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	MAY 5, 2025

APPEARANCES:

Michelle Sarah Matta	FOR THE APPLICANT (ON THEIR OWN BEHALF)
Jesse Epp-Fransen	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada	FOR THE RESPONDENT