Federal Court  Cour fédérale

Date: 20250516

Docket: T-86-24

Citation: 2025 FC 894

Ottawa, Ontario, May 16, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

LEONARD MEHMETI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision made by a Canada Revenue Agency [CRA] officer determining that he was not eligible for the Canada Recovery Benefit [CRB], because he had not demonstrated a 50% reduction in his average weekly income compared to the previous year, in accordance with paragraph 3(1)(f) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*]. I am dismissing the application. Based on the constraining facts and the law, the officer's decision is reasonable.

I. Background

[2] The Applicant arrived in Canada in July 2019 on a closed work permit and worked as a cook for the rest of the year. In March 2020, the restaurant at which the Applicant worked closed due to the COVID-19 pandemic. He earned Employment Insurance [EI] benefits from April to September 2020 before returning to work in June 2020 at drastically reduced hours.

[3] The Applicant applied for the CRB in September 2020 and received payments until he returned to full-time work in October 2021. In late 2022, the CRA requested corroborative evidence of the Applicant's CRB eligibility. In response, the Applicant submitted a letter of employment, a Record of Employment, as well as paystubs and bank statements covering the period he received the CRB. He also submitted additional pay stubs for September to December 2019.

[4] By letter dated March 23, 2023, the CRA determined that the Applicant was not eligible for the CRB as his average weekly income did not decline by 50% compared to the previous year. The Applicant requested a second review of this decision.

[5] In this second review, the Applicant argued that his weekly income should be calculated by dividing his earnings by the number of weeks he had actually worked in 2019. The CRA officer explained that the Applicant's income had to be divided by the full 52 weeks, rather than the 24 weeks he had worked. According to this calculation, the Applicant's average weekly income did not decrease by 50%. The CRA officer undertook the same calculation for the

Applicant's 2020 income and arrived at the same determination. The second refusal was confirmed by letter dated December 12, 2023.

II. Issues and Standard of Review

[6] There is no dispute that the standard of review applicable to determinations of eligibility for the benefits administered by the CRA is reasonableness: *Chen v Canada (Attorney General)*, 2025 FC 723 at para 21; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16.

[7] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59–61.

[8] In his written submissions, the Applicant argued that the CRA officer's decision was unreasonable for three reasons: (i) the officer's calculation, both in terms of interpretation and application, is unintelligible; (ii) the officer fettered their discretion by relying on the CRA Guidelines for determining the relevant calculation, as opposed to undertaking their own statutory interpretation, thereby frustrating the statute's purpose; and (iii) the decision lacks justification as it does not discuss the Applicant's interpretation of the calculation.

[9] Furthermore, at the hearing, the Applicant raised a new legal argument for the first time, namely that the officer should have considered whether he had any foreign income in the relevant time frame prior to coming to Canada.

III. Analysis

A. *The CRA officer's calculation is reasonable*

[10] The CRB was a federal government measure introduced in response to the COVID-19 pandemic to offer financial support to employed and self-employed Canadians. Paragraph 3(1)(f) of the *CRB Act* sets out the 50% reduction of income requirement that was applied in this case:

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	**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 :
[…]	[…]
(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to	**f)** au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f)(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :
(i) the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income	**(i)** tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à

and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application, and	laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020,
(ii) in the case of an application made under section 4 in respect of a two-week period beginning in 2021, their total average weekly employment income and self-employment income for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application;	**(ii)** tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2021;

[11] This provision was considered by Justice Grammond in *Saadi v Canada (Attorney General)*, 2024 FC 648 at para 14 [*Saadi 2024*]. As in this case, the applicant in *Saadi 2024* took issue with the CRA officer's 50% reduction calculation. He likewise argued that his average weekly income should have been calculated by dividing his gross earnings by the number of weeks he actually worked, not by 52 weeks.

[12] Justice Grammond concluded that the CRA officer's interpretation of paragraph 3(1)(f) of the *CRB Act* was reasonable based on the ordinary meaning of the words:

> [14] […] Indeed, subparagraph 3(1)(f)(i) explicitly states that the basis of comparison is the "average weekly employment … in the 12-month period preceding the day" of the application. <u>According to the ordinary sense of the concept of average, the periods during which income is zero must be taken into account.</u> Mr. Saadi has not demonstrated that this interpretation is unreasonable.
>
> [Emphasis added]

[13] Accordingly, the CRA officer's method of calculation in this case is reasonable. Notably, this interpretation has been upheld in numerous other cases since *Saadi 2024*: *Brunet c Canada (Procureur général)*, 2025 CF 75 at para 43; *Moghtaderi v Canada (Revenue Agency)*, 2024 FC 2069 at para 16 [*Moghtaderi*]; *Feng v Canada (Attorney General)*, 2024 FC 1913 at para 18 [*Feng*]; *Durrani v Canada (Attorney General)*, 2024 FC 1481 at para 8.

[14] The Applicant's reliance on *Saadi v Canada (Attorney General)*, 2022 FC 1195 [*Saadi 2022*] is outdated. In that case, Justice Pamel (then of this Court) determined that "[p]aragraph 3(1)(f) of the Act does not prescribe a precise method for calculating a taxpayer's average weekly income" and therefore the decision lacked justification because the decision maker "did not explain why she calculated Mr. Saadi's average weekly income on a 52-week basis, when that period included weeks during which Mr. Saadi did not earn employment or self-employment income": *Saadi 2022* at paras 17, 19. The matter was thus remitted to the CRA for a new decision. The result was the CRA decision which the Court found reasonable in *Saadi 2024*.

[15] The Applicant also argues that the CRA officer mistakenly compared his 2019 weekly average income against his bi-weekly income during the relevant CRB periods. This is incorrect. The officer compared the bi-weekly averages of each period: Second Review Report, Certified Tribunal Record [CTR] at 39. Calculating on a weekly or bi-weekly basis "has no significant impact [on] the result": *Saadi 2024* at para 11.

[16] Finally, the Applicant submits that the CRA officer improperly used his 2020 income when they should have used his 2019 income. While the officer stated that "[t]he 2020 income

calculations were used to determine the applicant's eligibility as they were the highest of 2019 and 2020", I agree with the Respondent that this was "a slip": Respondent's Memorandum of Fact and Law at para 57. The final paragraph of the officer's notes makes this clear. It states that "the applicant could not have earned more than $307.67 per CRB period applied": Second Review Report, CTR at 39. This figure is based on the Applicant's 2019 income, and so the earlier reference to 2020 is simply a typographical error. In any case, the Applicant was ineligible regardless of which year was used.

B. *No fettering of discretion*

[17] There is no merit to the Applicant's argument that the CRA officer fettered their discretion by calculating his average weekly income based on a 52-week period. As set out in paragraph 13 above, the CRA officer's interpretation has been affirmed as reasonable by recent jurisprudence.

[18] Furthermore, as the Respondent points out, the jurisprudence is clear that the eligibility conditions are established by statute and CRA officers have no discretion to change them: *Ashurova v Canada (Attorney General)*, 2025 FC 428 at para 54; *Moghtaderi* at para 17; *Feng* at para 18; *Saadi 2024* at para 2; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 23.

C. *Justified decision*

[19] The Applicant argues that the CRA officer's decision failed to grapple with his central arguments and thus lacks justification and transparency. I am unable to agree.

[20] The CRA officer's notes make clear that they considered the Applicant's submissions that his 2019 income should be divided by the 24 weeks he worked, as opposed to by a 52-week period: Second Review Report, CTR at 10. However, as set out above, the officer determined that the proper interpretation of paragraph 3(1)(f) of the *CRB Act* was that the income he had earned over the 24 weeks in 2019 had to be split over the 52-week period. Again, this interpretation has been upheld as reasonable by this Court.

D. *The Applicant's new legal argument*

[21] Generally, arguments made for the first time on judicial review should not be entertained if the issue could have been raised before the administrative decision-maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–23; *Zoghbi v Air Canada*, 2024 FCA 123 at paras 26–27 [*Zoghbi*]; *Terra Reproductions Inc v Canada (Attorney General)*, 2023 FCA 214 at paras 6–7; *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 49; *Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 99. As explained by Justice Stratas, the rationale is that "the legislation governing an administrative regime gives the administrative decision-maker, not reviewing courts, the power to decide all of the issues going to the merits of cases": *Zoghbi* at para 27.

[22] Here, the Applicant raised a legal argument for the first time at the judicial review hearing. He argued that the CRA officer erred in failing to consider whether he had any foreign income in the relevant time frame prior to coming to Canada. In support, the Applicant relied upon the CRA's Guidelines entitled "Confirming Covid-19 benefits eligibility" [*CRA Guidelines*]. Specifically, the *CRA Guidelines* stipulate that foreign income may be counted

towards the $5,000 criterion for establishing CRB eligibility: “Confirming Covid-19 benefits eligibility”, CTR at 54–55.

[23] The Applicant should have raised this issue before the CRA, as the merits-decider. It is for the CRA to consider the interpretation of its governing legislation at first instance. The Applicant neither raised the issue, nor adduced any evidence about income earned abroad prior to coming to Canada.

[24] This new legal argument was only raised by Applicant’s counsel at the hearing, without any notice to the Respondent or the Court. In my view, there is no reason to depart from the general rule that new arguments will not be entertained on judicial review. Indeed, Applicant’s counsel did not submit any jurisprudence in support of raising this new argument at the eleventh hour.

IV. Conclusion

[25] Based on the foregoing, the Applicant has failed to establish that the CRA officer’s decision is unreasonable. The application for judicial review is therefore dismissed.

[26] At the hearing, the parties advised the Court that they had agreed that no costs should be awarded to the successful party. I agree that this is appropriate and decline to award costs.

JUDGMENT in T-86-24

THIS COURT'S JUDGMENT is that the application is dismissed without costs.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-86-24
STYLE OF CAUSE:	LEONARD MEHMETI v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 7, 2025
JUDGMENT AND REASONS:	TURLEY J.
DATED:	MAY 16, 2025

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