

Federal Court



Cour fédérale

Date: 20250523

Docket: T-1087-25

Citation: 2025 FC 937

Toronto, Ontario, May 23, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

VASSOS THEODOSIOU

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT ON CONSENT

I. Overview

[1] The Applicant Vassos Theodosiou [Applicant], brings this motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules] seeking to resurrect his application for judicial review [Application] which he voluntarily discontinued. In his Application, the Applicant challenged the reasonableness of a decision of the Canadian Revenue Agency [CRA] finding the Applicant ineligible for the Canada Recovery Benefits [CRB] he received.

[2] For the reasons that follow, I am dismissing this motion as the Applicant has not met the strict test established by the Federal Court of Appeal in *Philipos v Canada (Attorney General)*, 2016 FCA 79 [*Philipos*] by which a discontinued proceeding may be resurrected.

II. Facts

[3] The Applicant applied for and received both the CRB and the Canada Emergency Response Benefit [CERB]. After a first and second review by CRA officers, the CRA determined that the Applicant was ineligible for the CERB and CRB. The rationale for the CRA's decision reads:

“[Applicant] does have gross business income of more than 5000\$ in 2019, which has been verified by the bank statement they submitted, but [Applicant] has net business income which is less than 5000\$ in 2019, 2020 and 2021. [Applicant] agreed during 2024-10-29 phone conversation that their tax assessment information is correct. [Applicant] is not eligible for CRB and CERB. [Applicant] does not meet the eligibility criteria that they had net business income of at least 5000\$ before they received benefits. But [Applicant] has gross business income of more than 5000\$ before their first CERB benefit, they are not required to pay CERB. Redetermination will be done for CRB. Denial letters will be sent for CERB and CRB.”

[4] On April 4, 2025, the Applicant, who is a self-represented litigant, commenced the Application challenging the CRA's decision. He received copies of the certified materials relevant to the Application on April 17, 2025.

[5] On April 22, 2025, the Applicant received a call from counsel for the Respondent [Respondent's Counsel]. The content of their conversation is captured by Respondent's Counsel

in a follow-up email she sent the Applicant after their call [Respondent's Email]. According to the Respondent's Email:

- a) Counsel for the Respondent stated that she could not provide legal advice to the Applicant;
- b) It was the Respondent's position that the Application was "almost certain to be dismissed" because the Applicant's net self-employment income was less than the minimum requirement for the CRB;
- c) The Applicant was of the view that the eligibility criteria had not been sufficiently explained and he was in a difficult situation due to his fixed income and mortgage;
- d) Respondent's Counsel advised that she could not provide a discount on taxes or amounts owing in her role;
- e) The Applicant indicated that he was open to discontinuing his Application as he wanted to "live in peace";
- f) The Applicant was advised that upon filing a Notice of Discontinuance with the Court he would be in the position to call the CRA to arrange a repayment plan; and
- g) Respondent's Counsel advised that there was no deadline to discontinue the Application and invited the Applicant to take more time to think about what he would do.

[6] Two days after this call, the Applicant filed a Notice of Discontinuance.

[7] The Applicant now seeks to re-open his Application. His supporting affidavit states that he had no legal representation at the time that he made the decision to discontinue his Application and he would liked to have obtained legal advice before making his decision. He asserts that he was "tricked" by Respondent's Counsel and that he "had no choice" but to follow her advice, as he thought she was looking out for his interests because she is a lawyer. He has since applied for free legal representation. He believes that he has a good case on the Application by reason that he says he met the eligibility criteria for the CERB.

III. Analysis

[8] Courts will hold litigants to their decision to unilaterally discontinue a proceeding, unless the moving party can show:

- 1) Circumstances that “strike at the root of the decision to discontinue” (*Philipos* at paras 19-20);
- 2) The proceedings sought to be resurrected have some reasonable prospect of success (*Philipos* at para 21); and
- 3) There is no resulting prejudice (*Philipos* at para 22).

[9] The Applicant has not satisfied the first two of these requirements.

[10] First, the Applicant has failed to demonstrate circumstances that strike at the root of his decision. While an applicant’s allegation that they were “tricked” into discontinuing the Application could satisfy the first element of the test (*Philipos* at para 20), the Applicant’s allegation is not made out on the evidence. I find that the Respondent’s email reflects the conversation between the Applicant and Respondent’s Counsel given that it is a contemporaneous attempt to capture and document the conversation and there is no evidence that the Applicant challenged its accuracy after having received it. That email reflects the fact that Respondent’s Counsel warned the Applicant that she was not giving the Applicant legal advice. It also provides an explanation beyond “trickery” as to why the Applicant would have discontinued the Application: he had expressed concern over his ability to pay and his desire for peace of mind.

[11] While the Applicant questions why a lawyer for the CRA would call him, the call was clearly an attempt to negotiate a settlement of the Application. Despite the fact that the

Respondent's Email reflects without prejudice settlement negotiations which are presumptively inadmissible (*Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 at para 12 [*Sable Offshore*]), the Applicant's allegation of "trickery" falls under the recognized exception which permits consideration of privileged communications that are relevant to an allegation of fraud (*Sable Offshore* at para 19).

[12] I agree with the Respondent that the present motion more accurately reflects a "change of heart," which the Federal Court of Appeal held is not a sufficient basis for resurrecting a discontinued proceeding (*Philipos* at para 24). It is worth noting in this regard that Respondent's Counsel encouraged the Applicant to take his time in making his decision and the Applicant appears to have done just that, as he waited two days before discontinuing the Application. Respondent's Counsel did not rush the Applicant into a decision.

[13] The Applicant has also not met the second requirement of the test in *Philipos* as he has failed to show that his Application has a reasonable prospect of success. Beyond the bald assertion that the Applicant considers his case to be a good one, the Applicant has failed to address the reasonableness or fairness of the CRA's decision with respect to his eligibility for the CRB, let alone provide any argument that would undermine it. His suggestion that he must meet the CRB eligibility requirements because he met the requirements for the CERB was squarely addressed and explained in the CRA's decision:

"It was explained to the applicant that he was allowed to keep the CERB benefit as first review confirmed that the applicant earned more than \$5,000 in gross business income, and we can allow CERB for that reason. However CRB is strictly based on net and the \$5,000 net self employment income is not met, and this results in the CRB being found not eligible."

[14] It is in the interests of justice that the Applicant be held to his decision to discontinue this Application.

THIS COURT'S JUDGMENT is that:

1. The style of cause shall be amended to reflect the Attorney General of Canada as the proper Respondent to this application;
2. The Applicant's motion to set aside the Notice of Discontinuance and re-open this application is denied; and
3. There shall be no costs of this motion.

"Allyson Whyte Nowak"

Judge