Federal Court Cour fédérale

**Date: 20231031**

**Docket: T-1809-22**

**Citation: 2023 FC 1450**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, October 31, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**MÉLANIE LAPLANTE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The applicant, Mélina Laplante, is a self-employed singer and voice teacher. The COVID-19 pandemic caused her to lose her sources of income.

[2] The applicant applied for and received the Canada Recovery Benefit [CRB]. The CRB is part of a package of measures introduced by the Government of Canada in response to the impacts of the COVID-19 pandemic. This benefit was available for any two-week period beginning on September 27, 2020, and ending on October 23, 2021, to eligible employed and self-employed individuals who suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 2 [*Aryan*]).

[3] The eligibility criteria for the CRB are set out in detail in subsection 3(1) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act]. These criteria include a requirement for the employee or self-employed person to have earned at least $5,000 in employment income or net self-employment income in 2019, 2020, or in the 12-month period preceding the day of their last application.

[4] The applicant seeks a judicial review of the decision of an agent [Agent] of the Canada Revenue Agency [CRA], dated August 4, 2022 [Decision], in which, following a second review, the Agent found that the applicant was not eligible for the CRB. The CRA denied her application on the grounds that she had not earned at least $5,000 in net self-employment income in 2019, 2020, or in the 12-month period preceding the day of her first application. The Officer found that the applicant's net business income had been either negative or less than $5,000 since 2016.

[5] The applicant submits that the Decision is unreasonable because, in her view, the Officer failed to take into account her accountant's proposal to amend her 2020 income tax return retroactively to not claim a depreciation, which would have the effect of increasing her income to

$7,041, so above $5,000. The applicant argues that the Decision is neither justifiable, transparent nor intelligible, as the Officer failed to address her accountant's proposal and to explain why the applicant could not simply resolve the problem by amending her 2020 income tax return, which would make her eligible for the CRB.

[6] The respondent submits that the Decision is reasonable considering the fact that the applicant's declarations of business income have been negative or less than $5,000 since 2016, when she began her business. The respondent argues that the depreciation claimed by the applicant against her income for the 2019, 2020 and 2021 taxation years constitutes an expense incurred by the applicant to generate business income for those years. The respondent claims that because the applicant decided to use this deduction when she filed her income tax returns, she cannot simply amend her returns for those years retroactively to make herself eligible for the CRB.

[7] For the reasons that follow, I conclude that the Agent's Decision is not unreasonable. Accordingly, the applicant's application must be dismissed.

## II. Standard of review

[8] It is well established that the applicable standard of review in this case is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [He]; *Aryan* at paras 15–16).

[9] A reasonable decision is one 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*]). The burden is on the applicant, the party challenging the Decision, to show that it is unreasonable (*Vavilov* at para 100).

[10] The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" and that the alleged shortcomings or flaws are "more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[11] The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the court itself would have reached in the administrative decision maker's place. Absent exceptional circumstances, a reviewing court should not interfere with factual findings. Moreover, in the context of an application for judicial review, it is not for this Court to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125; *Clark v Air Line Pilots Association*, 2022 FCA 217 at para 9).

## III. Analysis

[12] As discussed above, the onus is on the applicant, in her application for judicial review, to show that the Officer's Decision is unreasonable.

[13] The applicant submits that the Officer should have explained, in the Decision, why her accountant's proposal to amend her income tax return was not a viable solution. The applicant argues that as she was under no obligation to claim the depreciation, there is nothing preventing her from simply amending her return now to make herself eligible for the CRB.

[14] The respondent submits that the applicant decided to use this deduction for the 2019, 2020 and 2021 taxation years when she filed her income tax returns. She cannot simply amend her returns retroactively for those years to make herself eligible for the CRB. The respondent raises the following points: (i) no amended income tax return had been produced at the time the Decision was rendered; and (ii) the accountant had confirmed to the Officer that no error had been made in the applicant's income tax returns.

[15] The respondent argues that the Decision is reasonable and that reviewing courts cannot expect administrative decision makers to respond to every argument or possible mode of analysis. In any case, no amended tax returns were filed, so one can hardly expect the Officer to have addressed or referred to this issue. The respondent also relies on *Morin v Canada (Attorney General)*, 2023 FC 751 [*Morin*] and submits that while one is permitted to engage in prospective tax planning, one cannot simply go back and reclassify income after the fact in order to qualify for the CRB (*Morin* at paras 22–23; *Canada (Attorney General) v Collins Family Trust*, 2022 SCC 26 [*Collins*]).

[16] The applicant argues that in *Morin*, the administrative decision maker at least addressed the classification of revenue in her decision, which is not the case here. In this case, given that

the depreciation was an optional deduction, the applicant submits that the Officer should have addressed the issue of a potential amendment of the income tax return in the Decision.

[17] Given that no amended income tax return was submitted to the Officer, it was not unreasonable for the Officer not to have raised the issue of an amended return in the Decision.

[18] I asked the applicant's counsel at the hearing whether there existed any case law on the subject of retroactive tax planning or a case supporting the applicant's position. She was unable to point to any.

[19] The respondent, on the other hand, cited authorities in support of the proposition that one cannot simply go back and reclassify income after the fact in order to qualify for the CRB (*Morin* at paras 22–23; *Collins*). In *Collins*, the Supreme Court of Canada [SCC] affirms certain governing principles of tax law, including the prohibition against rectification in the context of retroactive tax planning, because, in its view, "[t]axpayers should be taxed on what they . . . did, and not on what they could have done or later wished they had done" (*Collins* at paras 1, 7 and 29). The SCC set out that this prohibition, "as stated in *Fairmont Hotels* and *Jean Coutu*, should be interpreted broadly, precluding any equitable remedy by which it might be achieved" (*Collins* at para 7).

[20] Ultimately, the applicant bears the burden of showing that the Decision is unreasonable—that is, demonstrating that it is not justified in relation to the facts and law that constrained the Officer (*Vavilov* at para 85). Having reviewed the applicant's supporting evidence, the record

before the Officer, and having considered the arguments of the parties, I conclude that the Officer's Decision is reasonable. It meets the *Vavilov* requirements of being internally coherent as well as being transparent, justified and intelligible.

[21] Accordingly, on the basis of the record and the information presented to the Officer, I cannot conclude that the Officer committed a reviewable error. Based on all the evidence, it was not unreasonable for the Officer to conclude that the applicant had not met the eligibility criteria set out in the Act.

**JUDGMENT in T-1809-22**

**THIS COURT'S JUDGMENT is as follows:**

1. The applicant's application for judicial review is dismissed.

2. Costs are awarded in favour of the respondent in the amount of $500.

"Vanessa Rochester"
Judge

Certified true translation
Francie Gow

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-1809-22 |
| **STYLE OF CAUSE:** | MÉLINA LAPLANTE v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JUNE 21, 2023 |
| **JUDGMENT AND REASONS:** | ROCHESTER J |
| **DATED:** | OCTOBER 31, 2023 |

**APPEARANCES:**

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|---|---|
| Agathe Cavanagh | FOR THE APPLICANT |
| Éliane Mandeville | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |