

Federal Court



Cour fédérale

**Date: 20241025**

**Docket: T-85-24**

**Citation: 2024 FC 1701**

**Toronto, Ontario, October 25, 2024**

**PRESENT: Mr. Justice Pentney**

**BETWEEN:**

**RUBEN DE BAAT**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ruben de Baat opened a fitness facility in August 2019. In order to get his business off the ground, he did not pay himself a salary until 2020.

[2] Because of government-imposed restrictions during the COVID-19 pandemic, Mr. de Baat was forced to close his facility for certain periods. He says that the business was closed for 13 months during a 24 month period. Despite being closed, however, the business continued to

incur fixed costs including rent and utilities. Mr. de Baat tried to find other employment during this period, but was unable to do so because other service-related industries were also experiencing slowdowns and closures.

[3] Mr. de Baat applied for the Canada Recovery Benefit (“CRB”) for 27 two-week benefit periods covering September 27, 2020 to October 9, 2021, inclusively. He received those benefits, and the Canada Revenue Agency (“CRA”) subsequently advised him they were conducting a review to ensure he was eligible for the benefits that he received.

[4] On March 23, 2023, CRA advised Mr. de Baat that the review had found that he was not eligible for any of the CRB benefits he had received because he had not experienced a 50% reduction in his average weekly income during the relevant period, based on the income he had reported for the calendar years 2019 and 2020 (the “First Review”). The letter advised Mr. de Baat that he had the right to seek a review of that decision.

[5] Mr. de Baat provided further documentation to support his claim for the benefits and a second CRA Officer (the “Officer”) had several conversations with him to clarify certain aspects of his claim. The Officer conducted a thorough and systematic review of his eligibility, as demonstrated by the notes in the CRA system. The Officer found that Mr. de Baat was eligible for CRB benefits for 15 of the two-week periods, but he was not eligible for the remaining 12 periods (the “Second Review”). The Officer based this calculation on an examination of the income Mr. de Baat had reported from October 31, 2019 to October 31, 2020.

[6] Mr. de Baat seeks judicial review of the Second Review decision. He argues that the CRA has misinterpreted and misapplied the *Canada Recovery Benefit Act*, SC 2020, c 12 [*CRB Act*]. Mr. de Baat's main point is that the CRA has failed to give effect to the spirit, intent and purpose of the *CRB Act* by adopting an unrealistic and unduly restrictive interpretation of how to calculate prior years' income for self-employed people whose businesses were forced to close because of the pandemic.

[7] Mr. de Baat's arguments rest on two main points. First, he was forced to shut down his business because of government-imposed lockdowns, and it was unreasonable to fail to take this into account in calculating his income drop over the prior 12 months. If the months he was forced to close were not included, he would be eligible for the CRB benefits for the entire period he claimed them.

[8] Similarly, due to COVID-19 closures he did not receive an income for several weeks at a time, followed by sporadic payments of slightly larger amounts to make up for some of the income he had lost. Mr. de Baat submits that if his earnings for the year were looked at as a weekly average (rather than a comparison of income for each two-week period) he would have been eligible for all of the 27 periods he claimed. He notes that the 12-month total revenue calculations include a 4-month period when his business was shuttered because of a government-mandated lockdown, as well as a 3-month period when he deferred his income in order to try to save his business. This was not taken into account in the Second Review decision.

[9] Second, he says that the CRA's approach imposes harsh consequences on him – for things that were beyond his control (lockdowns) or are part and parcel of opening a small business (deferring his income). Mr. de Baat argues that this is contrary to the legislative intent behind the *CRB Act*, which was intended to provide compensation for harms caused by COVID-19 lockdowns. He says the decision must, therefore, be unreasonable.

[10] The Respondent argues that the Officer who conducted the Second Review was bound to apply the requirements of the law, and that the decision reflects the outcome of applying the rules set out in the law to the facts of this case. The Second Review was more favourable towards the Applicant than the first one, and the result is reasonable.

[11] As I explained during the hearing, my role on judicial review is not to step into the shoes of the Officer and consider the case again from scratch. Instead, I am required to determine whether the decision is reasonable, under the framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 2. To do this, I must do three things. First, I need to examine the reasons given by the Officer to determine whether any crucial facts were overlooked or misunderstood. Second, I need to make sure the Officer did not misapply the law. Third, I need to assess whether the reasoning process the Officer followed is clear and logical so that the outcome is justified by the reasons given.

[12] Applying this approach to the Second Review decision, I find that the decision is reasonable. The Officer understood the facts, and Mr. de Baat does not argue that the information

he submitted was ignored or misunderstood. Instead, he says that the review did not take account of the reality of his situation as a small business owner who had just started to operate and then was forced to shut down because of COVID-19 lockdowns. These are factual questions that fall outside the scope of the Officer's discretion in applying the *CRB Act*, and the Officer had no choice but to follow the law.

[13] Mr. de Baat's arguments relate to the policy underlying the law and the choices made by Parliament in adopting it. The law gives the Officer no room for discretion, but instead sets out a clear set of rules that must be applied. As the Federal Court of Appeal recently confirmed in *Flock v Canada (Attorney General)*, 2022 FCA 187, at para 4: "the CRA official had no choice but to apply the eligibility criteria set out in the legislation." I note that in that case Mr. Flock had argued that the CRA erred in applying a "net income" test instead of considering his gross income, and he also argued that it made no sense to use 2020 as a reference for calculating his income because that was a pandemic year. Both arguments were rejected because the Officer was required to apply the law, and the eligibility criteria reflected policy choices that Parliament was entitled to make. Similar arguments about how calculations could be done differently have been rejected in other cases: see *Saadi v Canada (Attorney General)*, 2024 FC 1481; *Durrani v Canada (Attorney General)*, 2024 FC 648.

[14] The same reasoning applies here. Mr. de Baat argues that the criteria should be different to reflect the reality of small business start-ups, and to take into account periods when income was lost due to pandemic lockdowns. Both of these matters could have been taken into account by Parliament and reflected in the *CRB Act*, either by adopting different rules or giving officers

more discretion. Instead, Parliament adopted the rules set out in the legislation and gave officials virtually no discretion in applying them. The Officer had no choice but to apply the criteria set out in the law.

[15] The Second Review decision shows that the Officer adopted an approach that was more favourable to Mr. de Baat than the First Review. After reviewing the information provided by Mr. de Baat, including income tax, pay stubs, and bank information, the Officer explained: “After reviewing all documentation that the applicant submitted... I was in fact able to calculate applicant’s 12 months prior income for 50% reduction amount which was further advantageous for the taxpayer’s eligibility outcome based on the payslips he submitted.” The Officer’s notes continue, indicating that during a phone conversation with Mr. de Baat he stated that his income should be averaged out for the year, but “I advised that if we did average out it would make him ineligible for all periods based on his income...”

[16] The Officer’s notes set out the calculations for each of the two-week benefits periods, and the decision reflects the results. Mr. de Baat was found to be eligible for the benefit for some periods but not for others. He has not challenged the details of the calculations.

[17] I can find no flaw in the Officer’s reasoning. The conclusion that Mr. de Baat was eligible to receive the benefits for some of the two-week periods, but not eligible for other periods reflects the evidence Mr. de Baat submitted. The Officer applied the eligibility criteria set out in the legislation. The reasoning process is set out in the notes and the letter. This is all that is required for a reasonable decision.

[18] For the reasons set out above, I will dismiss this application for judicial review.

[19] The Respondent sought nominal costs in view of the fact that a prior scheduled hearing had to be adjourned because Mr. de Baat did not attend. Mr. de Baat explained that it was an honest mistake, he had simply mixed up the dates of the first hearing. While emphasizing the importance of respecting the Court's time and resources, in the present circumstances, and in exercise of my discretion, no costs will be awarded. Each party shall bear their own costs.

**JUDGMENT in T-85-24**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No costs are awarded.

"William F. Pentney"  
Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-85-24

**STYLE OF CAUSE:** RUBEN DE BAAT v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 23, 2024

**REASONS FOR JUDGMENT AND JUDGMENT:** PENTNEY J.

**DATED:** OCTOBER 25, 2024

**APPEARANCES:**

Ruben de Baat ON HS OWN BEHALF

Nian Fan (George) Lin FOR THE RESPONDENT

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