

Federal Court of Appeal



Cour d'appel fédérale

Date: 20221103

Docket: A-64-22

Citation: 2022 FCA 187

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
WOODS J.A.**

BETWEEN:

BEN FLOCK

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on November 1, 2022.

Judgment delivered at Toronto, Ontario, on November 3, 2022.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**BOIVIN J.A.
DE MONTIGNY J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] This appeal concerns an application by Mr. Flock for government relief that was provided to alleviate economic hardship during the COVID-19 pandemic. The particular relief at issue is known as the Canada Recovery Benefit (CRB). Mr. Flock sought the CRB for the period from September 27, 2020 to November 21, 2020.

[2] Mr. Flock's application for benefits was denied by the Canada Revenue Agency (CRA) on the ground that he did not satisfy the eligibility criteria. A first decision was communicated to Mr. Flock on June 9, 2021. A second review was completed and came to the same result. Hence, a second decision was communicated to Mr. Flock on July 15, 2021. Mr. Flock applied to the Federal Court for judicial review of this decision. The Federal Court dismissed the application for judicial review, for reasons cited at 2022 FC 305. Mr. Flock appeals from the Federal Court's decision to this Court.

[3] Eligibility criteria for the CRB are set out in the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2. The particular requirement that Mr. Flock did not satisfy is that an applicant who is self-employed must have earned at least \$5,000 in income in one of two periods, either the year 2019 or in the 12-month period prior to when the application was made (CRB Act, s. 3(1)(d)). In this case, the 12-month period would be mostly in the year 2020 when the pandemic began. The legislation further requires that income be calculated as net income, which is described as revenue from the self-employment less expenses incurred to earn that revenue (CRB Act, s. 3(2)).

[4] Mr. Flock does not contest the finding that he does not satisfy the \$5,000 threshold on a net income basis. However, Mr. Flock submits that it was inappropriate for the CRA to apply the net income test in the circumstances of his case. He submits that a gross income test should be applied. If a gross income test were applied, Mr. Flock would satisfy the eligibility criteria since he earned over \$5,000 in revenue in the year 2019. As the Federal Court correctly pointed out,

the CRA official had no choice but to apply the eligibility criteria set out in the legislation. Accordingly, this submission was properly dismissed in the Court below.

[5] At the hearing, Mr. Flock's main argument was that there was an apprehension of conflict of interest on the part of the CRA official who issued the decision. Mr. Flock submitted that the official, being an employee of the CRA, could not be impartial. Mr. Flock also submitted that the CRA official evidenced actual bias when the official informed him that they would expand the review to consider benefits that he had received in prior periods. Mr. Flock stated that he interpreted this comment to exhibit some suspicion of him.

[6] The issue of conflict of interest is not properly before the Court because Mr. Flock did not raise the issue in the Court below. The submission should be dismissed on this basis. In any event, the CRA cannot be faulted for implementing a second-level review internally because the CRA is mandated to review CRB applications under the governing legislation. Finally, if the CRA official made a comment to Mr. Flock about reviewing earlier benefits, this does not demonstrate bias as such review is within the mandate of the CRA. Accordingly, there is no basis for relief on the basis of actual, or an apprehension of, bias.

[7] At the hearing, Mr. Flock also submitted that the eligibility criteria should not reference the year 2020, because it makes no sense to reference a pandemic year. He submits that the criteria should instead apply to the years 2018 and 2019. This is not a basis for relief by way of judicial review because the CRA official had no choice but to assess Mr. Flock's entitlement to the CRB based on the eligibility criteria set out in the legislation. This was a policy decision that

Parliament was entitled to make, and the official had no ability to provide relief on grounds of fairness only.

[8] Mr. Flock’s memorandum raises many other concerns with the administration of the CRB, both generally and in regard to his application. None of these concerns warrant the intervention of this Court. I would briefly mention, however, that Mr. Flock made several allegations of intentional misconduct on the part of government officials. No details or evidence of intentional misconduct were provided to support these serious allegations. Such support is required. Accordingly, I have not taken into account submissions by Mr. Flock that government officials engaged in intentional misconduct.

[9] In the result, I have concluded that there is no basis for relief. In sum, the appellant has not established that the Federal Court made a reviewable error. I would dismiss the appeal with costs fixed in the amount of \$250 payable by the appellant to the respondent.

"Judith Woods"

J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-64-22

STYLE OF CAUSE: BEN FLOCK v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 1, 2022

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

DATED: NOVEMBER 3, 2022

APPEARANCES:

Ben Flock FOR THE APPELLANT
SELF-REPRESENTED

Laurent Bartleman FOR THE RESPONDENT
Valantina Amalraj

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada