

Federal Court



Cour fédérale

Date: 20250805

Docket: T-2531-24

Citation: 2025 FC 1469

Toronto, Ontario, September 5, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

JOANNE WHITTEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Canada Revenue Agency [CRA] found that Ms. Joanne Whitten was ineligible for both the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. The CRA came to this conclusion because Ms. Whitten had not established that she earned at least \$5,000 of self-employment income in the relevant periods, which was a requirement.

[2] Ms. Whitten now seeks judicial review of this ineligibility decision.

[3] While I sympathize with Ms. Whitten's situation, this application for judicial review must be dismissed because the CERB and CRB ineligibility decisions were reasonable. They were reasonable because the decision-maker considered the information provided by Ms. Whitten and followed the applicable legislation.

II. BACKGROUND

A. *Facts*

[4] During the height of the COVID-19 pandemic, Ms. Whitten applied for and received both the CERB and, later, the CRB. Payments under these programs were provided between March 15, 2020 and September 26, 2020 (for the CERB); and between September 27, 2020 and October 9, 2021 (for the CRB).

[5] In March 2023, the CRA contacted Ms. Whitten to retrospectively validate her eligibility for the CERB and CRB payments. Ms. Whitten was asked to provide supporting documentation to prove, among other things, that she had earned at least \$5,000 of gross employment and/or net self-employment income in 2019, 2020, or the 12 months prior to her application for the benefits.

[6] On April 5, 2023, Ms. Whitten called the CRA to ask which documents she should submit to substantiate her eligibility. A CRA agent spoke with Ms. Whitten and advised her to submit documents including but not limited to paystubs, invoices, receipts, bank statements, and anything she thought would confirm her \$5,000 income. The same day, Ms. Whitten submitted a

bank statement for the pay period ending February 28, 2019, which showed balances above \$5,000, but did not clearly indicate which transactions were related to employment or self-employment income. She also provided a copy of a cheque for \$125.00.

[7] On October 4, 5, and 10, 2023, a CRA agent attempted to follow up with Ms. Whitten regarding her documents. There was no answer to the phone calls or replies to voicemails requesting a call back within three business days.

[8] The next week, the CRA informed Ms. Whitten that she was not eligible for the CERB and CRB benefits she had received, as she had not earned at least \$5,000 of employment or self-employment income in 2019, 2020, or the 12 months prior to her application.

[9] On November 16, 2023, Ms. Whitten requested a second review. She submitted additional documentation, including: her 2020 tax return, 2020 T1 summary, invoice for preparation of her 2020 tax return, 2020 T4s from I.G. Financial Services and the Government of Canada, 2020 T5 Statement of Investment Income, and her 2019 notice of assessment. These documents appeared to demonstrate that while Ms. Whitten was in receipt of *gross* self-employment income that exceeded \$5,000 in the relevant periods, her net earnings were significantly lower. In fact, Ms. Whitten's 2019 net self-employment income showed a loss of \$12,971.

[10] On August 15, 2024, the CRA Agent assigned to the Second Review (“the CRA Agent” or “the Second Reviewing Agent”) telephoned Ms. Whitten to ask clarifying questions regarding her employment and her income during the relevant periods. Ms. Whitten informed the CRA

Agent that she had been working as a financial advisor, but her work was largely shut down as the offices were closed. She also explained that she was taking care of her parents at the time. She stated that she had no documents to submit other than a bank statement showing a direct deposit from the investment company where she had worked.

B. *Decision under Review*

[11] By letters dated August 27, 2024, the CRA Agent informed Ms. Whitten that she was not eligible to receive the CERB or the CRB, because she did not meet the \$5,000 income eligibility requirement. Of note, and for reasons set out in greater detail below, only the CRB letter contained language related to the recovery of the funds provided to Ms. Whitten.

[12] In the Second Review Report, which forms part of the reasons (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22, the CRA Agent analysed the documents received throughout the review process and noted that the Applicant had not earned at least \$5,000 before taxes of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of her first application. In making this determination, the CRA Agent stated:

BR [the Applicant] was asked if she has invoices, receipts with matching bank statements. BR mentioned she has received the direct deposit from his Investment company and other than that she doesn't have documents to submit. BR was asked if she has reported her income correctly in all the years. BR mentioned she has reported all her income correctly including expenses like office expense, training, travel, etc.

Decision: BR doesn't meet the requirement of net income of \$5K both in 2019, 2020. BR has reported her income less than \$5k in 2019, 2020 due to which BR is denied for CRB and BR doesn't have

matching receipt with the deposits. However, BR has met the \$5k gross income for CERB. BR is not eligible for CRB and CERB. DL [decision letter] will be sent for CRB and CERB (without repayment verse).

III. ISSUES and STANDARD OF REVIEW

[13] The only issue in this matter is whether the CRA Agent's decisions were reasonable.

[14] It is well established that the standard of review applicable to the merits of the CRA's decisions regarding CERB and CRB benefits is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12).

IV. ANALYSIS

A. *Preliminary Matter – New Documents Submitted on Judicial Review*

[15] As a preliminary matter, the Respondent notes that Exhibits “A,” “B,” and “C” (except for a February 2019 bank statement included at Exhibit “C”) of the Applicant's affidavit are all new documents that were not provided to the Second Reviewing CRA Agent. As these documents were not before the CRA Agent, the Respondent argues that they should not be considered in this judicial review.

[16] I have reviewed the documents in question and agree with the Respondent. The documents were not submitted to the Second Reviewing Agent, and they do not fall under any of the exceptions to the general rule that judicial review is to be conducted on the basis of the

record that was before the administrative decision-maker: *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22.

[17] As a result, I have not considered the documents identified above.

B. *The Decisions were Reasonable*

[18] Eligibility for both the CERB and the CRB was based, in part, on the requirement that applicants had to have received \$5,000 of employment and/or self-employment income in 2019, 2020, or the 12 months prior to an application for the benefits. This case turns on whether this income requirement refers to gross or net income.

[19] The *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*] was not particularly clear on this question. It simply granted benefits to certain “workers” based on various criteria, one of which was a requirement that the individual, “for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least \$5,000”: see *CERB Act*, s 2.

[20] The CRA interpreted this provision as relating to net, rather than gross income. However, because the applicable provision in the *CERB Act* did not state this explicitly, in 2021 the government issued the *Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order*, SI/2021-19 [*CERB Remission Order*], which granted relief to individuals such as the Applicant from the requirement to repay CERB overpayments that arose because of the confusion between net and gross self-employment

income requirements. As a result, this Court has found that judicial review matters related to CERB repayments that are, as here, subject to the *CERB Remission Order* may be moot: see *Olivet v Canada (Attorney General)*, 2024 FC 1452.

[21] With time came greater eligibility specificity. The *Canada Recovery Benefits Act* SC 2020, c 12 [*CRB Act*] specified that, “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”: *CRB Act*, s 3(2).

[22] With the above in mind, I find that the decisions under review are reasonable. The Second Reviewing CRA Agent considered the Applicant’s request based on the documents and figures provided by the Applicant and there was no allegation that the Applicant’s tax returns were incorrect or inaccurate. Based on this information, it was reasonable, and, in fact, inevitable, for the Agent to have concluded that the Applicant’s self-employment income for the relevant periods did not meet the \$5,000 threshold.

[23] As a result, I have concluded that it was reasonable for the Second Reviewing CRA Agent to conclude that the Applicant was not eligible for the CERB or the CRB for the relevant periods because she did not earn \$5,000 in net self-employment income. I note that the CRA will not be seeking repayment of the CERB payments due to the *CERB Remission Order*. In its decision letter related to the CRB, the CRA indicated that repayment may be required. This course of action – not seeking repayment for the CERB benefits, but seeking repayment for the CRB payments – is reasonable. For the sake of clarity, I note that the *CERB Remission Order* is limited to the CERB, and has never been extended to the CRB. While this Order ensures that Ms.

Whitten will not be subject to CERB repayment requirements, it has no bearing on the CRB:

Flock v Canada (Attorney General), 2022 FC 305 at para 19.

[24] On the question of the Applicant's potential CRB repayment requirements, I note that, in its decision letter, the CRA also stated as follows:

We understand that it may not be possible for you to pay your debt immediately and in full. We're here to help. The CRA offers various solutions tailored to your personal situation.

[25] Given this language, I would expect the CRA to adhere to the representations contained in the decision under review, and to exercise flexibility related to the quantum and/or timing of any repayments required of Ms. Whitten. This would not only be consistent with the language contained in the decision letter, but it would also reflect the humanitarian purpose underlying the federal government's response to the COVID-19 pandemic.

V. COSTS

[26] The Respondent seeks costs of \$500 in this matter. However, in my discretion, I will not make an order as to costs. I accept that the Applicant applied for CERB and CRB benefits in good faith, and on the understanding that she met the eligibility requirements, which were complex and, at times, poorly communicated. In these circumstances, I believe an order of costs against the Applicant would not be appropriate.

VI. CONCLUSION

[27] The application for judicial review is dismissed. There are no errors warranting judicial intervention.

JUDGMENT in T-2531-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No costs.

“Angus Grant”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2531-24

STYLE OF CAUSE: JOANNE WHITTEN v. ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: ST. JOHN'S, NEWFOUNDLAND

DATE OF HEARING: JULY 23, 2025

JUDGMENT AND REASONS: GRANT J.

DATED: SEPTEMBER 5, 2025

APPEARANCES:

Joanne Whitten	FOR THE APPLICANT (Self-represented)
Deanna Frappier	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Halifax, Nova Scotia	FOR THE RESPONDENT
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