

Federal Court



Cour fédérale

**Date: 20250905**

**Docket: 25-T-92**

**Ottawa, Ontario, September 5, 2025**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**COLTON BARBARO**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS AND ORDER**

[1] Mr. Colton Barbaro (the “Applicant”) brings a motion, pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”) for an extension of time within which to commence an application for judicial review of a decision of the Canada Revenue Agency (the “CRA”). In that decision, the CRA determined that he is not eligible for the Canada Emergency Response Benefit (the “CERB”) and the Canada Recovery Benefit (the “CRB”). The decision was made by way of a letter dated March 17, 2025.

[2] The Applicant filed his motion record on July 4, 2025. His motion is supported by his affidavit, affirmed on July 4, 2025. He also filed written submissions in support of his motion, in which he acknowledged the test for an extension of time and argued that he has met that test.

[3] In his affidavit, the Applicant deposed that he had misunderstood the advice he received from a CRA agent. He attached exhibits, including a copy of the letter of March 17, 2025 to his affidavit.

[4] In his written representations, the Applicant addressed the elements of the test for an extension of time, as set out in the decision in *Canada (Attorney General) v. Hennelly* (1999), 167 F.T.R. 399 (F.C.A.)

[5] The Attorney General of Canada (the “Respondent”) opposes the motion. He filed a responding motion record which includes the affidavit of Ms. Stephanie Guay. Ms. Guay is employed by the CRA as an Acting Program Officer in the Covid Benefits Verification Section.

[6] In her affidavit, Ms. Guay deposed briefly to the issuance of the decision and communications with the Applicant after the decision was made. She deposed to the advice in the letter of March 17, 2025, that if dissatisfied with the decision, the Applicant could seek judicial review in the Federal Court.

[7] Ms. Guay also deposed as to her knowledge of entries in the Applicant's case file about the review of his eligibility for the two Covid benefits. A copy of the CRA's case notes were attached as an exhibit to Ms. Guay's affidavit.

[8] Ms. Guay further deposed that according to notes in the file, the Applicant advised another CRA agent that he had uploaded some more documents and asked if they would be reviewed. According to Ms. Guay, the notes recorded that the unnamed CRA agent told the Applicant to follow the instructions in the decision letter.

[9] In his written submissions, the Respondent argues that the Applicant has not met the test for an extension of time. Specifically, he submits that the Applicant has shown only a "weak" intention to pursue an application for judicial review, that he did not adequately explain the reason for the delay in seeking judicial review, and that the proposed application for judicial review lacks merit. The Respondent did not address the element of the lack of prejudice in his written submissions.

[10] The accepted test for an extension of time to commence a proceeding was addressed by the Federal Court of Appeal in its decision in *Hennelly, supra*. The test requires evidence of a continuing intention to pursue litigation, a reasonable explanation for the delay, merit in the proposed litigation and a lack of prejudice to the other party.

[11] The decision in question was made on March 17, 2025. The decision clearly sets out that if he "disagreed" with the decision, the Applicant could seek judicial review before the Federal

Court “within 30 days” of the date of the letter communicating the decision. This means that the time limited for seeking judicial review was April 16, 2025. This motion for an extension of time was filed on July 4, 2025.

[12] The Applicant’s explanation for the delay is reliance upon alleged misinformation from agents of the CRA. This explanation is not supported by the notes attached as Exhibit B to the affidavit of Ms. Guay. Those notes record a number of phone calls from the Applicant to the CRA and include reference to his willingness to seek judicial review but that he “would like to avoid it”. This entry was made in the notes on April 4, 2025.

[13] The Applicant argues in his written submissions that he is indeed eligible for the CERB and CRB.

[14] The Respondent argues that the Applicant has shown only a “weak” intention to seek judicial review of the decision. He also submits that the Applicant has failed to reasonably explain the delay and to address the alleged errors in the decision. He also notes that the Applicant was aware of the judicial review process but did not want to engage with it.

[15] The decision in question was a second level review. Had the Applicant wished to present more documents to the CRA in the course of the validation process, he could and should have done so between the first level review and the second level review.

[16] I agree with the Respondent that, as a general rule, new evidence is not submitted to the Court in an application for judicial review.

[17] Upon judicial review, a Court cannot make a “new” decision, in this case, about the Applicant’s eligibility. That is the task assigned to the CRA.

[18] I also agree with the position of the Respondent that the Applicant has not identified an error in the decision of the CRA that he wants to challenge by way of an application for judicial review. It is not enough for the Applicant to assert that he meets the eligibility criteria.

[19] Upon considering the affidavits filed by the Applicant and the Respondent, and the arguments advanced by each party, I am not satisfied that the Applicant has met the test set out in *Hennelly, supra*.

[20] In the result, the motion will be dismissed. In the exercise of my discretion pursuant to Rule 400 of the Rules, I make no order as to costs.

**ORDER IN 25-T-92**

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

1. The motion is dismissed
2. There is no Order as to costs.

"E. Heneghan"  
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Judge

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

**DOCKET:** 25-T-92

**STYLE OF CAUSE:** COLTON BARBARO v. ATTORNEY GENERAL OF CANADA

**MATTER CONSIDERED IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES**

**REASONS AND ORDER:** HENEGHAN J.

**DATED:** SEPTEMBER 5, 2025

**WRITTEN REPRESENTATIONS BY:**

Colton Barbaro

SELF REPRESENTED

Levi Smith

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Edmonton, Alberta

FOR THE RESPONDENT