



Date: 20260202

Docket: T-2391-24

Citation: 2026 FC 145

Ottawa, Ontario, February 02, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

GUISEPPINA DI LELLO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an officer [the Officer] of the Canadian Revenue Agency [CRA] dated August 20, 2024 [the Decision], determining that the Applicant was ineligible for the Canadian Emergency Response Benefit [the CERB].

[2] As explained in detail below, this application for judicial review is dismissed, because the Decision is reasonable and was reached in a procedurally fair manner.

II. Background

[3] The Applicant applied for the CERB in 2020 and subsequently received payments totalling \$8,000 related to CERB periods between April 12, 2020, and August 1, 2020. Subsequently, by letter dated March 31, 2022, CRA required the Applicant to provide documents confirming her eligibility for those payments.

[4] On May 2, 2022, the Applicant provided documents to the CRA in response to its letter. By further letter dated April 28, 2023, a CRA officer advised the Applicant that she was not eligible for the CERB because she received more than \$1,000 of employment or self-employment income during each of the relevant periods and/or that she did not stop working or have her hours reduced related to COVID-19.

[5] The Applicant subsequently requested a second review of her CERB eligibility and, in a letter dated October 11, 2023, provided to CRA written submissions and further documentation in support of her eligibility. In those submissions, the Applicant acknowledged that she had earned more than \$1,000 per month but nevertheless disputed the requirement to repay the \$8,000 she had received under the CERB. The Applicant also noted that she had claimed her CERB payments as income, had paid \$4,500 towards her income tax for the 2020 taxation year, and was up-to-date in her tax payments.

III. Decision under Review

[6] On August 20, 2024, the Officer sent a letter to Applicant, advising of the Decision that the Applicant was not eligible for the CERB, because she earned more than \$1,000 of

employment or self-employment income during the applicable payment period and/or she did not stop working or have her hours reduced for reasons related to COVID-19.

[7] The Officer's notes, which also inform an understanding of the reasons for the Decision, reflect that the Officer calculated the Applicant's income for each of the relevant CERB periods (which the Officer numbered 2 to 5) and concluded that the Applicant had received the following gross income (in each case, exceeding \$1,000):

- A. Period 2 (April 12, 2020 to May 9, 2020): \$1,542.39
- B. Period 3 (May 10, 2020 to June 6, 2020): \$1,492.39
- C. Period 4 (June 7, 2020 to July 4, 2020): \$1,101.6
- D. Period 5 (July 5, 2020 to August 1, 2020): \$1,328.04

IV. **Law**

[8] In *Souza v Canada (Attorney General)*, 2025 FC 1232, Justice Guy Régimbald succinctly summarized the CERB as follows:

12. The CERB was introduced by the Government of Canada through *the Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERBA] as part of a set of measures in response to the consequences caused by the COVID-19 pandemic.

13. In order to receive the CERB, an eligible Canadian resident had to submit an application for any four-week period falling between the period beginning on March 15, 2020, and ending on September 26, 2020.

[9] Relevant provisions of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*], which govern eligibility for the CERB, include the following:

Definitions

2 The following definitions apply in this Act.

COVID-19 means the coronavirus disease 2019. (*COVID-19*)

Minister means the Minister of Employment and Social Development. (*ministre*)

...

worker means a person who is at least 15 years of age, who is resident in Canada and who, 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 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:

- (a) employment;
- (b) self-employment;
- (c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the *Employment Insurance Act*; and

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

COVID-19 La maladie à coronavirus 2019. (*COVID-19*)

ministre Le ministre de l'Emploi et du Développement social. (*Minister*)

...

travailleur Personne âgée d'au moins quinze ans qui réside au Canada et dont les revenus — pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l'article 5 — provenant des sources ci-après s'élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :

- a) un emploi;
- b) un travail qu'elle exécute pour son compte;
- c) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la *Loi sur l'assurance-emploi*;

(d) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption. (*travailleur*)

...

Payment

4 The Minister must make an income support payment to a worker who makes an application under section 5 and who is eligible for the payment.

...

Eligibility

6 (1) A worker is eligible for an income support payment if

(a) the worker, whether employed or self-employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and

(b) they do not receive, in respect of the consecutive

(d) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption. (*worker*)

...

Versement de l'allocation

4 Le ministre verse l'allocation de soutien du revenu au travailleur qui présente une demande en vertu de l'article 5 et qui y est admissible.

...

Admissibilité

6 (1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :

a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;

b) il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter

days on which they have ceased working,

(i) subject to the regulations, income from employment or self-employment,

(ii) *benefits*, as defined in subsection 2(1) of the *Employment Insurance Act*, or an employment insurance emergency response benefit referred to in section 153.7 of that Act,

(iii) allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children or one or more children placed with them for the purpose of adoption, or

(iv) any other income that is prescribed by regulation.

Exclusion

(2) An employed worker does not cease work for the purpose of paragraph (1)(a) if they quit their employment voluntarily.

Provision of information and documents

10 The Minister may, for any purpose related to verifying

un travail pour son compte :

(i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,

(ii) de *prestations*, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, ou la prestation d'assurance-emploi d'urgence visée à l'article 153.7 de cette loi,

(iii) d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption,

(iv) tout autre revenu prévu par règlement.

Exclusion

(2) Pour l'application de l'alinéa (1)a), un travailleur ne cesse pas d'exercer son emploi s'il le quitte volontairement.

Fourniture de renseignements et production de documents

10 Le ministre peut, à toute fin liée à la vérification du

compliance or preventing non-compliance with this Act, by notice served personally or by confirmed delivery service, require that any person provide any information or document within the reasonable time that is stated in the notice.

...

Return of erroneous payment or overpayment

12 (1) If the Minister determines that a person has received an income support payment to which the person is not entitled, or an amount in excess of the amount of such a payment to which the person is entitled, the person must repay the amount of the payment or the excess amount, as the case may be, as soon as is feasible.

respect ou à la prévention du non-respect de la présente loi, par avis signifié à personne ou envoyé par service de messagerie, exiger d'une personne qu'elle fournisse des renseignements ou qu'elle produise des documents dans le délai raisonnable que précise l'avis.

...

Restitution du trop-perçu

12 (1) Si le ministre estime qu'une personne a reçu une allocation de soutien du revenu à laquelle elle n'a pas droit ou une telle allocation dont le montant excédait celui auquel elle avait droit, la personne doit, dans les meilleurs délais, restituer le trop-perçu.

[10] Pursuant to subparagraph 6(1)(b)(i) of the *CERB Act*, a worker is eligible for benefits in an application period if, subject to relevant regulations, they do not receive employment or self-employment income. Section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90 [the Regulations] provides that such income is not taken into account if it does not exceed \$1,000:

Nominal income

1 Any income received by a worker for employment or self-employment is excluded from the application of

Revenu nominal

1 Sont soustraits à l'application du sous-alinéa 6(1)b)(i) de la *Loi sur la prestation canadienne*

subparagraph 6(1)(b)(i) of the *Canada Emergency Response Benefit Act* if the total of such income received in respect of the consecutive days on which they have ceased working is \$1000 or less.

d'urgence les revenus du travailleur provenant d'un emploi ou d'un travail qu'il exécute pour son compte, à condition que le total de tels revenus soit de mille dollars ou moins pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte.

V. Issues and Standard of Review

[11] Based on the parties' respective submissions, this matter raises the following issues for the Court's determination:

- A. Has the Applicant submitted new evidence that is inadmissible on judicial review?
- B. Is the Decision reasonable?
- C. Has the Applicant established that she was deprived of procedural fairness?

[12] The correctness is standard of review applies to the to procedural fairness issue (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Put otherwise, the Court is required to assess whether the procedure followed was fair having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[13] As reflected in the articulation of the second issue above, the merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17).

VI. Analysis

A. *Has the Applicant submitted new evidence that is inadmissible on judicial review?*

[14] The Respondent argues that, in considering the reasonableness of the Decision, the Court should disregard information contained in Exhibit B to the Affidavit of the Applicant [Exhibit B], sworn on October 4, 2024 [the Applicant's Affidavit], and included in her Application Record in support of this application for judicial review. Exhibit B consists of bank statements dating to periods in 2020.

[15] In support of its position in this application, the Respondent has filed an affidavit affirmed by the Officer on November 14, 2024, in which (among other things) the Officer states that they have reviewed the Applicant's Affidavit and, in making the Decision, did not review the bank statements attached as Exhibit B. Relying on that evidence, the Respondent notes that, in reviewing the reasonableness of an administrative decision (and subject to exceptions that do not apply in the matter at hand), a court will typically consider only the evidence that was before the administrative decision-maker when the decision was made (*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19-20).

[16] I accept the legal principle on which the Respondent relies, and the Applicant has not advanced any submissions in response to the Respondent's assertion that the bank statements in

Exhibit B were not before the Officer. In reviewing the record before the Court in this matter, it appears that both Exhibit B and the Certified Tribunal Record [the CTR] (which reflects the documentation that was before the Officer) include statements from Scotiabank dating to periods in 2020. However, it also appears that these two documents include different statements or at least different versions of the statements (Exhibit B reflecting pages created in November 2020 and the CTR reflecting pages created in April 2022).

[17] As such, I accept the Respondent's submission that the Exhibit B documentation was not before the Officer, and the Court will not take it into account in reviewing the reasonableness of the Decision. However, the documentation in the CTR is properly before the Court.

[18] Regardless, nothing substantive turns on this issue, as the Applicant has not argued that the Exhibit B bank statements support a conclusion as to levels of income different than those that the Officer identified in the Decision.

B. *Is the Decision reasonable?*

[19] The Applicant explains that in 2020 she was employed in a part-time position at Scotiabank and in a self-employment position with the Probation and Parole Office in Guelph, Ontario. Commencing in April 2020, she was unable to work because of the COVID-19 pandemic, although she received payments from Scotiabank from April to July of 2020 in relation to sick days and vacation days.

[20] The Applicant further explains that she applied for CERB payments in relation to the periods relevant to this application between April 12, 2020, and August 1, 2020, based on her understanding of the eligibility rules at the time, being that an applicant had stopped working due to COVID-19, had earned at least \$5,000 in a particular preceding period, and would report resulting CERB payments on their tax return and pay tax thereon. The Applicant notes that she did report the \$8,000 in CERB payments that she received on her tax return for the 2020 taxation year and that she made a \$4500 installment payment in 2020 towards taxes that would be owing for that year.

[21] The Applicant considers that she met the requirements for CERB eligibility that had been communicated at the time she applied for and received benefits. She asserts that she had no knowledge at that time of a requirement that an applicant have received less than \$1,000 in each relevant period and that the Decision is therefore unreasonable in denying her eligibility based on that requirement.

[22] The record before the Court does not include evidence that would allow the Court to assess with any precision the information that the Applicant received in 2020 regarding CERB eligibility or the source of such information. That said, the Court is not disputing the veracity of the Applicant's assertion that she thought she was eligible when she applied. However, what matters for purposes of the Court's review of the reasonableness of the Decision is the applicable law at the relevant time.

[23] The Applicant was found ineligible for the CERB because she did not meet the condition in paragraph 6(1)(b)(i) of the CERB Act, that a worker who applies for benefits did not receive, in

respect of the consecutive days on which they have ceased working, and subject to the regulations, income from employment or self-employment. The *CERB Act* came into force on March 25, 2020, the day in which it received royal assent. While the statute was amended by the *Budget Implementation Act, 2022, No.1, SC 2022, c 10*, no amendment was made to paragraph 6(1)(b)(i).

[24] The Regulations provide that income is excluded from the application of paragraph 6(1)(b)(i) of the *CERB Act* if the total of such income received in respect of the consecutive days on which worker has ceased working is \$1,000 or less. The Regulations came into force on April 16, 2020.

[25] The record before the Court does not identify the precise date on which the Applicant submitted her first application for benefits under the *CERB Act*. However, it is clear that the requirement in paragraph 6(1)(b)(i) existed from the time the statute was originally enacted. While the \$1,000 threshold was introduced a few weeks later, this had the effect of relaxing the eligibility requirements in that, prior to the introduction of that threshold, any income at all would have disqualified an applicant.

[26] As such, when the Officer concluded that the Applicant's income exceeded \$1,000 in each of the relevant periods, the Officer was applying the requirements of the applicable legislation. As the Respondent submits, in conducting the review of the Applicant's eligibility, as permitted by sections 10 and 12 of the *CERB Act*, the Officer had no room to depart from the eligibility criteria set out in the legislation (*Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at para 27,

applying *Flock v Canada (Attorney General)*, 2022 FCA 187 at paras 4 and 7). Therefore, considerations such as the fact that the Applicant exceeded the \$1,000 threshold by only small amounts, declared the CERB payments she received when she filed her 2020 tax return, or made relevant tax payments were not relevant to the Officer's task in making the Decision.

[27] As the Respondent submits, the Applicant has also not identified any errors in the Officer's analysis of the information provided by the Applicant and the resulting conclusion that, for each of the relevant periods, the Applicant received more than \$1,000 in income from employment or self employment. Nor has the Applicant identified a basis for the Court to conclude that it was unreasonable for the Officer to treat the gross payments that she received in relation to sick days and vacation days, attributable to her employment with Scotiabank, as income from employment.

[28] In conclusion on this issue, I find that the Decision is intelligible and supported by the record before the Officer and is therefore reasonable.

C. *Has the Applicant established that she was deprived of procedural fairness?*

[29] As with her submissions that the Decision is unreasonable, I understand the Applicant's argument that she was deprived of procedural fairness to stem from her position that the CERB requirement, based on which she was denied eligibility for benefits, was not communicated until after she received the CERB payments.

[30] However, as previously noted, the relevant requirement was contained in the applicable legislation, and the Officer had no choice but to apply that requirement when verifying the

Applicant's eligibility. For purposes of assessing whether the Applicant was deprived of procedural fairness, the question for the Court's consideration is whether the process leading to the Decision was fair in all the circumstances, meaning that the Applicant was afforded an opportunity to know that the case against her and to present her case fully and fairly (*Vavilov* at para 127).

[31] At the commencement of the process, the CRA sent the Applicant a letter dated March 31, 2022, which explained that she was not eligible to receive the CERB if she earned over \$1,000 in an application period and identified the sort of documentation she should provide in order to support her eligibility. On May 2, 2022, the Applicant provided documents of this sort to the CRA in response to its letter. The evidence in the record of this correspondence and subsequent written and oral communications between the CRA and the Applicant demonstrate that she was aware of the requirement that she had to satisfy in responding to the CRA's verification process and had an opportunity to attempt to satisfy that requirement. As such, I agree with the Respondent that the Applicant was afforded requisite procedural fairness.

VII. Conclusion and Costs

[32] Despite the Applicant's able and courteous advocacy on her own behalf in this application, she has not demonstrated that the decision is unreasonable or that she was deprived of procedural fairness. As such, this application for judicial review must be dismissed

[33] Notwithstanding that the Respondent has prevailed in this application, it is not claiming costs against the Applicant. As such, no costs will be awarded against her.

JUDGMENT in T-2391-24

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. No costs are awarded.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2391-24

STYLE OF CAUSE: GUISEPPINA DI LELLO v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 29, 2026

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: FEBRUARY 2, 2026

APPEARANCES:

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(ON THEIR OWN BEHALF)

Patrick Wu

FOR THE RESPONDENT

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FOR THE RESPONDENT