

Federal Court



Cour fédérale

Date: 20260227

Docket: T-2750-23

Citation: 2026 FC 277

Toronto, Ontario, February 27, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ANTONIO PISCITELLI

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 November 27, 2023 [the Decision], determining that the Applicant was ineligible for the Canada Emergency Response Benefit [the CERB].

[2] As explained in detail below, this application for judicial review is allowed, because the Decision is not intelligible and is therefore unreasonable in its treatment of Applicant's eligibility for the CERB in Period 2 (as defined below).

II. **Background**

[3] The Applicant applied for the CERB in 2020 and subsequently received payments totalling \$10,000 related to the following five four-week CERB periods: (a) March 15 to April 11, 2020 [Period 1]; (b) April 12 to May 9, 2020 [Period 2]; (c), July 5 to August 1, 2020 [Period 5]; (d) August 2 to August 29, 2020 [Period 6]; and (e) August 30 to September 26, 2020 [Period 7].

[4] Subsequently, by letter dated March 10, 2022, the CRA required the Applicant to provide documents confirming his eligibility for those payments.

[5] On April 17, 2022, the Applicant provided documents to the CRA in response to its letter. By further letter dated August 1, 2023, a CRA officer advised the Applicant that he was not eligible for the CERB because he received more than \$1,000 of employment or self-employment income during each of the relevant periods and/or that he did not stop working or have his hours reduced related to COVID-19 [the First Decision].

[6] The Applicant subsequently requested a second review of his CERB eligibility by letter dated August 8, 2022, and, in a further letter dated October 16, 2023, provided to the CRA written submissions and further documentation in support of his eligibility. In those submissions, the Applicant emphasized that, as he and his wife struggled to manage childcare for their

children who were not able to attend in-person school due to the pandemic, he missed multiple days from his employment as an apprentice electrician.

[7] The Applicant also requested that, instead of being asked to repay the \$10,000 in CERB benefits he had received, he be allowed to pay the amount by which his income had exceeded the \$1,000 limit for each of the relevant periods. The Applicant calculated that amount to total \$1741.67.

III. Decision under Review

[8] On November 27, 2023, the Officer sent a letter to Applicant [the Decision Letter], advising of the Decision that the Applicant was not eligible for the CERB for Periods 2, 5, 6, and 7, because he earned more than \$1,000 of employment or self-employment income during each of those periods and/or he did not stop working or have his hours reduced for reasons related to COVID-19.

[9] The Officer's notes (including a Second Review Report prepared prior to the issuance of the Decision Letter [the Second Review Report]), 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 and concluded that the Applicant had received the following gross income (in each case, exceeding \$1,000):

A. Period 2 (April 12 to May 9, 2020): \$1,680;

B. Period 5 (July 5 to August 1, 2020): \$1,890;

C. Period 6 (August 2 to August 29, 2020): \$1,750; and

D. Period 7 (August 30 to September 26, 2020): \$1,1512

[10] For Period 1, the Second Review Report indicates that the Officer concluded that the Applicant had received gross income of \$1,330. As explained in the following paragraph of the Second Review Report, the Officer was nevertheless satisfied that the Applicant was eligible for the payment he received in relation to Period 1:

However, even though the employment income is over \$1,000 for the first two weeks of the CERB benefit period. The applicant is eligible for the CERB period 1 because the applicant did not earn \$1000 during March 29 to April 11. Therefore, the applicant did not have any employment income for 14 day period in the first period they applied for. The applicant is eligible based on the 14 day rule.

IV. Law

[11] 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.

[12] 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
- (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

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) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à

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 days on which they have ceased working,

(i) subject to the regulations, income from

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 un travail pour son compte:

(i) sous réserve des règlements, de revenus provenant d'un emploi ou

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 compliance or preventing non-compliance with this Act, by notice served personally or by confirmed delivery service, require that any person

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 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

provide any information or document within the reasonable time that is stated in the notice.

personne qu'elle fournisse des renseignements ou qu'elle produise des documents dans le délai raisonnable que précise l'avis.

...

...

Return of erroneous payment or overpayment

Restitution du trop-perçu

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.

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.

[13] Pursuant to subparagraph 6(1)(b)(i) of the CERB Act as cited above, a worker's eligibility for benefits in an application period requires that, subject to relevant regulations, they do not receive employment or self-employment income in respect of the days on which they ceased working. 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

Revenu nominal

1 Any income received by a worker for employment or self-employment is excluded from the application of subparagraph 6(1)(b)(i) of the *Canada Emergency Response Benefit Act* if the total of such

1 Sont soustraits à l'application du sous-alinéa 6(1)b(i) de la *Loi sur la prestation canadienne d'urgence* les revenus du travailleur provenant d'un emploi ou d'un travail qu'il

income received in respect of the consecutive days on which they have ceased working is \$1000 or less.

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

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

- A. What is the proper name of the Respondent?
- B. Has the Applicant established that he was deprived of procedural fairness?
- C. Is the Decision reasonable?

[15] The correctness standard of review applies to the 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).

[16] As reflected in the articulation of the third 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. *What is the proper name of the Respondent?*

[17] The Applicant's Notice of Application [NOA], which commenced this application for judicial review, named the Respondent as the "THE MINISTER OF NATIONAL REVENUE".

[18] The Respondent submits that the proper name of the Respondent is the "ATTORNEY GENERAL OF CANADA". While purely a procedural matter that has no impact on the merits or outcome of this application, the Respondent is correct in this submission (see Rule 303 of the *Federal Courts Rules*, SOR/98-106; *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 13-14). My Judgment will therefore correct the name of the Respondent in the style of cause.

B. *Has the Applicant established that he was deprived of procedural fairness?*

[19] The Applicant's NOA asserts that the CRA breached the duty of procedural fairness, by failing to consider the material before it, failing to provide direction to the Applicant as to the material required for consideration, failing to provide reasons for the Decision in a transparent manner, failing to exercise its discretion impartially, and failing to consider the Applicant's request without undue delay.

[20] The Applicant has not advanced evidence or written or oral submissions in support of these assertions. In the absence of such support, I find no basis to conclude that the Officer failed to act impartially or failed to consider the Applicant's second review request without undue delay.

[21] As for the allegation of failure to provide direction to the Applicant as to the material required for consideration, again the Applicant has not supported this assertion. I agree with the Respondent's position that the Applicant was advised in the First Decision as to the basis for the CRA's conclusion that he was ineligible for the CERB and that, as reflected in the Officer's notes, the Officer further explained the basis for that conclusion over the telephone on November 21, 2023. Moreover, as will be apparent from the below review of the reasonableness of the Decision, the Officer's conclusions as to the Applicant's ineligibility turned on the calculation of his earnings, based on the material that the Applicant submitted, and was not based on any insufficiency in the material provided by the Applicant.

[22] The Applicant's other assertions (failure to consider material and failure to provide transparent reasons), if supported by the record before the Court, would go to the reasonableness of the Decision, to which I will turn shortly.

[23] In conclusion on this issue, I find no breach of procedural fairness in the process leading to the Decision

C. *Is the Decision reasonable?*

[24] The Applicant argues that he did what he thought was appropriate and expected of him during the COVID-19 pandemic. He refers to the context of his employer insisting that he report for work, childcare responsibilities resulting from the pandemic eliminating in-person schooling, government programs encouraging the application for benefits to support the economy, and what he characterizes as unclear rules surrounding benefits eligibility. He notes that both his and his wife's

employment was affected by the pandemic as well as their resulting and unanticipated childcare responsibilities, that she did not apply for benefits, and that he applied for only some of the CERB periods.

[25] The Applicant also emphasizes the challenges that his financial circumstances create in responding to the amount that the CRA wishes him to pay. He submits that it is unreasonable for him to be expected to repay the full amount of benefits for which the CRA has determined he was ineligible, particularly when he calculates that the amount by which his earnings exceeded the \$1,000 per-period limit totalled in the range of \$1,700 cumulatively over all the periods for which he was found ineligible. The Applicant asserts his expectation that either his second review or this application for judicial review would have resulted in some sort of settlement or compromise.

[26] However, the Court's role in this application is to review the reasonableness of the Decision, employing the principles explained in *Vavilov*, and in doing so the Court must be conscious of the fact that the Officer was obliged to apply the statutory eligibility criteria under the CERB Act. The Officer had no discretion in that regard (*Derosa v Canada (Attorney General)*, 2025 FC 144 at para 16; *Flock v Canada (Attorney General)*, 2022 FCA 187 at paras 4, 7).

[27] Reasonableness review pursuant to the principles of *Vavilov* is concerned with an administrative decision-maker's justification of its decision, including the need for the reasons for such a decision to be transparent and intelligible (*Vavilov* at paras 15, 99). In relation to Period 5, Period 6, and Period 7, I find the Decision to be reasonable. In the Second Review Report, the Officer employed the material provided by the Applicant to calculate his gross employment income

for each of those periods, finding that in each of those periods the total income exceeded the \$1,000 threshold set by the Regulations. This reasoning is intelligible and supported by the evidence before the Officer.

[28] However, I do not find the Officer's analysis with respect to Period 2 to be similarly intelligible. As with Periods 5 to 7, the Officer calculated that the Applicant's gross income in Period 2 exceeded \$1,000. However, the difference between Period 2 and the latter periods is that the Applicant's income in Period 2 was earned in two consecutive weeks, with no income earned in the other two consecutive weeks of that period. As the Applicant noted in his oral submissions before the Court, these circumstances appear to parallel those in Period 1, for which the Officer found him eligible for the CERB.

[29] As noted earlier in these Reasons, for Period 1, the Officer concluded that, even though the Applicant's employment income was over \$1,000 for the first two weeks of Period 1, he was nevertheless eligible for Period 1, because he did not earn \$1,000 during the last 14 days of Period 1. The Officer described the Applicant as eligible based on the "14 day rule".

[30] I read this reference to the 14-day rule as related to paragraphs 6(1)(a) and (b) of the CERB Act, in combination with section 1 of the Regulations (all reproduced earlier in these Reasons), which provide for eligibility if a worker 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 they do not receive, in respect of the consecutive days on which they have ceased working, income of more than \$1000.

[31] It appears from the record before the Court, and indeed from the information in the Second Review Report itself, that the Applicant earned no income in the first consecutive 14 days of Period 2. It is therefore not clear to the Court why the Officer's analysis that supported his eligibility for Period 1 did not also support his eligibility for Period 2.

[32] At the hearing of this application, the Respondent suggested that the Officer may have erred in relation to Period 1 and that the Applicant was actually ineligible for both Period 1 and Period 2. The Respondent noted the reference in the Second Review Report to the Applicant having stated that he took four weeks off from March 29 to April 25, 2020, due to the pandemic (representing the last two weeks of Period 1 and the first two weeks of Period 2). Based on the Applicant's explanation in the record that his absences from work were attributable to childcare responsibilities, the Respondent argued that this did not represent ceasing working "for reasons related to COVID-19" within the meaning of paragraph 6(1)(a) of the CERB Act.

[33] The Court expresses no view on this position, other than to note that it does not form part of the Officer's reasoning and therefore does not represent a basis for the Court to find the Decision intelligible and reasonable as it relates to Period 2.

[34] The Respondent also refers the Court to *Canada (Attorney General) v Gagnon*, 2023 FCA 174 [*Gagnon*], in which the Federal Court of Appeal described the CERB as follows (at para 5):

5. Faced with the COVID-19 pandemic's catastrophic consequences on workers and the Canadian economy, the Government of Canada quickly put in place two income replacement programs on March 25, 2020. The first, which is not

the subject of this dispute, was created by the *Canada Emergency Response Benefit Act*, S.C. 2020, c. 5, s. 8 (the CERB Act) (as enacted by section 8 of the *COVID-19 Emergency Response Act*). This benefit (the CERB) was intended for workers who were not eligible for employment insurance, and was for all employees and self-employed workers who had ceased working for reasons related to COVID-19 for at least 14 consecutive days, and who had not received employment or self-employment income in excess of \$1,000 during the four-week period for which they were applying for the payment (CERB Act, section 2 and subsection 6(1); *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90, section 1).

[Emphasis added]

[35] I understand the Respondent's point to be that the emphasized portion of the above passage could be read as indicating that income in excess of \$1,000 earned during a four-week benefit period invariably excludes an applicant from eligibility, even if there were 14 consecutive days during that period in which the applicant ceased working and no income was earned. The Respondent also notes that later in *Gagnon* the Court of Appeal described the eligibility conditions of subsection 6(1) as follows (at para 40):

... Subsection 6(1) of the CERB Act sets out two eligibility conditions: (a) not receiving any income for at least 14 consecutive days within a four-week benefit period; and (b) not receiving income in respect of the consecutive days on which the worker ceased working. Section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations* subsequently clarified that income of \$1,000 or less in respect of this period was excluded from the application of this requirement and would therefore not be considered.

[36] I do not necessarily read *Gagnon* as having focused on the point that the Respondent is arguing. However, again, it is not necessary for the Court to opine on this point (i.e., whether income in excess of \$1,000 earned during a four-week benefit period excludes an applicant from

eligibility, even if there were 14 consecutive days during that period in which the applicant ceased working and no income was earned), because such reasoning does not form part of the Officer's analysis in the Decision. In relation to Period 1, the Officer's analysis is contrary to the Respondent's position and, in relation to Period 2, there is no such analysis.

[37] In my view, the unexplained inconsistency between the results for Period 1 and Period 2 renders the Decision unintelligible in relation to Period 2.

[38] Finally, I note the Respondent's argument that, in addition to the analysis and finding surrounding the Applicant exceeding the \$1,000 income threshold, the Officer identified a second ground of ineligibility, being that the Applicant did not cease working or experience a reduction in hours attributable to COVID-19. I understand the Respondent to be focusing on paragraph 6(1)(a) of the CERB Act, requiring that an applicant "ceases working for reasons related to COVID-19" for at least 14 consecutive days within the relevant four-week period.

[39] Consistent with the Respondent's submission, the Decision letter appears to identify two grounds of ineligibility, the second reading, "You did not stop working or have your hours reduced for reasons related to COVID-19." However, when asked at the hearing to identify reasoning in the Officer's notes supporting this conclusion, the Respondent referenced a November 22, 2023, entry, related to a November 21, 2022, telephone conversation with the Applicant. This entry captures the Applicant's submissions over the telephone but does not include any analysis thereof.

[40] In the Second Review Report, after noting that the Applicant earned over \$1,000 in employment income during each of Periods 2, 5, 6 and 7, the Officer concluded that the Applicant was ineligible for these periods and then stated, “Based on the applicant earning over \$1,000 per applicable periods, applicant work was not reduced due to covid-19 and applicant was still employed during the application periods.”

[41] As the Respondent correctly submits, the Officer’s reasonable conclusion that the Applicant exceeded the \$1,000 threshold for each of Periods 5, 6 and 7 is sufficient to sustain the Decision in relation to those periods. As such, the remaining question for the Court is whether the second ground of ineligibility would be sufficient to sustain the Decision in relation to Period 2. I am not convinced that this argument assists the Respondent. Immediately after the Officer stated the above-quoted conclusion that the Applicant’s work in relation to Periods 2, 5, 6 and 7 was not reduced due to COVID-19, the Officer stated the conclusion that the Applicant was eligible for Period 1, because he earned less than \$1000 in that period and his work hours were reduced due to COVID-19. Again, the unexplained inconsistency between the results for Period 1 and Period 2 render the Decision unintelligible in relation to Period 2.

[42] I therefore find that the Decision is unreasonable in its treatment of the Applicant’s eligibility for the CERB in Period 2. As such, this application for judicial review will be allowed.

VII. Remedy and Costs

[43] By way of remedy, the Applicant seeks to have the Decision set aside and asks the Court to order a reduction in the amount he is required to repay to the CRA. As the Respondent

submits, the usual remedy in a successful application for judicial review is for the Court to refer the matter back to the administrative decision-maker for reconsideration (*Vavilov* at para 141). While *Vavilov* identifies circumstances in which the Court can depart from the usual remedy, no such circumstances apply in the case at hand. The appropriate remedy is for the Court to set aside the Decision and refer the matter back to a different CRA officer for redetermination.

[44] Neither party has claimed costs. Moreover, even though this application will be allowed, the parties have nevertheless achieved a mixed result, in that the Court has found the Decision to be unreasonable only in relation to one of the four CERB periods in issue. As such, my Judgment will award no costs to either party.

JUDGMENT IN T-2750-23

THIS COURT’S JUDGMENT is that:

1. This application is allowed, the Decision is set aside, and the matter is returned to a different CRA officer for redetermination.
2. The style of cause in this application is amended to change the name of the Respondent to the “ATTORNEY GENERAL OF CANADA”.
3. No costs are awarded.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2750-23

STYLE OF CAUSE: ANTONIO PISCITELLI v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 26, 2026

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: FEBRUARY 27, 2026

APPEARANCES:

Antonio Piscitelli

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Mira Amin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT