Federal Court Cour fédérale

**Date: 20260311**

**Docket: 26-T-63**



**Vancouver, British Columbia, March 11, 2026**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**CHESTER CHONG-WALDEN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

## ORDER AND REASONS

[1] The Applicant, a self-represented litigant, seeks an extension of time of over 850 days to commence an application for judicial review of Canada Revenue Agency [CRA] decisions dated August 30, 2023, denying his eligibility for the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. The CRA determined that the Applicant had not earned at least $5,000 (before taxes) in employment and/or self-employment income during the relevant time periods.

[2] The Applicant argues, amongst other things, that he qualifies for these benefits because he earned far more than the required $5,000 of employment income during the relevant periods, working full-time for his company, but was unable to pay himself due to being the co-owner of a self-funded clean technology startup.

[3] For the reasons set out below, the Applicant's motion for an extension of time is dismissed as it is not in the interests of justice to permit the Applicant to commence an application for judicial review.



## I. Background

[4] The Applicant is the Chief Executive Officer of a self-funded startup company aimed at bringing more environmentally beneficial building materials to market. He applied for and received the CERB from March to September 2020, and the CRB from September to December 2020.

[5] The CRA conducted a review of the Applicant's eligibility for these benefits. By letter dated January 27, 2023, the CRA sent a Contact Letter to the Applicant requesting documents to support that he was eligible for the benefits. The Applicant provided a response on February 6, 2023.

[6] By letters dated February 16, 2023, the Applicant was notified that the CRA determined that he was ineligible for the benefits received as he had not earned at least $5,000 (before taxes) in employment and/or self-employment income during the relevant time periods.

[7] By letter dated March 7, 2023, the Applicant requested a second review and provided financial documents related to his company.

[8] By letter dated May 29, 2023, the CRA sent Notices of Collection to the Applicant for the CERB and the CRB found owing.

[9] In conducting the second level review, the CRA noted that they required clarification from the Applicant regarding information relating to his income during the relevant time periods. The CRA Officer conducting the review attempted to contact the Applicant by telephone on July 25, July 26, August 2, August 24 and August 25, 2023, to obtain clarification regarding his eligibility but was unable to reach the Applicant. A number of voicemail messages were left for the Applicant to return the CRA Officer's call, which the Applicant did not do.

[10] By letters dated August 30, 2023, the CRA confirmed that the Applicant was ineligible for the CERB and the CRB. The letters also advised that he could apply for judicial review within thirty days.

[11] By letter dated October 29, 2025, the CRA sent to the Applicant a notice of collection for the benefit overpayments.

## II. Analysis

[12] It is well established that four factors are relevant to the Court's discretion in granting an extension of time: (i) a continuing intention of the moving party to pursue their application; (ii) the

application has some merit; (iii) no prejudice to the respondent arises from the delay; and (iv) a reasonable explanation for the delay exists [see *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 61; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) at para 3].

[13] While it is not necessary to satisfy each of the four criteria, the Court is to "consider each and decide whether on balance the interests of justice would be served in granting the extension of time" [see *Thompson v Canada (Attorney General)*, 2018 FCA 212 at para 6].

[14] In addition, the period of the delay may be an important factor such that "[t]he longer the delay, the more this may weigh in favour of not granting the extension" [see *Lesly v Canada (Citizenship and Immigration)*, 2018 FC 272 at para 3].

[15] Pursuant to subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7, an application for judicial review must be made within thirty days after the decision was first communicated to the party. The Chief Justice has emphasized that "[t]he time limits applicable to proceedings in this Court are not whimsical" [see *Lesly*, *supra* at para 18]. Indeed, the thirty-day deadline ensures certainty and finality in the administrative decision-making process [see *Larkman*, *supra* at para 87].

## A. Continuing intent to pursue an application for judicial review and the explanation for the delay

[16] The Applicant's evidence regarding his continuing intention to pursue an application for judicial review and his explanation for the delay overlaps and is primarily addressed in the following paragraphs of his affidavit:

> 14. As I did not fully understand the process required for further action or applying for a judicial review in this case, and the amounts owing did not have a stated payment due date on the documents, unlike other CRA payments that are required, I made the decision to continue to work on building the startup and wait until such time that the repayment could possibly be addressed.
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> […]
>
> 19. I have always responded in a timely manner to the letters from the CRA regarding [this matter] and wanting to pursue a further review (whether internally by the CRA or through the Court) of the CRA's decision that I don't qualify for the CERB Payments, as reflected in the Second Notice of Redetermination.

[17] After receiving the October 29, 2025 collection letter from the CRA, the Applicant states that he spoke with a Collections Contact Officer at CRA to "explain the situation of being a startup founder and not being able to pay [himself] during the time period before the CERB payments, but working endlessly on the venture," He stated that the Officer told him that there was still an opportunity to apply for judicial review. Thereafter, the Applicant states that he worked to figure out what was needed and how to prepare an application for judicial review. He attended the Registry on December 12, 2025, and was advised that he first needed to file a motion for an extension of time. He then worked on preparing the motion over the following weeks and filed his motion on February 9, 2026.

[18] I find that the Applicant's evidence falls short of demonstrating a continuing intention to pursue an application for judicial review. The Applicant must demonstrate a continuing intention to pursue an application for judicial review for the entire period — both prior to and after the expiry of the relevant time limit [see *Greenblue Urban North America Inc v Deeproot Green Infrastructure, LLC*, 2024 FCA 19 at para 8; *MacDonald v Canada (Attorney General)*, 2017 FC 2 at para 13]. However, the Applicant's evidence is that, following receipt of the CRA's August 30, 2023 decision letters, he specifically did not have an intention to proceed with an application for judicial review and decided to wait until such time that repayment could possibly be addressed. I find that it was only once the CRA sent the Collection Notices in 2025 that the Applicant then formed an intention to pursue an application for judicial review and, thereafter, I accept that he took steps to follow through with that intention. However, it is the absence of evidence of an intention to pursue an application for judicial review from August 30, 2023, to October 29, 2025, that is problematic.

[19] Moreover, contrary to the Applicant's assertion, his intention to pursue his dispute with CRA during the first and second review processes does not amount to evidence of a continuing intention to pursue an application for judicial review of the CRA's second review decisions.

[20] I find that the Applicant's evidence also falls short of demonstrating a reasonable explanation for the entire period of delay in question [see *Citizen for My Sea to Sky v Canada (Environment and Climate Change)*, 2023 FC 1721 at para 38; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 380 at para 36; *Lesly*, *supra* at paras 20–21]. The Applicant's lack of legal training and understanding of the judicial review process, as well as his inability to afford a lawyer,

do not constitute a reasonable justification for over 850 days of delay [see *Cortirta v Missinnipi Airways*, 2012 FC 1262 at para 3, aff'd 2013 FCA 280]. The Applicant was clearly informed of the 30-day time limit for seeking judicial review yet deliberately chose to not pursue a judicial review within the required time frame. I accept that it may have taken him some time to then prepare the necessary documents after familiarizing himself with the *Federal Courts Rules*, but that delay (to the extent reasonably justified) only accounts for approximately 90 days of the delay.



[21] I find that these factors weigh against the Applicant.

**B. The potential merit of the application**

[22] The Applicant need not establish that their application will necessarily succeed, only that it has some potential merit [see *Larkman*, *supra* at para 61].

[23] The standard of review applicable to COVID-19 benefits decisions is reasonableness [see *Chen v Canada (Attorney General)*, 2025 FC 723 at para 21; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16]. A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8].

[24] The Applicant asserts that the CRA's decisions are unreasonable as:

A. They are "based on a single point of information, namely income of $5,000 in a 12-month period, which is a really trivial amount – literally less than $100/week."

B. The CRA "failed to take into consideration the factors around which [the Applicant] was caught as a startup founder and not able to pay [himself] as a founder in the company, but responsible for others that [were] able to earn income from the work [he was] providing them through [their] funding and grants for which [their] venture qualified and was accepted."

C. The CRA's reasons were "inadequate and unintelligible" and that it "has a heightened responsibility to justify decisions with significant consequences on people working to build the future economy of Canada."

[25] I am unable to find that there is any potential merit in the Applicant's proposed application for judicial review. There are a number of eligibility criteria for the benefits at issue and it was only the $5,000 income criteria that the Applicant was unable to meet. While the Applicant may view the $5,000 income threshold as trivial, the income threshold (together with the other eligibility criteria) was established by statute, is non-discretionary and must be applied by the CRA Officer in reviewing the Applicant's eligibility for benefits.

[26] Contrary to the Applicant's assertion, it is clear from the notes in the CRA database (which form part of the reasons for decision) that the CRA Officer was well aware of the Applicant's circumstances as a founder of a startup and took them into consideration. The evidence before the

CRA Officer was that the Applicant had not been paid for his work, extensive as it was. The Applicant also confirmed in his motion materials that the company was unable to pay him during the relevant time period. While not mentioned by the Applicant in his motion materials, the notes in the CRA database indicate that the company provided an accounting report from 2019 stating, "[t]here is a balance owing to [the Applicant] in the amount of $4,907.51 as at December 31, 2019. When funds are available, this amount can be repaid without tax impact", which the Applicant had stressed to the CRA Officer was close to the $5,000 income threshold. The notes also indicated that the Applicant had advised that, "[t]he gross income for Centroplexus Projects, of which [he is] a 50% partner, was $1,555 in 2019", and that this would give him an income of over $5,000 for 2019.

[27] Importantly, the notes make it clear that the CRA Officer had additional questions for the Applicant related to these asserted amounts owing to him, including whether the Applicant had any documents related to these amounts and whether there were expenses to offset against the $1,555 in gross income. The CRA Officer attempted to reach the Applicant multiple times to address their questions but was unable to speak to the Applicant and the Applicant never returned their call. With these unanswered questions and the admission from the Applicant that he had not received any income from the company, I find that there is no merit to any assertion that the CRA Officer's determination that the Applicant had not met the income threshold was unreasonable.

[28] While the Applicant asserts that the CRA's reasons were inadequate and unintelligible, he has failed to identify what it is that he was unable to understand or what specifically the CRA failed to address. Having reviewed the August 30, 2023 decision letters and the notes in the CRA

database, I am satisfied that the decision demonstrates an internally coherent and rational chain of analysis that is justified in relation to the facts and applicable legal constraints.

[29] As such, I find that this factor weighs against the Applicant.

**C. Prejudice to the Respondent**

[30] The Applicant argues that granting an extension of time will not prejudice the Respondent. The Respondent asserts that they will be prejudiced, as: (a) the filing of an application for judicial review beyond the statutory deadline is, *per se*, prejudicial; (b) any extension of time in the absence of a reasonable explanation (such as here) can only result in prejudice to an opposing party; and (c) the Respondent is prejudiced by having to respond to a motion for an extension of time.

[31] I find that the prejudices asserted by the Respondent are more properly directed at whether it is in the interests of justice to grant the extension of time, overlap with other factors and/or are compensable in costs. As such, I find that this factor does not favour either party.

**D. The interests of justice**

[32] The overriding consideration on a motion to extend a deadline is whether it is in the interests of justice [see *Larkman, supra* at para 62]. Considering the four factors discussed above, I find that it is not in the interests of justice to grant an extension of time for the Applicant to commence a judicial review application.

[33] Most significantly, in my view, there is no potential merit to the application. As such, it would not be an efficient use of judicial resources to grant an extension of time. Moreover, I am mindful that time limits exist in the public interest to bring finality to administrative decisions [see *Canada v Berhad*, 2005 FCA 267 at para 60; *Cossy v Canada Post Corporation*, 2021 FC 559 (CanLII) at para 21; ***Lesly***, ***supra*** at para 18]. The exceptional delay in this case of over 850 days militates heavily against this discretionary remedy.

## III. Conclusion

[34] The Applicant's motion is dismissed. The Respondent has not sought their costs of the motion, and I agree that none should be payable.

**ORDER in 26-T-63**

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

1. The motion is dismissed without costs.

"Mandy Aylen"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | 26-T-63 |
| **STYLE OF CAUSE:** | CHESTER CHONG-WALDEN v ATTORNEY GENERAL OF CANADA |

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106**

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| **ORDER AND REASONS:** | AYLEN J. |
| **DATED:** | MARCH 11, 2026 |

**WRITTEN REPRESENTATIONS BY:**

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| Chester Chong-Walden | FOR THE APPLICANT ON HIS OWN BEHALF |
| Kezia Messakh | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Vancouver, British Columbia | FOR THE RESPONDENT |