**Date: 20260331**

**File: T-394-25**

**Reference: 2026 CF 411**

**Ottawa, Ontario, March 31, 2026**

**In the presence of the Honourable Judge Ngo**

**BETWEEN :**

**PHONNA PUY**

**applicant**

**And**

**ATTORNEY GENERAL OF CANADA**

**respondent**

**JUDGMENT AND REASONS**

[ 1 ] The applicant *is challenging* , through judicial review, a second review decision by an officer of the Canada Revenue Agency (CRA) confirming that she is not eligible for payments she received under the Canada

Emergency Response Benefit (CERB). The officer concluded that the applicant had “not stopped working or her hours of work were not reduced due to COVID-19 .” The CRA is seeking repayment of the amounts paid.

[ 2 ] I am aware that the plaintiff is representing herself and I have taken into accountthe Canadian Judicial Council's "Statement of Principles Concerning Litigants and Accused Persons Not Represented by Counsel" .

I. Relevant legal context

[ 3 ] I will summarize, in the following paragraphs, the applicable legal context in this case.

[ 4 ] In judicial review, the Court must apply the standard of reasonableness regarding the merits of the CRA's second review decision ( *Canada (Minister of Citizenship and Immigration) v Vavilov* , 2019 SCC 65 [ *Vavilov* ]).

[ 5 ] A court applying the reasonableness test does not seek to determine what decision it would have made in the place of the administrative decision-maker, nor does it undertake a new analysis or determine the correct solution to the problem. The reviewing court cannot re-evaluate and weigh the evidence considered by the administrative decision-maker to arrive at a different conclusion ( *Vavilov* at paras. 13, 83, 125).

[ 6 ] A reasonable decision is justified by the facts and the applicable law. The administrative decision-maker must consider the evidence on file and the overall factual context that affects the decision. The reasonableness of a decision may be compromised if the administrative decision-maker has fundamentally misinterpreted or disregarded the evidence presented to them ( *Vavilov* at para. 126).

[ 7 ] The decision under review includes both the reasons set out in the letters sent to the applicant and the notes of the CRA officer, the latter forming an integral part of the decision rendered ( *Aryan v Canada (Attorney General),* 2022 FC 139 at para. 22).

[ 8 ] As I explained at the hearing, the role of the Court in judicial review is to examine the administrative decision-maker's decision within the legal and factual context that was presented to the decision-maker at the

time it was made. In accordance with this role, the evidence available to the Court when it hears an application for judicial review is generally limited to the evidence available to the administrative decision-maker. In judicial review, the Court also cannot rule on whether the applicant was eligible for or entitled to the CERB.

[ 9 ] Therefore, as a general rule, documents and information not available to the administrative decision-maker are inadmissible in judicial review ( *University of Canada v. Canadian Copyright Licensing Agency (Access Copyright)* , 2012 CAF 22 at paras. 19-20 [ Access *Copyright* ]). In this case, the exceptions provided for in *Access Copyright* do not apply.

[ 10 ] Thus, I cannot consider the new evidence filed by the applicant in my assessment of the merits of the CRA's decision, specifically Exhibits 2, 3, 7, 9, 15 and 16 in her file.

[ 11 ] Finally, the legal context that the administrative decision-maker must follow is found in the *Canada Emergency Response Benefit Act* [Act], namely section 8 of the *COVID-19 Emergency Measures Act* , SC 2020, c 5. This Act creates the CERB.

[ 12 ] The Act establishes the eligibility criteria for the CERB, and also gives the Minister the power to demand repayment of any payment to which a person was not entitled (Act at s. 12(1)).

II. Analysis

A. *Preliminary questions*

[ 13 ] The respondent had raised preliminary procedural objections: (a) that the application is time-barred (which appears to stem from the applicant's misidentification of the decision under review) and (b) that the applicant introduced a new argument in its factum that was not in the application for review and was not clearly set out in the factum. The respondent maintains that this new argument should not be considered by the Court (citing *Tremblay v. Canada (Attorney General)* , 2025 FC 17 at para. 59 [ *Tremblay* ]).

[ 14 ] The defendant emphasizes that his pleadings at the hearing will address the merits of the claim, but that he defers to his factum of facts and law regarding his objections.

[ 15 ] I will address the second objection first. The defendant is correct that the notice of claim does not mention the disputed argument. However, in her factum, the plaintiff identified three issues in judicial review in the section on points in dispute. One of these issues is: “Why did the amount of repayment demanded increase from $986.02 (notice of May 30, 2023) to $8,033.23 (notice of January 14, 2025) without a clear explanation?”

[ 16 ] In *Tremblay,* cited by the defendant, the plaintiff introduced new arguments for the first time at the hearing, but these arguments were not set out in the notice of claim or in the factum of fact and law. The Court cites, in paragraph 59, paragraph 25 of *Benakezouh v. Canada (Attorney General)* , 2024 FC 1883 [ *Benakezouh* ], which confirms the principle that, except in exceptional circumstances, the Court should not accept the addition of new arguments at the hearing if they have not been raised in the factum of fact and law, because the defendant would be prejudiced and the Court would not have a proper opportunity to consider those arguments.

[ 17 ] New arguments presented for the first time without having been detailed in the factual and legal briefs prejudice the opposing party, which is obviously taken by surprise. Moreover, the Court is not in a position to fully assess the merits of a new argument that is raised suddenly during the hearing ( *Del Mundo v. Canada (Citizenship and Immigration)* , 2017 FC 754 at paras. 12–14 , cited in *Benakezouh* at para. 25 and *Tremblay* at para. 59).

[ 18 ] This is distinct from the case before me. Here, the plaintiff raised her concern about the increased amounts following the first and second reviews in her statement of facts and law. The defendant addressed this issue in his written submissions and at the hearing. He was therefore not taken by surprise. I conclude that the argument in question is not a new argument and that I may consider it.

[ 19 ] As to the first objection, namely the issue of time, the respondent submits that the applicant filed its notice of application more than 30 days after the decision under review was rendered, namely the CRA Decision of November 13, 2024 (citing section 18(2) of the *Federal Courts Act* , RSC 1985, c F-7). It explains that the Court has the power to grant an extension of time, but that it should not do so because the applicant does not meet the four criteria required for an extension: (a) that it has demonstrated a consistent intention to pursue its application; (b) that the application for review has some merit (in other words, that it is well-founded); (c) that the respondent will not suffer prejudice as a result of the delay; and (d) that it has a reasonable explanation to

justify the delay ( *Canada (Attorney General) v Larkman* , 2012 FCA 204 at para. 61 [ *Larkman* ]; *Canada (Attorney General) v Hennelly* , 1999 CanLII 8190 (FCA) at para. 3 [ *Hennelly* ]).

[ 20 ] Since the merits of the claim as required by *Larkman* are linked to the merits of the decision, I will deal with them together in the next section.

B. *The request for control*

[ 21 ] The applicant is contesting the decision because she says she had COVID-19 at the time she applied for the CERB, and because the amount claimed by the CRA increased between the first and second review.

[ 22 ] The applicant had applied for the CERB and was initially approved for periods 3 to 6, i.e. from May 10, 2020, to August 19, 2020. The amounts were paid to her without the CRA conducting a prior verification of her eligibility, which was the practice with CERB applications.

[ 23 ] In 2022, the applicant received a notice from the CRA requesting repayment of an overpayment of the CERB. After requesting and receiving an explanation of the notice in writing, she called the CRA to dispute the request, seeking to understand why she was being asked to repay the CERB. Following this call, the CRA began an initial review of her CERB payments. The CRA asked her to provide pay stubs and other documents to verify her eligibility for the CERB, which she did.

[ 24 ] On January 10, 2024, the applicant received a letter from the CRA informing her that, following the initial review, she was ineligible for periods 3 and 6. She contacted the CRA because she disagreed with this decision. The agent she spoke with explained the process for contesting the initial review and initiated a second review of the ineligibility decision.

[ 25 ] During the second review process, a CRA agent contacted the claimant by telephone. The claimant explained that she had been on leave from May 2020 until December 2020 due to her diabetes. The claimant had not applied for Employment Insurance after her leave, but had applied for the Canada Emergency Response Benefit (CERB) directly.

[ 26 ] On November 13, 2024, after reviewing the file, the CRA informed the applicant that she was not eligible for the CERB, now for periods 3 to 6. As a result, the CRA sent her a request for repayment on January 14, 2025, this time for a higher amount.

[ 27 ] The plaintiff explained at the hearing that she could have more clearly substantiated her absence from work at the time. She confirmed that she had informed the officer that she had stopped working due to diabetes, which is reflected in the officer's notes from their conversation on November 6, 2024. Finally, the plaintiff's pay stub showed a "D00" notation , which stands for "illness or injury .

[ 28 ] Considering the information before the second review officer — confirmation of a work stoppage due to diabetes and a pay stub identifying the absence as due to illness — the officer was entitled to conclude that the work stoppage was not due to a cause related to COVID-19. It was on this basis that the officer determined the question of ineligibility for the CERB.

[ 29 ] The applicant stated at the hearing that she had contracted COVID-19 twice and was still suffering from its after-effects. She also submitted that she became ill with COVID-19 at the same time as she was unable to work. However, there was nothing in the file before the officer to support the claim that she had stopped working in May 2020 due to a combination of her diabetes and COVID-19, as she described at the hearing.

[ 30 ] The eligibility criterion “you have not stopped working or your hours of work have not been reduced because of COVID-19” is found in the Act, in paragraph 6(1)(a). This eligibility criterion is not discretionary. The officer therefore had no choice but to apply it ( *Flock v. Canada (Attorney General)* , 2022 FC 305 at paras. 3, 23).

[ 31 ] Therefore, the CRA's conclusion that the claimant is not eligible for all the periods claimed is reasonable, as it is justified, transparent and understandable.

[ 32 ] The claimant expresses her confusion and incomprehension that the amount she had to repay increased significantly between the first examination (periods 3 and 6) and the second examination (periods 3 to 6).

[ 33 ] The defendant submits that a second examination is a new examination. This is a correct expression in the jurisprudence of this Court.

[ 34 ] A second review is intended to be independent and is always conducted by an officer who did not participate in the first review. An officer conducting a second review may rely on documents and information that the officer conducting the first review did not have. This procedure can help identify errors in the analysis of the officer who conducted the first review, if any ( *Richard v. Canada (Attorney General)* , 2025 FC 1464 at para. 76, other citations omitted). In short, the decision of the first review is superseded by the second review ( *Fang v. Canada (Attorney General)* , 2024 FC 1399 at para. 40).

[ 35 ] I understand the applicant's circumstances and the frustration she expressed at the hearing. I also understand her argument regarding the circumstances surrounding her CERB application. She argues that there was a great deal of confusion about the CERB eligibility criteria, that she applied in good faith, that she believed she was eligible, and that she was at work (and distracted) when the second review officer called her.

[ 36 ] Although this may be true, unfortunately, the Court cannot conclude that the officer committed a reviewable error. I must therefore dismiss the application for judicial review.

[ 37 ] The potential merit of the contested decision is one of the factors to be considered for an extension of time ( *Larkman* ) and overlaps with respect to the merits of the decision. However, the application is dismissed because the applicant has not demonstrated that the decision is unreasonable.

[ 38 ] The defendant does not claim costs. I agree that there is no basis for awarding costs in this case.

**JUDGMENT in case T-394-25**

**THE COURT RULES that:**

1. The request for judicial review is rejected, without costs.
2. The title is corrected to identify the appropriate defendant as the "Attorney General of Canada" rather than the "Canada Revenue Agency" .

"Phuong TV Ngo"
Judge

**FEDERAL COURT**
**LAWYERS LISTED IN THE CASE FILE**

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| **CASE :** | T-394-25 |
| **TITLED :** | PHONNA PUY c CANADA REVENUE AGENCY |
| **HEARING LOCATION:** | MONTREAL (QUEBEC) |
| **HEARING DATE:** | MARCH 19, 2026 |
| **JUDGMENT AND REASONS** | JUDGE NGO |
| **DATE OF REASONS:** | MARCH 31 , 2026 |

**COMPARISONS :**

| | |
|---|---|
| Ms. Phonna Puy | FOR THE PLAINTIFF (IN HIS OWN NAME) |
| Guillaume Turcotte, Esq. | FOR THE DEFENDANT |

**LAWYER LISTED IN THE CASE FILE :**

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|---|---|
| Attorney General of Canada<br>Montreal (Quebec) | FOR THE DEFENDANT |