

Federal Court



Cour fédérale

**Date: 20260417**

**Docket: T-3035-25**

**Citation: 2026 FC 523**

**Vancouver, British Columbia, April 17, 2026**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**HTAY LWIN AUNG**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicant, Htay Lwin Aung, is seeking judicial review of two second-review decisions dated July 17, 2025 [Decisions] whereby a Canada Emergency Benefits Validation agent [Agent] of the Canada Revenue Agency [CRA] found him inadmissible for two COVID-

era economic measures, namely, the Canada Emergency Response Benefit [CERB] and the Canada Recovery Caregiving Benefit [CRCB].

[2] Mr. Aung, who represents himself, challenges both the reasonableness of the Decisions and the procedural fairness of the process through which they were rendered. In its response, the Attorney General of Canada [AGC] concedes that the Decisions at issue are unreasonable and were reached in a procedurally unfair manner. However, the parties disagree on two remaining issues: the appropriate remedy and costs.

[3] For the reasons that follow, Mr. Aung's application for judicial review will be granted in part. I am satisfied that the Decisions are unreasonable and were reached in a procedurally unfair manner. However, contrary to Mr. Aung's submission, it is not the Court's role to determine his eligibility to the CERB and the CRCB. The appropriate remedy is to remit the matter back to the CRA for new decisions regarding his eligibility to these benefits, in light of the flaws conceded by the AGC and identified by the Court in these reasons. Moreover, in the exercise of my discretion, there will be no cost award.

## II. Background

### A. *Mr. Aung's professional activities and benefit claims*

[4] From 2011 to 2021, Mr. Aung was essentially providing caregiving services on a full-time basis to his late mother who had suffered from a stroke. He did so until she passed away. For his services, Mr. Aung was paid a monthly amount of approximately \$300 "for the first few

years” and \$500 to \$800 in the last four to five years, in cash. His brother had a joint bank account with their late mother, and he was making the payments to Mr. Aung. The cash money received by Mr. Aung was then used on everyday expenses and was not deposited in his bank account.

[5] Mr. Aung applied for the CERB for the periods between March 15, 2020 and September 26, 2020, and for the CRCB for the periods going from September 27, 2020 to February 27, 2021.

[6] On March 22, 2023, the CRA sent a letter to Mr. Aung advising him that the agency would conduct a verification review of his eligibility for the benefits [Verification Letter]. The Verification Letter listed acceptable forms of proof of earnings over \$5,000 and requested that Mr. Aung provide supporting documentation.

[7] On January 5, 2024, the CRA informed Mr. Aung that he was not eligible for the CERB and the CRCB on the basis that the CRA did not receive a reply to the Verification Letter and had tried without success to reach him by telephone.

[8] On April 16, 2024, Mr. Aung submitted documents for review, including: (i) a letter from himself dated March 26, 2024; (ii) a letter from himself dated April 25, 2023, which Mr. Aung allegedly sent in reply to the Verification Letter by registered mail the year before; (iii) a letter from Mr. Thuya Lwing Maung (Mr. Aung’s brother) dated March 26, 2024; (iv) four pages of transactions records from the Royal Bank of Canada showing multiple cash withdrawals from the joint bank account of Mr. Aung’s late mother and Mr. Maung; (v) a copy of a Canada Post

ticket for a registered domestic mail heading to Sudbury; and (vi) a copy of a COVID-19 assessment and prescription in the name of Mr. Aung from the British Columbia Ministry of Health, dated October 4, 2022.

[9] On May 31, 2024, the CRA informed Mr. Aung that, further to its first review, it determined that he was not eligible for the CERB and the CRCB as he did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of his applications.

[10] On July 3, 2024, Mr. Aung submitted new documents for review, including : (i) a letter from himself dated June 27, 2024; (ii) Exhibit A being a T1 adjustment request for the 2019 tax year; (iii) Exhibit B being a T1 summary and a slip summary; (iv) Exhibit C being another T1 summary and slip summary; (v) Exhibit D being the same four pages of transactions records from the Royal Bank of Canada previously submitted and showing multiple cash withdrawals from the joint bank account of Mr. Aung's late mother and Mr. Maung from March 2017 to December 2020; (vi) Exhibit E being the same letter from Mr. Maung dated March 26, 2024, also previously submitted; (vii) Exhibit F being a letter dated March 5, 2021 from Dr. Conrad Rusnak, a family doctor, identifying Mr. Aung as a caregiver to his late mother; (viii) Exhibit G being a letter from Dr. Stephen Kwok dated September 30, 2022, identifying Mr. Aung's late mother's pathologies and medications; (ix) Exhibit H being the same copy, previously submitted, of a COVID-19 assessment and prescription in the name of Mr. Aung from the British Columbia Ministry of Health, dated October 4, 2022; and (x) Exhibit I being a COVID-19 results review report in the name of Mr. Aung's late mother, dated February 25, 2021.

B. *The CRA's Decisions*

[11] In a letter dated July 17, 2025, the Agent informed Mr. Aung that, after their second review, the CRA was still of the view that he was ineligible to the CERB and the CRCB. The CRA explains the Decisions as follows:

We have determined you are not eligible for the Canada Emergency Response Benefit (CERB). You are not eligible for the following reason(s):

- You did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019 or in the 12 months before the date of your application.

We have determined you are not eligible for the Canada Recovery Caregiving Benefit (CRCB). You are not eligible for the following reason(s):

- You did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019 or in the 12 months before the date of your application.
- You were not caring for a child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility for reasons related to COVID-19. Or, the individual who usually provided care was not available for reasons related to COVID-19.

[12] The reasonableness of these Decisions must be assessed in light not only of the Decisions themselves, but also of the Agent's notes dated July 10, 2025, which are recorded in the CRA's internal system. These notes reveal the Agent's rationale in support of the Decisions and, as such, form an integral part of them (*Cormier c Canada (Procureur général)*, 2026 CF 241 at para 17 [*Cormier*]; *Deblois c Canada (Procureur général)*, 2026 CF 218 at para 16 [*Deblois*]; *Leclerc c Canada (Procureur général)*, 2025 CF 1787 at para 24 [*Leclerc*]; *Richard c Canada*

(*Procureur général*), 2025 CF 1464 at para 31; *Taileb c Canada (Procureur général)*, 2025 CF 1303 at para 21 [*Taileb*]; *Tcherkas v Canada (Attorney General)*, 2025 FC 1289 at para 38 [*Tcherkas*]; *Delage c Canada (Procureur général)*, 2025 CF 497 at para 16 [*Delage*]; *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 26; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22 [*Aryan*]).

[13] In this case, the Agent indicated that they were unable to confirm Mr. Aung’s eligibility for the benefits for which he had applied. The Agent noted that, although Mr. Aung claimed he was paid for caring for his late mother, there were “no work contract invoices or receipt” and no cash payments had been deposited into his bank account. The Agent further observed that, during a phone interview, Mr. Aung stated that COVID-19 did not affect his income, as he continued to care of his late mother and to receive payment for doing so. As such, the Agent concluded that Mr. Aung “was not caring for his mother due to COVID-19 and [that] his income was not affected by COVID-19.” The Agent also noted that Mr. Aung did not provide caregiver services to any clients other than his late mother and did not claim self-employment income until after he was deemed ineligible for the COVID-19 benefits he had received. Accordingly, the Agent found Mr. Aung ineligible for the benefits for which he applied.

C. *The standard of review*

[14] The Supreme Court of Canada’s landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] established a presumption that reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 35 [*Pepa*];

*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]), unless the circumstances lend themselves to the application of one of the recognized exceptions to this presumption (*Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30 at para 28 [*Society of Composers SCC*]; *Vavilov* at paras 33–64, 69–72).

[15] It is now well established that the standard of review applicable to the merits of CRA’s decisions regarding COVID-era benefits such as CERB and CRCB payments is reasonableness (*Cormier* at para 25; *Deblois* at para 12; *Leclerc* at para 42; *Taileb* at para 32; *Mailloux v Canada (Attorney General)*, 2025 FC 583 at para 16; *Delage* at paras 12–13; *Ashurova v Canada (Attorney General)*, 2025 FC 428 at para 34 [*Ashurova FC*], aff’d by 2026 FCA 54 at para 11 [*Ashurova FCA*]; *Devi v Canada (Attorney General)*, 2024 FC 33 at para 14; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 15; *He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [*He*]; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16).

[16] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Pepa* at para 46; *Mason* at para 64; *Vavilov* at para 85). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99, citing notably *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[17] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Pepa* at paras 46–47; *Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). Flaws must be more than superficial for the reviewing court to overturn an administrative decision. Before a decision can be set aside on the basis that it is unreasonable, the reviewing court must be satisfied that “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[18] The standard of reasonableness is rooted in the principle of judicial restraint and deference, and it requires reviewing courts to show respect for the distinct role that the legislature has chosen to give to administrative decision makers, more particularly on findings of fact and the weighing of evidence (*Mason* at para 57; *Vavilov* at paras 13, 24, 46, 75). Absent exceptional circumstances, a reviewing court will not interfere with the factual findings of an administrative decision maker (*Vavilov* at paras 125–126, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55; *Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3). The onus is on the party challenging the decision to prove that it is unreasonable.

[19] Despite the presumption of reasonableness, the approach to be taken with respect to procedural fairness issues has not changed following *Vavilov* (*Vavilov* at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision maker complies with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*]; *Canada (Attorney General) v McBain*, 2017 FCA 204).

[20] However, although the reviewing exercise is akin to correctness review, the Federal Court of Appeal has affirmed that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court, and the court must be satisfied that the procedure was fair having regard to all of the circumstances (*Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 22 [*Algoma Steel*]; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to the Supreme Court dismissed, no 39522 (August 5, 2021); *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]).

[21] Consequently, the test is whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties

concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*Algoma Steel* at para 22; *CPR* at para 56; *Higgins v Canada (Attorney General)*, 2018 FCA 49 at para 17). No deference is owed to the decision maker on issues of procedural fairness (*Amer v Shaw Communications Canada Inc*, 2023 FCA 237 at para 51; *Maritime Employers Association v Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para 81).

### III. Analysis

#### A. *The eligibility requirements for the CERB and the CRCB*

[22] As of March 2020, the federal government introduced a range of measures to mitigate the economic impacts caused by the COVID-19 pandemic, including the CERB and the CRCB. These were targeted financial benefits intended to support workers who experienced a loss of income due to the pandemic and who were unable to benefit from the protection offered by the regular employment insurance regime. The CRA is the federal body responsible for administering these income support programs. In this role, it acts on behalf of the Minister of Employment and Social Development.

[23] The CERB was available for seven four-week periods between March 15, 2020, and September 26, 2020, for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic. The CRCB followed the CERB and was available for any week between September 27, 2020, and May 7, 2022, for eligible employees and self-

employed workers who were unable to work due to one of the listed COVID-19-related issues when they would have otherwise been able to work that week.

[24] The eligibility criteria for the CERB are set out in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act]. Among other things, the CERB Act requires employees or self-employed workers to have earned at least \$5,000 in employment income or self-employment income in 2019 or in the 12-month period preceding their application for the CERB (see the definition for “worker” at section 2). It also states that the worker must have ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which the worker had applied for the CERB (paragraph 6(1)(a) of the CERB Act).

[25] As for the CRCB, its eligibility criteria are set out in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act]. Among other things, the CRB Act requires employees or self-employed workers to have earned at least \$5,000 in employment income or net self-employment income in 2019, 2020 or 2021 or in the 12-month period preceding their application for the CRCB (subparagraphs 17(1)(d)–(e.1) and paragraph 17(2)). It also states that, in the case of an employee, they must have been unable to work for, or in the case of a self-employed person, reduced the time devoted to their work by, at least 50% of the time they would have otherwise worked in that week, either because they cared for a child under 12 years of age or for a family member who required supervised care because of facility closure related to COVID-19, of an inability to attend a facility for reasons related to COVID-19 or the person who usually cared for the child of the family member was not available for reasons related to COVID-19 (subparagraph 17(1)(f) of the CRB Act). For the purpose of the CRCB, a family member

includes anyone whom the person considers to be like a close relative or who considers the person to be like a close relative (paragraph 17(3) of the CRB Act). Moreover, if two or more persons reside in the same household, only one of them may be paid a CRCB for any particular week (paragraph 23(3) of the CRB Act).

B. *Preliminary issues*

[26] Before dealing with the merits of this case, I must first rule on two preliminary issues raised by the AGC and discussed at the hearing.

[27] First, Mr. Aung's Notice of Application named the Respondent as the "Minister of National Revenue." Counsel for the Respondent submits that because the Minister of National Revenue is not directly affected by the decision, which was made by the CRA on behalf of the Minister of Employment and Social Development, the proper responding party is the AGC, in accordance with Rule 303 of the *Federal Courts Rules*, SOR/98-106 [Rules].

[28] Mr. Aung conceded this point at the hearing, and I agree. Accordingly, I will order that the style of cause be amended with immediate effect, replacing the Minister of National Revenue with the AGC as the named respondent (*Piscitelli v Canada (Attorney General)*, 2026 FC 277 at paras 17–18; *Kawasaki v Canada (Attorney General)*, 2025 FC 936 at para 15; *Aryan* at paras 13–14; *Hasselsjo v Canada (Attorney General)*, 2021 CanLII 89551 (FC) at para 2).

[29] Second, the AGC submits that Mr. Aung's record contains documents that were not before the Agent when they rendered their Decision. Specifically, the AGC submits that the

following paragraphs of Mr. Aung's affidavit and corresponding exhibits should be disregarded by this Court:

- A. Paragraphs 3 to 11 and 14 to 23 and the corresponding Exhibits "B" to "J" and "M" to "V" referring to copies of various Notices of Assessment and Notices of Reassessment in respect of the Applicant's 2011 to 2021 taxation years;
- B. Paragraph 13 and Exhibit "L" referring to a copy of a letter issued by Liberty Tax Service dated August 11, 2025;
- C. Paragraph 25 and Exhibit "X" referring to a copy of operations reports by interventional cardiologists;
- D. Paragraph 28 and Exhibit "AA" referring to a copy of a medical report dated April 13, 2018;
- E. Paragraph 29 and Exhibit "BB" referring to a copy of documents filled out by a medical practitioner dated August 6, 2020;
- F. Paragraph 30 and Exhibit "CC" referring to a doctor's letter dated August 23, 2017; and
- G. Paragraph 33 and Exhibit "FF" referring to a copy of a health assessment report dated September 12, 2022.

[30] Again, I agree with the AGC. It is settled law that, on judicial review, the Court cannot normally review evidence that was not before the administrative decision maker (*Ashurova FCA* at para 13; *Canada (Attorney General) v Canadian Civil Liberties Association*, 2026 FCA 6 at para 62 [CCLA]; *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, 2025 FCA 147 at paras 25–26, leave to appeal to the Supreme Court of Canada dismissed, no 41992 (November 6, 2025) [*Ostrich Farms*]; *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98 [*Tsleil-Waututh*]; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]). Indeed,

“[t]he essential purpose of judicial review is the review of decisions, not the determination, by trial de novo, of questions that were not adequately canvassed in evidence at the tribunal or trial court” (*Access Copyright* at para 19).

[31] However, there are some exceptions to this principle. Those limited exceptions notably extend to materials that: (1) provide general background assisting the reviewing court in understanding the issues; (2) demonstrate procedural defects or a breach of procedural fairness in the administrative process; or (3) highlight the complete absence of evidence before the decision maker (*CCLA* at para 62; *Ostrich Farms* at para 26; *Tsleil-Waututh* at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23–25; *Access Copyright* at paras 19–20).

[32] In this case, the specific evidence identified by the AGC and submitted by Mr. Aung as part of this judicial review was indeed not before the Agent, and none of the above-mentioned exceptions apply. I will consequently disregard this evidence in my decision. In any event, I point out that, in light of the AGC’s conceding the flaws affecting the Decisions, admitting this evidence would not have changed the outcome of this judicial review as it would have had no impact on the sole remaining issues, namely, the appropriate remedy and costs.

[33] Mr. Aung should note, however, that it will be open for him to submit those documents to the CRA as part of the new review of his eligibility now ordered by this Court. Because Mr. Aung bears the onus of establishing, on a balance of probabilities, that he meets the eligibility criteria to receive the CERB and CRB payments, he should not rely on any assumption that the CRA already has *de facto* access to those documents in its database. Conversely, it goes without saying that, in the redetermination process, the CRA shall give to Mr. Aung a full and fair

opportunity to present his evidence and his case, and to be informed of the evidence to be rebutted.

C. *The Decision is unreasonable and was reached in a procedurally unfair manner*

[34] For the grounds raised by the AGC, I am satisfied that the Decisions are both unreasonable and procedurally unfair.

[35] As conceded by the AGC, the Agent did not explain why Mr. Aung's supporting documents were insufficient as proof of income. Other than listing the documents as received, the record does not show the Agent engaging with those documents or discussing them with Mr. Aung. This suffices to make the Decisions unreasonable.

[36] Similarly, although Mr. Aung knew that the CRA was trying to verify his income for the purposes of his eligibility to the benefits, he did not fully know the case he had to meet as the insufficiencies in his supporting documents were not communicated to him. There is no indication in the record that the Agent advised Mr. Aung why his supporting documents were insufficient and what was additionally required to prove his eligibility. While bearing in mind that, in the context of decisions made under the CRB Act and the CERB Act, the level of procedural fairness owed is at the low end of the spectrum (*Ashurova FC* at para 61), it is clear from the record that Mr. Aung was not afforded a fair chance to respond to the Agent's concerns.

D. *The appropriate remedy is remitting the matter back to the CRA*

[37] Being satisfied that the Decision is unreasonable and was reached in a procedurally unfair manner, I must determine the appropriate remedy.

[38] As it appears from his Notice of Application, Mr. Aung seeks from this Court an order (i) directing the Minister of National Revenue to allow his CERB and CRCB claims, “which he has unlawfully failed or refused to do,” or alternatively, (ii) setting aside the Decision and referring the matter back for determination in accordance with such directions as the Court considers to be appropriate, and (iii) awarding him costs of his application.

[39] Despite Mr. Aung’s oral submissions, I agree with the AGC that this matter should be remitted to a different CRA agent for redetermination and that it does not fit within the limited circumstances where the Court could direct the CRA to allow Mr. Aung’s CERB and CRCB claims.

[40] It is true that in *Vavilov*, the Supreme Court of Canada emphasized that a reviewing court has some discretion as to the appropriate remedy when it quashes an unreasonable decision, with the majority cautioning against the “endless merry-go-round of judicial reviews and subsequent reconsiderations” (*Vavilov* at paras 140–142). Accordingly, it may sometimes be appropriate to decline to remit a matter to an administrative decision maker “where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose” (*Vavilov* at para 142; *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, 1994 CanLII 114 (SCC), [1994] 1 SCR 202

at pp 228–230; *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at paras 99–100 [*Society of Composers FCA*], aff'd in *Society of Composers SCC*). This may also be the case where correcting the error would not change the existing result and would have no practical consequences, and only one conclusion is in fact possible (*MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2 at para 52; *Farrier v Canada (Attorney General)*, 2020 FCA 25 at para 31; *Robbins v Canada (Attorney General)*, 2017 FCA 24 at paras 16–22 [*Robbins*]). This discretion to grant or not grant remedies exists in the case of both procedural and substantive errors (*Society of Composers FCA* at para 99).

[41] However, the Supreme Court specified that this remedial discretion must be exercised with restraint, as the choice of remedy must “be guided by the rationale for applying that standard [reasonableness] to begin with, including the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide” (*Vavilov* at para 140). Therefore, where a decision reviewed under the reasonableness standard cannot be upheld, it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision with the benefit of the Court’s reasons, and determine whether it arrives at the same outcome or at a different one (*Vavilov* at para 141; *Society of Composers FCA* at para 99; *Robbins* at para 17). In short, the threshold for choosing not to remit the matter to the administrative decision maker when their decision is considered unreasonable is high (*Canada (Attorney General) v Zalys*, 2020 FCA 81 at para 104; *D’Errico v Canada (Attorney General)*, 2014 FCA 95 at paras 14–17).

[42] Insofar as the standard of the reasonableness is marked by deference and respect for the legitimacy and competence of administrative decision makers in their area of expertise, the discretion of the reviewing courts to refuse remitting an unreasonable or procedurally unfair decision to the administrative decision maker for reconsideration must therefore be exercised carefully, sparingly, and with prudence. It shall be limited to those rare cases where the context can only inevitably lead to one single result and where the outcome leaves no doubt. These situations will more likely be exceptions. The Supreme Court's brief remarks in *Vavilov* on the exercise of discretion in remedies do not constitute an opening for reviewing courts to substitute themselves for the administrative decision maker and interfere with the merits of the decision to be rendered (*Pêcheries Lebreton & Fils Ltée c Canada (Emploi et Développement social)*, 2025 FC 2016 at paras 100–104; *Dugarte de Lopez v Canada (Citizenship and Immigration)*, 2020 FC 707 at paras 32–34; *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at para 50). It would be ironic, to say the least, if the discretionary remedy associated with the standard of reasonableness, a standard anchored in the recognition of and respect for the role of administrative decision makers, were to become the ground for transferring those decision makers' powers to the courts of justice responsible for their supervision.

[43] In the case of Mr. Aung, it is possible that, even if informed of the flaws affecting the Decisions, a new CRA agent could nevertheless reasonably arrive at the same decision. However, this new administrative decision maker could also reach a different conclusion, one more favourable to Mr. Aung, with respect to his eligibility to the benefits. It is for the Minister of Employment and Social Development, via the CRA, and not for the Court, to make such a determination. It would not be appropriate for the Court to venture into this area and thereby usurp the expertise and decision-making authority that the legislature has entrusted to the

administrative decision maker on the issue of eligibility to the benefits. This is clearly not a situation where the record leans so heavily in favour of one single outcome that sending the matter back to the CRA would serve no useful purpose (*Lemus v Canada (Citizenship and Immigration)*, 2014 FCA 114 at para 38).

#### IV. Conclusion

[44] For the reasons set forth above, Mr. Aung's application for judicial review is allowed, in part. I am satisfied that the Decisions are unreasonable and were reached in a procedurally unfair manner given that Mr. Aung did not know the case he had to meet. However, this is not one of those rare cases where the Court should direct the CRA's decisions. As such, the Decisions of the Agent with respect to Mr. Aung's eligibility to the CERB and the CRCB are quashed and the matter is remitted back to the CRA for redetermination by a different agent.

[45] Mr. Aung seeks costs of this application for judicial review, in the amount of \$237. The AGC opposes. It is true that, as a rule, the successful party is entitled to an award of costs. However, in this case, the AGC conceded the unreasonableness and procedurally unfairness of the Decisions, thereby greatly narrowing the issues in dispute. Moreover, even though Mr. Aung's application for judicial review is granted and the Decisions are quashed, I also rule in favour of the AGC on the main remaining issue in dispute, namely, the appropriate remedy. Therefore, given the divided result and in the exercise of my discretion pursuant to Rule 400, no costs will be awarded.

**JUDGMENT in T-3035-25**

**THIS COURT’S JUDGMENT is that:**

1. This application for judicial review is granted in part.
2. The decisions dated July 17, 2025, in which the Canada Revenue Agency [CRA] found the applicant ineligible for the Canada Emergency Response Benefit [CERB] and the Canada Recovery Caregiving Benefit [CRCB], are set aside.
3. The applicant’s files with respect to his applications for the CERB and the CRCB are returned to the CRA for redetermination by a new officer, in accordance with these reasons.
4. The style of cause is amended to name the Attorney General of Canada as the respondent.
5. No costs are awarded.

“Denis Gascon”  
\_\_\_\_\_  
Judge

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

**DOCKET:** T-3035-25

**STYLE OF CAUSE:** HTAY LWIN AUNG v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** APRIL 16, 2026

**JUDGMENT AND REASONS:** GASCON J.

**DATED:** APRIL 17, 2026

**APPEARANCES:**

Htay Lwin Aung

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Jun Choi

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT