

Federal Court



Cour fédérale

**Date: 20250520**

**Docket: T-1788-23**

**Citation: 2025 FC 910**

**Ottawa, Ontario, May 20, 2025**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**AURORA ZHANG**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review of two decisions made by a Canada Revenue Agency [CRA] officer determining that the Applicant was ineligible for the Canada Emergency Response Benefit [CERB] and the Canada Worker Lockdown Benefit [CWLB] because she had not earned at least \$5,000 in eligible income during the relevant time periods. I am dismissing the application as the Applicant has failed to establish that the officer's decisions are either unreasonable or procedurally unfair.

**I. Background**

[2] The Applicant received the CERB between April and September 2020, and the CWLB between December 2021 and January 2022.

[3] The CRA reviewed the Applicant's eligibility for the CERB and the CWLB in the spring of 2022, but was unable to reach the Applicant by phone and thus received no submissions. The CRA refused her CERB and CWLB applications because the Applicant had not demonstrated earning \$5,000 in eligible income during the prescribed periods. The Applicant was unaware of these decisions until she logged on to her CRA account in early 2023, at which point she requested a second review.

[4] During a conversation on June 27, 2023, the CRA officer conducting the second review asked about the documents the Applicant had submitted in support of her income. The Applicant indicated that she did not have any paystubs from her employer nor any record of her cash tips. Friends who had commissioned her artwork paid by way of e-transfer, and she had not kept an email record of this income. Finally, she was paid in cash for design work commissioned by a friend's mother. The CRA officer asked the Applicant to submit bank statements from 2019–2021, paystubs for 2021, and corroborating documents related to her self-employment: CRA officer's notes, entry dated June 27, 2023, Certified Tribunal Record [CTR] at 6. The Applicant submitted documents in response.

[5] After considering the Applicant's supporting documents, the CRA officer concluded that the evidence was insufficient to establish that she had met the \$5,000 threshold:

Decision:

In 2019 tax return, TP reported \$2,700 from employment income and \$1,500 from net self-employment income. TP had cash tips of \$800 estimated based on TP's shifts, did not have any record of it. TP submitted payment confirmation of \$345.41 claimed to be from friends for TP's artworks, the letters were 1 sentence typed or handwritten with no details of payers, which could be typed or written by anyone. The \$2,700 was verified but cash tips and artwork jobs could not be verified from TP's attestation and friends' confirmation. There was no other proof to confirm service provided.

In 2020 tax return, TP reported \$1,212 from employment income.

Prior to the first application date on 2020-04-13, TP had employment income of \$3,912 (\$2,700 and \$1,212 [*sic*]) which were supported by T4, payslips and bank deposits. Again, \$800 cash tips and \$345.41 artworks could not be verified from TP's attestation and friends' confirmation.

In 2021 tax return, TP reported \$3,600 from employment income and \$4,000 from net self-employment income. Employment income was confirmed through T4 and payslips. However, the net self-employment income could not be verified. TP submitted the invoice of \$4,000 for the job TP claimed doing for TP's friend's mother, not sure whom the deposit of \$4,000 in TP's bank account was from, and the payment confirmation was typed with no letterhead or signature. TP had \$904 claimed to be artwork work for friends, but the payment confirmation was typed with no details of payer which could be typed by anyone and the e-transfers in the bank account [*sic*] could be for any reason. There was no other proof to confirm service provided.

TP did not meet the \$5,000 threshold. Therefore, TP is deemed not eligible for CERB and CWLB.

[Emphasis added]

CRA officer's notes, entry dated July 27, 2023, CTR at 7

[6] By letters dated August 1, 2023, the CRA officer advised the Applicant that she was ineligible for the CERB and the CWLB because she did not earn at least \$5,000 (before taxes) of employment or net self-employment income in the relevant time periods.

## **II. Issues and Standard of Review**

[7] There is no dispute that the standard of review applicable to determinations of eligibility for the benefits administered by the CRA is reasonableness: *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 [Aryan]. 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”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

[8] The Applicant argues that the CRA officer’s decisions are unreasonable on two grounds. First, that the officer ignored relevant evidence regarding the Applicant’s cash tips and self-employment income. Second, that the decisions lack justification as they employ boilerplate language.

[9] The Applicant further argues that the decisions were made in a procedurally unfair manner because the CRA officer failed to advise the Applicant of the case to meet, and deprived her of the

opportunity to respond to the officer’s concerns. Where breaches of procedural fairness are alleged, no standard of review is applied but the Court’s reviewing exercise is “best reflected on a correctness standard”: *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. When assessing whether procedural fairness was met, a reviewing court asks whether the “procedure was fair having regard to all of the circumstances”: *CPR* at para 54.

### **III. Analysis**

#### **A. *Preliminary issues***

[10] The Respondent raised two preliminary issues for determination: (i) challenging multiple decisions in one judicial review application; and (ii) the admissibility of evidence.

[11] I agree with the Respondent that the Court should grant the Applicant leave to challenge both the CERB decision and the CWLB decision in this application, pursuant to Rule 302 of the *Federal Court Rules*, SOR/98-106. The two decisions were made by the same decision-maker, based on the same record, under two related statutes, and on the same legal basis. As such, it is in the interests of justice to consider both decisions together in this judicial review application: *Vincent v Canada (Attorney General)*, 2024 FC 803 at para 9; *James v Canada (Attorney General)*, 2024 FC 730 at paras 15–17; *Rehman v Canada (Attorney General)*, 2023 FC 1534 at paras 15–17.

[12] The Respondent argues that the Court should disregard Exhibits B, C, and D of the Applicant's affidavit because this evidence was not before the CRA officer when they made the decisions under review: Respondent's Memorandum of Fact and Law at para 61.

[13] As the Respondent notes, evidence not before the decision-maker when they made their decision is not generally admissible before this Court on judicial review: *Andrews v Public Service Alliance of Canada*, 2022 FCA 159 at para 18; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]. Further, while the list is not closed, there are three exceptions to this general rule: (i) providing general background information; (ii) highlighting the complete absence of evidence before the decision-maker below; or (iii) demonstrating procedural unfairness in the decision-making process: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13–25; *Access Copyright* at para 20.

[14] Here, the Applicant argues that Exhibit D (a letter from her employer confirming that the Applicant earned \$800 in cash tips in 2019) is admissible as fresh evidence in support of her procedural fairness argument. In particular, the Applicant alleges that had she been given the opportunity to provide additional evidence to support her eligibility, she would have submitted this letter.

[15] In similar circumstances, this Court has admitted new evidence that shows what an applicant would have provided, had the decision-maker given an opportunity to do so: *Broughton v Canada (Attorney General)*, 2023 FC 1693 at paras 19–22; *Chahal v Canada (Citizenship and*

*Immigration*), 2022 FC 725 at para 20; *Babafunmi v Canada (Citizenship and Immigration)*, 2022 FC 948 at para 18. On this basis, I find that Exhibit D is admissible for the purposes of the procedural fairness argument advanced by the Applicant. The Applicant did not make the same arguments regarding Exhibits B and C, and thus, they are not admissible. However, as I ultimately find below, I am not persuaded by the Applicant's procedural fairness argument.

B. *The CRA officer's decisions are reasonable*

(1) The legislative framework

[16] The CERB and the CWLB are federal government measures introduced in response to the COVID-19 pandemic, to offer financial support to employed and self-employed Canadians. The enabling legislation for the CERB is the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*]. The enabling legislation for the CWLB is the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [*CWLB Act*].

[17] To be eligible for these benefits, an applicant must have had a total income of at least \$5,000 from employment, self-employment, benefits under the *Employment Insurance Act*, allowances, money, or other benefits paid to the person under a provincial plan because of pregnancy or care of newborn children or children placed with them for the purpose of adoption, or any other source of income that is prescribed by regulation: *CERB Act*, ss 2, 5(1); *CWLB Act* ss 4(1)(d), 4(1)(e), 4(1)(g).

(2) The CRA officer did not ignore evidence

[18] The Applicant argues that in rejecting proof of her cash tips and self-employment income, the CRA officer unreasonably ignored relevant evidence. I disagree.

[19] Applicants have the onus of establishing their eligibility with sufficient documentary evidence: *CERB Act*, s 10; *CWLB Act*, s 13; *Singh v Canada (Attorney General)*, 2024 FC 51 at para 37; *Zhang v Canada (Attorney General)*, 2023 FC 1761 at para 35; *Dumbrava v Canada (Attorney General)*, 2023 FC 1011 at paras 48–49; *Mwandala v Canada (Attorney General)*, 2023 FC 812 at para 22.

[20] The Applicant told the CRA officer that she had no documentation of her cash tips, rather the \$800 was an estimate calculated based on her shifts: CRA officer’s notes, CTR at 6. The Applicant asserts that in failing to consider the cash tips as income, the CRA officer departed from the CRA’s guidelines entitled “Confirming COVID-19 benefits eligibility” [*CRA Guidelines*].

[21] While cash tips are an eligible source of income under the *CRA Guidelines*, the Applicant was nonetheless required to provide evidence of the tips received. As Justice Grammond held, “taxpayers who resort to cash transactions must keep sufficient records if they want to rely on such income to qualify” for these benefits: *Sjogren v Canada (Attorney General)*, 2023 FC 24 at para 38. The Applicant did not submit any such records.



[22] I also find that the CRA officer reasonably concluded that the evidence submitted in support of the Applicant's self-employment income was insufficient. As set out in paragraph 5 above, the officer found that there was not enough proof to confirm that the e-transfers were for art commissions. The Applicant submitted one-sentence letters with no details of the payer such that they could not be verified. The Applicant was required to prove her income adequately and failed to do so. It is not for this Court sitting in review to reassess and reweigh the evidence submitted: *Vavilov* at para 125.

[23] The Applicant further argues that the CRA officer misstates the amount of income the Applicant claimed to earn from her art: Applicant's Memorandum of Fact and Law at para 49. This is an immaterial typographical error. The same document, as well as the CRA officer's Second Review Report, list all the art sold (and at what price) in their summaries of evidence, indicating that the officer had indeed considered the amount claimed: CRA officer's notes, CTR at 27. Consequently, the CRA officer did not ignore central submissions as was the case in *Saadi v Canada (Attorney General)*, 2022 FC 1195 at para 19.

(3) The CRA officer did not use boilerplate language

[24] The Applicant argues that the CRA officer's decisions are unreasonable as the refusal letters employ boilerplate reasons for refusal: Applicant's Memorandum of Fact and Law at paras 47–48. The jurisprudence is clear, however, that an officer's notes are deemed part of their decision: *Shtokal v Canada (Attorney General)*, 2025 FC 498 at para 14; *Fahandez-Saadi v Canada (Attorney General)*, 2023 FC 1665 at para 22; *Aryan* at para 22.

[25] I find that the CRA officer's notes in this case are comprehensive, and express their reasons for finding the Applicant ineligible for the CERB and the CWLB in an intelligible, justified, and transparent manner: *Vavilov* at para 95.

C. *There was no breach of procedural fairness*

[26] The Applicant alleges a breach of procedural fairness, arguing that the CRA officer did not inform her that the evidence she submitted after their phone call was insufficient. As such, she asserts that she was unaware of the case to meet.

[27] The procedural fairness requirements for CERB and CWLB decisions are generally at the low end of the spectrum: *Moncada v Canada (Attorney General)*, 2024 FC 117 at para 32 [*Moncada*]; *Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 17; *Ramanathan v Canada (Attorney General)*, 2023 FC 1029 at para 46. The Court must determine whether, in the circumstances of the case, the applicant knew the case to meet and had a full and fair opportunity to respond: *CPR* at paras 54–56.

[28] The Applicant was aware that “providing corroborating evidence was an issue in [her] case”: *Moncada* at para 31. In particular, the CRA officer requested that the Applicant submit supporting documentation, including “bank statement [*sic*] from 2019–2021, paystubs for 2021, any confirmation, document related to her slf-employment [*sic*]”: CRA officer's notes, entry dated June 27, 2023, CTR at 6.

[29] However, it is not for decision-makers to advise applicants what documentary evidence will suffice to meet their burden of proof. Here, the CRA officer ultimately found that the evidence submitted was insufficient proof of the Applicant's self-employment income from the sale of her art. In the circumstances, the officer was not obliged to inform the Applicant of their sufficiency concerns prior to making their determination.

[30] Further, with respect to the income of \$800 in cash tips, the Applicant had advised the CRA officer in a phone conversation that she had no record of her cash tips and that the amount was based on an estimate. It was not incumbent on the CRA officer to advise the Applicant that they would be finding her ineligible based on the failure to substantiate the \$800 with evidence, and then provide her with yet another opportunity to submit evidence.

[31] In the circumstances, I find that the Applicant was made aware of the case to meet and was provided ample opportunity to submit corroborating evidence.

#### **IV. Conclusion**

[32] While I have sympathy for the Applicant's circumstances as a student, there is no legal basis upon which I may set aside the CRA officer's decisions. The decisions were reasonable and made in a procedurally fair manner. The application for judicial review is therefore dismissed. I note that the CRA officer's letters denying the Applicant's eligibility states that if she is unable to pay the debt immediately and in the full amount, the CRA offers various solutions tailored to an individual's situation: Letters dated August 1, 2023, Respondent's Record at 175, 176.

[33] The Respondent does not seek their costs, and I agree that none should be payable in the circumstances of this case.

**JUDGMENT in T-1788-23**

**THIS COURT’S JUDGMENT is that:**

1. The Applicant is granted leave to bring this application against the two Canada Revenue Agency decisions.
2. The application for judicial review is dismissed without costs.

“Anne M. Turley”

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Judge

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

**DOCKET:** T-1788-23

**STYLE OF CAUSE:** AURORA ZHANG v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 9, 2025

**JUDGMENT AND REASONS:** TURLEY J.

**DATED:** MAY 20, 2025

**APPEARANCES:**

John Wigle	FOR THE APPLICANT
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