

Federal Court



Cour fédérale

Date: 20250523

Docket: T-2143-24

Citation: 2025 FC 936

Vancouver, British Columbia, May 23, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

RYOKO KAWASAKI

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision of a Canada Revenue Agency [CRA] agent finding her ineligible for the Canada Emergency Response Benefit [CERB] under the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*].

[2] For the reasons that follow, I am dismissing the application for judicial review.

Background

[3] The Applicant applied for and received the CERB for six consecutive four-week periods, from April 12, 2020 to September 6, 2020, totalling payments of \$12,000. Subsequently, the CRA conducted a verification to ensure that the Applicant was eligible and entitled to receive this benefit.

[4] In that regard, on February 10, 2023, the CRA contacted the Applicant via letter, requesting documentation establishing proof of the Applicant's earnings over \$5,000 in 2019 or in the 12 months prior to the date she applied for the CERB. The Applicant spoke with a CRA agent via telephone and provided documents to CRA on March 29, 2023 and on April 3, 2023.

[5] On May 5, 2023, the CRA informed the Applicant that she was not eligible for the CERB because she did not earn at least \$5,000 (before taxes) of employment income or self-employment income in 2019 or in the 12 months before the date of her first application [First Review]. Accordingly, that she was required to repay the amount she had received. The CRA also informed her that if she did not agree with the decision, she could request a second review within 30 days. The Applicant requested this second review.

[6] A different CRA agent [Second Reviewer] conducted the second review [Second Review]. That Second Reviewer contacted the Applicant via telephone on January 5, 2024 to determine whether she met the CERB eligibility criteria. On March 20, 2024, CRA informed the Applicant that she was not eligible for the CERB for Periods 4, 5, 6, and 7. The Applicant was

sent a “Notice of redetermination for COVID-19 benefits” on March 28, 2024, requiring her to repay \$8,000 of the CERB benefit which she had been determined ineligible to receive.

[7] This is the judicial review of the Second Review.

Relevant Legislation

Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 [*CERB Act*]

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

.....

Return of erroneous payment or overpayment

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.

Decision Under Review

[8] The March 20, 2024, Second Review decision letter explained that, upon a review of the information available during the Second Review of her CERB application, the Applicant was determined to be not eligible for the CERB for the following periods:

Period 4: June 7 to July 4, 2020

Period 5: July 5 to August 1, 2020

Period 6: August 2 to August 29, 2020

Period 7: August 30 to September 26, 2020

[9] This was because she “did not stop working or have [her] hours reduced for reasons relating to COVID-19”.

[10] The certified tribunal record [CTR] contains the Case Summary (Second Review), which is comprised of Part 1, listing and describing the information obtained for the first and second reviews, and Part 2 setting out the new documents obtained as well as inquiries made and the case analysis for the Second Review [Case Summary]. The Case Summary forms a part of the reasons for the decision (*Aryan v Canada*, 2022 FC 139 at para 22 [*Aryan*]; *Xin v Canada (Attorney General)*, 2023 FC 595 at para 76). The Case Summary describes the documents received with respect to the first and second reviews as well as discussions with the Applicant in which she provided further information and her position with respect to the eligibility requirements. Under the subheading “Decision Explanation”, the Second Reviewer recorded that the Applicant worked at Body Shop Canada Ltd. [Body Shop] from October 6, 2019 to December 29, 2019. She then started work at LM Global Enterprises Ltd. [LM Global] on January 7, 2020. She stopped working there on April 6, 2020. At that time the Applicant was pregnant, with her due date being the end of June 2020. She had planned to work until June 15, 2020. However, she stopped working on April 6, 2020, on the advice of her family doctor and OBGYN, who both provided letters to this effect. The Second Reviewer also noted that the Applicant had submitted a letter stating that she stopped working as her daughter’s daycare had closed as a result of COVID-19. The Second Reviewer deemed the Applicant ineligible for CERB Periods 4 to 7 as she would have stopped working by June 15, 2020 to give birth, and not because of COVID-19. The Case Summary also noted that the Applicant’s Record of Employment [ROE] from LM Global confirmed that she quit her job due to illness or injury; that her child was born on July 1, 2020; and, that she received EI maternity benefits from September 27, 2020 to September 25, 2021.

Issues and Standard of Review

[11] The Applicant is self-represented. This matter was referred for disposition by Order dated May 15, 2025. It was determined on the basis of the parties' written records without an oral hearing. Upon review of the Applicant's written submissions, I would frame the issues she has raised as follows:

1. Was the Second Reviewer's decision reasonable?
2. Was the Second Reviewer's decision procedurally fair?

[12] The reasonableness standard of review applies to the Second Reviewer's decision on the merits. This asks the reviewing court to: "develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

[13] The standard of review for issues of procedural fairness is correctness (see *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Functionally, this requires the Court's analysis to focus on 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).

Preliminary Issues

[14] There are two preliminary issues raised by the Respondent.

[15] First, the Respondent submits that the Applicant has incorrectly named the CRA as the Respondent as the CRA is not directly affected by the decision under judicial review. Rather, the Attorney General of Canada is the proper Respondent. This is because the Applicant is challenging a decision made by an agent of the CRA on the behalf of Minister of Employment and Social Development. I agree and will order that the style of cause be amended to reflect this change (see *Federal Courts Rules* (SOR/93-106), s 303; *Aryan*, at para 13; *Peiris v Canada (Attorney General)*, 2024 FC 331 at para 26; *Masood v Canada (Attorney General)*, 2025 FC 220 at para 14).

[16] Second, the Respondent submits that the Applicant's record contains documents that were not before the Second Reviewer when they rendered their decision. Specifically, responses from the Applicant regarding her eligibility for CERB payments [Exhibit H.1]; a letter from LM Global explaining the adoption of a new one week working at the office/one week working from home COVID-19 related work policy [Exhibit A.3]; an EI benefits denial letter from Service Canada [Exhibit C.1]; and, evidence regarding the closing of a daycare due to COVID-19 [Exhibits D.1, D.2, D.3] [together, New Documents].

[17] The jurisprudence is clear that, as a general rule, the evidentiary record before a Court on judicial review is restricted to the evidentiary record that was before the decision-maker.

Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. The recognized exceptions are when an affidavit: (i) provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review, but does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker; (ii) brings to the attention of the reviewing Court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker so that the Court can fulfill its role of reviewing for procedural unfairness; and, (iii) highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 20; see also *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 19–25; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45).

[18] Here, the CTR does not contain the New Documents, and none of the exceptions to the general rule apply. Accordingly, the New Documents are not admissible and will not be considered for the purposes of this judicial review.

[19] I would also note, however, that the information captured by New Documents is also captured in the Case Summary, including by way of the Applicant's answers to why she was of the view that she met each of the CERB eligibility requirements.

Was the Second Reviewer's Decision Reasonable?

[20] The Applicant submits that she met all of the CERB criteria.

[21] First, she met the \$5,000 income eligibility threshold criteria.

[22] Second, that while she was working at LM Global, she received notice that her work hours were being reduced by 50% because of COVID-19 to a one-week-on, one-week-off work schedule. Thus, her hours were reduced due to COVID-19. Further, that during this same time, her daughter's daycare closed due to COVID-19 and, as a single mother, she had to care for her daughter. As such, she stopped working due to COVID-19. Additionally, she had to stop working due to the risk of contracting COVID-19 while pregnant. She submits that there were therefore three reasons related to COVID-19 that caused her to stop working.

[23] Third, as to her maternity leave benefits, she submits that she had initially applied for maternity leave but did not meet the 600-work hour requirement. She applied for the CERB instead. Later, as the pandemic continued, changes were made to the maternity leave (EI) benefit requirements. She applied again and was approved, receiving her first maternity leave payment on November 11, 2020 – six weeks after her last CERB payment was received on September 26, 2020. Thus, there was no overlap of CERB and maternity leave benefits.

[24] I would first note that, with respect to the Applicant's submission that she met the \$5,000 income eligibility threshold criteria, and as the Respondent points out, the Second Reviewer accepted that the Applicant met this criteria. Thus, while this had been the basis for refusal in the First Review, it was no longer at issue in the Second Review. During the Second Review, the concern was whether the Applicant met the remaining eligibility criteria – specifically whether she stopped working or had her hours of work reduced for reasons related to COVID-19, as

prescribed by s 6(1)(a) of the *CERB Act*. In that regard, it was open to the Second Reviewer to consider this, as CRA agents are responsible for considering all CERB eligibility requirements (see *El Harim v Canada (Attorney General)*, 2023 FC 1689 at para 12, citing *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 24 [*Lussier*]).

[25] The Respondent submits that the record demonstrates that the Applicant explained to the Second Reviewer that at the time that she began receiving the CERB, she was pregnant with a due date at the end of June, 2020, and she gave birth to her son on July 1, 2020. She had planned to work until June 15, 2020, when she would begin her maternity leave. The Applicant further explained that she did not work from April 6, 2020, through 2022, and had not applied for any work in order to look after her children.

[26] Further, that the Second Reviewer concluded that the Applicant did, in fact, cease working due to COVID-19 prior to the birth of her child, on the basis that the Applicant and her medical care professionals had concerns about the impact that COVID-19 may have on her pregnancy. This caused her to stop working earlier than she had originally planned – the Applicant stopped working on April 6, 2020, instead of June 15, 2020.

[27] Accordingly, the Respondent submits that Second Reviewer reasonably concluded that the Applicant met all of the criteria to be eligible for the CERB in Period 2 (April 12 – May 9, 2020) and Period 3 (May 10 – June 6, 2020), but did not meet all criteria for Period 4 (June 7 – July 4, 2020), Period 5 (July 5 – August 1, 2020), Period 6 (August 2 – 29, 2020) and Period 7

(August 30 – September 26, 2020) [collectively, the Denied Periods] because she did not cease working due to COVID-19 as required by s 6(1)(a) of the *CERB Act*.

[28] I agree that the evidence in the record establishes that the Applicant's evidence was that even prior to the onset of the COVID-19 pandemic, she would have ceased working by June 15, 2020 due to the impending birth of her child. This was supported by letters from her doctors she submitted as evidence for the review, indicating that she was unable to work from April 6, 2020 (when she stopped work due to pregnancy related COVID-19 concerns), to June 15, 2020 (when she had planned to stop work due to the birth of her child).

[29] Further, in the Case Summary the Second Reviewer also noted that the ROE from LM Global indicates that the Applicant's last day for which she was paid for her work there was April 8, 2020, that her expected date of recall was unknown, and that the reason for issuing the ROE was illness or injury. The Case Summary also indicates that the Applicant confirmed to the Second Reviewer that she did not contact LM Global to resume work after her maternity leave. It was also confirmed that her maternity/parental benefits commenced September 27, 2020, and finished on June 27, 2021 (five weeks of maternity benefits, 35 weeks of parental benefit).

[30] Why there is a gap between when the Applicant intended to finish work (June 15, 2020) and when she started receiving maternity/paternity benefits is not ascertainable from the record. However, I agree with the Respondent that what is relevant to this judicial review is that as of June 15, 2020, the Applicant was not scheduled to work nor was she scheduled to work at any point in the Denied Periods. Nor had she planned to work during the Denied Periods.

Accordingly, her hours were not reduced due to COVID-19 nor did she cease working as of June 15, 2020 due to COVID-19 (see *Levesque v Canada (Attorney General)*, 2023 FC 997 at paras 38–42).

[31] I also note that the Second Reviewer did not suggest that there was or would be an overlap in the Applicant’s CERB and maternity/parental leave benefits. Rather, they found that she was not eligible for the CERB during the Denied Periods because she did not stop working or have her hours reduced for reasons related to COVID-19.

[32] Eligibility criteria established under the *CERB Act* are statutory and non-discretionary and CRA agents are bound to apply them (*Vincent v Canada (Attorney General)*, 2024 FC 803 at para 33, citing *Davis v Canada (Attorney General)*, 2022 FC 1247 at para 24; *Rehman v Canada (Attorney General)*, 2023 FC 1534 at para 41). Based on the evidence found in the record, the Second Reviewer’s finding was reasonable.

Was the Second Reviewer’s Decision Procedurally Fair?

[33] The Applicant raises arguments concerning the procedural fairness of the Second Reviewer’s decision. Specifically, that the Second Reviewer did not provide her with an opportunity to explain her circumstances or to provide documents “for a fair and impartial review”. And, that because of her language barrier, miscommunications arose during her phone conversations with CRA agents, which were conducted in English.

[34] The Respondent submits that there is no evidence that the Applicant was not afforded an opportunity to explain her case and provide documents to the decision-maker. Further, that there is no evidence that the Applicant's understanding of English prevented her from making her case that, in her view, she met all of the CERB eligibility criteria.

[35] As noted above, the CTR contains a Case Summary dated January 1, 2024, which captures documents before the Second Reviewer, information reviewed and conversations held with the Applicant, among other things. The Case Summary itemizes a list of documents received from the Applicant, including those from the First Review. It goes on to explain the Second Reviewer's findings, being that the Applicant "met \$5k income eligibility criteria for CERB as [she] submitted pay stubs, bank statements, ROE, employment letters to prove they had \$6392.34 income from employment with in the 12 months before they applied for CERB". Under the heading "Action Plan", the Case Summary notes that she Second Reviewer "will contact [the Applicant] to confirm how Covid 19 affected their employment. I will also confirm the reason for quitting their job at GLOBAL ENTERPRISES LTD [...] and will also confirm all other eligibility criteria of CERB". The Second Reviewer's notes in the Case Summary reflect that they obtained these answers from the Applicant on a phone call dated January 5, 2024; and also lists "[A]dditional documents received" from the Applicant following that call. These include screen shots showing maternity benefits, doctor's letters, EI benefit statements from Service Canada and, notably, "answers from [the Applicant] for each of the eligibility criteria of CERB". On review of the record, I am satisfied that the Second Reviewer provided the Applicant with a reasonable opportunity to explain her circumstances and to provide relevant documentation, which she did.

[36] With regard to the Applicant's language barrier, the Case Summary also captures summaries of the conversations between the Second Reviewer and Applicant. The Case Summary explains that the Second Reviewer repeatedly informed the Applicant that CRA was reviewing all the eligibility criteria of the CERB in the Second Review and that, while in the First Review CRA asked for documents to confirm the Applicant's \$5,000 income eligibility criteria only, the Applicant must meet all of the eligibility criteria to keep the monies received from the CERB. The Case Summary notes state that the Applicant "was not understanding and keep on saying that they have \$5K income. Explained [to the Applicant] about the other eligibility criteria and advised [her] to check Canada.ca website for details and to call me back if they have any questions regarding eligibility criteria until January 26th."

[37] I would first note that, while in the context of Canada Recovery Benefit payments, this Court has previously found that an additional ground for denying an applicant's eligibility, which was not found on a first review, does not in itself constitute a breach of procedural fairness (*Sun v Canada (Attorney General)*, 2023 FC 1225 at para 43, citing *Lussier*, at para 24). In any event, on review of the Case Summary notes, it is clear that the Second Reviewer informed the Applicant of the case to be met (i.e. that she was responsible for meeting all of the eligibility criteria in order to retain the money she received from the CERB, and not simply establishing the \$5,000 income threshold criteria). And, when it was noted that the Applicant had difficulties understanding this point, she was referred to a government website for further details and was given the opportunity to call the Second Reviewer back if further questions arose. The Case Summary reveals that the Applicant did not ask any follow-up questions regarding her understanding of the need to meet all of the CERB eligibility criteria.

[38] In sum on this point, I am satisfied that the Applicant knew the case to meet and was afforded a full and fair opportunity to respond (see also *Elykova v Canada (Attorney General)*, 2025 FCA 97). There was no breach of procedural fairness and no reviewable error arises.

Conclusion

[39] For the reasons above, I find that the Second Reviewer's decision was reasonable and procedurally fair.

[40] On one final point, the Respondent points out that the Applicant's Record contains private and third-party information that ought to be redacted in the Court's record. I agree that the record contains sensitive personal information that should not be made public. Accordingly, certain sensitive personal private information contained in the Applicant's Record (her bank account numbers, SIN number, etc.) will be redacted.

JUDGMENT IN T-2143-24

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to name The Attorney General of Canada as the Respondent, replacing the Canada Revenue Agency;
2. This application for judicial review is dismissed.
3. There is no order as to costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2143-24

STYLE OF CAUSE: RYOKO KAWASAKI v THE ATTORNEY GENERAL
OF CANADA

**APPLICATION CONSIDERED IN WRITING AT VANCOUVER, BRITISH
COLUMBIA PURSUANT TO RULE 55 OF THE *FEDERAL COURT RULES*, SOR/98-106**

REASONS FOR JUDGMENT AND JUDGMENT: STRICKLAND J.

DATED: MAY 23, 2025

WRITTEN SUBMISSIONS BY:

Ryoko Kawasaki

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Ryan Liu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT