

Federal Court



Cour fédérale

**Date: 20250605**

**Docket: T-1229-23**

**Citation: 2025 FC 1016**

**Toronto, Ontario, June 5, 2025**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**KERRI ROSS**

**Plaintiff**

**and**

**ATTORNEY GENERAL OF CANADA**

**Defendant**

**REASONS AND JUDGMENT**

**I. INTRODUCTION**

[1] Ms. Kerri Ross (the “Applicant”) seeks judicial review of two decisions made by Ms. Maxine Druken, a Canada Emergency Benefits Validation Manager (the “Manager”) employed by the Canada Revenue Agency (the “CRA”) on April 17, 2023. In those decisions, the Manager

determined that the Applicant is not eligible to receive benefits under the *Canada Recovery Benefits Act*, S.C. 2020, c. 12 (the “Act”).

[2] The Applicant had applied for benefits under the Canada Recovery Benefit (“CRB”) program, as well as for benefits under the Canada Recovery Caregiving Benefit (“CRCB”) program that were established pursuant to the Act.

[3] The Manager found that the Applicant was ineligible for the benefits because she had not shown proof of net self-employment income of at least \$5,000.00 in 2019 or in the twelve month period before she applied for the benefits.

## II. PRELIMINARY PROCEDURAL ISSUES

[4] The Applicant received two decisions each dated April 17, 2023, but commenced only one application for judicial review. Her application for judicial review raises two preliminary procedural issues.

[5] First, the Applicant named the CRA as the “Respondent”. This is incorrect.

[6] Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 (the “Rules”) provides as follows:

(2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.	(2) Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.
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[7] In this case, the correct responding party is the Attorney General of Canada (the “Respondent”) and the style of cause will be amended, with immediate effect to amend the style of cause.

[8] Second, Rule 302 of the Rules provides that an application for judicial review can be filed in respect of one order or decision only, as follows:

Unless the Court orders otherwise, an application for judicial review shall be limited to a single order in respect of which relief is sought.	Sauf ordonnance contraire de la Cour, la demande de contrôle judiciaire ne peut porter que sur une seule ordonnance pour laquelle une réparation est demandée.
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[9] In the present case, the Respondent does not object to the fact that the Applicant seeks judicial review of two decisions in her application for judicial review. Each decision was made on the same day, by the same decision maker, relate to the same factual context and arise under the same Act.

[10] The Respondent makes no objection to the manner in which the Applicant proceeded.

### III. THE EVIDENCE

[11] The following facts are derived from the affidavits filed by the parties. Any exhibits attached to the affidavits are also evidence upon this application for judicial review.

[12] The Applicant and the Respondent filed affidavits. The Applicant also conducted cross-examination in writing of the Manager and filed the written replies as part of her application record.

[13] The Applicant swore her affidavit on July 14, 2023.

[14] The Respondent filed two affidavits of Ms. Maxine Druken, affirmed on August 17, 2023. One affidavit addressed the claim for the CRB benefit and the second affidavit set out evidence relating to the claim for CRCB benefits.

[15] In her affidavit, the Applicant deposed that she is a self-employed travel agent with “Travel Agent Next Door”. She deposed that her only income from this business came from commissions earned on travel that she booked.

[16] The Applicant further deposed that following the shut-down of travel by the government of Canada in March 2020, she was unable to earn commissions since commissions were payable after a client’s travel had begun and during the Covid shut-down, no travel took place.

[17] The Applicant also deposed that she was eligible for the Canadian Emergency Response Benefit (the “CERB”) based on her self-employment income in the 12 months preceding her application. She applied for the CERB for the period beginning March 24, 2020.

[18] Ms. Druken is the Manager who made the decisions under review. In her two affidavits, each affirmed on August 17, 2023, she deposed to her involvement with the Applicant in the process of validating her entitlement to the benefits.

[19] The Manager deposed that the Applicant was advised by letter dated January 23, 2023 of her ineligibility for the benefits. In that letter, the Applicant was advised that she could seek review of those decisions. After the Applicant made further submissions on January 26, 2023, the CRA proceeded with a second review.

[20] The Manager reviewed all submissions and evidence on file and ultimately determined that the Applicant had failed to show evidence of a minimum of \$5,000.00 of employment or self-employment income in 2019, 2020, or in the 12 months preceding the date she first applied for the benefits.

#### IV. STATUTORY SCHEME

[21] The decisions about eligibility for the benefits are fact-driven, within the framework of the Act. Paragraphs 3(1)(a) to (c) of the Act apply to the CRB and provide as follows:

**3 (1)** A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

- (a) they have a valid social insurance number;
- (b) they were at least 15 years of age on the first day of the two-week period;
- (c) they were resident and present in Canada during the two-week period;

**3 (1)** Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes :

- a) elle détient un numéro d'assurance sociale valide;
- b) elle était âgée d'au moins quinze ans le premier jour de la période de deux semaines;
- c) elle résidait et était présente au Canada au cours de la période de deux semaines;

[22] Sections 4 and 7 are also relevant and provide as follows:

**4 (1)** A person may, in the form and manner established by the Minister, apply for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021.

**(2)** No application is permitted to be made on any day that is more than 60 days after the end of the two-week period to which the benefit relates.

...

**4 (1)** Toute personne peut, selon les modalités — notamment de forme — fixées par le ministre, demander une prestation canadienne de relance économique à l'égard de toute période de deux semaines comprises dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021.

**(2)** Aucune demande ne peut être présentée plus de soixante jours après la fin de la période de deux semaines à laquelle la prestation se rapporte.

...

**7** The Minister must pay a Canada recovery benefit to a person who makes an application under section 4 and who is eligible for the benefit.

**7** Le ministre verse la prestation canadienne de relance économique à la personne qui présente une demande en vertu de l'article 4 et qui y est admissible.

[23] Paragraph 3(1)(d) identifies the sources of income that will be recognized as eligible sources of income and provides as follows:

in the case of an application made under section 4 in respect of a two-week period beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from the following sources:

- (i) employment,
- (ii) self-employment,
- ...

dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ciaprès, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :

- (i) un emploi,
- (ii) un travail qu'elle exécute pour son compte,
- ...

[24] Section 17 of the Act addresses the eligibility requirements for the CRCB. Paragraphs 17(1)(a) to (d) are relevant and provide as follows:

**17 (1)** A person is eligible for a Canada recovery caregiving benefit for any week falling within the period beginning on September 27, 2020 and ending on May 7, 2022 if

**17 (1)** Est admissible à la prestation canadienne de relance économique pour les proches aidants, à l'égard de toute semaine comprise dans la période commençant le 27 septembre 2020 et se

terminant le 7 mai 2022, la personne qui remplit les conditions suivantes :

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <p><b>(a)</b> they have a valid social insurance number;</p> <p><b>(b)</b> they were at least 15 years of age on the first day of the week;</p> <p><b>(c)</b> they were resident and present in Canada during the week;</p> <p><b>(d)</b> in the case of an application made under section 18 in respect of a week beginning in 2020, they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from the following sources:</p> <p><b>(i)</b> employment,</p> <p><b>(ii)</b> self-employment,</p> <p><b>(iii)</b> benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the Employment Insurance Act,</p> <p><b>(iv)</b> allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and</p> | <p><b>a)</b> elle détient un numéro d'assurance sociale valide;</p> <p><b>b)</b> elle était âgée d'au moins quinze ans le premier jour de la semaine visée;</p> <p><b>c)</b> elle résidait et était présente au Canada au cours de la semaine visée;</p> <p><b>d)</b> dans le cas d'une demande présentée en vertu de l'article 18 à l'égard d'une semaine qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars :</p> <p><b>(i)</b> un emploi,</p> <p><b>(ii)</b> un travail qu'elle exécute pour son compte,</p> <p><b>(iii)</b> des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la Loi sur l'assurance-emploi,</p> <p><b>(iv)</b> des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,</p> |
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(v) any other source of  
income that is prescribed by  
regulation;

(v) une autre source de revenu  
prévue par règlement;

## V. DISCUSSION AND DISPOSITION

[25] Although the Applicant did not clearly raise an issue of procedural fairness, she did make arguments that suggest that such an issue should be considered.

[26] Specifically, the Applicant argued that when the CERB program ended it was unclear that eligibility for benefits would change from gross income-based to net income-based for the CRB program.

[27] The CERB is governed by the *Canada Emergency Response Benefit Act*, S.C. 2020, c. 5, s. 8. It was in effect from March to October 2020. In her notice of application, the Applicant alleged that CRA agents “assured” her that she would be eligible for CRB benefits.

[28] In the interests of fairness, I will consider whether any breach of procedural fairness occurred.

[29] Any issue of a breach of natural justice or a breach of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 S.C.R. 339.

[30] The merits of the decisions are reviewable on the standard of reasonableness, following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019] 4 S.C.R. 653.

[31] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov*, *supra*, at paragraph 99.

[32] Was there a breach of procedural fairness?

[33] The Act sets out the eligibility criterion for both the CRB and CERB programs. Subsection 3(2) and 17(2) of the Act provide that income from self-employment is revenue from self-employment, less the expenses incurred to earn that revenue.

[34] While the evidence about the advice from the CRA to the Applicant is not unambiguous, the issue can be addressed by the material in the record produced by the Respondent.

[35] A letter was sent to the Applicant on November 18, 2022, asking that the submit documents to support her eligibility. In part that letter advised that “income could be earned through employment income (gross or total pay)” or “net self-employment income (after deducting expenses)”

[36] As well, on March 20, 2023, the Manager conducting the second review advised the Applicant that her eligibility would be determined on her net self-employment income

[37] In my opinion, the Applicant was advised about the criteria that would be used to assess her eligibility and she had the opportunity to submit evidence and make submissions. In these circumstances, the procedure was fair and there was no breach of procedural fairness.

[38] The Applicant argues that she met the minimum income threshold of \$5,000.00 in 2019 and 2020, in order to qualify for the CRB and CRCB programs. She claims that she earned \$5,347.41 in gross income in 2019 and \$7,721.65 in gross income in 2020, and that when she applied for the benefits she had not filed her income tax returns for those years and did not know her net income.

[39] The Applicant also submits that she has additional documents to show that she earned sufficient income to qualify for the CRB and CRCB programs.

[40] The Respondent disagrees with the Applicant and argues that her arguments amount to a disagreement about the “use” of her net income to assess her eligibility for the benefits. He submits that the Act clearly provides that self-employment income is calculated on a net basis for the purpose of assessing eligibility for the CRB and CRCB programs.

[41] The Respondent argues that the statutory eligibility criteria are non-discretionary and the CRA agents are bound to apply them

[42] I agree with the Respondent on this issue.

[43] There is no scope under the Act to allow CRA employees to depart from the eligibility criteria sent out in the Act. For the purpose of assessing eligibility for the CRB and CRCB programs, self-employment income is “net” income.

[44] The documents relied on by the Manager, in making the decisions, are included in the Respondent’s record. Those documents and the Manager’s answers upon the written cross-examination support the decisions that were made.

[45] The Applicant chose to conduct written examination of the Manager to Rule 99 of the Rules. The Manager provided her answers by way of an affidavit.

[46] The Applicant asked questions specifically about the determination of her eligibility, that is in her first question. The Manager replied as follows:

I reviewed the information reported by the Applicant on her 2019 and 2020 tax returns. In 2019, the Applicant reported gross self-employment income of \$2,976 and net self-employment income of -\$935. In 2020 the Applicant reported gross self-employment income of \$6,215 and net self-employment income of -\$1,008. When I spoke to the Applicant by telephone on March 20, 2023, I asked her whether she had any additional income to declare and she stated “no”. I also advised the Applicant that if she had additional documentation to support that she had earned over \$5,000 of net self-employment income that she should submit them. I did not receive any additional documents from the Applicant.

Since there was low gross self-employment income and net losses in self-employment income during the two taxation years (2019 and 2020), and the Applicant did not have additional income for those periods nor did she have any additional documentation to

support that she had earned over \$5,000 of net self-employment income, I did not break down the Applicant's net income to specifically calculate her net income for the 12 months prior to her application for Canada Recovery Benefit (CRB) made on October 13, 2020. Since the 12 month period from October 2019 to October 2020 was encompassed by the two taxation years (2019 and 2020) in which net losses were reported for self-employment income and there was low gross-self employment income, it did not seem reasonably possible that she could have earned more than \$5,000 of self-employment income during that 12-month period.

[47] The Applicant also asked, in question 2, about the relevance of the CERB application date. The Manager answered as follows:

The 12-month eligibility period considered for each application is based on the date of application for that specific benefit. The period of eligibility considered for the Applicant's application for the CRB was 2019, 2020 and the 12-month period from October 2019 to October 2020. The Applicant's application for the CRB was made on October 13, 2020.

[48] The "additional documents" referred to by the Applicant to show that she earned sufficient net income to qualify for the CRB and CRCB programs are not included in her application record.

[49] In any event, the general rule is that only the documents that were before the decision - maker at the time the decision was made, can be considered by the Court in an application for judicial review.

[50] The key to the Applicant's application for the CRB and CRCB is whether she had shown net income from self-employment income in the relevant time frames.

[51] The Manager concluded that she had not.

[52] I am not persuaded that the Applicant has shown that the Manager ignored the evidence submitted by the Applicant or failed to address that evidence.

[53] The Manager reasonably excluded the consideration of the CERB benefit from her consideration of the applications for the CRB and CRCB.

[54] I am satisfied that the decisions meet the applicable standard of reasonableness.

[55] In the result, the application for judicial review will be dismissed.

[56] Although in his written submissions the Respondent requested costs, he withdrew that request at the hearing and no costs will be awarded.

**JUDGMENT IN T-1229-23**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed,  
with no order as to costs.

The style of cause is amended to name the Attorney General of Canada as the  
Respondent.

"E. Heneghan"

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Judge

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

**DOCKET:** T-1229-23

**STYLE OF CAUSE:** KERRI ROSS v. ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ON

**DATE OF HEARING:** DECEMBER 10, 2024

**REASONS AND ORDER:** HENEGHAN J.

**DATED:** JUNE 5, 2025

**APPEARANCES:**

Kerri Ross	FOR THE APPLICANT
Ian Pillai	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Kerri Ross (Self-represented)	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT