

Federal Court



Cour fédérale

Date: 20250613

Docket: 25-T-57

Citation: 2025 FC 1066

Ottawa, Ontario, June 13, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

MICHAEL WETERINGS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a self-represented litigant, seeks an extension of time of approximately 963 days to commence an application for judicial review of Canada Revenue Agency [CRA] decisions dated August 12, 2022, denying his eligibility for COVID-19 benefits. The CRA determined that the Applicant had not earned \$5,000 in net self-employment income during the relevant time periods.

[2] The Applicant argues that he now qualifies for these benefits because he amended his 2019 income tax return such that his net self-employment income is now above the \$5,000 threshold. For the reasons set out below, the Applicant's motion for an extension of time is dismissed. It is not in the interests of justice to permit the Applicant to commence an application for judicial review.

II. Background

[3] The Applicant is a self-employed musician. He applied for and received the Canada Emergency Response Benefit [CERB], the Canada Recovery Benefit [CRB], and the Canada Worker Lockdown Benefit [CWLB] in 2020, 2021, and 2022.

[4] The CRA conducted a review of the Applicant's eligibility for these benefits in March and April 2022, during which time the Applicant provided supporting documentation. By letters dated April 28, 2022, the CRA determined that the Applicant was ineligible as he had not earned at least \$5,000 in net self-employment income.

[5] The Applicant requested a second review. In July 2022, a CRA officer explained that, based on the Applicant's income tax return, he did not meet the requisite income threshold. According to the officer's notes of this phone call, the Applicant stated that was because he claims expenses, a "perk" of being self-employed. He further asserted that it was not fair that he was ineligible based on net income when his gross income was over \$5,000: CRA officer's notes dated July 13, 2022, Respondent's Motion Record at 51. The CRA officer reiterated in a further phone call with the Applicant that "due to the amount of expences [*sic*] he deducts from his gross business income he

does not meet the eligibility criteria of \$5,000”: CRA officer’s notes dated August 4, 2022, Respondent’s Motion Record at 52.

[6] By letters dated August 12, 2022, the CRA confirmed that the Applicant was ineligible for the CERB, the CRB, and the CWLB. The letters also advised that he could apply for judicial review within thirty days: Letters dated August 12, 2022, Respondent’s Motion Record at 32–39.

[7] In September 2022, the CRA determined that the Applicant was not required to repay the CERB benefits he had received based on the *Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order*, SI/2021-19 [*Remission Order*]. The Applicant thus received a Notice of Redetermination to this effect: Notice of Redetermination dated September 22, 2022, Respondent’s Motion Record at 58–60.

III. Analysis

A. *Preliminary issue — the proper Respondent*

[8] I agree with Respondent that, in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106, the proper respondent is the Attorney General of Canada. As a result, the style of cause is amended to name the Attorney General of Canada as the Respondent, rather than the Canada Revenue Agency.

B. *The Applicant has failed to meet the test for an extension of time*

[9] It is well established that four factors are relevant to the Court’s discretion in granting an extension of time: (i) a continuing intention of the moving party to pursue their application; (ii) the application has some merit; (iii) no prejudice to the respondent arises from the delay; and (iv) a reasonable explanation for the delay exists: *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 61 [*Larkman*]; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) at para 3.

[10] While it is not necessary to satisfy each of the four criteria, the Court is to “consider each and decide whether on balance the interests of justice would be served in granting the extension of time”: *Thompson v Canada (Attorney General)*, 2018 FCA 212 at para 6.

[11] In addition, the period of the delay may be an important factor such that “[t]he longer the delay, the more this may weigh in favour of not granting the extension”: *Lesly v Canada (Citizenship and Immigration)*, 2018 FC 272 at para 3 [*Lesly*].

[12] Pursuant to subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7, an application for judicial review must be made within thirty days after the decision was first communicated to the party. The Chief Justice has emphasized that “[t]he time limits applicable to proceedings in this Court are not whimsical”: *Lesly* at para 18. Indeed, the thirty-day deadline ensures certainty and finality in the administrative decision-making process: *Larkman* at para 87.

(1) Continuing intent to pursue an application for judicial review

[13] An applicant must demonstrate a continuing intention to pursue an application for judicial review for the entire period — both prior to and after the expiry of the relevant time limit: *Greenblue Urban North America Inc v Deeproot Green Infrastructure, LLC*, 2024 FCA 19 at para 8; *MacDonald v Canada (Attorney General)*, 2017 FC 2 at para 13 [*MacDonald*].

[14] Here, the Applicant has not provided sufficient evidence of a continuing intention to seek judicial review since receiving the CRA decisions. As set out above, he was informed of the thirty-day deadline to seek judicial review in the CRA's August 2022 refusal letters. However, he did not attempt to file an application with this Court until filing this motion for an extension of time on May 2, 2025.

[15] The Applicant addresses his continuing intent to pursue an application in his affidavit: Affidavit of Michael Weterings sworn April 30, 2025, at paras 22–39 [Applicant's Affidavit]. First, he chronicles the steps he took to challenge the CRA's first review: Applicant's Affidavit at paras 22–29. The Applicant then speaks to what occurred after he received the second review refusal on August 12, 2022: Applicant's Affidavit at paras 30–39. In particular, he states that he “felt that [he] had exhausted all avenues to prove [his] earnings and Benefit eligibility status to CRA”: Applicant's affidavit at para 31. By the fall of 2022, the Applicant began to understand that “there were nuances” to the eligibility requirements: Applicant's affidavit at para 35. However, none of this evidence shows an intention, let alone a continuing intention, to pursue an application for judicial review before this Court.

[16] In his written representations, the Applicant states that he believed in “good faith” that he could still pursue a review with the CRA until he was advised otherwise. At that point, “he promptly sought legal advice and began preparing this application”: Applicant’s Written Representations at para 6. In his affidavit, he states that “[s]tarting in 2022 and over the following months” he communicated with pro bono law groups and lawyers: Applicant’s Affidavit at para 71. However, he did not file this motion for an extension of time until May 2025, almost three years later.

[17] In his reply written representations, the Applicant asserts that he was told that further CRA internal remedies might still be available even after the second review. He asserts that he did not understand that the judicial review clock had started: Applicant’s Reply Memorandum at 2. The CRA’s August 2022 letters, however, clearly explain that if the Applicant was not satisfied with the decisions, he had thirty days in which to seek judicial review before this Court. Despite this notice, the Applicant still contacted the CRA two years later, in August 2024, inquiring whether he could request a second review based on his amended 2019 income tax return. The CRA officer informed the Applicant that he had already had a second review and that the next step was judicial review, as set out in the August 2022 letters.

[18] The Applicant contacted the CRA six months later, in February 2025, stating that he should be allowed to submit further documents. He was once again advised of the judicial review process. In March 2025, the Applicant requested that the CRA place a note on his file stating that he intends to pursue a third review: CRA officers’ notes, Respondent’s Motion Record at 62–63.

[19] Finally, the Applicant argues that flexibility is warranted for self-represented litigants. This Court has held, however, that self-represented litigants are not relieved from complying with the law: *Collins v Canada (Attorney General)*, 2023 FC 863 at para 35; *MacDonald* at para 30. The evidence shows that the Applicant was clearly advised about the statutory time limit for seeking judicial review.

[20] There is insufficient evidence that the Applicant intended to commence an application for judicial review within the thirty-day statutory timeframe, or after the deadline passed. This factor thus weighs against the Applicant.

(2) The potential merit of the application

[21] An applicant need not establish that their application will necessarily succeed, only that it has some potential merit: *Larkman* at para 61.

[22] The standard of review applicable to COVID-19 benefits decisions 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. 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; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8.

[23] The Applicant argues that “the underlying application raises real and justiciable issues”: Applicant’s Reply Memorandum at 5. More specifically, he asserts that since amending his 2019 income tax return, he qualifies for the COVID-19 benefits at issue. Initially, his expenses were high in 2019 because he was expanding his music business: Applicant’s Affidavit at para 55. When he realized that he would have met the \$5,000 net self-employment income threshold if he had claimed fewer expenses, he amended his 2019 income tax return: Applicant’s Affidavit at paras 60–66.

[24] Based on the *Remission Order*, the Applicant is not required to repay any CERB benefits. As a result, a judicial review application as it relates to the CERB decision is moot: *Olivet v Canada (Attorney General)* 2024 FC 1452 at paras 10, 22–30.

[25] There are two fundamental flaws with the Applicant’s proposed judicial review application concerning the CRB and CWLB decisions. First, evidence not before a decision-maker when they made their decision is generally inadmissible 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*].

[26] While the list is not closed, there are three exceptions to this general rule. New evidence may be admissible if it: (i) provides general background information; (ii) highlights the complete absence of evidence before the decision-maker below; or (iii) demonstrates procedural unfairness

in the decision-making process: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13–25; *Access Copyright* at para 20.

[27] The Applicant’s new evidence (his amended 2019 income tax return) does not satisfy any of these exceptions. Indeed, the Applicant amended his tax return as a direct result of the underlying decisions in an attempt to retroactively qualify. As Justice Grammond aptly explained, “[o]n judicial review, one cannot bring new information or documents to the Court to make the decision appear unreasonable in retrospect”: *James v Canada (Attorney General)*, 2025 FC 187 at para 7 [*James*].

[28] Second, and in any event, this Court has consistently held that it is reasonable for the CRA to conclude that an income tax amendment made for the sole purpose of qualifying for COVID-19 benefits after-the-fact does not alter the CRA’s factual finding that the individual did not meet the requisite income threshold: *Nabbachi c Canada (Procureur général)*, 2025 CF 580 at para 36; *Pless v Canada (Attorney General)*, 2025 FC 252 at paras 14, 22; *James* at para 8; *Preston v Canada (Attorney General)*, 2025 FC 135 at para 32; *Singh v Canada (Attorney General)*, 2024 FC 51 at para 36; *Cohen v Canada (Attorney General)*, 2023 FC 1539 at para 41; *Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 37. Accordingly, I find that the Applicant’s argument about now qualifying for the benefits would have no potential merit on judicial review.

[29] I further find that the Applicant’s procedural fairness argument has no potential merit. He argues that the CRA relied on an ambiguous and inconsistent income threshold that was “later

contradicted by its acceptance of the same 2019 data for CERB”: Applicant’s Written Representations at para 8.

[30] The enabling statutes for the CRB and the CWLB expressly provide that income from self-employment is net income for the purpose of those benefits. In particular, the legislation states that “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”: *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, subsection 3(2) [*CRB Act*]; *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5, subsection 4(2) [*CWLB Act*]. The CRA officers were required to assess the Applicant’s eligibility based on the statutory criteria: *Flock v Canada (Attorney General)*, 2022 FCA 187 at paras 4, 7; *Xin v Canada (Attorney General)*, 2023 FC 595 at para 83.

[31] The *Canada Emergency Response Benefit Act*, SC 2020, c 5, unlike the *CRB Act* and the *CWLB Act*, did not specify that income from self-employment is net income. The *Remission Order* was introduced “to ameliorate the effects of possible confusion surrounding eligibility for the CERB, which was introduced with short notice at the beginning of a public health emergency”: *Flock v Canada (Attorney General)*, 2022 FC 305 at para 22. In accordance with the *Remission Order*, self-employed individuals are exempt from repaying any CERB benefits if: (i) their gross self-employment income was \$5,000 or more in 2019, or the 12 months prior to their application; and (ii) they filed their 2019 and 2020 income tax returns by December 31, 2022: *Remission Order*, s 1(1). There is therefore no inconsistency in the CRA’s treatment of these benefits.

[32] Based on the foregoing, I am unable to find that there is any potential merit in the Applicant's proposed application for judicial review.

(3) Prejudice to the Respondent

[33] The Applicant argues that granting an extension of time will not prejudice the Respondent. Indeed, no prejudice has been asserted. This factor thus weighs in the Applicant's favour.

(4) Explanation for the delay

[34] An applicant's explanation for a delay must be justified for the entire period in question: *Citizen for My Sea to Sky v Canada (Environment and Climate Change)*, 2023 FC 1721 at para 38; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 380 at para 36; *Lesly* at paras 20–21.

[35] The Applicant argues that his delay in pursuing an application for judicial review is reasonable based on: (i) medical conditions which impair his cognitive and physical functioning; (ii) the time required to secure a Disability Tax Credit [DTC]; and (iii) the filing of his amended 2019 tax return: Applicant's Written Representations at paras 12–13.

[36] In his affidavit, the Applicant states that his medical conditions cause delays in responding to complex legal matters, and impact compliance with filing deadlines and multi-tasking: Applicant's Affidavit at para 69. The Respondent asserts that there is "little evidence to explain how his health conditions prevented him from filing an application for judicial review before May

2, 2025, 963 days after the expiration of the 30-day deadline”: Respondent’s Written Submissions at para 25.

[37] I agree with the Respondent that there is no medical evidence explaining how the Applicant’s medical conditions impaired his ability to meet the prescribed deadline. The Applicant’s DTC designation does not, in and of itself, demonstrate that his medical conditions impacted his ability to file an application for judicial review. Indeed, obtaining a DTC had no impact on the Applicant’s qualification for COVID-19 benefits. That said, it is reasonable to infer from the Applicant’s affidavit that his conditions may have had some impact on the accessibility of the various review procedures, thus contributing to the delay. It is difficult to conclude, however, that the Applicant’s medical conditions explain the entire 963-day delay.

[38] I do not agree that the Applicant’s 2019 income tax amendment reasonably explains the lengthy delay. The Applicant was aware, as of at least July 2022 when he spoke to the second review officer, that he may have been eligible for the benefits if his business expenses in 2019 were lower. He did not take any steps, however, to file an amended tax return until the spring of 2024, almost two years later.

[39] Finally, I do not accept the Applicant’s argument that “systemic ambiguity” explains his delay. It was incumbent on the Applicant to ensure that he met the eligibility criteria: *Joodaki v Canada (Attorney General)*, 2024 FC 260 at para 25; *Ibrahim v Canada (Attorney General)*, 2023 FC 1357 at para 33; *Awid v Canada (Attorney General)*, 2022 FC 1654 at para 20.

[40] For these reasons, the Applicant's explanations for his delay do not weigh in his favour.

(5) The interests of justice

[41] The overriding consideration on a motion to extend a deadline is whether it is in the interests of justice: *Larkman* at para 62. Considering the four factors discussed above, it is not in the interests of justice to grant an extension of time for the Applicant to commence a judicial review application.

[42] Most significantly, in my view, there is no potential merit to the application. As such, it would not be an efficient use of judicial resources to grant an extension of time.

[43] Furthermore, I am mindful that time limits exist in the public interest to bring finality to administrative decisions: *Canada v Berhad*, 2005 FCA 267 at para 60; *Cossy v Canada Post Corporation*, 2021 FC 559 at para 21; *Lesly* at para 18. The exceptional delay in this case of approximately 963 days militates heavily against this discretionary remedy.

IV. Conclusion

[44] The Applicant's motion is dismissed. The Respondent has not sought their costs, and I agree that none should be payable.

[45] The Court appreciates that repayment of the CRB and CWLB benefits may be difficult for the Applicant. Notably, the CRA's refusal letters state that if the Applicant 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 12, 2022, Respondent's Record at 35–39.

JUDGMENT in 25-T-57

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to name the Attorney General of Canada as the Respondent.
2. The Applicant’s motion is dismissed without costs.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 25-T-57

STYLE OF CAUSE: MICHAEL WETERINGS v THE ATTORNEY
GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106**

JUDGMENT AND REASONS: TURLEY J.

DATED: JUNE 13, 2025

WRITTEN REPRESENTATIONS BY:

Michael J. Weterings

FOR THE APPLICANT
ON HIS OWN BEHALF

Jennifer Rogers

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT