

CANADA / JUDGMENT

He v. Canada (Attorney General)

2025 FC 1875

COURT

Federal Court

DECIDED

25 November 2025

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T-3053-24 Citation: 2025 FC 1875 Toronto, Ontario, November 25, 2025 PRESENT: The Honourable

Mr. Justice Manson BETWEEN: HUI NAN HE Applicant and ATTORNEY GENERAL OF CANADA

Respondent JUDGMENT AND REASONS I. Introduction [1] This is an application for judicial

review of the two Canada Revenue Agency (“CRA”) letters dated October 10, 2024. One letter

declined to conduct a second administrative review of the Applicant’s eligibility for the Canada

Emergency Response Benefit (“CERB”). The other letter stated that final decisions on the

Applicant’s eligibility for the Canada Recovery Benefit (“CRB”) and the Canada Worker Lockdown

Benefit (“CWLB”) had already issued on October 4, 2022, and that no further administrative

review would occur. II. Background [2] The Applicant, who is self-represented, applied for and

received CERB, CRB, and CWLB payments. The CRA administers these emergency income

support programs on behalf of the Minister of Employment and Social Development (the

“Minister”).

[3] On July 15, 2022, the CRA notified the Applicant that she was ineligible for CRB and CWLB. The Applicant requested a second review on July 30, 2022. A different CRA officer conducted that review and on October 4, 2022, issued final decisions confirming the Applicant’s ineligibility for CRB and CWLB. Those letters advised the Applicant that any challenge had to proceed by judicial review in this Court within 30 days.

[4] On October 4, 2022, the CRA also issued a first-level decision finding the Applicant ineligible for CERB. That letter advised the Applicant that, within 30 days, she could request a second review of her CERB eligibility by a different officer.

[5] On October 25, 2022, the Applicant filed an application for judicial review of the October 4, 2022 CERB, CRB, and CWLB decisions in this Court (Court File T-2238-22). This Court dismissed that application for delay on August 15, 2023, as amended August 17, 2023. The Applicant’s attempt to appeal that dismissal was itself dismissed on October 11, 2023.

- [6] On December 2, 2023, the Applicant asked the CRA to conduct further reviews of her eligibility for CERB, CRB, and CWLB. She provided T4 slips, Notices of Assessment for 2019 and 2020, and bank statements. The Applicant submits that these materials show she met the \$5,000 income requirement.
- [7] On October 10, 2024, the CRA issued the two letters at issue in this proceeding. III. The Decision [8] The CRA's CERB letter (the "CERB Response") refused to conduct a second review because the Applicant's request, dated December 2, 2023, was well outside the 30-day window described in the October 4, 2022 CERB decision.
- [9] The CRA's CRB/CWLB letter (the "CRB/CWLB Response") stated that the CRA had already issued final decisions on October 4, 2022, that judicial review was the final recourse, and that no further CRA administrative review would occur.
- [10] Neither the CERB Response nor the CRB/CWLB Response re-determined the Applicant's eligibility, given the decisions rendered in both cases. IV. Issues [11] There are three issues in this proceeding:
1. Whether the CRA met the duty of procedural fairness owed to the Applicant in the process that led to the October 10, 2024 CERB Response.
 2. Whether the October 10, 2024 CERB Response is reasonable.
 3. Whether the October 10, 2024 CRB/CWLB Response is a reviewable decision.
- [12] The Respondent also raised two preliminary matters:
1. Whether the CRA is the proper respondent under Rule 303 of the Federal Courts Rules, SOR/98-106 (the "Rules").
 2. The status of a document in the Applicant's Record purporting to transcribe cross-examination answers. V. Standard of Review [13] This court has held that the standard of reasonableness applies to judicial review of a CRA decision not to grant a second review of CERB and/or CRB eligibility (*Mentis v Canada (Revenue Agency)*, 2025 FC 1446 at para 30).
- [14] The standard of review with respect to the Applicant's procedural rights is correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).
- [15] The CRB/CWLB Response raises a threshold question: is it reviewable under section 18.1 of the Federal Courts Act, RSC 1985, c F-7? If not, the application must be dismissed as to the CRB/CWLB Response (*Air Canada v Toronto Port Authority*, 2011 FCA 347 at paras 28-30; *Prince v Canada (National Revenue)*, 2020 FCA 32 at para 21). I address the reviewability of the CRB/CWLB Response in my reasons that follow. VI. Analysis A. Preliminary Matters [16] The Applicant named the CRA as the Respondent. The proper responding party is the Attorney General of Canada and the style of cause is hereby amended accordingly.

- [17] The Applicant included a document that purports to transcribe the Respondent's written cross-examination answers in the Applicant's Record. The Respondent submits that its commissioned Form 99B affidavit, contains the authoritative record of its answers. I do not rely on the impugned document and the disposition does not turn on any contested cross-examination material. B. The CERB Response (1) Legislative and Procedural Framework [18] The Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 (the "CERB Act"), authorizes the Minister to require information and documents to verify an applicant's CERB eligibility and to determine whether amounts must be repaid. The CERB Act does not prescribe internal CRA review procedures. The record shows that the CRA adopted a two-step administrative process: an initial eligibility review followed by a second review by another officer if requested within 30 days. The October 4, 2022 CERB decision advised the Applicant of the 30-day opportunity to request the second review.
- (2) Was the CERB Response Reasonable? [19] The CRA issued an initial CERB ineligibility decision on October 4, 2022, and advised the Applicant that she could request a second review within 30 days. The Applicant did not request that second review within that period. More than a year later, on December 2, 2023, the Applicant asked the CRA to reconsider her CERB eligibility and submitted additional documents. During the intervening period:
- (a) On October 25, 2022, the Applicant filed an application for judicial review of the CRA's initial CERB ineligibility decision;
 - (b) On August 15, 2023, as amended August 17, 2023, that application was dismissed; and
 - (c) On October 11, 2023, the Applicant's appeal of that dismissal was dismissed.
- [20] Even if the period from October 25, 2022, to October 11, 2023, were excluded from calculating the 30-day period within which the Applicant could request a second review, more than 30 days still passed.
- [21] The CERB Response declined to open a second review because the Applicant's request was out of time under the CRA's established administrative process, which had been communicated to the Applicant. That rationale is transparent, intelligible, and justified in light of the CRA's mandate to administer and verify CERB eligibility and to manage the internal review process.
- [22] The Applicant argues that her subsequent, late filed documents demonstrate she met the \$5,000 income CERB eligibility requirement. Those submissions go to the Applicant's underlying CERB eligibility. However, the only decision presently before the Court regarding CERB is the CRA's October 10, 2024 refusal to conduct a late second review. That decision did not revisit eligibility on the merits. On this application, the question is whether the CRA's refusal to conduct an out of time second review was reasonable. It was.

- (3) Procedural Fairness [23] The Applicant also raises procedural fairness concerns. She says she repeatedly tried to contact the CRA, that she was self-represented and inexperienced, and that her evidence of income “never had the opportunity to be reviewed”.
- [24] The record shows that the Applicant received an initial CERB decision and clear notice of a 30-day opportunity to seek a second review by a different officer. Had she requested that second review in time, the Applicant could have provided additional documentation and made submissions to the CRA. There is no legislative requirement that the CRA accept out-of-time second review requests or consider late materials on the merits.
- [25] The CRA’s refusal to conduct a second review, given the late attempt to file new evidence which the Applicant requested after the 30-day period had lapsed, does not amount to a breach of procedural fairness. I therefore find no breach of procedural fairness in respect to the CERB Response. C. The CRB/CWLB Response (1) Is the CRB/CWLB Response Reviewable? [26] The CRB/CWLB Response advised the Applicant that:
- (a) the CRA had already made final determinations of the Applicant’s eligibility for CRB and CWLB on October 4, 2022;
 - (b) judicial review was the remaining recourse; and
 - (c) the CRA would not conduct “another review”.
- [27] The CRB/CWLB Response did not purport to assess new evidence. It did not issue a fresh eligibility determination. It did not alter the Applicant’s legal position that already flowed from the CRA’s October 4, 2022 CRB and CWLB eligibility decisions.
- [28] This Court has held that a courtesy letter that merely confirms a decision was already made is not itself reviewable unless the decision maker actually undertakes a fresh reconsideration on the basis of new facts or evidence and makes a new determination (*Global Marine Systems Ltd v Canada (Transport)*, 2020 FC 414 at para 59; *Francoeur v Canada (Treasury Board)*, 2010 FC 121 at paras 13, 16) An administrative body’s conduct does not trigger rights to bring a judicial review where it does not affect legal rights, impose legal obligation, or cause prejudicial effects (*McLaughlin v Canada (Attorney General)*, 2022 FC 1466 at para 45, citing *Air Canada v Toronto Port Authority*, 2011 FCA 347 at paras 28-29).
- [29] Applying those principles, I find that the CRB/CWLB Response is not reviewable by this Court. D. Review of the CRA’s CERB, CRB, and CWLB Eligibility Decisions [30] The CRA’s decisions regarding the Applicant’s eligibility for CERB, CRB, and CWLB are not properly before the Court and therefore not under review in this proceeding. Indeed, this Court dismissed the Applicant’s previous application for judicial review of those decisions due to delay and dismissed the Applicant’s appeal of that dismissal. VII. Conclusion [31] It was reasonable for the CRA to decline to conduct a further review of the Applicant’s CERB eligibility and the Applicant has established no breach of procedural fairness.
- [32] The CRB/CWLB Response is not reviewable by this Court.

[33] The application for judicial review is dismissed. The style of cause shall be amended to substitute the Attorney General of Canada as Respondent. In the circumstances, and given the Applicant's self-represented status, I make no order as to costs. JUDGMENT in T-3053-24 THIS COURT'S JUDGMENT is that: The application is dismissed. No costs are awarded. "Michael D. Manson" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-3053-24 STYLE OF CAUSE: HUI NAN HE v ATTORNEY GENERAL OF CANADA PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: November 13, 2025 JUDGMENT AND REASONS: MANSON J. DATED: november 25, 2025 APPEARANCES: Hui Nan He For The Applicant (ON HER OWN BEHALF) Colin McArthur Randy Ramoodit For The Respondent SOLICITORS OF RECORD: Attorney General of Canada Toronto, Ontario For The Respondent

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