

CANADA / JUDGMENT

Mutlaq v. Canada (Attorney General)

2025 FC 884

COURT

Federal Court

DECIDED

14 May 2025

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Decision Content

Date: 20250514

Docket: T-2197-24

Citation: 2025 FC 884

Ottawa, Ontario, May 14, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

NAHED MUTLAQ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] This is an application for judicial review of a decision by a benefits validation officer of the Canada Revenue Agency [CRA], dated July 31, 2024 [the Decision], which found the Applicant ineligible for certain Canada Emergency Response Benefit [CERB] payments she had previously received.

[2] A letter from the CRA dated July 31, 2024, conveying the Decision, stated that the Applicant was found ineligible for these payments because, for each of the applicable payment periods, the Applicant earned more than \$1,000 of employment or self-employment income and the Applicant did not stop working or have her hours reduced for reasons related to COVID-19.

[3] As explained in further detail below, this application for judicial review is dismissed, because the conclusion in the Decision that the Applicant earned more than \$1,000 of employment or self-employment income for each of the applicable payment periods is based on application of the relevant legislation to the evidence submitted by the Applicant to the CRA and is therefore reasonable.

II. Background [4] The Applicant is employed as an Education Program Assistant [EPA] with the Halifax Regional Centre for Education [HRCE], as well as being self-employed as an interpreter based in Halifax, Nova Scotia. In the CERB periods relevant to this application, she continued working as an EPA but was unable to generate income through self-employment.

[5] The CERB payments that are the subject of the Decision under review formed part of the Canadian government's suite of benefits provided in response to the COVID-19 pandemic. During the pandemic, the CRA released CERB payments on an attestation basis. However, an applicant's eligibility for CERB and other COVID-19-related benefits was subject to potential verification by the CRA. The Applicant applied for and received CERB payments related to the six periods from March 15, 2020, to August 29, 2020.

[6] By letter dated March 9, 2022, the CRA informed the Applicant that information on file suggested that she may have earned over \$1,000 during the periods she received CERB payments, which would have affected her eligibility for those payments. As such, the CRA required the Applicant to submit supporting documents to validate her income and verify her eligibility for the CERB payments she received. The Applicant submitted documents to the CRA in response.

[7] By letter dated July 31, 2023, an officer of the CRA found the Applicant ineligible for CERB in the periods for which she had received payments. This letter stated that: (a) the Applicant earned more than \$1,000 of employment or self-employment income during the applicable payment period; and (b) the Applicant did not stop working or have her hours reduced for reasons related to COVID-19.

[8] The Applicant initiated a review of that decision, following which a different CRA officer who was assigned to that review [the Officer] spoke to the Applicant by phone and the Applicant submitted additional documents to the CRA.

[9] By letter dated July 31, 2024 [the Decision Letter], the CRA conveyed to the Applicant the Decision by the Officer that is the subject of this application for judicial review.

III. Decision under Review [10] In the Decision Letter, the Officer found that the Applicant was not eligible for CERB during the relevant payment periods. The letter stated that the Applicant did not meet the following criteria: (a) she earned more than \$1,000 of employment or self-employment income during the applicable payment period; and (b) she did not stop working or have her hours reduced for reasons related to COVID-19.

[11] In an entry in the Officer's notes dated July 29, 2024 relating to their review of the Applicant's CERB eligibility [the Officer's Notes], the Officer summarized the evidence considered, the Officer's analysis, and the Officer's resulting conclusion, based on payslips that the Applicant had submitted related to her employment with HRCE, that the Applicant had exceeded the \$1,000 income threshold for each of the six CERB payment periods.

IV. Legislative Framework [12] CERB benefits are governed by the Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 [CERBA]. The requirements for a "worker" (as defined in section 2 of the CERBA) to be eligible for an income support payment are set out in subsection 6(1) of the CERBA as follows:

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.

Admissibilité

6 (1) Est admissible à l'allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :

- a) il cesse d'exercer son emploi — ou d'exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de quatre semaines pour laquelle il demande l'allocation;
- b) il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte :
 - (i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,
 - (ii) de prestations, au sens du paragraphe 2(1) de la Loi sur l'assurance-emploi, ou la prestation d'assurance-emploi d'urgence visée à l'article 153.7 de cette loi,
 - (iii) d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption,
 - (iv) tout autre revenu prévu par règlement.

[13] Section 1 of the Income Support Payment (Excluded Nominal Income) Regulations, SOR/2020-90 [Regulations] states that:

Nominal income

1 Any income received by a worker for employment or self-employment is excluded from the application of subparagraph 6(1)(b)(i) of the Canada Emergency Response Benefit Act if the total of such income received in respect of the consecutive days on which they have ceased working is \$1000 or less.

Revenu nominal

1 Sont soustraits à l'application du sous-alinéa 6(1)b)(i) de la Loi sur la prestation canadienne d'urgence les revenus du travailleur provenant d'un emploi ou d'un travail qu'il exécute pour son compte, à condition que le total de tels revenus soit de mille dollars ou moins pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte.

V. Issues and Standard of Review [14] The parties' arguments raise the following issues for the Court's adjudication:

Are certain documents included in the Applicant's Record inadmissible, because they were not before the Officer? Is the Decision reasonable?

[15] As is implicit in the articulation of the second issue above, the standard of review for the Court's consideration of the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 16–17).

VI. Analysis A. Are certain documents included in the Applicant's Record inadmissible, because they were not before the Officer? [16] The Respondent argues that the Court should disregard certain documentary evidence exhibited to the Applicant's affidavit. This evidence consists of copies of the Applicant's husband's death certificate, her residential lease, power and cell phone bills, a letter from the Applicant's psychiatrist, and certain completed HRCE forms [the Disputed Evidence]. The Respondent submits that the Disputed Evidence was not before the Officer and therefore presumptively cannot be considered on judicial review.

[17] It is trite law that, in reviewing the reasonableness of an administrative decision, the Court is typically required to restrict its review to consideration of evidence that was before the administrative decision-maker. However, there are exceptions to this requirement, including where new evidence provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review, but where that information does not represent new evidence on the merits of the issues; evidence which demonstrates a procedural defect; or evidence which highlights a complete lack of evidence before the administrative decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [Access Copyright] at para 20).

[18] Based on the Applicant's submissions, and particularly her oral submissions at the hearing of this application, it is apparent that the Applicant submitted the Disputed Evidence at least in part in an effort to demonstrate the hardship that she has experienced in recent years, including during the period of the COVID-19 pandemic. This hardship surrounds the death of the Applicant's husband, her mental health challenges, and financial challenges that have been exacerbated by the CRA's demand for repayment of the CERB payments to which the CRA has concluded the Applicant was not entitled.

[19] However, as the Respondent correctly submits, Parliament did not include in the CERBA any provisions that afford the CRA the authority to grant relief to a taxpayer based on compassionate considerations. Rather, the Officer had no choice but to assess the Applicant's entitlement to benefits based on the eligibility criteria set out in the legislation (*Letourneau v Canada (Attorney General)*, 2024 FC 760 at para 11).

[20] Nor does the Court have any authority to grant such relief. While I am sympathetic to the Applicant's circumstances, the Court's role is limited to assessing the reasonableness of the Decision, employing principles explained by the Supreme Court of Canada in *Vavilov*. As none of the Access Copyright exceptions apply in the case at hand, that assessment must take place based on the evidence that was before the Officer as the administrative decision-maker. As such, the Court will not take the Disputed Evidence into account in adjudicating this application.

B. Is the Decision reasonable? [21] In defending the reasonableness of the Decision, the Respondent focuses on both criteria identified in the Decision Letter: (a) whether the Applicant earned more than \$1,000 of employment or self-employment income during the applicable payment period; and (b) whether the Applicant stopped working or had her hours reduced for reasons related to COVID-19. Indeed, in relation to the second of these criteria, both parties advanced arguments at the hearing of this application on the extent to which the Applicant had her hours reduced during the relevant CERB payment periods and whether such reduction was due to COVID-19 or rather was due to other health concerns.

[22] However, based on my review of the Officer's Notes, I am not convinced that the second criterion (whether the Applicant stopped working or had her hours reduced for reasons related to COVID-19) was material to the Officer's analysis underlying the Decision. The Officer's Notes, which set out the Officer's analysis and resulting decision, focuses upon the Applicant's employment earnings as derived from her HRCE payslips and culminates with the following conclusion:

Inconclusion [sic] the applicant lost her self employment income from March - July, 2020 due to the pandemic and she continued to work at the education centre through zoom and phone calls. The Tax returns and T4s on file for 2019 clearly show the applicant met the \$5K income criteria before applying. However for CERB Periods 1-6 the applicant did exceed the \$1000 income criteria and will be deemed ineligible.

[23] As emphasized in Vavilov, a court reviewing the decision of an administrative decision-maker for reasonableness must focus upon the reasons actually provided by the decision-maker (at paras 15, 83). While the Decision Letter references the two eligibility criteria described above, I read the Officer's reasoning as demonstrating that the Decision turned solely on the \$1,000 income threshold criterion.

[24] However, it is clear from the combination of subparagraph 6(1)(b)(i) of the CERBA and section 1 of the Regulations that the requirement, that a CERB applicant not have earned more than \$1,000 in the relevant benefit period, must be met in order for the applicant to be eligible for benefits. As such, if the Officer reasonably concluded that this requirement was not met, then the Decision itself is reasonable and not subject to interference by the Court.

[25] In my view, it is clear that the Decision is reasonable. As demonstrated by the Officer's Notes referenced above, the Officer based their conclusion, that the Applicant had earned more than \$1,000 in each benefit period, on the Applicant's payslips from HRCE. Those payslips are included in the Certified Tribunal Record before the Court and demonstrate gross employment income consistent with the figures identified in the Officer's Notes, exceeding \$1,000 for each of the six relevant periods.

- [26] In so concluding, I have considered the Applicant's position in this application that her employment income from HRCE did not exceed \$1,000 in each period based on her net income as indicated in her payslips, i.e., her income after deduction of applicable income tax and potentially other deductions. This position raises the question whether it was reasonable for the Officer to have assessed the Applicant's CERB eligibility based on her gross employment income, rather than her net employment income.
- [27] While subparagraph 6(1)(b)(i) of the CERBA and section 1 of the Regulations speak only of "income", without expressly stating whether gross or net income is to be taken into account, I find no compelling basis for a conclusion that the Officer's use of gross income rather than net income was unreasonable.
- [28] The conclusion in the Decision, that the Applicant earned more than \$1,000 of employment or self-employment income for each of the applicable payment periods, is based on application of the relevant legislation to the evidence submitted by the Applicant and is therefore reasonable.
- [29] The Decision therefore withstands reasonableness review.

VII. Conclusion and Costs [30] As the Court has found the Decision to be reasonable, this application for judicial review must be dismissed.

- [31] As a final point, I note that the Decision Letter includes the following paragraph:

If you received a payment that you were not eligible for, you will be required to repay the amount. We understand that it may not be possible for you to pay your debt immediately and in full. We're here to help. The CRA offers various solutions tailored to your personal situation. In order to access these solutions, please call 1-833-253-7615 or visit us online at: canada.ca/resolving-debt-CRA

- [32] As explained earlier in these Reasons, the legislative provisions relevant to the present application do not afford the CRA or the Court authority to grant relief against the requirement to repay CERB amounts for which an applicant was not eligible. However, the above paragraph from the Decision Letter suggests that the CRA may afford such applicants an opportunity to structure debt repayments in a manner that accommodates their individual circumstances.
- [33] For the sake of good order, I note that there is no indication in the record before the Court that the parties have engaged in communications surrounding any such opportunity, and these Reasons therefore provide no comment thereon.
- [34] The Applicant seeks costs of this application. The Respondent does not. As the Respondent has prevailed but seeks no costs, my Judgment will enter no award of costs in this application.

JUDGMENT IN T-2197-24

THIS COURT'S JUDGMENT is that:

This application for judicial review is dismissed.

No costs are awarded in this application.

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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T-2197-24

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NAHED MUTLAQ v ATTORNEY GENERAL OF CANADA

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May 12, 2025

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SOUTHCOTT J.

DATED:

may 14, 205

APPEARANCES:

Nahed Mutlaq

For The Applicant

(ON THEIR OWN BEHALF)

Deanna Frappier K.C.

For The Respondent

SOLICITORS OF RECORD:

Attorney General of Canada

For The Respondent

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