

Federal Court



Cour fédérale

**Date: 20250131**

**Docket: T-1898-24**

**Citation: 2025 FC 197**

**Vancouver, British Columbia, January 31, 2025**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**TAMELLA SEVERCAN**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Tamella Severcan, [Ms. Severcan] seeks judicial review of the decision of the Canada Revenue Agency [CRA] that found Ms. Severcan ineligible for some of the benefits paid to her pursuant to the Canada Emergency Response Benefit [CERB]. By way of relief, Ms. Severcan seeks an order finding that she was eligible for the benefits she received.

[2] Ms. Severcan applied for and received CERB of \$2000 for each of seven four-week periods from March 15, 2020, to September 26, 2020.

[3] In September 2023, CRA requested Ms. Severcan to provide documents to verify her eligibility for the benefits she had received. The CRA conducted two reviews of her eligibility, considered her submissions in response to the CRA's request for additional information, and ultimately determined that Ms. Severcan was not eligible for CERB benefits for six of the seven periods; she was only eligible for benefits for the first period, March 15 – April 11, 2020.

[4] The CRA found that for two periods, Ms. Severcan earned more than \$1000 in employment income and was therefore ineligible for benefits in those periods. The CRA found that for four other periods, Ms. Severcan did not establish that her hours of work were reduced for reasons related to COVID-19.

[5] For the reasons that follow, the Application for Judicial Review is dismissed; the decision is reasonable and the process was procedurally fair.

## I. Background

### A. *Eligibility for CERB*

[6] The CERB and the subsequent Canada Recovery Benefit [CRB] were intended to provide financial benefits for those affected by the COVID-19 pandemic due to their inability or lesser ability to work.

[7] Eligible individuals received \$2,000 for each four-week period of the CERB program, which ran from March 15, 2020, to September 26, 2020.

[8] The eligibility criteria for the CERB are set out in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*]. Among other things, the *CERB Act* requires employees or self-employed workers to have earned at least \$5,000 in employment income or self-employment income in 2019 or in the 12-month period preceding their application for the CERB. The *CERB Act* also requires that the worker ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which the worker had applied for the CERB. In addition, employees or self-employed workers had to have suffered a 50% drop in their average weekly income compared with the previous year for reasons related to COVID-19.

[9] The key requirements are set out in section 6 of the *CERB Act*:

**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,

**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 :

|                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>(i) subject to the regulations, income from employment or self-employment,</u>                                                                                                                                                                                    | <u>(i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,</u>                                                                                                                                     |
| (ii) <i>benefits</i> , as defined in subsection 2(1) of the <i>Employment Insurance Act</i> , or an employment insurance emergency response benefit referred to in section 153.7 of that Act,                                                                        | (ii) de <i>prestations</i> , au sens du paragraphe 2(1) de la <i>Loi sur l'assurance-emploi</i> , ou la prestation d'assurance-emploi d'urgence visée à l'article 153.7 de cette loi                                                                        |
| (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 | (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) any other income that is prescribed by regulation.                                                                                                                                                                                                              | (iv) tout autre revenu prévu par règlement.                                                                                                                                                                                                                 |
| (2) An employed worker does not cease work for the purpose of paragraph (1)(a) if they quit their employment voluntarily.                                                                                                                                            | (2) Pour l'application de l'alinéa (1)a), un travailleur ne cesse pas d'exercer son emploi s'il le quitte volontairement.                                                                                                                                   |
| (3) The Minister may, by regulation,                                                                                                                                                                                                                                 | (3) Le ministre peut, par règlement :                                                                                                                                                                                                                       |
| (a) exclude a class of income from the application of subparagraph (1)(b)(i); and                                                                                                                                                                                    | a) soustraire à l'application du sous-alinéa (1)b)(i) toute catégorie de revenus;                                                                                                                                                                           |
| (b) prescribe any other income for the purposes of subparagraph (1)(b)(iv).                                                                                                                                                                                          | b) prévoir d'autres revenus pour l'application du sous-alinéa (1)b)(iv).                                                                                                                                                                                    |

[Emphasis added.]

[10] Pursuant to subsection 6(2) of the *CERB Act*, the Minister promulgated the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90 [*CERB Regulations*], which state in section 1:

**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.

**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.

[Emphasis added.]

[11] The effect of section 1 of the *CERB Regulations*, despite its awkward drafting, is that applicants can only earn income of \$1000 or less in the relevant period to fall within the eligibility criteria set out in subparagraph 6(1)(b)(i) of the *CERB Act*. Applicants who earned more than \$1000 in the relevant period were not eligible for benefits in that period.

## B. *The CERB Review Process*

[12] CERB applications were selected for review by CRA agents either before or after payments were made to applicants or recipients.

[13] The CRA established Guidelines “Confirming CERB, CRB, CRSB and CRCB Eligibility” [CRA Guidelines] to assist review agents in assessing eligibility.

[14] The CRA review process consisted of a first and second review, with several steps, including contact by a validation agent and discussions with the recipient regarding the CERB’s eligibility requirements to determine whether the recipient met the criteria; requests by the validation agent for additional documents if necessary; and, in the event of a finding of ineligibility, on request, a second review by a different agent with a report to the recipient and a final decision.

[15] On September 8, 2023, the CRA sent Ms. Severcan a letter requesting documents to support her eligibility for the CERB benefits she had received from March 15, 2020, to September 26, 2020. The letter states that “you were not eligible to receive CERB if during your application period you earned over \$1000”. The letter then elaborates on what is included in the \$1000 limit and asks Ms. Severcan to provide several documents including bank statements and pay stubs.

[16] The letter also states that “to be eligible to receive CERB you must have stopped working or had your working hours reduced due to COVID” and “[i]n order to verify you stopped working or had your working hours reduced during the periods you received CERB, please provide the following documents”. The letter lists the documents required, which include a record of employment, pays stubs, and a “letter from employer confirming the dates of any work stoppage or confirming the dates of reduced hours because of COVID-19”.

[17] The CRA conducted two reviews of Ms. Severcan's eligibility.

[18] By letter dated November 17, 2023, CRA notified Ms. Severcan that they had completed the first review and considered the information provided and determined that Ms. Severcan was ineligible for CERB for periods 2 to 7. The reasons cited for ineligibility state that Ms. Severcan earned more than \$1000 during the applicable payment period and that she did not stop working or have her hours of work reduced for reasons related to COVID-19. The letter notes that a second review could be requested and if so, Ms. Severcan must provide the reason for disagreeing with the decision, provide any new documents relied on and provide general contact information.

[19] Ms. Severcan responded by letter noting her income for various periods and other financial information.

[20] On July 18, 2024, the CRA advised Ms. Severcan by letter of the determination of the CRA's second review of her eligibility.

[21] The CRA "case specific notes", which are in the Certified Tribunal Record [CTR], provide a record of the CRA's process, the letters sent, responses received, attempts to contact Ms. Severcan, her responses and the two reviewing agents' assessment of the documents submitted.

## II. The Decision

[22] The CRA issued the final decision regarding Ms. Severcan's eligibility for benefits by way of letter dated July 18, 2024. The letter stated that the CRA had completed the second review of Ms. Severcan's application for CERB and carefully considered all the information provided to support CERB eligibility for periods 2 to 7 and concluded that Ms. Severcan is not eligible because she did not meet these criteria:

- You earned more than \$1000 of employment or self employment income during the applicable payment period.
- You did not stop working or have your hours reduced for reasons related to COVID-19.

[23] More specifically, the CRA found that for two periods, Ms. Severcan earned more than \$1000 in employment income. The CRA found that for four other periods, Ms. Severcan did not establish that her hours of work were reduced for reasons related to COVID-19, but rather based on a request she made to her employer regarding her work assignment.

## III. The Standard of Review

[24] The CRA's decision that Ms. Severcan did not meet the eligibility criteria for CERB is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23-27 [*Vavilov*]; *Laroque v Canada (Attorney General)*, 2022 FC 613 at para 16; *Devi v Canada (Attorney General)*, 2024 FC 33 at para 14; *Lang v Canada (Attorney General)*, 2024 FC 1100 at para 42).



[25] The Court's task is to examine the reasons of the decision-maker (in this case, the CRA Agent) and to determine whether the decision is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov* at para 85), and more generally, whether the reasons are justifiable, intelligible, and transparent (*Vavilov* at para 95).

[26] For a decision to be found unreasonable and set aside, the Court must find shortcomings or flaws that are central to the decision (*Vavilov* at para 100); this includes irrational reasoning and indefensible outcomes in light of the relevant factual and legal constraints (*Vavilov* at para 101).

[27] The Court does not reweigh the supporting evidence or information provided to the CRA or "re make" the decision whether an applicant for CERB is or is not eligible. The role of the Court is to determine if the CRA agent's decision is reasonable, as described above, and whether the process was procedurally fair.

[28] Issues of procedural fairness require the Court to determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54). The scope of the duty of procedural fairness owed varies with the circumstances and is informed by several factors (as established in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 21). Where there is a breach of procedural fairness, no deference is owed to the decision-maker.

IV. The Applicant's Submissions

[29] Ms. Severcan submits that she was eligible for CERB and requests the Court to recalculate her benefits, find that she is eligible and order the CRA to forego its collection of over-payment from her. She submits that her income from both employment and self-employment income was reduced due to COVID-19.

[30] Ms. Severcan initially argued, in her written submissions, that she did not earn more than \$1000 in various weeks in the eligibility periods. However, she explained that she now understands how the \$1000 income threshold affects her eligibility. She explained that the provisions were difficult to understand, including that it was not clear whether before or after-tax income was included. She also notes that her responses to the CRA focussed on this eligibility requirements and she provided various documents in an effort to explain her earnings in the various periods of eligibility. For example, Ms. Severcan's affidavit attached several documents including bank statements and emails with her employer and to the CRA and acknowledges amounts paid to her by her employer, Strive Living Society, for particular pay periods.

[31] Ms. Severcan clarified in her oral submissions that she does not now dispute that she earned more than \$1000 for two benefit periods and understands that she is not eligible for those two benefit periods.

[32] However, Ms. Severcan submits that she was entitled to benefits for four eligibility periods. Ms. Severcan disputes the CRA's finding that her employment hours were reduced for

reasons other than related to COVID-19. She notes that due to COVID-19 she could not work for more than one family as a support worker due to concerns about the spread of COVID-19 and, as a result, her hours were reduced. She also explains that she lost her income from self-employment as an immigration travel consultant, due to the COVID-19 restrictions on travel.

[33] Ms. Severcan submits that the CRA case specific notes are not accurate in stating that she was a caregiver, as she was a support worker, or that she requested not to work with older children. She seeks to explain that she was applying for jobs as a caregiver for children under 13, but did not obtain those jobs.

[34] Ms. Severcan also submits that although the CRA case specific notes indicate that the first reviewer attempted to contact her several times, she did not receive any voice mails or record any missed calls.

[35] She also explains that she did not focus on CRA's request, in their letters dated September 8, 2023, and November 17, 2023, identifying the type of information needed to verify that her working hours were reduced due to COVID-19. Ms. Severcan contends that she focussed on providing financial documents.

#### V. The Respondent's Submissions

[36] The Respondent submits that the CRA did not breach the duty of procedural fairness owed in the circumstances and the CRA's decision is reasonable.

[37] The Respondent notes the legislation and guidelines governing the determination of CERB benefits and the process followed by the CRA.

[38] The Respondent submits that the duty of procedural fairness owed is at the low end of the spectrum and was fully met. The Respondent points to the several letters sent by the CRA to Ms. Severcan, the CRA case specific notes, and notes that Ms. Severcan benefitted from two reviews of her eligibility and was given several opportunities to provide further information to support her claim.

[39] The Respondent explains the process that CRA followed to review Ms. Severcan's eligibility, noting that the CRA reviewing agents gave Ms. Severcan sufficient time and flexibility to respond:

- On September 8, 2023, the CRA sent Ms. Severcan a letter requesting documents to support her eligibility for the CERB benefits she had received. On October 10, 2023, Ms. Severcan responded. The CRA reviewing agent contacted Ms. Severcan by phone on three occasions on October and November but was unable to reach her. Based on the first review, the reviewing agent advised Ms. Severcan that she was eligible for CERB benefits only for the first period of eligibility and not eligible for the remaining periods because she had earned more than \$1000 and because she had not stopped working due to COVID-19.
- Upon the request of Ms. Severcan, the CRA conducted a second review. On April 3, 2024, Ms. Severcan advised CRA that she would be travelling for several months and provided her daughter's contact information for follow up.

- On June 25, 2024, the second benefit reviewer attempted to contact Ms. Severcan and left a voice mail setting out the purpose of the call and contact information and noting that a decision would be made based on the information on file if there was no further response. Ms. Severcan's daughter responded to the voice mail noting that Ms. Severcan would return on July 4, 2024, and acknowledged that she would be required to contact the second reviewer by July 9, 2024.
- On July 8, 2024, Ms. Severcan contacted the CRA second reviewing agent. That agent noted: that Ms. Severcan worked with Strive Living as a caregiver for special needs persons and travelled distances to do so; Ms. Severcan advised Strive Living Society in July 2020 that she could only work with children under 13 due to an injury she suffered while working with an older child; as a result, Strive Living Society could not find work for her; prior to COVID-19, Ms. Severcan also had some income from self-employment, but "lost her business"; in 2021, Ms. Severcan was employed by Homeland Moving and Logistics and stated that her net employment income was not more than her gross employment income; Ms. Severcan stated that she had a joint account with her daughter, who transferred money to that account to cover mortgage payments; and, Ms. Severcan indicated that she had no further information to submit.

[40] On July 9, 2024, following the second review, the CRA agent made the determination, confirming that Ms. Severcan was not eligible for six of the seven benefit periods.

[41] The Respondent submits that the information provided by Ms. Severcan to the CRA second reviewing agent, as recorded in the agent's notes (the CRA case specific notes), reflect

that Ms. Severcan reduced her hours with Strive Living Society because she requested that she only work with children under 13.

[42] The Respondent submits that the CRA applied the criteria to determine the eligibility for benefits in accordance with the statutory provisions. The reviewing agent considered the law and the facts and all the information subsequently provided by Ms. Severcan and clearly explained why Ms. Severcan is not eligible. The decision is justified, intelligible and transparent.

VI. The CRA did not breach the duty of procedural fairness owed

[43] The CRA did not breach the duty of procedural fairness owed in the circumstances, which is at the low end of the spectrum. Ms. Severcan was responsible for supporting her eligibility for the benefits she received and she was afforded several opportunities to do so. The CRA clearly set out the documents required to support Ms. Severcan's eligibility for benefits in the September 8, 2023 letter. The CRA followed its stated process for conducting two reviews of Ms. Severcan's eligibility, which took into account the information she eventually provided. As the Respondent notes, the CRA records indicate that the two CRA agents communicated with Ms. Severcan and waited for her response before determining her eligibility. The CRA agent's notes also indicate that Ms. Severcan advised that she had no further information to submit.

VII. The CRA decision is reasonable

[44] The CRA's decision is justified by the facts and the law and is intelligible and transparent. The CRA applied the eligibility criteria as set out in the *CERB Act*. While

Ms. Severcan now argues that the CRA reviewing agent misunderstood why her hours were reduced by Strive Living Society, there is nothing on the record before this Court to find that the CRA mis-recorded the information. Ms. Severcan was advised to provide various documents to establish that her hours were reduced or that she was unemployed for reasons related to COVID-19 in the September 8, 2023 letter, such as a record of employment or letter from her employer confirming the dates of the reduced hours of work and the reasons for the reduction. Ms. Severcan did not provide this information. Ms. Severcan also indicated, at the conclusion of her conversation with the second reviewing agent that she had no further information to provide. The CRA reasonably interpreted the information Ms. Severcan provided to her in their phone call. There is no basis for the Court to find that the CRA agent's notes are not accurate.

[45] Although Ms. Severcan will be disappointed with the outcome, the Court finds that the CRA decision is both reasonable and procedurally fair, and the Court must dismiss the Application for Judicial Review.

**JUDGMENT in file T-1898-24**

**THIS COURT'S JUDGMENT is that:**

1. The Application for Judicial Review is dismissed.
2. No costs were requested by the Respondent and no costs are ordered.

"Catherine M. Kane"

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Judge



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

**DOCKET:** T-1898-24

**STYLE OF CAUSE:** TAMELLA SEVERCAN v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JANUARY 27, 2025

**JUDGMENT AND REASONS:** KANE J.

**DATED:** JANUARY 31, 2025

**APPEARANCES:**

|                  |                    |
|------------------|--------------------|
| Tamella Severcan | ON HER OWN BEHALF  |
| Michael Filice   | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

|                                                           |                    |
|-----------------------------------------------------------|--------------------|
| None                                                      | FOR THE APPLICANT  |
| Attorney General of Canada<br>Vancouver, British Columbia | FOR THE RESPONDENT |