

Federal Court



Cour fédérale

**Date: 20241011**

**Docket: T-275-24**

**Citation: 2024 FC 1614**

**Toronto, Ontario, October 11, 2024**

**PRESENT: The Honourable Mr. Justice A. Grant**

**BETWEEN:**

**TODD ARCHER**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. OVERVIEW**

[1] The Applicant, Mr. Todd Archer, is seeking judicial review of a decision dated January 17, 2024 [the Decision] whereby the Canada Revenue Agency [CRA] found him ineligible for the Canada Emergency Response Benefit [CERB]. The CRA Agent found Mr. Archer ineligible because he had not stopped working for 14 consecutive days, for reasons related to COVID-19.

[2] This application for judicial review is dismissed. It was reasonable, based on the minimal medical documentation provided by the Applicant, and based on the applicable law, for the CRA to conclude that the Applicant was not eligible for the benefits that he had received. The CRA Agent's reasoning was rational, transparent, and justified. Considering the deference owed in these circumstances, there are no errors warranting judicial intervention.

## II. BACKGROUND

### A. *The CERB eligibility requirements*

[3] The CERB was one of several measures introduced by the federal government starting in 2020 to help address the economic repercussions caused by the COVID-19 pandemic. It consisted of targeted monetary payments designed to provide financial support to workers who suffered a loss of income due to the pandemic, and who could not benefit from the protection offered by the usual employment insurance plan. The CRA is the federal agency responsible for administering the program on behalf of the Minister of Employment and Social Development.

[4] The CERB was available for seven four-week periods between March 15, 2020 and September 26, 2020 for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic.

[5] The eligibility criteria for the CERB are set out in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act], excerpted in Annex "A", below. Among other requirements, paragraph 6(1)(a) of the CERB Act states:

**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;

B. *The Applicant's work history and benefits applications*

[6] The facts of this case are somewhat unusual in that Mr. Archer, who seeks to challenge a CRA decision related to his CERB eligibility, is also a CRA employee whose responsibilities have included answering calls from taxpayers on COVID-19 benefits.

[7] On September 11, 2020, the Applicant applied for and received the CERB for Period 7, running from August 30, 2020 to September 26, 2020.

[8] At some point before August 31, 2020, the Applicant had an appointment with his doctor. Though he could not recall why he had made an appointment, the Applicant did have an underlying respiratory condition and, "in the context of COVID-19", he was prescribed some medication. There is no indication in the record what this medication was. However, after taking it, Mr. Archer started experiencing side effects and became unwell.

[9] On August 31, 2020, the Applicant (who was working remotely) worked for 2 hours and 15 minutes, and then took sick leave without pay until September 13, 2020.

[10] On September 4, 2020, the Applicant's doctor issued a handwritten note indicating that Mr. Archer should be able to return to work on September 14, 2020. The note does not reference COVID-19, or why Mr. Archer was directed to take the medication.

[11] The Applicant returned to work on September 14, 2020.

[12] Mr. Archer's file was selected for an eligibility review under the CRA's review program for employees who claimed COVID-19 benefits while working for the CRA. On August 30, 2023, the CRA sent a letter to the Applicant informing him of the review and indicating the list of supporting documents to provide. The letter stated, among other things, "For your first CERB application, you must have had a complete work stoppage for a period of at least 14 days in a row during the four week CERB period".

[13] On September 11, 2023, the Applicant provided the CRA with his record of employment, showing the last date paid as August 31, 2020, and his bank statements.

[14] On September 28, 2023, the CRA informed the Applicant that he did not meet the CERB eligibility criteria, because a) he had earned more than \$1,000 of employment income during the period; and b) he did not stop working or have his hours reduced for reasons related to COVID-19.

[15] In early October 2023, the Applicant contacted the CRA twice to enquire about the first review decision and to request a second review. In support of this request, he provided on

October 26, a screenshot of an email confirming that he had been on sick leave without pay from September 1, 2020 until September 13, 2020.

[16] On December 5, 2023, the CRA issued a second decision letter determining that the Applicant was not eligible for the CERB because he had earned more than \$1,000 of employment income during the period. On the same day, Mr. Archer contacted the CRA by phone and discussed the result with several CRA agents. On December 8, during another phone call with the CRA, Mr. Archer was advised to submit documents stating the reasons for his disagreement with the second review, and to request a further review. He did so on December 10, and included the following documentation:

- a) A letter expressing the reasons for his disagreement;
- b) The CRA's Taxpayer Bill of Rights Guide; and
- c) Screenshots of emails confirming that on August 31, 2020, the Applicant worked 2.25 hours and took 5.25 hours as sick leave without pay.

[17] On December 12, the Applicant provided the CRA with a document containing various links to CRA webpages.

[18] On December 14, 2023, the CRA issued a revised second decision letter, informing him that the letter sent on December 5, 2023 had been sent in error. The revised second review decision determined that Mr. Archer was ineligible for CERB because a) he did not cease working for reasons related to COVID-19 for at least 14 consecutive days during the applicable period; and b) he had earned more than \$1,000 of employment income during the applicable period. The same day, the Applicant contacted the CRA by phone to discuss the revised second

review decision. He was informed that a third review was opened on December 10, 2023, while the revised second decision letter was being finalized.

[19] On January 4, 2024, the CRA Agent assigned to the third review contacted the Applicant by phone. During the conversation, the Applicant stated that:

- a) In light of the Applicant's underlying health conditions, the Applicant voiced concerns regarding the potential impact of the COVID-19 pandemic on his health to his doctor.
- b) The Applicant's doctor then suggested to take a certain medication as a preventative measure for COVID-19, which he did.
- c) On the morning of August 31st, 2020, the Applicant was at work but felt ill from the side-effects of a medication he took earlier, which made him leave work for the rest of the day.
- d) The Applicant contacted his doctor and obtained a note stating that he will be out of the office until September 14th, 2020, at which time the doctor would reevaluate the Applicant's condition.
- e) The Applicant was not sick because of COVID-19, and he has not been in contact with COVID-19.
- f) The Applicant had no more paid sick days, so he had to take a leave without pay starting in the morning of August 31st, 2020, to September 14th, 2020.

During the same phone call, the CRA Agent expressed the concern that the Applicant did not meet the 14 consecutive day criterion and that his leave without pay needed to be for COVID-19 related reasons. The CRA Agent asked for documentation from the Applicant's doctor, to support the review.

[20] The same day, Mr. Archer sent in the note from his doctor, dated September 4, 2020. The note stated: “[t]he above patient has been improving on his meds and should be able to return to full-time work on September 14th, 2020”.

[21] On January 5, 2024, the Applicant also sent the CRA a letter of explanation. The letter stated that that he does not remember the exact reason for the doctor’s visit, that he cannot speak as to the nature of the medication that he took, and that he was likely aware of the medication’s side effects.

C. *Decision under Review*

[22] By letter dated January 17, 2024, the CRA Agent informed the Applicant that he was not eligible for Period 7 of the CERB, because he did not stop working or have his hours reduced for reasons related to COVID-19 for a 14-day consecutive period within the four-week application period. This is the decision under review.

[23] In the Third Review Report, which forms part of the reasons (*Aryan v. Canada (Attorney General)*, 2022 FC 139 at para 22), the CRA Agent canvassed the documents received throughout the review process. The Agent also considered the Applicant’s argument that he had been off work for 14 consecutive days due to COVID-19 reasons and had not made \$1,000 of employment income during that time.

[24] In concluding that Mr. Archer was not eligible, the Agent noted that the Applicant did not have COVID and was not exposed to COVID, and that the medication Mr. Archer took was voluntary, precautionary, and preventative. The CRA Agent also noted that the doctor’s note

submitted in support of the Applicant’s sick leave without pay did not mention COVID or COVID-related reasons. The CRA Agent concluded that “if TP chose to take medication as precautionary measure but at the time did not have covid or known exposure, This [*sic*] is a choice and not a loss or reduction of employment hours directed related to pandemic”.

### III. ISSUES

[25] The sole issue to be determined on this application is whether the Decision under review is reasonable. Mr. Archer articulates a number of reasons why, in his view, the Decision is unreasonable.

### IV. LEGISLATIVE SCHEME

#### A. *CERB Act*

##### **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,

##### **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



(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.

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.

## V. STANDARD OF REVIEW

[26] It is well established that the standard of review applicable to the merits of the CRA's decisions regarding CERB benefits is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20 [*He*]; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12).

[27] In conducting a reasonableness review, a court “must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 15 [*Vavilov*]. It is a deferential standard, but remains a robust form of review and is not a “rubber-stamping” process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[28] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker” (*Vavilov* at para 85). Reasonableness review is not a “line-by-line treasure hunt for error” (*Vavilov* at para 102). Any flaws or shortcoming relied upon must be sufficiently central or significant, to render the decision unreasonable (*Vavilov* at para 100).

## VI. ANALYSIS

### A. *Preliminary Matter: New Evidence*

[29] The Respondent submits that the Applicant has included the following exhibits in his Record that were not before the CRA Agent as part of the decision-making process:

- a) A copy of the Service Canada’s webpage entitled “Questions and Answers on the Canada Emergency Response Benefit” dated February 24th, 2024, and lastly updated on August 2nd, 2022 (Exhibit C);
- b) An unsigned retirement notice from Dr. Joseph Yemus in English and in French, dated July 12, 2021 (Exhibit S); and
- c) A copy of the Service Canada’s webpage entitled “Sickness benefits” dated February 24th, 2024, and lastly updated on October 27, 2023 (Exhibit T).

[30] It is well established that when an application for judicial review is made to the Court, the Court must limit itself to the evidentiary record before the administrative decision maker:

*Maltais v. Canada (Attorney General)*, 2022 FC 817 at para 21. The three exceptions to this rule are set out in *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98. In brief, new evidence may be admitted where it (1) provides general background that might assist the Court in understanding the issues relevant to the judicial review; (2) is necessary to

bring to its attention procedural defects; and (3) highlights the complete absence of evidence before the administrative decision maker.

[31] At the hearing into this matter, Mr. Archer conceded that the retirement notice from his doctor was not a part of the record before the CRA Agent, and does not fall into one of the exceptions outlined above. As such, Exhibit “S” will be disregarded in my consideration of this application.

[32] With respect to the other two impugned exhibits, Mr. Archer acknowledges that they were not before the CRA Agent, but argues that they do provide general background that may be of assistance to the Court. While I agree that the webpages at issue do provide some general background, I do not find them to be of assistance, as my findings below are fact-based and are related to the specific circumstances of the Applicant. In other words, the webpages are of no assistance because my decision below does not turn on any particular interpretation of the CERB regime that may be assisted by the explanatory notes contained in the impugned documents. While nothing turns on it, I will not consider these documents in my review of the Agent’s decision.

B. *The Decision was Reasonable*

[33] The Applicant makes a number of submissions, largely related to alleged discrepancies between CERB eligibility in statute, in internal CRA documents, in public guidance, and in application by CRA agents. The main thrust of the Applicant’s argument, as I understand it, is that the CRA Agent’s Decision was unreasonable because she misapprehended the CERB

eligibility guidelines in two ways. First, by requiring the Applicant to have completely stopped work for 14 consecutive days during the relevant CERB period; and second, by finding that his reason for taking sick leave without pay did not constitute a reason related to COVID-19.

[34] Because the CERB Act requires an applicant to have stopped working *for reasons related to COVID-19*, the second CRA finding, if reasonable, is a determinative issue.

[35] I disagree with the Applicant's submission that the CRA Agent erred in finding that his reasons for stopping work did not fall within the range of "reasons related to COVID-19." Respectfully, the Applicant has failed to demonstrate a reviewable error and his submissions amount to a request for me to reweigh the evidence that was before the Agent. This is not the role of a court on judicial review. The CRA Agent's reasons were intelligible, rational, and justified.

[36] The CRA Agent found that Mr. Archer had failed to establish that his sick leave without pay constituted a reason related to COVID-19 because it arose due to side effects from a discretionary, precautionary, and preventative – rather than curative – medication intended to mitigate possible impacts from any COVID-19 exposure. She noted that the only documentation provided in support of the Applicant's sick leave without pay was a doctor's note that did not mention COVID-19. She ultimately determined that "if TP chose to take medication as precautionary but at the time did not have covid or known exposure, this is a choice and not a loss or reduction of employment hours directly related to pandemic."

[37] I have carefully considered this finding, together with the minimal medical documentation submitted by the Applicant. In the end, I have concluded that the Agent's conclusions represent a rational chain of analysis that is firmly rooted in the evidentiary record. Keeping in mind the deference owed to decision-makers who are acting within their core legislative purpose, I see no basis on which to conclude that the Agent's decision, and the reasons provided in support of that decision, were unreasonable.

[38] One of the Applicant's submissions is that the CRA guidelines for assessing whether a reason is "related to COVID-19" are vague. While there is some truth to this statement, this fact does not alter the deference afforded to decision-makers acting within their legislative purview: *Vavilov* at paras 85, 109.

[39] There is, to date, minimal judicial commentary on the breadth of the phrase "for reasons related to COVID-19", as found at paragraph 6(1)(a) of the CERB Act. In *Mitchell v Canada (Attorney General)*, 2023 FC 858, my colleague Madam Justice Go considered the case of a woman who had been put on COVID leave because of her underlying health condition. While she decided the matter on other grounds, she noted at para 25 that:

It remains to be seen, as a benefit-conferring piece of legislation, whether the requirement that a person ceases working for reasons related to COVID-19 under paragraph 6(1)(a) of the CERB Act extends to individuals like the Applicant, who has medical conditions that compromise their health and make them particularly vulnerable during the pandemic.

[40] However, even on a broad interpretation of the phrase, I find that the CRA decision in this matter was reasonable. As noted above, and in the Agent's Third Review Report, the

Applicant submitted little medical documentation. For example, there was no information before the CRA Agent related to the Applicant's pre-existing medical condition that he asserts left him vulnerable to COVID-related complications. There is no documentation related to his visit to the doctor, which led to the prescription that made him sick and caused him to miss work. When the CRA Agent followed up with the Mr. Archer to get more information, he acknowledged that he did not remember exactly why he had gone to the doctor.

[41] Further, it is completely unclear from the record what medication was prescribed to Mr. Archer, and how it bore any connection to COVID-19. The Applicant was unable to provide any detail about the medication at all, and did not provide any supporting documentation from his doctor or the pharmacist who presumably filled his prescription. It also remains a mystery what exactly the medication in question was intended to do.

[42] As noted above, the only documentation provided by the Applicant was a relatively generic note from his doctor that did not mention COVID-19, and simply stated (insofar as the handwriting can be discerned) that the Applicant has been improving on his meds and should be able to return to full-time work on September 14, 2020.

[43] As noted by my colleague Justice Gascon in *He*, the Canadian tax system is based on the principles of self-assessment and self-reporting. Furthermore, under subsection 5(3) of the CERB Act, individuals applying for the CERB are responsible for providing any information required of them in respect of the application. Section 10 of the CERB Act states that the CRA may, "for any purpose related to verifying compliance or preventing non-compliance with this

Act, . . . require that any person provide any information or document within the reasonable timeline that is stated in the notice”.

[44] As Justice Gascon further found in *He*, there is no doubt that the onus is on CERB applicants to establish that they meet, on a balance of probabilities, the criteria of the enabling legislation: *He* at para 25, citing *Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15 and *Walker v Canada (Attorney General)*, 2022 FC 381 at para 37).

[45] Keeping in mind that it is the taxpayer’s responsibility to establish their eligibility for the CERB, I find that it was entirely reasonable for the CRA Agent to conclude that Mr. Archer had failed to discharge this onus, based on the information that he had put forward.

[46] In order to be eligible for the CERB, it was a requirement for Mr. Archer to establish that he had ceased work for reasons related to COVID-19. I have found that it was reasonable for the CRA Agent to have concluded that Mr. Archer had failed to establish that his absence from work was related to COVID-19. As noted above, this finding is determinative of the application and, as a result, I need not consider Mr. Archer’s further argument related to whether he was required to completely cease work during the applicable period.

## VII. CONCLUSION

[47] The application for judicial review is dismissed. The Applicant has not demonstrated that the CRA Agent’s decision was unreasonable. The Decision is based on internally coherent reasoning that is both rational and logical, and is responsive to the evidence that was before the decision-maker. There are no errors warranting judicial intervention.

**JUDGMENT in T-275-24**

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

1. The application for judicial review is dismissed.
2. There is no order as to costs.

"Angus G. Grant"

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Judge



**ANNEX A*****Canada Recovery Benefits Act*****Eligibility**

**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;

**(d)** 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,

**(iii)** 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*,

**(iv)** 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

**Admissibilité**

**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;

**d)** 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 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 :

**(i)** un emploi,

**(ii)** un travail qu'elle exécute pour son compte,

**(iii)** 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*,

**(iv)** 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,

(v) any other source of income that is prescribed by regulation;

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

(e) in the case of an application made under section 4 by a person other than a person referred to in paragraph (e.1) in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 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 sources referred to in subparagraphs (d)(i) to (v);

e) dans le cas d'une demande présentée en vertu de l'article 4, par une personne qui n'est pas visée à l'alinéa e.1), à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (v) pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande s'élevaient à au moins cinq mille dollars;

(e.1) in the case of an application made under section 4 by a person referred to in paragraph (g) whose benefit period was established on or after September 27, 2020 in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 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 sources referred to in subparagraphs (d)(i), (ii), (iv) and (v) and from regular benefits and special benefits, as defined in subsection 2(1) of the *Employment Insurance Act*;

e.1) dans le cas d'une demande présentée en vertu de l'article 4, par une personne visée à l'alinéa g) dont la période de prestations a été établie le 27 septembre 2020 ou après cette date, à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i), (ii), (iv) et (v) ainsi que des prestations régulières et des prestations spéciales, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, s'élevaient, pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, à au moins cinq mille dollars;

(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

f) au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f)(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period

(i) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une

preceding the day on which they make the application, and

(ii) in the case of an application made under section 4 in respect of a two-week period beginning in 2021, their total average weekly employment income and self-employment income for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application;

(g) no benefit period, as defined in subsection 2(1) of the *Employment Insurance Act*, was established or could have been established in respect of the person in respect of any week that falls within the two-week period or, if such a benefit period was established on or after September 27, 2020 in respect of the person in respect of any week that falls within the two-week period,

(i) the person was paid regular benefits, as defined in that subsection, for the maximum number of weeks for which those benefits may be paid in that benefit period under Part I of that Act, or

(ii) the person was paid regular benefits and special benefits, as defined in that subsection, for the maximum number of weeks for which both those benefits may be paid in that benefit period under Part I of that Act;

(h) no income referred to in any of the following subparagraphs was paid or was payable to the person in respect of any week that falls within the two-week period:

(i) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy

période de deux semaines qui débute en 2020,

(ii) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2021;

g) aucune période de prestations, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, n'a été établie ou n'aurait pu être établie à l'égard de toute semaine comprise dans la période de deux semaines ou, si une telle période de prestations a été établie le 27 septembre 2020 ou après cette date à l'égard d'une telle semaine :

(i) ou bien la personne a reçu des prestations régulières, au sens de ce paragraphe, pour le nombre maximal de semaines à l'égard desquelles ces prestations peuvent être versées au cours de la période de prestations au titre de la partie I de cette loi,

(ii) ou bien la personne a reçu des prestations régulières et des prestations spéciales, au sens de ce paragraphe, pour le nombre maximal de semaines à l'égard desquelles ces deux prestations peuvent être versées au cours de la période de prestations au titre de la partie I de cette loi;

h) aucun des revenus ci-après ne lui a été versé ou n'aurait eu à lui être versé à l'égard de toute semaine comprise dans la période de deux semaines :

(i) des allocations, des 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 elle à

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,

**(ii)** a Canada recovery sickness benefit or a Canada recovery caregiving benefit,

**(ii.1)** benefits, as defined in subsection 2(1) of the *Employment Insurance Act*, and

**(iii)** any other income that is prescribed by regulation;

**(i)** they sought work during the two-week period, whether as an employee or in self-employment;

**(j)** they did not place undue restrictions on their availability for work during the two-week period, whether as an employee or in self-employment;

**(k)** if they have not previously received any benefits under this Part, they have not,

**(i)** on or after September 27, 2020, quit their employment or voluntarily ceased to work, unless it was reasonable to do so, and

**(ii)** in the two-week period in respect of which their application under section 4 relates and in any of the four two-week periods beginning on September 27, 2020 that are immediately before that two-week period

**(A)** failed to return to their employment when it was reasonable to do so if their employer had made a request,

son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,

**(ii)** une prestation canadienne de maladie pour la relance économique ou une prestation canadienne de relance économique pour les proches aidants,

**(ii.1)** des prestations, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*,

**(iii)** tout autre revenu prévu par règlement;

**i)** elle a fait des recherches pour trouver un emploi ou du travail à exécuter pour son compte au cours de la période de deux semaines;

**j)** elle n'a pas restreint indûment sa disponibilité pour occuper un emploi ou exécuter un travail pour son compte au cours de la période de deux semaines;

**k)** si elle n'a pas reçu de prestation au titre de la présente partie précédemment, elle n'a pas :

**(i)** d'une part, depuis le 27 septembre 2020, quitté son emploi ou cessé de travailler volontairement, sauf s'il était raisonnable de le faire,

**(ii)** d'autre part, au cours de la période de deux semaines à laquelle la demande présentée en vertu de l'article 4 se rapporte ni au cours des quatre périodes de deux semaines précédant immédiatement cette période, à l'exclusion de toute période de deux semaines commençant avant le 27 septembre 2020 :

**(A)** refusé de recommencer à exercer son emploi lorsqu'il était raisonnable de le faire, si son employeur le lui a demandé,

**(B)** failed to resume self-employment when it was reasonable to do so, or

**(C)** declined a reasonable offer to work in respect of work that would have started during the two-week period;

**(l)** if they have previously received any benefits under this Part, they have not,

**(i)** on or after the first day of the first two-week period for which any benefits were paid to them under this Part, quit their employment or voluntarily ceased to work, unless it was reasonable to do so, and

**(ii)** in the two-week period in respect of which their application under section 4 relates and in any of the four two-week periods beginning on September 27, 2020 that are immediately before that two-week period

**(A)** failed to return to their employment when it was reasonable to do so if their employer had made a request,

**(B)** failed to resume self-employment when it was reasonable to do so, or

**(C)** declined a reasonable offer to work;

**(m)** they were not, at any time during the two-week period, required to quarantine or isolate themselves under any order made under the *Quarantine Act* as a result of entering into Canada or

**(i)** if they were required to do so at any time during the two-week period,

**(B)** refusé de recommencer à exécuter un travail pour son compte lorsqu'il était raisonnable de le faire,

**(C)** refusé une offre raisonnable d'emploi ou de travail à son compte qui aurait débuté au cours de cette période;

**l)** si elle a déjà reçu une prestation au titre de la présente partie, elle n'a pas :

**(i)** d'une part, depuis le premier jour de la première période de deux semaines à l'égard de laquelle elle a reçu une prestation au titre de la présente partie, quitté son emploi ou cessé de travailler volontairement, sauf s'il était raisonnable de le faire,

**(ii)** d'autre part, au cours de la période de deux semaines à laquelle la demande présentée en vertu de l'article 4 se rapporte ni au cours des quatre périodes de deux semaines précédant immédiatement cette période, à l'exclusion de toute période de deux semaines commençant avant le 27 septembre 2020 :

**(A)** refusé de recommencer à exercer son emploi lorsqu'il était raisonnable de le faire, si son employeur le lui a demandé,

**(B)** refusé de recommencer à exécuter un travail pour son compte lorsqu'il était raisonnable de le faire,

**(C)** refusé une offre raisonnable d'emploi ou de travail à son compte;

**m)** elle n'a été tenue, à aucun moment au cours de la période de deux semaines, de se mettre en quarantaine ou de s'isoler en application d'un décret pris en vertu de la *Loi sur la mise en quarantaine* en raison de son entrée au Canada ou :

the only reason for their having been outside Canada was to

(A) receive a medical treatment that has been certified by a medical practitioner to be necessary, or

(B) accompany a person who has been certified by a medical practitioner to be incapable of travelling without the assistance of an attendant and whose only reason for having been outside Canada was to receive a medical treatment that has been certified by a medical practitioner to be necessary, or

(ii) if, as a result of entering into Canada, they were required to isolate themselves under such an order at any time during the two-week period, they are a person to whom the requirement to quarantine themselves under the order would not have applied had they not been required to isolate themselves; and

(n) they have filed a return of income under Part I of the *Income Tax Act* in respect of the 2019 or 2020 taxation year, other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4) of that Act.

### **Income from self-employment**

(2) For the purpose of paragraphs (1)(d) to (f), income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue.

(i) si elle y a été tenue à un moment quelconque au cours de cette période, la seule raison pour laquelle elle était sortie du Canada était, selon le cas :

(A) pour recevoir un traitement médical qui, d'après l'attestation d'un médecin, était nécessaire,

(B) pour accompagner une personne qui, d'après l'attestation d'un médecin, était incapable de voyager sans l'aide d'un préposé à ses soins et dont la seule raison de sortir du Canada était pour recevoir un traitement médical qui, d'après l'attestation d'un médecin, était nécessaire,

(ii) si, en raison de son entrée au Canada, elle a été tenue de s'isoler en application d'un tel décret à un moment quelconque au cours de la période de deux semaines, elle est une personne qui, n'eût été l'obligation de s'isoler, n'aurait pas été assujettie à l'obligation de se mettre en quarantaine en application du décret;

n) elle a produit, au titre de la partie I de la *Loi de l'impôt sur le revenu*, une déclaration de revenu, autre qu'une déclaration de revenu visée aux paragraphes 70(2) ou 104(23), à l'alinéa 128(2)e) ou au paragraphe 150(4) de cette loi, pour les années d'imposition 2019 ou 2020.

### **Revenu — travail à son compte**

(2) Le revenu visé aux alinéas (1)d) à f) de la personne qui exécute un travail pour son compte est son revenu moins les dépenses engagées pour le gagner.

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

**DOCKET:** T-275-24

**STYLE OF CAUSE:** TODD ARCHER v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** MONTRÉAL, QUÉBEC

**DATE OF HEARING:** SEPTEMBER 19, 2024

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**APPEARANCES:**

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