

Federal Court



Cour fédérale

**Date: 20250207**

**Dockets: T-741-24  
T-742-24**

**Citation: 2025 FC 252**

**Toronto, Ontario, February 7, 2025**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**ANDREW PLESS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Mr. Andrew Pless seeks judicial review of decisions rendered by an officer (Second Reviewer) of Canada Revenue Agency (CRA) that found him ineligible for the Canada Recovery Benefit (CRB) and the Canada Worker Lockdown Benefit (CWLB) because Mr. Pless' income in 2019, 2020 and in the 12 months prior to his application was below the "eligible" income of at least \$5,000 to obtain the benefits.

[2] For the reasons that follow, the Second Reviewer's decisions are reasonable and the applications for judicial review are dismissed.

## II. Background

[3] The CRB is implemented through the *Canada Recovery Benefit Act*, SC 2021, c 12, s 2 [*CRB Act*]. The CWLB is implemented through the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [*CWLB Act*]. Both require a prior "eligible" income of at least \$5,000 to obtain the benefits.

[4] Mr. Pless runs a tax consulting business and claimed that because of the pandemic he had almost no clients since the 2021 December lockdown.

[5] Mr. Pless was first found ineligible for the benefits on May 25, 2022. The initial second review confirmed this finding on July 27, 2022, as did a subsequent review on November 18, 2022. Mr. Pless sought judicial review of the November 2022 decisions, which was settled by the Minister. The decisions were set aside and remitted to the Second Reviewer for reconsideration.

[6] The Second Reviewer found Mr. Pless' income did not meet the \$5,000 income threshold for 2019, 2020 or the 12-month period before the first application. The Second Reviewer determined that the only income that qualified for consideration was Mr. Pless' "other employment" and net professional income, rather than Mr. Pless' gross professional income.

[7] The Second Reviewer found that Mr. Pless based his calculation on gross income rather than net income. The Second Reviewer noted that Mr. Pless had previously declared expenses against the gross amounts, reflecting a net income of less than \$5,000, and also noted that Mr. Pless refiled his 2019 and 2021 returns to remove deductions to demonstrate that self-employment income was greater than \$5,000. The Second Reviewer thus found that Mr. Pless had not met the minimum eligible income threshold for the CRB or the CWLB.

### III. Issues and Standard of Review

[8] As a preliminary issue, the Respondent submits that Mr. Pless' affidavit, dated August 1, 2024, should not be admitted. The Respondent submits it was not served in accordance with Rule 306 and cannot be included pursuant to Rule 309(2)(d) of the *Federal Courts Rules*, SOR/98-106 [Rules]. The Respondent further maintains it contains evidence that was not before the decision maker and should not be admitted (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*] at para 19).

[9] I agree with the Respondent, and the evidence in the affidavit will be excluded from consideration. Mr. Pless filed his notices of application on April 5, 2024, and under Rule 306, he had 30 days to serve his supporting affidavits. Mr. Pless appeared to serve the Respondent with his "Affidavit with exhibits" on May 1, 2024, though this affidavit does not appear to have been filed with the Court. The affidavit attached to his application record (under Rule 309(2)(d)) is dated August 1, 2024, which is more than 30 days afforded to file an affidavit under Rule 306. Moreover,

Mr. Pless has not demonstrated whether any facts contained in his affidavit that were not before the Second Reviewer should be admitted pursuant to the exceptions listed in *Access Copyright*.

[10] Aside from this preliminary issue, the remaining issue is whether the decision is reasonable pursuant to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

#### IV. Analysis

[11] Mr. Pless claims that based on his self-employment total revenue decreasing from \$5,525 (2019) to \$3,425 (2020) for the CRB, having \$9,765 in 2021 prior to the first CWLB application, having zero expenses, and all other information submitted, he meets the eligibility criteria for the programs.

[12] The Respondent submits that the Second Reviewer's decision is reasonable. The Respondent maintains that the original decision was reconsidered in accordance with the Minutes of Settlement and that the Second Reviewer reasonably found that Mr. Pless' declaration of expenses against the gross income amounts left the self-employment income amount as less than \$5,000.

[13] I agree with the Respondent. Subsection 3(2) of the *CRB Act* provides that "income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue" for the purposes of determining "income" under subsection 3(1). This provision is mirrored in subsection 4(2) and 4(1) of the *CWLB Act*. Eligible income for self-employment is assessed on net

self-employment income, rather than gross self-employment income (*Flock v Canada (Attorney General)*, 2022 FC 305 [*Flock*] at para 20, aff'd on appeal in 2022 FCA 187).

[14] Subsection 3(2) of the *CRB Act* is a mandatory statutory criterion: There is no room for discretion (*Flock* at para 23). The same applies to subsection 4(2) of the *CWLB Act*. As the Respondent points out, amending a tax return to not claim expenses so that one can qualify for the CRB or the CWLB does not alter the fact that the expenses exist and that net income does not meet the \$5,000 income threshold. It is not unreasonable for CRA to consider the expenses in calculating net income (*Lavigne v Canada (Attorney General)*, 2023 FC 1182 [*Lavigne*] at para 37; *Cohen v Canada (Attorney General)*, 2023 FC 1539 [*Cohen*] at para 41; *Preston v Canada (Attorney General)*, 2025 FC 135 [*Preston*] at para 32).

[15] In both the CRB and the CWLB applications, Mr. Pless adjusted his net income at various points.

[16] In the CRB application, Mr. Pless adjusted his net professional income twice: first, from–\$6,998 to \$5,525, and second, from \$5,525 to \$-5,740. This second change occurred after Mr. Pless had been denied the CRB and was not based on the \$5,000 criteria.

[17] In the CWLB application, Mr. Pless adjusted his net professional income from \$0, to \$9,765, and then to \$1.

[18] In both cases, the Second Reviewer found that Mr. Pless' net negative professional income “was from carry forward expenses from previous years”, which Mr. Pless had himself stated. The

Second Reviewer further found that Mr. Pless' invoices confirmed more than \$5,000 in gross income, but determined that expenses were being declared against Mr. Pless' gross income to earn self-employment income. As such, he had a net amount less than \$5,000.

[19] I agree with the Respondent that this is reasonable. Mr. Pless' net self-employment income was reported as \$-5,740 or \$1, respectively, and it is this form of income that is relevant for determining eligibility: It is not the gross self-employment income (*Flock* at para 20).

[20] Moreover, it appears that CRA's use of gross income minus expenses incurred to earn revenue to calculate net income can be reasonable (*James v Canada (Attorney General)*, 2024 FC 730). Specifically, Justice Anne Turley did not take issue with CRA taking gross self-employment income and subtracting the total expenses to determine net self-employment for the purposes of the eligibility criteria (*James* at paras 25-27).

[21] The Second Reviewer took the gross self-employment income amounts from Mr. Pless' invoices and considered the expenses declared against this gross self-employment to result in a net self-employment being lower than \$5,000. This is a reasonable application of the non-discretionary criteria of subsection 3(2) of the *CRB Act* (*Flock* at para 23) and subsection 4(2) of the *CWLB Act*.

[22] Moreover, the Second Reviewer did not accept Mr. Pless' refileing of his tax returns to remove deductions and demonstrate that his net self-employment income was greater than \$5,000. As stated above, amending a tax return to not claim expenses so that one can qualify for the CRB does not alter the net income not meeting the \$5,000 income threshold (*Lavigne* at para 37; *Cohen* at para 41; *Preston* at para 32). For both benefits, it is net self-employment income that is relevant;

it is not gross self-employment, as Mr. Pless submits. It was therefore not unreasonable for the Second Reviewer to consider the expenses being claimed against the gross employment to result in the net self-employment amount being lower than the \$5,000 minimum for both benefits.

V. Conclusion

[23] Mr. Pless has not demonstrated that the decisions are unreasonable. The decisions are justified in light of the legal requirement to offset his gross income with expenses required to do the work. The applications are dismissed without costs.

**JUDGMENT in T-741-24 and T-742-24**

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

1. The applications for judicial review are dismissed without costs.

"Michael Battista"

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Judge



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

**DOCKETS:** T-741-24 AND T-742-24

**STYLE OF CAUSE:** ANDREW PLESS v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 4, 2025

**JUDGMENT AND REASONS:** BATTISTA J.

**DATED:** FEBRUARY 7, 2025

**APPEARANCES:**

Andrew Pless

FOR THE APPLICANT  
(SELF-REPRESENTED)

Jesse Epp-Fransen

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT