

Federal Court



Cour fédérale

Date: 20260202

Docket: T-2100-25

Citation: 2026 FC 147

Ottawa, Ontario, February 2, 2026

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

SHELLY HERRERA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by an officer [the Officer] of the Canadian Revenue Agency [the CRA] dated May 23, 2025 [the Decision], determining that the Applicant was ineligible for the Canadian Emergency Response Benefit [the CERB].

[2] As explained in detail below, this application for judicial review is dismissed, because the Decision is reasonable and was made in a procedurally fair manner.

II. **Background**

[3] The Applicant received payments under the CERB related to six four-week periods between April 12, 2020, and September 26, 2020. Subsequently, by letter dated October 29, 2020, the CRA advised the Applicant that it had concluded she was not eligible for the CERB, because she did not stop working, or have her hours reduced, for reasons related to COVID-19. This letter also advised the Applicant that she could request a review of that decision.

[4] In a subsequent letter dated April 23, 2024, a CRA officer advised that the CRA had completed a review of the Applicant's eligibility and found that she was not eligible for the CERB because she did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, or in the 12 months before the date of her first application. This letter also advised the Applicant that she could request a second review of that decision.

[5] On May 10, 2024, the Applicant submitted a written request to the CRA for a second review of her CERB eligibility, accompanied by documentation including documents reflecting the Applicant invoicing or being paid amounts totalling \$10,800.00 in January and February of 2019.

[6] On May 17, 2025, the Applicant submitted additional documents to the CRA, including documents reflecting invoicing by or payments to the Applicant, or a company in which she has an interest, in January to March of 2019 and commencing again in September 2020.

[7] The notes of the Officer who conducted the resulting second review reflect telephone conversations between the Officer and the Applicant on May 1 and 15, 2025, following which the Officer sent the Applicant a letter dated May 23, 2025, conveying the Decision.

III. **Decision under Review**

[8] In the Decision, the Officer determined that the Applicant was not eligible to receive the CERB because she had not stopped working or had her hours reduced for reasons related to COVID-19.

[9] An entry dated May 21, 2025, in the Officer's notes further informs an understanding of the reasons for the Decision. That entry reads as follows:

Decision:

Benefit recipient (BR) earned \$9,536 from net self-employment income in 2019. They did not report any eligible income in 2020.

The \$5,000 income requirement was validated through cheques, invoices and bank deposits. However, invoices/bank deposits stopped in March 2019, BR did not send in any document to prove they were still working from April 2019 until the Covid-19 hit. The proof of work they provided was in September 2020 which was after the CERB periods. They stopped working in March 2019, their income was not affected by the Covid-19. Therefore, BR is deemed not eligible for CERB periods 2-7 for the following criterion:

You did not stop working or have your hours reduced for reason related to COVID-19.

Denial letter will be sent on May 23, 2025.

IV. **Law**

[10] In *Souza v Canada (Attorney General)*, 2025 FC 1232, Justice Guy Régimbald succinctly summarized the CERB as follows:

12. The CERB was introduced by the Government of Canada through *the Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERBA] as part of a set of measures in response to the consequences caused by the COVID-19 pandemic.

13. In order to receive the CERB, an eligible Canadian resident had to submit an application for any four-week period falling between the period beginning on March 15, 2020, and ending on September 26, 2020.

[11] Relevant provisions of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act], related to eligibility for the CERB, include the following:

Definitions

2 The following definitions apply in this Act.

COVID-19 means the coronavirus disease 2019. (*COVID-19*)

Minister means the Minister of Employment and Social Development. (*ministre*)

...

worker means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

COVID-19 La maladie à coronavirus 2019. (*COVID-19*)

ministre Le ministre de l'Emploi et du Développement social. (*Minister*)

...

travailleur Personne âgée d'au moins quinze ans qui réside au Canada et dont les revenus — pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l'article 5 —

\$5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:

- (a) employment;
- (b) self-employment;
- (c) 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*; and
- (d) 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. (*travailleur*)

...

Payment

4 The Minister must make an income support payment to a worker who makes an application under section 5 and who is eligible for the payment.

...

Eligibility

6 (1) A worker is eligible for an income support payment if

provenant des sources ci-après s'élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :

- a) un emploi;
- b) un travail qu'elle exécute pour son compte;
- c) 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*;
- d) 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. (*worker*)

...

Versement de l'allocation

4 Le ministre verse l'allocation de soutien du revenu au travailleur qui présente une demande en vertu de l'article 5 et qui y est admissible.

...

Admissibilité

6 (1) Est admissible à l'allocation de soutien du revenu le travailleur qui

remplit les conditions suivantes :

(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

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

for the purpose of adoption, or

placés chez lui en vue de leur adoption,

(iv) any other income that is prescribed by regulation.

(iv) tout autre revenu prévu par règlement.

Exclusion

Exclusion

(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.

Provision of information and documents

Fourniture de renseignements et production de documents

10 The Minister may, for any purpose related to verifying compliance or preventing non-compliance with this Act, by notice served personally or by confirmed delivery service, require that any person provide any information or document within the reasonable time that is stated in the notice.

10 Le ministre peut, à toute fin liée à la vérification du respect ou à la prévention du non-respect de la présente loi, par avis signifié à personne ou envoyé par service de messagerie, exiger d'une personne qu'elle fournisse des renseignements ou qu'elle produise des documents dans le délai raisonnable que précise l'avis.

...

...

Return of erroneous payment or overpayment

Restitution du trop-perçu

12 (1) If the Minister determines that a person has received an income support payment to which the person is not entitled, or an amount in excess of the amount of such a payment to which the person is entitled, the person must repay the amount of the payment or the excess

12 (1) Si le ministre estime qu'une personne a reçu une allocation de soutien du revenu à laquelle elle n'a pas droit ou une telle allocation dont le montant excédait celui auquel elle avait droit, la personne doit, dans les meilleurs délais, restituer le trop-perçu.

amount, as the case may be, as soon as is feasible.

[12] Pursuant to subparagraph 6(1)(b)(i) of the *CERB Act*, a worker is eligible for benefits in an application period if, subject to relevant regulations, they do not receive employment or self-employment income. Section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90, provides that such income is not taken into account if it does not exceed \$1,000:

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**

[13] Eight days before the hearing of this application scheduled for January 28, 2026, the Applicant filed a Motion Record dated January 20, 2026 [the Motion Record], returnable in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106 [the Rules], seeking leave of the Court under Rule 312 to file an additional affidavit, sworn on January 15, 2026 [the New Affidavit], to supplement her affidavit sworn on July 23, 2025 and included in the Applicant's

Record filed on October 24, 2025 under Rule 306 [the Original Affidavit]. On January 21, 2026, the Respondent wrote to the Court, advising that, given the proximity of the date for the hearing of the application, the Respondent intended to address the Applicant's motion at the hearing.

[14] On January 22, 2026, the Court issued a Direction to the parties, directing that the Respondent's response to the Applicant's motion, as well as any reply by the Applicant, was to be provided orally at the hearing of the application on January 28, 2026. As contemplated by that Direction, the parties' oral submissions at the January 28, 2026 hearing addressed both the Applicant's motion and the application for judicial review. The Court reserved its decision on both the motion and the application.

[15] As such, this matter raises the following issues for the Court's determination:

- A. Should the Court grant the Applicant leave to file the New Affidavit?
- B. Has the Applicant submitted new evidence in the Original Affidavit that is inadmissible on judicial review?
- C. Is the Decision reasonable?
- D. Has the Applicant established that she was deprived of procedural fairness?

[16] The correctness standard of review applies to the procedural fairness identified above (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). Put otherwise, the Court is required to assess whether the procedure

followed was fair having regard to all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[17] As reflected in the articulation of the third issue above, the merits of the Decision are reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 16-17).

VI. Analysis

A. *Should the Court grant the Applicant leave to file the New Affidavit?*

[18] As the Court explained at the hearing, the question whether to grant leave to file additional evidence under Rule 312 is governed by the decision of the Federal Court of Appeal in *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 [*Forest Ethics*]. At the outset, in order to obtain an order under Rule 312 in an application for judicial review, the requesting party must satisfy two requirements: (a) the evidence must be admissible on the application for judicial review; and (b) the evidence must be relevant to an issue that is properly before the Court (at para 4). If these two preliminary requirements are met, the requesting party must convince the Court to exercise its discretion in favour of granting a Rule 312 order. *Forest Ethics* identifies the following questions relevant to that exercise of discretion:

A. Was the evidence sought to be adduced available when the party filed its affidavits under Rule 306 or 308, as the case may be, or could it have been available with the exercise of due diligence?

- B. Will the evidence assist the Court, in the sense that it is relevant to an issue to be determined and sufficiently probative that it could affect the result?
- C. Will the evidence cause substantial or serious prejudice to the other party?

[19] In the case at hand, there is considerable overlap between the preliminary requirements and the second of the above questions, as their analysis turns on the nature of the evidence in the New Affidavit and the purpose for which the Applicant wishes that evidence taken into account in this application. I will therefore begin with that analysis.

(1) Relevance, admissibility and probative value

[20] The Applicant wishes to introduce the New Affidavit as relevant to the procedural fairness issue in this application. The New Affidavit (including its exhibits) provides evidence of her communications with the Officer, which the Applicant asserts failed to adequately inform her of the information the Officer required in order to assess her CERB eligibility, as well as additional income information that the Applicant asserts she could have provided the Officer to establish her eligibility had she understood what the Officer required.

[21] The Respondent takes the position that the New Affidavit is neither relevant nor admissible, because the evidence therein was not before Officer when the Decision was made. Consistent with the Respondent's position, *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [Access Copyright], explains that as a general rule the evidentiary record before court on judicial review is restricted to the record that was before the administrative decision-maker (at para 19). However, there are

recognized exceptions to this rule, including evidence that is necessary to bring to the court's attention procedural defects that cannot be found in the evidentiary record of the decision-maker, so that the court can fulfil its role of reviewing for procedural fairness (at para 20).

[22] The Respondent submits that the New Affidavit does not fall within the procedural fairness exception, because the evidence therein actually supports the Respondent's position that the Officer informed the Applicant of the information that the Applicant would have to submit in order to support her CERB eligibility. In my view, the Respondent's submission confuses the relevance and admissibility of the evidence with the ultimate effect that the evidence will have upon the Court's decision on the procedural fairness issue.

[23] In particular, the New Affidavit attaches a transcript of a telephone conversation [the Transcript] between the Applicant and the Officer on May 1, 2015 [the Conversation]. While the records filed by both parties in this application include the Officer's notes, which represent some record of what transpired in the Conversation, the Transcript is perhaps the best evidence of what was said. It is relevant to whether the Applicant was afforded procedural fairness, it falls within the *Access Copyright* exception identified above and is therefore admissible, and it appears to have significant probative value. Whether the Transcript in fact assists the Applicant or the Respondent will be assessed later in these Reasons when the Court addresses the procedural fairness issue. However, I am satisfied that it will assist the Court in addressing that issue.

[24] I note that the New Affidavit also includes evidence related to the Applicant's income that was not before the Officer but that she says that she could have submitted to the Officer had

she understood what was required to establish her CERB eligibility. While evidence of this nature is not relevant to the reasonableness of the Decision, it can potentially be admissible under the procedural fairness exception to support an assertion as to the effect of an alleged breach of procedural fairness (*Fournier v Canada (Attorney General)*, 2024 FC 859 [*Fournier*] at para 27).

(2) Timing of the new evidence

[25] By way of explanation as to why she did not include the evidence in the New Affidavit when she filed the Original Affidavit under Rule 306, the Applicant submits that it was not until she received the Certified Tribunal Record [CTR] on July 23, 2025, and had the benefit of the Officer's notes, that she began to realize that she had not understood the nature of the information that the Officer had been requesting in order to establish her CERB eligibility. The Applicant notes that she received the CTR on the same day that she swore the Original Affidavit and had not had an opportunity to digest the CTR's contents before finalizing the Original Affidavit.

[26] The Applicant further submits that it was not until she received the Respondent's Record on November 24, 2025, and had the benefit of both the Officer's affidavit and the Respondent's Memorandum of Fact and Law included therein, that she fully appreciated how her misunderstanding of the Conversation with the Officer had contributed to her failure to provide what the Officer was requesting and therefore the negative Decision.

[27] While the Applicant provided this explanation in submissions rather than in affidavit evidence in support of her motion, her explanation is consistent with the documents in the record

before the Court to which she refers. However, other than advancing submissions referencing communications with the Respondent's counsel expressing her wish to introduce new evidence, the Applicant's explanation does not justify particularly well why she did not bring her motion under Rule 312 until eight days before the hearing of this application. This point raises the question whether the Respondent has been prejudiced by this timing, to which I will turn shortly. Nevertheless, particularly taking into account the fact that the Applicant is self-represented, I accept that some explanation exists for why the evidence in the New Affidavit was not included at the time the Original Affidavit was filed.

(3) Substantial or serious prejudice to the Respondent

[28] By way of prejudice resulting from the timing identified above, the Respondent argues that it was required to prepare to address the New Affidavit in the short number of days between the Applicant's filing of her motion and the hearing of the application on its merits.

[29] While I agree with the Respondent that the Applicant could have been more diligent in preparing the New Affidavit and filing her Rule 312 motion earlier, I am not convinced that the Respondent has suffered any substantial or serious prejudice as a result thereof. As previously noted, at the hearing of the application, the Respondent's counsel was able to advance submissions that the contents of the Transcript support the Respondent's position on the procedural fairness issue.

(4) Conclusion on motion

[30] Based on the foregoing analysis, I am satisfied that the Court should exercise its discretion to grant leave to the Applicant to file the New Affidavit. I note that the Applicant's Motion Record includes a sworn copy of the New Affidavit. As such, there is no need for the Applicant to perform an additional filing. My Judgment will confirm that the New Affidavit included in the Motion Record shall be deemed to have been filed in the application.

B. *Has the Applicant submitted new evidence in the Original Affidavit that is inadmissible on judicial review?*

[31] The Respondent has identified certain documentation exhibited to the Original Affidavit that was not before the Officer when the Decision was made and argues that such documentation is therefore inadmissible and should not be considered by the Court.

[32] As with the portions of the New Affidavit to which the Court identified the possible application of *Fournier* earlier in these Reasons, this documentation exhibited to the Original Affidavit can be admissible under the *Access Copyright* exception to support an assertion as to the effect of an alleged breach of procedural fairness. However, I agree with the Respondent's position that, because this documentation was not before the Officer, it is irrelevant to the Court's review of the reasonableness of the Decision. As such, the Court will not take it into account for that purpose.

C. *Is the Decision reasonable?*

[33] The Applicant's written and oral submissions focused principally upon procedural fairness arguments, and the Respondent argued at the hearing that the Applicant had conceded in her oral submissions that the Decision was reasonable. While the Applicant made statements in her principal oral submissions that could be interpreted in that manner, she disputed that characterization in her reply submissions.

[34] I will therefore address this issue on the merits but concur with the Respondent's position that the Applicant has not identified any substantive defect in the Officer's analysis of her CERB eligibility. The Applicant is dissatisfied with the Decision, because of her position that she had additional income information relevant to her eligibility that she could have provided to the Officer if she had understood what the Officer was requesting. However, such information is not relevant to the Court's review of the reasonableness of the Decision, which must be based on the information that was before the Officer.

[35] As the Respondent submits, the Decision is justified, intelligible and transparent within the meaning conveyed in *Vavilov*, in that the Officer accounts for the information that the Applicant had provided and explains the conclusion that, in the absence of any evidence that the Applicant was receiving income between March 2019 and the commencement of the COVID-19 pandemic in the spring of 2020, the Applicant had not established that her income was affected by the pandemic.

[36] Before leaving the reasonableness issue, I note that, in the Applicant's oral reply submissions, she referred to what she considered to be an omission in the Respondent's Memorandum of Fact and Law. Paragraph 10 of the Memorandum provides a list of submissions by the Applicant to the CRA on May 17, 2025, and the Applicant argues that this list omits evidence of three payments that she received in March 2019. The Applicant emphasized that evidence of those payments exists elsewhere in the Respondent's Record. I will address this submission, because failure of an administrative decision-maker to account for evidence that was placed before them can support a conclusion that the decision is unreasonable.

[37] The Officer's affidavit, included in the Respondent's Record, attaches as exhibits what appear to be bank statements submitted by the Applicant to the CRA, identifying deposits of \$1980 on March 5, 2019, \$1440 on March 14, 2019, and \$1980 on March 28, 2019. As the Respondent submits, these bank statements do not appear to be identified in paragraph 10 of the Respondent's Memorandum of Fact and Law. However, the Officer's notes dated May 21, 2025 (which inform an understanding of the Decision) reference those payments and take them into account. Therefore, any omission of those payments in the Respondent's Memorandum does not reflect an omission in the Decision that would undermine its reasonableness.

D. *Has the Applicant established that she was deprived of procedural fairness?*

[38] As explained earlier in these Reasons, the Applicant argues that she was deprived of procedural fairness because, in her communications with the Officer, the Officer failed to clearly communicate the nature of the income information that the Applicant was required to submit in order to establish her CERB eligibility. In the language of procedural fairness, I understand the

Applicant's position to be that she therefore did not know the case that she had to meet in responding to the CRA's verification of her eligibility.

[39] The parties' submissions on this issue relate principally to May 1, 2025 Conversation between the Applicant and the Officer, which is the subject of the Transcript included in the New Evidence. The Applicant explains that, following the Conversation, she was labouring under two principal misunderstandings as to what she was required to submit to demonstrate her CERB eligibility.

[40] First, the Officer asked in the Conversation that the Applicant demonstrate income between February 2019 and April 2020. The Applicant thought that demonstrating any income at all in that time period would be sufficient. As a result, the Applicant believed that her demonstration of income in March 2019 would be sufficient to demonstrate CERB eligibility. She now understands that the Officer was asking that she demonstrate all income that she received during that time period, but the Applicant asserts that that request was not clearly communicated in the Conversation.

[41] Second, the Officer asked that the Applicant demonstrate when she last earned income. Based on that request, the Applicant demonstrated that she had earned income in September 2020. She now understands that the Officer was asking that she demonstrate when she last earned income prior to her claim for CERB due to the commencement of the pandemic, but the Applicant asserts that that request was not clearly communicated in the Conversation.

[42] In support of these assertions, the Applicant observes that the Officer's notes and the Transcript include references to all of February, March, and April of 2019 as the beginning of the period for which the Officer wished to receive income information. The Applicant emphasizes that the Transcript contains multiple references to February 2019, in which the Officer requested that the Applicant provide documentation demonstrating whether she had worked and received income from or after February 2019. In contrast, the Applicant observes that notes dated May 1, 2025, include a reference to asking the Applicant if she continued to work after March 2019, and that notes dated May 21, 2025, refer to the Officer's conclusion that the Applicant did not send in any documents to prove that she was still working from April 2019.

[43] I accept that these references to these three months appear in these documents. However, I have difficulty concluding that this demonstrates an inconsistency or lack of clarity in the Officer's communication with the Applicant. The relevant communication was the May 1, 2015 Conversation, and the Transcript that represents the best evidence of that communication demonstrates that the Officer consistently asked about work and income from or after February 2019. Consistent with the Transcript, the Officer's notes of the Conversation include the entry, "Told BR about the documents submitted, payments were until February 2019 only, did you continue to work after that?" (I understand "BR" to mean "benefits recipient", i.e. a reference to the Applicant.)

[44] The Officer's notes dated May 1, 2025, that include a reference to asking the Applicant if she continued to work after March 2019, precede the Conversation and are described as an action plan, that is an intention to ask the Applicant that question. However, these notes do not reflect

an actual communication with the Applicant that could have caused her confusion as between February and March.

[45] Similarly, the Officer's notes dated May 21, 2025, that refer to the Officer's conclusion that the Applicant did not send in any documents to prove that she was still working from April 2019, represent a portion of the Officer's analysis leading to the Decision. Again, these notes do not reflect a communication with the Applicant that could have caused her confusion.

[46] Moreover, I am not convinced that the distinction between these three months is particularly material to what the Officer was interested in receiving or the resulting analysis that led to the Decision. The Officer was considering whether the Applicant was able to demonstrate that she stopped working or had her hours reduced because of COVID-19. As such, it was the latter portion of the period between the spring of 2019 in the spring of 2020 (when the pandemic commenced and the Applicant made her CERB claim) that was most relevant to the assessment of the Applicant's eligibility.

[47] At the hearing, the Applicant also emphasized information in the New Affidavit that appears to identify work she completed between April and November 2019, which the Applicant explains she would have provided to the Officer had she understood the Officer's request. The Applicant references this information as supporting the veracity of her assertion that she misunderstood what the Officer was requesting.

[48] Of course, it is not the role of the Court in this application to speculate on the conclusion that the Officer would have reached as to the Applicant's eligibility had information regarding work up to November 2019 been submitted. However, I should also note that the Court is not disputing the veracity of the Applicant's assertion that she misunderstood the Officer's request. Rather, in considering whether the Applicant was deprived of procedural fairness, the Court's task is to assess whether the Officer's communication with the Applicant afforded her the opportunity to present her case fully and fairly (*Vavilov* at para 127).

[49] The Officer's notes of the Conversation include the entries, "Explained to BR the \$5,000 and work affected by Covid criteria" and "Document requested: pay stubs, bank statement, list of expenses, proof of work until Covid hit" [my emphasis]. These entries suggest that the Officer explained to the Applicant the need to establish that her work was affected by the pandemic and therefore to demonstrate proof of that work in the period leading to the pandemic.

[50] However, it is in this respect that the Transcript is particularly useful, as it represents a more verbatim, albeit not perfect, record of the Conversation. The Transcript includes the following entries:

CRA

Because, I want to explain that you also need to prove the 5,000 and other ... You also need to prove that because of Covid you could not work, but the document you submit is only stop in February, 2019, so we will want to know that from February until the time you apply in April, 2020, did you earn any income? Did you still work? Were you still working?

....

CRA

[Following a gap in the recording] ... The COVID hit. Because the payments you received is only from ... It stop from February, 2019. So from February, 2019 until March, 2020, that is the time the COVID hit. Do you know during that time, did you earn any income during that time?

....

CRA

Just think about it and then I will tell you what I need from you. So I need to see that during from February until April, 2020, you were still working, so I need the document to prove that, that any work payment you receive.

....

CRA

Yeah. And then that's the first thing. The second thing is, to prove that, at the time you stop, because I don't have enough the paystubs to show, so I don't know when you stop working. You still need to prove that the time you stop working (*unknown*) ... April, 2020, you were still working. Just show me like in the bank statement here's the income I earned from the business or anything. Yeah, just show like that, like I'm still working until April, 2020. Okay, that is all I need from you. Okay?

....

SH

And you need proof that I continued working ...

CRA

Until April, 2020.

SH

And if I did not continue working until then, I would tell you that. Yes?

CRA

Yes. Like the last paystub is in September, 2019, for example, like that. Then you can tell that from September, I did not work, I did

not earn any income, something like that. But, I want to remind you that if you did not work after that, you may not be eligible, so take your time to check back if you earn any income and show that. Okay?

[51] Some of these entries, and other portions of the Transcript, speak to the requirement for the Applicant to demonstrate that she earned at least \$5,000 during certain periods prior to her CERB application. The Officer found that the Applicant met that requirement, which is therefore not in issue in this judicial review.

[52] Otherwise, these entries demonstrate the Officer explaining to the Applicant the requirement to demonstrate that, because of the COVID-19 pandemic, she could not work and that, to do so, she should provide evidence of income she received until March-April 2020 when the pandemic commenced and she applied for benefits.

[53] I find no basis to conclude that the Officer did not communicate the relevant requirement. Indeed, the Officer identified the requirement several times, and the exchange between the Officer and the Applicant at the end of the above excerpts demonstrates the Officer clarifying that, if the Applicant ceased working at an earlier time such as September 2019 and was therefore unable to demonstrate that she continued working until April 2020 when she applied for benefits, she may not be eligible.

[54] In conclusion on this issue, as the Applicant has not demonstrated that she was deprived of the opportunity to know the case she had to meet and therefore to present her case fully and

fairly, I find no breach of the Officer's procedural fairness obligations and conclude that the Decision was made in a procedurally fair manner.

VII. **Conclusion and Costs**

[55] Notwithstanding the Applicant's able and courteous advocacy on her own behalf in this application, she has not demonstrated that the Decision is unreasonable or that she was deprived of procedural fairness. As such, this application for judicial review must be dismissed.

[56] While the Respondent has prevailed in this application, it has not claimed costs, and therefore no costs will be awarded against the Applicant.

JUDGMENT in T-2100-25

THIS COURT'S JUDGMENT is that:

1. The Applicant is granted leave under Rule 312 to file the New Affidavit in this application, and the New Affidavit as included in the Applicant's Motion Record shall be deemed to have been filed in the application.
2. This application is dismissed.
3. There is no order as to costs.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2100-25

STYLE OF CAUSE: SHELLY HERRERA v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 28, 2025

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: FEBRUARY 2, 2026

APPEARANCES:

Shelly Herrera

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Redwan Majumder

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT