

Federal Court of Appeal



Cour d'appel fédérale

Date: 20260323

Docket: A-95-25

Citation: 2026 FCA 61

**CORAM: LASKIN J.A.
LOCKE J.A.
WALKER J.A.**

BETWEEN:

ANDREW PLESS

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on March 23, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on March 23, 2026.

REASONS FOR JUDGMENT OF THE COURT BY:

LOCKE J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 23, 2026).

LOCKE J.A.

[1] Andrew Pless appeals a decision of the Federal Court (2025 FC 252) that dismissed his applications for judicial review of two decisions of an Officer of the Canada Revenue Agency (CRA). Those decisions found Mr. Pless ineligible for the Canada Recovery Benefit (CRB) and the Canada Worker Lockdown Benefit (CWLB), concluding that he had not met the minimum income requirements for these benefits.

[2] Mr. Pless raises three issues in his appeal. First, he argues that the Federal Court erred in excluding his affidavit dated August 1, 2024 on the grounds both that it was submitted late and that it contained information that was not before the CRA Officer when making the impugned decisions. Second, Mr. Pless argues that the CRA Officer's conclusion that he had not met the minimum income requirements was flawed. Finally, Mr. Pless argues that it was procedurally unfair to deny him the CRB and CWLB after having given him those benefits for a period of time without sufficient warning of the consequences of a later finding of ineligibility.

[3] It is our view that Mr. Pless cannot succeed on any of these issues.

[4] Mr. Pless argues that the cited grounds for excluding his August 1, 2024 affidavit were erroneous in that (i) an extension of time was granted by Associate Judge John C. Cotter, and hence it was not submitted late, and (ii) the affidavit reiterates information that was before the CRA Officer when making her decisions, and hence he cannot be accused of introducing new evidence.

[5] In fact, the extension of time concerned the deadline for filing Mr. Pless's application record pursuant to Rule 309 of the *Federal Courts Rules*, S.O.R./98-106. It was not permission to include in that application record an affidavit that had not previously been duly served as provided for in Rule 306. Therefore, the Federal Court was correct to exclude Mr. Pless's August 1, 2024 affidavit on the basis that it was submitted late.

[6] Mr. Pless's argument that the affidavit simply reiterates information that was already before the CRA Officer is not convincing since this simply highlights the fact that the information is already on file and the affidavit is not necessary. Mr. Pless has not indicated specifically how his argument at the Federal Court was impaired by the exclusion of his affidavit.

[7] The merits of the CRA Officer's decisions are to be reviewed based on their reasonableness. We step into the shoes of the Federal Court and focus on those decisions: *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at paras. 45-46. Mr. Pless criticizes the CRA Officer's emphasis on his income tax return, arguing that it is inconclusive proof of his actual income. While we agree that income tax returns are not conclusive proof of income for the purposes of the CRB and the CWLB, they are relevant to the issue, and we find nothing unreasonable in the CRA Officer's reference to Mr. Pless's income tax return in making the impugned decisions. The CRA Officer did not indicate that she felt bound by Mr. Pless's return.

[8] Mr. Pless argues that he had no expenses for the purposes of eligibility for the CRB and the CWLB. He argues that the CRA Officer determined that his net income was insufficient by applying expenses carried forward from previous years. He argues that it was unreasonable for the CRA Officer to have determined his eligibility for the CRB and the CWLB on this basis. We are not convinced that the CRA Officer acted unreasonably in this regard.

[9] Turning now to the issue of procedural fairness, it is important to bear in mind that it concerns procedure and cannot give rise to substantive rights. The ultimate question on this issue is whether Mr. Pless knew the case he had to meet, had an opportunity to respond and had an impartial decision maker consider his case fully and fairly: *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121 at para. 41.

[10] These requirements are met in this case. Mr. Pless's argument on this point essentially seeks a substantive right to keep benefits to which the CRA Officer reasonably concluded he was not entitled. His argument that he would have had to be represented by a lawyer to successfully challenge the impugned decisions does not alter the reasonableness of that conclusion, nor does it demonstrate that he was unaware of the case he had to meet or was denied an opportunity to respond.

[11] For the foregoing reasons, we will dismiss this appeal with costs fixed in the all-inclusive amount of \$250.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-95-25

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

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 23, 2026

REASONS FOR JUDGMENT OF THE COURT BY: LASKIN J.A.
LOCKE J.A.
WALKER J.A.

DELIVERED FROM THE BENCH BY: LOCKE J.A.

APPEARANCES:

Andrew Pless FOR THE APPELLANT
ON HIS OWN BEHALF

Colin McArthur FOR THE RESPONDENT
Randy Ramoodit

SOLICITORS OF RECORD:

Marie-Josée Hogue FOR THE RESPONDENT
Deputy Attorney General of Canada