

Federal Court



Cour fédérale

Date: 20260408

Docket: T-894-25

Citation: 2026 FC 454

Montréal, Quebec, April 8, 2026

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

DANIEL LEMAY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Mr. Lemay is seeking judicial review of a decision denying his application pursuant to the *Certain Emergency Response Benefits Remission Order*, SI/2022-32 [the Remission Order]. I am dismissing his application because the Canada Revenue Agency [CRA] had to apply the criteria set forth in the legislation, even though the forms it used gave the impression that the criteria were different.

[2] Mr. Lemay applied for and obtained the Canada Emergency Response Benefit [CERB] but was later found ineligible. His ineligibility for the CERB is not in dispute in the present application.

[3] Pursuant to the Remission Order, a person who received CERB payments to which they were not eligible may be exempted from repaying those amounts to the extent that they were eligible for, but did not receive, the Canada Emergency Student Benefit [CESB] for the same period.

[4] To be eligible for the CESB, among other conditions, one must be a student during the relevant period. Section 2 of the *Canada Emergency Student Benefit Act*, SC 2020, c 7 [the CESB Act] defines a student as follows:

student means a person who is a Canadian citizen, a person registered as an Indian under the *Indian Act*, a *permanent resident* as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* or a protected person within the meaning of subsection 95(2) of that Act and who

(a) is enrolled, at any time between December 1, 2019 and August 31, 2020, in a post-secondary educational program that leads to a degree, diploma or certificate;

(b) has graduated from secondary school in 2020, has applied for enrollment

étudiant Le citoyen canadien, la personne inscrite à titre d'Indien sous le régime de la *Loi sur les Indiens*, le *résident permanent* au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* ou la personne protégée au sens du paragraphe 95(2) de cette loi qui, selon le cas :

a) est inscrit, à tout moment entre le 1er décembre 2019 et le 31 août 2020, à un programme d'études postsecondaires qui mène à l'obtention d'un diplôme ou d'un certificat;

b) a terminé ses études secondaires en 2020, a présenté une demande

in such a post-secondary educational program that is scheduled to begin before February 1, 2021 and plans to enroll in the program if their application is accepted; or

(c) is a member of a class of persons that is prescribed by regulation.

d'admission à un tel programme d'études postsecondaires devant débiter avant le 1er février 2021 et a l'intention de s'y inscrire si sa demande d'admission est acceptée;

c) appartient à une catégorie de personnes prévue par règlement.

[5] In addition, section 3 of the *Canada Emergency Student Benefit Regulations*, SOR/2020-105 [the Regulations], provides:

A person who is to graduate from secondary school in 2020, has applied for enrollment in a post-secondary educational program that leads to a degree, diploma or certificate that is scheduled to begin before February 1, 2021 and plans to enroll in the program if their application is accepted is prescribed for the purposes of paragraph (c) of the definition student in section 2 of the Act.

Pour l'application de l'alinéa c) de la définition de *étudiant* à l'article 2 de la Loi, appartiennent à une catégorie prévue les personnes qui sont en voie de terminer leurs études secondaires en 2020, qui ont présenté une demande d'admission à un programme d'études postsecondaires menant à l'obtention d'un diplôme ou d'un certificat devant débiter avant le 1er février 2021, et qui ont l'intention de s'y inscrire si leur demande d'admission est acceptée.

[6] The T186 form prepared by the Canada Revenue Agency [CRA] for applications pursuant to the Remission Order states that the following categories of persons are admissible:

- a. You were enrolled in a post-secondary educational program (at least 12 weeks in duration) at a certified institution that leads to a degree, diploma, or certificate between December 1, 2019, and August 31, 2020,

- b. You completed or ended your post-secondary studies in December 2019 or later,
- c. You completed high school or equivalency before June 7, 2020, and applied for a post-secondary educational program that started before February 1, 2021, and planned to enroll in the program if your application was accepted,
- d. You completed high school or equivalency after June 7, 2020, and applied for a post-secondary educational program that started before February 1, 2021, and planned to enroll in the program if your application was accepted.

[7] The respondent concedes that there is a discrepancy between the CESB Act and Regulations, on the one hand, and the T186 form, on the other hand. A literal reading of situation (c) of the form encompasses anyone who finished high school at any point in the past before June 7, 2020. In contrast, paragraph (b) of the CESB Act definition, as well as section 3 of the Regulations, provide that the person must have completed high school in 2020, not earlier.

[8] This discrepancy has significant consequences for Mr. Lemay. He graduated from high school in 2002 and was admitted to Dawson College for the fall term of 2019, which he ultimately did not complete. He does not recall if he withdrew from his program before or after December 1, 2019.

[9] Based on the T186 form and other information he could gather, Mr. Lemay believed he was admissible to the CESB. He applied pursuant to the Remission Order and indicated that he qualified under paragraph (c) of the form. CRA officers, however, told him that to qualify under paragraph (c), he would have needed to graduate from high school in 2020. When he asked for the source or justification of what appeared to him to be a new eligibility requirement, he was

never given a clear answer. In fact, the record shows, and he confirmed at the hearing, that he was not told about the existence of the CESB Act until the filing of the respondent's record.

[10] Mr. Lemay's application was denied. The officer found him to be ineligible because he did not graduate from high school in 2020. The officer also considered whether Mr. Lemay was eligible under category (a) of the form, which corresponds to paragraph (a) of the definition of the CESB Act. However, the officer found that there was no evidence that Mr. Lemay ended his studies after December 1, 2019 and noted that Dawson College did not issue a T2202 slip for the year 2019.

[11] Mr. Lemay now applies for judicial review of the officer's decision. Although I have much sympathy for his predicament, I must dismiss his application.

[12] This Court reviews decisions regarding eligibility to COVID-19 related benefits on a standard of reasonableness: *Pless v Canada (Attorney General)*, 2026 FCA 61 at paragraph 7. A decision is reasonable if it is based on internally coherent reasoning and complies with the constraints bearing upon it: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 101, [2019] 4 SCR 653 [*Vavilov*]. In this regard, the most salient constraint is the legislation the decision maker must apply, in this case, the CESB Act: *Vavilov* at paragraph 108.

[13] The CESB Act states very clearly that to qualify as a student pursuant to paragraph (b) of the definition, one must have graduated from high school in 2020. It was reasonable for the

officer to deny Mr. Lemay's application because he graduated much earlier. In truth, it would have been unreasonable for the officer to rule in Mr. Lemay's favour, as this would have entailed disregard for the most salient legal constraint bearing upon the decision.

[14] Mr. Lemay eloquently presented a range of arguments aimed at persuading me that the eligibility conditions set forth in the T186 form should prevail over those found in the legislation. While his submissions draw upon a combination of common sense and general legal principles, I am bound to reject them.

[15] First, he relies on contract law principles according to which the written word of a contract must prevail over the subjective intentions of a party. He draws an analogy between the T186 form and a written contract, as well as between the CESB Act and a party's inner intentions. As explained at the hearing, an application for benefits created by legislation is generally not understood as giving rise to a contract. More generally, legislation cannot be analogized to someone's inner or hidden intentions. Rather, it is the most public form of law. While I recognize that legislation may be difficult for members of the public to access, read and understand, it remains applicable whether it has been explained or vulgarized to a particular person or not.

[16] In fact, well-established precedent teaches that one cannot rely on representations, oral or written, made by government officials if they contradict legislation. See, in this regard, my decision in *Bastien v Canada (Attorney General)*, 2023 FC 222. In my view, the form at issue in

the present case is such a representation that cannot displace the wording of the CESB Act. This remains so even though the form does not directly and clearly refer to the CESB Act.

[17] Likewise, the rule of law is best promoted by adherence to the legislative text. The rule of law, especially in its aspect of equal treatment before the law, would be undermined if legislation were to be applied inconsistently depending on representations made by government officials.

[18] Mr. Lemay also relied on the concept of procedural fairness. I would note that while issues of procedural fairness are decided on a standard akin to correctness, alleging a breach of procedural fairness does not change the standard of review applicable to the merits of the impugned decision. In a nutshell, Mr. Lemay impugns the fact that he did not know the case to meet and that he had the impression that the CRA officers were moving the goalposts by setting new eligibility requirements not laid out in the form.

[19] While it is deplorable that no one was able to point Mr. Lemay to the CESB Act, this did not give rise to a breach of procedural fairness. Mr. Lemay was told what the requirements were, and he was able to provide any evidence he had that he met those requirements. It is true that in some cases, representations made by government officials may give rise to legitimate expectations, but such expectations relate to the process and not the substance: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paragraph 97, [2013] 2 SCR 559. In other words, they cannot displace legislation.

[20] While Mr. Lemay did not focus his submissions on the second part of the decision, in which the officer found him ineligible under paragraph (a) of the definition of student, this part of the decision was also reasonable. The officer reasonably found that the evidence Mr. Lemay provided did not show that he continued to study after December 1, 2019. Had Dawson College issued a T2202 slip to Mr. Lemay, this might have shed some light on the question. It was nevertheless reasonable for the officer to note that no such slip was issued.

[21] Hence, the decision at issue was reasonable and rendered at the conclusion of a fair process. The application for judicial review must therefore be dismissed.

[22] This brings me to the issue of costs. The parties have agreed that the unsuccessful party would pay costs in the amount of \$250. In my view, however, this is an exceptional case in which it is just and appropriate to depart from the usual rule that the costs are borne by the losing party. There is no dispute that Mr. Lemay was not told that the CESB Act was the basis for the decision until the filing of the respondent's record. Had this been explained to Mr. Lemay, he would probably not have brought the present application for judicial review. Neither is there any dispute that the T186 form is inconsistent with the CESB Act. The respondent must bear some responsibility for this imbroglio, and this can be accomplished by ordering the respondent to pay the applicant's costs in the amount of \$250.

JUDGMENT in T-894-25

THIS COURT'S JUDGMENT is that

1. The Minister of National Revenue is removed as a respondent.
2. The application for judicial review is dismissed.
3. The respondent is condemned to pay costs in the amount of \$250 to the applicant.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-894-25

STYLE OF CAUSE: DANIEL LEMAY v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 7, 2026

JUDGMENT AND REASONS: GRAMMOND J.

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