

BETWEEN:

E POLY INTERNATIONAL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on June 29, 2026, at Oakville, Ontario

Before: The Honourable Justice John Sorensen

Appearances:

Representative for the Poly Elei
Appellant:

Counsel for the Respondent: Andrew Stuart

JUDGMENT

The appeal is dismissed without costs.

Signed this 9th day of July 2026.

“J.A. Sorensen”

Sorensen J.

Citation: 2026 TCC 130

Date: 20260709

Docket: 2025-104(IT)I

BETWEEN:

E POLY INTERNATIONAL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Sorensen J.

I. Procedural History

[1] By notices of redetermination dated June 20, 2023, the Appellant's Canada Emergency Rent Subsidy ("CERS") and Hardest-Hit Businesses Recovery Program ("HHBRP")¹ entitlements were reduced to nil. A notice of objection was filed. The redeterminations were confirmed by notice of confirmation dated September 12, 2024, leading to this appeal.

[2] A case management call was held on January 19, 2026, and according to the minutes, the Appellant confirmed that he was ready to go to trial.

[3] On February 6, 2026, the matter came on for a hearing and was immediately adjourned so that the Appellant could gather further information, and so that he could review relevant legislation and case law (which the Court asked the Respondent to provide to the Appellant). The matter proceeded on June 29, 2026.

¹ The numbering scheme for COVID benefit programs varies, and this appeal concerns benefits sought for CERS periods 1 to 7 and HHBRP periods 22 and 23. The HHBRP was a successor program to the CERS, and the first HHBRP period was described as claim period 22.

[4] The appeal bearing file no. 2025-177(IT)I was created to accommodate an application for an extension of time to appeal which was granted, and as it concerns the same subject matter as file no. 2025-104(IT)I, it will be closed.

II. Summary of Evidence

[5] The Appellant, Poly Elei, is an individual carrying on business as a sole proprietor under the business name “E Poly International”. He received CERS and HHBRP benefits in relation to real property that he rented and co-owned.

[6] The appeal fails because the real property in respect of which benefits were claimed was not qualifying property as defined in the legislation. Separately, there was also a lack of evidence with respect to financial matters and the delineation of the Appellant’s two income sources,² such that verifying a revenue decline was not possible.

[7] The Appellant testified that before filing his CERS claims he contacted the Canada Revenue Agency (“CRA”) to verify his eligibility, and that he began filing claims because he was advised that he was eligible.

[8] For the CERS claim periods in dispute, the Appellant claimed rent expenses for an apartment that I will describe as “Silver Maple”, which was a 16th floor unit in an apartment building. The Appellant there lived with his spouse. The CERS claims were for \$1,625 per period.

[9] For the HHBRP claim periods, the Appellant claimed expenses³ for residential real property I will describe as “Heathcliffe”, which the Appellant purchased with his spouse. The HHBRP claims were for \$1,250 per period.

² I concluded that the documents provided at the hearing were the extent of what the Appellant was able to obtain since there had been a case management conference and a prior adjournment following which the Appellant would presumably have known what was required to prosecute his appeal. Further, a February 23, 2026 letter from the Appellant to the Respondent was handed up at the hearing, which was neither formally nor in substance a “without prejudice” communication. That letter affirmed the Appellant’s claim that he no longer had access to the bank account he used during the claim periods, and that other documents were lost due to the passage of time and multiple moves.

³ These expenses appear to have included mortgage interest, insurance premiums and property tax. Within the definition of qualifying rent expense, factor “A” includes at paragraph (b) mortgage interest, insurance and property tax on a property owned by the eligible entity that is not used primarily to earn rental income.

[10] Before and during the claim periods the Appellant's income sources were brokering used car parts and driving an Uber. The Appellant was an intermediary for the sale of used car parts, receiving orders, procuring parts, and on-selling them. Sometimes, if a sale fell through, he could return the parts to the vendor, and sometimes he would have to keep unsold parts to resell another time.

[11] At the hearing, the Appellant handed up a landlord letter dated April 21, 2020 and attaching a lease renewal for the Silver Maple apartment. Monthly rent as of August 1, 2020 was to be \$1,546.75 (recall that the CERS claims per period were \$1,625 or 105% of the rent on the entire apartment).⁴

[12] In CERS periods 3 through 7, the Appellant testified that he lived with his spouse at their new residential property, Heathcliffe, but continued to rent the Silver Maple apartment. He testified that he used the apartment for parts storage. Therefore, he believed it was appropriate to seek CERS throughout these periods 3 through 7. To be clear, the CERS was in relation to the parts business, not driving.

[13] The HHBRP claims in periods 22 and 23 concern the Heathcliffe property, because the Appellant moved his parts stock there when he gave up the apartment.

[14] The Appellant testified that the parts business had been profitable, but had ceased earning income when the pandemic began. He testified that his Uber income dropped too. However, the Appellant did not have documents that would allow for the parts business income to be computed separately from the Uber income. The notice of confirmation was put to him, and he agreed with the statement in the confirmation that he did not provide the CRA with a breakdown between income from his two sources. He was not able to provide that breakdown to the Court at the hearing either.

[15] The Appellant suggested that his income was evenly divided between the parts business and Uber. However, this was not borne out by the available documents, as summarized below.

[16] Tax summary statements from Uber were entered into evidence. The statements were dated September 2019 through December 2019 and September 2020 through December 2020. While the reconciliation exercise conducted in Court was less than clear, it appears that, across each of the four 2019 statements, the

⁴ The components of the Appellant's benefit claims were not enumerated, and the only clearly established component was rent.

Appellant's gross monthly average income was approximately \$7,000. The statements for September 2020 through December 2020 support gross monthly average income of approximately \$4,000, more or less. The Appellant indicated that his 2020 gross income was approximately \$50,000, which was consistent with the information put to him on cross-examination in review of the notice of confirmation.

[17] Crown counsel pressed the Appellant on the income breakdown between the two sources. On cross-examination, Crown counsel observed that: the Appellant claimed that he earned around \$80,000 of gross income in 2019; the 2019 T1 return that the Appellant handed up showed \$81,582.16 of gross income; and that 12 months of Uber income would more or less account for all of his 2019 gross income. The Appellant pushed back, arguing that his Uber driving may have been cyclical and that monthly numbers cannot be readily extrapolated. However, there was no evidence to support any alternative explanation of his 2019 or 2020 income.

[18] Available bank statements were limited, and the Appellant could not identify deposits as coming from the parts business. The joint account was closed in October 2022, and the Appellant claimed that as of 2026 the bank would not produce historic statements from closed accounts.

[19] In the absence of any evidence to the contrary, it is reasonable to conclude that substantially all of the Appellant's income was from Uber driving and that the parts business was incidental, and in any case, the parts business income was not ascertainable.

III. Issues

[20] Is the Appellant entitled to the CERS for claim periods 1 to 7 for rent paid on Silver Maple, or should the benefits be denied because:

- A. Silver Maple was an apartment and not a qualifying property; and
- B. The Appellant failed to demonstrate a decline in qualifying revenue for the relevant periods.

[21] Is the Appellant entitled to the HHBRP for claim periods 22 and 23 for costs associated with Heathcliffe, or should the benefits be denied because:

- A. Heathcliffe was a dwelling-house and not a qualifying property; and

B. The Appellant failed to demonstrate a decline in qualifying revenue for the relevant periods.

[22] It was not disputed that Silver Maple and Heathcliffe were private residences for Mr. Elei and his spouse. I accept that he paid rent on the Silver Maple apartment and that expenses were incurred in respect of Heathcliffe, including mortgage interest, insurance premiums and property taxes.

[23] The definition of qualifying property in s. 125.7(1) of the *Income Tax Act* (Canada)⁵ excludes property that is: a self-contained domestic establishment of an eligible entity (or non-arm's length person); or part of a self-contained domestic establishment (and sub-adjacent land and such portion of any immediately contiguous land as can be reasonably regarded as contributing to the use and enjoyment of the self-contained domestic establishment).

[24] Per s. 248(1), self-contained domestic establishment means “a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats.”

[25] In *Milne*,⁶ this Court interpreted the definition of qualifying property as follows:

[20] The answer to this dispute lies in a key component of the definition of a “qualifying property” emphasized as follows:

qualifying property, of an eligible entity for a qualifying period, means real or immovable property (other than property that is a self-contained domestic establishment used by the eligible entity or by a person not dealing at arm's length with the eligible entity, **or part of such a self-contained domestic establishment**, the land subjacent to the self-contained domestic establishment and such portion of any immediately contiguous land as can reasonably be regarded as contributing to the use and enjoyment of the self-contained domestic establishment as a residence) in Canada used by the eligible entity in the course of its ordinary activities.

[21] Parts of a self-contained domestic establishment, as well as any attached land that forms part of its use and enjoyment, are clearly excluded.

⁵ *Income Tax Act*, RSC 1985, c. 1 (5th Supp.) (as amended) (the “ITA”).

⁶ *Milne v The King*, 2026 TCC 78 (“*Milne*”).

[22] Parliament therefore effectively outlined that businesses operating from almost any part of a personal residence would not qualify for the CERS.

[23] This exclusion applies to Mr. Milne because his acting studio was part of a self-contained domestic establishment, namely the home he rented.

[26] In other words, spaces that are a self-contained domestic establishment used by the eligible entity (or non-arm's length person), or that are part of a self-contained domestic establishment, are excluded from the definition of qualifying property.

[27] In limited circumstances it is possible that a property may be partially allocated between being a self-contained domestic establishment and a qualifying property, as suggested by CRA interpretative guidance.⁷ For example, a mixed-use building that includes a convenience store with the proprietor's apartment in the rear could be bifurcated for CERS purposes. According to *Milne*, in a mixed-use building the commercial area might be a qualifying property if it is separate from the residential area.⁸

[28] In this case, for the first two CERS periods Silver Maple was an apartment in which the Appellant and his spouse ordinarily resided, and was not a qualifying property even if some car parts were kept there, based on *Milne*. For this reason, the claims for the first two CERS periods fail.

[29] The Appellant's case is partially distinguishable from *Milne* because after the Appellant and his spouse moved out, the Silver Maple apartment was still rented and then allegedly used only for storage. Does the use of an apartment solely for commercial purposes take it out of the scope of self-contained domestic establishment for CERS and HHBRP purposes? No: the provisions are based on a practical classification scheme for qualifying property that does not invite debate over the way property was used.

[30] To begin dissecting the legislation: a self-contained domestic establishment **used by the eligible entity** is excluded. The provision does not specify the type of usage. It is presumed that Parliament speaks intentionally, and in the absence of any qualifying language (which would be within Parliament's power to include) I conclude that a self-contained domestic establishment used by the eligible entity for *any* purpose is excluded.

⁷ See CRA Interpretation 2020-0870041I7, May 17, 2021.

⁸ *Milne* at paragraphs 27 and 28.

[31] Self-contained domestic establishment means “a dwelling-house, apartment or other similar place of residence in which place a person as a general rule sleeps and eats.” When considering the definition of self-contained domestic establishment back in 1997, Bowie J wrote that “[c]ommon sense has not yet been displaced as an aid to interpretation.”⁹ A common sense interpretation of “dwelling-house” and “apartment” in a civil context¹⁰ is that they are places that are objectively meant to be occupied and used for ordinary daily activities of life – including sleeping, eating/drinking, washing, and keeping personal effects. The inclusion of the clause “in which place a person as a general rule sleeps and eats” modifies “other similar place of residence”, and in any case that language has no impact on the meaning of “dwelling-house” and “apartment” because they are already places in which people sleep and eat.

[32] In my view, it does not matter whether the Appellant slept and ate at the Silver Maple apartment after the move to Heathcliffe, or whether he used it just to store things. Silver Maple remained an apartment, in the sense of being a space that was purpose-built and intended as a residential living space.

[33] A vacant apartment is not a *tabula rasa* – it is still an apartment.¹¹ Viewed objectively, and taking into account generally applicable private and public law,¹² dwelling-houses and apartments do not lose their character.

[34] An apartment is a self-contained domestic establishment, ergo, apartments are excluded from the qualifying property category. Silver Maple was an apartment. It does not matter if the Appellant resided at Silver Maple or not in the CERS periods 3 through 7 – what matters is that the space was an apartment.

⁹ *Lott v The Queen*, [1998] 1 CTC 2869.

¹⁰ The criminal law may feature more expansive interpretations of “dwelling-house” informed by *Charter* values concerning search and seizure (*Canadian Charter of Rights and Freedoms*, s 8, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.). The ITA definition of “dwelling-house” in s. 231 is restricted and applicable only to s. 231.1 to 231.8.

¹¹ It is conceivable that in some circumstances an apartment could change character, but in my view that would require a material change to the property, in terms of zoning, structure and leasing arrangements. For example, perhaps an apartment building could become an office building or a hotel, but that would require a wholesale, objective recharacterization of the property.

¹² Rental agreements typically limit the usage of residential rental property to that purpose, and municipal zoning laws delineate residential, commercial, industrial, institutional and other land usage.

[35] Similar problems plague the HHBRP claim in relation to Heathcliffe. The Appellant argued that some car parts were moved there. However, Heathcliffe is also a self-contained domestic establishment, and any space in which inventory was stored would have been a “part” of the self-contained domestic establishment. For this reason, the HHBRP claims fail.

[36] In my view, no portion of either Silver Maple or Heathcliffe was a qualifying property because that concept excludes property that is a self-contained domestic establishment, and there was no factual basis to bifurcate these properties. Consequently, there was no qualifying rent expense and no entitlement to the CERS or the HHBRP.

Revenue Decline

[37] The foregoing conclusions are determinative of the appeal. However, for greater certainty, following is my conclusion regarding the qualifying revenue decline criterion.

[38] The Appellant indicated that he could not produce banking documents because he did not keep copies and the bank would not produce them. In my view, the relevant part of the preceding sentence is the part that came before “because”. Not having documents is problematic, and offering an excuse is not curative.

[39] The Appellant’s Uber driving income appears to have declined as a result of the pandemic, but that work does not support CERS or HHBRP benefits in relation to any qualifying property. The benefit claims were associated with the parts business. The extent of the parts business income is unclear but was likely limited, based on whatever can be extrapolated from the documents that were entered in evidence and reviewed, most notably the Uber statements and bank statements. The Appellant was unable to provide a breakdown of his income sources, which was an issue flagged during the administrative dispute process, and which was not resolved at the hearing. In the absence of evidence, it is not possible to reach a favourable conclusion regarding any alleged decline in qualifying revenue – a lynchpin for CERS and HHBRP eligibility.

Other Arguments

[40] The Appellant argued that he acted in good faith, having vetted his eligibility with the CRA before applying for the benefits, and that the funds he received were used for purposes that were consonant with the goal of the benefit programs. And

while the Appellant acknowledged that mistaken CRA advice does not supersede the statute, he argued that administrative guidance can be relevant to assessing reasonableness, and that administrative discretion must be exercised fairly. Here, the Appellant blurs assessment litigation and judicial review of discretionary decisions of the Minister of National Revenue. Administrative law principles find no audience in an assessment dispute.

IV. Conclusion

[41] For the foregoing reasons, the appeal is dismissed, without costs.

Signed this 9th day of July 2026.

“J.A. Sorensen”

Sorensen J.

CITATION: 2026 TCC 130

COURT FILE NO.: 2025-104(IT)I

STYLE OF CAUSE: E POLY INTERNATIONAL AND HIS
MAJESTY THE KING

PLACE OF HEARING: Oakville, Ontario

DATE OF HEARING: June 29, 2026

REASONS FOR JUDGMENT BY: The Honourable Justice John Sorensen

DATE OF JUDGMENT: July 9, 2026

APPEARANCES:

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