



What's New in HR Law

Court of Appeal Finds CERB and CRB Justifiably Violated Charter Rights of Disabled Workers

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Bottom Line

In [*Jacob v. Canada \(Attorney General\)*](#), the Ontario Court of Appeal (the “Court of Appeal”) found that the \$5,000 income thresholds for both the Canada Emergency Response Benefit (“CERB”) and the Canadian Recovery Benefit (“CRB”) breached section 15(1) of the Canadian *Charter of Rights and Freedoms* (“Charter”), as did the manner in which the threshold was calculated. However, the Court of Appeal held that these emergency measures were reasonable and justifiable limits on the *Charter* rights of disabled workers with active labour market participation (the “Claimant Group”) during the COVID-19 pandemic.

Facts

During the pandemic, the federal government enacted the [*Canada Emergency Response Benefit Act*](#) (the “CERB Act”). The *CERB Act* provided qualified applicants \$500 per week. This benefit was available from March 15, 2020 to October 3, 2020. To qualify for CERB payments, individuals were required to be at least 15 years of age, residents of Canada, and earn a minimum of \$5,000 from an eligible income source in the last 12 months or in 2019. Eligible income sources included employment income, parental benefits, and income from self-employment, but did not include Canada Pension Plan Disability Benefit (“CPP-D”) benefit payments.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

Following the CERB benefit, the federal government enacted the [Canada Recovery Benefits Act](#) (the “CRB Act”). The *CRB Act* provided qualified applicants between \$600 and \$1,000 each two-week period. This benefit was available from September 27, 2020 to October 23, 2021. The *CRB Act* maintained the same eligibility requirements as the *CERB Act*, with the exception of the qualification period, which was extended to cover a two-week period beginning in 2020 or in the 12-month period before the day on which the individual applied for the benefit. Eligible income sources, too, excluded CPP-D benefits.

Valerie Jacobs (the “Appellant”) lives with a disability and during the relevant time received CPP-D benefit payments. As a result of her disability-related limitations, the Appellant could only work part-time hours and was unable to meet the \$5,000 income threshold.

The Appellant challenged the income threshold and the exclusion of CPP-D payments from eligible income sources, alleging a violation of her equality rights under section 15(1) of the *Charter*. The application judge dismissed her application on the grounds that the \$5,000 income threshold did not differentiate her from non-disabled workers who were also unable to meet this threshold, and therefore, it was not discriminatory.

Court of Appeal Decision

The Court of Appeal found that the application judge erred in finding that there was no breach of section 15(1) of the *Charter*. However, the Court found that the breaches were justified under section 1 of the *Charter*.

More specifically, the Court of Appeal found that (i) although the programs were neutral on their face, they disproportionately impacted workers with disabilities by making it substantially more difficult for the Claimant Group to reach the income threshold without including CCP-D; and (ii) the *CERB Act* and the *CRB Act* reinforced existing disadvantages of the Claimant Group. Therefore, the \$5000 threshold and the manner in which income was calculated under both programs violated the Appellant’s section 15 *Charter* rights.

In determining that the violations were justified under section 1 of the *Charter*, the Court of Appeal made the following key findings:

- The *CERB Act* and the *CRB Act* shared the pressing and substantial objective of offsetting the consequences of the COVID-19 pandemic on the labour market by administering the benefits quickly and efficiently;
- CERB and CRB were not intended to provide a basic minimum income to everyone but rather to act as an income support for workers affected by the pandemic;
- The simple design of the threshold allowed the Canadian government to process 27.57 million applications for CERB and CRB;
- CERB and CRB were rationally connected to the objective;
- CERB and CRB fell within a range of reasonable alternatives to achieve the legislative objectives; and
- The benefits of CERB and CRB served millions of Canadians and outweighed the negative effects for those unable to meet the income threshold.

The Court of Appeal emphasized that CERB and CRB were time-limited programs developed to respond to an emergency situation. Although the Appellant raised an interesting inquiry into whether the ongoing amendments to CERB and CRB could have included considerations for disabled workers, this issue was raised for the first time on appeal and was not addressed by the Court of Appeal.

Takeaways

The impact of the COVID-19 pandemic on the livelihood of Canadians was a significant factor in assessing the pressing and substantial objective of the legislation, the reasonableness of its parameters, and whether the benefits of its design outweighed the negative consequences. This illustrates that courts will consider the context of emergency situations in assessing the validity of legislation in respect of *Charter* rights and alleged violations of same.

Need More Information?

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