

In The Federal Court of Canada

Between

Aisha Nadeem

-and-

Attorney General of Canada

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (*place where Federal Court of Appeal (or Federal Court) ordinarily sits*).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the [Federal Courts Rules](#) and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

Issued by: (Registry Officer)

Address of local office:

TO:

Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, Ontario K1A 0H8

Attorney General of Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario
M5H 1T1

Application

This is an application for judicial review in respect of a decision by Canada Revenue Agency (the “Minister”) to deny the Applicant Canada Emergency Response Benefit (the “CERB”)/Canada Recovery Benefit (the “CRB”) benefits on the basis that the Applicant income was not sufficient for her to qualify for these benefits (the “Decision”). The Applicant says that the decision is both incorrect and unreasonable because her income was sufficient for her to qualify for CERB/CRB benefits.

The Applicant Makes Application for:

1. An order quashing or vacating the Decision;
2. An order in the nature of mandamus compelling the Minister to grant the Applicant CERB/CRB benefits. In the alternative, an order that the Applicant’s application for CERB benefits be remitted back to the Minister and remitted back to the CRA for redetermination by a different decision maker;
3. Costs; and
4. Such further and other relief as this Honourable Court deems just.

The Grounds for the Application are:

The Applicant

1. The Applicant is a student and worker who resides in Mississauga, Ontario.
2. The Applicant worked from May 2019 to March 14, 2020 (applicable period for CERB/CRB application) for three employers Canada's Wonderland Company, The Staffing Edge Inc., and Humber College ITAL, earning \$4,566.86. Applicant also earned an additional reduced earnings (not applicable for CERB/CRB application) 1,101.51 during March 15 to July 4th. Employer issued T4 slips of all these incomes which was declared on the relevant income tax forms (2019 and 2020) assessed by CRA. All T4 incomes are supported by bank statements, which were also provided to CRA.
3. In addition to the Applicant’s employment income the Applicant earned self—employment income as a cleaner for domestic services to a senior. The Applicant earned \$550 (\$50/week) in cash between January 2020 and March 2020. The Applicant had no expenses related to his self-employment. The total of the Applicant’s self—employment and employment income is \$5,116.86 for the period of Mar 15 2019 to Mar 14 2020 i.e. income of at least \$5,000 in the last 12 months before the date of CERB/CRB application. The self employment income was also declared on income tax forms filled for year 2020 and assessed by CRA.
4. Due to the Covid—19 pandemic and shutdowns, the Applicant was unable to continue her employment and self-employment.

The Canada Emergency Response Benefit

5. On March 25, 2020, Part 2 of the Covid—19 Emergency Response Act, SC 2020 c 5 received royal assent, enacting the Canada Emergency Response Benefit Act, SC2020 c 5 s 8 (“CE RB Act”). The CERB was established to provide relief to Canadians during the Covid—19 pandemic.
6. The Applicant applied for, and initially received CERB benefits. The Applicant was subsequently informed in December 2020 that CRA can’t confirm her eligibility for CERB.

The Decision

7. The Minister completed her review via letter dated November 18, 2021. In this determination, the Minister determined that the Applicant was not eligible for CERB/CRB benefits. The letter provides the following basis for the Decision:

“You did not earn at least \$5, 000 (before taxes) of employment or self-employment income in 2019 or in the 12 months prior to the date of your first application.”

8. The Minister did not provide reasons why she rejected the Applicant’s submission that her income exceeded \$5,000.
9. The Applicant requested a second review on the basis that his income exceeded \$5,000 in the 12 months prior to his application for benefits.
10. The Minister completed her second review via letter dated April 28, 2022.
11. The Minister again denied the Applicant eligibility for CERB/CRB benefits and provided an identical basis for the Decision. Once again, no reasons were provided for the Minister rejecting the Applicant’s submission that her total income exceeded \$5,000.

Breach of Duty of Procedural Fairness

12. In failing to provide any written reasons for why she apparently rejected the Applicant’s submission that her total income exceeded \$5,000, the Minister breached the duty of fairness.
13. A decision that affects the rights, privileges and interest of an individual is sufficient to trigger the duty of procedural fairness: *Baker v Canada*, [1999] 2 SCR 817 at 20 (“Baker”). The duty of procedural fairness includes provision of written reasons: *Baker* at 43. Failure to provide even brief written reasons is also contrary to the Minister’s own policies respecting communication of determinations and resolving taxpayer appeals and requests for review.

Misinterpretation Of the CERB Act

14. Section 2 of the CERB Act, in the definition of “worker”, sets out that the minimum \$5,000 total income requirement is the total of both employment and self—employment income.
15. Neither the CERB Act nor related regulation qualifies or restricts the nature or source of the income received by a “worker”.
16. The Minister’s determination letters say, “employment and self—employment”. In doing so, the Minister is, without lawful basis, changing the inclusive ‘and’ in the CERB Act to the exclusive “or”, then applying this improper interpretation of the CERB Act to deny the Applicant’s entitlement to CERB benefits.

The Minister’s Determination is Factually Incorrect

17. It is a matter of fact that the Applicant's employment and self—employment income was \$5,175.96 in the twelve months before he applied for the CERB. As such the sole basis for rejection of CERB eligibility is incorrect.
18. This Honourable Court should intervene in this matter because the Minister has breached her duty of procedural fairness, has misinterpreted the CERB Act and has rendered a determination that is factually wrong. In doing so the Minister has treated the Applicant unfairly, unlawfully, arbitrarily, discriminatorily and contrary to his legitimate expectations.

The application will be supported by the following material:

1. Affidavit of Aisha Nadeem; and
2. If this application is Opposed, additional affidavits as the Applicant will advise.

THE APPLICATION REQUESTS, PURSUANT TO RULE 317, THE FOLLOWING MATERIAL IN THE POSSESSION OF THE MINISTER BE PRODUCED:

1. A certified copy of all documents relating to:
 - a. The Applicant's entire CERB application file, including communications and correspondence both between the Applicant and the Minister's delegate and between individuals within the Minister's offices, notes, audit or review reports, diaries, letters, drafts and other documents of any kind whatever; and
 - b. All policy papers, manuals, guidelines or like documents used by the Minister in evaluating a person's CERB/CRB eligibility and any other document of any kind relied on by the Minister's delegate in reaching her determination that the Applicant is not eligible for the CERB.



(Signature of applicant)

Aisha Nadeem

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[SOR/2021-151, s. 22](#)