

Court File No: T-955-23

ID#1

FEDERAL COURT

BETWEEN:

Timothy BARNARD

D É P O S É	COUR FÉDÉRALE FEDERAL COURT		F I L E D
	MAY 04 2023		
	CATHERINE ZAMALLOA-TREMBLAY		
MONTRÉAL, QC		1	

Applicant

and

ATTORNEY GENERAL OF CANADA

~~CANADA REVENUE AGENCY~~

Respondent

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 Montreal.


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)

**CATHERINE ZAMALLOA-TREMBLAY
AGENT DU GREFFE
REGISTRY OFFICER**


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Application

This is an application for judicial review in respect of:

A written decision of the Respondent, the Canada Revenue Agency (CRA), dated 31 March 2023, communicated to Applicant by post and received by him on 7 April 2023, demanding repayment in full of \$10,000.00 in COVID-19 relief funds Applicant received in the spring and summer of 2020 under the federal government's Canadian Emergency Response Benefit (CERB) program.

The Respondent's file number is C0054305532-001-45.

The Applicant makes application for:

The Applicant asks the Court to rule that the actions of the Respondent are unreasonable and have been carried out in bad faith; that its methods and procedures have been unfair, arbitrary and lacking transparency; that the alleged fact that the Applicant "did not stop working or have [his] hours reduced for reasons related to COVID-19" could not have been known to Respondent; that Respondent initially failed in its obligation to inform Applicant of his rights and the legal recourse available to him while demanding repayment of the benefits received; and that Respondent has intimidated the Applicant with improper demands for repayment of CERB benefits on the basis of an inherently faulty and abusive review process which did not follow Respondent's own procedures.

The grounds for the application are:

1. The Canada Emergency Response Benefits (CERB) program, administered by the Respondent, provided emergency COVID-19 relief benefits to Canadians in the spring and summer of 2020, later being replaced by the Canada Recovery Benefits (CRB) program.
2. According to a current Government of Canada information page for the CERB program (<https://www.canada.ca/en/services/benefits/ei/cerb-application.html>), the eligibility criteria for receiving CERB funds were as follows:

Who was eligible

The Benefit was available to workers:

- residing in Canada, who were at least 15 years old

- who stopped working because of reasons related to COVID-19 or were eligible for Employment Insurance regular or sickness benefits or have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020
- who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application, and
- who did not quit their job voluntarily

When submitting a first claim, you could not have earned more than \$1,000 in employment and/or self-employment income for 14 or more consecutive days within the four-week benefit period of your claim.

When submitting subsequent claims, you could not have earned more than \$1,000 in employment and/or self-employment income for the entire four-week benefit period of your new claim.

3. Applicant is a freelance translator residing in Montreal who works part-time from his home.

4. Applicant's clientele consists largely in Canadian and foreign art museums and galleries which, because of the COVID pandemic and by law, in Canada and abroad, were forced to shut their doors and suspend their operations in the spring and summer of 2020.

5. During the period mid-March to early September 2020 Applicant applied for and received \$10,000.00 in CERB assistance, representing five months of assistance at \$2,000 per month.

6. This assistance did not include a one-month period in July 2020 when Applicant did not apply for CERB benefits because of translation contracts that month which exceeded the \$1,000 monthly threshold permitted under the program, as described in par. 2 above.

7. Applicant later voluntarily withdrew from the CERB program again, in September 2020, when he was given a large contract from a university research group to translate scholarly texts for publication when it received a new tranche of funding for the new academic year. This research group's publication projects were not as directly affected by the pandemic or by the public health measures around it as Applicant's other clients were, as its members were all working from home.

8. Applicant also contracted COVID on 15 March 2020 and was quite ill with COVID and post-COVID pneumonia for several weeks from that date, severely limiting his ability to work for these first few weeks of the pandemic and qualifying him for CERB support during this time on that basis.

9. As was widely reported in the press at the time, Respondent widely granted CERB benefits to the public in the spring and summer of 2020 with limited oversight in order to expedite assistance during the public health emergency.

10. Respondent reserved the right to “validate” CERB recipients’ eligibility for the program at a later date. According to a current Revenue Canada information page, (<https://www.canada.ca/en/revenue-agency/services/benefits/covid-validation.html#h-4>), the procedure for validating an application for, or past receipt of, CERB funds is as follows:

Validating your application

Status: All benefits are closed

If you received or applied for any COVID-19 benefits, the CRA may ask you to provide more information to validate your application.

On this page

- [When to call the CRA](#)
- [Documents you may need to provide](#)
- [How to submit your validation documents](#)
- [If your application is denied](#)
- [If you need to repay COVID-19 benefits](#)

(. . .)

The CRA may ask you to:

- confirm the personal information we have on file
- verify that you meet the eligibility criteria
- review your account activity if we detect any suspicious behaviour

Documents you may need to provide

To complete our validation, we may ask you to provide some additional documents based on your situation. The CRA may verify the authenticity of any documents you provide.

We may ask for one or more of the following documents:

If you were an employee

If you were self-employed

If you received provincial or federal benefits

You must submit your validation documents to the CRA within the time period discussed or as shown on your notification.

11. Applicant was never asked for “more information” as described above at any time in the process, from his application for CERB benefits in the spring of 2020 to the actions of the Respondent in 2021, 2022 and 2023 which Applicant with the present Application is asking the Court to review.

12. Instead, and contrary to Respondent's stated procedure, in 2021-23 Applicant was subjected to no fewer than three peremptory written demands for the return in full of his \$10,000 in CERB benefits on the grounds that he did not qualify to receive them, as detailed below.

13. Respondent neither possessed nor requested documentation which would enable it to make such a determination in good faith as the result of a fair, thorough and transparent examination or review of Applicant's file in keeping with its own procedures.

14. The first demand for repayment came in a letter dated 19 October 2021, submitted here as **Applicant's Exhibit A-1**, which refers to a strictly internal review of which Applicant was completely unaware. The letter states in part:

Based on our review, you are not eligible [for CERB benefits]. You did not meet the following criteria:

-- 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.

-- You did not stop working, or had [*sic*] your hours reduced, for reasons related to COVID-19.

15. The "review" mentioned in this 21 October 2019 letter thus constitutes the "validation" process of a CERB applicant or recipient's right to benefits as described by the Respondent on its web site above, even though the Respondent clearly describes this validation process as involving a request for documentation, a request it never made in the Applicant's case.

16. Regarding the 21 October 2021 letter's first claim, that Applicant did not earn a minimum of \$5,000 in 2019, a simple check of Applicant's 2019 tax return would have shown this allegation to be false. The Respondent, namely the Canada Revenue Agency, for whom checking this tax return could not have been easier, thus acted in bad faith by invoking such a finding as grounds for depriving Applicant of relief benefits.

17. Regarding the second claim, that the Applicant's hours were not reduced during the time he was receiving CERB benefits, Respondent was in possession of absolutely no documentation or information enabling it to reach such a determination in good faith. It had only Applicant's general personal income tax return showing his total annual income for the year 2020, not any accounting of his month-by-month self-employed earnings, which would be used to determine Applicant's eligibility for specific monthly periods.

18. Respondent's letter of 19 October 2021 also stated that Applicant could request a "second review" by responding within 30 days of the date of Respondent's letter.

19. This information corresponds with that provided by Respondent on its web site as quoted above, which continues as follows:

If your application is denied

If your application is denied and you do not agree with the decision, you may ask to have your application reviewed again.

Your request for a second review must include the following:

- The reasons why you disagree with the decision (such as, not all of the information was considered, certain facts or details were missing, or misinterpreted)
- Any relevant new documents, new facts, or correspondence

To maintain impartiality and transparency, the second review will not be done by the same CRA official who did the first review.

Request a second review

The process to request a second review is different depending on your situation.

(. . .)

If the second review is denied

If you disagree with the result of the second review, you may apply to the Federal Court for a judicial review of the CRA decision within 30 days of the date you received the second review decision.

20. Applicant thereby responded to this letter by writing Respondent via its web site on 4 November 2021. Applicant's letter, disputing Respondent's determination and requesting a review, is submitted here as **Applicant's Exhibit A-2**.

21. Applicant reasonably assumed that Respondent would contact him and inform him of precisely what documentation it required in order to review his claim, rather than Applicant guessing and providing reams of documentation which may not have been sought by Respondent.

22. Respondent's web site quoted above states that "relevant new documents" should be submitted for a second review, and that "The process to request a second review is different depending on your situation" (par. 19). Here the context is clearly that of the Respondent already being in possession of certain documents relied on for its initial review per a request (par. 10), whereas in the Applicant's case Respondent was in possession of no such relevant documents and no such request had been made.

23. Instead of contacting him for documentation and more information, eleven months later Respondent wrote to Applicant again, this time in a letter dated 15 September 2022, submitted here as **Applicant's Exhibit A-3**.

24. The cover sheet of Respondent's letter of 15 September 2022 states in full:

Notice of redetermination for COVID-19 benefits

We reviewed your COVID-19 benefits and redetermined your eligibility and the amounts you are eligible to receive.

You need to pay \$10,000 minus any amounts you paid that are not processed yet.

Thank you,

Bob Hamilton
Commissioner of Revenue

25. The second page of Respondent's letter of 15 September 2022, headed "details of redetermination", states in part:

We have redetermined your benefits using the information you gave us and what we have.

26. This notice thus constitutes the findings of Respondent's "second" (and final) review ("We reviewed"; "We have redetermined") as described on its web page quoted above (par. 19). This was the review Applicant had requested a year earlier.

27. Respondent's letter failed, however, to indicate its own next steps in attempting to recover this sum or, crucially, to advise Applicant of his rights or the recourse available to him, especially his right (and obligation within a thirty-day period) to apply to Federal Court for judicial review of Respondent's decision, a right and obligation of which Applicant was unaware at the time.

28. Instead, Respondent's letter of 15 September 2022 once again simply demanded payment of the \$10,000 sum it was seeking.

29. In response, on 26 September 2022 Applicant wrote the Respondent, as seen here in **Applicant's Exhibit A-4**, denouncing Respondent's arbitrary, unfair and unreasonable methods and procedures.

30. Applicant reasonably presumed, in the absence of any possibility that Respondent's determination had been reached as a result of a diligent, informed and fair-minded review, that Respondent's letters were nothing more than random, computer-generated "fishing expeditions" rather than an individual review of Applicant's file, given media reports that hundreds of thousands of such letters were sent to CERB recipients -- and especially self-employed recipients -- around this time.

31. Applicant speculates that such random flagging of his file may have been prompted by fluctuations in Applicant's income, which are normal for self-employed individuals, raising concerns that Respondent was deliberately targeting self-employed Canadians.

32. Here too Respondent could easily have reviewed Applicant's personal income tax returns for the past ten years, for example, to observe considerable fluctuation in his annual income.

33. Here also is precisely where Respondent should have followed its own stated procedures and invited Applicant to participate in a review of his benefit eligibility, rather than issuing repeated letters based on multiple "reviews" demanding repayment in full of Applicant's benefits based on a determination of ineligibility which Respondent was in no position to make in good faith.

34. When initiating a routine tax audit of a taxpayer, before any other communication between the two parties, Respondent does not normally write to the taxpayer and assert that it has, on its own initiative and without documentation, determined that the taxpayer has avoided taxes and owes a precise sum of money named by the Respondent.

35. With Respondent's letter of 15 September 2022, Applicant now considered Respondent's two-stage review process, as described by Respondent on its web pages shown above and in its letter to Applicant of 19 October 2021, to be complete.

36. Applicant had no knowledge of or indication from Respondent, however, of the next steps in the process.

37. Applicant next heard from Respondent by telephone -- hitherto none of Applicant's interactions with Respondent around the question of his \$10,000 CERB benefits had taken place by telephone -- in early March 2023, nearly six months after the correspondence of 15 September 2022.

38. Applicant, given his correspondence with Respondent to this date and the results of the second and final review communicated to him, believed the purpose of the call to be to dun him for payment. The call came at a very inopportune moment for the Applicant, who considered it an invasion of his privacy and a disruption of his work during working hours when all other communication had been carried out by the post. He also has a medical condition which requires rest and calm. Applicant asked the Respondent's representative to respond to his most recent letter in writing rather than by telephone and hung up the phone.

39. A couple of weeks later Applicant was surprised to receive a letter from Respondent, dated 31 March 2023, received by Applicant on 7 April 2023 and submitted here as **Applicant's Exhibit A-5**. This letter, like the letter from more than six months earlier, also purported to convey the results of a "second review" and also demanded the return of \$10,000 in CERB funds on the grounds of Applicant's alleged ineligibility.

40. Respondent's letter of 31 March 2023 states that this second review was undertaken in response to a request by Applicant, purportedly on "October 4, 2022". Applicant made no such request on that date and has no record of any correspondence from that period apart from his letter of 22 September 2022, which makes no mention of a request for a review, Applicant believing at the time that the review process had been exhausted.

41. In fact, Applicant's request for a review was dated 4 November 2021, nearly eighteen months earlier, in response to Respondent's letter of 19 October 2021 giving him thirty days to request a second review.

42. Respondent's letter of 31 March 2023 states as its sole reason for seeking to recover the emergency benefits previously granted to Applicant an alleged "failure to meet the following criteria: You did not stop working or have your hours reduced for reasons related to COVID-19".

43. The unfounded and false claim made in earlier correspondence and reviews that Applicant did not earn a minimum of \$5,000 in 2019 had been dropped.

44. In this letter, Respondent advised Applicant that his only recourse after this second review was to initiate an action against Respondent in Federal Court.

45. Any such second (or second second) review of Applicant's case by the Respondent was necessarily conducted strictly internally at the CRA, without any documentation capable of proving or disproving Respondent's claims and without any involvement by the Applicant. As such the review was illegitimate, arbitrary and manifestly lacking any factual grounds or basis for its determination.

46. In fact, as part of this alleged review, Respondent once again requested no documentation or explanation from Applicant and conducted its review solely internally without the necessary documentation to make an informed and fair decision.

47. Such random and shambolic methods in contravention of Respondent's own procedures, its unreasonable and arbitrary tactics on the basis of a sham review process and above all its imperious demands for payment of a considerable sum of money, without grounds yet backed by the legendary powers of the Agency, constitute intimidation and are unworthy of a government body.

48. It is entirely possible that similar letters to other CERB or Canada Recovery Benefits (CRB) recipients, unequivocally affirming that the recipient of the letter received COVID relief funds to which he or she was not entitled and summarily demand repayment, without in some cases the least information which could lead the Respondent to believe its own claim in good faith, may have led some recipients to comply with Respondent's demand out of fear or obedience to authority, despite quite possibly being entitled to the benefits previously received.

49. If this were the case, the actions of the Respondent described in the present Application would be irresponsible in the extreme and should be audited on a case-by-case basis by a government auditor at arms length from the Respondent.

50. In the Applicant's case at least, Respondent simply has no documentation at its disposal enabling it to make an informed and good faith determination of sums owed, and much less justifying the issuance of such imperious demand letters.

51. In addition, Respondent's letters of 15 September 2022 and 31 March 2023, obviously form letters likely sent out by the tens or hundreds of thousands (as early as September 2020 news reports spoke of 650,000 demand letters sent to self-employed CERB recipients alone), conveyed the results of two purported final "second reviews" without in one case informing Applicant of his legal rights and the recourse available to him.

52. Respondent's actions and methods have needlessly, callously and repeatedly subjected Applicant to unwanted stress and anxiety, in the end forcing him either to pay \$10,000 to the Respondent despite Respondent not following its own review procedures, which could have avoided all this litigation; or file an Application for judicial review with Federal Court, a time-consuming and stressful action for which the Applicant does not have the necessary expertise or experience.

53. The Respondent has exercised its considerable powers and prerogatives recklessly and illegitimately without observing its own procedures, without regard for the distress it unjustifiably causes, and without the restraint and consideration for the Applicant, and quite likely for untold other Canadians, which are incumbent upon it.

54. The Applicant, age 64, is an individual of very limited means, living on a part-time income, who has never had any problems with the Respondent before this incident. He has never had any tax arrears, beyond an occasional balance due after assessment of his tax returns, a balance promptly paid. He has been audited two or three times without any adverse findings.

The application will be supported by the following material:

1. An affidavit by the Applicant;
2. Copies of Applicant's correspondence with Respondent 2021-23, referenced above as Exhibits A-1 to A-5.
5. A List of Exhibits

Supplementary demand

The applicant requests that the Respondent, the Canada Revenue Agency, send a certified copy of the following material, which is not in the possession of the Applicant but which is in possession of the Respondent, to the Applicant and to the Registry:

Copies of all material and documents relative to the present case, including but not limited to the data, documentation, analysis, calculations, deliberations, internal and external correspondence, etc. etc. which led to and justify the determination of ineligibility for and intended recovery of Canada Emergency Response Benefit (CERB) payments made to the Applicant.

Applicant also requests data showing how many initial letters have been sent to Canadians since 2020 similar to that sent to Applicant on 21 October 2019, demanding payment of a fixed sum rather than inviting the individual to collaborate in a review of their eligibility for CERB and/or CRB relief funds; and data showing how many and/or what percentage of any such letters were sent to self-employed individuals.

Applicant asks that all the above requested material include any document which would indicate the existence, extent and workings of any kind of quota system; of any random computerised method used to identify possible targets for recovery of CERB and/or CRB funds paid to Canadians; and of any kind of targeting of self-employed Canadians.

The whole with costs.

DATED at Montreal this 4th day of May, 2023



Timothy Barnard, Applicant

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