

JUDICIAL REVIEW

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F I L E D	FEDERAL COURT COUR FÉDÉRALE
29-SEP-2023	
Robert Mvondo	
WPG	-1-

Court File No. T-2051-23

FEDERAL COURT

BETWEEN:

PATRICK JAMES

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7

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: September 29, 2023

Issued by:

(Robert) Buye M'VONDO

(Registry Officer)

WPGRO05

Address of local office:

~~180 Queen Street West, Suite 208~~ 400 - 363 Broadway
~~Toronto, Ontario M5H 1T6~~ Winnipeg, Manitoba
R3C 3N9

TO:

THE ADMINISTRATOR

Federal Court

AND TO:

THE ATTORNEY GENERAL OF CANADA

Ontario Regional Office

Department of Justice Canada

120 Adelaide Street West

Suite #400

Toronto, Ontario M5H 1T1

APPLICATION

This is an application for judicial review in respect of the Canada Revenue Agency's decision to deny the Applicant's eligibility for the Canada Recovery Benefit ("CRB"), Canada Recovery Sickness Benefit ("CRSB"), and Canada Worker Lockdown Benefit ("CWLD", collectively with CRB and CRSB, the "**Benefits**"). On behalf of the Minister of Employment and Social Development ("**the Minister**"), and by letters dated August 30, 2023, each bearing reference number C0059379241-001-45, the CRA informed the Applicant that he is not eligible for the CRB or CRSB because he did not earn \$5,000 in income in 2019, 2020 or the 12 months prior to his first application for those benefits, and in the case of CWLD, because he did not earn at least \$5,000 in income in 2020, 2021 or in the 12 months prior to his first application.

The Applicant makes application for:

1. An Order setting aside the decisions of the CRA dated August 30, 2023 that the Applicant is ineligible for each of the Benefits, being CRB, CRSB and CWLD;
2. An Order directing the Minister to find that the Applicant did earn at least \$5,000 in income in 2019 or the 12 months prior to his first date of application for each of the Benefits and is therefore eligible for those Benefits;
3. In the alternative, an Order referring the matter back to a different agent of the Minister for reconsideration of the Applicant's eligibility for the Benefits, with such directions as this Honourable Court considers just and appropriate; and,
4. Such further or other relief as counsel may advise and this Honourable Court may permit.

The grounds for the application are:

1. The Applicant, Patrick James ("**Mr. James**"), resides in Kenora, Ontario. Prior to the COVID-19 pandemic, he carried on business as a self-employed outfitter and guide

for hunting and fishing trips under the business name NWO Whitetail. He provided outfitting and guiding services for hunting and fishing trips in the Kenora region for over 22 years.

2. The majority of Mr. James' historical income was derived from American and out-of-province clients.
3. As a result of the COVID-19 pandemic, including, *inter alia*, lengthy border closures and government regulations regarding in-person gatherings, hunting and fishing tourism declined dramatically. Mr. James' business suffered significantly during the COVID-19 pandemic, and he has since been forced to close his business.

Mr. James earned at least \$5,000 in income in 2019

4. Mr. James' gross self-employment income exceeded \$5,000 in 2019.
5. On or about July 5, 2019, Mr. James provided services to Waasegiizhig Nanaandawe'Iyewigamig (also known as Kenora Health Access Centre; the "Health Centre") for a staff appreciation day outing. Mr. James invoiced the Health Centre for \$9,612.91, and received payment. Mr. James has received an annual contract from the Health Centre for approximately 20 years.
6. On or about November 2 to November 9, 2019, Mr. James provided services to an individual named Steven Johnson. Mr. James invoiced Mr. Johnson for \$3,000 USD, but ultimately received payment of \$3,500 USD.

Mr. James Qualifies for the Benefits

7. Mr. James received a total of \$24,600 in CRB between September 27, 2020 and October 9, 2021.
8. Mr. James received a total of \$3,000 in CRSB between November 14, 2021 and December 25, 2021. Mr. James has an underlying medical condition, confirmed by a nurse practitioner.
9. Mr. James received a total of \$900 in CWLB between December 26, 2021 and January 15, 2022.
10. Mr. James diligently worked through the application process for the Benefits. He

repeatedly contacted agents of the CRA to confirm his eligibility prior to accepting any of the Benefits. Notably, Mr. James specifically walked through the process with CRA agents who were able to view his 2019 Assessment.

11. Mr. James advised the CRA agents with whom he spoke that he had no interest in receiving benefits if there was any question at all regarding his eligibility.
12. Mr. James filed his 2019 taxes on May 9, 2020. The CRA assessed Mr. James' return on May 19, 2020.
13. Mr. James filed his 2020 taxes on April 30, 2021. The CRA assessed Mr. James' return on May 10, 2021.
14. During the time that he received the Benefits, Mr. James continued to advertise his business through his website, through outreaching to past customers, and distributing business cards to businesses.
15. New and old clients advised Mr. James that they did not want to book hunting or fishing trips as they were reluctant to take that risk given the ongoing uncertainty with the risk of COVID-19 and the potential for border closures.

The CRA determines that Mr. James is ineligible for the Benefits

16. On September 15, 2022, the CRA issued Mr. James two letters stating that he was not eligible for the Benefits because he did not earn at least \$5,000 in 2019, 2020 or the 12 months prior to the date of her first application. Mr. James would have to repay the \$28,500 he had received.
17. Mr. James was shocked and devastated by the decision. He could not afford to pay back \$28,500, particularly not when the COVID-19 pandemic had destroyed his livelihood of over 20 years.
18. On November 3, 2022, Mr. James submitted paperwork to the CRA demonstrating his income of 2019.
19. On November 25, 2022, Mr. James spoke by telephone with a CRA agent holding badge #39001. The agent requested additional information to verify Mr. James' 2019 income including a bank statement, confirmation of income over \$5,000 and a self-employment spreadsheet.
20. On December 9, 2022, Mr. James submitted the requested information. He left a

telephone message for the agent advising the information was submitted.

21. On or about December 12 and 13, 2022, Mr. James left telephone messages for the agent requesting contact.

22. On or about April 11, 2023, Mr. James received three letters from the CRA, advising that he was not eligible for the Benefits. More particularly:

a. The letter regarding CRB stated that his net self-employment income was not over \$5,000 in 2019, 2020, 2021 or in the 12 months prior to his first application.

b. The letter regarding CRSB stated that his net self-employment income was not over \$5,000 in 2019, 2020, 2021 or in the 12 months prior to his first application and that his scheduled work week was not reduced by at least 50% because he was self-isolating for reasons related to COVID.

c. The letter regarding CWLD stated that his net self-employment income was not over \$5,000 in 2020, 2021 or in the 12 months prior to his first application

23. The letters did not reference any of the documentation Mr. James had submitted in either November or December 2022 to establish that his income did, in fact, exceed \$5,000 in 2019 and 12 months prior to his first application for the Benefits.

24. On or about May 2, 2023, Mr. James submitted a request for second review to the CRA.

25. On or about August 30, 2023, Mr. James received three letters from the CRA, denying his request for a second review and confirming the original decision of the CRA (the "Decision").

The Decision lacks procedural fairness and is unreasonable

26. The Decision is procedurally unfair. In particular:

a. The CRA failed to provide Mr. James an explanation as to how and why he did not meet the \$5,000 income eligibility requirement for the CRB. It thereby denied him the opportunity to know and meet the case against him;

27. The Decision lacks transparency, justifiability and intelligibility and is therefore unreasonable. In particular:

- a. The CRA ignored and failed to address relevant evidence, including Mr. James' evidence of his income, of the reduced client interest as a result of the pandemic, and Mr. James' efforts to obtain clients;
- b. The CRA failed to properly interpret and apply the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 including s. 3 of that Act;
- c. The CRA fettered its discretion by mechanically applying its delegated authority without adequate consideration of the circumstances before it;
- d. The CRA's reasons were inadequate and inconsistent with the principle of responsive justification. The CRA has a heightened responsibility to justify decisions with significant consequences on vulnerable people. The CRA was aware that Mr. James is a low-income individual with disabilities, lives in a seasonal tourist town, who would have to repay \$26,500 to the CRA if he were ineligible for the Benefits. The reasons it provided in the Decision fail to meet the standard of justification required in Mr. James' case, and in fact provide no justification at all.

28. The *Federal Courts Act*, RSC 1985, c F-7, including section 18.1;

29. The *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, including sections 3, 7, and 8; and,

30. Such further and other grounds as counsel may advise and this Honourable Court may permit.

This application will be supported by the following material:

Affidavit of Patrick S. James

Such further and other material as counsel may advise and this Honourable Court

may permit.

The Applicant requests that the Minister send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Minister to the Applicant and to the Registry.

1. Any and all records pertaining to the Applicant's receipt of the Canada Recovery Benefit and determinations about her eligibility for it; and,
2. Any and all records considered by the decision-maker(s).

September 29, 2023


Patrick S. James

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Sent from my iPhone