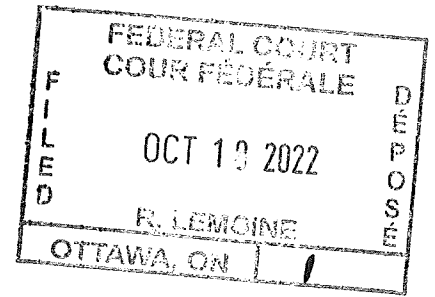


APPLICATION



FEDERAL COURT

BETWEEN:

Gregory M. Diakun
Applicant

and

The Attorney General of Canada
Respondent

APPLICATION UNDER
Section 18.1 of the Federal Courts Act

Application

This is an application for judicial review in respect of the Canada Revenue Agency decision of September 19, 2022 to deny the applicant's eligibility for Canada Recovery Benefits. This decision was received by mail by the applicant on September 23, 2022. The Canada Revenue Agency decision is both unreasonable and incorrect.

The applicant makes application for:

1. The court to quash the Canada Revenue Agency's decision, and to declare that the applicant may keep the Canada Recovery Benefits that were previously awarded.
2. The applicant further requests a court order for reimbursement of the costs of court filings in the amount of \$50.00

The grounds for judicial review are as follows:

1. The Canada Revenue Agency's decision in this matter is procedurally unfair.
2. The Canada Revenue Agency's decision in this matter is based on an error in fact.

1. Procedurally Unfair:

i) When the applicant applied for Canada Recovery Benefits, the qualifying requirement was a minimum of \$5000 in self-employment income in 2019, 2020, or the 12 months preceding application. The word "net" did not appear in the original Canada Recovery Benefit criteria (see document # 2, screenshot) and was never part of the 27 bi-weekly attestations the applicant carefully made in good faith.

ii) Changing the wording of the eligibility criteria upon review to retroactively disqualify a Canadian who had previously met the criteria is procedurally unfair and harms the very individual the Canada Recovery Benefit was designed to help.

iii) In order to receive the Canada Recovery Benefits, applicants were required to make specific attestations. If the requirement was in fact for

net self-employment income, the applicant's legitimate expectation would be that the attestation would have specified net income.

iv) Since the Canada Recovery Benefits replaced the Canada Emergency Response Benefit in October 2020 and the attestations did not change, the applicant's legitimate expectation was that the criteria also had not changed. The applicant received the Canada Emergency Response Benefit because he lost his livelihood as a direct result of the government action that prevented him from working. Since he was still prevented from working by government action, his legitimate expectation was that he would continue to be compensated for his lost livelihood.

2. Error in Fact:

i) On August 17, 2022, Canada Revenue Agency agent Simon, badge # 39059 specifically requested sufficient 2019 bank statements from the applicant to verify that the applicant met the the qualifying requirement of a minimum of \$5000 in income.

The applicant uploaded bank statements for November and December 2019 immediately to the Canada Revenue Agency's website. These bank statements clearly verify that the applicant exceeded the qualifying requirement of a minimum of \$5000 in self-employment income over the combined months of November and December 2019, alone.

In its second review of the applicant's Canada Recovery Benefit eligibility, the Canada Revenue Agency's letter, dated September 19, 2022, stated that the requested documents were not received.

This assertion is incorrect.

There was no other rationale provided in the second review to answer the applicant's reason for disagreement.

ii) If the second review finding of ineligibility is based on the incorrect assertion that the requested documents were not received, the finding is based on an error in fact.

Upon receipt of the second review letter on September 26, 2022, the applicant immediately called Canada Revenue Agency agent Simon, badge # 39059 to discuss the incorrect assertion and to request a fulsome rationale for the decision to deny the applicant's eligibility for Canada Recovery Benefits.

The applicant left a detailed message on the voice mail of Canada Revenue Agency agent Simon, badge # 39059. To date, no callback has been received.

The applicant is therefore left with no alternative but to seek remedy through judicial review.

This application will be supported by the following material:

1. Statement of Facts
2. Screenshot of original Canada Recovery Benefit eligibility criteria from the Canada Revenue Agency's website.
3. March 31, 2022 letter from the Canada Revenue Agency to applicant.
4. April 15, 2022 letter from applicant to the Canada Revenue Agency.
5. Applicant's bank statements of November and December 2019, verifying self-employment income in excess of \$5000.
6. Screenshot of August 17, 2022 confirmation of applicant's uploaded bank statements successfully uploaded to the Canada Revenue Agency website.
7. September 19, 2022 letter from the Canada Revenue Agency to applicant.

October 18, 2022



Gregory M. Diakun
Applicant
033045 Grey Road 28
RR1 Station Main
Hanover ON N4N 3B8
(519) 364-1997

Statement of Facts

1. The applicant has made his livelihood exclusively as a musician and primarily as a performing musician, for the entirety of his 47-year career. Contractual music performances have spanned 20 seasons with Mirvish Productions and 7 seasons with the Stratford Festival of Canada. He also worked steadily throughout his career as a music specialist in education, and as a director of music for worship.
2. When live performances were ordered closed in March 2020, the applicant lost all sources of his working income, including church and education positions, as well as contracts with Mirvish productions.
3. The federal government's lockdown benefits were designed to replace lost income for Canadians who lost their livelihood as a result of prohibitions and lockdowns. The applicant was amongst the working Canadians for whom the benefits were designed.
4. The CERB, CRB, and CWLB required attestations which the applicant made truthfully and in good faith. As a consequence, he was awarded all three benefits.
5. These benefits provided income to support the applicant in lieu of the income that he was prevented from earning due to prohibitions and lockdowns.
6. On March 31, 2022, the CRA sent letters to the applicant stating he was not eligible for any of the three COVID 19 benefits which he had been awarded, and that he would be required to return all COVID 19 benefits he had received.
7. On April 15, 2022, the applicant requested second reviews, and detailed the reasons that he was in fact, eligible for all the benefits he had received.
8. On September 19, 2022, the CRA sent letters repeating their initial stance of March 31, 2022, with respect to the CRB and CWLB, which was a denial of the applicant's eligibility for both benefits.
9. These second review letters contained errors in fact, and provided no rationale for the decision.
10. The applicant attempted to contact the CRA to discuss the errors in fact and lack of rationale, to no avail.
11. The applicant is seeking remedy through judicial review.

- [Full details about the CRB](#)

Eligibility

▼ Who is eligible for the Canada Recovery Benefit?

The Canada Recovery Benefit will be available to residents who are present in Canada for the 2 weeks in which they are applying for the Benefit and:

- are at least 15 years of age on the first day of the period which they are applying for the Benefit
- have a valid Social Insurance Number (SIN)
- are not eligible for Employment Insurance
- are not employed or self-employed due to the COVID-19 pandemic or are working and have had a reduction of at least 50 per cent in their employment/self-employment income for reasons related to COVID-19
- are available and looking for work and who must accept work where it is reasonable to do so
- had employment and/or self-employment income of at least \$5,000 in 2019 or in 2020, or in the 12-month period prior to their first application for the Canada Recovery Benefit



Sudbury ON, P3A 5C1

Date Mar 31, 2022
Account Number XXX XX3 940
Reference Number C0044447629-001-45

GREGORY M DIAKUN
RR 1 STN MAIN
HANOVER ON N4N 3B8

Dear Sir:

Re: Your application for the Canada Recovery Benefit

We are writing to advise you of our decision regarding your Canada Recovery Benefit (CRB) application.

The CRB is a taxable benefit created to give financial support to employed and self-employed Canadians directly affected by COVID-19 and who are not entitled to Employment Insurance (EI) benefits.

Further to our conversation on March 24, 2022, we have carefully reviewed your CRB eligibility.

Based on our review, you are not eligible.

You did not meet the following criteria:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

For more information on the eligibility criteria for CRB, go to canada.ca/en/revenue-agency/services/benefits/recovery-benefit/crb-who-apply

If you received a CRB payment that you were not eligible for, you will be required to repay the amount.

For more information on how to make a repayment, go to canada.ca/en/revenue-agency/services/benefits/recovery-benefit/crb-return-payment.html.

If you do not agree with this decision, you may request a second review within 30 days of the date of this letter. The second review will be completed by an officer who was not involved in the first review and decision.

Your request must include the following:

- the reason why you disagree with the Canada Revenue Agency's decision; for example not all information was considered or certain facts or details were missing, misinterpreted, or not considered in their proper context;
- any relevant new documents, new facts, or correspondence; and
- general contact information, your current home address, and current phone number.

You can send your request through My Account, by fax to 1-833-325-0555, or by mail to:

Sudbury Tax Centre
Post Office Box 20000, Station A
Sudbury ON P3A 5C1

Yours sincerely,

Barry Lelonde
Manager
Canada Emergency Benefits Validation

Gregory M Diakun
RR1 Station Main
Hanover On N4N 3B8

Barry Lelonde
Manager
Canada Emergency Benefits Validation
Sudbury Tax Centre
Post Office Box 20000, Station A
Sudbury ON P3A 5C1

April 15, 2022
Account Number 462 653 940
Reference Number C0044447629-001-45

Re: Your letter of March 31, 2022 regarding my application for the Canada Recovery Benefit

Mr. Lelonde:

I request a second review of your decision because your assessment is based on revised criteria being applied to my claim.

1. To qualify for the CRB when I applied, there was a requirement of a minimum of \$5000 in self employment income. The word "net" did not appear in the original CRB eligibility criteria and was never part of the attestations which I made in good faith.
 - i) In 2019, I earned \$30,013.33 in self-employment income plus \$943.97 in artist royalties from the Society of Composers, Authors and Music Publishers of Canada (SOCAN), for the use of copyrights resulting from my own works. The sum of these figures exceeds the \$5000 minimum self-employment earnings threshold, and verifies my eligibility for the CRB.
 - ii) In 2020, I earned \$9199.00 in self-employment income plus \$1482.08 in artist royalties from the Society of Composers, Authors and Music Publishers of Canada (SOCAN), for the use of copyrights resulting from my own works. The sum of these figures exceeds the \$5000 minimum self-employment earnings threshold, and verifies my eligibility for the CRB.
 - iii) In the 12 months before the October 12, 2020 date of my first CRB application, I earned \$19,550.50 in self-employment income plus \$1894.50 in artist royalties from the Society of Composers, Authors and Music Publishers of Canada (SOCAN), for the use of copyrights resulting from my own works. The sum of these figures also exceeds the \$5000 minimum self-employment earnings threshold, and verifies my eligibility for the CRB.
2. The CRB was created to give financial support to self-employed Canadians directly affected by COVID-19 who were not entitled to Employment Insurance (EI) benefits. I am a Canadian, I am self-employed, I am directly affected by COVID-19, and I am not entitled to EI benefits.

I am therefore eligible to receive the CRB.

3. Changing the wording of the eligibility criteria months after the rollout of the CRB, and using this change to retroactively disqualify a Canadian who had previously met the criteria is procedurally unfair and harms the very individual the CRB was designed to help.

Sincerely,



Gregory M. Diakun



your no fee chequing account

statement period: October 31, 2019 - November 29, 2019
statement date: November 29, 2019
account number: 0012197018

MR GREGORY M DIAKUN
033045 GREY RD 28 RR 1 STATION
HANOVER ON
N4N3B8

overdraft limit: \$1,000.00
overdraft amount due: \$0.00

details

date	transaction	funds out	funds in	balance
Oct 31	BALANCE FORWARD			382.42
Nov 01	TORONTO HYDRO ELECTRIC SY	92.90		289.52
Nov 01	ROGERS (9 DIGIT ACCOUNT N	56.49		233.03
Nov 04	CHEQUE IMAGE DEPOSIT		141.25	374.28
Nov 04	TRANSFER OUT	16.25		358.03
Nov 05	JELLY CRAFT BAK	18.78		339.25
Nov 05	CHEQUE IMAGE DEPOSIT		830.00	1,169.25
Nov 05	MASTERCARD, PC FINANCIAL	175.78		993.47
Nov 05	BNS MTGE DEPARTMENT	262.89		730.58
Nov 06	HANOVER HOME HA	16.33		714.25
Nov 08	FORESTERS LIFE INSURANCE COMPA	81.00		633.25
Nov 12	PETES DONUTS	8.03		625.22
Nov 12	CHEQUE IMAGE DEPOSIT		141.25	766.47
Nov 12	TRANSFER OUT	16.25		750.22
Nov 12	HANOVER HONDA	124.29		625.93

transactions continue in the next page

your no fee chequing account (cont'd)

statement period: October 31, 2019 - November 29, 2019
 statement date: November 29, 2019
 account number: 0012197018

date	transaction	funds out	funds in	balance
Nov 12	MASTERCARD, CANADIAN TIRE	302.62		323.31
Nov 12	WIGHTMAN TELECOM LTD	38.21		285.10
Nov 12	SWEET CHILI RES	13.08		272.02
Nov 13	BNS MTGE DEPARTMENT	262.89		9.13
Nov 15	SOCAN		385.51	394.64
Nov 15	SOCAN		236.02	630.66
Nov 15	POS MERCHANDISE	44.00		586.66
Nov 15	CHEQUE IMAGE DEPOSIT		569.00	1,155.66
Nov 15	INTERAC E-TRANSFER SEND Greg Diakun	255.00		900.66
Nov 15	MUNICIPALITY OF	366.06		534.60
Nov 18	HYDRO ONE NETWORKS INC	100.56		434.04
Nov 18	CHEQUE IMAGE DEPOSIT		141.25	575.29
Nov 18	TRANSFER OUT	16.25		559.04
Nov 18	HILLCREST MARKE	15.45		543.59
Nov 19	JELLY CRAFT BAK	19.00		524.59
Nov 19	JELLY CRAFT BAK	54.24		470.35
Nov 19	BNS MTGE DEPARTMENT	262.89		207.46
Nov 20	GRANT'S Y.I.G.	6.61		200.85

transactions continue in the next page

your no fee chequing account (cont'd)

statement period: October 31, 2019 - November 29, 2019
 statement date: November 29, 2019
 account number: 0012197018

date	transaction	funds out	funds in	balance
Nov 20	BELL MOBILITY / BELL MOBI	67.80		133.05
Nov 21	SWEET CHILI RES	14.71		118.34
Nov 21	LCBO/RAO #0298	40.85		77.49
Nov 22	BABS DINER	24.30		53.19
Nov 25	CHEQUE IMAGE DEPOSIT		635.00	688.19
Nov 25	SALLY'S RESTAUR	48.90		639.29
Nov 25	POS MERCHANDISE	62.60		576.69
Nov 25	CHEQUE IMAGE DEPOSIT		141.25	717.94
Nov 25	TRANSFER OUT	16.25		701.69
Nov 25	ROGERS (9 DIGIT ACCOUNT N	56.49		645.20
Nov 25	ABM INTERAC WITHDRAWAL	22.25		622.95
Nov 25	ABM INTERAC CHARGE	1.50		621.45
Nov 26	BNS MTGE DEPARTMENT	262.89		358.56
Nov 27	CHEQUE IMAGE DEPOSIT		660.00	1,018.56
Nov 27	MASTERCARD, MBNA CANADA B	300.00		718.56
Nov 28	MEZZETTA RESTAU	90.10		628.46
Nov 29	COFFEE TIME #20	24.27		604.19
Nov 30	INTEREST		0.01	604.20

transactions continue in the next page



your no fee chequing account (cont'd)

statement period: October 31, 2019 - November 29, 2019
 statement date: November 29, 2019
 account number: 0012197018

total funds out	3,658.76	
total funds in		3,880.54
closing balance		604.20

end of your no fee chequing account 0012197018 information

n/a - information is not available.

This statement includes all entries available at the time of processing. There may be transactions that occurred on the last day which are not shown on this statement. They will be on your next statement.

Please review your statement. If you believe your statement is wrong, please contact us within 30 days of the Statement Date, shown above. Your account must be in a positive balance at least one day of the month. Any amount over and above your Overdraft Limit is due immediately. To review the terms and conditions that apply to your statement, please refer to your "Products and Services Agreement".



your no fee chequing account

statement period: November 29, 2019 - December 31, 2019
statement date: December 31, 2019
account number: 0012197018

MR GREGORY M DIAKUN
033045 GREY RD 28 RR 1 STATION
HANOVER ON
N4N3B8

overdraft limit: \$1,000.00
overdraft amount due: \$0.00

details

date	transaction	funds out	funds in	balance
Nov 29	BALANCE FORWARD			604.20
Dec 03	JIMMY THE GREEK	12.42		591.78
Dec 03	BNS MTGE DEPARTMENT	262.89		328.89
Dec 04	LOBLAWS #1010	22.07		306.82
Dec 04	WIGHTMAN TELECOM LTD	36.09		270.73
Dec 04	TORONTO HYDRO ELECTRIC SY	104.18		166.55
Dec 06	GLOBAL VILLAGE CREATIVE INCCPT		1,527.79	1,694.34
Dec 06	MASTERCARD, PC FINANCIAL	522.31		1,172.03
Dec 06	CHEQUE IMAGE DEPOSIT		965.00	2,137.03
Dec 06	VISA, ROYAL BANK/BANQUE	646.38		1,490.65
Dec 06	INTERAC E-TRANSFER SEND Nathaniel	50.00		1,440.65
Dec 09	POS MERCHANDISE	26.00		1,414.65
Dec 09	POS MERCHANDISE	43.50		1,371.15
Dec 09	THREE KRETANS	49.55		1,321.60
Dec 09	THREE KRETANS	49.55		1,272.05

transactions continue in the next page



your no fee chequing account (cont'd)

statement period: November 29, 2019 - December 31, 2019
 statement date: December 31, 2019
 account number: 0012197018

date	transaction	funds out	funds in	balance
Dec 09	FORESTERS LIFE INSURANCE COMPA	81.00		1,191.05
Dec 10	MASTERCARD, CANADIAN TIRE	834.87		356.18
Dec 10	SHOPPERS DRUG M	9.96		346.22
Dec 10	MASTERCARD, MBNA CANADA B	1.09		345.13
Dec 10	BNS MTGE DEPARTMENT	262.89		82.24
Dec 11	POS MERCHANDISE	67.81		14.43
Dec 11	CHEQUE IMAGE DEPOSIT		793.00	807.43
Dec 13	GLOBAL VILLAGE CREATIVE INCCPT		337.63	1,145.06
Dec 13	HYDRO ONE NETWORKS INC	151.79		993.27
Dec 13	GERMANIA MUTUAL INSURANCE	165.00		828.27
Dec 16	0000000Chamsine	4.99		823.28
Dec 16	CHEQUE IMAGE DEPOSIT		141.25	964.53
Dec 16	TRANSFER OUT	16.25		948.28
Dec 16	TRANSFER OUT	43.72		904.56
Dec 16	CHEQUE IMAGE DEPOSIT		226.00	1,130.56
Dec 16	TRANSFER OUT	26.00		1,104.56
Dec 16	MUNICIPALITY OF	4.40		1,100.16
Dec 17	POS MERCHANDISE	20.00		1,080.16

transactions continue in the next page

your no fee chequing account (cont'd)

statement period: November 29, 2019 - December 31, 2019
 statement date: December 31, 2019
 account number: 0012197018

date	transaction	funds out	funds in	balance
Dec 17	BNS MTGE DEPARTMENT	262.89		817.27
Dec 19	BELL MOBILITY / BELL MOBI	50.85		766.42
Dec 19	LCBO/RAO #0639	201.40		565.02
Dec 20	GLOBAL VILLAGE CREATIVE INCCPT		337.63	902.65
Dec 20	FIESTA FARMS IN	9.99		892.66
Dec 20	INTERAC E-TRANSFER SEND Greg Diakun	201.00		691.66
Dec 20	TRANSFER OUT	43.72		647.94
Dec 23	POS MERCHANDISE	53.50		594.44
Dec 23	LCBO/RAO #0298	40.85		553.59
Dec 23	CHEQUE IMAGE DEPOSIT		175.00	728.59
Dec 23	TRANSFER OUT	16.25		712.34
Dec 23	SCOTIABANK - SCOTIALINE	600.00		112.34
Dec 24	TRANSFER IN		160.00	272.34
Dec 27	GLOBAL VILLAGE CREATIVE INCCPT		337.63	609.97
Dec 24	BNS MTGE DEPARTMENT	262.89		347.08
Dec 27	TORONTO HYDRO ELECTRIC SY	69.72		277.36
Dec 27	ROGERS (9 DIGIT ACCOUNT N	56.49		220.87
Dec 27	CRYSTAL CLEANER	16.95		203.92

transactions continue in the next page



your no fee chequing account (cont'd)

statement period: November 29, 2019 - December 31, 2019
 statement date: December 31, 2019
 account number: 0012197018

date	transaction	funds out	funds in	balance
Dec 30	CHEQUE IMAGE DEPOSIT		141.25	345.17
Dec 30	TRANSFER OUT	16.25		328.92
Dec 31	INTEREST		0.02	328.94
	end of transactions			
	total funds out	5,417.46		
	total funds in		5,142.20	
	closing balance			328.94

end of your no fee chequing account 0012197018 information

n/a - information is not available.

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As of September 26, 2022

Print/Save

Submitted documents

Filter: Status ▾



Reference/case number	Date	Document	Description	Confirmation Number	Status	Actions
C0047949337-001-45	August 17, 2022	Simpli November 2019.pdf Simpli December 2019.pdf	Gregory Diakun November 2019 Bank Statement	28I5S6I	Received Received	+ Submit

Items per page: 1 - 10 of 1



Sudbury ON, P3A 5C1

Date Sep 19, 2022
Account Number XXX XX3 940
Reference Number C0047949337-001-45

GREGORY M DIAKUN
RR 1 STN MAIN
HANOVER ON N4N 3B8

Dear Sir:

Re: Second review for your Canada Recovery Benefit application

We are writing to advise you of our decision regarding your request dated April 19, 2022, for a second review of your Canada Recovery Benefit (CRB) application.

Further to our conversation on August 17, 2022, we did not receive the documents requested to confirm your CRB eligibility.

Based on our review, you are not eligible.

You did not meet the following criteria:

- You did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

As you did not meet the eligibility criteria to qualify for CRB, any future CRB applications will be denied unless you can provide proof that you are able to satisfy the eligibility criteria.

If you received a payment that you were not eligible for, you will be required to repay the amount. We understand that it may not be possible for you to pay your debt immediately and in full. We're here to help. The CRA offers various solutions tailored to your personal situation.

In order to access these solutions, please call 1-833-253-7615 or visit us online at: canada.ca/resolving-debt-CRA

If you disagree with the result of the second review, you may apply to the Federal Court for a judicial review within 30 days of the date of this letter. For more information on judicial reviews, go to canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/judicial-review.

Yours sincerely,

S. Constantin
Manager
Canada Emergency Benefits Validation