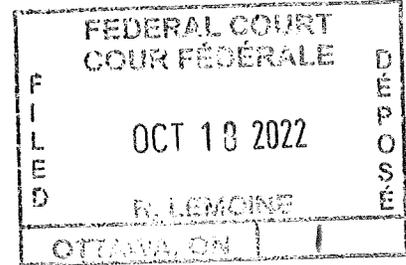


APPLICATION



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 Worker Lockdown 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 Worker Lockdown 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 is based on an error in fact.

1. Procedurally Unfair:

i) When the applicant applied for the Canada Worker Lockdown Benefit, eligibility was based on having earned at least \$5000 in 2020, 2021, or in the 12 months preceding application, from any one of the following eight sources (see document #2, screenshot):

- a) employment income
- b) net self-employment income
- c) maternity and paternal benefits from EI or similar QPIP benefits
- d) EI, regular, special or fishing benefits
- e) amounts from these COVID-19 benefits:

- Canada Emergency Response Benefit (CERB)
- Canada Recovery Benefit (CRB)
- Canada Recovery Caregiving Benefit (CRCB)

- Canada Recovery Sickness Benefit (CRSB)

ii) The applicant's eligible CERB and CRB earnings each exceeded the above \$5000 minimum. The applicant therefore qualified for the Canada Worker Lockdown Benefit.

iii) The CRA preliminary review letter of March 31, 2022 stated that the applicant was ineligible because he did not earn a minimum of \$5000 (before taxes) of employment or net self-employment income in 2020, 2021, or in the 12 months before the date of first application. The applicant did not claim eligibility under this criterion.

iv) In the applicant's request for second review letter of April 15, 2022, the applicant clarified that he was eligible for the CWLB because he received more than \$5000 in income from both the CERB and the CRB.

2. Error in Fact:

i) On August 17, 2022, CRA agent Simon, badge # 39059, who was reviewing the applicant's eligibility for CERB, CRB and CWLB, requested 2019 bank statements from the applicant sufficient to verify a minimum of \$5000 in income.

ii) In compliance, the applicant uploaded these requested documents immediately to the CRA's website. In its second review of the applicant's Canada Worker Lockdown Benefit eligibility, the CRA's letter stated that the requested documents were not received.

This assertion is incorrect.

iii) In its second review of the applicant's Canada Worker Lockdown Benefit eligibility, the CRA's letter states that the applicant is ineligible because he did not meet the criteria to have earned at least \$5000 (before taxes) of employment or net self-employment income in 2020, 2021, or in the 12 months before the date of first application. The applicant demonstrated his eligibility for the CWLB through other allowable criteria: receipt of both the Canada Emergency Response Benefit and the Canada Recovery Benefit in amounts exceeding \$5000.

There was no other rationale provided in the second review to answer the applicant's reason for disagreement: The Canada Revenue Agency's review and finding were based on assessing the applicant's eligibility against the wrong criteria.

iv) If the second review decision to deny the applicant's eligibility for Canada Worker Lockdown Benefits is based on an assessment using incorrect criteria, 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 the wrong criteria used to assess the applicant's eligibility for the Canada Worker Lockdown Benefit, and to request a fulsome rationale for the decision to deny the applicant's eligibility in second review.

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 Worker Lockdown Benefit eligibility criteria from the CRA website.
3. March 31, 2022 letter from the CRA to applicant.
4. April 15, 2022 letter from applicant to the CRA.
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 CRA website.
7. September 19, 2022 letter from the CRA 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.

- You earned **at least \$5,000** in 2020, 2021, or in the 12 months before the date you applied from any of the following sources:
- employment income (total or gross pay)
 - net self-employment income (after deducting expenses)
 - maternity and parental benefits from EI or similar QPIP benefits
 - EI regular, special, or fishing benefits
 - amounts from these COVID-19 benefits:
 - Canada Emergency Response Benefit (CERB)
 - Canada Recovery Benefit (CRB)
 - Canada Recovery Caregiving Benefit (CRCB)
 - Canada Recovery Sickness Benefit (CRSB)



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 Worker Lockdown Benefit

We are writing to advise you of our decision regarding your Canada Worker Lockdown Benefit (CWLB) application.

The CWLB is a taxable benefit created to give temporary income support to employed and self-employed Canadians who cannot work due to a COVID-19 lockdown.

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

Based on our review(s), 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 2020, 2021, or in the 12 months before the date of your first application.

For more information on the eligibility criteria for CWLB, go to <https://www.canada.ca/en/revenue-agency/services/benefits/worker-lockdown-benefit/cwlb-who-apply.html>

If you received a CWLB 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 <https://www.canada.ca/en/revenue-agency/services/benefits/worker-lockdown-benefit/cwlb-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: My Application for the Canada Worker Lockdown Benefit

Mr. Lelonde:

I request a second review of your decision because you have used the wrong criteria to assess my claim.

1. There are eight (8) independent and stand alone sources of income that support CWLB eligibility. I qualified because I received CERB and CRB which were included under the calculation of eligible income.
 - i.) I received \$20,000 in CERB and CRB benefits in 2020.
 - ii.) I received \$18,600 in CRB benefits in 2021.
 - iii.) I received approximately \$22,800 in CRB benefits in the twelve months preceding my first CWLB application.

This income from acceptable sources verifies my eligibility for the CWLB.

2. The CWLB was created to give temporary income support to self-employed Canadians who could not work due to a COVID-19 lockdown. I could not work due to a COVID-19 lockdown. I am eligible for the CWLB.

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

page 3 of 4

7010CA-2017/10-INT



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	5,417.46		
	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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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".

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	2815561	Received Received	Submit

Items per page: 10 1 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 Worker Lockdown 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 Worker Lockdown Benefit (CWLB) application.

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

Based on our review(s), 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 2020, 2021, or in the 12 months before the date of your first application.

As you did not meet the eligibility criteria to qualify for CWLB, any future CWLB 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