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Court File No.:

FEDERAL COURT

ARMAN YOUNANE KHOSROABADI

Applicant

and

ATTORNEY GENERAL OF CANADA

and

CANADA REVENUE AGENCY

Respondents

Notice of Application for Judicial Review

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The claim made 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 Federal Court, 180 Queen Street West, Toronto, Ontario M5V 1Z4.

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.

Dated this ____ day of February, 2024

Issued by: _____
(Registry Officer)

Federal Court of Canada
180 Queen St. West.
Toronto, Ontario
M5V 1Z4

TO: ATTORNEY GENERAL OF CANADA

Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

TO: CANADA REVENUE AGENCY

Sudbury Tax Centre
1050 Notre Dame Avenue
Sudbury ON P3A 5C1

Application

- 1) This is an application, pursuant to subsection 18.1(1) of the Federal Courts Act, RSC 1985, c F-7, for judicial review of a decision rendered by the Government of Canada and Canada Revenue Agency (herein referred to as CRA) in respect of the Applicant's eligibility for the Canada Emergency Response Benefit (herein referred to as the "CERB") under the Canada Emergency Response Benefit Act, SC 2020 c.5, s. 8 (herein referred to as the "CERBA"). The applicant was informed on January 25, 2024, through their CRA account that a decision had been reached, determining their ineligibility for CERB due to the failure to meet the requirement of earning a minimum of \$5,000 either in 2019 or in the 12 months preceding the initial application date.
- 2) The applicant's work history and circumstances are outlined as follows:
 - a. Worked as a Cashier/Front-end associate at Circle K from April 2018 until being let go in early 2019 due to slow business operations.
 - b. Began receiving Employment Insurance (EI) benefits from February 2019 to January 2020.
 - c. Received a total of \$6,045 (gross amount)/\$5,965 (net amount) in Regular EI benefits between February 2019 and September 2019.
 - d. Received a total of \$3,692 (gross amount)/\$3,640 (net amount) in Employment Insurance Family Caregiving Benefits between October 2019 and January 2020.
 - e. Applied for Employment Insurance family caregiving benefits when her sister, the applicant's dependent, was diagnosed with meningioma (brain tumor), impacting daily activities and basic care needs.
 - f. Although offered her job back to start in March 2020, the pandemic led to a more senior colleague continuing to work at the convenience store until COVID restrictions lifted.
 - g. In the meantime, the applicant assumed the role of a full-time caregiver for her sister, who underwent brain surgery on January 28, 2020, facing complications that required regular care and an emergency room visit. The inability to secure in-home care due to COVID restrictions left the applicant with no alternative but to prioritize caring for her sister (dependent).
 - h. Applied for the Canada Emergency Response Benefit (CERB) in April 2020 after confirming eligibility through information from CRA representatives and the original eligibility criteria on the CRA website.
 - i. Multiple CRA representatives assured her by phone that both EI Regular and Family Caregiving Benefits counted towards the \$5,000 minimum income amount eligibility criteria and there were no mention of any expectations that EI was expected to commence or conclude within a specific timeframe.
 - j. Relied on the eligibility criteria available at the time of applying for CERB as provided on the CRA website, a source confirmed by CRA representatives to verify eligibility criteria.
 - k. Relied on the advice provided by CRA representatives, it was understood that eligibility for the Canada Emergency Response Benefit (CERB) would translate to eligibility for the Canada Recovery Benefit (CRB), given that CRB was considered an extension of CERB.

- l. Despite reaching out to the CRA, on multiple occasions, for more information and guidance on benefits and eligibility, the applicant was not advised about potential benefits better suited to her situation (ie: Canada Worker Lockdown Benefit). CRA representatives only offered the CRB as an option to the applicant after the completion of the CERB period.
- m. Applied for and received CERB, totaling \$14,000, during the following periods:
 - i. Period 1: March 15, 2020 to April 11, 2020
 - ii. Period 2: April 12, 2020 to May 9, 2020
 - iii. Period 3: May 10, 2020 to June 6, 2020
 - iv. Period 4: June 7, 2020 to July 4, 2020
 - v. Period 5: July 5, 2020 to August 1, 2020
 - vi. Period 6: August 2, 2020 to August 29, 2020
 - vii. Period 7: August 30, 2020 to September 26, 2020
- n. Applied for and received CRB, totaling \$24,600, during the following periods:
 - i. Period 1: September 27, 2020 to July 17, 2021
 - ii. Period 2: July 18, 2021 to October 9, 2021
- o. Received a letter dated March 13, 2023, requesting documents to support CERB and CRB eligibility. The eligibility criteria for CERB in this letter differed from the original inclusion criteria.
- p. Submitted supporting documents on March 25, 2023, aligning with the eligibility criteria available during the CERB and CRB application, including the 2019 T4E.
- q. Received a review letter from the CRA on April 12 2023, stating that the CERB ineligibility was based on the Applicant not meeting the following criteria:
 - i. *"You did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of your first application."*
- r. Received a review letter from the CRA on April 12 2023, stating that the CRB ineligibility was based on the Applicant not meeting the following criteria:
 - i. *"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."*
- s. Received letters from the CRA on April 13, 2023, indicating amounts owed for CERB (\$14,000) and CRB (\$24,600).
- t. Contacted the CRA, explaining the situation and was advised to submit additional documents supporting caregiver status. Submitted documents on May 3, 2023
 - i. A letter explaining her circumstance
 - ii. Eligibility letter for employment insurance family caregiver benefits
 - iii. Clinical Notes from the dependants ER visit
 - iv. Employment start date letter
- u. Received multiple letters from the CRA indicating balances for CERB and CRB between June 13, 2023, and December 19, 2023
- v. Received a second review for the CERB and CRB applications on January 25, 2024, stating ineligibility and instructing to start repaying the amount, or apply to the federal court for a judicial review.
- w. Engaged with CRA representatives through phone calls on multiple occasions from January 10, 2024, to February 8, 2024, facing challenges in obtaining clear

information and being transferred between different departments without clear guidance.

- i. The applicant was not provided references to their own submitted documents or an analysis explaining the decision regarding eligibility criteria.
- ii. Experienced frequent transfers to various departments within CRA due to representatives' unfamiliarity with the protocol.
- iii. Encountered consistent redirection between CRA and Federal Court representatives as neither could provide answers regarding the next steps.
- iv. Lacked reference to the documentary proof or representations submitted by the Applicant in the decision, which demonstrated the income generated in 2019.
- v. Did not receive a reason in the decision explaining why or how the Applicant did not meet the criteria, considering the proof provided.
- vi. The rapid changes to the CERB and CRB eligibility criteria's caused confusion among the Applicant and CRA representatives resulting in misinformation and misguidance. The constant changes ultimately imposed a burden on the Applicant, who, despite diligently verifying eligibility, experienced hardship and financial stress. This occurred as they relied on the information provided by the CRA and its representatives.

2) The applicant makes application for:

- a. A declaration confirming that the Applicant satisfies the eligibility requirements for the Canada Emergency Response Benefit (CERB).
- b. A declaration confirming that the Applicant satisfies the eligibility requirements for the Canada Recovery Benefit (CRB) or any other benefit deemed suitable at the relevant time.
- c. In the alternative, referring the matter back to the CRA for reconsideration in accordance with such directions as this Honourable Court considers appropriate
- d. An order for costs and
- e. Such other relief as this Honourable Court deems appropriate and just in the circumstances and counsel for the Applicant may advance.

3) The grounds for the application are:

- i. The Applicant was eligible for the benefits as per the eligibility criteria set out on the CRA's website at the time of their application.
 1. The Applicant had income from regular employment insurance in the amount of \$6,045 in 2019.
 2. The Applicant had income from Family Caregiver benefits for adults in the amount of \$3,692.
 3. The Applicant was not able to go back to work in March 2020 due to COVID restrictions.
 4. The Applicant had to be away from work to take care of her sister (dependent) because in-home care was not available due to COVID-19 restrictions.
- ii. The criteria for eligibility at the time (April 2020) include the following:

1. Under drop down titled *“What are the eligibility criteria for the Canada Emergency Response Benefit”*
 - a. *“The benefit will be available to workers:*
 - b. *Residing in Canada, who are at least 15 years old;*
 - c. *Who have stopped working because of COVID-19 or are eligible for Employment Insurance regular or sickness benefits;*
 - d. *Who had income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and*
 - e. *Who are or expect to be without employment or self-employment income for at least 14 consecutive days in the initial four-week period. For subsequent benefit periods, they expect to have no employment or self-employment income.*
 - f. *The income of at least \$5,000 may be from any or a combination of the following sources: employment and self-employment. For those who are not eligible for Employment Insurance you may also include maternity and parental benefits under the Employment Insurance program and/or similar benefits paid in Quebec under the Quebec Parental Insurance Plan as part of the calculation for income.”*
2. Under the drop down titled *“Under what circumstances can I apply for the Canada Emergency Response Benefit?”*
 - a. *“The Canada Emergency Response Benefit is available to those who stop working for reasons related to COVID-19. Examples of stopping to work could include but are not limited to:*
 - b. *You have been let go from your job or your hours have been reduced to zero;*
 - c. *You are in quarantine or sick due to COVID-19;*
 - d. *You are away from work to take care of others because they are in quarantine, sick due to COVID-19; and/or*
 - e. *You are away from work to take care of children or other dependents whose care facility is closed due to COVID-19.*
 - f. *You can also apply for the Canada Emergency Response Benefit if you are eligible for Employment Insurance regular or sickness benefits.*
 - g. *You are not eligible for the Canada Emergency Response Benefit if you quit your job voluntarily.”*
- iii. The rapid and continual changes to the CERB and CRB eligibility criteria's caused confusion among the Applicant and CRA representatives resulting in misinformation and misguidance. Notably, these changes occurred not only during the application period but also years after the application period had closed.

- iv. Evolving eligibility criteria led to a discrepancy in the Applicant's eligibility after their application.
- v. The Applicant faced misinformation, a lack of information and guidance from CRA representatives at the time of applying for CERB and CRB.
- vi. The eligibility criteria at the time of applying were more inclusive.
- vii. Ongoing, subtle changes in criteria leading to the expansion of exclusionary criteria rendered the applicant ineligible according to the new version of the eligibility criteria.
- viii. Over the phone, CRA representatives exclusively presented the CRB to the applicant following the conclusion of the CERB period. They indicated that eligibility for CERB would also extend to CRB. However, the applicant was not informed about the change in the eligibility criteria, nor was she advised about alternative benefits that might have been more suitable for her specific situation (ie: CWLB, etc).

Statutory Provisions:

- ix. Federal Courts Act, R.S.C., 1985, c. F-7, Section 18.1; and
- x. The eligibility criteria that were relied upon at the time of applying.
- xi. Canada Recovery Benefits Act, S.C. 2020, c.12 s. 2
- xii. Canada Emergency Response Benefits Act, S.C. 2020, c.5 s.8

This application will be supported by the following material:

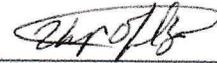
- a) Affidavit of Arman Younane Khosroabadi (including supporting appendices) and
- b) Such other material as Counsel may advise and this Honourable Court may permit.

Request for material pursuant to Rule 317:

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

- 1) Copies of ALL documents and information relating to the Applicant's account in the possession of the Canada Revenue Agency, specifically those relating to the Applicant's submissions for the CERB and CRB, which may include but are not limited to:
 - a. All audits, appeals and objections
 - b. A certified copy of the record, being all documents and phone recordings that were before the CRA at the time it considered the Applicant's eligibility for CERB and CRB.
 - c. Internal notes, reports, briefing notes, working papers, working notes, diary entries, telephone notes, correspondence, and deliberations relied upon by the CRA (including its current or former officers, employees or agents) relating to the CERB and CRB application of the Applicant; and
 - d. Correspondence between the Applicant and/or his representative and the CRA, working papers, memoranda, notices of assessment or reassessment and letters relating to the CERB and CRB application of the Applicant.
 - e. Every version of the eligibility criteria for CERB and CRB, along with their respective release dates, as presented on the CRA website and through any other available means from 2020 to the present date.

Dated this 21 day of February, 2024



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