

FILED	FEDERAL COURT COUR FÉDÉRALE	DÉPOSÉ
	MAY 21 2024	
	LINDSAY KRIEGER	
	EDMONTON, AB	

Court File No:

T-1184-24

FEDERAL COURT

BETWEEN:

CHRISTOPHER JAMES SHTOKAL

Applicant

and

C.S. 05/21/24 — ~~CANADIAN REVENUE AGENCY~~ — MAY 21, 2024 — C.S.
ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION

APPLICATION UNDER section 18.1 of the *Federal Courts Act* for judicial review of a decision of the Canadian Revenue Agency

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 the Federal Court of Canada in Edmonton, Alberta.

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.

MAY 21 2024

(Date)



Issued by: *(Registry Officer)*

**LINDSAY KRIEGER
REGISTRY OFFICER
AGENT DU GREFFE**

Address of local office:

**Rice Howard Place
10060 Jasper Avenue
Tower 1, Suite 530
Edmonton, Alberta
T5J 3R8**

TO: Canadian Revenue Agency
P.O. Box 3800 Stn A
Sudbury, Ontario
P3A 0C3

Application for Judicial Review

This is an application for judicial review in respect of a decision made by the Canadian Revenue Agency (the "CRA").

The following facts are relevant and material for the purposes of this application:

Decision under review

1. On or about April 19, 2024 the CRA, in response to the applicants requested second review of the applicants eligibility to receive the Canada Emergency and Recovery Benefits ("CERB") provided to the applicant from March 15 to September 26 of 2020, chose to exercise its discretion and for a second time denied the applicants eligibility for CERB (the "Act"), totaling a sum payment and subsequent debt to the applicant of \$14,000 (the "Debt"). These decisions with respect to the Debt will be referred to together in this application as the "Decision".
2. The Decision was communicated and discussed by the CRA with the applicant first via telephone call at 10:40am, Friday, April 19, 2024.
3. The Decision was also communicated by the CRA to the applicant via a mailed letter, dated April 23, 2024. Received by the applicant April 26, 2024.
4. All statutory references in this notice of application will be to the Act unless otherwise indicated.

Statement of facts

5. On or about the first week of March, 2020 the applicant was hired by Walmart Canada in Vegreville, Alberta for the position of "Part- time flex Overnight fulfillment associate."
6. Under the specific position title of "part-time flex associate" at Walmart the applicant was promised approx. 28 hrs/week but is subject on average to receiving 1-2 (8 hr) shifts a week, often less. On average grosses little more than about \$13,000 a year.
7. The applicants first working shift at Walmart was March 14, 2020.

8. March 14, 2020 was also the first day that the province of Alberta declared a state of emergency in response to the onset of the Covid virus pandemic. The applicant was now considered an "essential employee" working in an extremely public environment during what was considered at the time an unknown deadly virus possibly communicable through touch and respiration.

9. Due to imposed restrictions on the Canadian public regarding safety concerns during the onset of the viral pandemic, and how it affected the public's ability to go to work normally, the Canadian Government introduced CERB as a federal aid for those in need financially. CERB was opened to the public for application on or about April 6, 2020.

10. After the CERB program was introduced on April 6, 2020 the applicant shared in some of the public's confusion expressed in the media as to whether they met the criteria to apply for CERB, so the applicant chose to attempt to take on any extra shifts when they came about to avoid seeking financial assistance and to prove to his new employer he wanted to work more.

11. By late May of 2020 despite not being able to accurately access his wage or paystubs due to third party computer error, and still being confused on CERB criteria, the applicant decided to estimate his eligibility and apply for CERB because he was not receiving enough work shifts and felt he desperately needed the financial help as finding an additional job was near impossible during the beginning of the pandemic shutdown.

12. May 27, 2020 the applicant applied for and received payment for the first 3 pay periods of CERB. The applicant continued to subsequently apply for and receive payment for the following 4 pay periods until the CERB program was discontinued September 26, 2020.

13. Spring of 2021 the applicant filed his income tax, including paying \$2138.98 tax on the CERB. The applicant received his return. The applicant would subsequently file next year's taxes and also receive the return, as well as continued to receive all government appointed financial credits provided for his income bracket (GST cheques, etc.)

14. On or about June 27, 2023 the applicant received a letter dated June 21, 2023 from the CRA communicating for the first time their decision to deny his eligibility for the CERB he received 3 years prior citing the applicant earned more than the \$1000 limit of income during each CERB pay period and that the applicant could request a second

review within 30 days and in his request for a second review, cite any information not considered, facts or details that were missing/ misinterpreted/ or not considered in their proper context.

15. July 18, 2023 the applicant filed a request for a second review by the CRA for redetermination of his eligibility for CERB, citing his reasons for disagreeing, brought to attention that in pay period seven of CERB he did not exceed the \$1000 income limit, as well as provided necessary information and details to be considered in context when the CRA revisited the applicants case. The applicant expressed to be reconsidered for his eligibility for CERB based upon the details of his unique personal situation rather than strictly on the minimal earning income limit, asking for leniency on pay periods that barely exceeded the \$1000 limit, or complete forgiveness of the Debt should the CRA agree that the applicant was still in good faith and had a specific situation that warranted the applicant deserving of CERB despite the minimal amounts of income earned over \$1000.

16. April 19, 2024 the applicant was informed in a telephone call from the CRA that upon redetermination in a second review his eligibility for CERB was once again denied. During the phone call discussion the CRA agent advised the applicant that she could not change this second review decision but that the details of his case he presented in her opinion warranted reasonable cause to present his case to the Federal Court for a judicial review if he wished to ask for leniency against certain pay periods or waiving of the Debt dependent on the specific information and details of his case.

The applicant makes application for an Order:

1. In the nature of *certiorari* to quash and set aside the Decision, and return the matter to the CRA for redetermination, on the basis that the Decision is:

- a. Unreasonable;
- b. An improper exercise of the CRA's discretion;
- c. Significant harm to the applicant;
- d. Goes against the good faith of providing the financial.aid to those in need;
- e. Based on errors of fact.

The grounds for this application are that:

1. The CRA constitutes a federal board, commission or other tribunal for the purposes of section 18.1 of the *Federal Courts Act*.

2. In making the Decision, the CRA:

a. Unreasonably failed to properly consider the applicants circumstances and specific situation in context, including by their own admission during an April 19, 2024 phone call with the applicant in which the CRA admitted the amounts over the \$1000 limit were minimal at best, and due to the applicants specific stated circumstances his case likely had grounds to be brought forth in federal court for judicial review.

b. Unreasonably asks that the applicant not be refusing available work to be eligible for CERB while unreasonably requesting the applicant never exceed \$1000 in earned income while working an unpredictable ever changing work schedule as a brand new employee at a minimum wage job.

c. Unreasonably set the limit of \$1000 as a living wage, without the option to openly claim any extra earned income as per other government financial aid programs such as E.I. and AISH.

d. Unreasonably took 3 years to inform the applicant that he did not qualify for CERB after previously approving his eligibility, and continuing to file his tax returns and other government issued cheques.

e. Improperly exercised discretion by refusing financial aid to a poverty level income applicant working as a new hire at a minimum wage part time job as an essential employee in a public setting during the beginning of deadly viral pandemic while the outside job market was shut down due to quarantine.

f. Improperly used their discretion by their own admittance by agreeing with the applicant during an April 19, 2024 phone call that indeed most of the pay periods barely exceeded the \$1000 imposed limit, including one which was a minimal \$38.83 over, all which likely resulted from the applicant attempting to show good faith to his new employer, attempting to avoid needing financial aid by taking on an extra shift when it was offered, and to not be actively refusing work should the applicant apply for CERB.

g. Caused harm to the applicant by financially and emotionally devastating the low income earning applicant with the Debt which will unfortunately likely require the applicant to seek government financial aid again to support payment of the Debt while the applicant seeks better employment.

h. Acted in bad faith of the original intention to help those in honest need of a financial aid program such as CERB during a difficult time such as the Covid pandemic by disqualifying a poor person working a single minimum wage part time essential job during an active pandemic that desperately needed the help and themselves acted in good faith, because of minimal mathematical discrepancies and thus otherwise encouraging the applicant to not work in order to gain government financial aid.

i. Erred in fact by making the claim that during pay period 7 of CERB the applicant exceeded the \$1000 earned income limit when the applicant earned \$977.20 net pay during this period.

j. Erred in fact of the total of the Debt by not crediting the applicant with the \$2138.98 the applicant previously paid in tax on the received CERB aid.

3. Such further and other grounds as the applicant may argue and this Honourable Court accept.

This application will be supported by the following material:

1. An affidavit of Christopher James Shtokal
2. An affidavit of records of Christopher James Shtokal
3. A copy of the PDF. report (9 pages) submitted to the CRA by the applicant for second review request of CERB eligibility dated July 18, 2023, providing the requested paystubs, bank statements, employer letter, and 2020 T-4s to the CRA. CRA case reference # - C0045439348-001-45.
4. An itemized breakdown by the applicant of the pay earned by the applicant for each of the 7 CERB pay periods the applicant received.

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

1. All written instructions, reports, working papers, notes, letters, emails, memoranda, inter-office correspondence and other documents which the CRA considered or had when the Decision was made.

2. A transcript or copy of the CRA recording of the phone call made by the CRA to the applicant at 10:40am to 11:03am, April 19, 2024 from the CRA phone number 1-(709) 327-9458.

MAY 21, 2024
Date

CHRISTOPHER J. SHTOKAL
Signature of applicant

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