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	July 15, 2024 15 juillet 2024
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Court File No.

FEDERAL COURT

BETWEEN:

VITALI TCHERKAS

Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

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.

Dated: July 7, 2024

Issued by:

(Registry Officer)

Address of local office:

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, Ontario, K1A 0H9

TO: The Administrator
Federal Court of Canada

TO: The Minister of Canada Revenue Agency as Represented by the Attorney
General of Canada
Canada Emergency Benefits Validation
Sudbury Ontario, P3A 5C1

AND TO: Attorney General of Canada
Department of Justice
Civil Litigation Section
Bank of Canada Building
234 Wellington Street, East Tower
Ottawa, Ontario, K1A 0H8
Solicitors for the Minister of Canada Revenue Agency and Attorney
General of Canada

APPLICATION

This is an application for judicial review in respect of the decisions of the Minister of the Canada Revenue Agency (the “Minister” or “CRA”), through its Agent at the Canada Emergency Benefits Validation Unit, under CRA Reference # C0061704424-001-45, dated June 17, 2024 (collectively the “Second Review Decisions”). These decisions concern the Applicant’s Canada Emergency Response Benefits (CERB), Canada Worker Lockdown Benefit (CWLB), and Canada Recovery Benefit (CRB) applications (the “Applications”). In the Second Review Decisions, the Minister determined that the Applicant is not eligible for:

1. CERB:

- The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, or in the 12 months before the date of his application.
- The Applicant did not stop working or have his hours reduced for reasons related to COVID-19.

2. CRB:

- The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, 2020, or in the 12 months before the date of his application.
- The Applicant did not stop working or have his hours reduced for reasons related to COVID-19.

3. CWLB:

- The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2020, 2021, or in the 12 months before the date of his application.
- The Applicant did not stop working or have his hours reduced for reasons related to COVID-19.

THE APPLICANT MAKES AN APPLICATION FOR:

1. A declaration, pursuant to section 18.1 of the *Federal Courts Act*, that:

- a. The Applicant was eligible for CERB, CRB, and CWLB;
 - b. The Minister erred in issuing the Second Review Decisions in light of the evidence presented;
 - c. The Minister's reasoning underlying the Second Review Decisions is incorrect and unreasonable;
 - d. The Minister's Second Review Decisions failed to observe principles of natural justice and procedural fairness;
 - e. The Minister failed to recognize that short-term rental income constitutes self-employed income;
 - f. The Second Review Decisions are unlawful.
2. An Order in the nature of *certiorari* quashing and setting aside the Second Review Decisions.
 3. Determination that the short-term rental income in this case is self-employed income.
 4. Costs of the Application.
 5. Such further and other relief as may be appropriate and this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

THE APPLICANT

6. The Applicant is a self-employed individual who has been operating a short-term rental business from his house since late 2016, advertising mainly on Airbnb,

Booking.com, and Kijiji; and acquiring profit in 2017, 2018, and 2019; and continued periodically advertising his unit on Airbnb through 2023.

7. The Applicant earned a net income of \$5,008 from his short-term rental business in 2019, with gross earnings totaling \$15,116.60, which included various deductions such as an occupancy tax, in the amount of \$604.66 and Airbnb host fees, in the amount of \$453.49.
8. The Applicant was forced to temporarily close his short-term rental business in March 2020 due to COVID-19 pandemic-related restrictions enforced by the government. Despite attempts to restart the business in 2023, he ultimately decided to pursue self-employment in the construction sector.

COVID-19 PANDEMIC

9. On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic, followed by a state of emergency declaration in Ontario on March 17, 2020. This declaration started the quick implementation of restrictions on gatherings and commercial activities.
10. The Canadian government launched COVID-19 benefits in March 2020 to support individuals affected by the pandemic restrictions which significantly impacted the Applicant's ability to earn income from his short-term rental business.

THE LOCKDOWNS

11. The COVID-19 lockdowns in Ontario between 2020 and 2022 occurred in several phases:

(1) First Lockdown commenced in March 2020. Ontario declared its first state of emergency on March 17, 2020, leading to the initial lockdown which involved closing non-essential businesses and implementing social distancing measures.

(2) Second Lockdown (December 2020 to January 2021). A province-wide lockdown was announced on December 21, 2020, starting on December 26. This lockdown lasted for four weeks in Southern Ontario and two weeks in Northern Ontario due to a surge in cases.

(3) Third Lockdown (April 2021): Ontario entered another lockdown on April 3, 2021, followed by a stay-at-home order on April 7 due to rising cases and hospitalizations

(4) Fourth Lockdown (January 2022): Amid the spread of the Omicron variant, Ontario implemented restrictions again on January 5, 2022, closing indoor dining, gyms, and other indoor venues.

THE BENEFITS PROGRAMS

12. **CERB:** Established under the *Canada Emergency Response Benefit Act* to provide financial support to employed and self-employed workers affected by COVID-19 from March 15, 2020, to October 3, 2020.

13. **CRB:** Governed by the *Canada Recovery Benefits Act*, aimed at supporting economic recovery in response to COVID-19 to employed and self-employed

workers directly affected by the pandemic and not entitled to Employment Insurance benefits between September 27, 2020, and October 23, 2021.

14. CWLB: Provided under the *Canada Worker Lockdown Benefit Act* for residents affected by lockdown orders between October 24, 2021, and May 7, 2022.

ISSUANCE OF THE FIRST DECISION

15. On May 9, 2023, the CRA requested proof of the Applicant's earnings, stating the eligibility criteria for various COVID-19 benefits obtained by the Applicant during the following periods:

- **CERB:** March 15, 2020 to September 16, 2020
- **CRB:** September 27, 2020 to October 23, 2021
- **CWLB:** December 19, 2021 to January 1, 2022

16. On July 13, 2023, the CRA issued three decisions stating that the Applicant is not eligible for the benefits programs for the following reason(s):

- **CERB:** The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, or in the 12 months before the date of his application.
- **CRB:** The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, 2020, or in the 12 months before the date of his application.
- **CWLB:** The Applicant 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.

THE SECOND REVIEW DECISIONS

17. On June 17, 2024, CRA issued three Second Review Decisions stating that the

Applicant did not meet the eligibility criteria for all three benefits because:

CERB:

- The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, or in the 12 months before the date of his application.
- The Applicant did not stop working or have his hours reduced for reasons related to COVID-19.

CRB:

- The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, 2020, or in the 12 months before the date of his application.
- The Applicant did not stop working or have his hours reduced for reasons related to COVID-19.

CWLB:

- The Applicant did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2020, 2021, or in the 12 months before the date of his application.
- The Applicant did not stop working or have his hours reduced for reasons related to COVID-19.

REVIEWABLE ERRORS

18. By making the Second Review Decisions, the Minister erred in law, based the

decisions on erroneous findings of fact, acted unreasonably, and failed to

observe principles of natural justice and procedural fairness by:

(a) failing to provide justification, transparency, and intelligibility in their decisions;

(b) failing to consider the evidence submitted by the Applicant supporting eligibility for CERB, CRB, and CWLB;

(c) failing to account for the Applicant's continuation of his Airbnb business post-2020;

- (d) misinterpreting and misapplying the definition of short-term rental income as rental income and therefore non-self-employed income;
- (e) raising new allegations of unmet criteria in the Second Review Decisions without providing the Applicant sufficient opportunity to respond;
- (f) failing to accommodate the Applicant's limited command of English and pressing for an earlier meeting despite the Applicant's job commitments;
- (g) failing to clarify information that was misunderstood by the Applicant when requested.

19. Such further grounds as may be appropriate and to this Honourable Court may seem just.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. Affidavits that the Applicant may file in accordance with the *Federal Court Rules*; and,
2. Such further and other material as may seem appropriate and this Honourable Court may permit.

THE APPLICANT REQUESTS THAT THE MINISTER SEND CERTIFIED COPIES OF THE FOLLOWING MATERIALS THAT ARE NOT IN THE POSSESSION OF THE APPLICANT BUT ARE IN THE POSSESSION OF THE MINISTER, TO THE APPLICANT AND TO THE REGISTRY:

1. Notes, correspondence, commentaries, memoranda, summaries, and any other records related to the Minister's review of the Applicant's applications, including drafts of these documents. Including, but not limited to:
 - a. Records from the Special Assessment Observations notepads;
 - b. T1 Case Notepad Notes;
 - c. Case Analysis Report; and,
 - d. Second review report.
2. Reports, analyses, summaries, or conclusions of any internal or external advisors or subject-matter experts regarding the analysis of the application, policies, and laws on self-employed and rental income.
3. Internal policies and guidelines regarding self-employed income, rental income, CRB, CERB, and CWLB.
4. Such further and other documents as are in the Minister's possession that may pertain to the Minister's original and second review decisions.

DATED at Ottawa, Ontario, this 15th day of July, 2024.

Vitali Tcherkas

Vitali Tcherkas,
The Applicant (Self-Represented)
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Ottawa, ON K1S 2X2
Tel: 613-894-1500