

Court File No.

FEDERAL COURT

Between:

JOHN CONTOIS

Applicant

and

HIS MAJESTY THE KING

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.

Issued by: _____
3rd Floor, 635 – 8 Ave SW
Calgary, AB T2P 3M3

TO: Attorney General of Canada
Department of Justice Canada
Prairie Regional Office
300, 10423-101 Street
Edmonton, Alberta T5H 0E7

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Application for Judicial Review

The Applicant seeks leave of the Court to commence an application for judicial review of the decision of the Social Security Tribunal of Canada, dated December 5, 2023, denying the Applicant's request to backdate an application for Employment Insurance benefits.

The following facts are relevant and substantial for the purpose of this application:

1. The Applicant lost his job on March 31, 2020.
2. The Applicant is diagnosed with ADHD and cognitive disability.
3. In or around March 2020, the Applicant attempted to contact the Employment Insurance Commission with respect to submitting an application for benefits. However, the Applicant was unsuccessful in his attempts.
4. In March 2020, the Applicant the contacted the Canada Revenue Agency ("CRA") to discuss his options for unemployment benefits, and was assisted by a representative of the CRA to select and set up CERB benefits via telephone.
5. During his telephone conversation with the CRA, the Applicant was advised that all programs were similar, and the CRA program would be easier since the Applicant already had a "CRA My Account" set up.
6. On April 18, 2022, the Applicant was informed by his accountant that he should have received Employment Insurance ("EI"), not CERB benefits.
7. The Applicant's accountant advised that being in the wrong program made it necessary to pay back CERB supports that would not need to be paid back had the Applicant been receiving Employment Insurance.
8. The Applicant met all requirements for an EI claim when he lost his job, and was unsuccessful in finding alternate employment.
9. The Applicant submitted an application for EI benefits on April 22, 2022. Due to the Applicant's ADHD diagnosis, he was assisted by a Service Canada employee, Tracey McCormick, using a 3rd party authorization form.
10. Due the application process on April 22, 2022, the Applicant requested that the EI claim be backdated to the date he lost his job, being March 31, 2020.
11. On November 10, 2022, the Social Security Tribunal of Canada made a decision to dismiss the first decision the Applicant's request to backdate the Employment Insurance claim (GE-22-2617 and GE-22-2618)

12. On December 5, 2022, the Social Security Tribunal offered an Invitation to Case Conference to discuss the error in law made by the General Division and backdating the applicant's claim. (AD2-1)
13. The Employment Insurance Commission declined to attend the Case Conference.
14. On March 15, 2023, the Applicant was granted Leave to Appeal, and the case was sent back to the Social Security Tribunal, General Division, due to an error in law made in the first decision.
15. The member recommended that the General Division should decide if the claim should be backdated to September 27, 2020, or October 3, 2020. (AD-22-892 and AD-22-893)
16. On August 17, 2023, the General Division dismissed the application on the grounds that the applicant had not shown good cause for the delay in filing the Employment Insurance claim. The two case numbers were merged into one. (GE-23-979)
17. On December 5, 2023, The Social Security Tribunal of Canada refused the applicant Leave to Appeal, on the grounds that it was unlikely to succeed in an appeal and applicant did not have just cause for the delay in filing an Employment Insurance claim. (AD-23-820)

The Applicant accordingly makes application for:

1. A writ of certiorari quashing the Social Security Tribunal's decision of December 5, 2023, refusing Leave to Appeal;
2. An Order referring this matter for reconsideration by a new Panel at the Social Security Tribunal; and
3. Such further and other relief as may be advised and this Honourable Court considers appropriate in the circumstances.

The grounds for this application are that:

1. The Social Security Tribunal of Canada is a federal tribunal for the purposes of section 18.1 of the Federal Courts Act.
2. In making the decision, the Social Security Tribunal of Canada unreasonably denied the applicant's application to backdate his EI claim.
3. The Applicant met all requirements for filing an EI claim and backdating it.

4. The Applicant's disability and overwhelmed system were additional barriers to filing the EI claim.
5. The Applicant, once enrolled in a COVID-19 support program, met the filing requirement believing he was in the proper program.
6. The Social Security Tribunal's decision is unreasonable since, among other things, the reasons given for the decision are inadequate and the decision was not justified based on the facts relevant to the decision

This application will be supported by the following material:

1. Record of Employment
2. Medical records
3. Affidavit of John Contois
4. Exhibits

The Applicant requests that the Social Security Tribunal of Canada send a copy of the following material that is not in the possession of the Applicant but is in the possession of the Social Security Tribunal of Canada to the Applicant and to the registry.

1. All written instructions, letters, e-mails, memoranda, and other documents which the Social Security Tribunal of Canada had when the last decision was made.

December 18, 2023
Applicant



John Contois
738 3 Avenue S.W. Unit 515
Calgary, AB T2P 0G7