Challenging CERB and CRB overpayment notices

Speakers:

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What you can expect today

Lunch and Learn Series

1 hour in total (presentation and Q+A)

This is legal information, not legal advice.

Recording and slides will be sent out afterward.

ASL interpretation is provided. Closed captioning is also enabled.

The information is current as of today's date April 4, 2023

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Land Acknowledgement

CLEO's work takes place across the home and traditional territory of the Mississaugas of the Credit, the Haudenosaunee, and the Wyandot peoples, on land that many of us know as Ontario.

As we provide legal information today, we acknowledge the ongoing impact of colonization and anti-Indigenous racism, built into our laws and legal systems, resulting in devastating pain and inequality for Indigenous Peoples of every generation.

We also recognize the incredible amount of work that Indigenous Peoples contributed to the Calls to Action in the Truth and Reconciliation Commission Report calling for Equity for Indigenous Peoples in the Legal System.

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1. Introduction and Background

Canada Emergency Response Benefit (CERB)

- Ran from March 15 – September 26, 2020
- Requirements (more information available here):
  - residing in Canada and at least 15 years old
  - who had employment and/or gross self-employment income of at least $5,000 in 2019 or in the 12 months prior to the date of their application
  - who stopped working because of reasons related to COVID-19 **or** were eligible for Employment Insurance regular or sickness benefits **or** have exhausted their Employment Insurance regular benefits or Employment Insurance fishing benefits between December 29, 2019 and October 3, 2020
  - who did not quit their job voluntarily
  - valid Social Insurance Number

Canada Recovery Benefit (CRB)

- Ran from September 27, 2020 – October 23, 2021. For self-employed or workers not eligible for Employment Insurance
- Requirements (similar to CERB) – (full list available here):
  - residing in Canada and at least 15 years old
  - who had employment and/or net self-employment income of at least $5,000 in 2019, 2020 or in the 12 months prior to the date of their application;
  - who were not employed or self-employed for reasons related to COVID-19 **or** who had a 50% reduction in their average weekly income compared to the previous year due to COVID-19
  - who did not quit their job voluntarily
  - available and looking for work; OR working with a reduction in employment/self-employment income due to COVID-19
  - valid Social Insurance Number

- Canada Recovery Caregiving Benefit
  - Ran from September 27, 2020 to May 7, 2022.
  - Eligibility information available here.

- Canada Recovery Sickness Benefit
  - Ran from September 27, 2020 to May 7, 2022.
  - Eligibility information available here.

Common Reasons for Alleged CERB and CRB Overpayments

- Not meeting the $5,000 income threshold
- Reduction/loss of income not related to COVID-19
- There was no 50% reduction in income
- Self-employment income: was this work truly self-employment income? And/or, do you have enough paperwork to substantiate it?
- Investigation expands to consider other eligibility requirements

Preliminary Determination: Did individual meet benefit eligibility criteria?

- A person who has been asked by the CRA to verify their eligibility, or who has been notified that have been found ineligible, should review the eligibility criteria and confirm whether they met them.
  - E.g. did they earn the $5000 income within the relevant period?

Preliminary Determination: Did individual meet benefit eligibility criteria?

- If you are assisting someone with an overpayment who says they met eligibility requirements:
  - Gather documents in support of their eligibility
  - Try to glean from the person the procedural history with the CRA from the outset (e.g. phone calls with CRA agents, any letters from the CRA)
- The CRA does not have discretion to waive eligibility requirements. If the client does not meet eligibility criteria, consider a financial hardship request, which will be discussed later in the presentation.

2. CRA Reviews

CRA Reviews: Process

- Timelines can vary depending on stage of the review process
  - E.g. letter stating that CRA is reviewing file to verify eligibility may provide for timeline, such as 45 days, to provide supporting documents
  - E.g. initial decision letter stating that person is ineligible for CERB/CRB may state that they have 30 days to request a Second Review by the CRA
  - **Check all letters from the CRA and/or call the CRA to confirm timelines.**
  - You can request extensions of deadlines if you need more time. CRA is generally reasonable.

CRA Reviews: Process

- CRA agent will usually contact person by phone
  - Can choose to answer agent's questions over the phone
  - Alternatively, can ask agent what their questions are and write them down, then state that they will respond to all questions in writing.
  - If you are assisting someone and wish to speak to the CRA agent, you will need the client present. We have found that CRA agents do not have, and do not abide by representative forms.
- Submit through:
  - MyCRA online account
  - Fax – will take an additional two weeks for agent to receive, sometimes longer

Strategies for CRA Reviews

- **Format:** can provide simple written explanation in a letter with supporting documents attached
- Be as detailed and organized as possible
- Provide information in chronological order. E.g.:
  - Date that individual began working for employer; date of lay-off and reason why; date that the person first applied for CERB or CRB; date that they were notified of ineligibility; etc.
- Tell personal story, try to elicit empathy

Strategies for CRA Reviews

- Include any evidence needed to prove eligibility, such as:
  - Record of Employment, termination or lay-off letter, paystubs
  - Bank statements with relevant deposits highlighted
  - E-transfer emails, invoices, receipts, bills, ledgers, work logs, contracts, credit card statements to show expenses
  - Letters from clients, text messages, emails
  - *__Note__: Notice of Assessment not sufficient to prove income
- Reminder that net income after expenses = $5,000 for CRB

Questions?

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3. Judicial Review at the Federal Court

Disputing a CRA Second Review Decision: Judicial Review

- If a claimant disagrees with a negative CERB/CRB/CRCB Second Review decision, their only legal recourse is to file an application for judicial review with Federal Court.
- An application for Judicial Review must be made within 30 days of the date that the Second Review decision was communicated to the claimant.
- It is possible to request an extension (Motion for Extension of Time), but success is not guaranteed.

Judicial Review: Overview

- Starting a Judicial Review: The Federal Court Registry Office has been providing some self-represented individuals with templates for the document to commence the Judicial Review (Notice of Application).
- Judicial Review is supported by written, rather than oral, evidence.
- An applicant will file an affidavit within 30 days of the commencement of the Judicial Review. An applicant will include all documents and information to support their application in the affidavit.

Judicial Review: Practicalities

- In our experience, the Respondent will often offer to settle the Judicial Review if the case has merit.
- In settlement, the Respondent will refer the file back to the Canada Revenue Agency for redetermination.
- If the Respondent offers to settle, and have the file sent back to CRA for redetermination, we generally recommend claimants accept, as this is the likely remedy on judicial review.
- If the applicant is unsuccessful, usually there have not been costs awarded against the applicant. Where there have been, the awards have been between$250 and $800.

Judicial Review: To Pursue or Not to Pursue?

- Obtain legal advice if possible. Due to the significant overpayment at stake, and the low downside risk, we recommend considering judicial review where cases have merit, and client clearly meets the benefit eligibility criteria.
- While the process may seem daunting, there are numerous self-represented individuals, and as such the Federal Court and the Department of Justice are becoming accustomed to self-represented individuals.
- The most important point is to encourage thoroughness in obtaining any and all documents that could support their eligibility, and submitting them to the court, and trying to be as clear as possible in telling their story.

Judicial Reviews at the Federal Court: Resources

- **Federal Court of Canada Resources**
  - How to file an application for judicial review
  - Procedural chart for judicial review applications
  - Deadline guidelines
  - Deadline calculator

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4. Financial Hardship Applications

Benefits issued through the CRA or Service Canada?

- Different financial hardship processes depending on whether the benefits were issued through the CRA or Service Canada.
- For clients who were eligible for Employment Insurance (EI) benefits on March 15, 2020 – September 26, 2020, their EI claim became a CERB payment through Service Canada.
- All other COVID-19 benefits were issued through the CRA.

Service Canada issued CERB: Financial hardship

- Information about overpayments can be found on the CRA website here.
- Financial hardship applications available.
- Hardship is determined on the basis of the claimant's ability to pay the debt in the foreseeable future and whether a payment will affect the person's ability to pay for necessities .
- Possible outcomes: renegotiation of payment arrangement, suspension of collection activity, and/or other suitable measures .

Service Canada issued CERB: Financial Hardship Application

- The individual must contact the CRA if paying CERB debt would cause financial hardship
- There is a “Contact the CRA” tab on the page about this type of debt (here)
  - Phone number: 1-866-864-5823

Service Canada issued CERB: Applying for financial hardship

- Client to complete a financial questionnaire on the phone
- Provide information regarding:
  - Income
  - Rent
  - Expenses such as phone, internet, food, clothing, public transit, health care
  - Whether they are employed/looking for a job
- Financial hardship application will subsequently be mailed to the client
- The application explained all the documents that needed to be included

5. Requesting Repayment Plans for CRA-issued COVID-19 Benefits

Repayment Plan for CRA-issued benefits

- Individuals who received CRA-issued COVID-19 benefits, but did not meet the eligibility criteria may contact the CRA to request a repayment plan: 1-833-253-7615.
- Our experience: no formal process, and no financial verification process.
- May be able to have very low ($5.00 per month) repayment plan based on verbal statement alone.
- Agents vary. If request denied, ask to speak to manager, or call back.

End of Presentation!
Questions?

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Resources and supports:

CLEO's Steps to Justice

I got the CERB but did not qualify. What can I do?

Canada Revenue Agency

Payment Arrangements and Financial Hardship Provisions
Set up a payment arrangement

Getting late payment penalties or interest cancelled
Cancel or waive Penalties and Interest – CRA FORM

How to report CERB on your income tax return.

Resources and supports:

Federal Court of Canada Resources – for filing a Judicial Review

- How to file an application for judicial review
- Procedural chart for judicial review applications
- Deadline guidelines
- Deadline calculator

Contact your local community legal clinic for support

Find your local clinic or call 1-800-668-8258

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Campaigns – Take Action!

Articles of interest:

Mothers receiving Canada Child Benefit payments deserve a CERB amnesty

Rabble.ca

The end of large-scale pandemic benefits: What it means for low-income residents of Ontario in 2022

Open Policy Ontario

Poor people don’t have the resources to pay back CERB

John Stapleton, Open Policy Ontario

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Calls to action: Truth and Reconciliation

- **Truth and Reconciliation Commission of Canada: Calls to Action**
- **Settlers Take Action**

Education

- **Indigenous Canada - Free Course**

Whose Land?

Learn about where you are situated, information for land acknowledgements and learn about the treaties and agreements signed across Canada (Turtle Island).

- **Whose Land?**

Thank you for joining us!

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Steps to Justice – Steps to Justice

Contact me! Karen Dick at CLEO
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