



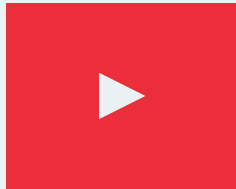
CERB Overpayments

Challenging and managing overpayments of federal pandemic benefits

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EI AND THE FEDERAL PANDEMIC BENEFITS:

Challenging and Managing Overpayments

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What We Will Do

- Why are people getting overpayments?
- How can you fight overpayments?
- How can you manage overpayments if there is no way to fight it?

So Many Different Benefits!

List of Short-Forms

- Canada Recovery Benefit (CRB)
- Canada Recovery Sickness Benefit (CRSB)
- Canada Recovery Caregiving Benefit (CRCB)
- Employment Insurance (EI)
- Canada Emergency Response Benefit (CERB)
- Employment Insurance Emergency Response Benefit (EI ERB)
- Income Assistance (IA) and Hardship Assistance (HA)
- Disability Assistance (DA) for Persons with Disability (PWD)
- Canada Pension Plan (CPP)
- Old Age Security (OAS) / Guaranteed Income Supplement (GIS)

What's Causing Overpayments?

- Some fraud, but other reasons more common.
- Rules were vague and unclear.
- Information people got was often wrong.
- Very little front-end verification.
- Many clients ended up getting the wrong benefit.

Common Problems Leading To CERB \ CRB Overpayments

- Problems with tax return (or not filing one).
- Misunderstanding about what should count towards the required \$5,000.
- Applying for CERB from both Service Canada and CRA.
- Having an existing EI benefit period when applying for a CRB.
- Government reviewing CRCB eligibility after school year ended.

Common Problems Leading To EI Overpayments

- Getting automatically rolled onto EI when not entitled due to being unavailable for work.
- Other reasons include:
 - A claim review that imposes a disqualification for quitting or misconduct.
 - A review changing the claimant's hours or earnings, or whether claimant is covered by EI at all.
 - Undeclared earnings while on claim.

How To Approach Overpayments

1. What benefit are you dealing with?
2. Has the time limit to declare an overpayment passed?
3. Has the time limit to collect the overpayment passed?
4. What is the time limit and process for your client to reconsider or appeal?
5. Is there a basis to challenge the overpayment?
6. If the debt is properly owing, is there a basis to apply for a write-off?
7. If the debt cannot be challenged or written-off, is a payment plan possible?

#1: First Thing First!

What Benefit Are You Dealing With?

- Must figure out what benefit the client received.
- CERB is sometimes used as a catch-all term.
- If really CERB, was it through Service Canada or CRA?
- Did the client get more than one type of benefit?

Richard

Richard comes to your office. He says the government is making him pay back his CERB. How would you go about confirming what benefit Richard actually received?

How to Find Out What Benefit Client Got?

- Ask to see letters.
- Why did client apply for benefits? Out of work? Sick? Providing care?
- Ask client to log into MyCRA or Service Canada account.
- Call CRA or Service Canada.
- When were the benefits paid?
 - CERB and EI-ERB (mostly) ended in September 2020.
 - Many people automatically transitioned to EI at the end of September 2020.
 - Very few regular EI claims between April and September 2020.

#2: Has Time Limit To Declare An Overpayment Passed?

El: 36 months, 72 months if misrepresentation.

CERB: No specific deadline.

CRBs: 36 months, 72 months if misrepresentation.

#3: Has Time Limit To Collect The Overpayment Passed?

El: 72 months from when overpayment declared.

CERB\CRB: Six years from when debt became due and payable.
There are exceptions and extensions:

- Claimant acknowledges debt or makes partial payment.
- Government gets a legal judgement against claimant.
- May still be able to deduct the debt from other benefits after this deadline.

Note: Deadline paused during a formal reconsideration/appeal.

#4: Figure Out Your Deadline: Employment Insurance

EI (Including EI ERB):

Reconsideration 30 days.

Appeal to SST 30 days.

EI application deadline:

Usually four weeks after
interruption of earnings.

#4: Figure Out Your Deadline: CERB And CRB

CERB (through CRA):	No reconsideration or appeal. However informal recon possible.
CRBs:	Reconsideration 30 days. No appeal after reconsideration.
CRB application deadline:	60 days after last day in week (or period) client is applying for.

#5: Is There A Basis To Challenge The Overpayment?

- Don't jump to a write-off or repayment plan if there shouldn't be an overpayment in the first place!
- Must look at criteria for the particular benefit.
- Can be challenging because decision letters often have very little information.
- Sometimes client come with Notice of Debt, not the decision that created the overpayment.

Richard

Based on the information Richard provides, you determine that he is actually being asked to repay EI he received from October to December, 2020. Richard was automatically transitioned from CERB to EI at the end of September, 2020, but he didn't really understand what was happening.

The letter from Service Canada says Richard is being asked to repay EI because he was unavailable for work. The letter notes that Richard's kid was at home with him, and not at school.

- What are Richard's options to challenge this decision or fix the situation?
- What further questions would you ask Richard?

#6: Is There A Basis To Write-off The Debt?

- “Write-off” means to wipe the debt off the government’s books.
- Does not mean debt is not legally owing.
- EI has provisions specifically dealing with write-offs
- CERB and CRBs have no specific write-off provisions.

#6: Writing-Off EI Debt

- General EI Overpayments:
 - Section 56 of the Employment Insurance **Regulation**
- EI ERB Overpayments:
 - Section 153.1306(1) Of the Employment Insurance **Act**.

#6: Writing-Off EI Overpayments

- Undue hardship.
- Severance becomes payable after EI paid (not relevant now) if no misrepresentation by claimant.
- Later decision from CRA impacting insurable hours and earnings if no misrepresentation by claimant.
- Bankruptcy.
- Death.
- Very small or uncollectable debts.
- Note: Always discretionary! These do not automatically get a write-off.

#6: Writing-Off EI Overpayments

- Some reasons for write-off apply only if overpayment is declared more than a year after the week for which benefits were paid:
 - Commission delay or error.
 - Employer error on RoE or about hours or earnings.
- Must not be due to false or misleading information from claimant (accidental or deliberate).
- Generally requires that claimant could not have reasonably known benefits were being wrongly paid.

#6: Writing-Off EI Overpayments: Process

- Lots of confusion and very little information.
- Call Service Canada at 1(800)206-7218.
 - Say you want to apply for a write-off, which needs a “level two decision-maker”.
- CRA apparently makes “recommendations” to Service Canada about undue hardship.
- Often get bounced back and forth.
- No right to reconsider or appeal write-off decisions.

#6: Writing-Off Other Federal Benefit Overpayments

- No explicit right for individual claimants to request a write-off.
- Exception: Self-employed people who qualified for CERB with \$5,000 gross as opposed taxable income.

#7: Payment Plans

- CRA collects all EI debts.
- Call CRA 1-866-864-5841.
- A payment plan does not necessarily stop CRA from scooping other benefits.
- A partial payment is a debt acknowledgement which can restart the clock for CERB \ CRB collections.

Richard

Richard tells you that he is an only parent. His kid was not in school because of an underlying condition that makes Covid a greater risk. He was not looking for work while collecting EI.

- Do you think an application for reconsideration has a strong chance of succeeding?
- What other options could you recommend for Richard?
- What further questions would you have for Richard?

QUESTIONS?