

FORM 301 — NOTICE OF APPLICATION
Federal Courts Rules, 2022, Rule 301

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September 28, 2023 28 septembre 2023		
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Court File No.:

FEDERAL COURT

B E T W E E N :

MARIE-ISABELLE FOURNIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

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 an E-Hearing at the following location: 6482 Slocan River Road, Winlaw, British Columbia V0G 2J0, with Zoom link details to be provided by the Court in due course.

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.

Sept. 28th 2023

Issued by:

*Address of
local office:*

TO:

**CANADA REVENUE AGENCY
Sudbury Tax Center
Post Office Box 20000, Station A
Sudbury, ON, P3A 5C1**

APPLICATION

This is an application for judicial review in respect of

Canada Revenue Agency

Canada Revenue Agency has determined in a second review issued on September 1, 2023, that I am not eligible for the Canada Emergency Response Benefit (CERB) and the Canada Recovery Benefit (CRB) based on not meeting the eligibility criteria: Earnings of at least \$5,000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of your first application, and that I was not working for reasons unrelated to COVID-19.

The decision was communicated to the Applicant on: September 6, 2023.

1. The Applicant makes application for:

- (a) An Order in the nature of *certiorari* quashing the Canada Revenue Agency's decision regarding my CERB and CRB eligibility;
- (b) An Order in the nature of *certiorari* quashing the Canada Revenue Agency's decision to withhold the total amount of my Income Tax refund, GST/HST credit entitlement for July 2023, credit for 2021 and BC climate action tax credit (BCCATC) entitlement for July 2023 as repayment for CERB;
- (c) The costs of this proceeding, plus all applicable taxes; and,
- (d) Such further and other relief as this Honourable Court may seem just.

THE GROUNDS OF THIS APPLICATION ARE:

Overview

Canada Revenue Agency Failed to Respect Procedural Fairness

2. Canada Revenue Agency(CRA) is saying I did not earn more than \$5000 before taxes in 2019.
 - (a) My total income for Tax Year 2019 of \$6,480 (before taxes) was employment income for the amount of \$6,113, and employment insurance for the amount of \$367.
 - (b) In recent phone calls with the CRA, the CRA is saying that my income from a T4A I received in 2019 is not valid because it is reported in box 28. At the time of application in the spring of 2020, there was no mention of box 28 not being valid on their website. There has never been any mention of box 28 in any of the CRA's documentation mailed to me. I filed my income tax return for tax year 2019 in spring 2020. The CRA has had my T4A from 2019 on file since then, but has never communicated to me that it was not valid until their phone call on May 25, 2023.
 - (c) There is no mention of Box 28 from a T4A in the Canada Emergency Response Benefit Act or in the Canada Recovery Benefits Act.
 - (d) My income reported on the T4A in 2019 was from employment income as stated in the Employment Insurance Act, under section 26 and 59 (d).
 - (e) The CRA has made multiple mistakes in their reports regarding my eligibility for the Canada Emergency Response Benefits(CERB) and the Canada Recovery Benefits(CRB). They failed to record true accounts of the conversation had over the phone on May 25, 2023. They failed to write accurate information that was communicated by me to them during that phone conversation. They made record of informations that were not communicated by them to me during the phone conversation. They made account of my emotional state during the phone conversation, but they failed to write their emotional state during the conversation and how they approached me.

- (f) On May 25, 2023, I received a phone call from the CRA. At the time I was receiving cancer treatment and I told the agent I was greatly affected by the treatments I had been receiving since November 2022. The conversation was initiated by the agent who had an aggressive and a patronizing tone. I felt disrespected and found that situation to be disrespectful and dehumanizing. They failed to write that in their report, but made sure to write my emotional state. That is part of the confirmation bias the CRA has been operating under in my case, which I will continue to demonstrate.
- (i) On that same phone call, the CRA agent first asked me, in an aggressive manner, what I had been doing the last three years. I felt attacked and wondered how that was relevant to my eligibility to CERB and CRB benefits as those benefits were only for year tax years 2020 and 2021. This again showed their biases. From that point on, I was on the defensive in reaction to their approach. I was not frustrated, I was trying to defend myself the best I could while being affected by cancer treatments. The agent never offered to conduct the conversation in French, which is obviously my first language, and would have greatly made things easier since I had chemo brain, which the agent knew about.
- (ii) On that same phone call, the CRA agent did not try to confirm my eligibility, but instead only tried to confirm that I was not eligible. They did not ask me to send in any supporting documents for the T4A, despite writing this in their report, they did not ask me to send bank reports, only for me to send my checks from my self-employment in 2020, which I did, they already had the invoices. I did not tell them I was paid in cash. They did not try to explain the difference between income and earnings, which would have been useless as I do not require to have that explained to me as I already know the difference.
- (iii) On that same phone call, the CRA failed to record accurate information regarding my employment in 2019. It demonstrates a lack of attention and intention in reporting information that could be used to confirm my eligibility.
- (iv) Following that phone call, on July 6, 2023, I received a letter from the CRA saying I was not eligible to CERB and CRB because I did not earned more than \$5000 before taxes in 2019.
- (v) In July 2023, I applied for a judicial review. I do not have money to hire a lawyer, so I had to figure out how to do it myself. I had only finished my cancer treatments a month prior and was unable to work.

- (vi) After filing my application, I received a call from the CRA counsel. They suggested I cancel my application and that my case be sent back to the CRA for another review. I told them I had more supporting documents that proved my employment earnings in 2019. Their counsel told me I was going to be able to send them in for another review, that there was going to be another agent assigned to my file, and that they were not going to be made aware of the first review. I canceled my application for a judicial review.
- (vii) On August 23, 2023, I received a call from a CRA agent. After identifying themselves and their reason for calling, they asked me if they could put me on speaker phone so that they could type. I thought that was odd as it is part of their job to type while being on the phone. I asked them if someone else was going to listen to the conversation. They paused before answering no, and there was an uncertain tone in their voice. That made me suspect they might have been recording me illegally and/or someone else was going to be listening to the conversation. They then told me they were sorry to hear about my illness. This was only stated in my request for another review in January 2023. They could only know that information if they had access to it. They also mentioned my employment insurance benefits from prior years before 2019, which the CRA counsel had included in their tribunal record in my first Judicial Review application. The CRA agent could only know that information if they had access to my first judicial review.
- (viii) On that phone call, the agent did not want to receive my supporting documents proving my earnings from Arrow & Slocan Lakes Community Services in 2019, reported on the T4A, were from employment. They also showed no compassion regarding the difficulty I encountered in finding work in 2019 caused by living in a secluded area, saying: “Yeah, but it’s a beautiful place to live, right?”. This statement also holds other implications, showing the CRA’s biases. They told me they were going to write their review and send it to their supervisor, but, in the first review, the agent made the decision themselves.
- (ix) On that phone call, the agent asked me to go through and explain to them my employment history from 2019. After every job description on my part, the agent made sure to pass judgment by giving me their opinion on how they thought this work should be interesting, in an infantilizing way, suggesting they thought I was someone who just did not want to work. This clearly showed their biases. I do not know that person, there is no reason why they should have given me their opinion on my employment without knowing me, my employer, or the history regarding that employment. These were unwanted

opinions. This was clearly intended as an humiliation process as they ended the conversation by telling me I was not eligible because of my T4A from 2019.

- (x) During that phone call, the agent asked me why I received employment insurance in the past. That information is irrelevant to my application to CERB and CRB benefits. The agent was trying to imply I was abusing the system. They had that information which was filed and was going to be used in my first Judicial Review by the CRA counsel. There is only one reason why one can receive employment insurance, and that is if their employment was terminated and they had collected enough insurable hours. A CRA agent should know that. This, again, shows their biases.
- (xi) On September 6, 2023, I received the letter from the CRA saying I was not eligible for CERB and CRB benefits for the same reason listed above, only this time they added that I was not working for reasons unrelated to Covid19. That reason is solely based on their opinion, not on facts. In the 15 minute conversation I had with the CRA agent, while having chemo brain and fatigue, which they knew about, in my second language, trying to give an accurate account of what happened three years ago and recall every piece of information pertinent to my case, while being treated like a child by the CRA agent, that agent was able to make this life altering decision based only on their opinion. This has never been a reason in all other documentation received by the CRA. They are only trying to prevent me from being eligible. They are not trying to confirm my eligibility. This again shows the confirmation bias they are operating under.
- (g) In 2019, I struggled to find work. I lived in a secluded area and work opportunities were scarce. I went to WorkBC in order to get help to find work. It resulted in them talking to me about an employment opportunity with Kootenay Adaptive Sport Association(KASA), which was a non-profit organization. The job posting was for an Administrative assistant position, funded by a job creation program with Arrow & Slocan Lakes Community Service. These earnings were reported on a T4A in box 28.
 - (i) I applied for other job postings in 2019 with no success.
 - (ii) I acquired more certifications in 2019 in order to increase my chances to find work.

3. The CRA is saying I was not working for reasons unrelated to Covid-19. This has never been a reason in prior letters, nor was it a reason the first CRA agent gave me. This is something the second agent has come up with to prevent me from being eligible, it is not based on facts, nor on information I told them during our phone conversation. It is based on their biases.

(a) I was not working for reasons related to Covid-19.

(i) In February 2020, I contracted Covid-19. In the two weeks preceding the lockdown, I had a plethora of symptoms I could not associate with any known illness: Intense sneezing, intestinal discomfort, vertigo, rectal acute pain, shivers. On March 14, 2020, I had conjunctivitis in both eyes, and a dry cough. I thought then it was because of the cat I had been in contact with at my place of work. In the following days, I developed other symptoms which were more serious: Shortness of breath, acute pain in lungs, muscle pain, tachycardia and fatigue.

i) In the first days of the lockdown, I found out my friend, who I live with, had work with an electrician on February 29, 2020, in close quarters, who had just returned from Hawaii and who had a dry cough who he thought was from the dust in his garage. We found out in the news during that time that there was a Japanese couple who had visited Hawaii in January 2020 who had tested positive with Covid-19 on their return home to Japan.

ii) In February 2020, the virus was already spreading in British Columbia before the Government of Canada alerted the population and took action.

(ii) My place of work with Immortal Performances was located in the owner's house, who was 87 years old at the time.

(iii) We were asked to stay home by the Government of Canada and it was not possible for me to do the required work for Immortal Performances from home.

(iv) It was not possible for me to return to my place of work for Immortal Performances from then on.

(v) I was not able to find work in my area after March 14, 2020, because of Covid-19.

i) In the fall of 2019, I met with the Silverton Camp Cafe in Silverton, when she told me I could go work with her the next spring, as she closed the cafe for the winter. On March 12, 2020, I emailed her to let her know I was still interested in working at the cafe when it opened later that spring. Two days

later the Government of Canada asked the population to stay home because of a global pandemic caused by Covid-19. I never received a reply and the cafe did not open like it was supposed to and stayed closed for another two months after that. When the owner opened the cafe, they worked by themselves and did not hire help as there was no tourism and business was extremely low. The borders were closed and travel between provinces was forbidden.

- ii) Ten days later, on March 21, 2020, I applied to work at Silverton Building supply(there are only two store fronts in Silverton)as they were busy and getting lots of business. I did not receive a reply, they hired someone else.
- iii) I asked the Grocery store in New Denver, BC, the next village over, but the owner told me they did not want to take anyone new on because of Covid-19.
- iv) I asked the liquor store in New Denver, BC, but they were not hiring.
- (vi) In August 2020, the house we were renting sold in the real estate market craze that was happening in the Kootenays because of Covid-19. Silverton is the smallest village in British Columbia, it is also a touristic destination. All the houses that had been for sale for years in Silverton were sold that summer. There was no other rentals available at the time. We had to move away, because of Covid19.
- (vii)My Covid-19 infection resulted in a long illness. In September 2020 I started coughing up residues from my lungs. In the winter of 2020-2021, I was coughing up, multiple times a day, a lot of residues from my lungs. I had a hard time wearing a mask for extended periods of time as it was hurting my lungs. Up until July 2021, I had lung problems and tachycardia which resulted in a lot of fatigue. I started to feel better in July 2021 when my tachycardia receded and my lungs had almost cleared up.
- (viii)In July 2021, I enrolled in an Online Yoga Teacher Training(YTT) Certification to create job opportunities for myself, as I was struggling to find work. This was the only school training I could afford and that would be relatively fast to complete.
- (ix) In 2020 and/or 2021, I had breast cancer, but was not aware of my illness. I had a hard time working through my YTT program, I had a lot of fatigue and not enough physical stamina to work through it full time. I thought it was long Covid at the time, and I still think it could also be a factor.

- (x) In the fall of 2021, I continued to look at job postings in my area and I applied for jobs, but my attempts were not successful.
 - (xi) In January 2022, I applied to work as field hand at a local farm the following spring, even though I did not know if I was going to be able to perform the work required. I did not receive an answer.
 - (xii) In 2022, my health was not improving and continued to decline. In July 2022, I found swollen lymph nodes in my armpit. I knew then it was cancer. I was diagnosed with breast cancer in September 2022.
 - (xiii) I haven't been working since because of surgery and cancer treatments.
4. In November 2020, I received a letter from the CRA regarding my eligibility and it stated: "If you determine that you meet the income eligibility requirements for the CERB, (...) , you can disregard this letter. I did. I never doubted my eligibility. I knew I was going to declare my self-employment income in my income tax return for tax year 2020 in the next few months, and I did. I did not hear from the CRA again for almost two years.
 5. In July 2022, I received a letter from the CRA saying I needed to prove my eligibility for CERB and CRB and that I made more than \$5000 before taxes in 2019, which I did, and so thought they needed to see prove of my self-employment in 2020. I sent my invoices for that period by Express post. The CRA had all my other documents from 2019 which I filed in my income tax return in 2020, including the T4A from Arrow & Slocan Lakes Community Services.
 6. In August 2022, I received a letter from the CRA saying the letter from July was sent in error and to please disregard. I had recently discovered that I had breast cancer and was relieved, I thought the case was closed.
 7. In November 2022, I received a call from someone who had a foreign accent and I could not clearly make out what they were saying, but I did hear the word CRA mentioned. At the time, there was news of scam calls pretending to be from the CRA in the media, I had no reason to think the CRA had to contact me, and they had never contacted me by phone, only by mail. I told the person on the phone that I could not understand what they were saying clearly, that there was no reason for the CRA to contact me, that I thought this was a scam call. The person on the phone did not switch to French either, and I told them I was going to hang up, and so I did. They did not call back. I later found out it was a CRA agent. There was no mention of what I said to that agent during that phone call in the phone records I received from the CRA.

8. At the end of November 2022, I received my first chemotherapy treatment. A few days later, in December 2022, I had a phone message from a CRA agent regarding my CERB and CRB benefits. I was not able to return the phone call at the time, as I was unable to speak on the phone for more than a few minutes at a time, if any, or do anything that required attention, energy and focus. I thought since the Christmas holidays were upon us, that the agent would most likely be on vacation, that I would call back after the holidays when I would hopefully feel better.
9. At the beginning of January 2023, I received a letter from the CRA saying I was not eligible to CERB and CRB. I had just received my second chemotherapy treatment. I did not understand what the problem was, and I had to request another review, which I did. It is from that moment on, that I thought maybe the T4A was the problem, and not my self-employment, as I could not understand what the reason would be. I did not hear from the CRA until May 25, 2023, on my last radiotherapy treatment day, at 8:15 am PST, when I received a call from a CRA agent.
10. Canada Revenue Agency withheld my income tax refund in the amount of \$75.00 dated May 09, 2023, my GST/HSTC entitlement for July 2023 for the amount of \$81.25 and credit for 2021 for the amount of \$153.00 (for a total of \$234,25) and my BCCATC entitlement for July 2023 for the amount of \$111.75 for repayment of CERB benefits received. These withheld payments, except for my income tax refund, do not show up as repayment on the statement I received from CRA in August 2023.
11. When I applied for CERB benefits, I made sure I was eligible. I read all the information available on the website. I was not planning on receiving benefits prior to Covid-19, I was looking for more work opportunities. I am still looking for work because I want to work. I do not like receiving benefits, I like to work. These measures were put in place to help people who needed it the most. These people were of low income, struggling to make ends meet, not being able to work and/or lost their employment. Three years later, some of these people are still of low income, and struggling financially more than ever before because of the rising cost of living, and now the CRA is demanding of them to refund these benefits, to: "Maintain public confidence in Canada's tax system and ensure that payments are available for people who need them the most." I cannot think of people who needed it the most other than low income people who were prevented to work because of reasons related to Covid-19.
12. I do not have money, I have debts. I have been dependant financially of a man I am not romantically involved with. He has been kind enough to help me through these

difficult times and I owe him my life. I do not know if I will ever be able to pay him back.

13. I have been wanting to return to school for years so I can have access to better jobs that do pay a living wage, but I haven't been able to save enough money. Living in British Columbia is expensive. A lot of the communities are rural and highly touristic and competition for jobs and lodging is high.
14. The CRA and the CRA agents, through phone conversations, imply that I have been lying based solely on their opinions fuelled by their biases, and not on facts. Being unemployed was not a choice and it isolated me. It has affected both my mental and physical health, it has also impacted my self-esteem negatively.
15. In my first application for a judicial review, Court File No.: T-1546-23, the CRA as filed documents from my income tax return dated 2018, which its irrelevant to CERB and CRB eligibility and shows their biases.
16. In the past year, I have been through surgery, chemotherapy, radiotherapy and I am now recovering from cancer and cancer treatments. Having to deal with these letters and phone calls with agents that were disrespectful and put together these judicial reviews has been taxing on my mental and physical health which was already affected by cancer treatments and the CRA has been insensitive in that regard and has failed to be understanding.
17. When I can return to work, I will face job opportunities that are traditionally held by women and that do not pay a living wage. When I applied to work for WorkSafe BC in Nelson, BC, in 2021, they were asking for experience but the position paid only \$17/hour before taxes. Nelson is 50kms away from where I live and the price of gas is almost \$2 a litre on top of the rising food prices and cost of living. If I am forced to refund these benefits, I will never be able to leave my current living situation, move in by myself when I need to, pay my debts, afford a vacation or leisure, go back east to visit my family, afford a retirement fund or save any money. I will keep accumulating debts and won't be able to afford a living.

18. This application will be supported by the following material:

- (a) T4A from Arrow & Slocan Lakes Community Services for year 2019
- (b) Screen Shots from the Government of Canada website
- (c) Letters from Canada Revenue Agency
- (d) CERB Act
- (e) CRB Act
- (f) Phone transcripts from the CRA
- (g) Phone transcripts
- (h) Work related emails
- (i) Statement of account for Covid-19 benefits date issued Aug 15. 2023, page 5
- (j) Kootenay real estate market, Castlegar News, Nov., 17, 2020
- (k) Such further and other materials as this Honourable Court may permit.

September 28, 2023



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