

Court File No.

FEDERAL COURT OF CANADA

BETWEEN:

MASOUD VATANKHAH

Applicant

And

THE ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION FOR JUDICIAL REVIEW
UNDER SECTION 18.1 OF THE *FEDERAL COURTS ACT*

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.

Date: _____ Issued by: _____
(Registry Officer)

Address of Local Office:

Federal Court of Canada
Address of local office:
180 Queen St. W. Suite 200
Toronto, Ontario M5V 3L6

TO:

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Application

This is an application for judicial review in respect of

Canada Revenue Agency (CRA)

Final decision that was made on April 26th, 2024, stating that the applicant did not meet the eligibility criteria to qualify for Canada Emergency Response Benefit (CERB) for the six following periods:

March 15, 2020, to April 11, 2020

April 12, 2020, to May 9, 2020

May 10, 2020, to June 6, 2020

June 7, 2020, to July 4, 2020

July 5, 2020, to August 1, 2020

August 2, 2020, to August 29, 2020

In its decision letter CRA states:

“You 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 your first application.”

The applicant makes application for:

- 1- The Court to allow this application for judicial review,
- 2- An order to have another CRA officer to reconsider the applicant’s eligibility for CERB, based on the applicant's gross self-employment income.
- 3- Where eligibility for CERB cannot be determined by gross self-employment income, the revised net self-employment income of over \$5,000, as filed with and accepted by the CRA should be used for the applicant’s CERB eligibility determination,
- 4- The applicant meets the eligibility criteria for CERB for the periods listed above.

The applicant operated a small local café together with his wife in 2019 and their business was devastated by the pandemic. The applicant applied for and received the Canada Emergency Response Benefit (CERB) listed above.

The applicant made his application for CERB in good faith and considered himself qualified based on his gross self-employment income of over \$5,000.

The grounds for the application are:

On or around January 18th, 2023, the applicant received a letter from the CRA to provide “Proof of Earnings over \$5,000”, see page 8.

The applicant responded to the CRA’s letter by providing a copy of his 2019 income tax return summary, showing a gross business income of \$91,207 on line 13499, see page 11.

The *Canada Emergency Response Benefit Act*, only refers to “total income” and does not distinguish between net or gross income.

On February 9th, 2021, the Government of Canada, announced the following:

“self-employed individuals who applied for the Canada Emergency Response Benefit (CERB) and would have qualified based on their gross income will not be required to repay the benefit, provided they also met all other eligibility requirements. The same approach will apply whether the individual applied through the Canada Revenue Agency or Service Canada.

This means that, self-employed individuals whose net self-employment income was less than \$5,000 and who applied for the CERB will not be required to repay the CERB, as long as their gross self-employment income was at least \$5,000 and they met all other eligibility criteria.” – see page 46.

The applicant did meet all the conditions for using the gross self-employment income as outlined by the Government of Canada, see pages 50 and 51.

The applicant applied for the Canada Emergency Response Benefit (CERB) in 2020 based on his self-employment income.

The applicant has filed his tax returns for 2019 and 2020, see page 54.

The applicant had gross self-employment income of \$5,000 or more in 2019 or the 12 months before you applied for the CERB, see page 11 and page 20.

The applicant met all other eligibility criteria to receive the CERB.

On June 7th, 2023, the applicant received a letter from the CRA stating that the applicant is not eligible for the CERB since the applicant “did not earn at least \$5,000 (before taxes) of employment or self-employment income in 2019”, see page 12.

The CRA ignored the fact that the applicant did in fact had a gross self-employment income of more than \$5,000 and therefore eligible for the CERB. The officer’s decision to determine the applicant ineligible for CERB was unreasonable and unjustified. See page 60, *Royston-Birbari v. Canada (Attorney General)*, 2024 FC 612 at para 13:

“For the CERB, the Canada Emergency Response Benefit Act defines a “worker” as a person earning at least \$5,000 in “total income” in 2019, or in the 12 months preceding their application (SC 2020, c 5, s 2). It does not refer to “net income” (see Zhang v Canada (Attorney General), 2023 FC 1761 at para 6). The reviewing officer found that Ms Royston-Birbari had, in fact, earned more than \$5,000 in gross income. Accordingly, the officer’s conclusion that she was not eligible for the CERB is unjustified.”

The applicant hired a new accounting firm to review the accounting transactions used to prepare his 2019 income tax return by another accounting firm to confirm the net business income amount.

The new accounting firm, found a number of deficiencies and accounting errors in the bookkeeping records used to prepare the applicant’s 2019 income tax return. These deficiencies resulted in overstating of eligible business expenses and understating of the business net income, see page 29.

The applicant’s new accounting firm found among other items, that the annual rent recorded in bookkeeping records for an amount of \$51,128, included HST and did not correspond to the actual rent cheques that were recorded on the business’ bank account statements, see page 30.

The correct amount of rent paid for 2019, was \$42,955.08 excluding HST, se page 31.

Purchases of materials during the year was overstated with amounts paid for groceries and food products purchased for personal use.

The applicant decided to rectify these errors and file a T1 Adjustment for 2019 addressing all the above deficiencies and other minor issues identified by the new accounting firm.

The 2019 T1 Adjustment filed with the CRA, resulted in a net income of \$6,745 earned by the applicant in 2019, see page 22.

The applicant instructed the new accounting firm to request a second review of the CERB matter and provide the CRA with rectified 2019 income tax return that now reflected a net income of over \$5,000, see page 22.

The gross business income of the applicant was unchanged and agreed to the original information provided to the CRA officer conducted the first review, that is more than \$5,000.

Unfortunately, the CRA officer conducting the second review, decided to ignore the fact that the applicant had a gross business income of more than \$5,000 and also disregarded the significant facts presented to support the applicant’s eligibility even based on the net income approach.

The second review also found the applicant ineligible for CERB citing the same reason as it was provided in the first review, see page 44.

The applicant submits that even the second review officer’s decision to determine the applicant ineligible for CERB was unreasonable and unjustified. *Royston-Birbari v. Canada (Attorney General)*, 2024 FC 612 at para 13.

This application will be supported by the following material:

Document Description	Page
Copy of the Canada Revenue Agency's (CRA) initial letter dated January 18th, 2023	8
Applicant's response to CRA's letter dated January 18th, 2023,	11
Copy of the CRA's first review letter dated June 7th, 2023,	12
Copy of the applicant's response to CRA letter dated June 7th, 2023, and supporting documentation.	14
Self-employment Income and Expense analysis prepared by applicant's new accountant to reflect actual business-related expenses.	29
Copy of the CRA's second review letter dated April 26th, 2024.	44
Government of Canada News release February 9th, 2021	46
Government of Canada publication on "Self-employment income (net vs. gross)"	50
Screen shot of the applicant's CRA's MyAccount, tax returns' processing dates,	54
Applicant's CERB statement of account and repaid amounts.	55
Royston-Birbari v. Canada (Attorney General), 2024 FC 612	60

21.05.2024
Date

Signature of applicant

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