

FORM 301 Rule 301
Notice of Application

Court File No: T-89-23

(Court seal)

e-document		ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	Jan 9, 2023	
	Scinthura Seeraladevan	
Toronto, ONT	- 1 -	

FEDERAL COURT

BETWEEN:

SHARON GANESH

Applicant

-and-

MINISTER OF NATIONAL REVENUE

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 Toronto, Ontario.

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.

January 6, 2023

Issued by: _____

(Registry Officer)

Address of local office:

TO: The Honourable Diane Lebouthillier, P.C., M.P.
Minister of National Revenue
7th Floor
555 Mackenzie Avenue
Ottawa ON K1A 0L5

Application

(Where the application is an application for judicial review)

This is an application for judicial review in respect of: the decision of the Canada Revenue Agency received December 20, 2022 by Applicant (with notification dated December 2, 2022) demanding that upon second review, without explanation for reasoning, I, the Applicant repay the Covid-19 benefits received. I disagree with the Canada Revenue Agency's decision and am applying for a Federal Judicial Review under Section 2 of Canada Emergency Response Benefit Act and Subsection 23(2.1) of Financial Administration Act pursuant to the Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order: SI/2021-19.

The applicant makes application for:

1. Judicial review of a decision made by the CRA's most recent letter dated December 2, 2022, and other corresponding notices rejecting my proof of eligibility for CERB and CWLB.

The grounds for the application are:

1. I, the Applicant received a letter on December 20, 2022 (dated December 2, 2022) from the CRA notifying me that they have rejected my submissions and denied my eligibility for Covid-19 benefits with a 30 day deadline to apply for federal judicial review.
2. As per the Eligibility Criteria for the CERB benefit as posted on the CRA website in the Spring of 2020, I earned \$5000.75 self-employment income before taxes in the 12 months prior to the first CERB application beginning March 13, 2020.
3. As a self-employed individual, I contract my diversified services to clientele to earn income. In the 12 month period prior to the first CERB application, my income came from Church (worship and events management) and Administrative Services.
4. I am eligible to receive Covid-19 benefits, as per the CRA webpage with headline 'Canada Emergency Response Benefit (CERB) **Self-employment income (net vs. gross)**'. It states, "If you're self-employed, you may have based your eligibility on your gross instead of your net self-employment income. The Government of Canada announced on February 9, 2021 that you can keep the CERB if you meet the conditions below:

You received the CERB based on your self-employment income for an eligibility period between March 15, 2020 and September 26, 2020

You earned \$5,000 or more in **gross self-employment income** (before taxes, deductions, and expenses) in 2019 or the 12 months before you applied for the CERB

You met all the other CERB eligibility criteria

You filed both your 2019 and 2020 income tax returns. You must file by December 31, 2022

If you meet the conditions

You can keep the CERB. You do not need to contact the CRA or Service Canada to check.”

5. I am eligible to receive the COVID-19 benefits based on the definition of ‘worker’ in the CERB Act, section 2.
6. It was determined that I was eligible to receive the CERB benefits by two different CRA agents who I spoke with over the phone. I received a total of \$14,000 which I declared as Other Income in my 2020 tax return.
7. In excerpt posted by Toronto Tax Lawyers on TAXPAGE.com regarding the issue of CERB repayment, “Allan Lanthier, a chartered professional accountant who has been an advisor to the Department of Finance and the CRA, argues there is ‘no clear legal basis’ for the federal tax agency to say that CERB’s \$5000 income threshold refers to net income for self-employed persons....I could argue that (the CRA’s position) is frivolous.”
8. As stated in the CERB and EIER Benefit Remission Order, “On February 9, 2021, the Government announced that self-employed individuals who applied for the CERB and would have qualified based on their gross income will not be required to repay the benefit, provided they were otherwise eligible. The same approach will apply whether the individual applied through the CRA or SC.”
9. On May 12, 2021, the Canada Gazette, an official publication of the Government of Canada, announced that in pursuant to subsection 23(2.1) of the Financial Administration Act, His Excellency the Administrator of the Government of Canada in Council made a *Canada Emergency Response Benefit and Employment Insurance Emergency Response Benefit Remission Order* on the basis that the collection of certain payments is ‘unreasonable and unjust’.
10. In addition to the Eligibility Criteria posted on the CRA website to receive the CERB benefit, I am also deemed eligible by the Remission Order’s qualifications which states:

“Individuals that received the CERB or EI-ERB based on their gross self-employment income will have their debt remitted. Specifically, this group would comprise self-employed individuals that received CERB or EI-ERB payments and met the following criteria:

- (a) they claimed benefits based on self-employment income;
- (b) they had net self-employment income (or insurable income) of less than \$5,000;
- (c) they had gross self-employment income of \$5,000 or more;
- (d) they were otherwise eligible to receive benefits under the CERBA or EIA;
- (e) they filed their income tax returns for 2019 and 2020 by December 31, 2022; and
- (f) if they met the above criteria, they have repaid part or all of the CERB or EI-ERB they had received, and will make a claim to the CRA requesting that those monies be returned to them.

Self-employed individuals meeting these criteria would not be required to return any of their CERB or EI-ERB payments.”

11. I received a letter from the CRA dated August 5, 2022 stating: “We are writing to advise you of our decision regarding your Canada Emergency Response Benefit CERB application. ... You did not meet the following criteria: *You did not earn at least \$5000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of your first application*”
12. I received a letter from the CRA dated August 4, 2022 stating: “We are writing to advise you of our decision regarding your Canada Worker Lockdown Benefit. Based on our review(s), you are not eligible. You did not meet the following criteria: *You did not earn at least \$5000 (before taxes) of employment or net self-employment income in 2020, 2021, or in the 12 months before the date of your first application.*”
13. The eligibility criteria on the CRA’s online application for the Canada Worker Lockdown Benefit states:

You earned **at least \$5,000** in 2020, 2021, or in the 12 months before the date you applied from any of the following sources:

- employment income (total or gross pay)
- net self-employment income (after deducting expenses)
- maternity and parental benefits from EI or similar QPIP benefits
- EI regular, special, or fishing benefits
- amounts from these COVID-19 benefits:
 - Canada Emergency Response Benefit (CERB)
 - Canada Recovery Benefit (CRB)
 - Canada Recovery Caregiving Benefit (CRCB)
 - Canada Recovery Sickness Benefit (CRSB)

I earned at least \$5000 in 2020 of the CERB benefit income.

14. I mailed letter dated August 17, 2022 to CRA in response to their first review requesting a second review of CERB eligibility in disagreement to their letter dated August 5, 2022. This letter outlines all the relevant income earned 12 months prior to 1st CERB application totaling \$5000.75 gross earnings before taxes, with all supporting documented proof to meet the eligibility requirements of CERB and CWLB.
15. On Sept.23, 2022 I received Notice of redetermination for COVID-19 benefits from CRA dated Sept.15, 2022, demanding repayment of \$2430 for CWLB without acknowledging the proof of income provided, or any reason for rejecting my evidence.
16. On Sept 29, 2022 I received Notice of redetermination for COVID-19 benefits from CRA dated Sept.15, 2022, demanding repayment of \$14,000 for CERB without acknowledging the proof of income provided, or any reason for rejecting my evidence.
17. On Dec.20, 2022 I received a letter from the CRA dated Dec.2, 2022 stating, “Based on our review, you are not eligible. You did not meet the following criteria: *You did not earn at least*

\$5000 (before taxes) of employment or self-employment income in 2019 or in the 12 months before the date of your first application....If you disagree with the result of the second review, you may apply to the Federal Court for judicial review within 30 days of the date of this letter.

This application will be supported by the following material:

The Affidavit of Sharon Ganesh will include the following documentary exhibits:

1. Copy of CRA webpages for CERB Eligibility
2. Copy of CRA webpages with Canada Emergency Response Benefit (CERB) **Self-employment income (net vs. gross)** headline
3. Letter from the CRA dated August 4, 2022 on first review decision of CWLB eligibility.
4. Letter from the CRA dated August 5, 2022 on first review decision of CERB eligibility.
5. Applicant's letter to the CRA dated August 17, 2022 with following proof of self-employment income earned in the 12 month period upon first CERB application:
 - Copy of Minden Bible Church employment contract
 - Copy of payment by cheque of \$1100 to Sharon Ganesh for Minden Bible Church services deposited April 15, 2019.
 - Copy of payment by cheque of \$1100 to Sharon Ganesh for Minden Bible Church services deposited July 8, 2019
 - Copy of third payment by cheque of \$1200 to Sharon Ganesh for Minden Bible Church services deposited Oct. 2, 2019 upon verbal extension of contract.
 - Copy of Statement of Earnings from Elections Canada in the amount of \$300.75 deposited Nov.15, 2019.
 - Copy of payment by cheque of \$300 to Sharon Ganesh for Administrative Service to Realti Group deposited Jan.22, 2020 with corresponding invoice.
 - Copy of payment by cheque of \$1000 to Sharon Ganesh for Administrative Service to Ray's Place dated February 25, 2020 and cashed with corresponding invoice.
6. Excerpt from CERB Act, Section 2
7. Excerpt from TAXPAGE.com
8. Copy of the Canada Gazette announcement of Remission Order
9. Copy of CRA webpage for CWLB application
10. Copy of Notice of redetermination for COVID-19 benefits from CRA dated Sept.15, 2022, demanding repayment of \$2430 for CWLB
11. Copy of Notice of redetermination for COVID-19 benefits from CRA dated Sept.15, 2022, demanding repayment of \$14,000 for CERB
12. Copy of Letter from CRA dated Dec.2, 2022

January 6, 2023

Sharon Ganesh
(Signature of applicant)

SHARON GANESH
34 Dalmatian Crescent
Toronto, ON
M1C 4W3
Phone: (416) 284-0413
sfganesh@hotmail.com

[SOR/2021-151, s. 22](#)