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F I L E D	FEDERAL COURT COUR FÉDÉRALE		D É P O S É
March 03, 2022 03 mars 2022			
Sherri Ally			
TOR		1	

STATEMENT OF CLAIM

992275 ONTARIO INC.

Plaintiff

V.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

represented by ATTORNEY GENERAL FOR CANADA

on behalf of MINISTER FOR EXPORT DEVELOPMENT CANADA

Defendant

(Court seal)

STATEMENT OF CLAIM

PURSUANT TO SECTION 48

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

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 DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Feb. 24, 2022

Issued by:

(Registry Officer)
Address of local office:
180 Queen Street West
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TO: Deputy Attorney General
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Claim

1. The Plaintiff claims:

- a. An Order for a declaratory judgement as to the qualification of the Plaintiff to receive full benefits under the CEBA program, both the initial and expansion programs;
- b. In the alternative, an Order for specific performance in approving and advancing monies, specifically CEBA expansion funds in the amount of \$20,000 as set out in the CEBA expansion program;
- c. In the alternative, \$20,000 in damages representing the total grant portions of the initial and expansion programs together with \$10,000 in general damages;
- d. Leave of the Court to allow Axel Winkelmann to represent 992275 Ontario Inc. in Court as its sole shareholder and operating officer; and
- e. The costs of this Action.

2. The Government of Canada initiated the Canada Emergency Benefits Act and regulations (the CEBA program) in 2020 as a remedial program to assist small business impacted by the Covid pandemic.

3. The CEBA program is administered by Export Development Canada.

4. 992275 Ontario Inc. is an Ontario corporation and was a CEBA program applicant.

5. The CEBA program is comprised of 2 qualification streams – the payroll stream and the expenses stream. The payroll stream under which 992275 Ontario Inc. applied required:

- a. that the company business number was registered prior to March 1, 2020; and
- b. that the 2019 payroll was in excess of \$20,000

The Plaintiff met these qualifications, was approved under the initial program and subsequently denied under its further application under the CEBA expansion program.

6. On or about April 2020, 992275 Ontario Inc. applied for assistance under the first phase of the CEBA program using the Payroll Stream.

7. On or about May 2020, 992275 was approved for the program, subject to audit review of its application. \$40,000 was advanced through a participating financial institution, the Royal Bank, as a bank loan to the 992275. The program details for the first phase were such that a \$40,000 loan would be advanced without interest until December 31, 2022. Thereafter, if not repaid, the loan would bear interest at a rate of 5%. If repaid on or before Dec. 31, 2022, \$10,000 of the loan would be considered a grant and only \$30,000 would be required to be paid back. The Dec. 31, 2022 repayment date has since been extended to Dec. 31, 2023. 992275 at all material times intended to repay the loan and qualify for the \$10,000 grant in phase 1 of the program.

8. On or about December 2020, the CEBA program was expanded (the CEBA expansion), offering a further \$20,000 of which only \$10,000 needed to be repaid if paid back before December 31, 2022 (now changed to Dec. 31, 2023), the balance becoming a grant of \$10,000.

9. On or about Dec. 9, 2020, 992275 applied to the CEBA expansion program.

10. On or about Dec. 18, 2020, 992275's CEBA expansion program application was denied. Communication from the program stated the reason for denial as:

"The Government of Canada has reviewed your enrolment request for the \$20,000 Canada Emergency Business Account (CEBA) expansion and we wanted to let you know that your request was not successful due to the following:

Post -funding validation completed by the Government of Canada has identified discrepancies between information provided in your original \$40,000 CEBA loan enrollment request and CRA records. The reasons for the discrepancy could be that:

The payroll amount associated with your CRA Business Number is not in the eligible range for the CEBA program based on the CRA's records; OR

The CRA's records reflect that your CRA Business Number is either closed or was active with an effective date after March 1, 2020; OR

A combination of both of the above reasons.”

In further communication with the CEBA call center, the problem was said to be that the payroll amount did not exceed the \$20,000 minimum.

11. 992275 registered its business number in 2001. 992275's payroll for 2019 was \$20,100 according to company records and confirmed by CRA records and correspondence. 992275 met the qualifications enumerated in paragraph 5 and its CEBA program expansion application should not have been denied.

12. The Plaintiff maintains that the CEBA program was apparently hastily put together and was flawed. There appears to be no transparency or accountability within the program. Contact with the program was solely through call back centers, who had no authority over the administration of the program. 992275 could not speak to anyone in charge nor was there an appeals process in place.

13. At no time was 992275 independently able to submit its qualification criteria, namely the original date of its business registration and confirmation by letter from the CRA that its payroll for 2019 was in excess of the \$20,000 threshold.

14. Subsequent to the denial of the CEBA expansion program application, 992275 asked the call center to request to escalate the application for further review. 992275 was never permitted to be directly involved in the process of escalation nor did anyone

from the Program contact 992275 at any point in time. After 9 weeks of waiting, calling the call center every week to ascertain the status of the escalation, 992275 was eventually informed that the application remained rejected and no proper or reasoned explanation was provided.

15. Thereafter, 992275, assuming, that a proper review /escalation would not have come to this conclusion, once again asked the call center to send an email asking to escalate a review of the application. In both escalations, 992275 was never provided with a copy of the details of the escalation request email, although a copy had been requested and denied. After waiting a further 13 weeks, and calling every week, a bureaucratic non-explanatory rejection was received.

16. 992275 contends that it qualifies for both the primary first phase of the program, for which funds were advanced, and for the expansion program for which its application was denied.

17. 992275 maintains that the CEBA program is grossly flawed, was not properly administered and that the escalation efforts by 992275 were essentially ignored.

18. 992275 maintains that the decision to reject its expansion application was erroneous and inconsistent with a proper determination of the facts.

19. 992275 maintains that the government had an obligation to administer this program fairly, honestly and equitably to the benefit of 992275. It failed to do so.

20. 992275 maintains that that there is no communication ability within the program, no transparency whatsoever and the operation of the program fails to meet any standard of fundamental fairness especially from the point of view of being an emergency remedial program.

21. 992275 further contends that the government failed at all material times throughout the process to act with any degree of reasonableness.

22. 992275 found itself deprived of the \$20,000 in additional funding during a period in which it qualified for and required this program assistance.

23. 992275 further finds itself in a position of not receiving the \$20,000 in grant monies afforded under the program.

24. 992275 remains unclear as to whether the Royal Bank, as loan administrator, will be requested to call the \$40,000 loan already advanced based on the rejection of the expansion program application for which the qualification criteria was identical.

25. On or about Dec. 22, 2021, 992275 contacted its area Member of Parliament. The Member's office sent a letter detailing the case to the Conservative Shadow Minister, who in turn forwarded it to the department. The response was that the program was closed.

26. 992275 contends that the Defendant has acted with gross negligence and total disregard for the interests and rights of 992275 within the context of what is supposed to be a remedial program.

27. 992275 contends that it should be compensated for its extended and unnecessary financial hardship and be granted the program benefits in their entirety, or in the event the program is closed be compensated for the \$20,000 in grant monies that were available under the program and which 992275 would otherwise have been entitled to, given that it intended and would have repaid the loans as required to qualify.

28. The Plaintiff asks that this matter be tried in Toronto.

February 24, 2022



992275 Ontario Inc.
Represented by Axel Winkelmann, President
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SOR/2021-150, s. 12

Court file No.

992275 ONTARIO INC.

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

FEDERAL COURT OF CANADA

Proceeding commenced at TORONTO

STATEMENT OF CLAIM
Pursuant to Section 48

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Representing the Plaintiff