

FORM 301 Rule 301
Notice of Application

Court File No: T-569-23

(Court seal)

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	Mar 22, 2023	
Wayne Sawtell		
Ottawa, ONT		1

FEDERAL COURT

BETWEEN:

PETER BROUGHTON

Applicant

-and-

THE ATTORNEY GENERAL OF CANADA

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.

March 20, 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 by Applicant dated Feb 21, 2023, received February 25, 2023 demanding that upon second review, without explanation that the Applicant repays 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:

Judicial review of a decision made by the CRA's most recent letter dated February 21, 2023, and other correspondence rejecting my proof of eligibility for CERB and CRB.

The grounds for the application are:

1. As per the Eligibility Criteria for the CERB benefit as posted on the CRA website in the Spring of 2020, I earned \$16,584.41 (inaccurately listed by the accountancy firm in box 12599 as the source of income in my 2019 and 2020 tax returns but to be re-categorized by my accountant Giroday and Warren LLP) self-employment income before taxes in the 12 months prior to the first CERB application beginning March 13, 2020.
2. As a self-employed individual, I contract my boat and my diversified services to clientele to earn income. In the 12 month period prior to the first CERB application, my income came from AirBnB, boat cruises and in late 2020 to beyond the time periods in question, work in the film industry.
3. 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 and CRB.
- You met all the other CERB and CRB 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.”

4. I am eligible to receive the COVID-19 benefits based on the definition of ‘worker’ in the CERB Act, section 2.
5. It was determined that I was eligible to receive the CERB and CRB benefits by two different CRA agents who I spoke with over the phone. I received a total of \$18,000 (\$14,000 CERB +\$4,000 - \$400 tax CRB) which I declared as Other Income in my 2020 and 2021 tax returns.
6. 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 CRB 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.”
7. 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’.
8. 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.”

9. I received a letter from the CRA dated Aug 25, 2022, requesting proof of earnings over \$5,000 in order to be eligible for COVID 19 Benefits in 2019 or in the twelve months prior to the date you applied for Canada Emergency Response Benefits or in the twelve months before the date you applied for Canada Recovery Benefits. I spoke to someone from CRA and she said, the best method of proof was to send Bank Statements. I re-uploaded them to my CRA account on Oct. 07, 2022 as they hadn't received them after my initial effort in Sept. 2022.
10. I received a letter from the CRA dated Dec 2, 2022 stating: “We are writing to advise you of our decision regarding your Canada Emergency Response Benefit (CERB). ...you are not eligible the following reason(s): *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*”.
11. I received a letter from the CRA dated Dec 2, 2022 stating: “We are writing to advise you of our decision regarding your Canada Emergency, Recovery and/or Lockdown Benefits review. We have determined that you are not eligible for the Canada Recovery Benefit (CRB). Based on our review, you are not eligible for the following reason(s): *You did not earn at least \$5000 (before taxes) of employment or net self-employment income in 2019 or in the 12 months before the date of your first application.*”
12. I uploaded my boat income statements, bank statements and Airbnb statements via My Account on Dec 17, 2022 to CRA in response to their first review requesting a second review of CERB eligibility in disagreement to their letter dated Dec 2, 2022. The statements outline all the relevant income earned 12 months prior to 1st CERB application totaling \$16,584.41 gross earnings before taxes, with all supporting documented proof to meet the eligibility requirements of CERB and CRB.
13. On Jan 23, 2023, I received Notice of redetermination for COVID-19 benefits from CRA dated Jan 18, 2023 demanding repayment for CRB without acknowledging the proof of income provided, or any reason for rejecting my evidence.
14. On Jan 23, 2023, I received Notice of redetermination for COVID-19 benefits from CRA dated Jan 18, 2023 demanding repayment for CERB without acknowledging the proof of income provided, or any reason for rejecting my evidence.
15. On Feb 25th, 2023 I received a letter from the CRA dated Feb 21, 2022 stating, “We are writing to advise you of our decision regarding your request dated December 17, 2022, for a second review of your Canada Emergency Response Benefit (CERB) application...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. Again they didn't acknowledge the proof of income provided and gave no reason for rejecting my evidence.

16. On Feb 25, 2023 I received a letter from CRA dated Feb 21, 2022 stating, "We are writing to advise you of our decision regarding your request dated December 17, 2022, for a second review of your Canada Recovery Benefit (CRB) application...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. Again they didn't acknowledge the proof of income provided and gave no reason for rejecting my evidence.*
17. On Mar 14, 2023 I received a Statement of account for COVID-19 benefits stating that I had an amount owing of \$18,000 again with no explanation.
18. Under Rule 317 subsection (1), I request that that all material in the possession of the tribunal be sent to me

This application will be supported by the following material:

- a) Applicant's upload proof to My Account to the CRA
- b) Bank statements showing AirBnB payments through PAYPAL
- c) Bank statements showing boat hire income
- d) Bank statements showing income from sources in the film industry
- e) AirBnB statements
- f) Income summaries for 2019 and 2020
- g) My sworn testimony that my accountant, Giroday and Warren, will re-categorize the source of income (currently listed as rental income) in my tax returns, to the appropriate box for business purposes.

The Affidavit of Peter Broughton will include the following documentary exhibits:

1. Copy of CRA web pages for CERB eligibility
2. Copy of CRA web pages for RRB eligibility
3. Copy of CRA webpages with Canada Emergency Response Benefit (CERB) **Self-employment income (net vs. gross)** headline
4. Letter from CRA dated Aug. 25, 2022 for me to provide proof of \$5,000 income
5. Letter from the CRA dated Dec 2, 2022 on first review decision of CRB eligibility
6. Letter from the CRA dated Dec 2, 2022 on first review decision of CERB eligibility
7. Letter from CRA dated Feb. 21, 2023 on second review decision of CRB eligibility
8. Letter from CRA dated Feb. 21, 2023 on second review decision of CERB eligibility
9. Excerpt from CERB Act, Section 2
10. Excerpt from TAXPAGE.com

11. Copy of the Canada Gazette announcement of Remission Order
12. Copy of Notice of redetermination for COVID-19 benefits from CRA dated Jan 18, 2023, demanding repayment of \$4,000 for CRB
13. Copy of Notice of redetermination for COVID-19 benefits from CRA dated Jan 18, 2023, demanding repayment of \$14,000 for CERB
14. Copy of Statement of account for COVID-19 benefits, dated Mar. 24, 2023

Mar 20, 2023



(Signature of applicant)

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SOR/2021-151, s. 22