

BETWEEN:

FEDERAL COURT

DONNA ROYSTON-BIRBARI

Appellant

-and-

ATTORNEY GENERAL OF CANADA and the MINISTER OF NATIONAL REVENUE

Respondents

APPLICATION UNDER sections 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: 180 Queen Street West, Suite 200
Toronto, Ontario
M5V 3L6

TO: **Attorney General of Canada**
284 Wellington St.
Ottawa, ON
K1A 0H8

Telephone: 613-957-4222
Fax: 613-954-0811

AND TO: **Office of the Minister of National Revenue**
The Honourable Diane Lebouthillier, M.P.
Minister of National Revenue
7th Floor
555 MacKenzie Avenue
Ottawa ON
K1A 0L5

APPLICATION

This is an application for judicial review in respect of

1. The Canada Revenue Agency's ("CRA") notice that, after CRA's review of my Canada Emergency, Recovery, and/or Lockdown Benefits, it has determined that I am not eligible for the Canada Worker Lockdown Benefit ("CWLB") for the following reasons:

- a. That I did not earn at least \$5,000.00 (before Taxes) of employment or net self-employment income in 2020, 2021, or, in the 12 months before the date of my first application.

and requesting repayment, which denial was communicated to me by letter dated February 6, 2023, but postmarked February 21, 2023, and delivered February 28, 2023.

2. The Canada Revenue Agency's ("CRA") notice that, after CRA's review of my Canada Emergency, Recovery, and/or Lockdown Benefits, it has determined that I am not eligible for the Canada Emergency Response Benefit ("CERB") for the following reasons:

- a. That I did not earn at least \$5,000.00 (before Taxes) of employment or net self-employment income in 2019, or, in the 12 months before the date of my first application.

and requesting repayment, which denial was communicated to me by letter dated February 6, 2023, but postmarked February 21, 2023, and delivered February 28, 2023.

3. The Canada Revenue Agency's ("CRA") notice that, after CRA's review of my Canada Emergency, Recovery, and/or Lockdown Benefits, it has determined that I am not eligible for the Canada Recovery Benefit ("CRB") for the following reasons:

- a. That I did not earn at least \$5,000.00 (before Taxes) of employment or net self-employment income in 2019, 2020, or, in the 12 months before the date of my first application.

and requesting repayment, which denial was communicated to me by letter dated February 6, 2023, but postmarked February 21, 2023, and delivered February 28, 2023.

The applicant makes application for:

1. A declaration that the Decisions are unreasonable, unlawful, and invalid;
2. An Order quashing the Decisions with an order not to remit the matter back to CRA;
3. Alternatively, an order that the Decisions be remitted to another Officer for redetermination;
4. Costs of the proceedings; and,
5. Such further and other relief as may be sought and this Honourable Court may permit.

The grounds for the application are:

1. I am on Canada Pension Plan and am self-employed and do not earn much more than \$5000.00 per year on a good year.
2. In 2020, because of the COVID-19 lockdown, I applied for and received Canada Recovery Benefits that allowed me to survive due to the lockdown's impact on my self-employment income.
3. CRA initially accepted the claims without review, but subsequently undertook a review of my eligibility for benefits. CRA requested by books and records. I provided CRA a true copy of my books and Records, including bank statements and copies of etrasfer payments as evidence of my self-employment income. I was paid in cash and etransfers.

4. I have satisfied the requirements under the CWLB, CRB and CERB, being I earned at least \$5,000.00 (before taxes) of employment or self-employment income in 2019, 2020, 2021, or in the 12 months before the date of my first application and have provided support of my income.
5. Such further and other grounds as may be sought and this Honourable Court may permit.

This application will be supported by the following material:

1. Affidavit of Donna Royston-Birbari;
2. 2019-2021 Income tax returns and Notice of Assessments;
3. Books and records;
4. Correspondence with CRA;
5. CWLB application;

The applicant requests CRA to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the CRA to the applicant and to the Registry:

1. CWLB application;
2. CERB application;
3. CRB application;
4. CRA notes;
5. Such further and other material as may be sought and this Honourable Court may permit.

6. Such further and other material as may be sought and this Honourable Court may permit.

March 6, 2023


DONNA ROYSTON-BIRBARI

20-145 Edgewater Dr
Stoney Creek, Ontario
L8E 5W6

T: (905)815-2437
E-mail: donnabirbari@gmail.com

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

BIRBARI v. **ATTORNEY GEMERAL et al**
Appellant Respondents

Court File No.

FEDERAL COURT
Proceedings Commenced at Toronto

NOTICE OF APPLICATION

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20-145 Edgewater Dr
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E-mail: donnabirbari@gmail.com
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