

FORM 301 Rule 301
Notice of Application

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November 23, 2023 23 novembre 2023			
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APPLICATION

(Court File No.)

FEDERAL COURT

BETWEEN:

Lois McDonald
Applicant

and

Canada Revenue Agency
Respondent

APPLICATION UNDER Rule 301 Judicial Review

(Court seal)

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..

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.

November 23rd, 2023

Issued by: Toronto office

TO: Canada Revenue Agency

Application

This is an application for judicial review in respect of-

Canada Revenue Agency - Canada Emergency Response Benefit/Canada Recovery Benefit -Validation

Order dated October 25th 2023. (Appendix A)

Received by mail October 30th 2023.

Decision to disallow eligibility for benefits under both CERB and CRB for the following reason -

-did not earn at least \$5000 (before taxes) of self-employment income in 2019

The applicant makes application for:

A Federal Court Review regarding the applicant's eligibility for CERB and CRB. The applicant respectfully requests that The Court consider the applicant's claim that conditions of eligibility for CERB and for CRB, were met in accordance with the publically available information on the CRA web site in 2020 and that the applicant did suffer the loss of net self-employment income after expenses in the amount of \$11503.98.

The grounds for the application are-

1. The applicant's 2019 Net self-employment business income, after business expenses and before adjustments for tax allowances was \$ 11,503.98, This is well in excess of \$ 5000.00. This Net Business Income is correctly shown on the applicants 2019 income tax return, Business Income Schedule, form T2125, page 3, part 4, line 9369. (Appendix B)
2. The CRA CERB web site published in 2020 defines Net Self-employment Income for purposes of CERB eligibility as "net self-employment income after expenses" for the year 2019. A reasonable reading of this requirement would not suggest that the calculation of an allowance for tax deduction adjustments should be considered relevant to eligibility (Appendix C)

..

The amount of adjustments for tax deduction allowable for "business-use-of-home" expenses (line 9945, T2125) did not reduce the Net Self-employment Income that flowed to the applicant during 2019, and should not be involved in determining the amount of lost net income..In fact the allowed tax deduction actually enhances the value of the net income by rendering a significant portion of it exempt from income tax. .

This allowance on line 9945 is a percentage calculation of previously existing and on-going normal home expenses. (T2125, page 4) It is for taxation purposes only and therefore is only deducted at the bottom of page 3, part 5, to determine Net Taxable Income as reported on page 3 line 13500 of the applicants T1 return.. (Appendix D)

3. Notwithstanding the above, CRA has since published a ruling that allows eligibility to be determined based on 2019 Gross Sales rather than Net Business Income after expenses.. (Appendix E)

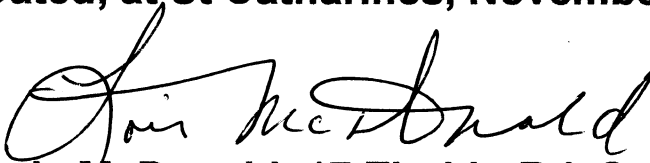
This application will be supported by the following material:

- Appendix A – CRA letters of denial received October 30th 2023
- Appendix B - 2019 Tax return, schedule, T2125, page 3
- Appendix C - Screen shot of CRA eligibility requirements for CERB
- Appendix D - 2019 Tax return schedule, T2125, page 4
- Appendix E - CRA ruling allowing the use of Gross sales.
- Affidavit of Lois McDonald dated November 22nd, 2023

The applicant requests Canada Revenue Agency 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 –please advise the amounts of CERB and CRB disallowed
- 2 -an explanation of how CRA made the determination to disallow eligibility
- 3 -the legislation and other documents relied upon
- 4 -all notes related to telephone conversations with the applicant.

Dated, at St Catharines, November 22, 2023



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