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| F              | FEDERAL COURT    | D             |   |
| I              | OF APPEAL        | É             |   |
| L              | COUR D'APPEL     | P             |   |
| E              | FÉDÉRALE         | O             |   |
| D              |                  | S             |   |
|                | October 12, 2023 |               |   |
|                | 12 octobre 2023  |               |   |
| Yovana Pataroo |                  |               |   |
| Court File No. | MTL              |               | 1 |

# **FORM 337.1Rule 337.1** **Notice of Appeal**

FEDERAL COURT OF APPEAL

BETWEEN:

Aijun Sun

Appellant

and

Attorney General of Canada

Respondent

(*Court seal*)

## **Notice of Appeal**

(under subsection 27(1.2) of the *Federal Courts Act*)

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant.  
The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Federal Court of Appeal at a time and place to be fixed by the Judicial Administrator. Unless the court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (place where Federal Court of Appeal ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the Federal Courts Rules and serve it on the appellant's solicitor or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the judgment appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

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 613-996-6795) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: Oct.11, 2023

Issued by: (Registry  
Officer)

Address of local office:

30 McGill Street

Montréal, Quebec

H2Y 3Z7

TO: Attorney General of Canada  
Department of Justice Canada, Quebec Region  
200, René-Lévesque Blvd. West  
East Tower, 9th floor  
Montréal, (Québec) H2Z 1X4  
Fax: 514-283-3103, Tel: 438-466-3130  
Per: Christophe Tassé-Breault  
Christophe.tasse-breault@justice.gc.ca

## APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the judgment of the Federal Court in Court File No. T-2368-22, per Mandy Aylen, dated September 12, 2023 by which the Federal Court dismissed the Appellant's application for judicial review. The judgement is not reasonable because CRA breached its duty of procedure fairness. The Federal Court refused to accept the new evidence which was delayed because CRA refused to issue Notice of Reassessments and audit results on time purposely in order that the appellant could not have the right evidence to submit in the Applicant's Record. The Federal Court instructed the Appellant to file the motion record of new evidence later in order to meet the deadline for submitting the Applicant's Record in April 2023. However, in the judgment rendered on Sep. 1, 2023, it states that new evidence is not admissible. Why the appellant's business services agreement, the invoices, and the payment of the invoice which support the appellant's \$5000 business income is not admissible. Why the Federal Court instructed the appellant to submit a motion record of new evidence if the new evidence is admissible. Why the Federal Court in Montreal gave the appellant wrong instruction?

In the Judgment rendered on Sep. 12, 2023, the judge does not mention the fact that CRA did not issue the Notice of Reassessments of the appellant's adjusted tax returns and the auditing of the appellant's tax returns, so the judge erred in fact. The judge's analysis of the standard review is not correct because the judge not only omitted the important facts about the CRA's issuing of the Notice of Reassessments and the CRA auditing, but also erred in law. The CRB eligibility is based on accounting rules and calculations. Anybody who has at least \$5000 business income and has 50% deduction of the average weekly income compared to the previous year is eligible for CRB. The service contract, the invoice, and the payment should support the \$5000 business income. The calculation of the two years average weekly income shows whether the appellant has 50% deduction of the average weekly income compared to the previous years. If these numbers can be reached, the appellant is qualified for CRB. In the judgement rendered on Sep. 12, 2023, the judge wrote three pages about the self employment documents, but the judge refused to accept and look the appellant's self employment documents. If the judge refuses to check the appellant's documents, how the judge can know whether the appellant's self employment income documents are correct or not. Based on Supreme Court Judgment December

19, 2019, 2019 SCC65 and 2019 SCC66, the Supreme Court has changed how courts look at administrative (non-court) decisions, to make the law clearer and more predictable.

Administrative decision maker, a CRA agent, should follow the rules first, not determine the reasonableness first. A correct decision is the only right answer in light of law and facts. The standard review of reasonableness means the administration decision is reasonable or not when there are several decisions to choose. For CRB eligibility question, which is a math and accounting law question, there is only one decision to choose eligible or not eligible based on the accounting documents. Refusing to accept these decision making documents, the Federal Court not only erred in fact but also erred in law.

THE APPELLANT ASKS that the said new evidence should be accepted and, a judicial review should be allowed, with costs to the Attorney General.

THE GROUNDS OF APPEAL are as follows:

1. On July 5, 2022, the Applicant received CRA's first review result of her Canada Recovery Benefit Application by mail. The first review result states that the applicant is not eligible for the CRB because she did not meet the following criteria:

- You did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020, or the 12 months before the date of your first application.

2. Several days later, the applicant received a phone call from a CRA agent. The agent told the applicant that the applicant is not qualified for the CRB. The agent just asked the applicant to submit the bank statements and invoices to CRA for the second review. There are no written documents from CRA to instruct the applicant how to prepare the documents in order to complete the second review. In the phone conversation, the agent also did not mention the 50% reduction of the average weekly income compared to the previous year, which was stated in the second review result letter after finishing the second review several months later. The agent also did told the applicant that she has to submit rental leases after the applicant told the agent that her business does not use invoices because the rents are deposited to her bank account monthly.

3. After the phone conversation with the agent, the Applicant revised her 2019 and 2020 tax returns in July 2022 in order to have at least \$5,000 of the net self employment income to satisfy CRB eligible criteria and submitted the bank statements to CRA. CRA and Revenue Quebec all

issued the notice of reassessments to the applicant, which means that CRA has accepted and admitted the applicant's transfer of \$5000 from rental income to self-employment income in 2019 and 2020 tax returns. The applicant thought the transferring rental income to business income is correct since the second reviewer and the CRA notice of reassessment preparer all did not point out that the transferring of rental income to business income is wrong.

4. On October 12, 2022, the Applicant received CRA's Second review result for her Canada Recovery Benefit Application. The second review result states that the applicant is not eligible for the CRB because she did not meet the following criteria:

- You did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020, or the 12 months before the date of your first application.

- You did not have a 50% reduction in your average weekly income compared to the previous year due to Covid-19.

5. The CRA's two review results are different, which is not only misleading the Applicant's preparation for the second review, but also the reasonableness of the review results is questionable. There is no explanation in the second review results. The review results also did not show the applicant the calculation why the applicant did not have a 50% reductions in her average weekly income compared to the previous year due to Covid-19, which is an error of the tax law. [See *Crook v. Canada (Attorney General)*, 2022 FC 1670 (CanLII)]. The judge in the above case states "In my view, the officer's decision does not meet the standards of justification, transparency, and intelligibility required of a reasonable decision. I reach this conclusion primarily because of the lack of explanation by the officer as to why the "detailed invoices" provided by Mr. Crook were insufficient in the context to substantiate his having earned at least \$5,000 in self-employment income in the 12-month period prior to his application for CRB". As a result, Mr. Crook application for judicial review is allowed and the issue of Mr. Crook's eligibility for the CRB is referred back to the CRA for redetermination by another officer.

6. The judge erred in fact that after the second review, appellant revised her tax return in November and December 2022, but no Notice of Reassessments were issued to the appellant under the situation the appellant called CRA hundred hours and sent a registered mail to the

appellant's tax centre, Sudbury Tax Center. The judge did not mention that CRA refused to issue notice of reassessment of the appellant's revised tax returns after the appellant filed the Request of Material in the Possession of the Respondent in December 2022.

7. The judge erred in fact that CRA started the auditing of the appellant's tax return in January 2023. The auditor refused to issue the audit result to the appellant and the appellant filed the complaint against him to CRA and the Office of the Taxpayers Ombudsperson. The first audit result was sent to the appellant on May 17, 2023, which is a date after the deadline for the appellant's submission of the Applicant Record. The judgment did not mention CRA auditing of the appellant's tax return in her two judgements.

8. The fact is that after CRA issued the second review result, the appellant cannot reach anybody of CRA, although the appellant called CRA hundred hours, sent registered mail to the tax center, and filed several complaints against the CRA and the auditor to the tax Ombudsperson. CRA and CRA's auditor's behaviour is not only an issue of procedure fairness, but also a workplace ethic issue of cheating. The appellant does not know what kind of evidence CRA wants and whether her revised tax returns are correct or not if CRA keeps quiet. This situation leads to the file of the appellant's motion record of new evidence. The appellant was notified that she cannot transfer her rental income to business income in the audit result letter dated May 17, 2023. It is the first time CRA gave the opinion to the appellant's revised tax returns. The audit letter dated May 17, 2023 was the first information the appellant received from CRA since November 2022 when she revised her tax returns several times. The applicant revised her tax returns on May 27, 2023 in order to report \$6900 business income in the 2019 tax return and found the business documents, such as the service contract, invoices, payment to support this change of the tax return. It is CRA's misconduct which leads to the writing of the motion record for new evidence. If CRA notified the applicant that she cannot transfer rental income to business income when she revised her tax return in July 2022, the applicant does not need to file the motion record for new evidence because she can file the \$6900 business income in the applicant record directly. As a result, the judicial review should be allowed. [See *Sjogren v. Canada (Attorney General)*, 2022 FC 951 (CanLII)]

9. The judge erred in fact that the registry officer in Federal Court of Montreal office also gave the appellant wrong instruction on purpose. The appellant called the registry office in Montreal

regarding the filing of the applicant's record without CRA's notice of reassessments and the auditor's results. The office told the appellant that she had to file the Applicant's Record on time and submit the new evidence later by filing a motion record of new evidence. The registry office emailed a sample motion record to the appellant in order that she can write her motion record of new evidence. The registry office's instruction misled the appellant to trust that the Federal Court can accept new evidence because of CRA's mistakes and procedure unfairness. If the appellant was not told that she will be able to submit new evidence later by filing motion record of new evidence, she would not have filed the Applicant's Record without getting any notice of reassessments and audit result. The appellant filed the Request for Materials in the possession of the Respondent twice, but the respondent replies that the respondent does not have the notice of reassessments. Who has the Notice of Reassessments and the audit results, if CRA does not have? There were a lot of misconducts and cheating in CRA's procedure towards the appellant.

10. The CRA's tax assessment and audit staff's attitude are abnormal and they worked together to commit an unfair procedure in order that the appellant cannot submit the right evidence to the Federal Court on time. For example, the appellant received CRA's mailed letter dated December 23, 2023 from the Sudbury tax center, in which CRA states that they are processing the notice of reassessment and request the appellant to be patient. On the contrary, on January 6, 2023, the appellant received a phone call from CRA Quebec tax center and was told that the Quebec center will audit the appellant's tax return. The appellant always could not reach the auditor and the first audit result was sent to the appellant on May 17, 2023. After receiving the first review result, the appellant knows what evidence she should submit. As a result, it is impossible for the appellant to submit the right documents before the deadline for her to submit the Applicant's Record. Furthermore, the appellant received the second review result on August 5, 2023, just before the Federal Court hearing, after the appellant called CRA and the Federal Court to adjourn the hearing.

11. Since the appellant could not get any feedback from CRA and the Auditor after the second review, she filed the Request for Materials in the Possession of the Respondent twice and no response from the respondent. How the appellant knows what evidence CRA wants if the appellant cannot reach CRA regarding the Notice of Reassessment and the audit result.

12. The judge erred in law. As a general rule, materials that were not before the decision maker are not admissible on judicial review. The Federal Court of Appeal has recognized certain exceptions to this general rule, such as where the new evidence: 1. Provides general background that might assist the Court understanding the issues relevant to the judicial review; 2. is necessary to bring procedural defects to the Court's attention; 3, highlights the complete absence of evidence before the administrative decision-maker. The appellant's new evidence is totally meets the above three criteria. The appellant's business services contract, business invoices, and the payment are key evidence for the Federal Court to make judicial review because these documents will show \$5000 business income and the 50% deduction of the average weekly income directly. The procedure defect leads to the appellant's late submission of the key evidence. The CRA agent who completed the second review of the appellant's tax returns does not have the key evidence because CRA did not give any feedback to the appellant regarding her revised tax returns. The appellant only knows what she should submit after she received the first feedback from CRA, the audit letter dated May 17, 2023.

13. CRA auditor from Quebec Tax Center acted without jurisdiction since the appellant's tax center is Sudbury Tax Center Ontario.

14. CRA failed to observe a principle of natural justice in which the CRA refused to issue Notice of Reassessments to the appellant and CRA auditor refused to issue audit result to the Appellant before the deadline for the appellant to submit the Applicant's record. As a result, the appellant could not file the right evidence in the Appellant's Record. CRA has to issue Notice of Reassessment of adjusted tax return in four weeks normally. The procedural is not fair to the appellant. Furthermore, the appellant filed the Requisition of Material in the Possession of the Respondent twice, but no response from the respondent regarding this issue. The judge did not mention this in her two judgments. The Federal Court of Appeal has to allow the judicial review.

15. The judge erred in law in making a decision or an order, whether or not the error appears on the face of the record. The judge issued the first judgment on Sep. 1, 2023 after the August 30, 2023 hearing. After the appellant emailed the Federal Court in Montreal on Sep. 12, 2023 that the appellant will file the appeal to the Federal Court Appeal, the judge rendered her second judgment and emailed it to the appellant two hours later on Sep. 12, 2023. It looks the second



judgment is only prepared for the appellant's appeal to the Federal Court of Appeal. The appellant cannot see the logical chain of analysis in these two judgements.

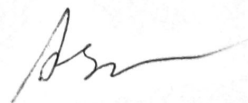
16. In the judgment rendered on Sep. 12, 2023, the judge wrote three pages from page 5 to page 7 about the self employment income policy and acceptable proof for self employment income. The issue in this appeal is the respondent and the Federal Court refused to accept the appellant's self employment documents as new evidence to support her eligibility of CRB. The judge wrote three pages about service contract, invoice, and receipt of payment theoretically, but the judge refused to accept the appellant's new evidence which includes everything the judge wrote. The judge cannot make the right decision if the judge refuses to accept and see the appellant's documents. The judge should accept the new evidence in order to complete the judicial review.

17. The appellant requests that CRA sends a certified copy of the following material that is not in the possession of the appellant but is in the possession of the respondent to the appellant and to the Registry:

Notice of Reassessment of the appellant's tax return revised in May 2023 and August, 2023 for the year of 2019 and 2020. The appellant refilled her 2019 and 2020 tax returns in August 2023 again because she did not receive the notice of reassessments for the tax returns filed in May 2023.

Date: Oct. 11, 2023

Signature of the appellant:



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