

Court File No.: T-2640-23

FORM 301 – Rule 301
NOTICE OF APPLICATION

APPLICATION
FEDERAL COURT
BETWEEN:

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F I L E D	FEDERAL COURT COUR FÉDÉRALE 13-DEC-2023 Priscilla Lam
VAN	1

C.W. CARRY LTD.
 Applicant

and

**CANADA REVENUE AGENCY (MINISTER OF NATIONAL REVENUE) and THE
 ATTORNEY GENERAL OF CANADA**
 Respondent

APPLICATION UNDER sections 18.1 and 28 of the *Federal Courts Act* RSC, 1985,
 c F-7

NOTICE OF APPLICATION

**TO THE RESPONDENT: CANADA REVENUE AGENCY (MINISTER OF NATIONAL
 REVENUE) and THE ATTORNEY GENERAL OF CANADA**

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 Calgary, Alberta.

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.

December 13, 2023

**ORIGINAL SIGNED BY
PRISCILLA LAM
A SIGNÉ L'ORIGINAL**

Issued by: _____
(Registry Officer)

**Courts Administration Service
P.O.Box 10065, 3rd Floor
701 West Georgia Street
Vancouver, B.C. V7Y 1B6**

Address of Local Office: _____

TO:

**CANADA REVENUE AGENCY (MINISTER OF NATIONAL REVENUE)
Economic Entity and International Tax Division
High Complexity Audit Tax Service Office
9755 King George Boulevard Surrey BC V3T 5E1**

and

THE ATTORNEY GENERAL OF CANADA

Notice of Application

This is an application for judicial review of a decision issued by the Minister of National Revenue - Canada Revenue Agency (“**CRA**”). On November 16, 2023, the CRA issued to the Applicant, C.W. Carry Ltd. (the “**Applicant**”) a Second Level Response Letter with respect to the Canadian Emergency Wage Subsidy (the “**Decision**”). The Decision was accompanied with a Fact Sheet which outlined the position of the CRA in greater detail (the “**Fact Sheet**”).

Background:

After undertaking an audit of the Applicant’s Canadian Emergency Wage Subsidy (“**CEWS**”) claims, the CRA sent the Applicant a letter on May 18, 2022 (the “**Audit Letter**”). The CRA noted that the Applicant had mistakenly used its March 2020 revenue amount instead of the February 2020 revenue amount in calculating their prior reference period amounts. This error resulted in the Applicant electing to use the alternative approach rather than the general approach for calculating CEWS pursuant to section 125.7 of the *Income Tax Act* RSC 1985, c 1 (5th Supp). The auditor noted that, once the mistake in the calculation of the prior reference period was corrected, using the alternative approach resulted in an overpayment of an aggregate of \$1,086,568.86. However, if they could instead use the general approach, their overpayment would only be \$63,153.84.

Both during the audit and in response to the Audit Letter, the Applicant requested the CRA allow it to amend or revoke its election to use the alternative approach for calculating CEWS. Specifically, the Applicant requested the CRA exercise its discretion to extend the time for the Applicant to file, and in turn amend, its CEWS applications, in part, due to recent legislative amendments adding subsection 125.7(16) (the “**Request**”).

In a Determination Letter and Notices of Determination dated July 6, 2023 (the “**Audit Decision**”), the CRA stated the Applicant was unable to change its prior reference period, effectively denying the Applicant’s Request for the CRA to exercise its discretion.

In response to the Audit Decision, the Applicant filed an application for judicial review on July 24, 2023 (Court File No. T-1542-23). As a result of this application, the CRA eventually indicated to the Applicant that it should apply for a second-level review of the Request.

The Decision:

The Decision at issue in this application is the second-level review of the Applicant’s request to amend its application. In the Decision, the CRA denied the Applicant’s Request, citing as its reason:

You are responsible for making sure your claims are filled out correctly and filed on time. All the information was available to you on how to accurately calculate the application(s) before the filing deadline(s).

The CRA stated in the Fact Sheet that “[a]lthough a simple mistake was made, and the CRA MAY accept late amendments due to calculation errors, this mistake should have been avoided as all the information was available to calculate the subsidy at the time of the filings.” In effect, the CRA acknowledged it has the discretionary authority to accept late-filed amendments to 125.7 applications due to calculation errors, but decided not to use that discretion to grant the Request.

However, the CRA failed to properly consider and exercise its discretion regarding the Applicant’s Request.

The Applicant makes application for:

1. Judicial Review of the Decision;
2. An Order of this Honourable Court vacating the Decision of the CRA and issuing a new decision or directing the Canada Revenue Agency to reconsider the Decision;
3. An Order providing such directions to the CRA as this Court considers to be appropriate so as to guide the CRA decision-maker to make a lawful decision;
4. An Order as to costs, as counsel may advise and this Honourable Court may consider to be appropriate in the circumstances; and
5. Such further and other orders and/or relief as the Applicant may request and this Honourable Court may deem just.

The grounds for the application are:

1. The CRA erred in law by failing to properly exercise its discretion throughout their conduct of the Applicant’s file and in rendering the Decision;
2. The CRA acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
3. The CRA generally failed to observe the principles of natural justice and failed to conduct itself fairly;
4. The CRA erred in law in making a decision or an order, whether or not the error appears on the face of the record;
5. The Decision is based on erroneous (or unknown) assumptions of both fact and law made by CRA;
6. The CRA made findings are without any basis in evidence and/or law; and

7. Such other and further grounds as counsel may advise or this Honourable Court may allow.

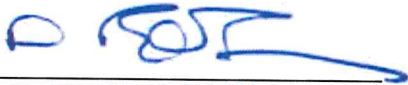
This Application will be supported by the following material:

1. Affidavit evidence as may be filed in accordance with the *Federal Courts Rules* (the "**Rules**"); and
2. Such other and further materials as counsel may advise or this Honourable Court may allow.

Pursuant to Rule 317 of the *Rules*, the Applicant requests the 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. All documents in the possession of the CRA relating to the Decision that were not provided to the Applicant directly by the CRA; and
2. A copy of all internal materials and inter-office emails of the CRA in regards or relation to the Decision.

December 13, 2023



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