

Court File No.

T-60-24

FEDERAL COURT

BETWEEN:

Seal

ANGELIKI KOUROUCLIS

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D E P O S É
	JAN 10 2024	
	SHERRI ALLY	
TORONTO Applicant -1-		

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7

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 180 Queen Street West, 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.

Date: January 9, 2024

JAN 10 2024

CHERRI ALLY
R. CLERK OF COURT
AGENT DU GREFFE

Issued by:

(Registry Officer)

Address of local office: 180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO: THE ADMINISTRATOR
Federal Court

AND TO: THE ATTORNEY GENERAL OF CANADA
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

(Service to be effected by filing duplicate copies in the registry pursuant to s 133 of the *Federal Courts Rules* and s 48 of the *Federal Courts Act*.)

APPLICATION

This is an application for judicial review pursuant to s. 18.1 of the Federal Courts Act, RSC 1985 c F-7 in respect of a decision of the Canada Revenue Agency ("CRA") Benefits Compliance Officer on behalf of the Minister of National Revenue ("the Minister"). By letter dated December 11, 2023, and bearing reference number C0063021615-001-45, CRA Manager S. Constantin informed the Applicant that she was not eligible to receive the Canada Recovery Caregiving Benefit ("CRCB") as she did not care for a child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility for reasons related to COVID-19. Or, the individual who usually provided care was not available for reasons related to COVID-19.

Prior, the Applicant submitted a directly related application for Judicial Review dated June 19, 2023 (the "First Application") in respect of a decision of the CRA Benefits Compliance Officer on behalf of the Minister. By letter dated May 18, 2023, and bearing reference number C0054669650-001-45, CRA Manager S. Constantin informed the Applicant that she was not eligible to receive the CRCB as she did not receive \$5,000 in income in 2019, 2020, 2021, or in the 12 months prior to the application for that benefit. The First Application was returned to CRA for additional consideration leading to the need for the application herein.

The Applicant makes application for:

1. An Order setting aside the decision of the CRA decision dated December 11, 2023, that the Applicant is ineligible for the CRCB.
2. An Order directing the Minister to find that the Applicant did earn at least \$5,000 in income in 2019, 2019, 2020, 2021, or in the 12 months prior to her first date of application for the CRCB and is therefore eligible for that benefit.
3. An Order directing the Minister to find that the Applicant did care for a child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility for reasons related to COVID-19. Or, the individual who usually provided care was not available for reasons related to COVID-19 and is therefore eligible for the CRCB benefit.
4. In the alternative, an Order referring the matter back to a different agent of the Minister for reconsideration of the Applicant's eligibility for the CRCB, with such directions as this Honourable Court considers just and appropriate; and,
5. Such further or other relief as counsel may advise and this Honourable Court may permit.

The grounds for the application are:

6. The Applicant, Angeliki Kourouclis ("**Ms. Kourouclis**"), is a low-income single mother residing in Mississauga, Ontario. She has two children: seven year-old twins (a boy and a girl).
7. Ms. Kourouclis is originally from Ethiopia. She does not have any family in Canada, except her half-sister, Meskerem Weldeselasia ("**Ms. Weldeselasia**").
8. Ever since 2017 after Ms. Kourouclis lost her job following a maternity leave, she has struggled financially to provide for her children while caring for them as a single mother.

Ms. Kourouclis earned at least \$5,000 in income in 2019

9. In or around April 2019, Ms. Kourouclis started independently day trading from her home through Quéstrade a web-based broker. She used a business account (a "Margin" account), which allowed her to leverage her investments when buying and selling securities. Ms. Kourouclis actively monitored the stock market while it was open on weekdays. Additionally, she conducted research to aid her day trading on weekdays before and after the stock market opened, and on the weekends. This allowed Ms. Kourouclis to buy and sell securities frequently.
10. During this time, Ms. Kourouclis had Ms. Weldeselasia care for her children on weekdays and some weekends so she could devote herself to day trading full-time.
11. In or around August 2019, Ms. Kourouclis completed three day trading courses ("The Complete Foundation Stock Trading Course", "Advanced Stock Trading Course + Strategies", and "Day Trading and Swing Trading Strategies For Stocks") through Udemy, a web-based education company.
12. In or around September 2019, Ms. Kourouclis called CRA, asking if her income from day trading would be considered self-employment income. She described how she day traded and the training she completed. The CRA agent she spoke with told her based on her description of her circumstances, Ms. Kourouclis's income from day trading would likely be considered self-employment income.
13. By the end of 2019, Ms. Kourouclis had earned \$7,305.60 from day trading.

Ms. Kourouclis applies for the Canada Emergency Response Benefit ("CERB")

14. In or around February 2020, Ms. Weldeselasia was no longer able to care for Ms. Kourouclis' twins due to COVID-19 concerns. Without childcare, Ms. Kourouclis could not devote herself to day trading full-time.
15. In or around March 2020, when CERB was first announced, Ms. Kourouclis called

CRA, asking if she qualified. She explained how she conducted her trades and earned more than \$5000.00 in 2019. The CRA agent recommended that she apply as she had earned more than \$5,000.00 in self-employment income.

16. From March 15, 2020, to September 26, 2020, Ms. Kourouclis received the CERB for a total of \$14,000.00.

Ms. Kourouclis applies for the CRCB

17. CERB ended on September 26, 2020, and was replaced with the Canada Recovery Benefit, the Canada Recovery Sickness Benefit, and the CRCB.
18. Starting September 27, 2020, Ms. Kourouclis received the CRCB as her twins were learning from home rather than starting junior kindergarten in person due to COVID-19 concerns.
19. From September 27, 2020, to July 17, 2021, she received the CRCB for a total of \$21,000.00.
20. In or around April 2021, Ms. Kourouclis submitted her 2019 tax return, which she filed without assistance using Turbo Tax software. This was her first-time filing taxes with income from day trading and there was an error in her 2019 tax return.

The CRA determines Ms. Kourouclis is ineligible for the CERB and CRCB

21. On June 27, 2022, the CRA notified Ms. Kourouclis via letter her CRCB eligibility was selected for review. She was requested to provide documents showing she had earned at least \$5000 in 2019, 2020, or in the 12 months before the date she first applied for the benefit.
22. Ms. Kourouclis subsequently spoke with a CRA agent and explained that she had earned more than \$5,000 in 2019 so she did not understand why she had received the letter. She indicated that she had recently filed her taxes without assistance. The agent advised her to find a "reputable accounting firm" and have them assist her with responding to the letter.
23. Ms. Kourouclis hired an accountant, Salman Rundhawa ("Mr. Rundhawa"), who advised her that she needed to resubmit her 2019 tax return to prove her income. On or around August 2, 2022, Mr. Rundhawa resubmitted Ms. Kourouclis's 2019 tax return on her behalf. There was an error in her amended 2019 tax return.
24. On August 8, 2022, the CRA notified Ms. Kourouclis via letter that the letter from June 27, 2022, was sent in error and should be disregarded. However, this new letter went on to say that her CERB and CRCB eligibility were selected for review. For both, she was asked to provide documents showing she earned \$5,000 in 2019, 2020, or in the 12 months before the date she applied for the benefit.

25. Mr. Kourouclis believed that the submission of her amended 2019 tax return which set out her income from self-employment, would address the eligibility issues outlined in the August 8, 2022, correspondence. On August 11, 2022, Ms. Kourouclis' 2019 tax return was reassessed.
26. On October 17, 2022, the CRA sent Ms. Kourouclis a letter stating she was not eligible for the CERB because she did not earn at least \$5,000 in 2019 or the 12 months prior to the date of her first application and therefore had to repay \$14,000 she had received from the CERB.
27. On the same day, Ms. Kourouclis received a virtually identical letter stating she was not eligible for the CRCB because she did not earn at least \$5,000 in 2019, 2020, 2021, or in the 12 months prior to the date of her first application and therefore she would also have to repay the \$21,000 she had received from the CRCB.
28. Ms. Kourouclis was terrified by the two CRA letters from October 17, 2022. It did not appear that the review had considered her amended 2019 tax return and tax slips outlining her income from day trading.
29. On or around October 24, 2022, Ms. Kourouclis spoke to Mr. Rundhawa regarding the two CRA letters from October 17, 2022. Mr. Rundhawa informed her that he did not have access to Ms. Kourouclis's CRA account since CRA was upgrading its system at the time.
30. On or around December 6, 2022, Ms. Kourouclis uploaded a personal note to her CRA account, explaining that she did not agree with the reviews of her CERB and CRCB eligibilities.
31. On or around March 12, 2023, a CRA agent (the "Agent") left a voicemail for Ms. Kourouclis. Ms. Kourouclis called the CRA and was informed the Agent was the CRA agent assigned to her case. Ms. Kourouclis and the Agent tried to connect over the next month but were unable to.
32. On or around April 17, 2023, Ms. Kourouclis spoke with the Agent. The Agent explained she was contacting Ms. Kourouclis regarding the note Ms. Kourouclis uploaded to her CRA account. Ms. Kourouclis explained how her day trading constituted self-employment income and therefore she qualified for CERB and CRCB since she made more than \$5,000 from day trading in 2019. She described the training she had received, the hours and frequency of her trades, as well as the expenses she incurred.
33. At the request of the Agent, Ms. Kourouclis uploaded the documents that she referred to in the conversation which included: a log of her 2019 day trading activities, a summary of her 2019 day trading activities, a log of her 2019 business expenses, proof of payment for FINVIZ subscription, invoices for TradingView

subscriptions, a Certificate of Completion for "Advanced Stock Trading Course + Strategies" from Udemy, and a Certificate of Completion for "The Complete Foundation Stock Trading Course" from Udemy.

34. Ms. Kourouclis did not have any further contact with the CRA. CRA agents were unavailable from April 19, 2023, until May 4, 2023, due to a federal public service strike.
35. Having heard nothing further, Ms. Kourouclis was surprised on May 18, 2023, to receive a second review letter indicating that she was still not eligible for the CERB because she did not earn at least \$5,000 in 2019 or the 12 months prior to the date of her initial request for benefits (the "Decision"). The letter provided no further details as to why she did not meet the income requirement.
36. On the same day, Ms. Kourouclis received another second review letter indicating she was not eligible for CRCB because she did not earn at least \$5,000 in 2019, 2020, 2021, or in the 12 months prior to the date of her first application (the "Decision"). The letter provided no further details as to why she did not meet the income requirement.
37. On or around July 19, 2023, the First Application was served regarding both CERB and CRCB to the Attorney General. On or around July 26, 2023, the Applicant discussed settlement with the office of the Attorney General. On or around August 4, 2023, Ms. Kourouclis received a signed copy of the Minutes of Settlement and Notices of Discontinuance. On August 10, 2023, the Applicant filed Notices of Discontinuance with the Federal Court. The Decision was referred back to CRA for reconsideration.
38. On or around October 10, 2023, at 12:10 PM Ms. Kourouclis received a call from a CRA agent. The agent (number 39147, name Brandy) indicated that she was from the Validation department of the CRA. Ms. Kourouclis indicated to the CRA agent that she needed to verify her identity with the CRA. The CRA agent agreed to speak later in the afternoon.
39. The same day, Ms. Kourouclis called the CRA's main line and validated the agent ID and name with the CRA.
40. The CRA agent called Ms. Kourouclis the afternoon of October 10, 2023. The agent asked Ms. Kourouclis to submit to the CRA any additional documents submitted to the Attorney General. The CRA agent instructed Ms. Kourouclis to upload all the additional documents to the CRA using the web portal.
41. By October 13, 2023, at 2:30PM EST, Ms. Kourouclis completed uploading to the CRA web portal all the documents requested by the CRA agent. Ms. Kourouclis contacted the CRA agent using the phone number provided to her by the agent.

Ms. Kourouclis left a message to the CRA agent voice mail indicating that she uploaded all the requested documents.

42. The documents uploaded to the CRA, via the web portal, include the documents submitted with the Affidavit dated July 19, 2023. Additionally, Ms. Kourouclis uploaded 20 new additional files to the CRA, and these include:

- I. COVID19_advisory_ontario.pdf
- II. Covid-19-vaccines-children-5-11.pdf
- III. DrBarwell-note-COVID19-homeschooling.pdf
- IV. Exhibit-1_FamilyDoctor_DrBarwell.jpg
- V. Exhibit-
2_PeelPublicHealthServices_COVID19_Vaccination_Ongoing_COVID-19_Response.pdf
- VI. Exhibit-3_EducationMinister-Tweet-April2021.jpg
- VII. Exhibit-4_Schools_With_Covid19_Cases.xlsx
- VIII. Exhibit-5_Science-Brief-Education_v.1.1_2021
- IX. Exhibit-6_HealthCanada.ca.pdf
- X. Exhibit-7_covid-19-vaccines-children-5-11.pdf
- XI. Exhibit-8_NACI.pdf
- XII. Exhibit-9-FEPS.jpg
- XIII. Exhibit-10-DixieClinic-COVID19-info-for-patients.jpg
- XIV. Financial-Advisor-West-Neighborhood-House.docx
- XV. FollowUpNote_October_16_2023.docx
- XVI. Exhibit-Z.docx
- XVII. Notes-for-Exhibit-Z.docx
- XVIII. Notice-Reassessment-Tax-Year-2019-NEW.pdf
- XIX. Why_Children_homeschooled_2021.docx
- XX. WhyChildrenWereHomeSchooled.docx

43. The Applicant received a call from the CRA agent (number 39147) on October 19, 2023. The phone conversation between Ms. Kourouclis and the CRA agent took place from about 10:30 AM – 1:00 PM EST.

44. The CRA advised Ms. Kourouclis that she completed reviewing all the documents that Ms. Kourouclis uploaded to the CRA web portal.

45. The CRA agent questioned the absence of business expenses in Ms. Kourouclis' 2019 Tax Year. Ms. Kourouclis clarified that she intended to use the 2019 business expenses to offset her potential gains.

46. The CRA agent questioned why Ms. Kourouclis' children were homeschooled in 2020 and 2021. Ms. Kourouclis advised that her sister stopped babysitting for her in

February 2020 due to COVID-19 concerns. Without babysitting, Ms. Kourouclis was unable to day trade as she was caring for her 4-year-old twins.

47. Ms. Kourouclis was also not able to trade in the stock market. This was due to the inability to:

- I. Research companies of interest;
- II. Monitor daily news alerts from financial news channels;
- III. Review and analyze technical charts during regular stock market hours;
- IV. Attend conference calls;
- V. Analyze expert analysis and comparison research data;
- VI. Monitor trading forums for scam alerts and illegal pump and dump schemes; and
- VII. Review regulatory documents that companies and issuers of securities must submit to the Securities and Exchange Commission (SEC) on a regular basis.

48. Ms. Kourouclis advised the CRA agent that her trading frequency decreased between 2019 – 2023 because of the stock market changes, including:

- I. The stock market crash in 2020 due to the pandemic;
- II. Microcap companies that Ms. Kourouclis was primarily trading had become highly risky due to the increased market volatility;
- III. US election results in 2021;
- IV. The war in Ukraine in 2022; and
- V. Investor sentiment changed dramatically due to ongoing US-China trade war.

49. The CRA agent inquired whether Ms. Kourouclis' trading time had been reduced by at least 50% in 2020 and 2021. Ms. Kourouclis informed the agent that her trading time had decreased by more than 50% and offered to provide the specific percentage.

50. Ms. Kourouclis indicated to the CRA agent that she could provide actual figures of her trading activities. The CRA agent indicated that she reviewed Ms. Kourouclis' trading activities uploaded to the CRA web portal by Ms. Kourouclis.

51. The CRA agent advised that the CRCB was for people affected by COVID-19. The CRA agent inquired whether a medical professional requested that Ms. Kourouclis keep the children at home. Ms. Kourouclis indicated that a medical professional did not ask Ms. Kourouclis to keep her children at home.

52. Ms. Kourouclis advised that the Peel region, where Ms. Kourouclis resides with her children, had the highest infection rate in Ontario. Ms. Kourouclis was terrified of sending her 4-year-old twins to school, emphasizing their age as a factor in being unable to grasp proper hand hygiene and mask wearing. Ms. Kourouclis, uploaded a supporting note from the children's Physician to the CRA:

I. DrBarwell-note-COVID19-homeschooling.pdf".

53. Ms. Kourouclis advised that she had recently lost her mother due to ovarian cancer and was terrified the children would contract the COVID-19 disease. Ms. Kourouclis wrote two letters to the CRA to explain further:

I. Why_Children_homeschooled_2021.docx; and
II. WhyChildrenWereHomeSchooled.docx.

54. Ms. Kourouclis mentioned to the CRA agent that the COVID-19 vaccine for 5-year-olds, the age group of Ms. Kourouclis' children, was not approved until November 2021. Ms. Kourouclis attached the following documents as support:

I. COVID19_advisory_ontario.pdf;
II. Covid-19-vaccines-children-5-11.pdf;
III. Exhibit-6_HealthCanada.ca.pdf;
IV. Exhibit-7_covid-19-vaccines-children-5-11.pdf; and
V. Exhibit-8_NACI.pdf.

55. Ms. Kourouclis received letters from the CRA dated December 11, 2023, indicating that her application for CERB was accepted but CRCB was denied (the "Second Decision").

56. CRA indicated that Ms. Kourouclis was not eligible for CRCB for the following reason(s):

She was not caring for a child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility for reasons related to COVID-19. Or, the individual who usually provided care was not available for reasons related to COVID-19.

57. Ms. Kourouclis received a Notice of redetermination for CERB, dated December 14, 2023, indicating that she was eligible for the benefit she received.

58. Ms. Kourouclis received a Notice of redetermination for CRCB, dated December 14, 2023, that required her to pay \$21,000 to CRA.

59. Ms. Kourouclis received a CRA Statement of Account, dated December 19, 2023, indicating she owed the CRA \$21,000.

The Second Decision lacks procedural fairness and is unreasonable

60. The Decision that Ms. Kourouclis is ineligible for the CRCB is unfair and unreasonable. In particular:

- a. The CRA breached Ms. Kourouclis' right to procedural fairness by failing to provide Ms. Kourouclis an explanation as to the reasons it determined she was not caring for a child under 12 years old or a family member because they were unable to attend their school, daycare, or care facility for reasons related to COVID-19;
- b. The CRA breached Ms. Kourouclis' right to procedural fairness by failing to provide Ms. Kourouclis an explanation as to the reasons it determined the individual who usually provided care was not available for reasons related to COVID-19;
- c. The CRA breached Ms. Kourouclis' right to procedural fairness by failing to advise Ms. Kourouclis the documents she provided the CRA did not meet the standard of proof and thereby denied her a fair opportunity to prove her income;
- d. The CRA's decision lacks transparency, justifiability and intelligibility for the following reasons:
 - i. The CRA ignored and failed to address relevant evidence, including Ms. Kourouclis' evidence of her difficulty gaining employment and caring for her children as a single mother during the COVID-19 pandemic;
 - ii. The CRA ignored and failed to address relevant evidence, including Ms. Kourouclis' evidence that the regular care services for her children were unavailable due to COVID-19; and
 - iii. The CRA failed to address the remaining requirements for the CRCB benefit and whether the Applicant met those requirements;
 - iv. The CRA failed to properly interpret and apply the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 including s. 17 of that Act. In doing so, the CRA fettered its discretion by mechanically applying its delegated authority without adequate consideration of the circumstances before it;

- v. The CRA failed to provide adequate reasons for the denial of Ms. Kourouclis' eligibility for the CRCB. The CRA has a heightened responsibility to justify decisions with significant consequences on vulnerable people. The CRA was aware that Ms. Kourouclis is a low-income single mother who would have to repay \$21,000.00 to the CRA if she were ineligible for the CRCB. The reasons it provided in the Second Decision fail to meet the standard of justification required in Ms. Kourouclis' case, and in fact provide no justification at all;
- e. The *Federal Courts Act*, RSC 1985, c F-7, including section 18.1;
- f. The *Canada Recovery Benefits Act*, SC 2020, c 12, s 2, including sections 17, 21, and 22; and,
- g. Such further and other grounds as counsel may advise and this Honourable Court may permit.

This application will be supported by the following material:

- a. The CRA's letter dated June 27, 2022, notifying Ms. Kourouclis that her eligibility for the CRCB was selected for review;
 - b. The CRA's letter dated August 8, 2022, notifying Ms. Kourouclis that her eligibility for the CERB and CRCB was selected for review;
 - c. The CRA's letter dated October 17, 2022, notifying Ms. Kourouclis that she is ineligible for the CRCB';
 - d. Written submissions and documentary evidence submitted by Ms. Kourouclis to the CRA, dated December 6, 2022;
 - e. Additional documentary evidence submitted by Ms. Kourouclis to the CRA in or around April 2023;
 - f. The CRCB Decision of the CRA dated May 18, 2023, notifying Ms. Kourouclis that she is ineligible for the CRCB;
 - g. The remaining documents referred to herein; and
 - h. Such further and other material as counsel may advise and this Honourable Court may permit.
61. The **Applicant requests** that the Minister send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Minister to the Applicant and to the Registry:

- Any and all records pertaining to the Applicant's receipt of the CRCB and determinations about her eligibility for it; and
- Any and all records considered by the decision-maker(s).

January 9, 2023



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The Applicant

13 JAN 11 2023
1905-3504 HURONTARIO ST.
MISSISSAUGA ON L5B 0B9

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of _____ JAN 10 2024 A.D. 20 _____

Dated this _____ day of JAN 10 2024 20 _____


HERRI ALLY
R. CLERK OFFICER
AGENT DU GREFFE