



NEWS

Class-action lawsuit proposed against federal government over CERB repayment demands

By [Rosa Saba](#) Business Reporter

Tuesday, February 2, 2021

A semi-retired Mississauga teacher is the representative plaintiff for a proposed class-action lawsuit against the federal government, on behalf of self-employed pensioners affected by the confusion over eligibility for the Canada Emergency Response Benefit.

However, the lawyer behind the proposed lawsuit hopes that if it's successful, it will help all self-employed Canadians affected by the confusion over gross versus net income, not just pensioners.

Janet Ryan, the representative plaintiff, made \$5,000 in 2019 before taxes through part-time tutoring, according to the statement of claim. She also got payments from the Canada Pension Plan and from Old Age Security, which her tutoring supplemented.

Lawyer Jan Weir said Ryan's self-employment income was affected by COVID-19 and, after checking the eligibility requirements on the government's website, she applied for and received CERB. Weir heard from Ryan shortly after she received the same letter in late 2020 that had 441,000 other Canadians worried they may have to pay their benefits back.

The letter was sent to anyone for whom the Canada Revenue Agency could not confirm eligibility for the CERB, and does not necessarily mean the individual must repay it. However, for many self-employed Canadians, it was the first time they realized that their eligibility was based on net income, and not gross income. Some made more than \$5,000 in 2019 via gross self-employed income, but netted less than \$5,000, and suddenly realized they weren't eligible for the thousands of dollars they'd received.

Many of these self-employed CERB recipients were told by CRA agents before they applied for the benefit that they qualified based on their gross income. The CRA later admitted some agents were given the wrong information, but individuals affected by this confusion are still required to repay the benefit if their net self-employed income was less than \$5,000 in 2019.

The Star found that the government web pages concerning CERB did not mention the distinction until some time between April 21 and 25, even though applications for the benefit opened April 6. Weir said he believes the confusion was a "human error" that he hopes the government will accept responsibility for.

The proposed class action, which has yet to be certified, is not seeking financial damages other than legal costs; it simply asks that those represented not be required to pay back the CERB they got.

Though the proposed suit is technically on behalf of pensioners like Ryan, Weir believes that if the class action is successful, all self-employed Canadians affected by the uncertainty will benefit: "In that sense, it's a tide that lifts all boats," he said.

In an emailed statement, Ryan said she hopes to "help others who rightly qualified

for the CERB relief to be able to keep the money, which was extremely helpful.”

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On Jan. 27, Green Party MP Paul Manly presented a petition to the House of Commons asking that the government let self-employed CERB recipients retroactively use their gross self-employed income instead of net to determine their eligibility.

A CRA spokesperson told the Star in an email Jan. 27 that the agency “is sensitive to cases of hardship for Canadians” hit hard financially by the pandemic, and added that the government “will have more information on this shortly.” The press secretary for Employment Minister Carla Qualtrough said that same day that the government is “actively looking at options to respond ... We will have more to say very soon.”

That’s what Allan Lanthier, a former government adviser and retired partner of an international accounting firm, calls “dithering.” Lanthier said while he thinks it’s “a bit premature” for a lawsuit, given that the government has not definitively told these self-employed Canadians whether or not they’ll have to repay CERB, he thinks it’s high time for Ottawa to do so.

“Most individuals are in limbo,” he said, adding that the amount paid out is likely not a lot of money for the government, but is significant for the recipients. “How long can it possibly take for the government to come to a conclusion on this? It’s a simple issue.”

Both Lanthier and Peterborough accountant Kevin Dunn think the government doesn’t have a legal leg to stand on. “The law is not necessarily on their side,” said Dunn, who is optimistic that self-employed Canadians affected by the confusion over gross and net income will eventually get the answer they’re looking for, or something close to it.

“I think the longer the government goes without clearing this up, the better the chances that it’s going to be forgiven.”