

Federal Court



Cour fédérale

**Date: 20250530**

**Docket: T-624-23**

**Citation: 2025 FC 980**

**Ottawa, Ontario, May 30, 2025**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**OLESYA REK**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant, Olesya Rek (“Ms. Rek”), seeks judicial review of a decision of the Canada Revenue Agency (the “CRA”) dated February 28, 2023, in which she was found ineligible for the Canada Recovery Benefit (“CRB”) under paragraph 3(1)(d) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the “Act”).

[2] Ms. Rek submits that the CRA erred in assessing her business expenses and net self-employment income.

[3] For the reasons that follow, I disagree. This application for judicial review is dismissed.

## II. **Background**

### A. *Statutory Framework*

[4] The CRB was a social benefit intended to alleviate the economic impact of the COVID-19 pandemic. Individuals who applied for the CRB in 2020 were required to have earned an income of at least \$5,000 from employment or self-employment “for 2019 or in the 12-month period preceding the day on which they make the application” (the Act, s 3(1)(d)). Income from self-employment is defined as “revenue from the self-employment less expenses incurred to earn that revenue” in subsection 3(2) of the Act.

[5] Recipients of the CRB may be subject to compliance reviews by the CRA (the Act, s 26). If a recipient is found to have been ineligible for the CRB in a given payment period, they are required to repay the amount received during that period to the CRA (the Act, s 28).

[6] A CRB recipient may challenge an ineligibility finding by requesting a second review (the Act, s 31). If they disagree with the findings of the second review, a recipient may apply for judicial review of the second review decision.

B. *Facts*

[7] Ms. Rek runs an online business. She is self-employed. Ms. Rek received 27 payments of the CRB between September 27, 2020 and October 9, 2021.

[8] Ms. Rek was selected for a compliance review by the CRA. On April 13, 2022, she was found ineligible to have received the CRB, as she had not earned at least \$5,000 in self-employment income in 2019, 2020, or the one-year period preceding her application (the Act, s 3(1)(d)). Ms. Rek requested a second review.

[9] On July 14, 2022, Ms. Rek was again found ineligible for the CRB (the “Initial Second Review Decision”). She sought judicial review of the Initial Second Review Decision, based on the CRA’s failure to convert her income from US currency to Canadian currency.

[10] Ms. Rek’s application for judicial review was eventually discontinued. The parties agreed that the matter would be remitted for redetermination.

[11] On February 9, 2023, a CRA agent called Ms. Rek. The agent requested further information about “the amounts [Ms. Rek] had claimed for gross and net business income in 2019 and 2020,” as “the net income claimed was negative” and “it did not appear that [Ms. Rek] had earned \$5000 prior to her benefits.” Ms. Rek claimed to have earned over \$5,000 between October 2019 and October 2020. The agent was concerned that Ms. Rek had altered her 2020 business expenses to inflate her apparent self-employment income, flagging that Ms. Rek had

reported just \$14,887.55 in business expenses for the period of January to October 2020 but almost \$40,000 in total business expenses for 2020. There were no such fluctuations in Ms. Rek's reported gross income. As later explained by the agent in their decision report:

When looking specifically at [Ms. Rek's] income information provided for 2020 from January 1 to October 11, they claim to have...had total expenses of \$14887.55. When comparing this information against their claimed gross income and expenses on their 2020 Income Tax and Benefit Return, [Ms. Rek] would have had, from October 12, 2020 to December 31, 2020...total expenses for the same period of \$23823.41. That would mean in the first 9 months and 11 days of 2020, [Ms. Rek] had business expenses of \$14887.55 and in the final two months and 20 days of 2020 they had expenses totalling \$23823.41. I asked on our call dated February 9, 2023 if [Ms. Rek] could provide an explanation as to why their business expenses from October 12 to December 31, 2020 would be significantly higher than in the previous 9 months and 11 days of the year...

[Emphasis added]

[12] On February 12, 2023, Ms. Rek provided a written response to the CRA. Listing her expenses in October to December 2020, Ms. Rek explained that she paid \$12,550 in subcontracts to family members for modelling and delivery services. She did not provide receipts or other documentation for her claimed expenses.

[13] On February 28, 2023, the CRA once again found Ms. Rek ineligible for the CRB (the "Final Second Review Decision"). The CRA acknowledged the explanation provided by Ms. Rek, but determined that "[t]he claims made by [Ms. Rek] simply do not make sense and it appears [Ms. Rek] is moving around expenses for the year to attempt to satisfy the \$5000 net self-employment income requirement." The CRA's findings were based on a comparison of Ms. Rek's reported expenses for materials, delivery, and motor vehicle charges from January 1 to

October 11, 2020 and from October 12 to December 31, 2020. According to the CRA, “[t]he comparisons...show that [Ms. Rek] is heavily weighting [sic] their expenses towards the final two months and 20 days of 2020.” The CRA concluded that, “[d]ue to the high amount of expenses claimed for each year and across the entire time frame of 2015 and 2020, it does not appear reasonable that [Ms. Rek] would have had a 12 month period of earning a net amount of over \$5000.” This is the decision that is presently under review.

### III. **Preliminary Issues**

#### A. *Style of Cause*

[14] The Respondent requests that the style of cause be amended to identify the proper respondent as the Attorney General of Canada, rather than the CRA. I agree.

[15] The style of cause is amended effectively immediately to identify the proper responding party as the Attorney General of Canada.

#### B. *New Evidence*

[16] Ms. Rek seeks to adduce new materials that were not before the CRA. These documents are attached to Ms. Rek’s affidavit dated April 27, 2023.

[17] The Respondent submits that Ms. Rek’s new evidence should not be accepted by the Court, as it was not before the CRA at the time of the Final Second Review Decision. Since Ms.

Rek's new evidence also does not meet any of the exceptions to "[t]he rule against permitting new evidence in a judicial review proceeding," the Respondent submits that Ms. Rek's new evidence should be disregarded by the Court (*Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 ("*Sharma*"). Ms. Rek did not make submissions in response.

[18] I agree with the Respondent. Ms. Rek's new evidence was not before the CRA at the time of the Final Second Review Decision. It is not included in the CTR, nor in the copies of Ms. Rek's letter to the CRA dated February 12, 2023 provided in either of the parties' materials. I further note that Ms. Rek's new evidence addresses the veracity of her claimed business expenses and therefore does not fall under any of the exceptions to the rule against admitting new evidence on judicial review (*Sharma* at para 8; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20 ("*Access Copyright*"). Ms. Rek's new evidence will therefore not be considered by this Court.

#### IV. **Issue and Standard of Review**

[19] The sole issue in this application is whether the Final Second Review Decision is reasonable.

[20] The standard of review is not disputed. The Respondent submits that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*"). I agree.

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

## V. Analysis

[23] Ms. Rek submits that the CRA’s decision is unreasonable, as she met the income eligibility requirement in paragraph 3(1)(d) of the Act. Ms. Rek submits that the CRA erred by assuming that “expenses and incomes during the year should be uniform and proportional.” Ms. Rek states that “this is not so,” as many business expenses are, by nature, volatile, and were especially so “during the COVID-19 pandemic when everything was closed, opened, then closed

again.” Ms. Rek states that her new evidence was provided to verify her claimed expenses in 2020.

[24] The Respondent submits that the CRA made no reviewable error. It is the Respondent’s position that the CRA accounted for the evidence before it and carefully considered Ms. Rek’s submissions. The Respondent asserts that Ms. Rek is attempting to re-argue her case with new evidence that was not before the decision-maker, which is not permissible on judicial review (*Access Copyright* at para 18).

[25] I agree with the Respondent.

[26] In compliance reviews for COVID benefits, the onus is on the benefits recipient to bring evidence of their eligibility (the Act, s 26). Benefits recipients are required to present this evidence to the CRA, as it is the CRA – rather than this Court – that renders decisions on recipients’ eligibility. The role of this Court on judicial review is more limited: the Court may only consider whether the CRA’s findings were reasonable in light of the legal framework for compliance reviews and the evidence placed before the CRA by a benefits recipient.

[27] Ms. Rek placed little evidence before the CRA about the timing of her business expenses, despite being informed that this was the CRA’s main concern with her eligibility during the call on February 9, 2023. Ms. Rek’s submissions to the CRA consisted of a two-page document listing her expenses and explaining that she had processed a large volume of subcontracts in



October to December 2020. Ms. Rek did not provide receipts or invoices for the subcontracts. The CRA reasonably found that Ms. Rek's evidence was not sufficient to resolve their concerns.

[28] Ms. Rek does not contest the CRA's assessment of her evidence. I agree with the Respondent that, instead, Ms. Rek has sought to bring new evidence to demonstrate that her business expenses were charged as claimed.

[29] Ms. Rek does not explain why she did not place this new evidence before the CRA. There is nothing in the new evidence to suggest that it was unavailable at the time of the Final Second Review Decision.

[30] I recognize the significance of the CRA's decision on Ms. Rek and commend her for the courteous and engaged manner in which she has represented herself before this Court. However, I cannot find that the Final Second Review Decision is unreasonable. The Final Second Review Decision is justified in light of the evidence that was placed before the CRA (*Vavilov* at para 126).

## VI. **Conclusion**

[31] For these reasons, I find no reviewable error in the CRA's decision. The Final Second Review Decision accords with the legal framework for compliance reviews and the evidence before the decision-maker (*Vavilov* at para 99). This application for judicial review is dismissed, without costs.

**JUDGMENT in T-624-23**

**THIS COURT’S JUDGMENT is that:**

1. The style of cause is amended to identify the Attorney General of Canada as the proper Respondent, effective immediately.
2. This application for judicial review is dismissed.
3. No costs are awarded.

“Shirzad A.”

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-624-23

**STYLE OF CAUSE:** OLESYA REK v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 15, 2025

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** MAY 30, 2025

**APPEARANCES:**

Olesya Rek  
(On her own behalf)

FOR THE APPLICANT

Udani Perera

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT