Cour fédérale Federal Court

Date: 20260130

Docket: T-1669-25

Citation: 2026 FC 136

Toronto, Ontario, January 30, 2026

PRESENT: Mr. Justice Brouwer

BETWEEN:

OLIVER MO

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Oliver Mo has brought an application for judicial review of the decision of the Canada Revenue Agency [CRA] finding him ineligible for the Canada Emergency Response Benefit [CERB] from April 12 to July 4, 2020 (CERB benefit periods 2-4). Despite the Court's sympathy for Mr. Mo's situation, the application must be dismissed.

I. Overview

[2] Mr. Mo is a 75-year-old retired former employee of Costco Canada. He worked at Costco part-time from 2010 until his retirement in 2022. In March 2020, as COVID-19 measures began

to take effect, Mr. Mo was informed by his manager at Costco that he would not be scheduled to work until further notice because of the seriousness of the pandemic and his heightened risk because of his age (69 at the time). Mr. Mo therefore applied for the CERB and received benefits from March 15, 2020 to September 26, 2020.

[3] Three years later, in September 2023, the CRA notified Mr. Mo that it had launched a compliance review and requested additional documentation to support his eligibility for the CERB payments he had received in 2020. Mr. Mo responded with an explanation of the impact of the pandemic on his employment and income during the benefit periods and attached bank statements from late 2019 and pay stubs from March 2, 2020 through September 27, 2020. His reported income in 2020 dropped almost in half, from $30,815.37 in 2019 to $15,314.86 in 2020.

[4] On March 18, 2024, the CRA determined that Mr. Mo was ineligible for the CERB between March 15, 2020, and July 4, 2020 (CERB benefit periods 1-4), on the basis that he had earned more than $1,000 of employment income during these payment periods and did not stop working or have his hours reduced for reasons related to COVID-19. He sought an internal review of this decision (called a Second Review), in support of which he again provided his pay stubs as well as email correspondence with a Costco assistant warehouse manager showing that he had requested an updated letter of employment specifying that he had been asked not to return to work in 2020 due to COVID-19.

[5] The Second Review decision maker contacted Mr. Mo by telephone to explain how eligibility criteria were computed and to confirm the reason for the CERB application. Soon

thereafter the decision maker issued the decision under review, finding that the first decision maker had erred in finding Mr. Mo ineligible for the CERB during benefit period 1, but that Mr. Mo was nevertheless ineligible during benefit periods 2-4 because:

i. he earned more than $1,000 of employment or self-employment income during the applicable periods; and

ii. he did not stop working or have hours reduced for reasons related to COVID-19.

[6] Mr. Mo asserts that this decision was unreasonable. He concedes that his pay stubs show that he received payments from his employer during the relevant periods and that these payments, even excluding a bonus from the calculation, still exceed the $1,000 income cap set out in section 6 of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8. He is, moreover, unable to explain the basis or reason for these payments and has been unable to obtain clarification from Costco because Mr. Mo's records are apparently no longer available to management at the Costco warehouse where he worked. Nevertheless, Mr. Mo submits the payments must have been for work completed prior to the pandemic and that, in any event, the payments should not be considered employment income for the purpose of calculating CERB eligibility because he was not actually working at the time, having stopped for reasons related to COVID-19. He seeks an order setting aside the decision and "directing the CRA to reconsider the application without requiring unattainable employer verification due to the post-retirement records [being] inaccessible by the Costco warehouse."

[7] The Respondent defends the CRA's assessment of the evidence regarding Mr. Mo's income as reasonable. The Respondent explains that, as the CRA decision maker had also

explained to Mr. Mo on the telephone, the CRA was authorized to consider wages, vacation pay, statutory holiday pay, bonuses and personal pay when assessing whether Mr. Mo had exceeded the $1,000 income cap for benefits, and for each of the periods at issue these amounts exceeded the cap. The Respondent concedes that the decision maker's second ground for finding Mr. Mo ineligible was unreasonable but maintains that because the first ground was reasonable there is no reason to send the matter back for redetermination; the outcome is inevitable.

II. Analysis

A. *Preliminary issue: style of cause*

[8] The Respondent notes that Mr. Mo has named the incorrect party as the Respondent in this matter. I agree. Pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the Attorney General of Canada should be named as the Respondent. The style of cause will therefore be amended.

B. *The decision is not unreasonable*

[9] The CERB ineligibility decision of the CRA is subject to reasonableness review (*Dekany v Canada (Attorney General)*, 2025 FC 397 at paras 22–25*; Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 15*, aff'd* 2022 FCA 187). A reasonable decision is one that is "based on internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

[10] Although the situation in which Mr. Mo now finds himself is undoubtedly frustrating – he is retired and facing a demand to repay government benefits he applied for and received five years ago based on what was no doubt a good faith belief that he was eligible for them – I am not persuaded that the CRA decision maker's calculation of the income cap was unreasonable. I accept the Respondent's submission that the decision maker properly took into account the evidence, applied the law, and reasonably explained the outcome. There is therefore no valid basis upon which this Court can intervene and set aside the first ground upon which the CRA determined that Mr. Mo was ineligible for the CERB during benefit periods 2-4. This finding alone provided a sufficient, independent, and reasonable justification for the determination that Mr. Mo was ineligible for benefits during benefit periods 2-4.

[11] While the second basis for the decision was unreasonable, as conceded by the Respondent, the error is immaterial given my finding that the first ground was reasonable and was independent from the second. As such I must dismiss the application.

[12] To be very clear, my determination is based on the fact that notwithstanding the unreasonableness of the second finding by the CRA decision maker, the first finding was intelligible and transparent and fully justified the outcome. This is not the argument presented by the Respondent, which as I understand it is that I should rely on paragraph 142 of *Vavilov* to decline to remit the matter for redetermination on the basis that the outcome is inevitable. I reject that argument.

[13] In the paragraph cited by the Respondent, the Supreme Court of Canada explained:

> [142] [W]hile courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative

> decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167, at paras. 18-19. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose[.]

[14] I do not believe that the present situation is what the Supreme Court of Canada had in mind with that paragraph. There has been no "endless merry-go-round of judicial reviews and subsequent reconsiderations" here – this is Mr. Mo's first judicial review. Nor do I accept that the Supreme Court of Canada was inviting reviewing courts to deny remedies to successful applicants based on their own assessments of the merits of the underlying cases; that would be contrary to the whole thrust of the Court's reasoning in *Vavilov* and then in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, which instruct respect of the intention of the legislature to assign certain decisions to expert administrative tribunals rather than to courts. The Supreme Court of Canada was clear that only in "limited scenarios" should reviewing courts substitute their own decisions for those of administrative decision makers. It is far from clear that these limited scenarios include substituting alternative reasons for refusal where applicants have established a reviewable error in the refusal by the administrative tribunal.

[15] As the Respondent has quite appropriately not sought costs, I will make no order as to costs.

JUDGMENT in T-1669-25

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Attorney General of Canada as the Respondent.

2. The Application is dismissed.

3. There is no order as to costs.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1669-25
STYLE OF CAUSE:	OLIVER MO V ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	CALGARY, ALBERTA
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APPEARANCES:

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Levi Smith	FOR THE RESPONDENT

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