

Federal Court



Cour fédérale

**Date: 20191101**

**Docket: T-894-19**

**Citation: 2019 FC 1367**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, November 11, 2019**

**PRESENT: The Honourable Associate Chief Justice Gagné**

**BETWEEN:**

**JEAN-CLAUDE NADEAU**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**ORDER AND REASONS**

[1] Before me is a motion in writing filed by the Attorney General of Canada (AGC) for an order dismissing Jean-Claude Nadeau's application for *mandamus*.

[2] Mr. Nadeau reached the age of 65 while serving a prison sentence in a federal penitentiary. His application for old age security pension was approved by Service Canada in August 2015, but before benefit payments even began, Service Canada informed him that his benefits would be suspended starting in June 2016 because of his incarceration.

[3] What followed was a series of proceedings instituted by Mr. Nadeau challenging that decision and the constitutionality of subsection 5(3) of the *Old Age Security Act*, RSC 1985, c O-9, which provides that a person who is subject to a sentence of imprisonment to be served in a penitentiary by virtue of an Act of Parliament is not entitled to a pension in respect of the period of incarceration. Mr. Nadeau's case was first subject to an application for reconsideration and then went back and forth between the General and Appeal Divisions of the Social Security Tribunal.

[4] I will mention here only the applications and decisions relevant to disposing of the matter currently before the Court:

- On October 11, 2016, Mr. Nadeau asked the General Division to order the Minister of Employment and Social Development to provide him with all the documents in his possession that led to the decision to suspend his benefits;
- On October 18, 2016, the General Division responded to Mr. Nadeau that it had no authority to require the Minister to provide him with the requested documents and sent him a copy of the *Eliminating Entitlements for Prisoners Act*, SC 2010, c 22, amending the *Old Age Security Act* to prevent prisoners from receiving old age pension benefits;
- On July 19, 2017, the General Division dismissed the appeal it had before it based on the record on the ground that Mr. Nadeau failed to appear at the hearing that was to take place by videoconference on June 15, 2017;
- In January 2018, the Appeal Division granted leave to appeal that decision and, with the Minister's consent, allowed the appeal and referred the matter back to the General Division;
- Since in his written submissions, Mr. Nadeau raised certain violations of the *Canadian Charter of Rights and Freedoms*, the General Division informed him on September 28, 2018, that he had to file a notice under paragraph 20(1)(a) of the *Social Security Tribunal Regulations* (this was the second notice of a constitutional issue, since the first, which

had been deemed non-compliant by the General Division, was withdrawn by Mr. Nadeau on December 19, 2016);

- On October 26, 2018, Mr. Nadeau filed his second notice of constitutional issue, and, since it was again deemed non-compliant by the General Division, the latter decided that it would dispose of the other issues raised by Mr. Nadeau, but not the constitutional issue;
- Mr. Nadeau sought leave to appeal that decision to the Appeal Division, which was denied on May 30, 2019 (it refused to decide on an interlocutory decision of the General Division, being of the view that no exceptional circumstance justified it); it referred the file back to the General Division so that it could decide the matter on the merits.

[5] On the same day, Mr. Nadeau filed with the Court his application for *mandamus* seeking to force the AGC to send him [TRANSLATION] “the documents requested by the applicant related to said applications made to the Social Security Tribunal, within 30 days of the judgment”.

Below is the list of documents he is requesting:

[TRANSLATION]

1. I REQUEST that the Attorney General of Canada provide the applicant with all of the documents that are relevant or bundles of relevant documents that are in his custody and regarding which I know of no non-disclosure privilege claimed in the contents of sections 4.1 and 5 of the Department of Justice on the suspension of the Canada old age pension for a prisoner.
2. A certified copy of the Notwithstanding Clause that the Government of Canada has in its possession to limit certain rights recognized in the 1982 *Canadian Charter of Rights and Freedoms* of the applicant on 2016-05-05, for a prisoner on the suspension of the payment of the applicant’s OAS.
3. The constitutional notices of the attorneys general of Canadian provinces about the rights recognized in the 1982 *Canadian Charter of Rights and Freedoms* for prisoners on amending the Charter for 2/3 of the provinces and the Attorney General of Canada’s right to appeal the comments and opinions of the provinces.

4. The cogent and persuasive evidence held by the Attorney General of Canada in support of his action against the applicant on the suspension of OAS payments.
5. A certified copy of reports by Government of Canada legal analysts and constitutional lawyers that the statute used by Service Canada to suspend the applicant's OAS payments does not infringe the rights recognized in the 1982 *Canadian Charter of Rights and Freedoms* for prisoners and that judgments rendered by the Supreme Court of Canada and the Federal Court of Canada on prisoners' rights are not applicable to prisoners and that the Canada pension is a subsidy.
6. A certified copy of documents that make it completely legally valid for the Government of Canada to take possession of the applicant's assets, which is the basis for the old age security pension, which are the dues that the applicant has paid into his SIN account as a worker until the age of 65, belongs to the government during incarceration [sic].
7. A certified copy of the reasons relied on by the Department of Justice Canada for not correcting the *Department of Justice Act* (s 5), which provides, among other things, that he "shall advise the heads of the several departments of the Government on all matters of law connected with such departments" (par. (c)) in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* in integrally keeping the contents of subsection 123(2) of the 1964–1965 Act, Chapter 51, on the Canada Pension Plan, reproduced in Bill C-31 and absent from Bill C-26, but still in effect as an action against the applicant.
8. A certified copy of the agreement negotiated between the parties, which are the Department of Employment and Social Development Canada (formerly the Department of Human Resources and Skills Development), Ottawa, Ontario K1A 0L4, and the Correctional Service of Canada, for the suspension of payments of the Canada pension and regarding which no non-disclosure privilege was claimed.
9. A certified copy of the appeal filed by the respondent in *Solasky v The Queen*, [1980] 1 SCR 821, by the Honourable Justice Dickson, on the rights of prisoners.
10. A certified copy that the government is not bound to apply and to recognize the case law in judgments rendered by the courts on

the rights and freedoms of prisoners that are enshrined in the 1982 *Canadian Charter of Rights and Freedoms*.

[6] A simple reading of this list leads to the conclusion that some of the documents mentioned in it simply do not exist, while others are not relevant to Mr. Nadeau's proceeding before the General Division of the Social Security Tribunal. In some cases, this is not really a request for documents, but rather a legal argument disguised as a request to provide documents.

[7] In any case, it is not for this Court to govern the exercise of a pending proceeding before a specialized administrative tribunal. The General Division is master of its own procedure and has full authority to determine the required evidence relevant to the exercise of its jurisdiction.

[8] In his motion record, Mr. Nadeau relies on [TRANSLATION] "the statement in section 15 of the 1982 *Canadian Charter of Rights and Freedoms* for a full answer and defence, which is not respected, and the Evidence Act in Canada, s 650 [that statute has only 54 sections], *R. v. Stinchcombe* 560 [sic]", in support of his request to provide documents. However, this is not a case of discrimination that raises the application of the Charter or a criminal proceeding that requires a complete disclosure of evidence from the Crown. This is an administrative proceeding governed by the *Social Security Tribunal Regulations*, SOR/2013-60, which has not been exhausted. An application for judicial review or an application for *mandamus* before this Court is thus premature (*Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30–33, 51).

[9] Mr. Nadeau also relies on section 4.1 of the *Department of Justice Act*, RSC 1985, c J-2, which provides that the Minister of Justice verifies the compliance of statutes and regulations presented to the House of Commons with the *Canadian Charter of Rights and Freedoms*.

[10] The documents listed at paragraph 5 concern a number of federal institutions, including the Department of Justice. The *Access to Information Act* grants individuals and corporations the right to access documents relating to federal institutions; it provides that they can have the documents disclosed to them upon request, subject to exceptions provided in the Act.

Mr. Nadeau is also obliged to exhaust the procedures available to him under the *Access to Information Act*. An application for *mandamus* before this Court is not an alternative to an access to information request.

[11] It is therefore plain and obvious that Mr. Nadeau's application is premature and that it has no chance of success.

**ORDER in DOCKET T-894-19**

**THE COURT’S JUDGMENT IS that:**

1. The respondent’s motion is allowed;
2. The applicant’s application for *mandamus* is dismissed;
3. Without costs.

“Jocelyne Gagné”  
\_\_\_\_\_  
Associate Chief Justice

Certified true translation  
This 25th day of November 2019

Johanna Kratz, Reviser

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

**DOCKET:** T-894-19

**STYLE OF CAUSE:** JEAN-CLAUDE NADEAU v ATTORNEY GENERAL  
OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO  
RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** GAGNÉ A.C.J.

**DATED:** NOVEMBER 11, 2019

**WRITTEN REPRESENTATIONS BY:**

Jean-Claude Nadeau

ON HIS OWN BEHALF

Sylvie Doire

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Department of Justice  
Gatineau, Quebec

FOR THE RESPONDENT