Federal Court  Cour fédérale

Date: 20181102

Docket: T-48-18

Citation: 2018 FC 1108

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa (Ontario), November 2, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

GÉRARD LANGLOIS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Gérard Langlois, is a pensioner. He reached the age of 65 in July 2012. Since August 2012, he has been receiving an Old Age Security [OAS] pension and a Guaranteed Income Supplement [GIS] [collectively, the pension benefits] that are paid to him in accordance with the *Old Age Security Act*, RSC 1985, c O-9 [OASA] and the *Old Age Security Regulations*, CRC, c 1246 [OASR]. He is representing himself in this application for judicial review.

[2] The applicant would like the amount of his pension benefits to be indexed outside of the current statutory and regulatory context to take into account the increase in the cost of living, and those benefits must be exempt from any federal income tax. The Minister of Employment and Social Development, who is responsible for the application of the OASA, has already rejected a request for reconsideration of the amount of pension benefits. The General Division (Income Security Section) [General Division] of the Social Security Tribunal [Tribunal] determined that there were no errors in the calculation of the pension benefits amount and that the Tribunal did not have the power to increase that benefits amount.

[3] The Tribunal's Appeal Division dismissed the applicant's application for leave to appeal the General Division's decision. The impugned decision was rendered under subsection 58(2) of the *Department of Employment and Social Development Act* (SC 2005, c 34) [DESDA], which provides that the Appeal Division may refuse leave to appeal if it "is satisfied that the appeal has no reasonable chance of success".

[4] The standard of review applicable to a review of the reasons for refusal to grant leave to appeal a General Division decision is the reasonableness standard (*Tracey v Canada (Attorney General)*, 2015 FC 1300 at paras 21-23; *O'Rourke v Canada (Attorney General)*, 2018 FC 498 at para 3; *Bergeron v Canada (Attorney General)*, 2016 FC 220 at para 6), while issues of procedural fairness or constitutional questions are determined on the correctness standard. (*Air Canada Pilots Association v Kelly*, 2011 FC 120 at paras 45-46; *Atkinson v Canada (Attorney General)*, 2014 FCA 187 at paras 25, 32; *Glover v Canada (Attorney General)* 2017 FC 363 at para 16).

[5] In addition to explaining his personal situation in his affidavit, the applicant relied on various excerpts of newspaper articles about the cost of living in Canada. The applicant argues that the precarious situation he has been in since retiring is contrary to the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter], and that discretion granted by subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th supp) [ITA] must be exercised in good faith, in accordance with the principles of procedural fairness and considering all of the relevant facts on the record.

[6] Before going any further, the following clarifications should be made.

[7] Known among taxpayers as a fairness provision, subsection 220(3.1) of the ITA expressly allows the Minister of National Revenue to waive or cancel all or any portion of any penalty or interest payable under the ITA [the relief provision]. However, no such decision was rendered under the relief provision, and this issue was not before the Tribunal in this file.

[8] Furthermore, the applicant puts forward in his affidavit and his factum several new facts that were not before the Tribunal. The applicant also claims damages [TRANSLATION] "for harm caused". First, he cannot raise new facts in an application for judicial review (*Association of Universities and Colleges of Canada c Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19). Second, under paragraph 18(1)(a) of the *Federal Courts Act*, RSC 1985, c F-7, this Court has no jurisdiction to award damages in judicial review (*Canada (Attorney General) v TeleZone Inc*, [2010] 3 SCR 585 at para 52).

[9] Having considered all of the parties' representations, the Court finds that the dismissal of the application for leave to appeal constitutes an acceptable outcome based on the evidentiary record and the applicable law. Any allegation of violation of a principle of procedural fairness has no basis. This is also the case for any constitutional challenge by the applicant of the validity of statutory and regulatory provisions. The Tribunal could assume the constitutionality of the applicable statutory and regulatory provisions. In addition, the Tribunal did not have the power under the DESDA to increase the amount of the applicant's pension benefits. In short, the applicant's appeal was destined to fail. There is therefore no need to intervene in this case.

[10] For a better understanding of the Court's general finding, the following remarks would be helpful.

[11] First, the applicant did not raise or demonstrate an error of fact or law in the calculation of the pension benefits amount. Indeed, sections 3 and 7 of the OASA provide that a Canadian resident is normally eligible to receive OAS when he or she has attained 65 years of age regardless of his or her employment situation or income. The GIS, however, is a benefit conferred on low-income seniors, who have few or no sources of income other than the OAS. The applicant's income for a calendar year is that determined under the ITA. It includes, among other things, pension benefits from the previous year. In the case of the applicant (who has resided in Canada for at least ten years since his 18th birthday), the GIS amount was determined based on subsection 12(5) and section 13 of the OASA. In passing, any suggestion by the applicant that the pension benefits must be exempt from any federal income tax has no legal basis: according to clause 56(1)(a)(i)(A) of the ITA, those benefits are income.

[12] Second, the Tribunal does not have the power under the DESDA to apply fairness principles to increase pension benefits amounts as it sees fit. In this case, in accordance with subsections 7(2) and 12(2) of the OASA, the OAS and GIS amounts, respectively, must be adjusted quarterly, thus, four times per year, based on changes to the Consumer Price Index [CPI]. Under section 9 of the OASR, the CPI referred to by the OASA is that published by Statistics Canada. Objectively speaking, the CPI is the measure of the average retail price of a multitude of goods and services purchased by Canadian consumers to determine the average cost of living in a given economy. This indicator is always calculated based on a base year: Statistics Canada. The CPI is not a personal statistic established based on the applicant's cost of living: the Canadian CPI does not differ from one Canadian resident to another (for an explanation on this, see *Introduction to the Canadian Consumer Price Index*: https://www150.statcan.gc.ca/n1/pub/62-553-x/2014001/chap/chap-1-eng.htm; Bank of Canada, *The Consumer Price Index*: https://www.bankofcanada.ca/wp-content/uploads/2010/11/consumer_price_index.pdf).

[13] Third, the Tribunal is not legally bound to hold an oral hearing for an application for leave to appeal. It is a discretionary decision (see sections 43 and 44 of the *Social Security Tribunal Regulations*, SOR/2013-60 [SSTR]; *Robbins v Canada (Attorney General)*, 2017 FCA 24 at para 21). In the case at bar, the Tribunal's administrative decision to entertain this file as a regular appeal in the absence of a proper notice of constitutional question, is reasonable and does not contravene any principle of procedural fairness. The applicant did not comply with the procedure prescribed in paragraph 20(1)(a) of the SSTR. The notice provided had to be sufficiently precise for the Tribunal to be able to properly decide on the merits (*Canada*

(Attorney General) v Stewart, 2018 FC 768 at para 46). However, the notice of constitutional question was deficient even on its face. The applicant's application for leave to appeal and subsequent written submissions did not correct the deficiencies of the notice because they still did not contain the statutory or regulatory provision(s) at issue or consistent constitutional arguments.

[14] Fourth, the Tribunal did not fail to consider any relevant evidence. The Tribunal did not have to answer the multiple questions asked of it by the applicant, which were taken up by the applicant before the Court. At the risk of repeating myself, what is important to know is that the amount of the applicant's current expenses does not enter into the calculation of pension benefits or of any adjustment authorized under the OASA and OASR. The Tribunal does not have to "prove" to the applicant that they are in compliance with the Constitution of Canada. The constitutionality of the statutory and regulatory provisions at issue must be assumed here. Although the Court appreciates the difficult and precarious situation that the applicant finds himself in, with respect, the applicant's appeal before the Tribunal had absolutely no reasonable chance of success on the merits.

[15] Fifth, no serious arguments have been raised before this Court by the applicant with respect to any alleged violation of sections 7 or 15 of the Charter or of subsection 36(1) of the *Constitution Act, 1982*, which were briefly alluded to by the applicant with no further clarifications, and no notice of constitutional question was served on or filed with this Court under section 57 of the *Federal Courts Act*, so that the statutory and regulatory provisions at

issue cannot be judged to be invalid, inapplicable or inoperable (*Bilodeau-Massé v Canada (Attorney General)*, 2017 FC 604 at paras 84-88).

[16] That said, the applicant is mainly relying on the "Guide for Canadians" drafted at the time of the Brian Mulroney government, a document that is not binding, as well as on *Bank of Toronto v Lambe* (1887), 12 App Cas 575; *Co-operative Committee on Japanese Canadians v Attorney-General of Canada*, 1946 CanLII 361 (UK JCPC), [1947] AC 87; *Fort Frances Pulp and Power Co v Manitoba Free Press Co Ltd*, [1923] AC 695, 1923 CanLII 429 (UK JCPC), which had been decided before the Charter came into force in 1982.

[17] In *Gosselin v Quebec (Attorney General)*, [2002] 4 SCR 429 [*Gosselin*], the Supreme Court of Canada considered section 45 of the *Charter of Human Rights and Freedoms*, CQLR c C-12 (in light of paragraph 11(1) of the *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 and of articles 22 and 25 of the *Universal Declaration of Human Rights*, GA Res 217 A (III), Doc A/810 UN, p 71 (1948)), as well as sections 7 and 15 of the Charter. The highest court in the country found that sections 7 and 15 of the Charter did not create a positive obligation for a government to guarantee each individual adequate living standards (*Gosselin* at paras 55-56, 72-74, 81-83).

[18] The three judgments rendered by the Judicial Committee of the Privy Council that the applicant relies on are not relevant in this case. Those matters concerned defining the scope of jurisdiction with respect to price control and availability of goods, taxation, and Parliament's

emergency powers. The legal scope of sections 91 and 92 of the *Constitution Act, 1867* is not at issue in this file; neither is that of subsection 36(1) of the *Constitution Act, 1982*.

[19] In any case, it is the exclusive responsibility of relevant legislatures and governments to follow up on the political undertakings set out in subsection 36(1) of the *Constitution Act, 1982*. That provision confers no right of action on an individual (*Cape Breton (Regional Municipality) v Nova Scotia (Attorney General)*, 2009 NSCA 44 at paras 55-66, 86; *Regional District of East Kootenay v Augustine*, 2017 BCSC 322 at paras 34-35). It is not for the courts to decide on amounts to be granted by governments to low-income seniors residing in Canada to enable them to face the increase in the cost of living in retirement (*Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525 at pp 544-546 *a contrario*).

[20] For these reason, this application for judicial review is dismissed. Without costs.

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THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed. Without costs.

"Luc Martineau"
Judge

Certified true translation
This 16th day of November 2018

Margarita Gorbounova, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-48-18
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APPEARANCES:

Gérard Langlois	FOR THE APPLICANT (FOR HIMSELF)
Stéphanie-Yung Hing	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Gatineau, Quebec	FOR THE RESPONDENT