

Court File No. T-633-21

FEDERAL COURT

BETWEEN:

DAVID FRENCH

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FILED	FEDERAL COURT COUR FÉDÉRALE	RECEIVED
	AVR 16 2021 APR 16 2021	
	PETER KARAMBELAS	
TORONTO, ON		—

Applicant

-and-

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following pages 4 et seq.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard by videoconference between the Toronto Local Office of the Court and Bath

Seal

Institution, Canada.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Court Rules* and serve it on the Applicant's solicitor, or if the Applicant is self-represented, on the Applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Court Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

~~April 6, 2021~~ ²¹

APR 16 2021

Issued by:

ANIL KAMAL
SENIOR REGISTRY OFFICER
AGENT PRINCIPAL DU GREFFE



(Registry Officer)

Address of local office:

Toronto Local Office
 180 Queen Street West,
 Suite 200
 Toronto Ontario
 M5V 3L6

TO: FEDERAL COURT OF CANADA

Chief Administrator
Courts Administration Service

Toronto Local Office
180 Queen Street West, Suite #200
Toronto Ontario
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**AND TO: THE MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondent

per: *Federal Court Rules*, Rule 133

APPLICATION

THIS IS AN APPLICATION for judicial review under section 18.1 of the *Federal Courts Act* in respect of a time limit complaint made against the *Correctional Service of Canada* (the “CSC”), to the *Office of the Privacy Commissioner of Canada*, in what is a deemed refusal situation, pursuant to ss. 16 (3) of the *Privacy Act*, regarding the Applicant’s CSC – Offender Privacy Act Requests for pertinent file information requested through CSC’s *Access to Information and Privacy Division* (“ATIP”), under section 12 (1) of the *Privacy Act*.

The time limit complaint is in respect of the Applicant’s CSC – Offender Privacy Act Requests File Nos. P-2016-04171, requested 2016-11-01 and due 2016-12-01, P-2017-05847, requested 2018-02-27 and due 2018-04-23, P-2017-05848, requested 2018-02-27 and due 2018-04-23, P-2018-01378, requested 2018-06-22 and due 2018-07-25, P-2018-05406, requested 2019-03-13 and due 2019-04-12, P-2019-00181, requested 2019-03-25 and due 2019-04-24, P-2019-00183, requested 2019-03-25 and due 2019-04-24, P-2019-00376, requested 2019-03-27 and due 2019-04-26, P-2019-00377, requested 2019-03-27 and due 2019-04-26, P-2019-00464, requested 2019-04-04 and due 2019-05-06, P-2019-01260, requested 2019-04-26 and due 2019-05-27, P-2019-03072, requested 2019-09-17 and due 2019-10-17, P-2019-03730, requested 2019-10-15 and due 2019-11-14, P-2019-03731, requested 2019-10-15 and due 2019-11-14, P-2020-00861, requested 2020-05-27 and due 2020-06-28, P-2020-00864, requested 2020-05-27 and due 2020-06-28, P-2020-00863, requested 2020-05-27 and due 2020-06-28, P-2020-00860, requested 2020-05-27 and due 2020-06-28, P-2020-00858, requested 2020-05-27 and due 2020-06-28, P-2020-00862,

requested 2020-05-27 and due 2020-06-28, P-2019-01260, requested 2020-04-26 and due 2020-05-27, P-2020-04819, requested 2020-012-30 and due 2021-01-31, P-2019-05015, requested 2020-04-01 and due 2020-05-02, and any and all remaining CSC – Offender Privacy Act Request’s still active and beyond the legislated timeframe set out in the *Privacy Act* for response made to ATIP of the CSC, a Creature of Statute existing in and by S.C. 1992 c. 20 as am., a.k.a. *Corrections and Conditional Release Act* (the “CCRA”), Part 1, pursuant to s. 5 thereof.

The deemed refusal decision is also in respect of the Applicant’s complaint to the *Office of the Privacy Commissioner of Canada*, File No. PA-055168 and CSC’s failure to keep its commitment to respond to several of the said requests and others, as per the conditional resolution of File: PA-055168 dated 2019-09-19.

The deemed refusal decision is in further respect of the Applicant’s Request for Correction of CSC File: P-2018-05744, dated 2019-05-01, Record Correction Request of CSC File: P-00185, dated 2019-08-19, and any and all other Record Correction Requests made pursuant to ss. 12 (2) (a) of the *Privacy Act* and CSC’s failure to satisfy the legislated timeframes set out in the *Privacy Act* for response.

Given that the *Office of the Privacy Commissioner of Canada* has failed to respond to the Applicant’s complaint, dated 2020-09-01, received by the *Office of the Privacy Commissioner of Canada* on 2020-09-17, and added into their system (PA-055168) on 2020-09-24, within the legislated timeframes, relief by way of summary judgement under s. 41 of the *Privacy Act* read with reference to s. 44 of the *Privacy Act* is not available to the Applicant.

Finally, if this Honourable Court permits, the Applicant further seeks declaratory relief in respect of the cyclical pattern of abuse exhibited by the Respondent in relation to the Applicant's rights outlined under the *Privacy Act*.

THE APPLICANT MAKES APPLICATION FOR:

1. An Order pursuant to s. 18.1 (3) (a) of the *Federal Courts Act*, RSC 1985, c F-7 for the production and disclosure of the following *Correctional Service of Canada* ("CSC") Files:
 - a. File Number P-2016-04171, and File Number P-2017-05847, and File Number P-2017-05848, and File Number P-2018-01378, and File Number P-2018-05406, and File Number P-2019-00181, and File Number P-2019-00183, and File Number P-2019-00376, and File Number P-2019-00377, and File Number P-2019-00464, and File Number P-2019-01260, and File Number P-2019-03072, and File Number P-2019-03730, and File Number P-2019-03731, and File Number P-2020-00861, and File Number P-2020-00863, and File Number P-2020-00860, and File Number P-2020-00858, and File Number P-2020-00862, and File Number P-2019-01260, and File Number P-2020-04819, and File Number P-2019-05015, and any and all remaining CSC – Offender Privacy Act Request's still active and beyond the legislated timeframe set out in the *Privacy Act* for response.

2. A writ of *mandamus*, or an Order in the nature, to compel compliance with the mandatory requirements of the *Privacy Act*, at ss. 12 (1) (a), and 12 (1) (b), and 12 (2) (a), and 12 (2) (b).
3. An Order that the CSC accept responsibility for being negligent in respect to providing the said Offender Privacy Act Requests and Correction to Information Requests within the legislated timeframes provided within the *Privacy Act*.
4. An Order declaring that the CSC's particular malice, as evidenced by the sheer volume of deemed refusal decisions and failed conditional resolutions as well as the complete absence of due process, constitutes an act of harassment.
5. An Order declaring that CSC's failure to provide the said records so that the Applicant can prepare for a judicial review to determine a reduction in the number of years of imprisonment without eligibility for parole pursuant to ss. 745.6 (1) of the *Criminal Code* is a violation of s. 7 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").
6. His expense on this application and in connection with this application.

7. Such further and other relief as the Applicant may advise and this Honourable Court might allow.

THE GROUNDS FOR THE APPLICATION ARE

8. **THAT** in accordance with ss. 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 as am. ("*Federal Courts Act*"), the matter in respect of which relief is sought directly affects the Applicant.
9. **THAT** in accordance with ss. 18.1 (3) (a) of the *Federal Courts Act*, the Federal Court may Order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing.
10. **THAT** in accordance with ss. 46. (1) (a) (ii) of the *Federal Courts Act*, subject to the approval of the Governor in Council and subject also to subsection (4), the rules committee may make general rules and orders for regulating the practice and procedure in the Federal Court of Appeal and in the Federal Court, including, without restricting the generality of rules providing for discovery and production and supplying of copies, of documents by the Crown in a proceeding to which the Crown is a party,

11. The Applicant complains that in accordance with ss. 18.1 (4) of the *Federal Courts Act*, the CSC, ATIP:

- a. Refused to exercise the CSC's legal obligations due and owed the Applicant under and by the *Privacy Act*, at ss. 12 (1) (a) and ss. 12 (1) (b);
- b. Refused to exercise the CSC's legal obligations due and owed the Applicant under and by the *Privacy Act*, at ss. 14 (a) and ss. 14 (b);
- c. failed to observe a principle of procedural fairness by having failed to provide the records requested under the *Privacy Act*, to the Applicant within the legislated timeframes, and further by having failed to provide notice in writing as to why the records were not provided within the legislated timeframes.
- d. In all events, failed to observe the mandatory procedure required by the *Privacy Act*, at 12 (1) (a), and at 12 (1) (b), and at 12 (2) (a), and at 12 (2) (b), and at 14 (a), and at 14 (b), and at ss.16 (3);
- e. Failed to observe any other procedure that CSC is required by the *Privacy Act*, at ss. 15 (a) (i), and ss. 15 (a) (ii), and 16 (1) (a), and 16 (1) (b), to observe.

12. **THAT** the Applicant filed a complaint with the *Office of the Privacy Commissioner of Canada*, also now exceeding the legislative timeframe for response, and where the *Office of the Privacy Commissioner of Canada* has responded and a conditional resolution has been made, the CSC has failed to keep its commitment.

13. **THAT** given the *Office of the Privacy Commissioner of Canada's* failure to respond to the Applicant's complaint, dated 2020-09-01, received by the *Office of the Privacy Commissioner of Canada* on 2020-09-17, and added into their system (PA-055168) on 2020-09-24, within the legislated timeframes for a response, relief by way of summary judgement under s. 41 of the *Privacy Act* read with reference to s. 44 of the *Privacy Act* is not available to the Applicant.

14. **THAT** several of the said records are relevant to matters currently before the Court, namely Federal Court File Nos. T-1062-20 and T-1157-20 and Health Professions Appeal and Review Board File Nos. 20-CRV-0501 and 20-CRV-0502 and are required in order to proceed with the litigation of these matters.

15. **THAT** CSC's failure to provide the said records within a reasonable time, so that that Applicant can prepare for a judicial review by the Courts to determine a reduction in the number of years of imprisonment without

eligibility for parole pursuant to ss. 745.6 (1) of the *Criminal Code*, is in violation of the Applicant's rights under s. 7 of the *Charter*.

16. **THAT**, if permitted by this Honourable Court, the Applicant is also seeking relief beyond the jurisdiction of the *Office of the Privacy Commissioner of Canada*, namely an Order declaring that the CSC accept responsibility for being negligent in respect to providing the said Offender Privacy Act Requests and Correction to Information Requests within the legislated timeframes provided within the *Privacy Act*.

17. **THAT**, if permitted by this Honourable Court, the Applicant is also seeking relief beyond the jurisdiction of the *Office of the Privacy Commissioner of Canada*, namely an Order declaring that the CSC's particular malice, as evidenced by the sheer volume of deemed refusal decisions and failed conditional resolutions, as well as the complete absence of due process, constitutes an act of harassment.

18. In bringing this Application, he acts in person of necessity *bona fides* pursuant to, and for all purposes of in full accordance with:

- a. SOR/98-106 as am., a.k.a. *Federal Court Rules* 3, 119, 122 read in context of the *Interpretation Act*, R.S.C. 1985, c. 1-21 as am., ss. 3, 10,

11, and 12;

b. *Federal Courts Act*, R.S.C. 1985, c. F-7 as am, s. 4; and

c. *The Canadian Charter of Rights and Freedoms* (“Charter”) s. 24 (1)
pursuant to s. 32 (1) thereof.

19. *Privacy Act* R.S.C. 1985, c P-21, ss. 12 (1) (a), 12 (1) (b), ss. 12 (2) (a), 12 (2)
(b), ss. 14 (a), ss. 14 (b), and ss. 16 (3).

20. *Federal Courts Act*, R.S.C. 1985, c. F-7 as am, s. 4; 18.1 (1), 18.1 (3) (a), ss.
18.1 (4), and 46 (1) (a) (ii).

21. *Federal Courts Rules*, SOR/98-106 as am.: ss. 1.1 (1), s. 3, and Part 5.

22. *The Canadian Charter of Rights and Freedoms* s. 7

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING
MATERIAL:**

23. The Affidavit of David French and the exhibits referred to therein.

24. This Notice of Application.

25. Such further and other material as the Applicant may advise and the Honourable Court may accept.

THE APPLICANT REQUESTS that the Attorney General of Canada send a certified copy of the following material that is not in the Applicant's possession but is in the possession of the Respondent and his Access to Information and Privacy Division ("ATIP"), to the Applicant and Registry:

26. A list of **ALL ACTIVE** CSC Offender Privacy Act Requests currently before CSC's ATIP Division.

27. A list of **ALL ACTIVE** CSC Correction to Information Requests currently before the CSC.

28. All emails, notes to file, memoranda, etc., from and to and/or to and from Bath Institution and ATIP and from and to and/or to and from ATIP and the Office of the Privacy Commissioner of Canada.

29. Such further and other material as the Applicant may request in the course of this application or that this Honourable Court may require.

April 6, 2021

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

(Signature of Solicitor or party)

David French
5775 Bath Road
P.O. Box 1500
Bath ON
K0H 1G0

GO/em

CC –Office of the Privacy Commissioner of Canada