

Date: 20070920

Docket: A-566-06

Citation: 2007 FCA 299

**CORAM: DESJARDINS J.A.
DÉCARY J.A.
RYER J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

DOUGLAS JONES

Respondent

Heard at Vancouver, British Columbia, on September 20, 2007.

Judgment delivered from the Bench at Vancouver, British Columbia, on September 20, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on September 20, 2007)

RYER J.A.

[1] This is an appeal from a decision of Russell J. of the Federal Court (2006 FC 1366), dated November 10, 2006, granting an application for judicial review of a decision of a review tribunal (the Review Tribunal), constituted pursuant to section 82 of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (the Act), dated November 8, 2005. In its decision, the Review Tribunal refused to re-open a decision of another review tribunal, dated September 17, 1996, pursuant to subsection 84(2) of the Act, on new facts.

[2] In his decision, Russell J. concluded that the findings of the Review Tribunal with respect to the discoverability and materiality aspects of the test for the determination of whether there are new facts, for the purpose of subsection 84(2) of the Act, were patently unreasonable. Having considered the submissions of Counsel for the Attorney General of Canada, we have not been persuaded that the conclusion of Russell J. has been shown to contain any palpable and overriding error. Accordingly, that conclusion cannot be overturned.

[3] With respect to the second issue that was argued before us, in our view, Russell J. improperly formulated his order. Accordingly, the appeal will be allowed for the sole purpose of substituting the following order for the one that he made:

ORDER

1. The application for judicial review is allowed. The decision of the Review Tribunal is set aside. The application under subsection 84(2) of the *Canada Pension Plan* is referred back to the Review Tribunal to be determined taking into account the new facts and the existing record.
2. The parties are at liberty to address the Court on the issue of costs.

[4] The Respondent will be entitled to costs on this appeal.

"C. Michael Ryer"

J.A..

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-566-06

STYLE OF CAUSE: AGC v. Douglas Jones

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 20, 2007

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RYER J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

DATED: September 20, 2007

APPEARANCES:

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William J. Andrews FOR THE RESPONDENT

SOLICITORS OF RECORD:

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