

Date: 20080221

Docket: A-341-07

Citation: 2008 FCA 70

Present: SHARLOW J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

NANCY HRYCIW

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 21, 2008.

REASONS FOR ORDER BY:

SHARLOW J.A.

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REASONS FOR ORDER

SHARLOW J.A.

[1] Before me is a motion in relation to an application by the Crown for judicial review of a decision of the Pension Appeals Board granting the respondent Nancy Hryciw a disability pension under the *Canada Pension Plan*, R.S.C. 1985, c. C-8. Ms. Hryciw seeks an order extending the time for filing her affidavit and her record. The Crown's affidavit and record were filed on time.

[2] The Crown opposes the motion on the basis that Ms. Hryciw has satisfied none of the factors traditionally considered in a motion to extend time. There is no evidence of a continuing intention on the part of the respondent to oppose this application. There is nothing upon which to assess, even on tentative basis, the merits of her position on the application. There is no reasonable explanation for the delay. The excuse offered is the inadvertence of counsel, but no explanation is offered for her error.

[3] The Crown claims to be prejudiced by the delay, but that claim really amounts to a complaint that if the extension is granted, Ms. Hryciw will have had more time to prepare than the Crown. That complaint could be valid if, for example, Ms. Hryciw is proposing to file an affidavit containing evidence that is not already on the record, although any prejudice from that could be remedied by permitting cross examination on the affidavit or permitting the Crown to amend its memorandum of fact and law. Ms. Hryciw's motion record does not include a draft of the affidavit or the record she proposes to file, although it indicates they are both ready to be filed.

[4] The Crown has established a basis upon which Ms. Hryciw's motion for an extension of time could be dismissed. However, I must also consider the difficult position of the Court when an application is heard without submissions from counsel for the respondent. In this case, unless Ms. Hryciw is permitted to file at least a memorandum of fact and law, her counsel may not be permitted to make oral submissions at the hearing. Even if the panel hearing the application decides in its discretion to permit Ms. Hryciw's counsel to make oral submissions, neither the Court nor the Crown will have advance notice of the submissions she proposes to make.

[5] To assist the Court, I will grant the motion of Ms. Hryciw in part, to permit her to file a respondent's record containing only her memorandum of fact and law. The costs of this motion will be borne by the respondent in any event of the cause.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-341-07

STYLE OF CAUSE: Attorney General of Canada v. Nancy Hryciw

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: SHARLOW J.A.

DATED: February 21, 2008

WRITTEN REPRESENTATIONS BY:

Marie-José Blais

FOR THE APPLICANT

Lesley C. Tough

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE APPLICANT

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FOR THE RESPONDENT