



Court File No.

T-1221-15

FEDERAL COURT

XHEMAJL OSAJ

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER s. 18.1 of the *Federal Court Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

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 at Toronto, Ontario.

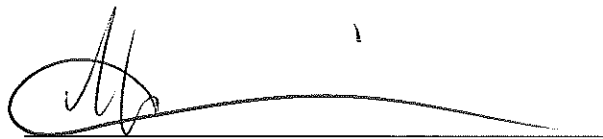
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor,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

Copies of the Federal Courts 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, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: July 23, 2015

Issued by:



(Registry Officer)

Address of local office:

180 Queen Street West, Suite 200

Toronto, Ontario

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MICHELLE GAUVIN
REGISTRY OFFICER
AGENT DU GREFFE

TO: Deputy Attorney General of Canada William F. Pentney
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APPLICATION

This is an application for judicial review in respect of the decision of Hazelyn Ross, tribunal member of the Appeal Division of the Social Security Tribunal (“Tribunal”), dated June 16, 2015, Appeal No. AD-15-284, refusing the Applicant leave to appeal the decision of the General Division of the Tribunal with respect to the date on which the Applicant became entitled to a Canada Pension Plan (“CPP”) disability pension. The decision was first communicated to the applicant on June 24, 2015.

The applicant makes application for:

1. An Order setting aside the decision of the Tribunal Member and returning the matter to the Appeal Division of the Tribunal for redetermination by a different member with such directions as this Honourable Court considers appropriate.
2. Such other Order as counsel may advise and this Honourable Court may permit.

The grounds for the application are:

1. The Applicant suffers from a variety of medical conditions as a result of injuries sustained in two traumatic accidents in January 2008 and November 2009.
2. The Applicant applied for a CPP disability pension in June 2010. His application was denied by the Minister of Employment and Social Development. His appeal of the Minister’s decision was heard by the General Division of the Tribunal on November 26, 2014.
3. The medical evidence from the Applicant’s family doctor and several specialists, considered by the General Division, documented the following: A motor vehicle accident in January 2008 caused the Applicant serious pain in his lower back and leg. He was also diagnosed with adjustment disorder with mixed anxiety and depressed mood, and post traumatic headaches. He returned to work in September 2008 with reduced hours and duties until November 2009 when he fell off the stairs at a worksite, suffering multiples injuries. As a result, he was diagnosed with chronic low back pain, knee pain, post traumatic stress

disorder, depression, pain syndrome, insomnia, anxiety, and post-trauma headaches. He was treated by several specialists and received extensive physiotherapy. Medical reports in April and May 2011 stated that the Applicant had “reached maximal medical recovery” and was permanently disabled.

4. On February 5, 2015, the General Division granted the Applicant’s appeal, determining that he had a severe and prolonged disability pursuant to s. 42(2) of the *Canada Pension Plan* and qualified for CPP disability benefits. The General Division made no findings of credibility against the medical evidence or the Applicant’s testimony. However, the General Division found the Applicant became disabled in April 2011, relying on the medical reports that he had “reached maximal medical recovery” at that time, instead of November 2009 when the Applicant had his second accident.
5. The Applicant applied to the Appeal Division for leave to appeal the General Division’s decision. The leave application was refused on June 16, 2015. The Appeal Division determined that the General Division did not err in its determination of April 2011 as the date of onset of the Applicant’s disability, and there was therefore no ground of appeal that would have a reasonable chance of success.
6. The Appeal Division erred as follows:
 - a. The Appeal Division repeated the General Division’s erroneous finding of fact of April 2011 as the date of onset of the Applicant’s disability, made in a perverse and capricious manner, without regard to the evidence. The medical evidence and the Applicant’s testimony, which the General Division had accepted as credible, established that the Applicant’s disability stemmed at the very latest from his accident in November 2009. Medical reports from January 2010 onwards reported the severity of the Applicant’s disability. Further, given that “maximal medical recovery” implicitly involves a process of improvement, the Applicant’s condition would have been more severe before April 2011.

b. The Appeal Division erred in finding that the General Division had not applied the wrong test to assess the Applicant's disability, when the General Division had imposed factors of "maximal medical recovery" and "permanent disability" not required by the test for finding severe and prolonged disability under s. 42(2) of the *Canada Pension Plan*.

7. *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 18.1(3), (4).

8. *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 42(2).

9. *Department of Employment and Social Development Act*, S.C. 2005, c. 34, ss. 56 - 59.

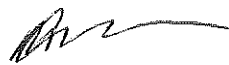
10. Such other grounds as counsel may advise and this Honourable Court may permit.

This application will be supported by the following material:

1. The Affidavit of the Applicant and exhibits thereto;
2. Such other material as counsel may advise and this Honourable Court may permit.

The Applicant requests the Appeal Division of the Social Security Tribunal to send a certified copy of the materials in the possession of the Tribunal that were before the tribunal member when she made the decision for which judicial review is sought, to the Applicant and to the Registry:

July 23, 2015



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