Date: 20070706

Docket: T-876-06

Citation: 2007 FC 724

Ottawa, Ontario, July 6, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ANITA VINCENT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application for judicial review of a decision of the Pension Appeals Board (PAB), dated February 15, 2006, which granted leave to appeal a decision of a Review Tribunal, dated October 6, 2005, regarding the payment of disability benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP).

[2] The applicant seeks a writ of *certiorari* quashing the decision of the PAB to grant leave to appeal the decision of the Review Tribunal.

Background

[3] The applicant, Anita Vincent, was employed as a retail clerk until some point in 1986, when she stopped working due to manic depression. The applicant is married and has four children, who were born in 1971, 1975, 1982, and 1984. She applied for disability benefits under the CPP in May 2003. In her application, the applicant indicated that she had been treated by psychiatrist Dr. James Hanley since April 1987, family physician Dr. Boodasingh since 1997 and psychiatrist Dr. James Karagrants since September 2001. Dr. Hanley described the applicant's condition as follows in a 2003 medical report:

> Physical findings and functional limitations:
>
> This patient has had a life-time struggle with Bipolar illness; during a depressive phase, she becomes uncommunicative and extremely socially isolated, even with her family. She has suffered from insomnia, with problems in interrupted sleep, loss of appetite function, extremes of unsociability and mood disturbance…feelings of hopelessness, emotional vulnerability and a volatile expression of mood and suicidal ideation/impulsivity which has led to attempts at self-harm. When there is a lift of mood, she becomes manic…loss of concentration, inappropriate behaviour, loss of inhibition …affected by a source of heightened energy and lack of any need for sleep/relaxation. During both phases, Mrs. Vincent is prone to suffer anxiety.
>
> Prognosis of the main medical condition of this patient:
>
> Mrs. Vincent has struggled with a very severe psychiatric disorder for many years against a background of serious hypothyroidism, refractory to intervention. She has reached a point in her life where the struggle for her own life maintenance has taken priority over all other aspects of her life. She has been disabled for years, but now would never be able to make any type of a work return or contemplate employment because of her mood variance. I feel that at

> this time in her life, Mrs. Vincent is totally disabled; any further attempt to have her work would only jeopardize her physical and emotional health.

[4] Dr. Hanley also provided the applicant with a declaration of incapacity, dated January 21, 2005. Dr. Hanley described the condition that caused the applicant's incapacity as follows:

> This woman has suffered a Bipolar Disorder (Type I) which has been severe and incapacitating, and which over the years has resulted in multiple hospitalizations and continuing clinical supervision on a regular basis. Although ill for some time before being seen by me in consult, she was first assessed by the … on 1987/04/13.
>
> Although followed by a family physician, I would have been her primary care-giver for the Bipolar Disorder and ancillary medical difficulties.

[5] In a letter to the applicant's counsel, dated January 25, 2005, Dr. Hanley stated the following:

> Mrs. Vincent was first seen by me on 13/04/1987; at the time she was distraught and confused by the wide variability of her moods and relevant cognitive problems that included problems with concentration, memory, judgment and insight. Indeed, prior to her referral to me, she had suffered bouts of her Bipolar Disorder which often left her confused, irascible, and very depressed; once she was seen and diagnosed psychiatrically, it was obvious that she was and would be severely handicapped by her illness which, on multiple occasions, needed prolonged hospital admissions for treatment and stabilization.
>
> With her cognitive and emotional status being so seriously compromised from the time she was first assessed by me in consultation, she would not have had the capacity to appreciate the circumstances/consequences of her disorder; neither would she have the capacity to plan an application or, for that matter, appreciate the fact that she could have applied for her CPP because of a Medical Disability. In fact, I myself did not think to ask her about this; it has only been since achieving a better relative medical stability that she has been able to reflect on what her disorder has done to her, and I

> fully support the fact that she has been medically disabled since 1987.

[6] On September 3, 2003, the Minister of Human Resources Development Canada denied her application for disability benefits on the basis that she had not provided sufficient medical evidence in support of her application. However, the application was later granted by the Minister in a notice of entitlement, dated February 16, 2004. An effective date for the commencement of payment of disability benefits was set for June 2002. The applicant requested that the Minister reconsider the effective date for the commencement of payment, but was informed on April 2, 2004, that the decision had been reconsidered and maintained.

[7] The applicant then appealed the Minister's decision, dated April 2, 2004, to the Review Tribunal. She claimed that her medical condition had rendered her disabled and incapable of forming an intention to apply for benefits from the onset of her illness in 1986, and requested that her medical information be reviewed. The Review Tribunal held a hearing on July 26, 2005, and on October 6, 2005, the applicant's appeal was allowed. The commencement date for the payment of disability benefits to the applicant was set for August 1987. The Minister applied to the PAB for leave to appeal the Review Tribunal's decision on January 9, 2006. The PAB granted leave to appeal the Review Tribunal decision on February 15, 2006 and communicated this decision to the applicant by letter dated February 23, 2006. This is the judicial review of the decision by the PAB to grant leave to appeal the decision of the Review Tribunal dated October 6, 2005.

Review Tribunal Decision

[8] The panel concluded that subsection 60(11) of the CPP did not restrict the date an application was deemed to have been received to January 1, 1991. Since the applicant's incapacity existed in April 1987 and continued until the hearing date in July 2005, the provisions of subsections 60(8) to (10) were applicable.

[9] The panel noted the testimony of Dr. Hanley, the psychiatrist who began treating the applicant for severe bipolar disorder on April 13, 1987. The doctor testified that when he began treating the applicant, she was extremely ill and was undergoing disruptive cognitive events which prevented her from forming any rational thought. The doctor testified that from April 13, 1987, until the present hearing, the applicant was incapable of forming or expressing an intention to apply for benefits, and that had it not been for her family's actions, the application would never have been filed. Dr. Hanley signed a declaration of incapacity in January 2005, indicating that the applicant was incapable of forming or expressing an intention to apply for benefits as of April 13, 1987.

[10] Although the Minister gave weight to the fact that the applicant had filed various forms in support of her application for disability benefits, the panel established that her lawyer and doctor had filed the documents. In addition, her family made the decision to hire a lawyer.

[11] The panel concluded that the applicant was unable to form or express an intention to apply for benefits as of April 13, 1987. The panel concluded that this incapacity was continuous until the

date of her application for disability benefits in May 2003. The panel also concluded that the applicant's condition constituted a disability within the meaning of the CPP, from April 13, 1987, as her condition was severe, prolonged and continuous. Due to the nature of the applicant's condition, and pursuant to subsection 60(8) of the CPP, her application was deemed to have been made in July 1987. Therefore, in accordance with section 69 of the CPP, benefits would commence in August 1987.

Minister's Application for Leave to Appeal and Notice of Appeal

[12] The ground of appeal was:

> The Review Tribunal erred in fact and law in deciding the Respondent was entitled to a disability pension with a date of onset of April 13, 1987 and an effective date of August 1987 as a result of the Respondent having been unable to make an application since April 13, 1987.

[13] It was submitted that the applicant's application for CPP disability benefits was received in May 2003, and that the maximum retroactive benefit allowed under the CPP was February 2002 (fifteen months prior to the date of her application). The Minister submitted that the evidence on file did not support a finding that Mrs. Vincent was incapable of forming or expressing an intention to apply for disability benefits between January 1, 1991, and May 2003. The Minister noted that she attended various medical examinations between 1987 and 2001, was the primary caregiver for her four children, and there was no medical information from the period between January 1, 1991, and May 2003.

[14] The Minister noted that Dr. Hanley's medical report stated that she was hospitalized "before control of her symptoms was achieved" and that while she has been disabled for years, she "now would never be able to make any type of work return". Dr. Hanley also stated that "at this time in her life, Mrs. Vincent is totally disabled." In addition, she was capable of completing her application for disability benefits and all relevant documentation. The Minister submitted that Mrs. Vincent was not entitled to a disability pension under the CPP prior to February 2002, the maximum retroactive date available to her based on her date of application of May 2003 (see paragraph 42(2)(b) of the CPP).

PAB Reasons for Granting Leave to Appeal

[15] The PAB did not issue any reasons for granting leave to appeal the Review Tribunal's decision. A letter dated February 23, 2006, stated the following:

> Further to our letter of January 18, 2006, this is to inform you that a member of this Board has considered the Minister's Application for Leave to Appeal and on February 15, 2006, the Minister of Social Development was granted leave to appeal as required under Section 83 of the Canada Pension Plan.

Issues

[16] The applicant submitted the following issues for consideration:

1. What standard of review applies to the decision to grant leave to appeal?
2. Should the decision to grant leave to appeal be quashed?

[17] The respondent submitted the following issue for consideration:

Did the PAB apply the right test (i.e.: whether an arguable case was raised) in granting leave to appeal the Review Tribunal decision?

Applicant's Submissions

[18] The applicant submitted that the standard of review applicable to a decision by the PAB to grant leave to appeal was correctness (see *Burley* v. *Canada (Minister of Citizenship and Immigration)* (2001), 201 F.T.R. 127, 2001 FCT 127 (F.C.T.D.)). It was submitted that if the PAB failed to apply the proper test for determining whether an arguable case was raised, it had committed an error of law.

[19] In *Callihoo* v. *Canada (Attorney General)* (2000), 190 F.T.R. 114, Justice MacKay stated that the review of a decision concerning an application for leave to appeal to the PAB involved two issues: (1) whether the right test was applied; and (2) whether a legal or factual error was committed in determining whether an arguable case was raised. Justice MacKay noted that if new evidence was adduced, or if a new issue of law or relevant fact not considered by the Review Tribunal was raised, then an arguable issue had been raised and warranted the granting of leave. The applicant submitted that in the case at hand, no new evidence was adduced, and the Review Tribunal did not commit an error of law, nor did it fail to consider any significant facts. It was submitted that the decision to grant leave to appeal did not meet the test for granting leave and was therefore contrary to law. The

applicant submitted that the application for leave simply revisited factual arguments that were considered by the Review Tribunal.

[20] The applicant noted that the respondent's application for leave argued that she was able to fill out forms, complete her application for disability benefits and was therefore not continuously disabled. However, the Review Tribunal considered these facts and determined that these forms were prepared and filed by her doctor and lawyer.

[21] The applicant submitted that the PAB's decision to grant leave: (1) was not within its jurisdiction and resulted in an error in law, as leave was granted where no arguable case was raised; and (2) was based upon on an erroneous finding of fact that was perverse, capricious or made without regard to the material. It was submitted that given the minimal deference to be shown to the decision, it was not necessary to show that an error of fact was perverse or capricious. However, it was submitted that the decision to grant leave was perverse and capricious as it was unsupported by the facts. It was submitted that the decision was not made with proper regard to the material, as a review of the evidence revealed that no arguable case was raised.

[22] The applicant noted the respondent's argument that there were gaps in her medical information from January 1991 until May 2003. It was submitted that these arguments were false, as the Review Tribunal had heard testimony from her treating psychiatrist, wherein he gave uncontradicted testimony that she was continuously disabled at all relevant times. It was submitted that the respondent had made unfounded allegations that were not supported by the evidence.

Respondent's Submissions

[23] The respondent submitted that the standard of review applicable to the question of whether the PAB had applied the right test for granting leave was correctness (see *Canada (Minister of Human Resources Development)* v. *Lewis*, 2006 FC 322). It was submitted that the CPP did not set out any criteria for determining whether leave applications should be granted under section 83 of the CPP. The respondent submitted that the jurisprudence established that a leave to appeal proceeding was a preliminary step to a hearing on the merits, and was a lower hurdle for the applicant for leave to meet, since the case did not have to be proven (see *Kerth* v. *Canada (Minister of Human Resources Development)* (1999), 173 F.T.R. 102 (F.C.T.D.); *Burley* above).

[24] The respondent noted that on an application for leave to appeal to the PAB, the applicant must show an arguable ground upon which the proposed appeal might succeed (*Martin* v. *Canada (Minister of Human Resources Development)* (1999), 252 N.R. 141 (F.C.A.)). It was submitted that the decision of a leave judge may, on judicial review, be set aside if an error of law was committed, or where an error of significant fact was made that was unreasonable or perverse in light of the evidence (see *Callihoo* above).

[25] The respondent noted that pursuant to subsections 60(8) to (11) of the CPP, the Review Tribunal was called upon to determine whether the applicant was incapable of forming or expressing an intention to make an application before the application was made, as opposed to whether the applicant was disabled. The respondent submitted that based upon the medical

information on file, it was arguable that the applicant had the capacity to form or express an opinion to make an application at some point before it was submitted in 2003. It was noted that her doctor had provided a medical report, dated December 9, 2003, which stated that following her hospitalization in 1987, control of her symptoms was achieved. The report also stated that the applicant had been disabled for years but now would never be able to return to work because of the severity of her mood variance. It was submitted that it was therefore arguable that the applicant was not continuously incapable of forming or expressing an intention to make an application (see subsection 60(10) of the CPP).

Analysis and Decision

Standard of Review

[26] Whether the PAB applied the proper test in granting leave to appeal the decision of the Review Tribunal is a question of law, reviewable on the standard of correctness (see *Burley* above at paragraph 18).

[27] **Issue**

Did the PAB err in granting leave to appeal the Review Tribunal's decision? (i.e.: was an arguable case was raised)?

Pursuant to subsection 83(1) of the CPP, a party may apply to the PAB for leave to appeal a decision of the Review Tribunal. The CPP does not set out any criteria for determining whether the PAB should grant applications for leave to appeal. However, the appropriate test for granting leave

to appeal has been articulated in Federal Court jurisprudence. In *Callihoo* above at paragraph 15, Justice MacKay set out the test as follows:

> On the basis of this recent jurisprudence, in my view the review of a decision concerning an application for leave to appeal to the PAB involves two issues,
>
> 1. whether the decision maker has applied the right test - that is, whether the application raises an arguable case without otherwise assessing the merits of the application, and
>
> 2. whether the decision maker has erred in law or in appreciation of the facts in determining whether an arguable case is raised. If new evidence is adduced with the application, if the application raises an issue of law or of relevant significant facts not appropriately considered by the Review Tribunal in its decision, an arguable issue is raised for consideration and it warrants the grant of leave.

[28] While the PAB must provide reasons for refusing an application for leave to appeal, no such duty exists when leave to appeal is granted (see subsection 83(3) of the CPP). I cannot determine from the decision what test was applied by the decision maker in granting leave as no reasons were given for the decision. Even if it is assumed that the PAB applied the correct test, it must be determined whether the PAB erred in law or in its appreciation of the facts in finding whether an arguable issue was raised.

[29] The applicant submitted that the PAB incorrectly found that an arguable case had been raised in granting leave to appeal the Review Tribunal's decision. The respondent submitted that the application for leave to appeal and notice of appeal raised an arguable case and justified the granting of leave. Pursuant to subsection 83(4) of the CPP, where leave to appeal is granted, the application

for leave to appeal thereupon becomes the notice of appeal, and shall be deemed to have been filed at the time the application for leave to appeal was filed.

[30] In its notice of appeal and memorandum of fact and law, the respondent submitted that the totality of the evidence on file did not support a finding that the applicant was continuously incapable of forming or expressing an intention to apply for disability benefits before May 2003. The respondent noted the following considerations in support of this argument:

- there was a significant gap in the applicant's medical information from January 1, 1991 until May 2003;
- Dr. Hanley's medical report, dated December 9, 2003, stated that (1) the applicant was hospitalized before control of her symptoms was achieved; (2) she had been disabled for years but now would never be able to return to work; and (3) he felt that at this time in her life she was totally disabled;
- she was able to complete her application for disability benefits; and
- she was the primary caregiver to her four children from at least 1972 until 1990.

(Emphasis Added.)

[31] The respondent submitted that there was insufficient medical information regarding the applicant's health from January 1991 until May 2003. The Review Tribunal noted that under questioning, Dr. Hanley confirmed that throughout the period commencing April 13, 1987, and up to and including the date of the hearing, the applicant was incapable of forming or expressing an intention to apply for benefits.

[32] The respondent pointed to statements in Dr. Hanley's medical report which seemed to imply that the applicant was not continuously disabled. However, Dr. Hanley provided uncontradicted testimony before the Review Tribunal that the applicant was incapable of forming or expressing an intention to apply for CPP benefits as of April 13, 1987, and that this incapacity was continuous up to and including the date of her application in May 2003, and continued up to and including the date of the hearing. In addition, I would note that Dr. Hanley signed a declaration of incapacity indicating that the applicant had been incapable of forming or expressing an intention to apply for benefits as of April 13, 1987. In my view, Dr. Hanley's statements do not give rise to an arguable issue regarding the continuity of the applicant's disability.

[33] In my view, the fact that the applicant was able to complete her application for disability benefits and retain counsel does not lead to the conclusion that she was not continuously disabled. As noted by the Review Tribunal, Dr. Hanley, the applicant's husband and her lawyer prepared and filed the application on her behalf. In addition, the decision to hire counsel was made by the applicant's family. I do not believe that an arguable case would arise on these particular facts.

[34] I have reviewed the Review Tribunal's decision and I note that the signing of the various application forms was dealt with by the Review Tribunal.

[35] The Review Tribunal accepted the oral testimony of Dr. Hanley as to the applicant's medical condition and its impact upon her ability to make an application for disability benefits. Dr. Hanley's testimony included the following statement:

> . . . the severity of her Bipolar disorder was so disruptive that she was incapable of sustained sequential thinking to allow her to initiate or pursue the application.

The Review Tribunal also noted that this statement applied from the time Dr. Hanley began treating her in 1987.

[36] The Review Tribunal's decision states in part as follows:

> 8 During his testimony Dr. Hanley confirmed under questioning from the Panel that throughout the period commencing April 13, 1987 up to and including the date of the hearing herein, Mrs. Vincent was incapable of forming or expressing an intention to apply for benefits. Dr. Hanley stated if it were not for the actions of her family "no application would ever have been made." He also confirmed that while there were ups and downs in her condition her "incapacity was continuous throughout that entire period up to and including the hearing of this Appeal."
>
> 9 A Declaration of Incapacity was signed by Dr. Hanley in January 2005 indicating Mrs. Vincent as incapable of forming or expressing an intention to apply for benefits as of April 13, 1987.
>
> 10 The Panel has concluded, and the uncontested expert testimony of Dr. Hanley supports the finding, that Mrs. Vincent was incapable of forming or expressing an intention to apply for the CPP Disability benefits as of April 13, 1987. That incapacity was continuous up to and including her date of application, May 8, 2003, and continued up to and including the date of his hearing.
>
> 11 For greater certainty the panel has concluded that Mrs. Vincent's condition constituted a disability within the meaning of the Act as of April 13, 1987. Her condition was both severe and prolonged. The disability continues up to and including the date of this hearing.
>
> 12 The Panel has concluded that section 60(11) establishes a time period following which if an incapacity pursuant to section 60 of the Act begins and/or continues to exist, Sections 60(8)-(10) of the Act may be considered. It does not restrict the date an application is deemed to have been received to January 1, 1991.

> 13 The Panel has concluded that due to the nature and severity of Mrs. Vincent's condition, and pursuant to section 60(8), her application is deemed to have been made July 1987. In accordance with section 68 of the Act, benefits will commence, August 1987.

[37] Based on the evidence before the Review Tribunal and the conclusions reached by the Review Tribunal, I cannot find that an arguable issue was raised in the application for leave to appeal on this basis.

[38] As well, no new evidence was adduced in this case nor were any significant facts not appropriately considered by the Review Tribunal so as to raise an arguable issue.

[39] As a result, I would find that the PAB erred in granting leave to appeal the decision of the Review Tribunal, given that the test for granting leave was not met in this case.

[40] The application for judicial review is therefore allowed.

JUDGMENT

[41] **IT IS ORDERED that** the application for judicial review is allowed and the decision to grant leave in this matter is set aside.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Canada Pension Plan*, R.S.C. 1985, c. C-8.:

42(2) For the purposes of this Act,	42(2) Pour l'application de la présente loi:
(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,	a) une personne n'est considérée comme invalide que si elle est déclarée, de la manière prescrite, atteinte d'une invalidité physique ou mentale grave et prolongée, et pour l'application du présent alinéa:
(i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and	(i) une invalidité n'est grave que si elle rend la personne à laquelle se rapporte la déclaration régulièrement incapable de détenir une occupation véritablement rémunératrice,
(ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and . . .	(ii) une invalidité n'est prolongée que si elle est déclarée, de la manière prescrite, devoir vraisemblablement durer pendant une période longue, continue et indéfinie ou devoir entraîner vraisemblablement le décès; . . .
60(8) Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that the	60(8) Dans le cas où il est convaincu, sur preuve présentée par le demandeur ou en son nom, que celui-ci n'avait pas la capacité de former ou d'exprimer l'intention de faire

person had been incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

une demande le jour où celle-ci a été faite, le ministre peut réputer cette demande de prestation avoir été faite le mois qui précède celui au cours duquel la prestation aurait pu commencer à être payable ou, s'il est postérieur, le mois au cours duquel, selon le ministre, la dernière période pertinente d'incapacité du demandeur a commencé.

(9) Where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that

(9) Le ministre peut réputer une demande de prestation avoir été faite le mois qui précède le premier mois au cours duquel une prestation aurait pu commencer à être payable ou, s'il est postérieur, le mois au cours duquel, selon lui, la dernière période pertinente d'incapacité du demandeur a commencé, s'il est convaincu, sur preuve présentée par le demandeur:

(a) the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made,

a) que le demandeur n'avait pas la capacité de former ou d'exprimer l'intention de faire une demande avant la date à laquelle celle-ci a réellement été faite;

(b) the person had ceased to be so incapable before that day, and

b) que la période d'incapacité du demandeur a cessé avant cette date;

(c) the application was made

c) que la demande a été faite, selon le cas:

(i) within the period that begins on the day on which that person had ceased to be so incapable and that comprises the same number of days, not exceeding twelve months, as in the period of incapacity, or

(ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more than one month after the month in which that person had ceased to be so incapable,

the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(i) au cours de la période — égale au nombre de jours de la période d'incapacité mais ne pouvant dépasser douze mois — débutant à la date où la période d'incapacité du demandeur a cessé,

(ii) si la période décrite au sous-alinéa (i) est inférieure à trente jours, au cours du mois qui suit celui au cours duquel la période d'incapacité du demandeur a cessé.

(10) For the purposes of subsections (8) and (9), a period of incapacity must be a continuous period except as otherwise prescribed.

(10) Pour l'application des paragraphes (8) et (9), une période d'incapacité doit être continue à moins qu'il n'en soit prescrit autrement.

(11) Subsections (8) to (10) apply only to individuals who were incapacitated on or after January 1, 1991.

(11) Les paragraphes (8) à (10) ne s'appliquent qu'aux personnes incapables le 1er janvier 1991 dont la période d'incapacité commence à compter de cette date.

69. Subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth

69. Sous réserve de l'article 62, lorsque le versement d'une pension d'invalidité est approuvé, la pension est payable pour chaque mois à

month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan,

compter du quatrième mois qui suit le mois où le requérant devient invalide sauf que lorsque le requérant a bénéficié d'une pension d'invalidité prévue par la présente loi ou par un régime provincial de pensions à un moment quelconque au cours des cinq années qui ont précédé le mois où a commencé l'invalidité au titre de laquelle le versement est approuvé:

(a) the pension is payable for each month commencing with the month next following the month in which the applicant became disabled as a result of which the payment is approved; and

a) la pension est payable pour chaque mois commençant avec le mois qui suit le mois au cours duquel est survenue l'invalidité au titre de laquelle le versement est approuvé;

(b) the reference to "fifteen months" in paragraph 42(2)(b) shall be read as a reference to "twelve months".

b) la mention de « quinze mois » à l'alinéa 42(2)b) s'interprète comme une mention de « douze mois ».

83.(1) A party or, subject to the regulations, any person on behalf thereof, or the Minister, if dissatisfied with a decision of a Review Tribunal made under section 82, other than a decision made in respect of an appeal referred to in subsection 28(1) of the Old Age Security Act, or under subsection 84(2), may, within ninety days after the day on which that decision was communicated to the party or Minister, or within such longer period as the Chairman or Vice-Chairman of the Pension Appeals Board may either

83.(1) La personne qui se croit lésée par une décision du tribunal de révision rendue en application de l'article 82 — autre qu'une décision portant sur l'appel prévu au paragraphe 28(1) de la Loi sur la sécurité de la vieillesse — ou du paragraphe 84(2), ou, sous réserve des règlements, quiconque de sa part, de même que le ministre, peuvent présenter, soit dans les quatre-vingt-dix jours suivant le jour où la décision du tribunal de révision est transmise à la personne ou au ministre, soit

before or after the expiration of those ninety days allow, apply in writing to the Chairman or Vice-Chairman for leave to appeal that decision to the Pension Appeals Board.

dans tel délai plus long qu'autorise le président ou le vice-président de la Commission d'appel des pensions avant ou après l'expiration de ces quatre-vingt-dix jours, une demande écrite au président ou au vice-président de la Commission d'appel des pensions, afin d'obtenir la permission d'interjeter un appel de la décision du tribunal de révision auprès de la Commission.

(2) The Chairman or Vice-Chairman of the Pension Appeals Board shall, forthwith after receiving an application for leave to appeal to the Pension Appeals Board, either grant or refuse that leave.

(2) Sans délai suivant la réception d'une demande d'interjeter un appel auprès de la Commission d'appel des pensions, le président ou le vice-président de la Commission doit soit accorder, soit refuser cette permission.

(2.1) The Chairman or Vice-Chairman of the Pension Appeals Board may designate any member or temporary member of the Pension Appeals Board to exercise the powers or perform the duties referred to in subsection (1) or (2).

(2.1) Le président ou le vice-président de la Commission d'appel des pensions peut désigner un membre ou membre suppléant de celle-ci pour l'exercice des pouvoirs et fonctions visés aux paragraphes (1) ou (2).

(3) Where leave to appeal is refused, written reasons must be given by the person who refused the leave.

(3) La personne qui refuse l'autorisation d'interjeter appel en donne par écrit les motifs.

(4) Where leave to appeal is granted, the application for leave to appeal thereupon becomes the notice of appeal, and shall be deemed to have been filed at the time the

(4) Dans les cas où l'autorisation d'interjeter appel est accordée, la demande d'autorisation d'interjeter appel est assimilée à un avis d'appel et celui-ci est réputé avoir été

application for leave to appeal was filed.	déposé au moment où la demande d'autorisation a été déposée.
. . .	. . .
(11) The Pension Appeals Board may confirm or vary a decision of a Review Tribunal under section 82 or subsection 84(2) and may take any action in relation thereto that might have been taken by the Review Tribunal under section 82 or subsection 84(2), and shall thereupon notify in writing the parties to the appeal of its decision and of its reasons therefor.	(11) La Commission d'appel des pensions peut confirmer ou modifier une décision d'un tribunal de révision prise en vertu de l'article 82 ou du paragraphe 84(2) et elle peut, à cet égard, prendre toute mesure que le tribunal de révision aurait pu prendre en application de ces dispositions et en outre, elle doit aussitôt donner un avis écrit de sa décision et des motifs la justifiant à toutes les parties à cet appel.

The *Federal Courts Act*, R.S.C. 1985, c. F-7:

18.(1) Subject to section 28, the Federal Court has exclusive original jurisdiction	18.(1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour:
(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of mandamus or writ of quo warranto, or grant declaratory relief, against any federal board, commission or other tribunal; and	a) décerner une injonction, un bref de certiorari, de mandamus, de prohibition ou de quo warranto, ou pour rendre un jugement déclaratoire contre tout office fédéral;
(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain	b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

relief against a federal board, commission or other tribunal.

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of habeas corpus ad subjiciendum, writ of certiorari, writ of prohibition or writ of mandamus in relation to any member of the Canadian Forces serving outside Canada.

(2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d' habeas corpus ad subjiciendum, de certiorari, de prohibition ou de mandamus.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.

18.1 . . . (4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

18.1 . . . . (4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas:

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

(d) based its decision or order on an erroneous finding of fact

d) a rendu une décision ou une ordonnance fondée sur une

that it made in a perverse or capricious manner or without regard for the material before it;	conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
(e) acted, or failed to act, by reason of fraud or perjured evidence; or	e) a agi ou omis d’agir en raison d’une fraude ou de faux témoignages;
(f) acted in any other way that was contrary to law.	f) a agi de toute autre façon contraire à la loi.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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