

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

JASON JOSEPH HYRA)	<i>No Appearance</i>
)	<i>for the Appellant</i>
(Applicant) Appellant)	
)	<i>S. R. Paul and</i>
- and -)	<i>E. E. Milner</i>
)	<i>for the Respondents</i>
THE WORKERS COMPENSATION)	
BOARD OF MANITOBA and THE APPEAL)	<i>Chambers motion heard and</i>
COMMISSION)	<i>Decision pronounced:</i>
)	<i>February 8, 2024</i>
(Respondents) Respondents)	

PFUETZNER JA

[1] At the hearing of the motion, I dismissed the applicant (Mr. Hyra)’s request for an adjournment and struck his motion with brief reasons to follow. These are those reasons.

Background

[2] Mr. Hyra sought judicial review, in the Court of King’s Bench, of a decision of the respondent, the Appeal Commission, affirming a decision of the Workers Compensation Board of Manitoba (the WCB). The application judge dismissed the application, and Mr. Hyra appealed the decision to this Court. This Court heard and dismissed the appeal on September 11, 2023 (see *Hyra v Workers Compensation Board of Manitoba*, 2023 MBCA 79 [Hyra Appeal]). A certificate of decision was signed by the Registrar on November 29, 2023.

[3] While his appeal was pending in this Court, Mr. Hyra filed a motion seeking an order to compel the WCB to answer questions on interrogatories. He later withdrew that motion prior to the hearing of the appeal. However, after his appeal was dismissed, he refiled the motion. Correspondence from Mr. Hyra to the Registry staff indicated his intention to seek leave to appeal *Hyra Appeal* to the Supreme Court of Canada and that he required WCB's answers to the interrogatories for his intended appeal.

[4] The motion was initially scheduled to be heard in chambers on November 30, 2023, but an adjournment was granted at Mr. Hyra's request supported by medical documentation.

[5] Mr. Hyra was not present for the hearing of the motion before me on February 8, 2023. On February 7, 2023, after the close of business, he notified Registry staff that he would not be able to attend due to tinnitus that he had been suffering from since December 2023, which had become acute during the prior three days. He sought an adjournment. The respondents opposed the adjournment, arguing that the medical information provided by Mr. Hyra was insufficient to show that he was unable to prepare for or to attend the hearing.

Decision

[6] As I will explain, I declined to adjourn the hearing of the motion as, in my view, it was not in the interests of justice to do so.

[7] Section 7(1) of *The Court of Appeal Act*, CCSM c C240, sets out the powers of a judge of the Court of Appeal in chambers and states:

Powers of judge in chambers

7(1) *In any cause or matter pending in the court, any application or motion incidental thereto, not involving the decision of that cause or matter may be heard and disposed of by a judge of the court sitting in chambers; and a judge of the court may at any time during vacation make any interim order to prevent prejudice to the claims of any party as the judge thinks fit.*

[emphasis added]

Pouvoirs du juge en cabinet

7(1) *Les demandes ou requêtes accessoires à des causes ou affaires en instance devant le tribunal peuvent être entendues et réglées par un juge du tribunal siégeant en cabinet, à condition qu'elles n'entraînent pas de décision sur les causes ou les affaires en question. Un juge du tribunal peut, à tout moment pendant la période des vacances judiciaires, rendre une ordonnance provisoire qu'il estime appropriée afin d'empêcher qu'il ne soit fait tort aux prétentions d'une partie.*

[nos italiques]

[8] Section 7(1) limits the powers of a chambers judge to hearing and disposing of matters which are incidental to a matter pending in our Court. Mr. Hyra does not have a matter pending in this Court. His appeal has already been heard and dismissed, and a certificate of decision entered. It is patently obvious that I have no jurisdiction to make the order sought by Mr. Hyra regardless of the merits of his motion.

[9] In light of the fact that I clearly had no ability to grant Mr. Hyra's motion, even if I were inclined to do so, there would have been nothing gained by adjourning the motion to allow Mr. Hyra to argue its merits. His position was very clear from the material provided to the Registry.

[10] In all of the circumstances, it was not in the interests of justice to adjourn the hearing of the motion. As I had no jurisdiction to hear the motion, the motion was struck. There was no order of costs of the motion.

Pfuetzner JA