

Date: 20070920

Docket: T-1926-06

Citation: 2007 FC 935

[ENGLISH TRANSLATION]

BETWEEN:

MINISTER OF NATIONAL REVENUE

Applicant

and

**LA COOPÉRATIVE DE SERVICES
DES TRAVAILLEURS AUTONOMES
DE L'OUTAOUAIS also known as
COOP HARMONIE PLUS**

Respondent

REASONS FOR ORDER

Pinard J.

[1] The respondent, upon its request, is appealing the decision by Prothonotary Richard Morneau on June 19, 2007, refusing it authorization to have two witnesses heard, authorization that is required under Rule 371 of the *Federal Courts Rules*, SOR/98-106. This rule reads as follows:

371. On motion, the Court may, in special circumstances, authorize a witness to testify in

court in relation to an issue of fact raised on a motion.

371. Dans des circonstances particulières, la Cour peut, sur requête, autoriser un témoin à

témoigner à l'audience quant à une question de fait soulevée dans une requête.

[2] Furthermore, the Prothonotary's order establishes a timeline for the rest of the proceedings related to the respondent's application for review of a judicial authorization granted by this Court on November 6, 2006, under subsection 231.2(3) of the *Income Tax Act*, R.S.C. (1985), c. 1 (5th Supp.), (the ITA). This second part of the order is not truly being challenged, but the timeline that it includes most of course be amended based on the outcome of the respondent's appeal in the first part of the appeal regarding the application of Rule 371.

[3] As the Prothonotary's order applies *mutatis mutandis* to docket T-1933-06, between the Minister of National Revenue and the Coopérative québécoise de formation des travailleurs, also known as Coop Plus, the order in support of which these reasons have been filed therefore apply *mutatis mutandis* to that other docket.

[4] This order is issued on the basis of the parties' written submissions. To require me to exercise my own discretion, the respondent must demonstrate either that the Prothonotary's order deals with an issue that has a decisive influence on the outcome of the case, or that the Prothonotary committed an obvious error in exercising his discretionary power. In my opinion, the respondent completely failed.

[5] First, it is obvious that the Prothonotary's order is purely incidental and that for all practical purposes, it does not put an end to the dispute, as the respondent can pursue its motion to review the judicial authorization granted under subsection 231.2(3) of the ITA and file, if it deems it appropriate, affidavit evidence, which it has not shown that it is unable to do.

[6] As for the Prothonotary's application of Rule 371, not only do I see no obvious errors, but I consider it to be altogether well-founded in fact and law. It appears to me that the Prothonotary assessed the little evidence submitted by the respondent to rightly conclude that there is a lack of "special circumstances" that would allow for the two witnesses it designated to be summoned. It should be recalled that motions must be decided based on documentary evidence and that deviating from this practice is exceptional. The burden of demonstrating the existence of special circumstances that might justify authorization to have a witness heard under Rule 371 falls to the party applying for that authorization. In this regard, the following decisions referred to in the Prothonotary's decision appear to be entirely appropriate: *Cyanamid Canada Inc. v. The Minister of National Health and Welfare* (1992), 52 F.T.R. 22 and *Glaxo Canada Inc. v. Canada (Minister of National Health and Welfare) and Apotex Inc. et al. No. 4* (1987), 11 F.T.R. 132.

[7] For these reasons, the respondent's appeal is dismissed, the Prothonotary's decision is upheld, and the timeline that it includes is amended by replacing the date of July 18, 2007, at paragraph 2(a), with October 19, 2007, and by replacing the date of August 3, 2007, at paragraph 2(b), with November 7, 2007.

[8] Costs are awarded against the respondent.

"Yvon Pinard"

Judge

Ottawa, Ontario
September 20, 2007

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1926-06

STYLE OF CAUSE: MINISTER OF NATIONAL REVENUE v. LA
COOPÉRATIVE DE SERVICES DES
TRAVAILLEURS AUTONOMES DE L'OUTAOUAIS
also known as COOP HARMONIE PLUS

**WRITTEN MOTION UNDER
RULE 369 SUBMITTED AT:** Ottawa, Ontario

REASONS FOR ORDER: Pinard J.

DATED: September 20, 2007

SOLICITORS OF RECORD:

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