

## PUBLIC SERVICE

### PENSIONS

#### *Reserve Force Pension Plan*

Judicial review of decision by advisory officer from Public Services and Procurement Canada, Pension Centre, adopting particular interpretation of *Reserve Force Pension Plan Regulations*, SOR/2007-32 (Regulations) for calculating applicant's pension benefits entitlement — Applicant retired reserve force member — Electing to “buyback” years of service, paying into Reserve Force Pension Plan (Pension Plan) — Benefits under Pension Plan calculated taking into account maximum of 35 years of pensionable service by participant — Parties' positions diverging on which 35-year period to be taken into account when participant like applicant having over 35 years of service — Applicant's first pension benefit deposit less than amount calculated in Pension Benefit Estimates Statement — Pension Centre advising applicant that estimate incorrect, that only applicant's first 35 years of earnings to be used in pension calculation, such that applicant's final 7 years of earnings not included — Advisory officer interpreting Regulations, s. 11(3) as providing that, when election made to count past earnings as pensionable earnings, those past earnings counted backwards from date of election to maximum of 35 years — Under advisory officer's calculation, applicant continuing to accrue pensionable service after election date but only until reaching 35-year maximum — Applicant interpreting s. 11(3) such that expression therein “starting with the most recent” meaning most recent earnings as of date of retirement, not most recent earnings as of date of election — Whether Pension Centre committing reviewable error in its interpretation, application of Regulations, s. 11(3) to calculate applicant's pension benefits — No basis to conclude that officer's decision outside range of possible, acceptable outcomes, based on applicable facts, law — Key question: if reserve force member such as applicant having over 35 years of service, which type of earnings truncated to respect 35-year maximum? — Whether answer Regulations, s. 10(1)(b) pre-March 1, 2007, earnings or s. 10(1)(a) post-March 1, 2007 — Answer turning on interpretation of words “starting with the most recent” in s. 11(3) — Second sentence of s. 11(3) stating “only those that would result in a maximum of 35 years of pensionable service” — Word “those” referring to subject of first sentence of s. 11(3), i.e. “past earnings” — Such interpretation within range of acceptable outcomes — Word “However” in second sentence of s. 11(3) not supporting position that earnings to be counted under second sentence having to be other than past earnings — Regulations, s. 57 relating to calculation of accrued pension benefits, not directly applicable to operation of s. 11(3) — Effect of Regulations, ss. 26(2), 35 providing strong support for reasonableness of officer's decision, conclusion that s. 11(3) directing accounting of past earnings, starting with most recent past earnings as of date of election — *Pension Benefits Standards Act*, R.S.C. 1985, c. 32, s. 16(5) inapplicable to Pension Plan, not undermining reasonableness of officer's decision — Application dismissed.

LAMARCHE V. CANADA (ATTORNEY GENERAL) (T-2073-18, 2019 FC 1303, Southcott J., reasons for judgment dated October 17, 2019, 29 pp.)