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RCMP

Pensions — Judicial review of Government of Canada Pension Centre (Pension Centre) decision pursuant to *Royal Canadian Mounted Police Superannuation Act*, R.S.C., 1985, c. R-11 (Superannuation Act) holding that appellant entitled only to return of contributions with interest following applicant's resignation — Applicant, former RCMP Constable found by RCMP's Conduct Board to have contravened Code of Conduct established under *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 (RCMP Act) — Applicant resigned within 14-day grace period allowed by Conduct Board — Subsequently received two counselling packages from Pension Centre advising him of his rights under Superannuation Act — From first package applicant electing to receive lump-sum payment of transfer value — Withdrew appeal of Conduct Board's decision, because he could not collect transfer value while appeal ongoing — Respondent saying Pension Centre's advice regarding applicant's entitlement to transfer value based on its misunderstanding of applicant's pension entitlement — Pension Centre therefore sending applicant second counselling package, this time applying Superannuation Act, s. 11(4) to applicant's pension entitlement — This counselling package not mentioning transfer value payment — Applicant opted for return of contributions with interest by signed election, expressly waived his rights to potential lifetime annuity — Applicant disputed Pension Centre's application of s. 11(4), claiming he was entitled to transfer value of his pension — Pension Centre stated in its decision that because employment ceased as result of misconduct, s. 11(4) was applied — Applicant arguing entitled to transfer value of his pension entitlements because of Superannuation Act, s. 12.1, which applies, according to its opening words, "[d]espite any other provision of this Act" — Main issue whether Pension Centre's decision reasonable — Applicant by legislation entitled to transfer value because he meets all five preconditions set out in Superannuation Act, s. 12.1(1) — Opening words of s. 12.1 of critical importance in terms of constraining law in this case — Those 'notwithstanding' words removing any ambiguity between s. 12.1, any other provision of Superannuation Act — S. 12.1 applying notwithstanding "any other provision of the" Superannuation Act, including subsection 11(4) — Moreover, paying transfer value of pension to contributor (even one who has left after misconduct) consistent with broader interpretative principle that benefits-conferring legislation should be interpreted broadly, liberally in favour of those entitled to benefits of that legislation — Defined benefit pensions form of deferred compensation — Explicit statutory language required to divest pension plan contributors generally of their right to deferred compensation they earned, would otherwise enjoy — Impact of Pension Centre's decision is that while applicant's personal contributions to his pension returned with interest, deferred compensation he earned lost — This result requiring clear, explicit statutory language — S. 12.1 not only missing required explicit language to take away applicant's deferred compensation, but in fact stating opposite by virtue of notwithstanding words with which it opens — Given the constraining law, unreasonable for Pension Centre to find applicant not entitled to transfer value of his pension — Opening 'notwithstanding' words of s. 12.1(1) precise, unequivocal — Pension Centre's interpretation of Superannuation Act, s. 11(4) frustrates constraining case law (i.e. *Re Thompson and Town of Oakville*, *Re Ruelens and Town of Oakville*, [1964] 1 O.R. 122, (1963), 41 D.L.R. (2d) 294 (H.C.J.)), defeats purpose of Parliament having legislated lesser penalty of resignation within 14-day grace period in s. 11(4) — Decision at issue in this case new interpretation that effectively means members of RCMP may only receive return of contributions regardless of whether they resign within 14-day grace period, or are dismissed — Pension Centre's interpretation of s. 11(4) collapsing distinct concepts of resignation,

dismissal into single action — Applicant's resignation took him out of s. 11(4) by virtue of the applicable constraining law — Matter remitted to Pension Centre to determine precise value of transfer value benefit — Application allowed.

GIRARD V. CANADA (ATTORNEY GENERAL) (T-1269-21, 2022 FC 578, Brown J., reasons for judgment dated April 21, 2022, 40 pp.)