

Federal Court



Cour fédérale

Date: 20220421

Docket: T-1269-21

Citation: 2022 FC 578

Ottawa, Ontario, April 21, 2022

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

JASON GIRARD

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by the Government of Canada Pension Centre [Pension Centre], dated July 5, 2021 [Decision] pursuant to the *Royal Canadian Mounted Police Superannuation Act*, RSC, 1985, c. R-11 [*Superannuation Act*]. At issue is whether the Applicant, a member of the Royal Canadian Mounted Police [RCMP] found to have contravened the RCMP's Code of Conduct and directed to resign within 14 days or in default,

dismissed, is entitled to the “Transfer Value” of his pension entitlements or a potential annuity (pension) in the discretion of the Treasury Board. The Pension Centre held the Applicant is entitled only to a return of contributions with interest.

II. Facts

[2] The Applicant was an RCMP Constable who was found by the RCMP’s Conduct Board on November 20, 2020, to have contravened five provisions of the Code of Conduct established under the *Royal Canadian Mounted Police Act*, RSC, 1985, c. R-10 [*RCMP Act*].

[3] As a consequence, the Conduct Board acting under paragraph 45(4)(b) of the *RCMP Act* imposed the following conducts measures on the Applicant:

- Allegations 1 to 3: a reprimand and the forfeiture of 20 days’ pay.
- Allegations 4 and 5: I direct Constable Girard to resign. If he fails to do so within 14 days, then I direct that he is to be dismissed.

[4] The Applicant resigned on December 3, 2020, within the 14-day grace period allowed by the Conduct Board.

[5] He subsequently received two counselling packages from the Pension Centre advising him of his rights under the *Superannuation Act*.

[6] The first counselling package dated December 11, 2020, said he had two options: a Deferred Annuity payable at age 60 (worth an estimated \$1,482.21 per month), or a Transfer

Value payable immediately with an estimated worth \$382,894.70 gross of taxes. The Applicant elected the lump-sum payment of the Transfer Value. He therefore withdrew an appeal of the Conduct Board's decision he had filed previously, because he knew he could not collect the Transfer Value while he had an ongoing appeal.

[7] The Respondent says the Pension Centre's advice regarding his possible entitlement to a Transfer Value was based on its misunderstanding of the Applicant's pension entitlement.

[8] Therefore on March 2, 2021, the Pension Centre sent the Applicant a second counselling package this time applying subsection 11(4) of *Superannuation Act* to the Applicant's pension entitlement. The Pension Centre told the Applicant he had two options: either a return of contributions (with interest) under subsection 11(4)(a) estimated at \$104,797.27 gross of taxes, or a potential lifetime annuity as determined by the Treasury Board under subsection 11(4)(b). This counselling package did not mention a Transfer Value payment. The Applicant called the Pension Centre to ask them to "correct the amount", to no avail.

[9] The Applicant was informed of his rights to have independent legal advice. The Applicant needed the money, and opted for a return of contributions with interest by signed election dated March 11, 2021. He expressly waived his rights to a potential lifetime annuity as determined by the Treasury Board.

[10] On June 2, 2021, the Applicant disputed the Pension Centre's application of subsection 11(4), claiming he was entitled to the Transfer Value of his pension. In the alternative, he asked the Treasury Board to consider a potential lifetime annuity.

[11] The Pension Centre considered the matter and by Decision dated July 5, 2021 maintained its position on the application of subsection 11(4) holding he was only entitled to a return of contributions with interest. It also affirmed its earlier decision not to send the matter to the Treasury Board because the Applicant had waived that right in his signed election dated March 11, 2021. This Decision is the subject of this application for judicial review.

III. Decision under review

[12] The Pension Centre's Decision states in pertinent parts:

In December 2020, a retirement counselling package was mailed to you. This package was prepared based on your reason for termination being a voluntary discharge. In January 2021, an amended package was sent, as the Pension Centre was advised that your termination should be treated as misconduct. This is based on the fact that your resignation was following a disciplinary hearing, where the Conduct Board Decision directed you to resign under the *RCMP Act*, pursuant to subsection 45(4). Therefore, your employment ceased as a result of misconduct and subsection 11(4) of the *RCMP Superannuation Act* was applied.

On March 11, 2021, you signed an option for a Return of Contributions. This benefit was paid to you on March 25, 2021. As noted on the Pension Benefit Option Form you signed on March 11, opting for a Return of Contributions signifies that you choose to forego the opportunity for a lifetime annuity as determined by Treasury Board.

IV. Issues

[13] The Applicant submits the issue are:

1. Did the Pension Centre unreasonably deny the Applicant a Transfer Value benefit in accordance with section 12.1 of the *Superannuation Act*?
2. In the alternative, did the Pension Centre unreasonably interpret subsection 11(4) of the *Superannuation Act* to include RCMP members who have been ordered to resign?
3. In the further alternative, did the Pension Centre unreasonably refuse to send the Applicant's request to Treasury Board to exercise its discretion to grant the Applicant an increased pension benefit under paragraph 11(4)(b) of the *Superannuation Act*?

[14] The Respondent submits the issues are:

1. Did the Pension Centre unreasonably determine that subsection 11(4) of the *Superannuation Act* applied to the Applicant because the Conduct Board directed him to resign from the RCMP pursuant to subsection 45(4) of the *RCMP Act*?
2. In the alternative, did the Pension Centre unreasonably fail to send the matter to the Treasury Board to exercise its discretion under paragraph 11(4)(b) of the *Superannuation Act*?

[15] At issue is whether the Decision is reasonable.

V. Standard of Review

[16] Both the Applicant and the Respondent submit the standard of review is reasonableness, and I agree.

[17] This case is fundamentally about statutory interpretation. This means the Court should begin by examining the text, context, and purpose of the legislation to understand the “lay of the land” and then examine the Pension Centre’s decision to analyze whether its interpretation of the provision is reasonable, see *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 [per Stratas JA, Rennie and MacTavish JJA concurring] at paras 16-19, leave to appeal to SCC granted, no. 39855 (2022-03-03):

[16] *Hillier* [*Hillier v Canada (Attorney General)*, 2019 FCA 44, ed.] begins by reminding reviewing courts of three basic things they should appreciate when conducting reasonableness review. First, in many cases, administrators may have a range of interpretations of legislation open to them based on the text, context and purpose of the legislation. Second, in particular cases, administrators may have a better appreciation of that range than courts because of their specialization and expertise. And, third, the legislation—the law on the books that reviewing courts must follow—gives administrators the responsibility to interpret the legislation, not reviewing courts.

[17] For these reasons, *Hillier* tells reviewing courts to conduct themselves in a way that gives administrators the space the legislator intends them to have, yet still hold them accountable. Reviewing courts can do this by conducting a preliminary analysis of the text, context and purpose of the legislation just to understand the lay of the land before they examine the administrators’ reasons. But the lay of the land is as far as they should go. They should not make any definitive judgments and conclusions themselves. That would take them down the road of creating their own yardstick and measuring the administrator’s interpretation to make sure it fits.

[18] Instead, *Hillier* recommends (at para. 16) that a reviewing court should “focus on the administrator’s interpretation, noting what the administrator invokes in support of it and what the parties raise for or against it”, trying to understand where the administrator was coming from and why it ruled the way it did: *Hillier* at para. 16.

[19] Under this approach, the reviewing court does not act in an “external” way, *i.e.*, “arrive at a definitive conclusion about the best way to read the statutory provision under review before considering how the administrator’s interpretation matched up with [the] preferred reading”. Rather, as Professor Daly has observed,

the reviewing court acts in an “internal” way, *i.e.*, “a relatively cursory examination of the provision at issue, with a view to analyzing the robustness of the [administrator’s] interpretation”. See Paul Daly, “Waiting for Godot: Canadian Administrative Law in 2019” (online: <https://canlii.ca/t/t23p> at 11).

[18] Regarding reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as the Supreme Court of Canada’s decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard, noting the “facts and law” constrain decision-makers:

[31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or

significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[Emphasis added]

[19] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker’s reasoning is justified in relation to the “constellation of law and facts” that are relevant to the decision. *Vavilov* also instructs that elements of the legal and factual contexts of a decision operate as constraints on the decision maker:

[104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker’s reasoning “adds up”.

[105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[Emphasis added]

[20] *Vavilov* summarizes the constraining aspects of the law and facts by requiring administrative decisions to fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”:

[86] Attention to the decision maker’s reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir*, at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with “the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to

outcomes”: para. 47. Reasonableness, according to *Dunsmuir*, “is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process”, as well as “with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law”: *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

VI. Relevant sections of statute law

[21] Although subsection 11(4) is the main focus of the submissions in this case, section 11 of the *Superannuation Act* in its entirety states:

Benefits payable on retirement

11 (1) A contributor who, having reached retirement age, ceases to be a member of the Force for any reason other than disability or misconduct is entitled to a benefit determined as follows:

(a) if he or she has served in the Force for a period that is less than the period prescribed by the regulations for the purposes of this paragraph, he or she is entitled to

(i) a return of contributions, or

Prestations payables à la retraite

11 (1) Un contributeur qui, après avoir atteint l’âge de retraite, cesse d’être membre de la Gendarmerie pour toute raison autre que l’invalidité ou l’inconduite, a droit à une prestation déterminée comme suit:

a) s’il a servi dans la Gendarmerie pendant une période inférieure à la période réglementaire prévue pour l’application du présent alinéa, il a droit:

(i) soit à un remboursement de contributions,

(ii) a cash termination

(ii) soit à une allocation de cessation en espèces, si elle est d'un montant supérieur;

allowance, whichever is the greater; and

(b) if he or she has served in the Force for a period equal to or greater than the period prescribed by the regulations for the purposes of paragraph (a), he or she is entitled to an immediate annuity.

b) s'il a servi dans la Gendarmerie pendant une période égale ou supérieure à la période réglementaire prévue pour l'application de l'alinéa a), il a droit à une annuité immédiate.

Retirement due to disability

Retraite attribuable à l'invalidité

(2) A contributor who is compulsorily retired from the Force by reason of having become disabled is entitled to a benefit determined as follows:

(2) Un contributeur qui est obligatoirement retraité de la Gendarmerie du fait qu'il est devenu invalide a droit à une prestation déterminée comme suit:

(a) if he or she has to his or her credit a period of pensionable service less than the period prescribed by the regulations for the purposes of this paragraph, he or she is entitled to

a) s'il compte à son crédit une période de service ouvrant droit à pension inférieure à la période réglementaire prévue pour l'application du présent alinéa, il a droit:

(i) a return of contributions, or

(i) soit à un remboursement de contributions,

(ii) a cash termination allowance,

(ii) soit à une allocation de cessation en espèces, si elle est d'un montant supérieur;

whichever is the greater; and

(b) if he or she has to his or her credit a period of pensionable service equal to or greater than the period prescribed by the regulations for the purposes of paragraph (a), he or she is entitled to an immediate annuity.

b) s'il compte à son crédit une période de service ouvrant droit à pension égale ou supérieure à la période réglementaire prévue pour l'application de l'alinéa a), il a droit à une annuité immédiate.

Retirement to promote economy or efficiency

Retraite motivée par un souci d'économie ou d'efficacité

(3) A contributor who, not having reached retirement age, is compulsorily retired from the Force to promote economy or efficiency is entitled to a benefit determined as follows:

(3) Un contributeur qui, avant d'avoir atteint l'âge de retraite, est obligatoirement retraité de la Gendarmerie pour favoriser l'économie ou l'efficacité, a droit à une prestation déterminée comme suit:

(a) if he or she has served in the Force for a period that is less than the period prescribed by the regulations for the purposes of this paragraph, he or she is entitled to a return of contributions;

a) s'il a servi dans la Gendarmerie pendant une période inférieure à la période réglementaire prévue pour l'application du présent alinéa, il a droit à un remboursement de contributions;

(b) if he or she has served in the Force for a period equal to or greater than the period prescribed by the regulations for the purposes of paragraph (a) but less than the period prescribed by the regulations for the purposes of paragraph (c), he or she is entitled to

b) s'il a servi dans la Gendarmerie pendant une période égale ou supérieure à la période réglementaire prévue pour l'application de l'alinéa a), mais inférieure à celle prévue pour l'application de l'alinéa c), il a droit, à son choix, selon le cas:

(i) [Repealed, 2003, c. 26, s. 45]

(i) [Abrogé, 2003, ch. 26, art. 45]

(ii) a deferred annuity, or

(ii) à une annuité différée,

(iii) in the case of a contributor whose retirement is due to a reduction in the total number of members of the Force, and in any other case in the discretion of the Treasury Board, an immediate annuity, reduced, until the time that the contributor reaches sixty-five years of age but not after that, by five per cent for each full year not exceeding six by which the period of service in the Force is less than the period prescribed by the regulations for the purposes of paragraph (c),

(iii) dans le cas d'un contributeur dont la retraite résulte d'une réduction du nombre total des membres de la Gendarmerie, et dans tout autre cas, selon la discrétion du Conseil du Trésor, à une annuité immédiate, réduite, jusqu'à ce que le contributeur atteigne l'âge de soixante-cinq ans mais non par la suite, de cinq pour cent pour chaque année entière sans excéder six par laquelle la période de son service dans la Gendarmerie est inférieure à la période réglementaire prévue pour l'application de l'alinéa c);

at his or her option; and

(c) if he or she has served in the Force for a period equal to or greater than the period prescribed by the regulations for the purposes of this paragraph, he or she is entitled to an immediate annuity.

c) s'il a servi dans la Gendarmerie pendant une période égale ou supérieure à la période réglementaire prévue pour l'application du présent alinéa, il a droit à une annuité immédiate.

Dismissal for misconduct

Renvoi pour inconduite

(4) A contributor who is compulsorily retired from the Force by reason of misconduct is entitled to

(4) Un contributeur qui est obligatoirement retraité de la Gendarmerie pour motif d'inconduite a droit:

(a) a return of contributions; or

(b) in the discretion of the Treasury Board, the whole or any part specified by the Treasury Board of any benefit to which he or she would have been entitled under this section if

(i) in the case of a contributor who at the time of his or her retirement had reached retirement age, he or she had ceased to be a member of the Force for any reason other than disability or misconduct, or

(ii) in the case of a contributor who at the time of his or her retirement had not reached retirement age, he or she had been compulsorily retired from the Force to promote economy or efficiency due to a reduction in the total number of members of the Force,

except that in no case shall the capitalized value of the benefit be less than the amount of the return of contributions referred to in paragraph (a).

Retirement for other reasons

a) soit à un remboursement de contributions;

b) soit, selon la discrétion du Conseil du Trésor, à la totalité ou à une partie spécifiée par le Conseil du Trésor de toute prestation à laquelle il aurait eu droit selon le présent article, si:

(i) dans le cas d'un contributeur qui, à la date de sa retraite, avait atteint l'âge de retraite, il avait cessé d'être membre de la Gendarmerie pour quelque motif autre que l'invalidité ou l'inconduite,

(ii) dans le cas d'un contributeur qui, à la date de sa retraite, n'avait pas atteint l'âge de retraite, il avait été obligatoirement retraité de la Gendarmerie pour favoriser l'économie ou l'efficacité à cause d'une réduction du nombre total des membres de la Gendarmerie,

sauf que, dans aucun cas, la valeur capitalisée de cette prestation ne peut être inférieure au montant du remboursement de contributions, mentionné à l'alinéa a).

Autres motifs

(5) A contributor who, not having reached retirement age, ceases to be a member of the Force for any reason other than disability, misconduct or to promote economy or efficiency is entitled to a benefit determined as follows:

(a) if the contributor has served in the Force for a period that is less than the period prescribed by the regulations for the purposes of this paragraph, the contributor is entitled to a return of contributions;

(b) if the contributor has served in the Force for a period equal to or greater than the period prescribed by the regulations for the purposes of paragraph (a) but less than the period prescribed by the regulations for the purposes of paragraph (c), the contributor is entitled to a deferred annuity;

(c) if the contributor has served in the Force for a period equal to or greater than the period prescribed by the regulations for the purposes of this paragraph but less than the period prescribed by the regulations for the purposes of paragraph (d), the contributor is entitled to an annual allowance payable immediately on the contributor ceasing to be a

(5) Le contributeur qui cesse d'être membre de la Gendarmerie, sans avoir atteint l'âge de retraite, pour quelque motif autre que l'invalidité, l'inconduite ou le souci d'économie ou d'efficacité, a droit à une prestation déterminée comme suit:

a) s'il a servi dans la Gendarmerie pendant une période inférieure à la période réglementaire prévue pour l'application du présent alinéa, il a droit à un remboursement de contributions;

b) s'il a servi dans la Gendarmerie pendant une période égale ou supérieure à la période réglementaire prévue pour l'application de l'alinéa a), mais inférieure à celle prévue pour l'application de l'alinéa c), il a droit à une annuité différée;

c) s'il a servi dans la Gendarmerie pendant une période égale ou supérieure à la période réglementaire prévue pour l'application du présent alinéa, mais inférieure à celle prévue pour l'application de l'alinéa d), il a droit à une allocation annuelle payable au moment où il cesse d'être membre de la Gendarmerie et diminuée de cinq pour cent pour

member of the Force reduced by five per cent for each full year by which

(i) the period of the contributor's service in the Force is less than the period prescribed by the regulations for the purposes of paragraph (d), or

(ii) the contributor's age at the time of retirement is less than the retirement age applicable to the contributor's rank,

whichever is the lesser; and

(d) if the contributor has served in the Force for a period equal to or greater than the period prescribed by the regulations for the purposes of this paragraph, the contributor is entitled to an immediate annuity.

[Emphasis added]

chaque année entière par laquelle:

(i) la durée de son service dans la Gendarmerie est inférieure à la période réglementaire prévue pour l'application de l'alinéa d),

(ii) son âge à sa retraite est inférieur à l'âge de retraite applicable à son grade, si ce chiffre est inférieur;

d) s'il a servi dans la Gendarmerie pendant une période égale ou supérieure à la période réglementaire prévue pour l'application du présent alinéa, il a droit à une annuité immédiate.

[Je souligne]

[22] Section 12.1 of the *Superannuation Act* states:

Transfer value

12.1 (1) Despite any other provision of this Act, except subsection 24.1(6), but subject to the regulations, a contributor who has ceased to be a member of the Force, has served in the Force for a period equal to or greater than the period prescribed by the regulations and is not entitled

Valeur de transfert

12.1 (1) Malgré les autres dispositions de la présente loi, à l'exception du paragraphe 24.1(6), le contributeur qui cesse d'être membre de la Gendarmerie et qui y a servi pendant une période égale ou supérieure à la période réglementaire mais n'a pas droit à une annuité immédiate

to an immediate annuity is entitled, in the place of any other benefit under this Act to which the contributor would otherwise be entitled in respect of the pensionable service that the contributor has to their credit, to a transfer value that is payable to the contributor in accordance with subsection (2).

[Emphasis added]

a droit, sous réserve des règlements, en remplacement des prestations auxquelles il aurait par ailleurs droit en vertu de la présente loi à l'égard du service ouvrant droit à pension qu'il compte à son crédit, à une valeur de transfert qui lui est versée conformément au paragraphe (2).

[Je souligne]

[23] Subsection 45(4) of the *RCMP Act* states:

Conduct measures

45(4) If a conduct board decides that an allegation of a contravention of a provision of the Code of Conduct by a member is established, the conduct board shall impose any one or more of the following conduct measures on the member, namely,

(a) recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner,

(b) direction to resign from the Force and, in default of resigning within 14 days after being directed to do so, recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if

Mesure disciplinaire

45(4) Si le comité de déontologie décide qu'un membre a contrevenu à l'une des dispositions du code de déontologie, il prend à son égard une ou plusieurs des mesures disciplinaires suivantes:

a) il recommande que le membre soit congédié de la Gendarmerie, s'il est sous-commissaire, ou, s'il ne l'est pas, le congédie de la Gendarmerie;

b) il ordonne au membre de démissionner de la Gendarmerie, et si ce dernier ne s'exécute pas dans les quatorze jours suivants, il prend à son égard la mesure visée à l'alinéa a);

the member is not a Deputy
Commissioner, or

(c) one or more of the
conduct measures provided
for in the rules.

[Emphasis added]

c) il impose une ou
plusieurs des mesures
disciplinaires prévues dans
les règles.

[Je souligne]

VII. Analysis

[24] Although the issue is whether the Decision is reasonable, I will address each of the Applicant's arguments. In this connection, the Applicant says he is entitled to the Transfer Value of his pension entitlements because of section 12.1 of the *Superannuation Act*, which was relatively recently amended and which applies, according to its opening words, "Despite any other provision of this Act". In the alternative, he says subsection 11(4) does not apply to an RCMP member who resigned within the 14 days allowed by the Conduct Board's ruling. i.e., subsection 11(4) applies to a member who is dismissed but not one who resigns even by direction. In the further alternative, he claims the right to have the Treasury Board (not the Pension Centre which made the Decision in the case at bar) determine what if any potential annuity (pension) he might receive.

[25] Because this case turns on the RCMP's *Superannuation Act*, and because of its complexity and the many different benefits it may afford, it is useful per *Mason* at para 17 to set out the 'lay of the land' in terms of benefits available. This legislation sets out six different kinds of entitlements, as outlined by the Applicant and not disputed by the Respondent:

- 1) Return of contributions: This is the total amount of payments made over time by a contributor (such as the Applicant) towards his or her pension, repaid by the

Government to the contributor with interest. It does not include payments into the pension fund made by the Government, which remain in the pension fund. Subsection 9(1) defines return of contributions:

“a return of

(a) the amount paid by the contributor into the Superannuation Account or the Royal Canadian Mounted Police Pension Fund but not including any amount so paid pursuant to subsection 39(7) of the Public Service Superannuation Act, and

(b) any amount paid by him or her into any other account or fund, together with interest, if any, that has been transferred to the Superannuation Account or the Royal Canadian Mounted Police Pension Fund,

to the extent that the amount remains to his or her credit in the Superannuation Account or the Royal Canadian Mounted Police Pension Fund, together with interest, if any, calculated pursuant to subsection (6). (*remboursement de contributions*)”

A return of contributions is what the Respondent says the Applicant is entitled to under subsection 11(4)(a). In this case, it amounts to an estimated \$104,797.27 gross of taxes.

2) Cash termination allowance: This is essentially one month’s pay per year of service. Subsection 9(1) defines cash termination allowance as:

“an amount equal to one month’s pay for each year of pensionable service to the credit of the contributor, computed on the basis of the rate of pay authorized to be paid to him or her at the time he or she ceases to be a member of the Force, minus an amount equal to the amount by which

(a) the total amount the contributor would have been required to contribute to the Superannuation Account or the Royal Canadian Mounted Police Pension Fund up to the time he or she ceases to be a member of the Force, other than interest or charges for payments by instalments, in respect of service after 1965, if he or she had contributed on the basis of the rate set forth in subsection 5(1) as it read on December 31, 1965,

exceeds

(b) the total amount the contributor was required to contribute to the Superannuation Account or the Royal Canadian Mounted Police Pension Fund up to the time he or she ceases to be a member of the Force, other than interest or charges for payments by instalments, in respect of service after 1965; (*allocation de cessation en espèces*)”

This benefit is not in issue in this case.

- 3) Immediate annuity: This is a pension (or annuity) payable immediately. Subsection 9(1) defines immediate annuity as:

“an annuity that becomes payable to the contributor immediately on his becoming entitled thereto; (*annuité immédiate*)”

It is not in issue in this case.

- 4) Deferred annuity: This is the total pension (depending on length of service, salary etc.) payable to a contributor when he or she reaches age 60. It is defined in subsection 9(1) as:

“an annuity that becomes payable to the contributor at the time he reaches sixty years of age; (*annuité différée*)”

This is not in issue in this case.

- 5) Annual allowance: This is an immediate pension but reduced 5% for each year the contributor is short of the age and service milestones for a full pension. This is not in issue in this case.

- 6) Transfer Value: This is the actuarial-based present day lump sum value of the deferred pension which the contributor might be paid over his or her estimated lifetime. It is defined in subsection 9(1) as:

“a lump sum amount, representing the value of the contributor’s pension benefits, as determined in accordance with the regulations. (*valeur de transfert*)”

A Transfer Value lump sum payment is what the Applicant claims under subsection 12.1(1). In this case, the Transfer Amount amounts to an estimated \$382,894.70 gross of taxes.

A. *Did the Pension Centre unreasonably deny the Applicant a transfer value benefit in accordance with section 12.1 of the Superannuation Act?*

[26] The Pension Centre disqualified the Applicant from a Transfer Value because of its reading of subsection 11(4) of the *Superannuation Act*. The Applicant submits the Pension Centre unreasonably relied on subsection 11(4) of the *Superannuation Act* because subsection 12.1(1) states a Transfer Value is available to him “despite any other provision of this Act”, i.e., the *Superannuation Act*. I agree.

[27] The constraining law in this connection per *Vavilov* at paras 31-33, 86, and 104-105 (cited above), is subsection 12.1(1) of the *Superannuation Act*. Subsection 12.1(1) of the *Superannuation Act* establishes a wide entitlement to Transfer Value payments provided only five (5) preconditions are met:

12.1 (1) **Despite any other provision of this Act**, [1] except subsection 24.1(6), but [2] subject to the regulations, **a contributor** who has [3] ceased to be a member of the Force, has [4] served in the Force for a period equal to or greater than the period prescribed by the regulations and [5] is not entitled to an immediate annuity **is entitled**, in the place of any other benefit under this Act to which the contributor would otherwise be entitled in respect of the pensionable service that the contributor has to their credit, **to a transfer value** that is payable to the contributor in accordance with subsection (2).

[Emphasis as added by Applicant]

[28] Notably, section 12.1 provides a contributor such as the Applicant, “despite any other provision of this Act”, “is entitled” to a Transfer Value “in the place of any other benefit under this Act to which the contributor would otherwise be entitled in respect of the pensionable

service that the contributor has to their credit” – in this case, in place of a return of contributions set out in the Pension Centre’s Decision which relied on subsection 11(4).

[29] In my respectful view the Applicant by the legislation is entitled to a Transfer Value because he meets all five preconditions set out in subsection 12.1(1) of the *Superannuation Act*:

1. Subsection 24.1(6) must not apply: this subsection concerns pension transfer agreements with another eligible employer, so that when RCMP members transfer to a certain employers they may transfer their pension with them. The Applicant was not transferring to another eligible employer, so he meets this precondition.
2. The entitlement is subject to the regulations: the *Royal Canadian Mounted Police Superannuation Regulations*, CRC, c. 1393 [*Superannuation Regulations*] require the member not be eligible for an immediate annuity as of the date of their election [section 55(1) of the *Superannuation Regulations*]. The regulations also require that a member elect to take their transfer value within one year of being given the option [sections 56-57 of the *Superannuation Regulations*]. The Applicant was not old enough to qualify for an immediate annuity, and made his election within the one-year period. He meets this condition.
3. The contributor must cease to be a member of the Force: in other words, an RCMP member cannot take their transfer value and keep working for the RCMP. The Applicant is no longer a member of the Force. He meets this condition.
4. The member must have the required length of service: the prescribed period is two years, and the Applicant had just over ten years’ service. He meets this condition.
5. The member must not be entitled to an immediate annuity: the Applicant was not entitled to an immediate annuity. He meets this condition.

[30] I add the Respondent does not dispute the Applicant meets all five conditions of subsection 12.1(1).

[31] The opening words of section 12.1 are of critical importance in terms of constraining law in this case: “Despite any other provision of this Act, except subsection 24.1(6), but subject to the regulations”. These words are a relatively recent addition to the *Superannuation Act*. Parliament amended section 12.1 of the *Superannuation Act* to include these words in 2012.

[32] The Applicant submits, and I agree that the addition of these ‘notwithstanding’ words removes any ambiguity between it and any other provision of the *Superannuation Act*, and establishes subsection 12.1 applies notwithstanding “any other provision of the” *Superannuation Act*. With respect, this includes subsection 11(4). In particular, if there was any doubt, these notwithstanding words clearly and unambiguously oust the possible application of subsection 11(4).

[33] Moreover, paying the Transfer Value of a pension to a contributor (even one who has left after misconduct) is consistent with the broader interpretative principle that benefits-conferring legislation should be interpreted broadly and liberally in favour of the those entitled to the benefits of that legislation, see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 36 [*Rizzo*]; *National Automobile, Aerospace, Transportation and General Workers Union of Canada (Caw-Canada, Local 2182) v Canada (Attorney General)*, 2007 FC 449 [per Lemieux J] at paras 109-113 [*National Automobile*].

[34] The *Superannuation Act*'s provision of deferred pensions and by extension Transfer Value (the commuted present day value of a deferred pension) creates a defined benefit pensions.

Very critically, defined benefit pensions “are a form of deferred compensation”, see *IBM*

Canada Limited v Waterman, 2013 SCC 70 at para 4:

[4] In my view, employee pension payments, including payments from a defined benefit plan as in this case, are a type of benefit that should generally not reduce the damages otherwise payable for wrongful dismissal. Both the nature of the benefit and the intention of the parties support this conclusion. Pension benefits are a form of deferred compensation for the employee’s service and constitute a type of retirement savings. They are not intended to be an indemnity for wage loss due to unemployment. The parties could not have intended that the employee’s retirement savings would be used to subsidize his or her wrongful dismissal. There is no decision of this Court in which a non-indemnity benefit to which the plaintiff has contributed, such as the pension benefits in issue here, has ever been deducted from a damages award.

[Emphasis added]

[35] It is equally well established that explicit statutory language is required to divest an applicant pension plan contributor generally, and this Applicant in particular, of his right to the deferred compensation he earned and would otherwise enjoy: see *GMAC Commercial Credit Corporation - Canada v T.C.T. Logistics Inc.*, 2006 SCC 35 at para 51 [*GMAC Commercial Credit*]:

[51] If the s. 47 net were interpreted widely enough to permit interference with all rights which, though protected by law, represent an inconvenience to the bankruptcy process, it could be used to extinguish all employment rights if the bankruptcy court thinks it “advisable” under s. 47(2)(c). Explicit language would be required before such a sweeping power could be attached to s. 47 in the face of the preservation of provincially created civil rights in s. 72. As Major J. stated in *Crystalline Investments Ltd. v. Domgroup Ltd.*, [2004] 1 S.C.R. 60, 2004 SCC 3:

. . . explicit statutory language is required to divest persons of rights they otherwise enjoy at law. . . .

[S]o long as the doctrine of paramountcy is not triggered, federally regulated bankruptcy and insolvency proceedings cannot be used to subvert

provincially regulated property and civil rights.
[para. 43]

The language of s. 47(2) falls well short of this standard. The bankruptcy court can undoubtedly mandate employment-related conduct by the receiver, but as s. 47(2) of the *Bankruptcy and Insolvency Act* is presently worded, the court cannot, on its own, abrogate the right to seek relief at the labour board.

[Emphasis added]

[36] The impact of the Pension Centre's decision is that while the Applicant's personal contributions to his pension are returned with interest, the deferred compensation he earned is lost. The difference is substantial as may be seen by comparing the estimated value of the Transfer Value and a return of contributions with interest. The difference lost by the Applicant is \$278,097.43 gross of taxes.

[37] In my respectful view, this result requires clear and explicit statutory language. There is no such clear and explicit language in the *Superannuation Act*. In fact, and with respect, section 12.1 of the *Superannuation Act* is not only missing the required explicit language to take away the Applicant's deferred compensation, but in fact states the opposite by virtue of the notwithstanding words with which it opens: "Despite any other provision of this Act" (the balance of the notwithstanding wording is not relevant in this case; a matter not in dispute).

[38] Given the constraining law (the opening words of section 12.1 of the *Superannuation Act*), and given *Vavilov's* instructions concerning constraining law in paras 31-33, 86, and 104-105, I am driven to conclude it was unreasonable for the Pension Centre to find the Applicant is not entitled to the Transfer Value of his pension.

[39] I did consider the Respondent’s submission that the “pro-benefit principle” (and deferred compensation submissions) cannot override canons of statutory interpretation. However I also took note of the Federal Court of Appeal’s emphasis that a perceived purpose of legislation cannot be used to extend the meaning of a legislative provision beyond what its plain, unambiguous words will allow, see *Wilson v Atomic Energy of Canada Limited*, 2015 FCA 17 [per Stratas JA] at para 86, rev’d on another point 2016 SCC 29:

[86] The pro-benefits principle begs the question before us. It sheds no light on just what benefits Parliament has actually given employees under Part III of the Code. We cannot use the pro-benefits principle to drive Parliament’s language in the Code higher than what genuine interpretation of Part III of the Code – an examination of its text, context and purpose – can bear. Put another way, while the pro-benefits principle exists, it cannot be used as a licence to amend the law that Parliament has made.

[40] See also *Hillier, supra* at para 25 and *Canada v Cheema*, 2018 FCA 45 at paras 74-75.

[41] However, I am far from persuaded the Applicant is seeking to drive Parliament’s language higher than what the genuine interpretation of subsection 12.1(1) can bear, nor is he trying to amend the law that Parliament has made. With respect, in my view, Parliament chose to enact a specific preface to subsection 12.1(1) and did so using the words “[D]espite any other provision of this Act”.

[42] The Applicant asks this provision of the *Superannuation Act* to be applied as Parliament wrote it in plain and unambiguous words; I am unable to see why he should not have what Parliament has determined is his.

[43] The Respondent also relies on the maxim of statutory interpretation that the legislature does not intend to produce absurd consequences, see *Rizzo, supra* at para 27. That is, to the extent possible, one should avoid adopting an interpretation that would render any portion of the statute meaningless, pointless or redundant. The Respondent submits that accepting the Applicant's submission would lead to absurd consequences. According to the Applicant's logic, the Respondent says subsection 12.1(1) would apply even in the case of a member who was immediately dismissed under paragraph 45(4)(a) or dismissed failing resignation under paragraph 45(4)(b) (as long as they met the other preconditions of section 12.1).

[44] However, it seems to me that when Parliament chose to add a 'notwithstanding' preface to a section of a statute saying the section applies "[D]espite any other provision of this Act", it means just that. *Vavilov* at para 120 confirms "the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. In this sense, the usual principles of statutory interpretation apply equally when an administrative decision maker interprets a provision. Where, for example, the words used are "precise and unequivocal", their ordinary meaning will usually play a more significant role in the interpretive exercise: *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10." That with respect is the case here: I find the opening 'notwithstanding' words of subsection 12.1(1) are precise and unequivocal. They mean what they say, in other words, no more nor less. Parliament chose to enact that subsection 12.1(1) takes precedent over "any other provision" in the *Superannuation Act*. That is something Parliament chose to do. I see no reason to deny Parliament's enactment by referring to interpretative rules that contradict this precise and unequivocal amendment.

[45] In any event, there is no redundancy because while the Applicant is not eligible for an immediate annuity, a deferred annuity, a cash termination allowance or an annual allowance by virtue of subsection 11(4), he is not disentitled (i.e., he is entitled) to a Transfer Value payment because of the opening words of subsection 12.1(1).

[46] At best, on the issue of interpretative rules, maxims or principles, there is a conflict between the rules concerning deferred compensation provisions and rules regarding avoidance of redundancies. In my view, it is not necessary to have to resort to either, because the words “Despite any other provision of this Act” are plain and unambiguous. If necessary, I would apply the requirement that explicit statutory language is required to divest an applicant generally, and this Applicant in particular, of his right to a Transfer Value which is the present value of the deferred compensation he earned and would otherwise enjoy as determined by the Supreme Court of Canada in *GMAC Commercial Credit, supra* at para 51, above. I say this given not only the absence of any clear and explicit words to that effect, but in particular given the clear and explicit words to the contrary found in the opening words of section 12.1.

[47] I should add I accept the submissions of both counsel that the Parliamentary debates on the amendment adding the opening ‘notwithstanding’ words to subsection 12.1(1) shed no light on this interpretative issue. The proposed legislation ultimately enacting the amendment enjoyed wide support in House of Commons and Senate of Canada and proceeded without relevant debate on this point in either chamber or in committee.

[48] In summary, I conclude Parliament amended subsection 12.1(1) the effect of which requires Transfer Value payments to all those described in subsection 12.1(1), including persons in the position of the Applicant. This is a determinative finding such that I do not need to review the Applicants remaining submissions. However, because they were argued, I add the following.

B. *Did the Pension Centre unreasonably interpret subsection 11(4) of the Superannuation Act to include RCMP members who have been ordered to resign?*

[49] In the alternative, the Applicant submits RCMP members like the Applicant who resign after being ordered to resign within the 14 days or in default are dismissed, as contemplated by para 45(4)(b) of the *RCMP Act*, are not included in subsection 11(4) of the *Superannuation Act*.

Subsection 11(4) provides:

11(4) A contributor who is compulsorily retired from the Force by reason of misconduct is entitled to

(a) a return of contributions; or

(b) in the discretion of the Treasury Board, the whole or any part specified by the Treasury Board of any benefit to which he or she would have been entitled under this section if

(i) in the case of a contributor who at the time of his or her retirement had reached retirement age, he or she had ceased to be a member of the Force for any reason other than disability or misconduct, or

(ii) in the case of a contributor who at the time of his or her retirement had not reached retirement age, he or she had been compulsorily retired from the Force to promote economy or efficiency due to a reduction in the total number of members of the Force,

except that in no case shall the capitalized value of the benefit be less than the amount of the return of contributions referred to in paragraph (a).

[Emphasis added]

[50] The Applicant submits subsection 11(4) should be read in context with the disciplinary regime in subsection 45(4) of the *RCMP Act* which sets out three disciplinary penalties (referred to as “conduct measures”) open to a Conduct Board upon the establishment of a contravention:

45(4) If a conduct board decides that an allegation of a contravention of a provision of the Code of Conduct by a member is established, the conduct board shall impose any one or more of the following conduct measures on the member, namely,

(a) recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner,

(b) direction to resign from the Force and, in default of resigning within 14 days after being directed to do so, recommendation for dismissal from the Force, if the member is a Deputy Commissioner, or dismissal from the Force, if the member is not a Deputy Commissioner, or

(c) one or more of the conduct measures provided for in the rules.

[Emphasis added]

[51] The Applicant submits the *RCMP Act* distinguishes between a dismissal and a direction to resign because of the longstanding constraining legal position that a resignation following an order to resign is a manner by which a police officer’s pension may be preserved: *Thompson v Oakville (Town)* (1963), 41 DLR (2d) 294 [per Chief Justice McRuer, Ontario High Court of Justice] at para 14 [*Thompson*]. The Applicant also points to a Conduct Board’s decision in

Commanding Officer, “E” Division (Conduct Authority) v Sergeant Sukhjit Dhillon, Regimental Number 47909, 2019 RCAD 13 at para 195 where this same understanding was very recently stated by an RCMP Conduct Authority Representative before an RCMP Conduct Board.

[52] The Applicant submits and I agree that the purpose of the legislated grace period of 14 days to resign pending dismissal is to give RCMP members an opportunity to resign and thus to preserve their pension entitlements. The direction to resign is thus a “lesser penalty” because it protects the RCMP member’s pension.

[53] In my respectful view, the Pension Centre’s interpretation of subsection 11(4) of the *Superannuation Act* frustrates constraining jurisprudence, namely the *Thompson* decision of 1963, as reiterated by an RCMP Conduct Authority in 2019. Moreover, it defeats the purpose of Parliament having legislated the lesser penalty of resignation within the 14-day grace period in subsection 11(4). In my view, the Decision at issue in this case is a new interpretation that effectively means members of the RCMP may only receive a return of contributions regardless of whether he or she resigns within the 14-day grace period, or is dismissed. It unreasonably eliminates the critical, and potentially very substantial as here, financial distinction between resignation and dismissal.

[54] The Pension Centre’s interpretation of subsection 11(4) of the *Superannuation Act* collapses these two distinct concepts into a single action, contrary to Parliament’s clear intention that there be two separate penalties with different consequences – namely, that a direction to resign preserves a member’s pension, whereas a dismissal does not.

[55] With respect, the Pension Centre acted unreasonably because its Decision runs afoul of two separate constraining laws. First, it is contrary to the constraining jurisprudence established in *Thompson*, and secondly it is contrary to constraining legislation namely subsection 11(4) itself.

[56] I rely on the ruling of Chief Justice McRuer in *Thompson, supra*. In that case, two police officers were found to have breached the *Code of Offences* of Ontario's police legislation. The legislation set out sentencing options that are more or less similar to those in the case at bar – requiring a resignation within a certain period of time, or dismissal:

12(1) A member of a police force who is guilty of an offence against the code may be punished by,

(a) dismissal;

(b) being required to resign forthwith or at such date as is ordered.

[57] Chief Justice McRuer ruled that the requirement the officer resign had the effect of preserving pension rights that would be lost if he or she was dismissed. If dismissed, the Chief Justice ruled an officer “would forfeit his pension rights”, which otherwise would not be the case:

I italicize the words "required to resign forthwith". There are other provisions with regard to reduction in rank, reduction in pay, forfeiture of leave, etc. It was under these other provisions the sentence was imposed by the Chief Constable on Thompson. The sentence imposed on Ruelens purported to be under cl. (b) but for what it was worth and what it meant, the sentence was that he be requested to resign. Now it is not clear what follows if one is required to resign and does not resign, but I take it that subsequent proceedings would be taken charging that the officer had not obeyed the order requiring him to resign and that he would be dismissed which would be a very unlikely course as he would

forfeit his pension rights and a man of wisdom would not take that course even though he disputed the justice of the sentence.

[58] It is worth noting that Chief Justice McRuer is the author of *Report of the Royal Commission Inquiry into Civil Rights*, Report No. 1 (Toronto: Queen's Printer, 1968), which recommended administrative law review by courts shift from the ancient prerogative writs to the modern remedy of judicial review. This recommendation has been widely implemented across Canada, and indeed is implemented in this Court by section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7 (compare with the older section 18 dealing with prerogative writs of prohibition, *certiorari*, *mandamus*, *quo warranto* etc.).

[59] The *Thompson* decision has been cited and applied 64 times, although not on this point. The parties dispute its continuing relevance. I consider it telling that the Respondent offers no authority to contradict or weaken the import of this longstanding decision by this respected jurist. In my view, the *Thompson* decision continues to be a useful guide to the interpretation of provisions in police legislation which allow those responsible for sentencing police officers on conduct matters to make orders requiring an officer to resign within a certain period of time, or in default, be dismissed. *Thompson* is also a constraint the law imposes on the Pension Centre when deciding the Applicant's pension entitlements, and is a constraint of the type recognized by *Vavilov* at paras 31-33, 86, and 104-105. The Pension Centre's failure to exercise its powers within this legal constraint rendered its decision unreasonable. This is in my view an alternative and additional ground upon which judicial review must be granted.

[60] Turning again to subsection 11(4) of the *Superannuation Act*, I will deal with one further argument of the Applicant. The subsection provides:

11(4) A contributor who is compulsorily retired from the Force by reason of misconduct is entitled to

(a) a return of contributions; or

(b) in the discretion of the Treasury Board, the whole or any part specified by the Treasury Board of any benefit to which he or she would have been entitled under this section if

(i) in the case of a contributor who at the time of his or her retirement had reached retirement age, he or she had ceased to be a member of the Force for any reason other than disability or misconduct, or

(ii) in the case of a contributor who at the time of his or her retirement had not reached retirement age, he or she had been compulsorily retired from the Force to promote economy or efficiency due to a reduction in the total number of members of the Force,

except that in no case shall the capitalized value of the benefit be less than the amount of the return of contributions referred to in paragraph (a).

[61] The Applicant makes the following submissions with which I agree:

36. Turning to the text with this context and purpose in mind, the introductory phrase of s. 11(4) of the *RCMP Superannuation Act* reads as follows:

11(4) A contributor who is compulsorily retired from the Force by reason of misconduct is entitled to . . .

37. The crucial word is the verb “is” in the phrase “*who is compulsorily retired from the Force by reason of misconduct.*” The use of the verb “is” in s. 11(4) requires agency on the part of a third-party to trigger a retirement. For example, if the RCMP

dismissed the Applicant by reason of misconduct then that would be caught by s. 11(4) of the Act. Similarly, when the Commissioner (or a delegate) discharges a member of the RCMP under s. 20.2(1)(g) of the *RCMP Act* and s. 6(a) of the *Commissioner's Standing Orders (Employment Requirements)* – i.e. dismisses a member because of a disability – then this is caught by s. 11(2) of the *RCMP Superannuation Act*, which uses the identical phrase “*is compulsorily retired from the Force by reason of having become disabled.*” As another example, when the Commissioner discharges a member for economic reasons under s. 20.2(1)(j) of the *RCMP Act*, then this is caught by s. 11(3) of the *RCMP Superannuation Act* which uses that same phrase.

38. In all these cases, Parliament worded the *RCMP Superannuation Act* such that the retirement must occur as a result of a discharge from service performed by the employer. In other words, the act of being compulsorily retired under those provisions rests solely with the RCMP. In this case, by contrast, the Applicant resigned from service – admittedly, because he was ordered to do so as a penalty for his misconduct, but it was a resignation nonetheless.

[62] The keys to this interpretation lie in the language used. The verb “is” indicates someone other than the Applicant has taken a step that made the member “compulsorily retired”. In this case, the Applicant was not dismissed, he resigned. In my view, his resignation took him out of subsection 11(4) by virtue of the applicable constraining law, namely *Thompson*.

[63] I recognize the Respondent’s submission to the effect that the Pension Centre reasonably determined subsection 11(4) of the *Superannuation Act* applied because the Applicant’s employment ceased as a result of misconduct, leading to the conclusion that a member who is directed to resign because he contravened the *Code of Conduct*, falls within the scope of a contributor who is compulsorily retired from the Force by reason of misconduct. Moreover, subsection 45(4) of the *RCMP Act* provides: “If a...contravention of a provision of the *Code of Conduct*...is established, the conduct board shall impose any one or more of the following

conduct measures on the member”, which can be reasonably interpreted as being the same as saying an allegation of misconduct is established.

[64] The difficulty is this approach eliminates the long-standing distinction between resigning, even where required to resign, and dismissal, which is contrary to *Thompson* as constraining jurisprudence.

C. *Did the Pension Centre unreasonably refuse to send the Applicant’s request to Treasury Board to exercise its discretion to grant the Applicant an increased pension benefit under s. 11(4)(b) of the Superannuation Act?*

[65] In the further alternative, the Applicant submits the Pension Centre unreasonably refused to consider the exercise of discretion under paragraph 11(4)(b) of the *Superannuation Act*, which provides the Treasury Board the discretion to provide a full pension to an RCMP member dismissed for misconduct:

11(4) A contributor who is compulsorily retired from the Force by reason of misconduct is entitled to

(a) a return of contributions; or

(b) in the discretion of the Treasury Board, the whole or any part specified by the Treasury Board of any benefit to which he or she would have been entitled under this section if

(i) in the case of a contributor who at the time of his or her retirement had reached retirement age, he or she had ceased to be a member of the Force for any reason other than disability or misconduct, or

(ii) in the case of a contributor who at the time of his or her retirement had not reached retirement age, he or she had been compulsorily retired from the Force to

promote economy or efficiency due to a reduction in the total number of members of the Force,

except that in no case shall the capitalized value of the benefit be less than the amount of the return of contributions referred to in paragraph (a).

[66] The Pension Centre ruled that because the Applicant duly signed a formal written election for a return of contributions, he cannot ask for the Treasury Board to exercise its discretion under paragraph 11(4)(b) of the *Superannuation Act*, even though it originally advised him that he would be entitled to the Transfer Value, instead of a return of his contributions.

[67] The Applicant submits the Pension Centre's decision is unreasonable in two respects:

- First, the Applicant was automatically to be paid his return of contributions, which is what happened. While the Applicant did not immediately ask Treasury Board to exercise its discretion when asked in March 2021, he did so in June 2021. The Pension Centre unreasonably read into s. 11(4)(b) of the *Superannuation Act* a requirement that the Applicant make a choice about his pension payment and also unreasonably read into s. 11(4)(b) that any choice was irrevocable and not subject to any later exercise of discretion.
- Second, even if the Pension Centre reasonably read an "option" into s. 11(4)(b) of the *Superannuation Act*, it failed to consider the impact of its own erroneous advice provided to the Applicant in December 2020. The Pension Centre informed the Applicant on December 10, 2020 that he was entitled to a Transfer Value benefit. Relying upon that advice, the Applicant abandoned his appeal against the Conduct Board's decision.

[68] The Applicant submits paragraph 14(1)(a) of the *Superannuation Regulations* allows a contributor to revoke an option made under subsection 9(4) of the *Superannuation Act* where

there has been “erroneous advice” provided by the Pension Centre. Respectfully, I do not see how these sections are applicable to the case at bar – the Pension Centre unreasonably made a decision pursuant to subsection 11(4) of the *Superannuation Act*, not subsection 9(4).

Nevertheless, the Applicant submits he received erroneous advice on December 10, 2020, which the Applicant relied on to his detriment. Once confronted, the Applicant says the Pension Centre unreasonably failed to consider whether that erroneous advice triggered subsection 14(1) of the *Superannuation Regulations* allowing the Applicant to revoke his option and apply to the Treasury Board to exercise its discretion under paragraph 11(4)(b) of the *Superannuation Act*.

[69] The Respondent submits, and I agree, the Applicant’s suggestion he based his election on “erroneous advice” is without merit in the circumstances of this case because by March 11, 2021, the Pension Centre had reversed its prior position. It phoned the Applicant to let him know the Transfer Value was no longer an option. The Pension Centre then sent the Applicant a new counselling package explaining the reasoning behind its decision and spelling out his options under subsection 11(4). The Applicant acknowledged he had the opportunity to seek independent legal advice and financial advice prior to making his written signed election. Therefore, and in my respectful view, it was reasonable for the Pension Centre not to change its decision based on the Applicant’s change of position in terms of abandoning his appeal. In fact, the first time the Applicant raised the issue with the Pension Centre was in his June 2, 2021 letter – three months after he learned that the Pension Centre had reversed its position and two months after he duly and formally received a return of contributions.

[70] The Respondent further submits the practice of having members make an election is reasonable because having the Treasury Board exercise its discretion in every case, without any contributor election, would be a waste of resources. Respectfully, I agree it was overall reasonable for the Pension Centre to decline to send the matter to the Treasury Board because the Applicant had already formally elected to forego a potential annuity in place of the immediate repayment of his contributions. Therefore, I conclude the Decision of the Pension Centre in this respect was reasonable.

D. *Remedial issue*

[71] If this Court agrees with the Applicant that section 12.1 of the *Superannuation Act* provides him with a right to a Transfer Value benefit regardless of the reasons for his departure from the RCMP, the Applicant seeks an order that the Pension Centre provide him with the Transfer Value benefit, remitting the matter to the Pension Centre solely to determine the precise value of that benefit. Given the Respondent agrees with the Applicant's statement of the available remedies if this Court finds the Pension Centre committed a reviewable error, this requested Order will issue accordingly.

VIII. Conclusion

[72] In my respectful view, the Decision is not justified on the facts and constraining law and must therefore be set aside. The remedy agreed upon will therefore be granted as well such that the Pension Centre shall provide the Applicant with the Transfer Value benefit, and this matter is

remitted to the Pension Centre solely to determine the precise value of the Transfer Value benefit.

IX. Costs

[73] The parties agree that costs should be awarded to the successful party in the all-inclusive amount of \$2,500.00, and I therefore Order the Respondent to pay the Applicant his costs in the all-inclusive amount of \$2,500.00.

JUDGMENT in T-1269-21

THIS COURT'S JUDGMENT is that:

1. Judicial review is granted.
2. The Decision is set aside.
3. The Pension Centre shall provide the Applicant with the Transfer Value benefit.
4. This matter is remitted to the Pension Centre solely to determine the precise value of the Transfer Value benefit.
5. The Respondent shall pay the Applicant his costs in the all inclusive amount of \$2,500.00

"Henry S. Brown"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1269-21

STYLE OF CAUSE: JASON GIRARD v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: APRIL 11, 2022

JUDGMENT AND REASONS: BROWN J.

DATED: APRIL 21, 2022

APPEARANCES:

Christopher Rootham FOR THE APPLICANT

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