

Date: 20090325

Docket: A-337-08

Citation: 2009 FCA 99

**CORAM: EVANS J.A.
PELLETIER J.A.
RYER J.A.**

BETWEEN:

STANLEY COHEN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on March 25, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on March 25, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on March 25, 2009)

PELLETIER J.A.

[1] This is an appeal of a decision of Hughes J. dismissing the application for judicial review of a decision of the Assistant Secretary of the Treasury Board of Canada which determined that Mr. Stanley Cohen was not eligible to make an election, pursuant to paragraph 6(1)(b) of the *Public Service Superannuation Act*, R.S.C. 1985, c. P-36, to purchase elective service qualifying as a pensionable service for the purposes of that legislation.

[2] Mr. Brown rightfully conceded that in order to succeed on this appeal, he must persuade us that, despite the legal forms to the contrary, Mr. Cohen was appointed pursuant to subsection 7(1) of the *Law Reform Commission Act*, R.S.C. 1985, c. L-7.

[3] Mr. Brown has not succeeded in doing so. The decision of the Supreme Court of Canada in *Canada (Attorney General) v. Public Service Alliance of Canada*, [1991] 1 S.C.R. 614 [*Econosult*], is squarely against the position taken by the appellant. Status as a person employed under the *Public Service Employment Act*, R.S.C. 1985, c. P-32, cannot be acquired informally. While it may be that the parties could have organized their affairs differently, they chose to do so in a particular way and, in the face of the statutory scheme, we are unable to disregard the choices they made.

[4] The appeal will be dismissed with costs.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-337-08

**APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGHES, DATED
MAY 27, 2008, T-2167-06**

STYLE OF CAUSE: *Stanley Cohen v. Attorney General of
Canada*

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 25, 2009

REASONS FOR JUDGMENT OF THE COURT BY: EVANS, PELLETIER & RYER JJ.A.

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

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FOR THE APPELLANT

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Lorne Ptack

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT