

## PUBLIC SERVICE

### PENSIONS

Judicial review of Government of Canada Pension Centre's negative decision refusing to recognize existence of employment relationship between applicant, government between 1984-1995, thereby denying applicant's entitlement to pension for work he carried out during those years — *Public Service Superannuation Act*, R.S.C., 1985, c. P-36 (PSSA), *Public Service Employment Act*, S.C. 2003, c. 22, **ss. 12, 13** (PSEA) at issue in present case — PSSA covering both public servants appointed under PSEA, employees of wide range of agencies not part of "public service" strictly speaking — Obligation to contribute to plan usually triggered when person begins eligible employment but PSSA providing for option of making retroactive contribution in number of situations, including when person was, for some reason, employee *de facto* but was not contributing to plan — Applicant working for David Florida Laboratory, which belongs to Government of Canada, now part of Canadian Space Agency — Agency covered by PSSA — Between 1983-1995, while applicant contributed to Laboratory's work as technologist, applicant not occupying position created, staffed in accordance with PSEA but through private employer which hired applicant — Undisputed that applicant fully integrated member of Laboratory team; having no interaction with companies that hired him except with respect to applicant's salary increases — Applicant leaving Laboratory in June 1995, became public service employee in October 1997, contributing to plan since that time — Once hired by public service, applicant immediately inquiring about possibility of buying back years of service at Laboratory to no avail — Contacted Pension Centre several times — Whether reasonable for Pension Centre to conclude that applicant not actually having employment relationship with government except for period from January 1 to June 30, 1995 — Employment in public service governed by specific rules — In past, courts ruled that public service employment legislation excludes application of private law principles concerning employment relationship — Particularly relevant case being Supreme Court of Canada decision in *Canada (Attorney General) v. Public Service Alliance of Canada*, [1991] 1 S.C.R. 614 (*Econosult*) establishing that private law principles cannot be used to recognize *de facto* employment relationship for purposes of collective labour relations regime in public service — Federal Court having to determine whether Pension Centre reasonably applied doctrine of binding precedent to issue of whether it could determine existence of employment relationship based on circumstances of present case, whether rule established by *Econosult* to be extended to pension plan created by PSSA — Nothing indicating that Supreme Court wanted to impose blanket prohibition on use of private law test to recognize existence of employment relationship involving government in any context — Federal Court of Appeal, Federal Court case law that considers application of rule in *Econosult* to pensions also does not mandate one single answer — Decisions examined not rendering unreasonable Pension Centre's policy whereby pension may be granted to person showing that they had *de facto* employment relationship with government — In making decision that applicant had no employment relationship with government, could not receive pension under PSSA for period under consideration, Pension Centre adopted reasoning which was complete perversion of test for establishing employment relationship, which purpose is to determine whether genuine employment relationship existing beyond formal legal relationships that parties put in place — When parties entering into contract that has appearance of contract for services, contract's terms, conditions must be examined to verify whether they establish relationship that can genuinely be described as employment relationship — Actual relationship also has to be examined to determine whether genuine employment relationship existing between parties — If review of contract, reality showing existence of employment relationship, fact that parties acted in accordance with contract not bar to such a conclusion — Moreover, position adopted by Pension Centre leading to absurd results: rewarding breach of contract, allowing parties to

manipulate result of exercise by drafting contract that does or does not reflect reality depending on desired result — Taking broader view, purpose of PSSA, which is to ensure public servants' financial security when they retire, also to be considered — Parliament's intention is that membership in plan mandatory — Here, Laboratory where applicant worked wanted to hire applicant as employee, treated him as such for time applicant worked there; however, put in place tripartite relationship to avoid administrative constraints — Therefore, Pension Centre's decision unreasonable — Application allowed.

CÉRÉ V. CANADA (ATTORNEY GENERAL) (T-2010-17, 2019 FC 221, Grammond J., judgment dated February 22, 2019, 27 pp.)