

101, 1933

In the Privy Council.

No. 20 of 1933.

ON APPEAL FROM THE SUPREME COURT OF
CANADA.

BETWEEN

CLIFFORD B. REILLY - - - - (Petitioner) Appellant

AND

HIS MAJESTY THE KING - - - (Respondent) Respondent.

CASE FOR THE RESPONDENT.

1. This is an appeal by special leave from the judgment of the Supreme Court of Canada, dated 15th June, 1932, dismissing the appeal of the appellant from a judgment of the Exchequer Court of Canada, dated 27th November, 1931, which dismissed the claim of the appellant by Petition of Right to recover from His Majesty damages for breach of an alleged contract of employment between the respondent and the appellant.

RECORD.
p. 43.
p. 42.
p. 16.

2. The sole question at issue is whether His Majesty is under any liability to pay the appellant damages by way of compensation for loss of a statutory office (to which the appellant had been appointed for a term of 10 years), resulting from the abolition of the office, during the currency of such term, by the repeal by the Dominion Parliament of the statutory provisions which created it.

3. The Federal Appeal Board was originally constituted by and under the authority of secs. 10 to 13, inclusive, of chap. 62 of the Statutes of Canada, 1923, entitled "An Act to amend the Pension Act" with power to hear and determine certain appeals from the decisions of the Board of Pension Commissioners for Canada refusing applications for pension under the provisions of the Pension Act, chap. 43 of the Statutes of Canada, 1919, and amendments thereto. The said sections (with amendments thereto 20 enacted by secs. 1 and 2 of chap. 65 of the Statutes of Canada, 1927) were

RECORD. consolidated as secs. 50 to 53 of the Pension Act, R.S.C., 1927, chap. 157. It will be sufficient, for the purposes of this appeal, to refer to these latter provisions. They are textually reproduced in the Appendix of Statutes to this Case. Their effect, so far as material to the consideration of the question at issue herein, was to provide,

(1) That there should be a Board known as The Federal Appeal Board, consisting of not less than three members, nor more than seven members, appointed by the Governor in Council, on the recommendation of the Minister of Justice;

(2) That one of the members of the Board should be appointed chairman and hold that office during pleasure, and any member might be removed for cause, at any time, by the Governor in Council;

(3) That of the members first appointed to the Board other than the Chairman, one half should be appointed for a term of two years and the other for a term of three years, and they should be eligible for re-appointment for such further terms, not to exceed five years, as the Governor in Council might deem advisable;

(4) That the Chairman should be paid a salary of \$7,000. per annum and each of the other members a salary of \$6,000. per annum to be paid monthly out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada; and

(5) That the Board should hear and determine appeals in respect of any refusal of pension by the Board of Pension Commissioners for Canada, upon certain specified grounds, the decision of the Board thereon to be final and binding upon the applicant and upon the Commission.

p. 45. 4. By Order of His Excellency the Governor General in Council dated 17th August, 1923 (P.C.1620), passed under the authority of the statutory provisions aforementioned, and by a Commission passed under the Great Seal of Canada on the same date, the appellant was appointed to the office of member of the Federal Appeal Board for a term of three years. His term of appointment, subsequently extended by Order in Council dated 4th June, 1926 (P.C.882) to a term of five years from August 17th, 1923, was finally extended by Order in Council dated 16th August, 1928, (P.C. 1506) for a period of five years from August 17th, 1928.

5. Chap. 35 of the Statutes of Canada, 1930, entitled "An Act to amend the Pension Act" (assented to on 30th May, 1930), by s. 14, repealed the provisions of the Pension Act, R. S. C., 1927, chap. 157, relating to the constitution and powers of the Federal Appeal Board, namely secs. 50, 51, 52 and 53, with effect (by s. 17) as of the 1st October, 1930, and provided for the establishment of two new tribunals to be called the Pension Tribunal and the Pension Appeal Court, respectively, for the purpose of adjudicating on applications for pensions not granted by the Board of Pension Commissioners for Canada. This legislation admittedly had effect,

as of October 1st, 1930, to abolish the office of member of the Federal Appeal Board held by the appellant in virtue of the appointment and extensions of the term thereof aforementioned.

RECORD.

6. Sec. 19, ss. 1 of the Interpretation Act, R.S.C., 1927, chap. 1, provides in part, as follows :—

Where any Act or enactment is repealed, or where any regulation is revoked, then, unless the contrary intention appears, such repeal or revocation shall not, save as in this section otherwise provided,

10 (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked; or

(e) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, . . . as if the Act or regulation had not been repealed or revoked.

7. The British North America Act, 1867, by sec. 91, gave to the Parliament of Canada exclusive legislative authority in respect of (among
20 other matters) :

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

and by sec. 92 gave to the Provincial legislature exclusive legislative authority in respect of (among other matters) :—

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

13. Property and Civil Rights in the Province.

30 16. Generally all Matters of a merely local or private nature in the Province.

8. By his Petition of Right, the appellant (suppliant) alleges, in substance, that his appointment to the office of member of the Federal Appeal Board gave rise to a contract whereby His Majesty came under an obligation to continue him in office and to pay him the salary attached thereto for the unexpired portion of his term of office, i.e., from October 1st, 1930, to August 17th, 1933; that this contract was broken by His Majesty and that p. 3.

RECORD. he is, therefore, entitled to damages based upon the emoluments of the office of such unexpired term. The appellant, therefore, claimed to recover from His Majesty the sum of \$25,000.00 by way of damages but this amount was subsequently reduced at the trial to \$17,300.00, the latter amount being the amount of the salary of the office claimed to be due for the unexpired portion of the appellant's term of appointment thereto.

p. 6. 9. The Statement of Defence, filed on behalf of His Majesty, alleges, in substance, that the appointment of the appellant to the office of member of the Federal Appeal Board did not create any contractual relation between the appellant and His Majesty; that no contract was ever made on behalf of His Majesty with the appellant for any of the services or matters alleged or for the payment of any moneys therefor; that, on the coming into force on October 1st, 1930, of chap. 35 of the Statutes of 1930, the said Board was abolished and ceased to exist; that no provision was made by that Act, or any other, for the payment to any of the members of the said Board holding office, as such, on that date, of any compensation for loss of office consequent upon the abolition of the said Board; that, after that date, no authority existed for the payment to such members, or any of them, of any salary or other compensation; that both the office held by the appellant and the salary annexed thereto were subject at all times to be, and were, in fact, lawfully abolished and discontinued at the will of the Sovereign authority, the Legislature of Canada, without regard to any right, interest or expectation of the appellant in respect thereof; that the abolition of the said office on October 1st, 1930, as aforementioned, necessarily involved the abolition or annulment of any right of the appellant to be paid the salary which had been attached to it and that the appellant was not entitled to recover any sum of money whatsoever by way of debt or damages for breach of contract against His Majesty.

10. The trial of the action took place before MacLean, J., President of the Exchequer Court of Canada, on the 28th October, 1931, but, on the application of the appellant, was subsequently re-opened for hearing of argument of counsel upon the question whether chap. 35 of the Statutes of 1930 was not *ultra vires* of the Dominion Legislature to such extent, if any, as the said enactment purported to deprive the appellant (suppliant) of any property or civil rights or other right or remedy or any recourse in respect of the matters alleged in his Petition of Right. Argument upon this additional question was heard by the learned President on the 17th November, 1931; and on the 27th November judgment was rendered dismissing the petition as hereinbefore stated.

pp. 13-15. 11. The reasons for judgment delivered by the learned President are reported in (1932) Ex. C.R. at pp. 14-18. The learned Judge considered that the issue was whether, in the absence of legislation on the matter, so clear and positive as to dispel reasonable doubt, an appointment to serve the State in a public capacity created a contractual relationship between the Crown and the appointee. If there was not that relationship,

actions of this nature were groundless. His reasons for answering that question in the negative, in summary, were the following : RECORD.

(a) The settled principle of law was that public office was a distinctive thing and was not contractual in its nature.

(b) At common law no public officer had any right of compensation for abolition of his office, though it was not unusual for the legislature to grant the right ; but in this case there was no statutory provision for compensation.

10 (c) In these matters the law, as applied in the United States, was to the same effect—citing *Mechem on Public Offices and Officers*, p. 4 ; and *Connor v. Mayor of State of New York*, 2 Sandford (N.Y. Sup. Ct.) 355 ; 5 N.Y.R. 285.

(d) The fact that here the appointment purported to be for the term of five years did not make it any more a contract than one made to continue during good behaviour.

20 (e) There was nothing, in the circumstances of the case, suggestive of an agreement on the part of the Crown or on the part of the suppliant, in respect of the continuance of the said office or of the salary attached thereto or of the services of the suppliant ; in fact, there could be no such engagement, because the statute did not authorize the Governor-in-Council to enter into any such engagement.

(f) There being no contract, there was no "right" which s. 19 of the Interpretation Act could preserve and which no repealing legislation could affect.

30 (g) The contention that the Act of 1930 was *ultra vires* of the Dominion Parliament as interfering with property and civil rights, of course, failed when it was found that the suppliant was not before the Court on the basis of contract. Moreover, this contention was a two-edged sword, for, if Parliament was forbidden for the reason suggested from breaking the alleged contract, then it had no power to create the contract in the first instance.

12. From this judgment the appellant (suppliant) appealed to the Supreme Court of Canada ; the appeal was argued before Anglin, C.J., and Rinfret, Lamont, Cannon, Orde (*ad hoc*) JJ. on 27th May, 1932, and by judgment pronounced by that Court on 15th June, 1932, the appeal p. 42. was dismissed with costs.

13. Reasons for judgment were delivered by Orde (*ad hoc*) J. on pp. 40-42. behalf of Anglin, C.J., and Rinfret, Lamont and himself, and also by 40 Cannon, J. They are reported in (1932) S. C. R. at pp. 597-602.

Orde, J. stated that the sole question here was whether or not, by p. 40, l. 13. virtue of the legislation creating the office and the nature of his appointment thereto, the appellant acquired a contractual or other vested right to the office and its emoluments. Assuming the possibility of such a contract, he found it difficult to see in what way the appointment of the appellant to be a member of the Federal Appeal Board under the Pension Act differed

RECORD. from any other appointments to offices under the Crown. There was, of course, in every appointment to public office a contractual element in that the Crown, in effect, promised to pay the salary or other emolument fixed by law for services performed. But this in no respect affected the Crown's prerogative right, unless restricted by statute, to dismiss the servant at any time without liability for damages or further compensation. Even if there were a contract of service, the Crown's absolute power of dismissal was deemed to be imported into it, and nothing short of a statute could restrict that power. Here there was no dismissal from office by the Crown in the ordinary sense. Parliament abolished the office. The power of the Crown to abolish a civil office and thereby to deprive the holder thereof of any right to further compensation was recognized in *Young v. Waller* (1898) A.C. 661. If in cases where its power was not restricted by statute the Crown might abolish an office, *a fortiori* Parliament which created it must surely possess the power. 10

Reliance had been placed upon the provisions of s. 19 of the Interpretation Act, R.S.C. (1927) chap. 1, which preserved rights, privileges, obligations and liabilities acquired, accrued, accruing or incurred under a repealed Act. But this argument begged the question. If there was no right, there was nothing to preserve. If the appellant's appointment to his office even for a definite period did not deprive the Crown of the right to terminate the appointment at any time, and *a fortiori* did not deprive Parliament of the power, by abolishing the office, of automatically terminating the appointment, what right was there to preserve? 20

pp. 41-42.

Cannon J., held that the Exchequer Court and the Supreme Court of Canada had no power to enforce the demand of the Petition of Right since to do so would involve interference with the free agency of the executive branch of the Sovereign power in respect of the dismissal of the appellant following the abolition by Parliament of his office.

14. It is submitted, on behalf of the Attorney-General of Canada, that the judgment of the Supreme Court of Canada is right and ought to be affirmed, and that the appeal therefrom ought to be dismissed, for the reasons stated in the reasons for judgment delivered by Orde (*ad hoc*) J. and Cannon J., and in the reasons for judgment delivered by the learned President of the Exchequer Court of Canada, and for the following, among other 30

REASONS

1. Because there was no contract, express or implied, between His Majesty and the appellant in respect of the said office or of the salary thereof. 40
2. Because the office in question was a public office created by Act of the Legislature of Canada, and was liable to be abolished at will by the said Legislature.

3. Because chap. 35 of the Statutes of Canada 1930 had effect to abolish the said office and all right in the appellant to receive a salary in respect thereof.
4. Because any right of the appellant to be paid the salary of the said office was a right, existing by law only as an incident of the office and as growing out of the actual performance of the duties thereof, and the abolition of the office necessarily involved the annulment of such right.
- 10 5. Because the appellant is not entitled to compensation for the abolition of the said office and of the salary thereof either at common law or in virtue of any statute.
6. Because the appellant was not removed or dismissed from office by the action of His Majesty, but vacated his office in consequence of its lawful abolition by the sovereign legislative power.
7. Because the matters alleged by the appellant do not disclose, or give rise to, any obligation on the part of His Majesty to pay to the appellant any sum of money whatsoever by way of compensation for breach of contract or otherwise.

WILFRED GREENE.

C. P. PLAXTON.

APPENDIX OF STATUTES.

Pension Act, Revised Statutes of Canada, 1927, Chapter 157.

PENSION ACT, Revised Statutes of Canada, 1927, Chap. 157. An Act to provide Pensions to or in respect of Members of the Canadian Naval, Military and Air Forces.

SHORT TITLE.

Short title. 1. This Act may be cited as the Pension Act.

Judicial powers on inquiries. 9. The Commission shall have all the powers and authority of a Commissioner appointed under Part 1 of the Inquiries Act.

Power to take evidence on oath. 2. The Commission shall have power to appoint a person or persons to hear and receive evidence with respect to any matter pertaining to pensions, and such person or persons shall have authority to administer oaths and to hear and receive evidence under oath and to take affidavits in any part of Canada. 10

Where sittings may be held. 3. The Commission, represented by one or more Commissioners, may in its discretion hold sittings in any part of Canada for the purpose of hearing evidence or complaints in respect of pensions.

Regulations. 10. The Commission shall have power, with the approval of the Minister, to make such regulations as it deems necessary for carrying out the provisions of this Act. 20

FEDERAL APPEAL BOARD.

Federal Appeal Board. 50. There shall be a Board known as "The Federal Appeal Board," consisting of not less than three nor more than seven members appointed by the Governor in Council on the recommendation of the Minister of Justice.

Chairman. 2. One of the members shall be appointed by the Governor in Council chairman of the Board, and shall hold that office during pleasure, and any member may be removed for cause, at any time, by the Governor in Council.

Qualification. 3. The majority of the members shall be persons who served in the naval, military or air forces of Canada during the war. 30

Term of office. 4. Of the members first appointed to the Board, other than the Chairman, one-half shall be appointed for a term of two years and the other for a term of three years, and they shall be eligible for re-appointment for such further terms, not to exceed five years, as the Governor in Council may deem advisable.

Quorum. 5. During such time as the Governor in Council may determine, three members shall constitute a quorum thereof; and thereafter a majority of the members shall constitute a quorum.

6. Each member shall devote the whole of his time to the performance of his duties under this Act, and shall not accept or hold any office or employment inconsistent therewith. Whole time given. Pension Act, Revised Statutes of Canada, 1927, Chapter 157 —continued.
7. In case of the illness, absence or inability to act of any member, the Governor in Council may appoint a person to act in his stead. Substitute.
8. No member shall be disqualified to act by reason of interest or of kindred or affinity to any person interested in any matter before the Board, but in such case the Governor in Council may, either upon the application of such member or otherwise, appoint some disinterested person to act in his stead. Member interested, or kindred of parties.
9. The Chairman shall be paid a salary of seven thousand dollars per annum, each of the other members shall be paid a salary of six thousand dollars per annum, and such salaries shall be paid monthly out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada. Salaries.

APPEALS.

51. Upon the evidence and record upon which the Commission gave its decision an appeal shall lie in respect of any refusal of pension by the Commission on the ground that the injury or disease or aggravation thereof resulting in disability or death was not attributable to or was not incurred during military service. Appeals.
2. Every member of the Board shall also have the right to hear, but only upon the evidence and record upon which the Commission gave decision, such appeals at such times and places as are fixed by regulations made and approved by the Board, and to give decisions thereon. Hearing by member of Board.
3. The member giving any such decision shall notify the applicant who has so appealed and the Commission, by registered letter mailed within five days after such decision; and if such applicant or the Commission is not satisfied with such decision an appeal therefrom may be lodged within thirty days from such decision with the Federal Appeal Board, a quorum of whom, not including the member of the Board who originally gave the decision, shall hear the appeal and the decision of the Board thereon shall be final. Notice of decision. Appeal to Federal Appeal Board.
4. The right of appeal shall be open for two years after the appointment of the Federal Appeal Board by the Governor in Council, or for one year after the decision complained of, whichever may be the later. Time allowed for appeals.

Pension Act, One appeal
Revised only.
Statutes of
Canada,
1927,
Chapter 157
—continued.

5. An applicant shall be entitled to only one appeal upon the grounds or any of them set forth in subsection one of this section.

6. The decision of the Federal Appeal Board thereon shall be final and shall be binding upon the applicant and upon the Commission :

Reconsideration and appeal upon newly discovered evidence.

Provided that if within one year after a decision by the Federal Appeal Board upholding a refusal of pension by the Commission or within one year after the fourteenth day of April, one thousand nine hundred and twenty-seven, whichever is the later, the applicant submits newly discovered evidence which, in the opinion of a majority of the Commission, establishes a reasonable doubt as to the correctness of the previous decision, the Commission shall reconsider such case, and if refusal of pension be confirmed, the applicant shall have the right of a second appeal to the Federal Appeal Board and its decision thereon shall be final and shall be binding upon the applicant and upon the Commission.

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Right of attendance at appeals.

7. Every applicant and the Board of Pension Commissioners for Canada or its representatives shall have the right to attend in person, at any and all sittings for the purpose of hearing an appeal held by the Board or by a member thereof, under such conditions as to the payment of an applicant's expenses thereby incurred as may be fixed by regulation of the Governor in Council, and the applicant may if he so desires, but at his own expense, be assisted thereat, by counsel or representative other than the official Soldier Adviser appointed under the Department of Soldiers' Civil Re-establishment Act.

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Counsel.

Signatures to judgments of Federal Appeal Board, and information to be contained therein.

8. Any judgment rendered by the Federal Appeal Board shall be signed by the Chairman or presiding member of the Board and the Secretary and shall contain the following information :—

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- (i) The name or names of the member or members of the Board who heard the appeal;
- (ii) The medical classification of the injury or disease causing the disability in respect of which the appeal has been made;
- (iii) The medical classification of the injury or disease causing the disability in respect of which the appeal is allowed or disallowed as the case may be;
- (iv) If the appeal is allowed, whether the injury or disease resulting in disability was attributable to or was incurred during military service or pre-existed enlistment and was aggravated during service.

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Powers of Board.

52. The Federal Appeal Board shall have all the powers and authority of a commissioner appointed under Part I of the Inquiries Act. Judicial powers on inquiries.

2. The Federal Appeal Board shall have power to appoint a person or persons to hear and receive evidence with respect to any matter pertaining to pensions, and such person or persons shall have authority to administer oaths and to hear and receive evidence under oath and to take affidavits in any part of Canada. Power to take evidence on oath.

Pension Act, Revised Statutes of Canada, 1927, Chapter 157 —continued.

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Regulations.

53. The Governor in Council may make such rules and regulations as he deems necessary Rules and regulations.

- (a) respecting the sittings, practice and procedure of the Federal Appeal Board; and
- (b) generally, to carry out in all respects and to enforce the provisions of this Act.

STATUTES OF CANADA, 1930, Chap. 35.

An Act to amend the Pension Act.

[Assented to 30th May, 1930.]

Statutes of Canada, 1930, Chapter 35.

20 HIS Majesty, by and with the advice and consent of the Senate and the House of Commons of Canada, enacts as follows :—

5. Section nine of the said Act (*R.S.C. 1927 c. 157*), and section ten as enacted by section six of chapter thirty-eight of the statutes of 1928, are repealed and the following sections are substituted therefor :—

30 “ 9.—(1) The Governor in Council may appoint nine persons to be members of a Pension Tribunal; one of such persons shall be appointed chairman of the tribunal and he and each of the other members thereof shall hold office for ten years, subject only to earlier removal for cause. Pension Tribunal.

(2) The salary of the chairman of the Pension Tribunal shall be seven thousand dollars a year and the salary of each of the other members thereof shall be six thousand dollars a year. Salaries.

Statutes of
Canada,
1930,
Chapter 35
—continued.

Pension Appeal Court.	<p>“ 10.—(1) The Governor in Council may appoint three persons to be members of a Pension Appeal Court; one of such persons shall be appointed president thereof and he and each of the other members thereof shall hold office for ten years, subject only to earlier removal for cause.</p>	
Salaries.	<p>(2) The salary of the president of the Pension Appeal Court shall be eight thousand dollars a year and the salary of each of the other members thereof shall be seven thousand dollars a year.</p>	
Whole time and no other office.	<p>“ 10A. Each member of the Pension Tribunal and each member of the Pension Appeal Court shall devote his whole time to the performance of the duties of his office and shall not hold any other office or employment.</p>	10
Residence.	<p>“ 10B. All the members of the Pension Appeal Court and the chairman of the Pension Tribunal shall reside at Ottawa or within ten miles thereof and each of the other members of the Pension Tribunal shall reside at such place as may be directed by the chairman.</p>	
“ Veterans’ Bureau.”	<p>“ 10K.—(1) Provision shall be made for the constitution of a branch of the Department to be known as the “ Veterans’ Bureau ” which, subject to the direction of the Minister, shall be administered by a chief pensions advocate who shall be assisted by such other pensions advocates and such additional staff as may be required for the proper performance of the duties of the branch.</p>	20
Salaries of pensions advocates.	<p>(2) Notwithstanding anything in the <i>Civil Service Act</i> or any other statute, the Governor in Council may appoint, and fix the salaries of, the chief pensions advocate and the pensions advocates.</p>	
Commission counsel.	<p>“ 10L.—(1) Notwithstanding anything in the <i>Civil Service Act</i>, the Governor in Council may on the recommendation of the Commission appoint a chief commission counsel, and on the like recommendation a number of commission counsel not exceeding seven.</p>	30
Clerical assistance and staff.	<p>(2) The chief commission counsel and the commission counsel shall be provided with such clerical assistance as is required for the performance of their duties, and the chief commission counsel shall, subject to the directions of the Commission, be charged with the duty of ensuring the proper performance of their duties by the commission counsel and the clerical staff.</p>	40
Salaries of commission counsel.	<p>(3) The salary of the chief commission counsel shall be the same as that authorized to be paid to the chief pensions</p>	

advocate, and the salaries of the commission counsel shall be the same as those authorized to be paid to the pensions advocates."

Statutes of
Canada,
1930,
Chapter 35
—continued.

14. Sections fifty and fifty-one of the said Act (*R.S.C.*, 1927, c. 157), as amended by chapter thirty-eight of the statutes of 1928, and fifty-two and fifty-three of the said Act, are repealed and the following are substituted therefor :—

RULES OF PROCEDURE.

10 " 50.—(1) The members of the Commission, and of the Pension Tribunal and the Pension Appeal Court shall together have power to make rules not inconsistent with this Act with respect to the procedure to be followed in matters coming before them for adjudication. Power to make rules.

(2) The president of the Pension Appeal Court shall convoke and preside at any meeting required to be held for the purpose of the adoption of rules under this section, but if he is absent or incapacitated the chairman of the Pension Tribunal may act in his stead. Presiding officer.

20 (3) All such rules shall forthwith upon their adoption be published in the *Canada Gazette*. Publication.

PROCEDURE.

" 51.—(1) Every application for any payment under this Act shall be made in the first instance to the Commission whose duty it shall be Applications to be made to the Commission.

- (a) to collect such relevant information, if any, as may be available in the records of any department of the Government of Canada;
- (b) to make, through its medical and other officers, such inquiry as appears advisable into the facts upon which the claim is based;
- 30 (c) to grant the application, if it appears to be proper to grant it on the material available, and if not, to refer the claim to the chief pensions advocate and the chief commission counsel.

(2) Any application heretofore disposed of by the Federal Appeal Board may, notwithstanding such disposition, be renewed at any time under this Act. Renewals of applications.

40 " 52.—(1) The Commission, forthwith upon granting any application, shall notify the Department of its award and the grounds thereof; it shall, if relevant, indicate the medical Commission to notify Department.

classification of all injuries or diseases it has considered, specify the medical classification of the injury or disease upon which the award is based, and state whether or not this was either attributable to or was incurred during military service or, having existed before enlistment, was aggravated during military service.

(2) Every such notification of any award shall be acted upon by the Department forthwith upon its receipt.

Duty of
chief pen-
sions
advocate.

“ 53. Upon the reference of any application to the chief pensions advocate as aforesaid, it shall be his duty

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(a) to notify the claimant and any interested soldiers' service organization of the reference of the claim to him;

(b) to cause the case to be prepared for presentation on behalf of the claimant to the Pension Tribunal;

(c) when the case is so prepared, to cause application to be made to the registrar of the Pension Tribunal, at the request of the claimant, and on notice to the chief commission counsel, to have a time and place fixed for the hearing of the application; and

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(d) to arrange for the presentation of the claim before the tribunal at such time and place either by himself or a pensions advocate, unless the claimant elects to have the same presented by some other person at his own expense.

Duty of
chief com-
mission
counsel.

“ 54. Upon the reference of any application to the chief commission counsel as aforesaid, it shall be his duty to cause such inquiry to be made as appears advisable and to appear himself or arrange for a commission counsel to appear on the hearing of the application by the Pension Tribunal in order to assist it in disposing of the claim by conceding such points as it appears to be proper to concede and by directing attention to such matters and questions as appear to require consideration for the purpose of determining whether or not the claim should be allowed.

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Access to
records.

“ 55.—(1) The pensions advocates and commission counsel shall have free access to all the records of the Department and to all material considered by the Commission in disposing of any application.

Contents
deemed
confidential.

(2) No such records or material relating to any member of the forces, pensioner or applicant for pension, shall be inspected by, nor shall their contents be communicated by anyone in the public service to, any person other than

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(a) the member of the forces, pensioner or applicant for pension concerned;

- (b) such public servants as may require to inspect them or have their contents communicated to them in order that they may properly discharge their duties;
- (c) such medical advisers and other persons, including representatives of soldiers' service organizations, as may be consulted by or on behalf of a commission counsel or by or on behalf of the person whom the records or material directly concern; and
- 10 (d) such person as may be employed by such last mentioned person to present a claim on his behalf before the Pension Tribunal or the Pension Appeal Court.

“ 56. The Pension Tribunal shall be charged with the Pension duty of hearing and disposing of all applications under this Tribunal. Act which may be brought before it as hereinbefore provided.

“ 57. For the purpose of hearing applications the Pension Hearings. Tribunal shall sit at convenient places throughout Canada; the selection of such places, the determination of the days for the sittings at each thereof, and the assignment of members of the tribunal to attend thereon, shall be in the discretion of the 20 chairman subject to such rules of procedure as may be adopted as hereinbefore provided.

“ 58.—(1) Two members of the Pension Tribunal sitting Quorum. together shall form a quorum for the purpose of hearing and disposing of any application as to the disposition of which they are in agreement; any application as to the disposition of which Disagree- there has been an equal division of opinion shall be reheard ment. before an uneven number of members exceeding by at least one the number of members who took part in the first hearing.

(2) With the consent of all parties entitled to be heard Hearing by one member upon any application, any application may be heard and disposed of by one member of the tribunal, who shall constitute a quorum by consent. of the tribunal for the purpose of such application.

“ 59. The Pension Tribunal shall have all the powers of Powers under a Commissioner under Part I of the *Inquiries Act* and may under *Inquiries Act*. exercise any discretion conferred by this Act upon the Commission.

“ 60. The Pension Tribunal shall have power to direct the Witnesses. payment to witnesses called to give evidence before it, or to persons required by it to attend for medical examination, such allowances for travelling expenses and loss of time, at rates 40 fixed by the rules of procedure, as, having regard to all the circumstances, it considers should be paid by the public.

Statutes of Canada,
1930,
Chapter 35
—continued.

Medical examination. “ 61.—(1) The Pension Tribunal shall have power to direct the medical examination of any claimant, whose application is before it, by a specialist, physician or surgeon selected by him, and the account of such physician or surgeon for any such examination, and for his attendance before the tribunal to give evidence as to his findings thereon, shall be paid by the Department upon the certificate of a registrar of the tribunal, given under its direction, that the examination was authorized by the tribunal to be made and that the sums charged therefor and for attending to give evidence are proper and reasonable in amount. 10

Admission to hospital. (2) For the purpose of any such examination the Tribunal shall have power to direct the admission of a claimant into a hospital administered by the Department.

Disposal of application only after full opportunity, etc. “ 62.—(1) No application shall be disposed of by the tribunal until after full opportunity to adduce evidence and to be heard at a public hearing has been afforded to all persons entitled to be heard, and so far as possible, the decision of the tribunal shall be given at such public hearing in the presence of all such persons. 20

Hearings in private. (2) At the request of the applicant, the tribunal may direct any application to be heard and its decision may be given in private if it considers that a public hearing might be disadvantageous to the applicant and that a hearing in private would not be contrary to the public interest.

Grounds of division to be given. “ 63. At the time its decision is given, the Pension Tribunal shall indicate fully the grounds upon which its conclusions are based and, if the decision is not unanimous, the members of the tribunal who dissent and the grounds of their dissent shall be specified. 30

Notice to Department. “ 64. Notice of every decision of the tribunal shall be forthwith given by the registrar to the Department.

Appeals from decisions of Pension Tribunal, “ 65.—(1) From the decision of the Pension Tribunal on any application falling within one of the classes hereinafter defined, the claimant or the commission counsel may appeal to the Pension Appeal Court within the time hereafter limited by filing notice of intention to appeal with the registrar of the Pension Appeal Court, who shall notify the Department, the chief pension advocate, and the chief commission counsel, of the receipt of such notice and of the time at which the appeal will come on to be heard. 40

Notice of appeal. (2) Notice of an appeal may be filed by a commission counsel at any time within fifteen days from the date of the

decision if the same was given at the conclusion of the hearing, or if not so given, within fifteen days after the appellant has received notice thereof, and by the applicant at any time.

Statutes of
Canada,
1930,
Chapter 35
—continued.

“ 66. An appeal shall lie to the Pension Appeal Court from any decision of the Pension Tribunal turning upon :— Appeals to Pension Appeal Court.

- (a) whether or not any injury or disease or aggravation thereof which resulted in the disability or death upon which the application is based, was attributable to or was incurred during military service ;
- 10 (b) whether or not any injury or disease or aggravation thereof which was attributable to or was incurred during military service resulted in the disability or death upon which the application is based ;
- (c) whether or not any pre-enlistment disability was wilfully concealed, was obvious, was of a nature to cause rejection from service, or was congenital ;
- (d) the degree of any pre-enlistment disability ;
- (e) the right to receive pension in respect of any period prior to the date of the application therefor ;
- 20 (f) the jurisdiction of the Commission or the Pension Tribunal to deal with an application either generally or in any particular way ;
- (g) the interpretation of any provision of this Act.

“ 67.—(1) Every decision of the Pension Tribunal in favour of the applicant shall be acted upon by the Department after the expiry of sixteen days from the date upon which it receives notice of the decision unless and until it has been notified that an appeal has been taken to the Pension Appeal Court. Carrying out of decisions.

- 30 (2) Notwithstanding that it has been so notified, the Department shall act upon such decision after the expiry of sixty days from the date thereof unless and until it is notified by the registrar of the Pension Appeal Court that such Court has otherwise directed or that the appeal has been presented to the Court, which still has its decision thereon under consideration. In case of appeals.

“ 68. The Pension Appeal Court shall hear and dispose of all appeals from the Pension Tribunal which may be properly brought before it. Disposal of appeals.

- 40 “ 69. The sittings of the Pension Appeal Court shall be public except in cases in which the hearing by the Pension Tribunal has been held in private and the Pension Appeal Court considers it desirable to adopt a like course in respect of the hearing of the appeal. Sittings to be public.

Statutes of
Canada,
1930,
Chapter 35
—continued.

All members
to sit.

“ 70. Unless the parties agree that an appeal shall be heard before only two members of the Pension Appeal Court, all the members thereof shall sit for the hearing of any appeal; if an appeal is heard before only two members of the court and they cannot agree as to its disposition, it shall stand dismissed.

Appeals to
be presented
by Commis-
sion
Counsel.

“ 71.—(1) Every appeal shall be presented before the Pension Appeal Court on behalf of the claimant and by a commission counsel in the same way as it is required to be presented before the Pension Tribunal, but on the evidence and record upon which the decision of the tribunal was given, without addition. 10

Remission
for re-
hearing.

(2) The Pension Appeal Court, if it considers such evidence or record to be incomplete or unsatisfactory, may remit the case to the Pension Tribunal for re-hearing.

Decision to
be final.

“ 72.—(1) Subject as hereinafter provided every decision of the Pension Appeal Court in favour of an applicant or dismissing an application shall be final.

Carrying
out of
decision.

(2) Any decision in favour of a claimant shall be forthwith notified by the registrar to and shall be forthwith acted upon by the Department. 20

Decision to
be final if
not
appealed.

(3) Any decision of the Pension Appeal Court against an applicant and any such decision by the Pension Tribunal which is not appealed shall be final and no application based upon any error in such decision, by reason of evidence not having been presented or otherwise, shall be entertained by the Commission or the Pension Tribunal except with the leave of the Pension Appeal Court, which shall have jurisdiction to grant such leave in any case in which it appears proper to grant it. 30

Appeals to the
Federal
Appeal Board
transferred to
the Pension
Tribunal.

15. All appeals heretofore taken to the Federal Appeal Board and remaining undisposed of at the date of the coming into force of this Act shall be deemed to have been referred thereunder for hearing by the Pension Tribunal and shall be dealt with accordingly.

Coming into
force.

17. This Act shall come into force on the first day of October, 1930, provided that any appointment required or authorized to be made thereunder may be made at any time after the first day of September, 1930 and any salary or other payment to which any person so appointed may be entitled shall be payable from the date of his appointment. 40

INTERPRETATION ACT, Revised Statutes of Canada, 1927,
Chap. 1.

Interpreta-
tion Act,
Revised
Statutes of
Canada,
1927,
Chapter 1.

An Act respecting the Form and Interpretation of Statutes.

SHORT TITLE.

1. This Act may be cited as the Interpretation Act, R.S., Short title.
c. 1, s. 1.

APPLICATION.

2. Every provision of this Act shall extend and apply to To every
10 (a) every Act of the Parliament of Canada, now or here- Act.
after passed, except in so far as any such provision
(i) is inconsistent with the intent or object of Exceptions.
such Act; or
(ii) would give to any word, expression or
clause of any such Act an interpretation
inconsistent with the context; or
(iii) is in any such Act declared not applicable
thereto;

16. No provision or enactment in any Act shall affect, in His Majesty
any manner whatsoever, the rights of His Majesty, his heirs or not bound.
20 successors, unless it is expressly stated therein that His Majesty
shall be bound thereby. R.S., c. 1, s. 16.

18. Every Act shall be so construed as to reserve to Par- Powers of
liament the power of repealing or amending it, and of revoking, Parliament
restricting or modifying any power, privilege, or advantage reserved.
thereby vested in or granted to any person, whenever such
repeal, amendment, revocation, restriction or modification is
deemed by Parliament to be required for the public good.

19. Where any Act or enactment is repealed, or where Effect of
any regulation is revoked, then, unless the contrary intention repeal.
30 appears, such repeal or revocation shall not, save as in this
section otherwise provided,

(b) affect the previous operation of any Act, enactment
or regulation so repealed or revoked, or anything
duly done or suffered thereunder; or

Interpreta-
tion Act,
Revised
Statutes of
Canada,
1927,
Chapter 1
—continued.

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment or regulation so repealed or revoked; or

(e) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the Act or regulation had not been repealed or revoked.

10

Officers
during
pleasure.

24. All officers now appointed or hereafter appointed by the Governor General, whether by commission or otherwise, shall remain in office during pleasure only, unless it is otherwise expressed in their commissions or appointments.

In the Privy Council.

No. 20 of 1933.

ON APPEAL FROM THE SUPREME COURT
OF CANADA.

BETWEEN
CLIFFORD B. REILLY (*Petitioner*) *Appellant*
AND
HIS MAJESTY THE KING
(*Respondent*) *Respondent*.

CASE FOR THE RESPONDENT.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2,
For the Respondent.

LYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.