

[86] ... The decision to provide older surviving spouses with less assistance covering the costs of last illness and death than younger surviving spouses was not motivated by a desire to ameliorate a more disadvantaged sector in society. Rather, the evidence indicates that the Reduction Provisions were motivated primarily by financial considerations.¹⁷⁷

Contextual Factor 4: Nature of the Benefit

95. The analyses of the trial judge and majority of the Court of Appeal under this factor were perfunctory at best. The trial judge held that the disadvantage suffered by the appellants was not severe, because they were better off than most seniors and received a higher survivor's pension than the comparator group.¹⁷⁸ This simply repeats the error under the second contextual factor.¹⁷⁹

96. The trial judge did not address the nature of the interest affected. In *Law*, the Court said it is relevant to consider "whether the distinction restricts access to a fundamental social institution."¹⁸⁰ The SDB is such an institution and it is also, for many, an earned benefit, since the older the participant at the time of death, the greater the contribution as compared to the amount of the SDB.¹⁸¹

97. Nor can it be said that because the benefit is economic, it is not important. The dignity interest is engaged in denying payments upon death. As stated by the Alberta Court of Appeal: "being deprived of a fair and equal share of resources, rights or benefits on the basis of an enumerated or analogous ground goes to the core of human dignity."¹⁸²

98. The appellants rely on *Rowles J.A.* at paragraphs 88-89, particularly these comments:

[88] ... The ability to cover the financial costs associated with last illness and death of a spouse is intimately linked to the degree and quality of care that can be provided which, in turn, can have a direct impact on the health and well-being of the ill or dying spouse. For the surviving spouse, the Reduction Provisions increase not only her financial burden, but also her psychological burden in terms of having to assume a larger role in caring for her partner informally at home. Furthermore, to the extent that the Reduction Provisions force the surviving spouse to use part of her pension, the ability to meet her own day-to-day expenses

¹⁷⁷ *Withler, BCCA (per Rowles J.A.)*, para. 86, A.R. Vol. I, p. 111

¹⁷⁸ *Withler, BCSC*, para. 161, A.R. Vol. I, pp. 71-72; *Withler, BCCA (per Ryan J.A.)*, para. 179, A.R. Vol. I, pp. 150-51

¹⁷⁹ *Withler, BCSC*, para. 170, A.R. Vol. I, p. 74; see also paras. 123, 139, A.R. Vol. I, pp. 56, 61-62

¹⁸⁰ *Law*, para. 74, ABoA Tab 20

¹⁸¹ Table indicating age of participant and death benefit, A.R. Vol. VI, p. 176; and see Evidence of D. Hébert, pp. 801-04 (especially p. 803, ll. 36-47; p. 804, ll. 1-11), A.R. Vol. III, pp. 1-4

¹⁸² *Ferraiuolo*, para. 88, ABoA Tab 11; *Martin*, para. 103, ABoA Tab 28; *Egan*, paras. 179-80, ABoA Tab 9

and needs subsequent to the loss of her partner is also adversely affected. As such, I find that the economic nature of the interest in this case is highly associated with physical and mental integrity interests as well.¹⁸³

Human Dignity

99. This Court has cautioned about the use of “human dignity” in determining whether there has been an infringement of s. 15, in particular where to do so imposes *an additional burden* on equality claimants.¹⁸⁴ The trial judge seems to have imposed that very burden when concluding her judgment by saying: “I do not agree that a reasonable person would view these provisions as stigmatizing the surviving spouses;”¹⁸⁵ and saying, “the absence of complaints about the Reduction Provisions” was “important evidence relevant to the question of whether the law violates the human dignity of the plaintiffs.”¹⁸⁶ If human dignity remains an important consideration then it must be considered in this case in the manner described by Rowles J.A.:

[92] What is perhaps of most concern about the Reduction Provisions in this case is that they are premised on the assumption that older surviving spouses can readily draw on their pensions with little or no consequence. Yet by requiring surviving spouses to use their pensions to compensate for receiving a reduced death benefit, the law exacerbates their income vulnerability, which is the very harm against which survivor’s pensions are meant to protect. The effect of the Reduction Provisions is that older couples are essentially forced to choose between the medical needs of the ill spouse preceding death and the needs of the surviving spouse thereafter.¹⁸⁷

100. This conclusion was borne out by the evidence. For example, many of the class members who testified recounted how they quit their jobs to stay home and take care of their ailing spouses.¹⁸⁸ Others did not have even that option. Consider Patricia McNaughton, whose husband worked for the government for 28 years, and retired in 1981. She had to put her husband in a palliative care hospital, against his wishes, because she could not afford nursing care and she could not lift him to care for him herself. Mrs. McNaughton received a death benefit of about

¹⁸³ *Withler, BCCA* (per Rowles J.A.), para. 88, A.R. Vol. I, p. 112

¹⁸⁴ *Kapp*, para. 22, ABoA Tab 30

¹⁸⁵ *Withler, BCSC*, para. 168, A.R. Vol. I, p. 73

¹⁸⁶ *Withler, BCSC*, para. 126, A.R. Vol. I, p. 57

¹⁸⁷ *Withler, BCCA*, para. 92, A.R. Vol. I, p. 114

¹⁸⁸ Evidence of J. Fitzsimonds, p. 55, ll. 31-43, A.R. Vol. II, p. 15; Evidence of E. Ball, p. 25, ll. 1-12, A.R. Vol. II, p. 2; Evidence of P. McNaughton, p. 141, ll. 20-30, A.R. Vol. II, p. 50; Evidence of S. McLaren, p. 73, ll. 1-45, A.R. Vol. II, p. 73

\$14,000. If the SDB had not been reduced she: “[would] have kept him home. I would have let him die in his own bed. I wouldn’t have sent him to a hospital.”¹⁸⁹

101. The trial judge found that the “loneliness and despair” of the widows who testified before her was “quite apparent and understandable” and that this despair was “compounded by the receipt of a reduced SDB.” Yet the trial judge concluded that this does not fulfill the requirement of s. 15 of the *Charter*.¹⁹⁰ We respectfully submit that it goes a long way.

102. In concluding on the issue of discrimination, the trial judge gave Parliament an unprecedented amount of deference in deciding that it “is within the prerogative of Parliament to enact legislation that incorporated a plan of life insurance with the usual hallmarks of employee group insurance taking into account the various age groups and the public interest.”¹⁹¹

103. Even if the SDB is to be characterized as “insurance,” this is still a statutory benefit subject to the *Charter*. As a result, assumptions and presumptions about insurance must receive close scrutiny, even if they have operated for some time. Jurisprudence under human rights legislation indicates that even private insurers’ age-based distinctions need close scrutiny¹⁹² and can only be justified by credible actuarial evidence. Thus, when deciding whether discrimination on the basis of age, sex and marital status in automobile insurance was a reasonable and *bona fide* distinction permitted by the Ontario *Human Rights Code*, a majority of this Court required that the distinction be based in “credible actuarial evidence.” Moreover, the majority noted that:

This statistical analysis does not, however, fully satisfy the reasonableness test required by s. 21. Human rights values cannot be over-ridden by business expediency alone. To allow “statistically supportable” discrimination would undermine the intent of human rights legislation which attempts to protect individuals from collective fault. *To allow discrimination simply on the basis of statistical averages would only serve to perpetuate traditional stereotypes with all of their invidious prejudices.* Society has decided not to hold the individual responsible for the sins of his or her “group” and the courts must seek to

¹⁸⁹ Evidence of P. McNaughton, pp. 144, ll. 7-13, A.R. Vol. II, p. 53; see also Evidence of E. Ball, p. 30, ll. 24-47; p. 31, ll. 1-15; p. 32, ll. 1-26; p. 39, ll. 1-31, A.R. Vol. II, pp. 7-9, 12

¹⁹⁰ *Withler, BCSC*, para. 170, A.R. Vol. I, p. 74

¹⁹¹ *Withler, BCSC*, para. 170, A.R. Vol. I, p. 74. This is reminiscent of the rational basis approach used in the U.S. in certain equal protection cases and which legal scholars have urged this Court to resist adopting: See Moran, “Protesting Too Much: Rational Basis Review Under Canada’s Equality Guarantee”, in Sheila McIntyre and Sanda Rodgers, eds., *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms* (Markham, Ont.: LexisNexis Butterworths, 2006) at pp. 71-72, 74-75, 79-81, 93, ABoA Tab 43

¹⁹²The government’s expert conceded that the assumptions about age on which insurance plan are based could be described as involving “stereotype”: Evidence of G. Argue, p. 706, l. 31 – p. 707, l.10, A.R. Vol. II, pp. 179-80

further rather than restrict this decision. It is therefore necessary to consider whether there was an alternative which in all the circumstances was practicable.¹⁹³

104. The Reduction Provisions were not based on “credible actuarial evidence,” as is evident by the “exorbitant surplus” accumulated over the years.¹⁹⁴

105. Finally, the trial judge misapprehended the appellants’ submission to the effect that, had the Reduction Provisions begun at the later of retirement or age 65, there would not have been a violation of s. 15. This was not the appellants’ submission; to the extent this alternative was discussed, it was in reference to s. 1, addressed below. At this stage it is sufficient to say that once the government decided to extend the SDB beyond retirement and to cover all employees active and retired, it could no more limit those benefits on the basis of the recipients’ age than it could on their race, religion or gender. Governments may be able to avoid infringing the *Charter* by not giving any benefits at all; but once a benefit is given, it must be given without discrimination.

106. Nor was age being used as a proxy for retirement as it might be in other contexts;¹⁹⁵ it was used deliberately instead of retirement.¹⁹⁶

¹⁹³ *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 S.C.R. 321, p. 349 [emphasis added], ABoA Tab 37

¹⁹⁴ See para. 22 and accompanying transcript references

¹⁹⁵ See e.g. *Laronde*, ABoA Tab 18. The New Brunswick Court of Appeal dealt with a law that provided disabled workers injured on the job compensation for lost wages until they reached 65 and then compensation for the loss of pension benefits. These workers were never going to “retire” since they were no longer working, so age 65 was the proxy for retirement, which is distinguishable from the present case. Now that this Court has re-affirmed its commitment to the *Andrews* framework it is at least arguable that the NBCA might have a different view of this issue today.

¹⁹⁶ The trial judge found that the average age of retirement for federal public servants is 58 or 59 and that 50% retire before age 59. The median age was 62-63: *Answers to Interrogatories*, A.R. Vol. IV, pp. 168-180. The average age of retirement for Canadian Forces members is 45 after 25 years of service: Garson RFJ para. 138; Between 1947 and 1986 there was mandatory retirement at age 65 in the federal public service, although exceptions were made by ministerial exemption. After 1986 a federal public servant could work as long as he or she liked: Evidence of J. Arnold, p. 614, ll. 3-25, A.R. Vol. II, p. 156. The average or median age of retirement is subject to change and the Court might now take judicial notice of the very real possibility that more people will retire at older ages as life expectancy increases and insecurity related to insufficient or shrinking investments or retirement plans. See also *Senate Report on Aging* at pp. 106-11, ABoA Tab 40. As the decision of *Gill v. Canada*, 2009 FCA 56, ABoA Tab 46, reveals there are indeed civil servants who are still working past 70 and who may not even have a full pension entitlement.

Section One

107. Having found no violation of s. 15, the trial judge did not address other issues, including justification under s. 1 and remedy. However, this Court has the jurisdiction to make a fresh assessment of the evidence where such an assessment is in the interests of justice and feasible.¹⁹⁷ It is clear from the evidence that the government failed to prove that this breach of s. 15 is justified under s. 1 of the *Charter*, an onus that is particularly high in a s. 15 case.¹⁹⁸

Objective

108. The government must first justify the particular infringing measure by asserting a pressing and substantial objective.¹⁹⁹ There is a distinction as to whether the Court will consider an asserted objective pressing and substantial and whether, on the other hand, it is the “true objective” of the legislation.²⁰⁰ In *Hislop*, this Court said “in the majority of cases, in order to satisfy the pressing and substantial objective test, the government must adduce some evidence to support its argument.”²⁰¹

109. There are three possible objectives of the Reduction Provisions. At trial, and on appeal, the government asserted that that the Reduction Provisions maintain the competitiveness of the federal government as an employer.²⁰² Justice Rowles rightly rejected this as being “impermissibly vague and broad” and said that “[e]ven if it were to be accepted, it would inevitably fail the minimal impairment test.” In any event, the appellants’ uncontradicted evidence was that the federal public service, in the labour market, does not operate on the same competitiveness model as the private sector.²⁰³

¹⁹⁷ *Hollis v. Dow Corning Corp.*, [1995] 4 S.C.R. 634, para. 33, ABoA Tab 15

¹⁹⁸ *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, para. 129 [*RJR-MacDonald*], ABoA Tab 33; *Andrews*, pp. 153-54, ABoA Tab 4; *Lavoie*, para. 6, ABoA Tab 19; *R. v. Oakes*, [1986] 1 S.C.R. 103, pp. 135-40, ABoA Tab 31

¹⁹⁹ *RJR-MacDonald*, para. 144, ABoA Tab 33

²⁰⁰ *R. v. Bryan*, [2007] 1 S.C.R. 527, 2007 SCC 12, paras. 32-34, ABoA Tab 29; *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, 2007 SCC 27, paras. 143-47, ABoA Tab 13

²⁰¹ *Hislop*, para. 41, ABoA Tab 5

²⁰² Opening Remarks of D. Rennie, p. 409, ll. 18-20, A.R. Vol. II, p. 151; Evidence of G. Argue, p. 733, A.R. Vol. II, p. 187; See also *Argue Opinion*, A.R. Vol. VI, p. 32 and see *Withler, BCCA (per Rowles J.A.)*, paras. 108, 125, A.R. Vol. I, pp. 120, 127

²⁰³ *Chaykowski Reply Report*, A.R. Vol. IV, pp. 136-37

110. The government has asserted that the objective is related to costs. Rowles J.A. accepted that this was the objective, but relying on the government's own evidence, rightly rejected it as one that was pressing and compelling.²⁰⁴ Given the exorbitant surplus, there could be no claim that the government's purpose in having or maintaining the Reduction Provisions was to avert a "financial emergency" or "fiscal crisis" or involved "drastic circumstances" which is the only kind of cost justification that may be permissible.²⁰⁵

111. Defence counsel's opening alluded to what might be the real reason that the government did not repeal or modify the Reduction Provisions: the government "has to make sure that there's continued political and public support for compensation of the public service but that that compensation does not overreach or offend the limits of political or public acceptance."²⁰⁶ This is not a compelling and pressing objective, and it is an impermissible one. It is also the most likely one, and for that reason alone the government cannot meet its onus under s. 1.

Rational Connection

112. In the alternative, the appellants rely on the analysis of Rowles J.A.:

If the purpose of the legislation is related to cost-savings, then a reduction in benefits is clearly rationally connected to that goal. However, if the goal is to allocate benefits according to need, then the rational connection is much more tenuous. For the reasons I have given in the course of my s. 15 analysis, I am of the view that it has not been established that younger employees have a greater need for the death benefit than older people.²⁰⁷

Minimal Impairment

113. In *Alberta v. Hutterian Brethren*, the majority of this Court held that "deference [to legislative objective] is not blind or absolute. The test... is whether there is an alternative, less drastic means of achieving the objective in a real and substantial manner."²⁰⁸

²⁰⁴ *Withler, BCCA (per Rowles J.A.)*, paras. 113, 123, A.R. Vol. I, pp. 122, 126

²⁰⁵ *Newfoundland (Treasury Board) v. Newfoundland and Labrador Assn. of Public and Private Employees (N.A.P.E.)*, [2004] 3 S.C.R. 381, 2004 SCC 66, paras. 72-74 86, 97, ABoA Tab 27

²⁰⁶ Opening Remarks of D. Rennie, p. 402, ll. 5-30, A.R. Vol. II, p. 150; see also Evidence of J. Arnold, p. 617, ll. 39-47 and p. 618, ll. 1-25, A.R. Vol. II, pp. 157-58

²⁰⁷ *Withler, BCCA (per Rowles J.A.)*, paras. 128-29, A.R. Vol. I, pp. 127-28

²⁰⁸ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 9 W.W.R. 189, 2009 SCC 37, para. 55, ABoA Tab 3

114. The government could have realized its objective of cost saving (notwithstanding there was no fiscal crisis requiring the same) without the Reduction Provisions. The actuaries who gave evidence agreed that, if the Reduction Provisions had never existed or were now eliminated and other aspects of the Plans, such as contribution or benefit levels, were adjusted, the Plans would be sustainable.²⁰⁹

115. The SDB is primarily funded by employee contributions. The employer contribution is very low compared to private and other government benefit plans. Employee contributions to the SDB have been so high that the Plans have accumulated significant surpluses. In the face of such a low government contribution and a significant surplus, it is disingenuous to argue that the Reduction Provisions are necessary to maintain the affordability and security of the Plans.²¹⁰

116. Nor would the “employment package” constitute a minimal impairment for all the reasons set out above at paragraphs 84-88.

117. The appellants rely on Justice Rowles’ reasons at paragraphs 130-139 and, in particular:

[137] This case is not the first time that alternatives to the Reduction Provisions have been raised. In 1992, when Parliament was considering Bill C-55,... the Public Service Alliance of Canada... recommended the reductions should be eliminated “given that the reserves in the supplementary death benefit accounts are substantial”. The recommendations were not accepted. However, on cross-examination, Ms. Joan Arnold, a witness called by the respondent, admitted that at the time the amendments were proposed in 1992, there was no discussion amongst Treasury Board staff for the rationale of the Reduction Provisions beginning at age 60. No studies were done as to the comparative needs of spouses of contributors who died over the age of 60 versus under the age of 60. Finally, no one examined the needs of spouses whose partners died over the age of 60 and were in receipt of government programs (such as the pension programs, old age security, and CPP) as compared to the needs of spouses whose partners died under the age of 60 and were not in receipt.²¹¹

118. The appellants suggested at trial and on appeal that, were costs containment a pressing and compelling objective, having a reduction provision that commenced the later of retirement or an

²⁰⁹ See Facts at paras. 24-25; Re: Projected surplus without reductions: *Christie Report #1*, A.R. Vol. III, pp. 101, 119; *Christie Report #3*, A.R. Vol. IV, p. 82; Evidence of J. Christie p. 212, ll. 42-47; p. 213, ll. 12-22 and ll. 27-44; p. 214, ll. 1-20 and ll. 33-39, A.R. Vol. II, pp. 74-76; *Christie Report #2*, A.R. Vol. III, p. 148

²¹⁰ Evidence of G. Argue, p. 684, ll. 1-33; p. 685, ll. 27- 46; p. 688, ll. 23-47; p. 689, ll. 28-32; p. 694, ll. 27-46; p. 695, ll. 20-22, A.R. Vol. II, pp. 171-76, *Argue Opinion*, A.R. Vol. VI, p. 38; Evidence of J. Christie, p. 303, ll. 40-47, p. 304, ll. 1-11, A.R. Vol. II, pp. 122-23

²¹¹ *Withler, BCCA*, para. 137, A.R. Vol. I, p. 131

age such as 65 or older, would be less costly than no reduction provisions and less impairing than the Reduction Provisions.²¹² It is true that such a scheme would be less costly but the appellants now submit that even this alternative would not pass constitutional muster. Cost containment does not come close to being a pressing or compelling objective in this case, and even if it were, given Parliament's purpose for the SDB (to cover the expenses associated with last illness and death of *all of its employees active or retired*), Parliament must craft legislation that does not terminate the benefit when it is most needed – at any age, especially past 60 or 65. The trial judge was correct in finding that: “[a]mending the legislation in the manner contended for by [counsel for the appellants] would do nothing to redress this substantive complaint.” Where the Court was wrong was in holding that the appellants’ “substantive complaint” did not amount to unjustifiable age discrimination: the substantive complaint being, *inter alia*, that “the purpose of the SDB was to assist with the expenses associated with last illness and death... and that the Reduction Provisions did not correspond with that purpose because the expenses increased, not decreased, with age.”²¹³

Balancing the Deleterious Effects and Salutory Effects

119. It is difficult to conceive of any salutory effects that offset the deleterious effects of the Reduction Provisions. Parliament has denied elderly people, as they get older, a benefit that would have helped them cope, with dignity, with what can fairly be described as the most stressful and painful event of their lives, the last illness and death of a spouse. This detriment, in balance with the absence of any salutory effect, amounts to unjustifiable age discrimination.

Remedy

120. The appellants seek orders that the Reduction Provisions are inconsistent with the *Charter* and, pursuant to s. 52 of the *Constitution Act, 1982* are of no force or effect. The declaration must be given retroactive effect, and as such, the appellants are entitled to the difference between the SDB they received and the SDB they would have received without the Reduction Provisions, with interest. If necessary, the appellants seek an alternative order under s. 24(1).

²¹² see also *Clark Report*, A.R. Vol. V, p. 158; Evidence of D. Hébert, p. 846, ll. 41-47; p. 847, ll. 1-12, A.R. Vol. III, pp. 44-45, A.R. Vol. VI, p. 18; Evidence of J. Arnold, p. 612, ll. 29-47; p. 613, ll. 1-40, A.R. Vol. II, pp. 154-55; Evidence of D. Hébert, p.815, ll. 4-37; p. 833, ll. 17-24; pp. 834-49, A.R. Vol. III, pp. 32-47; Graphs and Charts, A.R. Vol. VI, pp. 177-84; *Withler, BCSC*, para. 168, A.R. Vol. I, p. 73

²¹³ *Withler, BCSC*, para. 168, A.R. Vol. I, p. 73

121. As this Court said in *Hislop*:

86 ... In instances where courts apply pre-existing legal doctrine to a new set of facts, Blackstone's declaratory approach remains appropriate and remedies are necessarily retroactive. Because courts are adjudicative bodies that, in the usual course of things, are called upon to decide the legal consequences of past happenings, they generally grant remedies that are retroactive to the extent necessary to ensure that successful litigants will have the benefit of the ruling...²¹⁴

122. Unlike *Hislop*, but like *Miron*,²¹⁵ this case does not involve "a substantial change in the law."²¹⁶ Age discrimination (unlike discrimination based on sexual orientation) has been clearly proscribed in the *Charter* since 1985 and the Reduction Provisions are unconstitutional based on well established jurisprudence stemming from *Andrews*, *Tétrault-Gadoury*, *Law*, and *Kapp*, to name but a few of the leading equality rights cases. The very specific provisions at issue in this case have been held to be unconstitutional in *Margolis* and their discriminatory features were condemned by the Canadian Human Rights Commission in 1980 as being in violation of the *Canadian Human Rights Act*.²¹⁷

123. Even if the government were to claim that a decision in favour of the appellants involved a substantial change in the law, this is a *necessary but not a sufficient* condition for a purely prospective remedy.²¹⁸ None of the factors in *Hislop* that operated to allow for only a prospective remedy in that case operate in the case at Bar.

124. While the SDB is a benefits scheme, it is one funded primarily by employee contributions and is thus more like an unconstitutional levy as in *Kingstreet Investments*.²¹⁹ The class has thereby paid too much for too little.

125. As a "benefit case," Parliament may have a "range of options"²²⁰ *moving forward*, but one option it does not have is to enact retroactive legislation denying the appellants their remedy as that would simply be to re-enact what the Court has declared to be an unconstitutional law.

²¹⁴ *Hislop*, para. 86, ABoA Tab 5

²¹⁵ *Miron v. Trudel*, [1995] 2 S.C.R. 418 [*Miron*], paras. 127-30, 150-62, ABoA Tab 25

²¹⁶ *Hislop*, paras. 99, 105-106, ABoA Tab 5

²¹⁷ *Withler*, BCSC, para. 127, A.R. Vol. I, pp. 56-57

²¹⁸ *Hislop*, para. 99, ABoA Tab 5

²¹⁹ *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, [2007] 1 S.C.R. 3, 2007 SCC 1, paras. 12, 19-30 [*Kingstreet Investments*], ABoA Tab 17

126. The appellants' remedial claim is grounded in their spouses' employment relationship and is supported by the self-described "exorbitant" surpluses accumulated over a long period of time in both Plans, the surplus being the result of the Reduction Provisions and over-contributions of employees to the Plans.²²¹ It is thus consistent with the *Hislop* "fairness to litigants" factor.²²²

127. For the same reasons the remedy sought is not one that would "encroach unduly on the inherently legislative domain of the distribution of government resources,"²²³ or be "highly disruptive in respect of... framed budgets." "[P]roviding a retroactive remedy in this case [is] the only means of 'cur[ing] an injustice which might otherwise go unremedied',"²²⁴ and the only means of achieving a victory that is not merely "hollow" or "Pyrrhic."²²⁵

PARTS IV AND V: COSTS SUBMISSION AND ORDER SOUGHT

128. The appellants seek their costs in this Court.

129. The appellants seek the following orders:

- a. a declaration that the Reduction Provisions are of no force or effect pursuant to s. 52 of the *Constitution Act, 1982*; and
- b. an order that the appellants and all members of the class are entitled to be paid the difference between what they received as a Supplementary Death Benefit, and what they would have received absent the Reduction Provisions, plus interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

"Joseph J. Arvay QC"

Dated: October 27, 2009

Joseph J. Arvay, Q.C., John Kleefeld
and Elin R. S. Sigurdson
Counsel for the Appellants

²²⁰ *Hislop*, para. 108, ABoA Tab 5

²²¹ However, the cost of providing a remedy to the appellants would likely be considerably less than even the surplus.

²²² *Hislop*, paras. 116, 160, ABoA Tab 5

²²³ *Hislop*, para. 117, ABoA Tab 5

²²⁴ *Hislop*, para. 106 (citing *Miron*), ABoA Tab 5

²²⁵ *Hislop*, para. 116, ABoA Tab 5

PART VI: LIST OF AUTHORITIES

	Paragraph(s)
CASES	
<i>A.C. v. Manitoba (Director of Child and Family Services)</i> , [2009] 7 W.W.R. 379, 2009 SCC 30	43, 49, 50
<i>Age Concern England v. Secretary of State for Business, Enterprise and Regulatory Reform</i> , [2009] All ER (EC) 619	45
<i>Alberta v. Hutterian Brethren of Wilson Colony</i> , [2009] 9 W.W.R. 189, 2009 SCC 37	113
<i>Andrews v. Law Society of British Columbia</i> , [1989] 1 S.C.R. 143	45, 49, 62, 65, 83, 106-107, 122
<i>Canada (Attorney General) v. Hislop</i> , [2007] 1 S.C.R. 429, 2007 SCC 10	62, 83, 108, 121-123, 125-127
<i>Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)</i> , [2004] 1 S.C.R. 76, 2004 SCC 4	62, 83
<i>Corbiere v. Canada (Minister of Indian and Northern Affairs)</i> , [1999] 2 S.C.R. 203	45, 51
<i>Dunsmuir v. New Brunswick</i> , [2008] 1 S.C.R. 190, 2008 SCC 9	71
<i>Egan v. Canada</i> , [1995] 2 S.C.R. 513	90, 97
<i>Ermineskin Indian Band and Nation v. Canada</i> , [2009] 1 S.C.R. 222, 2009 SCC 9	83, 97
<i>Ferraiuolo v. Olson</i> (2004), 246 D.L.R. (4 th) 225, 2004 ABCA 281	89, 93, 97
<i>Gill v. Canada</i> , 2009 FCA 56	49, 106
<i>Gosselin v. Québec (Attorney General)</i> , [2002] 4 S.C.R. 429, 2002 SCC 84	46-47, 50, 54-55
<i>Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia</i> , [2007] 2 S.C.R. 391, 2007 SCC 27	108
<i>Hodge v. Canada (Minister of Human Resources Development)</i> , [2004] 3 S.C.R. 357, 2004 SCC 65	74
<i>Hollis v. Dow Corning Corp.</i> , [1995] 4 S.C.R. 634	107
<i>Housen v. Nikolaisen</i> , [2002] 2 S.C.R. 235, 2002 SCC 33	72

	Paragraph(s)
<i>Kingstreet Investments Ltd. v. New Brunswick (Finance)</i> , [2007] 1 S.C.R. 3, 2007 SCC 1	124
<i>Laronde v. New Brunswick (Workplace Health, Safety and Compensation Commission)</i> (2007), 280 D.L.R. (4 th) 97, 2007 NBCA 10	49, 59, 106
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2 - 3 ELIZABETH II.

CHAP. 64.

An Act to amend the Public Service Superannuation Act.

[Assented to 26th June, 1954.]

HER Majesty, by and with the advice and consent of the 1952-53, c. 47. Senate and House of Commons of Canada, enacts as follows:

1. (1) The *Public Service Superannuation Act*, chapter 47 Part I. of the statutes of 1952-53, is amended by inserting therein, immediately after section 1 thereof, the following heading:

“PART I.
SUPERANNUATION.”

(2) A reference to “this Act” in sections 2 to 38 of the said Act, and in Part IV of Schedule A thereto, shall be References to Act. construed as a reference to Part I of the said Act.

2. The said Act is further amended by adding thereto the following Part:

“PART II.
SUPPLEMENTARY DEATH BENEFITS.

INTERPRETATION.

39. (1) In this Part,
(a) “basic benefit” with respect to a participant means
(i) five thousand dollars, or
(ii) the salary of the participant if it is a multiple of two hundred and fifty dollars or the nearest multiple of two hundred and fifty dollars above the salary of the participant if it is not a multiple of two hundred and fifty dollars,
whichever is the lesser amount, subject to a reduction, to be made as of such time as the regulations prescribe,

Definitions.
“Basic benefit.”

- of one-tenth of such lesser amount for every year in excess of sixty attained by the participant, except that in the case of a participant employed in the Public Service the basic benefit shall be not less than one-sixth of his salary if such one-sixth is a multiple of two hundred and fifty dollars or the nearest multiple of two hundred and fifty dollars above one-sixth of his salary if such one-sixth is not a multiple of two hundred and fifty dollars;
- “Benefit.” (b) “benefit” means the amount payable in respect of a participant under section 43;
- “Crown corporation.” (c) “Crown corporation” means a Crown corporation as defined in section 76 of the *Financial Administration Act*, except any such corporation specified in Part I of Schedule A to this Act;
- “Elective.” (d) “elective” as applied to a participant means that the participant comes within subparagraph (iv) of paragraph (e);
- “Participant.” (e) “participant” means
- (i) a person who is required by subsection (1) of section 4 to contribute to the Superannuation Account,
 - (ii) an employee of a Crown corporation who is required to contribute to the Superannuation Account in respect of current service or who, but for subsection (2) of section 4, would be required so to contribute,
 - (iii) a member of the regular forces, and
 - (iv) a person not coming within subparagraph (i), (ii) or (iii) who has made an election under section 40 or 41 and continues to contribute under this Part,
- but does not include an employee of a Crown corporation or public board excluded from the operation of this Part by the regulations;
- “Public board.” (f) “public board” means a board, commission or corporation specified in Schedule A and includes the Office of the Custodian of Enemy Property;
- “Public service participant.” (g) “public service participant” means a participant who is employed in the Public Service or who, having ceased to be so employed, continues to be a participant by virtue of an election made under section 40;
- “Regular forces participant.” (h) “regular forces participant” means a participant who is a member of the regular forces or who, having ceased to be such a member, continues to be a participant by virtue of an election made under section 41;
- “Salary.” (i) “salary” means
- (i) in the case of a participant employed in the Public Service, the compensation received for

the performance of the regular duties of his position or office in the Public Service,

- (ii) in the case of a participant who is a member of the regular forces, three thousand dollars per annum if his rank is lower than chief petty officer in the Royal Canadian Navy or warrant officer in the Canadian Army or Royal Canadian Air Force, and five thousand dollars per annum if his rank is chief petty officer or higher in the Royal Canadian Navy or warrant officer or higher in the Canadian Army or Royal Canadian Air Force,
- (iii) in the case of an elective public service participant, his salary in the Public Service at the time he ceased to be employed in the Public Service, and
- (iv) in the case of an elective regular forces participant, three thousand dollars per annum if his rank at the time he ceased to be a member of the regular forces was lower than chief petty officer in the Royal Canadian Navy or warrant officer in the Canadian Army or Royal Canadian Air Force, and five thousand dollars per annum if his rank at that time was chief petty officer or higher in the Royal Canadian Navy or warrant officer or higher in the Canadian Army or Royal Canadian Air Force; and

(j) other words and expressions have the same meaning as in Part I.

Other words and expressions.

(2) A participant who is employed by a Crown corporation shall for the purposes of this Part be deemed to be employed in the Public Service.

Crown corporation employees deemed to be in Public Service.

(3) Where in any circumstances a woman would be deemed to be or not to be the widow of a deceased contributor under Part I, a woman shall, in like circumstances, be deemed for the purposes of this Part to be or not to be the widow of a deceased participant.

When woman deemed widow.

(4) For the purposes of sections 40 and 41, in calculating the period during which a person has been employed in the Public Service (in this subsection called "public service") or has been a member of the regular forces (in this subsection called "military service"), public service shall be deemed to be military service and military service shall be deemed to be public service.

40. A person who ceases to be employed in the Public Service and at the time he ceases to be so employed is a public service participant who has been employed in the Public Service substantially without interruption for five or more years, may, within thirty days after that time, elect to continue to be a participant under this Part.

Election to continue as participant.

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Idem. **41.** A person who ceases to be a member of the regular forces and at the time he ceases to be such a member is a regular forces participant who has been a member of the regular forces substantially without interruption for five years or more, may, within thirty days after that time, elect to continue to be a participant under this Part.

CONTRIBUTIONS.

Amount of contribution. **42.** Every participant shall contribute to the Consolidated Revenue Fund at the rate of ten cents per month for every two hundred and fifty dollars in the amount of his basic benefit, or, in the case of elective participants and participants who are absent from duty, such contributions as the regulations prescribe.

BENEFITS.

Payment of benefit. **43.** (1) On the death of a participant there shall be paid to the persons and in the manner specified in this Part, the amount of the basic benefit of the participant with respect to which the last contribution payable under this Part by the participant was calculated.

"Last contribution" defined for certain cases. (2) Where, in the case of a participant who at the time of death was employed in the Public Service, salary is not paid for the full month in which he died, the last contribution shall be for that full month and shall be deemed to have become payable immediately before death.

To whom benefits paid. **44.** (1) Benefits shall be paid as follows:
 (a) if the participant died leaving a spouse, to the spouse; or
 (b) if the participant died leaving no spouse, to the estate of the participant.

How benefits paid. (2) Subject to any regulations made under paragraph (f) of subsection (1) of section 50, a benefit shall be paid in a lump sum.

Account in Consolidated Revenue Fund. Credits to Account. **45.** (1) There shall be an account in the Consolidated Revenue Fund to be known as the Public Service Death Benefit Account to which shall be credited the following:
 (a) the amount of all contributions paid under section 42 by public service participants;
 (b) the payments made by a Crown corporation or public board as required by the regulations;
 (c) one-sixth of the benefits paid in respect of participants who, at the time of death, were employed in the Public Service;

- (d) one-sixth of the benefits paid in respect of elective public service participants to whom an immediate annuity was payable under Part I upon their ceasing to be employed in the Public Service; and
 - (e) an amount representing interest on the balance from time to time to the credit of the said Account at such rate and calculated in such manner as the regulations prescribe.
- (2) There shall be an account in the Consolidated Revenue Fund to be known as the Regular Forces Death Benefit Account to which shall be credited the following: Idem.
- (a) the amount of all contributions paid under section 42 by regular forces participants;
 - (b) one-sixth of the benefits paid in respect of participants who, at the time of death, were members of the regular forces;
 - (c) one-sixth of the benefits paid in respect of elective regular forces participants to whom a pension was payable under the *Defence Services Pension Act* upon their retirement from the regular forces; and
 - (d) an amount representing interest on the balance from time to time to the credit of the said Account at such rate and calculated in such manner as the regulations prescribe.
- (3) Benefits shall be paid out of the Consolidated Revenue Fund and shall be charged as follows: How benefits to be charged.
- (a) the benefits paid in respect of public service participants shall be charged against the Public Service Death Benefit Account; and
 - (b) the benefits paid in respect of regular forces participants shall be charged against the Regular Forces Death Benefit Account.

GENERAL.

- 46.** (1) There shall be issued to elective participants a document in such form as the regulations prescribe as evidence that they are participants under this Part. Elective participants.
- (2) An elective participant ceases to be a participant if any contribution payable by him under this Part is not paid within thirty days after the due date thereof. Idem.

47. Benefits are not capable of being assigned, charged, attached, anticipated or given as security and any transaction purporting to assign, charge, attach, anticipate or give as security any benefit is void. Benefits not assignable, etc.

48. The Minister shall lay before Parliament at least once in every five years an actuarial report on the state of the Accounts established by this Part containing an estimate Actuarial report.

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of the extent to which the amounts standing to the credit of the Accounts and the contributions payable under this Part are sufficient to meet the benefits chargeable against the Accounts.

Annual
report.

49. The Minister shall lay before Parliament each year a report on the administration of this Part during the preceding fiscal year, including a statement showing the amounts that during such year were credited to or charged against each Account established by this Part.

Regulations.

50. (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Part into effect and, without restricting the generality of the foregoing, may make regulations

(a) prescribing the times as of which the reductions referred to in paragraph (a) of subsection (1) of section 39 shall be made;

(b) excluding any Crown corporation or public board from the operation of this Part;

(c) prescribing the manner and time of payment of contributions;

(d) prescribing the contributions to be made by elective participants and participants who are absent from duty and prescribing the conditions upon which participants who are absent from duty may continue to be participants;

(e) respecting the manner and time of proof of age and of death;

(f) authorizing payment, with the approval of the Treasury Board, out of any benefit payable to the estate of a deceased participant, of expenses incurred for the maintenance, medical care or burial of the participant;

(g) prescribing the rate of interest and the manner of calculating the interest to be credited to the Accounts established by this Part;

(h) prescribing the amount, time and manner of payments to be made by Crown corporations and public boards in respect of participants who are employed by such corporations or boards;

(i) prescribing the circumstances in which a deceased female participant who, in the opinion of the Treasury Board, was at the time of her death living apart from her husband by reason of his desertion, shall, for the purpose of this Part, be deemed to have died leaving no spouse; and

(j) prescribing forms for the purposes of this Part.

Application
of s. 30.

(2) Paragraphs (l), (m), (n), (o) and (p) of subsection (1) of section 30 are, *mutatis mutandis*, applicable to this Part.

51. (1) Section 56 of the *Civil Service Act* does not apply to a participant. *Civil Service Act.*

(2) No contract of insurance shall be entered into under the *Civil Service Insurance Act* on the life of any person unless *Civil Service Insurance Act.*

(a) a medical examiner or a medical referee has in accordance with the regulations under that Act recommended without qualification the acceptance of the risk, and

(b) the medical report on the application for the contract of insurance was based on a medical examination begun prior to the 1st day of May, 1954.

52. (1) Notwithstanding anything in this Part, the expression "participant" does not include *Ineligibility.*

(a) a person employed in the Public Service on the 1st day of July, 1954, or

(b) a person who is a member of the regular forces on the 1st day of July, 1954,

if that person, on or before the 1st day of November, 1954, in such manner and form as the regulations prescribe, has elected not to come under the provisions of this Part.

(2) An election made under this section is irrevocable. *Election irrevocable.*

53. (1) Except as provided in subsection (2), this Part shall come into force *Coming into force.*

(a) with respect to public service participants, and

(b) with respect to regular forces participants,

on a day or days to be fixed by proclamation of the Governor in Council.

(2) This section and sections 50 and 52 shall come into force on the day that *An Act to amend the Public Service Superannuation Act*, enacted at the first session of the twenty-second Parliament, was assented to. *Idem.*

8 - 9 ELIZABETH II.

CHAP. 38

An Act to amend the Public Service
Superannuation Act.

[Assented to 14th July, 1960.]

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

1952-53, c.47;
1953-54, c.64;
1955, c.16;
1956, c.44.

1. (1) Section 2 of the *Public Service Superannuation Act* is amended by adding thereto, immediately after paragraph (d) thereof, the following paragraph:

“(da) “Force” means the Royal Canadian Mounted Police;”

“Force.”

(2) Section 2 of the said Act is further amended by adding thereto, immediately after paragraph (j) thereof, the following paragraph:

“(ja) “regular forces” means the regular forces of the Canadian Forces, and includes the forces known before the coming into force of Part II of the *National Defence Act* as the Royal Canadian Navy, the Canadian Army Active Force, the Permanent Active Militia, the Permanent Militia Corps, the permanent staff of the Militia, the Royal Canadian Air Force (Regular) and the Permanent Active Air Force;”

“Regular forces.”

(3) Paragraph (l) of section 2 of the said Act is repealed and the following substituted therefor:

“(l) “salary”, as applied to the Public Service, means the compensation received by the person in respect of whom the expression is being applied for the performance of the regular duties of a position or office, and, as applied to the regular forces or the Force, means the pay or pay and allowances, as the case may be, applicable in the case of that person, as determined under the *Canadian Forces Superannuation Act* or the *Royal Canadian Mounted Police Superannuation Act*,”

“Salary.”

1960.

Public Service Superannuation Act. Chap. **38.**

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to erroneous advice received by one or more persons of that class, from a person in the Public Service whose ordinary duties included the giving of advice as to the counting of service under this Act or the *Superannuation Act*, that a period of service of such a person before the time he became a contributor thereunder could not be counted by him under the said Act, failed to elect under the said Act within the time prescribed therefor to pay for that service, the circumstances under which and the manner and time in which the contributor may elect to pay for that service, and the circumstances under which and the terms and conditions (including conditions as to interest) upon which any such election made by him to pay for that service, or any election made by him under paragraph (b) of subsection (1) of section 5 to pay for that service as a period of service described in clause (F) of subparagraph (iii) of that paragraph, shall be deemed to have been made by him under this Act or the *Superannuation Act*, as the case may be, within the time prescribed therefor by the said Act.”

(5) The Governor in Council may make regulations prescribing, in the case of a contributor who in the opinion of the Minister was one of a class of persons who, pursuant to erroneous advice received by one or more persons of that class, from a person in the Public Service whose ordinary duties included the giving of advice as to contributions for service under the *Civil Service Superannuation Act*, that a period of service of such a person before the time he became a contributor under the *Civil Service Superannuation Act* could be counted by him under that Act without contribution by him therefor, failed to elect under that Act within the time prescribed therefor to pay for that service, the circumstances under which and the manner and time in which the contributor may elect to pay for that service, and the circumstances under which and the terms and conditions (including conditions as to interest) upon which any such election made by him to pay for that service, or any election made by him under paragraph (b) of subsection (1) of section 5 of the *Public Service Superannuation Act* to pay for that service as a period of service described in clause (F) of subparagraph (iii) of that paragraph, shall be deemed to have been made by him under the *Civil Service Superannuation Act* within the time prescribed therefor by that Act.

21. (1) All that portion of paragraph (a) of subsection (1) of section 39 of the said Act following subparagraph (ii) thereof is repealed and the following substituted therefor: 1953-54, c. 64.
s. 2.

“whichever is the lesser amount, subject to a reduction, to be made as of such time as the regulations prescribe, of one-tenth of that lesser amount for every year of age in excess of sixty attained by the participant, except that in the case of a participant who is employed in the Public Service, the basic benefit shall be not less than

(iii) one-sixth of his salary if such one-sixth is a multiple of two hundred and fifty dollars, or the nearest multiple of two hundred and fifty dollars above one-sixth of his salary if such one-sixth is not a multiple of two hundred and fifty dollars, or

(iv) five hundred dollars, whichever is the greater, and in the case of an elective participant who, upon ceasing to be employed in the Public Service, was entitled under Part I to an immediate annuity or an annual allowance payable immediately or who, upon ceasing to be a member of the regular forces, was entitled under the *Canadian Forces Superannuation Act* to an annuity, the basic benefit shall be not less than five hundred dollars;”

(2) Paragraph (e) of subsection (1) of section 39 of the said Act is amended by striking out the word “and” at the end of subparagraph (iii) thereof, by adding the word “and” at the end of subparagraph (iv) thereof and by adding thereto, immediately after subparagraph (iv) thereof, the following:

“(v) a person not coming within subparagraph (i), (ii), (iii) or (iv) who has made an election under section 40 or 41 and to whom the basic benefit in the amount of five hundred dollars referred to in paragraph (a) applies without contribution under this Part by him therefor,”

1956, c. 44.
s. 7.

22. (1) Paragraph (b) of subsection (2) of section 40 of the said Act is repealed and the following substituted therefor:

“(b) may, within that period of thirty days, elect to continue to be a participant under this Part after the expiration of that period, and shall, if upon ceasing to be so employed he is entitled under Part I to an immediate annuity or an annual allowance payable immediately, be deemed so to have elected within that period to continue to be a participant under this Part after the expiration of that period.”



<p><i>The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11</i></p>	<p><i>Loi constitutionnelle de 1982 (R.-U.), constituant l'annexe B de la Loi de 1982 sur le Canada (R.-U.), 1982, c. 11</i></p>
<p>http://www.canlii.org/en/ca/const/const1982.html</p>	<p>http://www.canlii.org/fr/ca/const/const1982.html</p>
<p>Guarantee of Rights and Freedoms</p> <p>Rights and freedoms in Canada</p> <p>1. The <i>Canadian Charter of Rights and Freedoms</i> guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.</p>	<p>Garantie des droits et libertés</p> <p>Droits et libertés au Canada</p> <p>1. La <i>Charte canadienne des droits et libertés</i> garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.</p>
<p>Equality Rights</p> <p>Equality before and under law and equal protection and benefit of law</p> <p>15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p> <p>Affirmative action programs</p> <p>(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p>Droits à l'égalité</p> <p>Égalité devant la loi, égalité de bénéfice et protection égale de la loi</p> <p>15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.</p> <p>Programmes de promotion sociale</p> <p>(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion,</p>

	de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.
<p>Enforcement</p> <p>Enforcement of guaranteed rights and freedoms</p> <p>24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.</p>	<p>Recours</p> <p>Recours en cas d'atteinte aux droits et libertés</p> <p>24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.</p>



<p>Canadian Forces Superannuation Act, R.S.C. 1985, c. C-17</p>	<p>Loi sur la pension de retraite des Forces canadiennes, L.R.C. 1985, c. C-17</p>
<p>http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-17/latest/rsc-1985-c-c-17.html</p>	<p>http://www.canlii.org/fr/ca/legis/lois/lrc-1985-c-c-17/derniere/lrc-1985-c-c-17.html</p>
<p>Definitions</p> <p>60. (1) In this Part...</p> <p>"participant" means</p> <p>(a) a member of the regular force,</p> <p>(b) a member of the reserve force who is on full-time service, with the approval of the Chief of the Defence Staff, in a position in a regular force establishment or as supernumerary to a regular force establishment,</p> <p>(c) a person other than a member of the regular force who has made an election under section 62 and continues to contribute under this Part,</p> <p>(d) a person not coming within paragraph (a) or (c) who has made an election under section 62 and to whom the basic benefit in the amount of five thousand dollars referred to in paragraph (a) of the definition "basic benefit", or to whom the basic benefit of five hundred dollars referred to in paragraph (b) of that definition, applies without contribution under this Part by the participant therefor, and</p> <p>(e) a person who has made an</p>	<p>Définitions</p> <p>60. (1) Les définitions qui suivent s'appliquent à la présente partie...</p> <p>«participant »</p> <p>a) <i>Membre de la force régulière;</i></p> <p>b) membre à plein temps de la force de réserve qui, avec l'approbation du chef d'état-major de la défense, occupe un poste inscrit au tableau de dotation de la force régulière ou est en sus du nombre de postes fixé par ce même tableau;</p> <p>c) personne autre qu'un membre de la force régulière qui a exercé un choix aux termes de l'article 62 et continue à contribuer aux termes de la présente partie;</p> <p>d) personne non visée aux alinéas a) ou c) qui a effectué le choix prévu à l'article 62 et à qui s'applique la prestation de base d'un montant de cinq mille dollars mentionnée à l'alinéa a) de la définition de « prestation de base » au présent paragraphe ou à qui s'applique la prestation de base d'un montant de cinq cents dollars mentionnée à l'alinéa b) de cette définition, sans contribution de sa part aux termes</p>

<p>election under subsection 6.1(1),</p> <p>but does not include a person described in paragraph 62(1)(b) of the <i>Public Service Superannuation Act</i> who elected not to come under the provisions of Part II of that Act;</p>	<p>de la présente partie à cet égard;</p> <p>e) personne qui a effectué un choix prévu au paragraphe 6.1(1).</p> <p>La présente définition exclut une personne décrite à l'alinéa 62(1)b) de la <i>Loi sur la pension de la fonction publique</i> qui a choisi de ne pas se prévaloir des dispositions de la partie II de cette loi.</p>
<p>Amount of contribution</p> <p>65. Every participant shall contribute to the Consolidated Revenue Fund at the rate of five cents per month for every two hundred and fifty dollars in the amount of the participant's salary or, in the case of elective participants or participants who are absent from duty, such contribution as the regulations prescribe.</p>	<p>Montant de la contribution</p> <p>65. Chaque participant contribue au Trésor au taux de cinq cents par mois par tranche de deux cent cinquante dollars comprise dans le montant de son traitement ou, s'il s'agit d'un participant volontaire ou absent du service, pour le montant que fixent les règlements.</p>



<p><i>Canadian Forces Superannuation Regulations, C.R.C., c. 396</i></p>	<p><i>Règlement sur la pension de retraite des Forces canadiennes, C.R.C., c. 396</i></p>
<p>http://www.canlii.org/en/ca/laws/regu/crc-c-396/latest/crc-c-396.html</p>	<p>http://www.canlii.org/fr/ca/legis/regl/crc-c-396/derniere/crc-c-396.html</p>
<p>52. The times when the reductions referred to in the definition “basic benefit” in subsection 60(1) of the Act shall be made are as follows:</p> <p>(a) in the case of an elective participant who ceased to be a member of the regular force and to whom an annuity or pension is not payable under the Act or the <i>Defence Services Pension Continuation Act</i>, each reduction shall be made on each anniversary of the day (that is on or that follows the 61st birthday of the participant, whichever occurs first), on which an annual contribution under the Act is payable; and</p> <p>(b) in any case, other than the case mentioned in paragraph (a), each reduction shall be made on the first day of April or the first day of October whichever date immediately follows each anniversary of the birthday of the participant commencing with his 61st birthday.</p>	<p>52. Les époques auxquelles se feront les réductions prévues à la définition « prestations de base » au paragraphe 60(1) de la Loi sont les suivantes :</p> <p>a) dans le cas d’un participant volontaire qui a cessé d’être membre des forces régulières et qui n’a pas droit à une annuité ou à une pension en vertu de la Loi ou de la <i>Loi sur la continuation de la pension des services de défense</i>, chaque réduction se fera à chaque anniversaire du jour (qui est ou qui suit le 61^e anniversaire de naissance du participant, suivant celui qui survient le premier), auquel une contribution annuelle en vertu de la Loi est payable; et</p> <p>b) dans tout cas, autre que les cas mentionnés à l’alinéa a), chaque réduction se fera le premier jour d’avril ou le premier jour d’octobre, soit celle de ces dates qui suit immédiatement chaque anniversaire de naissance du participant à partir de son 61^e.</p>



<p><i>Canadian Human Rights Act, R.S.C. 1985, c. H-6</i></p>	<p><i>Loi canadienne sur les droits de la personne, L.R.C. 1985, c. H-6</i></p>
<p>http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-h-6/latest/rsc-1985-c-h-6.html</p>	<p>http://www.canlii.org/fr/ca/legis/lois/lrc-1985-c-h-6/derniere/lrc-1985-c-h-6.html</p>
<p>15. (1) It is not a discriminatory practice if</p> <p>...</p> <p>(c) an individual's employment is terminated because that individual has reached the normal age of retirement for employees working in positions similar to the position of that individual;</p>	<p>15. (1) Ne constituent pas des actes discriminatoires :</p> <p>...</p> <p>c) le fait de mettre fin à l'emploi d'une personne en appliquant la règle de l'âge de la retraite en vigueur pour ce genre d'emploi;</p>



<p><i>The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11</i></p>	<p><i>Loi constitutionnelle de 1982 (R.-U.), constituant l'annexe B de la Loi de 1982 sur le Canada (R.-U.), 1982, c. 11</i></p>
<p>http://www.canlii.org/en/ca/const/const1982.html</p>	<p>http://www.canlii.org/fr/ca/const/const1982.html</p>
<p>Primacy of Constitution of Canada</p> <p>52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.</p> <p>Constitution of Canada</p> <p>(2) The Constitution of Canada includes</p> <p>(a) the <i>Canada Act 1982</i>, including this Act;</p> <p>(b) the Acts and orders referred to in the schedule; and</p> <p>(c) any amendment to any Act or order referred to in paragraph (a) or (b).</p> <p>Amendments to Constitution of Canada</p> <p>(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.</p>	<p>Primauté de la Constitution du Canada</p> <p>52. (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.</p> <p>Constitution du Canada</p> <p>(2) La Constitution du Canada comprend :</p> <p>a) la <i>Loi de 1982 sur le Canada</i>, y compris la présente loi;</p> <p>b) les textes législatifs et les décrets figurant à l'annexe;</p> <p>c) les modifications des textes législatifs et des décrets mentionnés aux alinéas a) ou b).</p> <p>Modification</p> <p>(3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle.</p>

25-26 ELIZABETH II

25-26 ELIZABETH II

CHAPTER 28

CHAPITRE 28

An Act to correct certain anomalies, inconsistencies, archaisms, errors and other matters of a non-controversial and uncomplicated nature in the Revised Statutes of Canada, 1970 and other Acts subsequent to 1970

Loi visant à corriger certaines anomalies et incompatibilités, certains archaïsmes et certaines erreurs mineures et évidentes des Statuts révisés du Canada de 1970 et de certaines lois postérieures

[Assented to 29th June, 1977]

[Sanctionnée le 29 juin 1977]

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

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Miscellaneous Statute Law Amendment Act, 1977*.

1. La présente loi peut être citée sous le titre: *Loi corrective de 1977*.

Titre abrégé

R.S., c. A-3

AERONAUTICS ACT

LOI SUR L'AÉRONAUTIQUE

S.R., c. A-3

2. Subsection 6(6) of the *Aeronautics Act* is repealed and the following substituted therefor:

2. Le paragraphe 6(6) à la *Loi sur l'aéronautique* est abrogé et remplacé par ce qui suit:

Jurisdiction where offences committed outside Canada

“(6) Where a person has violated a provision of a regulation or an order or direction of the Minister made under a regulation with respect to the operation over the high seas or any territory not within Canada of an aircraft registered in Canada the violation of which is an offence by virtue of subsection (4) or (5), the offence is within the competence of and may be charged, tried and punished by the court having jurisdiction in respect of similar offences in the judicial division of Canada where that person is found in the same manner as if the offence had been committed in that judicial division.”

Jurisdiction en cas d'infractions commises hors du Canada

«(6) Lorsqu'une personne a enfreint une disposition d'un règlement ou d'une ordonnance ou directive du Ministre, établies sous le régime d'un règlement concernant l'utilisation, au-dessus de la haute mer ou de tout territoire non compris dans les limites du Canada, d'un aéronef enregistré au Canada, dont la violation constitue une infraction prévue par le paragraphe (4) ou (5), une telle infraction est du ressort de la cour compétente pour connaître des infractions semblables dans la division judiciaire du Canada où cette personne se trouve et une accusation visant une infraction de ce genre peut être portée devant cette cour, qui peut juger et punir l'inculpé, comme si l'infraction avait été commise dans cette division judiciaire.»

2	C. 28	Statute Law Amendment, 1977	25-26 ELIZ. II
R.S., c. A-13	ANIMAL DISEASE AND PROTECTION ACT	LOI SUR LES MALADIES ET LA PROTECTION DES ANIMAUX	S.R., c. A-13
1974-75-76, c. 86, s. 5	3. The <i>Animal Disease and Protection Act</i> is amended by adding thereto, immediately after section 5 thereof, the following heading:	3. La <i>Loi sur les maladies et la protection des animaux</i> est modifiée par l'insertion, après l'article 5, de la rubrique suivante:	1974-75-76, c. 86, art. 5
	"EVIDENCE"	«PREUVE»	
R.S., c. B-7	BLIND PERSONS ACT	LOI SUR LES AVEUGLES	S.R., c. B-7
	4. Subsection 5(1) of the <i>Blind Persons Act</i> is repealed and the following substituted therefor:	4. Le paragraphe 5(1) de la <i>Loi sur les aveugles</i> est abrogé et remplacé par ce qui suit:	
Allowance payable monthly	"5. (1) The allowance in respect of which the Government of Canada is authorized by this Act to make payments shall be payable monthly."	"5. (1) L'allocation pour laquelle le gouvernement du Canada est autorisé par la présente loi à faire des paiements doit être versée mensuellement."	Allocation mensuelle
1970-71-72, c. 6	CANADA COOPERATIVE ASSOCIATIONS ACT	LOI SUR LES ASSOCIATIONS COOPÉRATIVES DU CANADA	1970-71-72, c. 6
	5. (1) The <i>Canada Cooperative Associations Act</i> is amended by adding thereto, immediately after section 4 thereof, the following section:	5. (1) La <i>Loi sur les associations coopératives du Canada</i> est modifiée par l'insertion, après l'article 4, de l'article suivant:	
Corrections	"4.1 (1) Where a certificate of incorporation, continuation, amendment or amalgamation contains any misnomer, misdescription, clerical error or other defect, the Minister may direct that the certificate be corrected.	"4.1 (1) Le Ministre peut faire corriger les certificats de constitution en corporation, de continuation, de modification ou de fusion contenant, notamment des erreurs de noms, de description et de typographie.	Corrections
Notice of correction	(2) Notice of the correction of a certificate of incorporation, continuation, amendment or amalgamation shall be given forthwith by the Minister in the <i>Canada Gazette</i> if the correction made causes the certificate to depart materially from the text of the original notice given in respect thereof under section 14 or 28 or subsection 120(10)."	(2) Le Ministre doit, sans délai, faire publier dans la <i>Gazette du Canada</i> un avis de correction des certificats de constitution en corporation, de continuation, de modification ou de fusion lorsque cette correction modifie fondamentalement le texte de l'avis original soumis en vertu des articles 14 ou 28 ou du paragraphe 120(10)."	Avis de correction
	(2) Section 15 of the said Act is repealed.	(2) L'article 15 de ladite loi est abrogé.	
R.S., c. C-9	CANADIAN FORCES SUPERANNUATION ACT	LOI SUR LA PENSION DE RETRAITE DES FORCES CANADIENNES	S.R., c. C-9
	6. (1) Subparagraph 10(4)(b)(ii) of the <i>Canadian Forces Superannuation Act</i> is repealed and the following substituted therefor:	6. (1) Le sous-alinéa 10(4)b(ii) de la <i>Loi sur la pension de retraite des Forces canadiennes</i> est abrogé et remplacé par ce qui suit:	
	"(ii) with the consent of the Treasury Board, the whole or any part specified by the Treasury Board of any annuity	"(ii) du consentement du conseil du Trésor, à la totalité ou à toute partie, spécifiée par le conseil du Trésor, de	