S.C.C. FILE NO. 33039

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

HAZEL RUTH WITHLER and JOAN HELEN FITZSIMONDS

APPELLANTS
(Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

-and-

THE ATTORNEY GENERAL OF ONTARIO and
WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)

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PART I – STATEMENT OF FACTS

1. LEAF takes no position on the adjudicative facts.

PART II – POINTS IN ISSUE

2. In *Kapp,*[1] this Court renewed its commitment to a substantive equality approach as articulated in its first s.15 decision, *Andrews.*[2] LEAF seeks to further advance and solidify this commitment, arguing that:

a. Mirror-comparator groups as required by *Hodge*[3] reinstate the discredited similarly situated test and must be rejected.

b. The correspondence factor as described by Iacobucci J. in *Law*[4] has collapsed into a relevance test that further contributes to a similarly situated analysis.

c. The mirror-comparator group and the correspondence factor have been rigidly defined in relation to a narrow understanding of the purpose of the legislation, thus undermining substantive equality. A broad contextual approach to purpose is required.

d. Applying a substantive equality analysis to this appeal, the Court must "stand in the shoes" of the claimants. This contextualized approach reveals that the claimants are predominantly elderly widows, in a culture that erects barriers to women's full participation and economic security.

e. The reduction in the Supplementary Death Benefit ("SDB") to the claimants violates s.15 of the *Charter*;[5] the impugned provisions fail to take into account the needs of an already vulnerable group of elderly women, exacerbating their economic insecurity.

f. LEAF was granted leave to intervene to argue the role of comparison and correspondence in the substantive equality analysis. LEAF takes no position on s.1 of the *Charter.*

PART III – ARGUMENT

The Problems of "the Mirror"

3. As acknowledged by this Court in *Kapp,*[6] the focus, following *Hodge*, on identifying and tracking the single, correct, "mirror" comparator group has reintroduced the similarly situated test.[7]

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[1] *R.* v. *Kapp,* 2008 SCC 41 [*Kapp*] at paras. 14-25.
[2] *Andrews* v. *Law Society of British Columbia,* [1989] 1 S.C.R. 143 [*Andrews*].
[3] *Hodge* v. *Canada (Minister of Human Resources Development),* [2004] 3 S.C.R. 357 [*Hodge*] at para. 17.
[4] *Law* v. *Canada (Minister of Employment and Immigration),* [1999] 1 S.C.R. 497 [*Law*] at para. 70.
[5] *Canadian Charter of Rights and Freedoms, Constitution Act,* 1982, as enacted by the *Canada Act* 1981 (UK), 1982, c.11.
[6] *Kapp, supra* note 1 at paras. 15 and 22.

When claimants are asked to find a group that mirrors their own, the analysis becomes a search for "sameness" – "but for" a protected personal characteristic, the two groups are the same and they should therefore be treated the same way. The essence of the equality claim, however, may be that nobody "looks like" the claimant group -- it is precisely that their own distinct needs, long rendered invisible, must be taken into account.

4. Under the similarly-situated approach, the claimant group must show themselves as the same as those who fit a norm that has already excluded the claimant group. If they cannot show themselves as the same, the court is likely to find no discrimination, only difference. There are some claims, particularly when inequality is connected to distinctive aspects of experience related to group membership, that necessitate a focus on outcome.[8]

5. For example, in *Bliss*, the Court found no sex discrimination because pregnant persons were treated alike and were seen as relevantly different from non-pregnant persons. The Court held, "[a]ny inequality between the sexes in this area is not created by legislation but by nature."[9] The Court corrected its error in *Brooks*, recognizing discrimination by acknowledging that while pregnancy is a uniquely female experience, substantive equality should not concern itself with "relevant biological differences"[10] but should instead look to lived effects and systemic outcomes. Substantive equality is about promoting full social participation and inclusion: women should be equal economic actors, not disadvantaged by bearing all the costs associated with pregnancy.[11]

6. The mirror-comparator approach prevents the necessary consideration of discriminatory effects in the larger context of social, economic and political inequalities that shape the claimant group's opportunities, access to resources, security of the person, political leverage and other markers

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[7] Daphne Gilbert and Diana Majury, "Critical Comparisons: The Supreme Court of Canada Dooms Section 15" (2006) 24 *Windsor Y.B. Access Just.* 111; Hester Lessard, "*Charter* Gridlock: Equality Formalism and Marriage Fundamentalism" in Sheila McIntyre and Sanda Rodgers, *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms* (Markham: LexisNexis Butterworths, 2006) [*Diminishing Returns*]; Dianne Pothier, "Equality as a Comparative Concept: Mirror, Mirror on the Wall, What's the Fairest of Them All?" in *Diminishing Returns*, *ibid.*

[8] Pregnancy and pay equity claims in female-dominated workplaces are examples of gendered situations, one biological, one socially-constructed, that require broad level substantive equality comparison to recognize systemic inequalities and for which a mirror-comparator group approach is not helpful.

[9] *Bliss* v. *Canada (A.G.)*, [1979] 1 S.C.R. 183 at 190.

[10] *Miron* v. *Trudel*, [1995] 2 S.C.R. 418 [*Miron*] at para. 136.

[11] *Brooks* v. *Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219 at 1243-1244.

of full social inclusion. "[I]f we are not to undermine the promise of equality in s.15(1) of the *Charter*, we must go beyond [similarities and]...differences and examine the impact of the impugned distinction in its social and economic context..."[12]

7. The mirror-comparator group approach further fails to meet the demands of equality because it necessarily reduces claimants to a single, all encompassing ground of discrimination and thereby treats them as uni-dimensional. Some litigants will experience multiple forms of discrimination simultaneously that are integral to their claim. Discrimination suffered on the basis of one's sex, Aboriginal identity and poverty, for example, is lived as interactive, and is neither reducible to a single inequality nor simply additive. The experience of interlocking inequalities may defy dualistic comparisons under a single "ground" to which the mirror analysis is applied.[13]

8. In this case, the majority of the claimant group experiences inequalities arising from the interrelation of at least two grounds of discrimination: age and sex.[14] The onus on the claimant group should not be to establish that they are "exactly like" the younger surviving spouses who are entitled to the full SDB, "but for" their age and the age of their spouses.

Contextualized Correspondence

9. The mirror-comparator group approach has been accompanied by a relevance analysis that collapses into formalism. The formalist approach looks for relevant bases for differentiation between the two "mirror" comparator groups, with relevance determined in light of the stated purpose of the law. If the distinction is relevant to the government's purpose, there is no discrimination.

10. Justice Iacobucci's invocation of the correspondence factor in *Law* is best understood as endorsing substantive equality by requiring inquiry into whether the law or policy accounts, or fails

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[12] *Miron*, *supra* note 10 at para. 136; See also, *Andrews*, *supra* note 2 at 165.

[13] Kerri Froc, "Will 'Watertight Compartments Sink Women's *Charter* Rights? The Need for a New Theoretical Approach to Women's Multiple Rights Claims under the Canadian *Charter of Rights and Freedoms*" (LL.M. Thesis, Faculty of Law, University of Ottawa, 2008) [unpublished, on file with author] at 9-24; Daphne Gilbert, "Time To Regroup: Rethinking Section 15 of the *Charter*" (2003) 48 McGill L.J. 627; Nitya Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1993) 19 Queen's L.J. 179; Dianne Pothier, "Connecting Grounds of Discrimination to Real People's Real Experiences" (2001), 13 C.J.W.L. 37.

[14] Members of this claimant group may also experience distinct discrimination because of the correlation between advanced age and disability. See *Statistics Canada Gender Based Report*, *infra* note 24 at p.292.

to account, for the claimant's actual and distinct circumstances,[15] contextually understood. This approach enables identification of adverse effects. However, the correspondence factor has slipped into relevance; it has become the similarly situated test.[16] The relevance test's uncritical and de-contextualized approach to statutory purpose "[m]ay validate distinctions which violate the purpose of s.15(1)..." and "lead to enquiries better pursued under s.1."[17] This problem was foreshadowed by Wilson J. who warned in *Turpin* that without a contextualized approach, the s.15 analysis would become a mechanical and sterile categorization process conducted entirely within the four corners of the challenged legislation. This would likely "result in the same kind of circularity which characterized the similarly situated test clearly rejected by this Court in *Andrews*."[18]

11. Instead, a substantive approach to equality demands a thorough interrogation of the legislative scheme and its impact. "[I]t does not follow from a finding that a group characteristic is relevant to the legislative aim, that the legislator has employed that characteristic in a manner which does not perpetuate limitations, burdens and disadvantages in violation of s.15(1). This can be ascertained only by examining the effect or impact of the distinction in the social and economic context of the legislation and the lives of the individuals it touches."[19]

Equality Requires Contextualized, Effects-Based Analysis from the Claimant's Perspective

12. Discrimination does not merely exist as a historic problem. Rather, our society remains pervasively marked by systemic inequalities which create hierarchies of power and powerlessness, and shape our lives and opportunities.[20] Institutional structures that are designed to majoritarian standards perpetuate the interests and hence social, economic and political domination of certain groups. Systemic inequalities are normalized as common sense, natural or neutral, reinforcing the perceived superiority of the dominant and inferiority of those they subordinate.

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[15] *Law*, *supra* note 4 at para. 70.
[16] Bruce Ryder, Cidalia C. Faria and Emily Lawrence. "What's Law Good For? An Empirical Overview of *Charter* Equality Rights Decisions" (2004) 24 S.C.L.R. (2d) 103 at 119, 120, 122; See also: Sheila McIntyre, "Deference and Dominance: Equality Without Substance" in *Diminishing Returns*, *supra* note 8.
[17] *Miron*, *supra* note 10 at para. 137 (per McLachlin J.); *Canadian Foundation for Children, Youth and the Law* v. *Canada (Attorney General)*, 2004 SCC 4 at paras. 97-99 (per Binnie J.).
[18] *R.* v. *Turpin*, [1989] 1 S.C.R. 1296 at 1332.
[19] *Miron*, *supra* note 10 at para. 133 (per McLachlin J.).
[20] See for example: Diana Majury, "The *Charter*, Equality Rights and Women: Equivocation and Celebration", (2002) 40 Osgoode Hall L.J. 297; Margot Young, "Blissed Out: Section 15 at Twenty" in *Diminishing Returns*, *supra* note 8.

13. Given the pervasiveness of systemic inequality, discrimination will only be fully visible by centering on the experience of those marginalized by majoritarian norms and standards. A substantive equality analysis must be "undertaken in a purposive and contextualized manner."[21] The task is to inhabit, as far as possible, the perspective of the claimants, so as to understand the historical, social and political context of the claim. A central purpose of the equality guarantee is to "ameliorate the position of groups within Canadian society who have suffered disadvantage by exclusion from mainstream society."[22] By shifting perspective, the court renders visible those discriminatory practices that, "although widespread and persistent, are frequently invisible to everyone but those who suffer from them."[23]

14. In relation to the "sex" ground of discrimination, for example, a contextual approach includes a recognition that women, as a group, are less economically secure; experience systemic labour market discrimination, including pay inequity, and occupational segregation into part-time, insecure and lower paid work with no or poor pensions; are overwhelmingly responsible for unpaid caregiving for children and family members, resulting in interrupted and reduced labour force participation and economic insecurity; and are poorer than men in every age group.[24] Understanding this context is crucial to recognizing whether the disadvantage created by a government rule is discriminatory; the fundamental question is whether the rule has the effect of perpetuating these harms. "The remedial and holistic nature of the s.15(1) inquiry obliges this Court to proceed to the directed contextual analysis from the standpoint of acknowledging severe and profoundly patterned historical disadvantages."[25]

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[21] *Law*, *supra* note 4 at paras. 23, 41; *M.* v. *H.* [1999] 2 S.C.R. 3 at para. 47.
[22] *Eaton* v. *Brant County Board of Education*, [1997] 1 S.C.R. 241 at para. 66; *Granovsky* v. *Canada*, [2000] 1 S.C.R. 703 at para. 79.
[23] Frances Henry and Carol Tator, *The Colour of Democracy: Racism in Canadian Society*, 3rd ed. (Toronto: Nelson Thomson, 2006) at 1, cited in Julie Jai and Joseph Cheng, "The Invisibility of Race in Section 15: Why Section 15 of the *Charter* has not Done More to Promote Racial Equality" (2006) 5 J.L. & Equality 125 at para. 45.
[24] Statistics Canada, *Women in Canada 5th Edition, A Gender Based Statistical Report* (Ottawa: Social and Aboriginal Statistics Division, March 2006) [*Statistics Canada Gender Based Report*] at 14, 15, 109, 134, and 140; Women's lower wages, reduced labour force participation and part-time or other insecure work result in limited or no savings and reduced pension entitlements, whether under a private plan or CPP/QPP. The average monthly retirement income being paid to women who retired in May 2009 was only $391.29 while the average retirement pensions paid to men was $564.23, with the maximum CPP retirement pension for 2009 being $908.75 a month. Monica Townson, *Women's Poverty and the Recession* (Canadian Centre for Policy Alternatives, September 2009) at 31 [*Women's Poverty and the Recession*]. See also *infra* at notes 37 and 39.
[25] *Lovelace* v. *Ontario*, [2000] 1 S.C.R. 950 at para. 59.

15. As stated in *Andrews*, recognizing difference "is the essence of true equality."[26] Substantive equality takes into account distinct needs and remedies inequality even when, or precisely because, the claimants are differently situated. The government may claim that a law or policy is directed only at those who currently enjoy the benefit and conclude that the claimants are relevantly different, failing to recognize that the legitimate needs of the claimants are properly included within the purpose of the scheme.

16. In *Eldridge,*[27] the Court advanced equality by ensuring that deaf patients could fully participate in medical decision-making. The Court was not diverted from a substantive equality analysis by governments' urging a narrow comparison with other minority language users with a need for interpreter services, or by a search for comparable services provided to other persons with disabilities to facilitate their access to medical services. In finding a s.15 violation, the Court recognized the difference that deafness makes. Deaf patients faced discrimination in accessing services because the medical system was designed as though everyone could hear.

17. This Court should draw on its human rights jurisprudence to inform a substantive approach to equality. The task of moving beyond similarity and difference, to challenging an established standard, was taken up by this Court in *Meiorin.*[28] The Court noted with approval that the heart of the substantive equality guarantee is the "goal of transformation" – changing institutions and relations to make them "available, accessible, meaningful and rewarding for the many diverse groups of which our society is composed."[29]

18. To achieve substantive equality, it is necessary to adopt a broad, equality-minded articulation of the statutory objective.[30] In *Battlefords and District Co-operative* v. *Gibbs,*[31] this Court adopted a principled and contextual approach to statutory purpose that must also be taken in *Charter* cases. The

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[26] *Andrews, supra* note 2 at 169.
[27] *Eldridge* v. *British Columbia (Attorney General),* [1997] 3 S.C.R. 624 [*Eldridge*].
[28] *British Columbia (Public Service Employee Relations Commission)* v. *BCGSEU,* [1999] 3 S.C.R. 3 [*Meiorin*]. LEAF cites this case, and *Gibbs, infra* note 31, recognizing that there are distinct analytical approaches to human rights and *Charter* claims; see *Andrews, supra* note 2 at 175-176.
[29] *Ibid,* at para. 41, citing Shelagh Day and Gwen Brodsky, "The Duty to Accommodate: Who Will Benefit?" (1996) 75 *Can. Bar Rev.* 433 at 462.
[30] *Miron, supra* note 10 at para. 133-137.
[31] [1996] 3 S.C.R. 566 [*Gibbs*].

purpose of the scheme was redefined explicitly to make it consonant with the goals of human rights legislation and broadly framed to reflect the needs addressed, not limited to categories of persons defined by a ground. *Gibbs* concerned an employment benefit scheme that offered different conditions for receipt of long-term disability for physical as compared to mental disabilities. Justice McLachlin (as she then was) held that:

> ...in defining the purpose of schemes, reference should not be made to specific disabilities and specific target groups. To permit this is to permit the kind of reasoning which led tribunals and courts in the past to deny benefits to pregnant women, on the ground that the schemes in question were intended to compensate for illness only. This Court rejected such reasoning in *Brooks*, by defining the purpose of the plan broadly as being to compensate persons who were unable to work for valid-health-related reasons. The focus of the inquiry was thus placed on the need being provided for—the loss of employment for health-related reasons—rather than on the class of person being compensated.[32]

Application: Contextualized Comparison and Correspondence in this Case

19. The reasoning in *Gibbs* is helpful in assessing the impugned provisions in this case, which progressively reduce the SDB to claimants whose spouses died after age 60 or 65. Rather than focusing on the age classifications in the scheme, the central concern should be the broad need being provided for – without reference to age. For younger recipients and older recipients the SDB should be described as meeting a need for "transitional funding" to assist recipients with economic dislocation following the death of a spouse. This description of the broad purpose encompasses the benefit's actual import.

20. The impugned provisions address the needs of the younger survivor whose spouse dies before age 60 or 65, but virtually ignore the needs of the most elderly survivors. A surviving spouse's need for transitional funding does not disappear with age; it varies greatly depending on individual circumstances, including the length of last illness of the spouse, and the stage of life and caregiving responsibilities of the survivor. After a sudden death, a younger survivor who is gainfully employed, has no dependents, and is the beneficiary of mortgage insurance and life insurance benefits would be economically secure without receiving the full SDB payment. In contrast, an elderly widow never employed outside the home, carrying a mortgage, and having spent retirement savings on uninsured health expenses during her spouse's lengthy illness, might face poverty after

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[32] *Ibid.* at para. 50 (per McLachlin J.).

receiving only the paid-up benefit.[33] Within a context of varied needs and circumstances, virtual exclusion of the most aged is discriminatory.

21. The task for the Court is *not* to locate the "mirror" comparator group against which to measure the Appellants' claim of disadvantage. The question is *not* whether the distinction discriminates against the claimants as compared only to a particular subset of those who are entitled to the full SDB, either young widows or those in their 40s and 50s who are entitled to a full SDB and may also be entitled to a partial or full pension. The focus instead is on a contextual understanding of the place of the claimants within the benefit scheme and society at large, and the effects of the impugned provisions.

22. A contextualized focus on the lived experiences of the appellants reveals that, typically, the claimants are older women. All of the representative plaintiffs and claimant witnesses are women. The Trial Judge alludes to the majority of the members of the class being women. Most spousal relationships are heterosexual, women tend to marry slightly older men and to live longer than men, and the armed forces are, and until very recently, the public service was, male dominated.[34] The impugned provisions, while worded in a gender-neutral way, disproportionately affect elderly single women, a group that is vulnerable and more marginalized than many other groups in society.

23. The Attorney General argues that the elderly, as a group, no longer experience economic disadvantage in Canada.[35] This is false. Elderly single women are particularly financially vulnerable after a lifetime of systemic labour market discrimination.[36] This is true of the female claimants, as a

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[33] In this case, the survivor's pension available to wives of deceased civil service and armed forces members is equal only to a maximum of 35% of the annual salary of the plan member (for members who have contributed 35 years of pensionable service) resulting in a significant drop in income after their spouse's death; Appellants' factum, para. 13. See also *infra*, notes 37 and 39.

[34] See Reply Report of John Christie, A.R. Volume IV at 79 which confirms that even as late as 1989 the ratio of men to women in the civil service was 144%. Equal representation of men and women in the civil service was achieved in 1998, although men still dominate the Canadian workforce in general, Statistics Canada, *Employment Trends in the Federal Public Service* by Katarzyna Naczk, (Ottawa: Public Institutions Division, March 2007) at 8. In 2007, only 13.5% of the armed forces were women, an increase from previous years, see Department of National Defence, *Annual Report on Regular Force Personnel* 2007/2008 (Ottawa: Workforce Modelling & Analysis Section, February 2009) at iii.

[35] Respondents' Factum at para. 34; But see *Law, supra* note 4 where the Court recognized the economic vulnerability of older surviving spouses at paras. 101, 103.

[36] The expert economist called by the Appellants at trial, Professor Chaykowski, gave evidence with respect to the reduced incomes of elderly women, including that the median income of female seniors is less than that of male

group, whether or not they are somewhat better off than other elderly women in Canada who are not impacted by the legislative scheme. As members of a disadvantaged group, this Court has recognized that "in most cases, further differential treatment will contribute to the perpetuation or promotion of their unfair social characterization, and will have a more severe impact upon them, since they are already vulnerable."[37]

24. Many of these claimant women would not have been employed outside the home, at least not full-time.[38] Instead, they have contributed to the well-being of their families, facilitating the earnings of the (typically male) pension-holder. The value of women's economic contributions through domestic labour and childcare is often disregarded in a society constructed to recognize male norms around market participation. Legislation discriminates if it fails to take into account the needs of women in traditional relationships arising at separation and death.

25. The reduction in benefits for those with older spouses assumes recipients have less need for transitional funding, which in turn rests on a series of assumptions: that older employees will have amassed significant savings that can be easily and quickly accessed by the surviving spouse at the time of death; that older employees will have planned for their death and saved to adequately provide for their spouses and other dependents; that older employees do not need the additional funds to cover the variety of circumstances surrounding death, whether sudden or expected. These various suppositions relate to the choices of the employee, not the surviving spouse; the surviving spouse

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seniors, the median level of assets of female seniors is less than that of male seniors, and that it was an "empirical regularity" that female seniors fare less well in terms of income as compared to male seniors; see Chaykowski Report, A.R. Vol. IV at 92 and 94; and Evidence of Chaykowski, A.R. Vol. II at 126. A high percentage of elderly women living on their own live in poverty, see Statistics Canada, *A Portrait of Seniors in Canada – 2006*, by Martin Turcotte and Grant Schellenberg (Ottawa: Social and Aboriginal Statistics Division, 2007) at 68 and Monica Townson, "The impact of precarious employment on financial security in retirement" in Statistics Canada, *New Frontiers of Research on Retirement* ed. by Leroy O. Stone, (Ottawa: Unpaid Work Analysis Division, 2006) 355 at 363-367: See also Special Senate Committee on Aging – Final Report, *Canada's Aging Population, Seizing the Opportunity* (April 2009) http://www.parl.gc.ca/40/2/parlbus/commbus/senate/com-e/agei-e/rep-e/AgingFinalReport-e.pdf at 98, 107-108 and 117; Government of Canada, National Advisory Council on Aging, *Seniors on the Margins, Aging in Poverty in Canada* (2005) at 9 and 13; *Statistics Canada Gender Based Statistical Report*, *supra* note 24 at 135, 140, 278; *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Canada* (7 November 2008) CEDAW/C/CAN/CO/7 at para. 37

[37] *Law*, *supra* note 4 at 63.

[38] *Statistics Canada Gender Based Statistical Report*, *supra* note 24 at 275, 276, 280; *Women's Poverty and the Recession*, *supra* note 24 at 31; see also *supra* note 36; This may be particularly true of military wives and wives of public servants who were very mobile. Prior to the 1960s, wives of officers were *forbidden* from paid employment, see Deborah Harrison and Lucie LaLiberte, *No Life Like It: Military Wives in Canada* (Toronto: James Lorimer & Sons, 1994) at 122-123, 160-173.

may have had limited or no control over these circumstances. This reality underlines that the need for transitional funding is gendered.

26. It is predominantly women, in economically interdependent relationships, who require transitional funding, at all ages. To remedy and prevent discrimination - the goal of s.15 - more is required than assumptions that a historically disadvantaged group can somehow manage to get by on its own, given their social and political context of economic vulnerability. The government must demonstrate that it has taken into account the impact of its scheme on all surviving spouses, and justify, with evidence, its age-based distinctions. It cannot simply assert that retirees can be expected to have saved for the full range of needs that may arise at the end of life.

Conclusion

27. Section 15's tumultuous interpretive history reminds us that, "…there will never be a time when the work of building a better, i.e., more egalitarian society will be complete, when we can wash our hands, put on our party clothes, and say that the job is done… Section 15 jurisprudence will *always* be a work in progress."[39] The promise of *Kapp* flows from this Court's commitment to substantive equality as the heart of s.15. A contextualized approach to comparison, with careful examination of the effects of the impugned legislation, must guide substantive equality analysis.

PART IV – COSTS

28. LEAF does not seek costs, and respectfully submits that no order for costs should be made against it, except the Order of Cromwell J. dated December 29, 2009.

PART V – ORDERS SOUGHT

29. LEAF takes no position on the ultimate disposition of the appeal.

30. LEAF respectfully requests that it be granted an opportunity to make oral submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26th DAY OF February, 2010.

DAPHNE GILBERT **JOANNA RADBORD**

[39]Donna Greschner, "Praise and Promises" (2005) 29 S.C.L.R. (2d) 63 at 73.

PART VI – AUTHORITIES

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