



[2021] 3 F.C.R. D-21

**PENSIONS**

Canada Pension Plan — Survivor's pension — Judicial review seeking to quash decision by Social Security Tribunal, Appeal Division (2020 SST 147) finding that *Canada Pension Plan*, R.S.C., 1985, c. C-8 (Plan), s. 63(6) not infringing *Canadian Charter of Rights and Freedoms*, s. 15(1) in unjustified way — Eligibility for, calculation of survivor's pension governed by Plan, ss. 58, 63, 72 — Amount calculated partly in relation to amount of deceased spouse's contributions to Plan — Other factors present — S. 63(6) fitting amongst these factors — If individual has survived two spouses, s. 63(6) limiting spouse to one survivor's pension, albeit higher of two — Applicant claiming s. 63(6) cap discriminating against her on basis of sex — Stating seemingly neutral law in s. 63(6) indirectly placing women at disadvantage — Whether s. 63(6) discriminating against applicant — S. 63(6) not suffering from severe deficiencies identified in cases such as *Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 SCC 78, [2004] 3 S.C.R. 657 — Evidence suggesting no detrimental effects resulting from s. 63(6) — Applicant failed to show that s. 63(6) creating distinction based on enumerated or analogous ground, that s. 63(6) imposing burdens or denying benefit in manner reinforcing, perpetuating or exacerbating disadvantage — On its face, s. 63(6) not discriminating between men, women — Nothing in Supreme Court case law eliminating applicant's obligation to adduce evidence in support of her claim of discrimination — *Fraser v. Canada (Attorney General)*, 2020 SCC 28, 450 D.L.R. (4th) 1 instructing that two types of evidence helpful in proving that a law has disproportionate impact on members of protected group — Courts acting only on basis of evidence unless legislative provision creating factual presumption or doctrine of judicial notice, very narrow, restricted doctrine, applying — This is so under Charter — If court not having evidence grounded in actual situation of discrimination claim it must reject s. 15(1) claim — Nature, quality of evidence herein general, unduly broad — In *Fraser*, sex-based discrepancy established between demographics of group affected by law, group that could be affected by law — Here, no similar sex-based discrepancy in demographics of group law could apply to, i.e., once-widowed survivors, demographics of group law did apply to, i.e., twice-widowed survivors — Survivor's pension not intended to provide symbolic recognition of non-financial contributions made to a marriage — Designed instead to provide minimum income supplement, related in part to contributions made to Plan by spouse, not just contributions made during marriage — Applicant's argument that any legislative provision that perpetuates pre-existing disadvantage, does not redress it liable to be struck down rejected — Courts should not frustrate substantive equality claims by imposing evidentiary requirements that deserving s. 15(1) claimants cannot meet — Allowing individuals to stack survivor's pensions on top of one another would undermine insurance nature of Plan, place survivors of more than one spouse at an advantage as compared to survivors of only one spouse — S. 63(6) is minimally impairing — Beneficial effects of s. 63(6) outweighing deleterious effects of any rights infringement — Application dismissed.

WEATHERLEY V. CANADA (ATTORNEY GENERAL) (A-181-20, 2021 FCA 158, Stratas J.A., reasons for judgment dated July 29, 2021, 33 pp.)