

**Date: 20080313**

**Docket: A-35-07**

**Citation: 2008 FCA 99**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
SHARLOW J.A.**

**BETWEEN:**

**ELISABETA LEZAU**

**Applicant**

**and**

**MINISTER OF SOCIAL DEVELOPMENT AND  
ATTORNEY GENERAL OF CANADA**

**Respondents**

Heard at Toronto, Ontario, on March 12, 2008.

Judgment delivered at Toronto, Ontario, on March 13, 2008.

**REASONS FOR JUDGMENT BY:**

**LÉTOURNEAU J.A.**

**CONCURRED IN BY:**

**NADON J.A.  
SHARLOW J.A.**

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**REASONS FOR JUDGMENT**

**LÉTOURNEAU J.A.**

[1] This application for judicial review involves a challenge under section 15(1) of the *Canadian Charter of Rights and Freedoms* (Charter) to the minimum contributory requirements for survivor benefits under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (Plan).

[2] At issue are paragraphs 44(1)(c), 44(1)(d), 44(1)(f), 44(3)(b) and subparagraph 49(b)(ii) of the Plan which the applicant asks this Court to declare unconstitutional because they allegedly contravene section 15.

[3] The applicant is an immigrant to Canada whose spouse was a contributor to the Plan. She was denied survivor benefits by the minister of Social Development (minister) because her deceased spouse had made insufficient contributions to the Plan.

[4] The Pension Appeals Board (Board) upheld the decision of the minister in detailed and comprehensive reasons for judgment totalling forty (40) pages. It applied to the facts of the case the principles established by the Supreme Court of Canada in *Law v. Canada*, [1999] 1 S.C.R. 497 and *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28.

[5] Over the minister's objection, the Board used as a comparator group to conduct its analysis under section 15 all immigrants who come from a non-agreement country on or after their eighteenth birthday. The applicant and her spouse fell into that category.

[6] For the sake of clarity, I should add that the term "non-agreement country" refers to a country with which Canada has not entered into a reciprocal international social security agreement. Where such an agreement exists, Canada will recognize the years of contributions made by an immigrant to the social security regime of the country that he left to immigrate to Canada. There is

no such recognition when the country is a non-agreement country. This is the case of Romania where the applicant and her spouse came from.

[7] I should also add that, under the Plan, the age of eighteen (18) marks the beginning of the deceased's contributory period to the Plan. That period ends on occurrence of several events one of which is the death of the contributor.

[8] The applicant submitted to the minister and the Board that the time at which the contributory period begins, i.e. age 18, is discriminatory towards immigrants like her spouse who was 43 years old when he came to Canada. She argued that the time of an immigrant's arrival in Canada should mark the commencement of the contributory period since he or she cannot contribute to the Plan before arrival in Canada and taking employment here. Those immigrants coming from a country where an agreement exists with Canada are treated like Canadians because their contributions in their home country are recognized by the Plan. Immigrants from a non-agreement country are treated differently and, as a result, discriminated against.

[9] The Board noted that the contributory rules to the Plan apply to all Canadians, immigrants and non-immigrants. It acknowledged that the Plan created a differential treatment between contributors who have made sufficient contributions and those who have not. However, it rightly pointed out that this is an attribute of any social benefit legislation that requires a person to qualify for benefits by meeting certain criteria.

[10] Looking at the disadvantage alleged by the applicant in this case, it concluded that the disadvantage was not suffered because of any personal characteristics or of specific targeting. In the Board's view, there was no violation of human dignity.

[11] Moreover, the Board studied the proposal made by the applicant that the contributory period begin only after arrival in Canada and concluded that "the net result would be that each immigrant would be treated differently from not only non-immigrants but other immigrants who may have arrived in Canada at an earlier age than they did": see paragraph 54 of the Board's reasons for judgment.

[12] In the end, the Board concluded that the differential treatment of contributors to the Plan did not amount to discrimination within the meaning of section 15 of the Charter.

[13] After a careful review of the Board's decision, the record and the submissions of the parties, I am satisfied that the Board correctly applied the right principles to the facts of this case and, in so doing, committed no error which warrants or justifies our intervention.

[14] I would dismiss the application for judicial review.

\_\_\_\_\_  
"Gilles Létourneau"

J.A.

"I agree  
M. Nadon J.A."

"I agree  
K. Sharlow J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-35-07

**(AN APPLICATION FOR JUDICIAL REVIEW OF A DECISION OF THE PENSION APPEALS BOARD, DATED DECEMBER 8, 2006, WHEREBY THE APPLICANT'S APPLICATION WAS DISMISSED – CANADA PENSION PLAN NO. CP23253)**

**STYLE OF CAUSE:** ELISABETA LEZAU v. MINISTER OF SOCIAL DEVELOPMENT AND ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 12, 2008

**REASONS FOR JUDGMENT BY:** LÉTOURNEAU J.A.

**CONCURRED IN BY:** NADON J.A.  
SHARLOW J.A.

**DATED:** March 13, 2008

**APPEARANCES:**

Dana-Elisabeta Lezau FOR THE APPLICANT

Rose Gabrielle Birba  
James Gray FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

Ms. Dana-Elisabeta Lezau FOR THE APPLICANT  
Toronto, Ontario

John H. Sims, Q.C.  
Deputy Attorney General of Canada FOR THE RESPONDENTS