Provision Barring Human Rights Complaints is Constitutional

In a decision dated June 6, 2007 the British Columbia Court of Appeal ruled that s. 62(1) of the Canadian Human Rights Act (CHRA) does not violate the equality rights guaranteed in s. 15(1) of the Charter. The provision in question bars individuals from making a complaint under the CHRA in respect of "any superannuation of pension fund of plan established by an Act of Parliament enacted before March 1, 1978". [i]

The petitioner, Ms. Howe, sought to collect death benefits under her deceased husband's Canadian Armed Forces pension, which was established by the Canadian Forces Superannuation Act (CFSA), enacted in 1959. The petitioner was living apart from her husband at the time of his death and was denied benefits on this basis; a provision (now-repealed) in the CFSA provided that a widow living apart from her husband at the time of his death could be deemed to have predeceased him and thus lose any pension or death benefits. The petitioner filed a complaint with the Canadian Human Rights Commission (CHRC) claiming that the CFSA discriminated against her on the basis of marital status. However, her complaint was barred by the operation of s. 62(1) of the CHRA. The petitioner subsequently brought an action before the B.C. Supreme Court, claiming that s. 62(1) of the CHRA violated s. 15(1) of the Charter.

The B.C. Supreme Court found that s. 62(1) did not violate s. 15(1) of the Charter; the Court of Appeal upheld the decision. Justice Levine, writing for the Court of Appeal, endorsed the lower court's finding that, "s. 62(1) of the CHRA does not violate s. 15(1) of the Charter, because it is not discriminatory… [t]he exclusion from the complaint procedure… was not based on any personal characteristic of the appellant, but on the nature of the pension plan under which her husband was receiving benefits at his death". [ii].

Sources:

- Canadian Forces Superannuation Act, R.S.C. 1985, c. C-17.
- Canadian Human Rights Act, R.S.C. 1985, c. H-6.
- Howe v. Canada (Attorney General), 2007 BCCA 314 (CanLII).
- Howe v. Canada (Attorney General) and Canada (Human Rights Commission), 2004 BCSC 1023 (CanLII).

[i] Canadian Human Rights Act, R.S.C. 1985, c. H-6, s. 62(1)
[ii] Howe v. Canada (Attorney General), 2007 BCCA 314 (CanLII) at para. 3.