

Our File: 1178

March 22, 2019

BY EMAIL

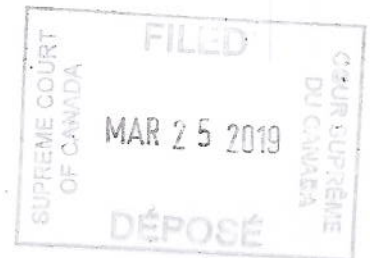
Roger Bilodeau, QC
Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

Christopher Rupar
Department of Justice
National Litigation Sector
500-50 O'Connor Street
Ottawa, ON K1A 0H8

Agent for the Respondent

To the Registrar:

Re: *Fraser et al. v Canada (Attorney General)*
SCC File No.: 38505



Pursuant to Rule 28 of the *Rules of the Supreme Court of Canada*, the Applicants Joanne Fraser, Allison Pilgrim, and Colleen Fox make the following submissions in reply to the Response of the Attorney General of Canada, dated March 14, 2019.

As set out in Part II of their memorandum of argument, the Applicants seek leave to appeal on two broad issues: (1) the appropriate test for benefit of the law under section 15 of the *Charter*; and (2) the legal characterization of full- versus part-time employment status and its impact on the supplementary employment rights of employees who temporarily reduce their hours of work. The Respondent notes in its response that this statement of the questions in issue does not expressly put the constitutional validity or applicability of the impugned statutory and regulatory provisions into issue in the proposed appeal, as required under Rule 25(1)(c)(ii) of the *Rules of the Supreme Court of Canada*.¹

The Applicants acknowledge this oversight with respect to their articulation of the questions in issue under Part II of the memorandum of argument, and wish to clarify and confirm that the proposed appeal does indeed raise issues as to the constitutional validity of the impugned provisions of the *RCMP SA* and *Regulations*. This aspect of the proposed appeal was stated elsewhere in the Applicants' memorandum of argument, and remains consistent with the issues as first raised in the notice of application that initiated these proceedings and as considered and dealt with by the courts below.²

¹ Respondent's memorandum of argument, dated March 14, 2019, para. 29.

² See, e.g., Applicants' memorandum of argument, dated February 5, 2019 at para. 2 [Applicants' Application for Leave to Appeal ("ALA"), Tab E at 104]; Judgment and Reasons of the Honorable Justice Kane, June 8,

From the beginning, this case has put the constitutional validity of the impugned provisions of the *RCMPSA* and *Regulations* squarely into issue. If granted, an appeal to consider and decide the appropriate test for benefit of the law under section 15 of the *Charter* would of course also call for the application of the correct legal test and a determination by this Honourable Court as to the constitutional validity of the impugned provisions. To confirm, and notwithstanding the Applicants' oversight with respect to Rule 25(1)(c)(ii), the underlying questions of whether the impugned provisions of the *RCMP Superannuation Act* and the *Regulations* violate subsection 15(1) of the *Charter* and, if so, whether that violation can be saved by section 1, remain squarely at issue in the proposed appeal.

With respect to the second issue raised by the proposed appeal, the Applicants seek by way of reply to clarify a significant point relied upon by the Respondent in its response. The Respondent cites the Federal Court of Appeal's examination of the definitions of "full-time member" and "part-time member" in section 2.1 of the *Regulations* to support the conclusion that the Applicants were "part-time members" while job-sharing.³ However, the provisions cited in this regard were only introduced into the *Regulations* in late 2006. Prior to that point - *and at all relevant times when the Applicants worked reduced hours under job-sharing agreements* - the *Regulations* included no reference whatsoever to "part-time" employment, and all RCMP regular members were presumptively engaged on a full-time basis, without reference to hours worked over a given period.⁴ It is precisely this absence of a definition that gives rise to the second question in issue, namely the appropriate legal characterization of employees as full- or part-time for purposes of determining supplementary (e.g., pension) rights during periods of temporarily reduced hours of work.

The Applicants respectfully submit that this Honourable Court should allow this application for leave so that these important legal issues may be resolved by Canada's highest court.


Paul Champ / Bijon Roy

2017 at para. 60 [ALA, Tab B at 22]; Reasons for Judgment of the Federal Court of Appeal, December 7, 2018 ("FCA Decision") at para. 28 [ALA, Tab D at 90].

³ Respondent's memorandum of argument, dated March 14, 2019, paras 43-44, citing FCA decision at para. 34

⁴ See *Royal Canadian Mounted Police Superannuation Regulations*, CRC c.1393 [in force March 22, 2006 - October 25, 2006], available online at: <<http://canlii.ca/t/l4g4>>.