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Age Discrimination and Income-Security Benefits: The Long Retreat from *Tétreault-Gadoury?*

Mel Cousins*

Résumé

En 1991, la Cour suprême du Canada a rendu un jugement historique dans l'affaire *Tétreault-Gadoury c. Canada (Commission de l'Emploi et de l'Immigration)* en décidant que la cessation statutaire des prestations de l'assurance emploi à l'âge de 65 ans constituait une violation de la garantie d'égalité contenue dans l'article 15 dont la justification ne peut être démontrée dans le cadre d'une société libre et démocratique, en accord avec l'article 1 de la *Charte canadienne des droits et libertés*. En 1999, le support de la garantie a été affaibli lorsque, dans l'affaire *Law c. Canada (Ministre de l'Emploi et de l'Immigration)*, la Cour suprême importa une analyse contextuelle de la discrimination dans l'article 15 de la *Charte*. Depuis lors, la jurisprudence a commencé à se distancer de *Tétreault-Gadoury*, au point où, en 2007, la Cour d'appel du Nouveau-Brunswick a émis des doutes quant au fait de savoir si l'affaire *Tétreault-Gadoury* demeurait encore applicable au vu de l'analyse *Law*.

L'auteur fait une comparaison entre l'analyse de l'article 1 entreprise par la Cour suprême dans *Tétreault-Gadoury* et l'analyse contextuelle de l'article 15 demandée par *Law*, et arrive à la conclusion qu'il existe suffisamment de similarité entre les facteurs sous-jacents pour donner à penser que *Tétreault-Gadoury* pourrait bien réussir une analyse *Law* si elle était faite aujourd'hui. Cependant, l'auteur ajoute qu'il semble improbable que les tribunaux canadiens seraient disposés à étendre le verdict de discrimination à d'autres programmes de sécurité du revenu qui chevauchent l'âge de retraite normale, et suggère que la disposition des tribunaux à donner de tels verdicts de discrimination relève moins de facteurs contextuels et plus des perspectives d'ensemble de la Cour suprême du Canada quant au degré de droit de regard qu'elle devrait exercer sur l'action de l'État.

Introduction

Age discrimination has played a prominent role in equality jurisprudence under the *Canadian Charter of Rights and Freedoms*,[1] particularly in comparison with other jurisdictions such as the European Court of Human Rights or the U.S. Supreme

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1. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

Court. In part, at least, this prominence arises because age is an enumerated ground of discrimination that is prohibited under s. 15 of the *Charter.*[2]

Looking specifically at the issue of income-security benefits, there have been some cases in which courts have struck down particular provisions as inconsistent with the *Charter* on age grounds.[3] One of the most important decisions on age discrimination in the context of income-security benefits was the case of *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)* (1991),[4] in which the Supreme Court struck down an age restriction in the *Unemployment Insurance Act*[5] that removed persons aged sixty-five and over from normal unemployment insurance benefits and instead provided them with a small lump-sum retirement benefit. While *Tétreault-Gadoury* has never been explicitly called into question by the Supreme Court, it predates the now standard approach to the application of the equality clause set out by the Supreme Court of Canada.

In successive cases, the court has dealt with differences in the delivery of income-security programs based on age. *Law v. Canada (Minister of Employment and Immigration)*[6] (1999) and *Gosselin v. Quebec (Attorney General)*[7] (2002) both upheld the constitutional validity of income-security programs that differentiated on the basis of age to the disadvantage of younger persons. These age-based discrimination decisions are so important to Canadian constitutional litigation that author Peter Hogg notes, "Since 1999, every case has followed the *Law* analysis, and looked for an impairment of human dignity. *Law* has supplanted *Andrews* as the leading case on s. 15."[8]

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2. In contrast, age is not specifically mentioned in Article 14 (non-discrimination) of the *European Convention on Human Rights.* (Nevertheless, the European Court of Human Rights does consider arguments on the basis of age discrimination—presumably on the basis that this falls under "other status" in Article 14). Nor has age been recognized as a suspect ground under U.S. constitutional jurisprudence (see e.g. *Massachusetts Board of Retirement v. Murgia,* 427 U.S. 307, 96 S. Ct. 2562 (1976)), although a number of state courts have struck down provisions similar to those discussed in this note (see e.g. *Golden v. Westark Community College,* 333 Ark. 41, 969 S.W. 2d 154 (Ark. Sup. Ct. 1998); *Pierce v. Lafourche Parish Council,* 762 So.2d 608 (La. Sup. Ct. 2000); and *Reesor v. Montana State Fund,* 2004 Mont. 1, 103 P.3d 1019 (Mont. Sup. Ct. 2004), although other courts have upheld such provisions).

3. In addition to *Tétreault-Gadoury,* [1991] 2 S.C.R. 22, 1991 CanLII 12, which is discussed in more detail in the text, see also *Clemons v. Winnipeg (City)* (1994), 93 Man.R. (2d) 287, 114 DLR (4th) 702 (Q.B.), rev'd (1995), 100 Man.R. (2d) 64, 122 D.L.R. (4th) 676 (C.A.), where the Manitoba Court of Queen's Bench held that a policy of refusing social assistance to persons under eighteen was in breach of the *Charter.* This decision was reversed on appeal, on grounds that an application for *Charter* relief was premature because all administrative remedies had not yet been exhausted.

4. [1991] 2 S.C.R. 22 , 1991 CanLII 12 [*Tétreault-Gadoury*].

5. S.C. 1970-71-72, c. 48 [*Act*], which has been long since repealed and replaced with the *Employment Insurance Act,* S.C. 1996, c. 23.

6. [1999] 1 SCR 497, 1999 CanLII 675 [*Law*].

7. 2002SCC84, [2002] 4 S.C.R. 429 [*Gosselin*]

8. Peter W. Hogg, *Constitutional Law of Canada,* 5th ed., looseleaf (Scarborough: Thomson Carswell, 2007), vol. 2 at para. 55.9(b).

Every successful equality challenge that predates *Law,* therefore, invites an enquiry into whether it would survive the *Law* analysis. Furthermore, a number of provincial appellate and superior courts have considered somewhat similar issues concerning the termination of certain income-security benefits at pension age. These courts have upheld these cases either on the basis that, though in breach of s. 15, they were justified by s. 1 of the *Charter,*[9] or, more recently, that there was no breach of s. 15 at all.[10] These developments all call into question the status of *Tétreault-Gadoury* and whether it still represents good law as regards age discrimination.

In the following part of this note, we outline the approach adopted by the Supreme Court in *Tétreault-Gadoury* and the subsequent moves away from that approach by provincial appellate and superior courts. Then we look in detail at the more recent *Laronde*[11] decision and compares the approach adopted therein with the Supreme Court's approach in *Tétreault-Gadoury.*

Age Differentiation as Stigmatization

As outlined above, the *Tétreault-Gadoury* case involved a provision of the *Unemployment Insurance Act*[12] (1971) whereby, in the case of a person who had reached age sixty-five or over, the normal unemployment benefit was not payable and the person received instead a small lump-sum payment equivalent to three weeks' benefit. The respondent had lost her job shortly after her sixty-fifth birthday and applied for unemployment insurance benefits. This application was refused under the impugned provision of the law. The Federal Court of Appeal subsequently found that this rule was a breach of s. 15 that was not saved by s. 1 of the *Charter,* and this decision was upheld on appeal by the Supreme Court of Canada.[13]

The decision of the court followed that concerning mandatory retirement in *McKinney v. University of Guelph*[14] (1990) in which the court had ruled that such rules were in breach of s. 15 but were justified under s. 1. That case was clearly fresh in the minds of the judges as they approached the case very much from the standpoint of its impact on Ms. Tétreault-Gadoury's status in the labour market. The court's judgment (delivered by La Forest J.) stated that the provisions of the *Act* permanently deprived

9. See *Zaretski v. Saskatchewan (Workers Compensation Board)* (1997), 156 Sask.R. 23, 148 DLR (4th) 745 (Q.B.) [*Zaretski*], aff'd (1998) 168 Sask. R. 57, 163 DLR (4th) 191, 1998 CanLII 12340 (C.A.), leave to appeal to S.C.C. refused, 26767 (28 January 1999). The Court of Appeal upheld the trial court's judgment in an extremely brief decision holding that, even if there were a breach of s. 15, the provision was justified under s. 1 of the *Charter.*

10. See *Laronde v. WHSCC and Attorney General of New Brunswick,* 2007 NBCA 10 [*Laronde*].

11. *Ibid.*

12. *Supra* note 5, s. 31.

13. A separate aspect of the case—not discussed here—concerned whether an administrative tribunal might apply the *Charter* without an express provision in that regard.

14. [1990] 3 S.C.R. 229, 76 DLR (4th) 545, 1990 CanLII 60 [*McKinney*].

her of the status of a socially insured person by making her a pensioner of the state, even if she were still looking for a new job.[15] It held there could be no doubt, following *McKinney,* that if mandatory retirement provisions violate s. 15 of the *Charter,* the denial of unemployment insurance benefits must also do so.[16] The court held that it stigmatized a person, regardless of her personal skills and situation, as belonging to a group of people no longer part of the active population and perpetuated the "insidious stereotype" that a person who is sixty-five years or older could not be retrained for the labour market.[17]

Having found a *Charter* breach, the court in *Tétreault-Gadoury* accepted that there were two valid legislative objectives of the rule: (1) to prevent a person over sixty-five from receiving a double benefit of both pension and unemployment benefits, and (2) "to prevent the abuse of the *Act* by those who had already determined to retire from the labour force",[18] presumably collecting unemployment insurance benefits without conducting a viable job search and not having a genuine intention to return to the work force. The court found that these legislative objectives, "when taken at face value, are sufficient to meet the 'objectives test'"[19] demanded by s. 1 of the *Charter.* However, it doubted that a third legislative objective—to tailor the unemployment benefit scheme to fit within benefits for people over sixty-five—could, in itself, be sufficiently important to justify the infringement of a *Charter* right.[20]

Furthermore, in considering the proportionality of the *Charter* breach, the court focused on the principle of minimal impairment. It held that the law had not been carefully designed to achieve its valid legislative objectives and that it certainly did not meet the "minimum impairment" requirement.[21] The objective of preventing double benefit could, for example, have been achieved by deducting pension receipts from unemployment insurance benefits. Thus, the Supreme Court ruled that the provision was in breach of s. 15 and as not saved by s. 1 of the *Charter.*

Subsequently, in *Zaretski v. Saskatchewan (Workers Compensation Board)*[22] (1997), another pre-*Law* decision, the Saskatchewan Court of Queen's Bench appeared to have extended somewhat the Supreme Court's approach to a finding of age discrimination

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15. *Tétreault-Gadoury, supra* note 4 at para. 35.
16. *Ibid.*
17. *Ibid.*
18. *Ibid.* at para. 41.
19. *Ibid.*
20. *Ibid.* at para. 43.
21. *Ibid.* at para. 57.
22 *Zaretski v. Saskatchewan (Workers Compensation Board)* (1997), 156 Sask.R. 23, 148 DLR (4th) 745 (Q.B.) [Zaretski], aff'd (1998) 168 Sask. R. 57, 163 DLR (4th) 191, 1998 CanLII 12340 (C.A.), leave to appeal to S.C.C. refused, 26767 (28 January 1999).

under s. 15 of the *Charter.*[23] The issue concerned a provision of provincial workers compensation legislation that discontinued benefits at age sixty-five—the benefits being replaced by much lower annuity benefits. The trial court pointed out that the Supreme Court had held, in a series of mandatory retirement cases and in *Tétreault-Gadoury,* that age distinctions concerning issues such as continued employment and the right to unemployment benefits were discriminatory under s. 15 of the *Charter.*[24] It held that, having regard to the analysis of the Supreme Court in those cases, one was "driven to conclude" that the provision in question did violate s. 15 as it denied benefits to a class of workers identified "solely by virtue of age".[25]

The trial court in *Zaretski* was "unable to distinguish" the circumstances of that case from those considered in *Tétreault-Gadoury.*[26] However, there arguably is a distinction between the two cases. In failing to identify it, the court effectively extended the rationale of the Supreme Court's decision, which turned on denial of access to the labour market, to a broader rationale involving denial of access to income-security benefits.

Nevertheless, the trial court in *Zaretski* did consider that the impugned rule constituted a reasonable limit under s. 1. In particular, it found that providing a uniform retirement age that corresponded with other programs, and that limited financial demands on the workers compensation fund, were important legislative objectives. It held that the legislation was rationally connected with these objectives, and a proportionate limit on the right of injured workers. In its s. 1 analysis, the trial court was able to distinguish *Tétreault-Gadoury* on the basis that the termination of benefits in that case involved a greater degree of impairment than did the replacement of income maintenance benefits by an annuity payment in *Zaretski.*[27]

Age Differentiation as Discrimination: *Laronde v. New Brunswick (WHSCC)*

Laronde v. New Brunswick (Workplace Health, Safety and Compensation Commission)[28] (2007) is a recent post-*Law* case very close in its facts to *Zaretski.* In *Laronde,* the Court of Appeal of New Brunswick, in a carefully reasoned decision, has come to a conclusion entirely different from that of the Saskatchewan court and has implicitly

23. The judgment was upheld on appeal by the Court of Appeal, which in a very short oral judgment simply held that, assuming the provision were in breach of s. 15, it was satisfied that the lower court's analysis as to s. 1 was correct. Therefore the discussion here focuses on the decision of the Court of Queen's Bench.

24. *Supra* note 9 at para. 42.

25. *Ibid.* at paras. 44-51.

26. *Ibid.* at para. 48.

27. *Ibid.* at pars. 52-82.

28 *Laronde v. WHSCC and Attorney General of New Brunswick,* 2007 NBCA 10 [*Laronde*].

questioned whether *Tétreault-Gadoury* remains good law in the light of the *Law* test.[29]

Under New Brunswick workers compensation legislation, once a person reaches sixty-five years of age, long-term workers compensation benefits cease. Prior to reaching age sixty-five, Mr. Laronde received about $1,500 per month in workers compensation benefits and Canadian pension payments. On reaching age sixty-five, the workers compensation benefits ceased, and he was paid a once-off annuity of $11,437 (intended as compensation for a loss of pension income caused by the inability to contribute to public and private pension plans during the period of incapacity for work).[30] In addition, he received $1,262 monthly in both federal and provincial old age pension payments. While the exact details are not apparent from the judgment, one can assume that the termination of the workers compensation benefits left Mr. Laronde worse off.

The Court of Appeal applied the *Law* test to ascertain if this state of facts amounted to discrimination. This test requires that (1) the law imposes differential treatment between a person and others, (2) on one or more of the grounds enumerated in s. 15 (or analogous grounds) and (3) the law in question had a purpose or effect that is discriminatory in that it denies human dignity.[31] It was conceded that the first two tests were satisfied and the case turned on the assessment of the third factor. The *Law* judgment had further specified a number of contextual factors to be taken into account in assessing whether human dignity had been infringed. These involved (1) pre-existing disadvantage, (2) correspondence between the grounds of distinction and the actual needs and circumstances of the affected group, (3) the ameliorative purpose or effect of the impugned measure and (4) the nature and scope of the interests involved.

Considering these factors in light of the facts of the case, the Court of Appeal accepted that older people were more prone to stereotypical attitudes or assumptions that were factually unjustified. The court did not consider, however, that this discrimination applied in the present case where the "notion" that the person could not work was based on the fact that he was disabled, rather than on any stereotype.[32] In

29. *Ibid.* at para. 35, where the court remarked that "the *Andrews* framework was subsequently displaced by the one provided for in *Law.* Fortunately, I do not have to speculate on whether *Tétreault-Gadoury* would be decided differently today."

30. Unfortunately we do not know what this equated to in monthly terms. The calculations are further complicated by the fact that an overpayment was deducted from this annuity so the amount actual paid to Mr. Laronde was lower.

31. See *R. v. Kapp*, 2008 SCC 41 at para 17, where the Supreme Court of Canada recently stated that its case law had established in essence a two-part test for showing discrimination under s. 15(1): (1) Does the law create a distinction based on an enumerated or analogous ground? (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping? The Court acknowledged that these tests were divided, in *Law*, into three steps, but stated that in its view the test "is, in substance, the same."

32. *Laronde, supra* note 10 at para. 11.

assessing the correspondence between the impugned distinction and the needs of the affected group, Robertson J.A. (speaking for the court) noted the statements of the majority of the Supreme Court in *Gosselin.*[33] In *Gosselin,* the majority noted (1) perfect correspondence between a program and actual needs and circumstances was not required, (2) one could not infer disparity between program and needs, based on the mere failure of the government to prove that the assumptions on which the scheme was based were justified and (3) an age chosen reasonably reflected the legislative goal—the fact that some might prefer a different age did not indicate a lack of sufficient correlation.[34] Applying this approach to the case, the court concluded that there was no lack of correlation between the program and the needs and circumstances of injured workers who reach age sixty-five.[35] The court did not find any ameliorative purpose for the legislation and so found that the third factor was neutral. Finally, the court (somewhat casually) stated that there was no evidence as to the impact of the legislation on persons whose compensation was terminated at sixty-five. Therefore, the court found, no evidence that such termination forces workers to live at or below the poverty line. Accordingly the court did not find that this factor favoured a finding of discrimination. Overall, given that only the first factor (pre-existing disadvantage) did support such a finding, the court was satisfied that the termination of benefits did not undermine the human dignity of those over sixty-five and did not constitute discrimination under s. 15 of the *Charter.*

The Court of Appeal shortly dismissed the value of *Tétreault-Gadoury* as a precedent, pointing out that it had been decided long before *Law* and had been referred to only in passing in that case and in *Gosselin.* Robertson J.A. also distinguished the case on the facts, pointing out that the rules in question provided longer "transitional" benefits than did those in the older case.[36]

So where does this leave *Tétreault-Gadoury?* Clearly it was decided long before *Law* and does not specifically apply the four s. 15 factors outlined in that judgment. However, one can, in fact, ascertain from the judgment clear indications of how the court would have decided these issues (for ease of comparison, the relevant factors are set out in table form). First, like the Court of Appeal in *Laronde,* the Supreme Court in *Tétreault-Gadoury* clearly believed that older people were subject to pre-existing disadvantages in access to the labour market. Unlike the Court of Appeal, the Supreme Court took the view that there *was* a lack of correspondence between the impugned provisions and the circumstances of the respondent in that case. Again, the third factor (ameliorative purpose) was neutral. The Supreme Court differed, however, from the Court of Appeal on the fourth factor (the interests

33. *Supra* note 7.

34. *Ibid.* at paras. 55-57. See also the rather different approach proposed by Bastarache J. (dissenting) in that case at paras. 239-49.

35. *Laronde, supra* note 10 at paras. 13-29.

36. *Ibid.,* at para 35. Robertson J.A., at para 36, similarly disposed of *Zaretski, supra* note 9.

affected), focusing on the loss of status as a socially insured person, rather than a pure financial loss.

Table 1: Contextual factors in assessing discrimination

Factor	Tétreault-Gadoury	Laronde
Pre-existing disadvantage	Yes	Yes (but questioned relevance to the facts of the case)
Correspondence	No	Yes (following *Gosselin*)
Ameliorative purpose	None	None
Interests affected	Loss of status	No evidence of serious impact

It appears that the critical difference between the two decisions arises under the second and fourth factors—correspondence and interests affected. These are related, in part, to the factual differences in the two cases in that one involved employment/unemployment whereas the other involved a person incapable of work. The interest found by the Supreme Court to be affected in *Tétreault-Gadoury* (loss of status as a socially insured person) did not arise (or did not arise in the same way) in *Laronde*, where the person was not being forced to become a state pensioner but simply moved from being a recipient of pension and workers compensation benefits to being a recipient of pension benefits (and a lump-sum provided by the workers compensation scheme).[37] However, the second aspect (correspondence) cannot so readily be disposed of on the facts. In *Tétreault-Gadoury* the Court applied a very strict test, holding that the "mandatory retirement" involved in that case constituted age discrimination that was not justified under s. 1 of the *Charter*—a finding that perhaps misled the Saskatchewan court in *Zaretski* into holding that age distinctions in relation to access to another income-security benefit were also discriminatory.

However, the Supreme Court in *Gosselin* has made in clear that in a s. 15 analysis of "discrimination", perfect correspondence is not required. Given the evidence (discussed in *Laronde*) that 86 per cent of the Canadian workforce retires by age sixty-five,[38] one might wonder whether an assumption that people will retire at sixty-five is not sufficiently close to present-day societal facts to justify a finding of correspondence. As most income-security programs are designed on the assumption that workers will have retired at age sixty-five, this may justify such a finding. However, in specific circumstances the interests involved or other facts may be found to outweigh the factor of correspondence in the overall assessment of whether a measure infringes human dignity.

37. One might, however, be somewhat critical of this aspect of the *Laronde* decision in that it must be assumed that Mr. Laronde was financially worse off to some quantifiable amount as a result of the termination of benefits and that some data as to the broader issue must surely be available that would have allowed a clearer assessment of the impact.

38. *Supra* note 35 at para. 25.

Conclusion

As we have seen in this note, the 1991 finding by the Supreme Court that termination of unemployment benefits at age sixty-five is in breach of the *Charter* (and not justified under s. 1) has been called into question by more recent developments. In part, this is because the decision in *Tétreault-Gadoury*—in the context of cases on mandatory retirement—focused heavily on that aspect of the case and can be distinguished on the facts from cases involving termination of other income-security benefits that do not involve withdrawal from the labour force.

However, the rather strict approach to correspondence between a program and the needs and circumstances of individuals applied in that case is also now called into question by the *Gosselin* judgment with its emphasis on a more flexible approach. Nonetheless, it may still be the case that *Tétreault-Gadoury* is correctly decided on its own particular facts. Even if one were to now apply the *Law* test to those facts and, following *Gosselin,* come to a less damning conclusion about the lack of correspondence between the assumption that persons would retire at sixty-five and the needs and circumstances of the respondent in *Tétreault-Gadoury,* a court might still conclude that human dignity was affected. This likelihood is due to the level of pre-existing disadvantage on this point, and the nature and scope of the interests affected. However, it seems unlikely that Canadian courts would now expand the outcome of *Tétreault-Gadoury* to cases involving a potential overlap between other income-security benefits and pension age.

A number of authors have been rather critical of the emphasis on human dignity in equality jurisprudence following *Law.* Some have argued that the requirement that a provision must impair human dignity to violate s. 15 is reverting to an idea rejected in earlier jurisprudence that the equality guarantee applies only to "unreasonable or unfair" distinctions.[39] The Supreme Court of Canada has recently responded to these criticisms, accepting that

> human dignity is an abstract and subjective notion that, even with the guidance of the four contextual factors, cannot only become confusing and difficult to apply; it also proven to be an *additional* burden on equality claimants, rather than the philosophical enhancement it was intended to be.[40]

In an apparent move away from a reliance on human dignity, the Court stated that analysis of discrimination in a particular case focuses more usefully on "perpetuation of disadvantage and stereotyping as the primary indicators of discrimination".[41] However, in *Laronde,* as in a number of other Canadian cases, it is largely the degree

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39. See P.W. Hogg, *Constitutional Law of Canada* (Scarborough: Thomson Canada, 2006), at 1168. For a contrary view, see D. Greschner, "Does *Law* Advance the Cause of Equality" (2001) 27 Queen's L.J. 299.

40. *Kapp, supra* note 31 at para 22 (as are subsequent quotations in this paragraph).

41. It is as yet too early to predict how this apparent change will affect equality jurisprudence. For an early example see *Harris v. Minister for Human Resources and Skills Development,* 2009 FCA22.

of correspondence between the impugned distinction and the "needs and circumstances" that a court will require—or conversely the margin of discretion allowed to the state—that is the critical factor in whether or not a breach of s. 15 is found. The "correspondence" issue is also found in similar jurisprudence in the United States Supreme Court or the European Court of Human Rights.[42] Therefore, it is not perhaps only the emphasis on human dignity per se that makes it more difficult to advance a successful argument under s. 15, but rather the overall view that the Supreme Court of Canada takes on the degree of oversight that it should apply to state action.

42. In the case of the U.S. Supreme Court, as is well known, outside limited cases that require heightened scrutiny, the Court normally requires only a "rational" relationship between the distinction made by the law and some governmental objective (see, for example, L.M. Seidman, *Constitutional Law: Equal Protection of the Laws* [New York: Foundation, 2002]). And, in contrast to the Canadian approach under s. 1 of the *Charter*, the U.S. courts' examination of such "rationality" is normally superficial at best. Similarly, with the exception of issues (such as nationality or, to a lesser extent, gender) where the European Court of Human Rights will require "very weighty reasons" to justify a distinction, the Court normally allows a wide margin of discretion when it comes to general measures of economic or social strategy (in the context of social security, see M. Cousins, *The European Court of Human Rights and Social Security Law* [Antwerp: Intersentia, 2008]).