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# MEMO

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**To:** You (counsel for the Respondent Crown)

**From:** Senior Crown Counsel

**Date:** September 18, 2018

**Re:** *Fraser v Canada*

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We act for the Crown in this appeal involving s 15 of the *Charter*. I need you to write the factum and argue the appeal for me.

The appellant's factum is due on Friday October 26, 2018 at 9:00 a.m. I recommend that you complete a draft of your factum before you receive the appellant's factum – you can always revise your draft to address any additional points the appellant raises that you didn't anticipate.

Our factum is due on Friday, November 2, 2018 by 9:00 a.m. and must be filed electronically via Brightspace. We must also provide a copy to opposing counsel.

The appeal will be heard during the week of February 4-7, 2019. I am scheduled to be out of town for a discovery that week. You will need to check the Court's docket to determine the exact date and time of the appeal. Should the appeal be delayed by inclement weather, it will likely be rescheduled for the same time the following week. Please keep this time available if possible.

I've summarized some of the relevant facts of the case and set out the grounds of appeal to which we have to respond. Feel free to use any other facts mentioned in the lower courts' decisions, if you think they might be useful.

Good luck!

## Facts

Policing is a traditionally male profession (73.5% of RCMP members are male) in which patrol duties, shift work, and working in rural or isolated environments, create greater challenges for those balancing work and child care obligations. The appellants are

retired female RCMP officers who each job-shared for several years to help balance their work and child care obligations.

The RCMP introduced the option of part-time work in 1985 and job-sharing in 1997. Job-sharing allows RCMP members to share a single full-time position with another member (or members) for a limited period of time. In 2010 and 2014, 100% of the RCMP members who job-shared were female, with the majority doing so in order to meet child care obligations. A 2012 Police Study found that 61% of female officers had primary responsibility for child-care in their families, compared to 9% of male officers. Only 1% of female officers had a spouse at home full-time with children, compared to 12% of male officers.

RCMP members also have the option of going on a leave without pay (LWOP). Common reasons for seeking a LWOP include parental leave, sick leave, education leave, or to accommodate family responsibilities. Members who go on LWOP can opt to buy back their pensionable service for the period of the leave by paying both the employer and employee pension contributions for the leave period. This will leave them with the same pension as if they had worked full-time during the leave. Job-sharing RCMP members are not permitted to buy back full-time pension benefits and receive reduced pensions that are pro-rated to reflect their years of part-time service.

Pensions have been highlighted as a source of inequality for women as they typically reward permanent, full-time, long-service employment (i.e. male-pattern employment) over other forms of employment.

The appellants allege that the RCMP pension plan and regulations discriminate against them on the enumerated ground of sex and the analogous ground of parental status contrary to s 15(1) of the *Charter*. They allege the denial of this benefit exacerbates long-standing disadvantages for women in the workforce, perpetuates a stereotype that women can assume only one role (as either a caregiver or full-time worker), and sends a message that they are not as valued as members who work full-time or take leaves without pay.

The trial judge dismissed the female RCMP members' discrimination claim, finding that there was no discrimination under s 15 of the *Charter*, and as such, no need to consider s 1 of the *Charter*. They appealed. The Federal Court of Appeal reserved decision on the appeal in September 2018 and will render a decision with reasons in due course.

In the meantime (in an unusual procedural move), the appellants have appealed to the Supreme Moot Court of Dalhousie on the following grounds:

**First Issue:**

1. Do the RCMP pension plan and/or regulations create a distinction based on an enumerated or analogous ground, contrary to s 15 of the *Charter*? (step 1 of the test).

The student handling issue 1 should begin by summarizing the relevant jurisprudence under s 15 of the *Charter* (with a focus on the current law) and complete the first step of the test.

Note: for the purposes of this appeal only, the respondent Crown concedes that parental status (the fact of being a parent) is an analogous ground under s 15 but does not concede that the ground extends to the choices made by parents in discharging their family obligations.

### **Second Issue:**

2 (a) If so, are the impugned provisions discriminatory, contrary to s 15 of the *Charter*? (step 2 of the test)

(b) If there was a violation of the appellants' *Charter* rights under s 15, can it be saved by s 1?

The student handling issue 2(a) will complete the second step of the test and may frame the second step of the test as he or she thinks best. The student will likely want to be brief with the s 1 argument in issue 2(b), given how difficult it is to justify a s 15 violation.

### **Sources**

You will want to start by reading the lower court's reasons. You will find them at 2017 FC 557. This case was argued at the Federal Court of Appeal in early September 2018 so it's possible that the Federal Court of Appeal will release the decision before this appeal is argued at the Supreme Moot Court of Dalhousie. If the decision comes down before your moot, you will likely want to refer to the Federal Court of Appeal's reasons in argument, but the outcome at the Federal Court of Appeal will not change the parties' status as appellant/respondent, nor is it binding on the Supreme Moot Court of Dalhousie.

The Supreme Moot Court of Dalhousie prefers that counsel cite only the most relevant cases and authorities. You may cite up to seven cases on each issue, any relevant legislation you feel should be brought to the Court's attention, and up to two secondary sources. You may cite *Withler v Canada (Attorney General)*, 2011 SCC 12, *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30 and *R v Oakes*, [1986] 1 SCR 103 without these cases counting toward your seven case limit.