

Date: 20121119

Docket: A-131-12

Citation: 2012 FCA 301

**CORAM: NOËL J.A.
MAINVILLE J.A.
WEBB J.A.**

BETWEEN:

BEVERLEY TIPPETT

Applicant

and

THE ATTORNEY GENERAL OF CANADA AND JOHN STARK

Respondents

Heard at Halifax, Nova Scotia, on November 19, 2012.

Judgment delivered from the Bench at Halifax, Nova Scotia, on November 19, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on November 19, 2012)

NOËL J.A.

[1] This is a judicial review application from a decision of the Pension Appeals Board (PAB) allowing an appeal from a decision of the Review Tribunal on the basis that the challenge brought by the applicant under section 15 of the *Canadian Charter of Rights and Freedoms* (Charter) involved a retrospective and, thus impermissible application of the Charter.

[2] The challenge is directed at the three year limitation period set out in paragraph 55(1) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP) within which a division of the unadjusted pensionable earning between spouses (*i.e.* credit-split) may be claimed, and the burden which it places on women.

[3] We are all agreed that on the undisputed facts of this case, there is no retrospective application of the Charter, and that the PAB erred in law in holding otherwise.

[4] Specifically, there is no dispute that the applicant's right to apply for the credit split under paragraph 55(1) of the CPP arose upon her divorce in February 1985 and expired three years later when the limitation period set out in that provision ran out. It follows that the right to apply expired in February 1988, when section 15 of the Charter was in force.

[5] It was therefore not open to the PAB to refuse to entertain the Charter challenge on the basis that it involved a retrospective application of the Charter.

[6] The decision of the PAB will accordingly be set aside, and the matter will be remitted to a differently constituted panel of the PAB, for a hearing on the merits of the appeal.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 20121119

STYLE OF CAUSE: BEVERLEY TIPPETT and THE
ATTORNEY GENERAL OF
CANADA AND JOHN STARK

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: November 19, 2012

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, MAINVILLE, WEBB J.J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

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(Attorney General of Canada)

John Stark FOR THE RESPONDENT
(John Stark)

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N/A FOR THE RESPONDENT
(John Stark)