



On March 4, 2011, the Supreme Court of Canada (“SCC”) released its decision in [*Withler v. Canada \(Attorney General\)*](#). The appellants in *Withler* challenged the constitutionality of federal laws that reduced their spouses’ supplemental death benefit (“SDB”) based on age. The SCC ruled that the SDB did not violate the equality rights protected by section 15(1) of the *Charter*, and held that elements of pension benefit schemes must be considered in the context of the scheme as a whole. The SDB was thus viewed as one part of a broad-based scheme addressing the competing interests of employees at different stages of their lives. The SCC described the SDB’s purpose with respect to older employees as financial assistance for last illness and death, and not as a long-term income stream.

As we discussed in the September 2010 [Spectrum HR Law Update](#), a successful appeal had significant potential cost implications for the plans at issue, as well as for other public sector plans with similar death benefit provisions. Additionally, a successful appeal would likely have cleared the way for challenges to long-standing exemptions in human rights legislation that permit reductions in private pension plans based on age. With the SCC’s dismissal of the appeal, the federal laws permitting a reduction of SDB benefits based on age remain in full force and effect.

If you have questions or would like further information on this or other related topics, please contact any member of the Spectrum HR Law LLP Pensions, Employment Benefits, and Executive Compensation practice group:

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