EMPLOYMENT BENEFITS AFTER *TALOS*

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The Legislative Background

In 2006, the Legislative Assembly of Ontario amended the definition of "age" in the *Human Rights Code*[2] in order to effectively prohibit mandatory retirement policies in the province. Prior to these amendments, the protection against age discrimination in employment under the *Code* only applied to workers aged 18-64. Discriminating against a worker on the basis that they were 65 or older, such as through mandatory retirement, did not constitute age discrimination. The 2006 amendments removed this ceiling to the prohibition against age discrimination, largely ending mandatory retirement in Ontario.[3]

At the same time as introducing these amendments, however, the Legislature also introduced new provisions into the *Code* that permitted employers to cut off certain types of employment benefits for their workers when they turned 65. The newly introduced 25(2.1) of the *Code* provided that any benefit, pension, superannuation or group insurance plan did not constitute age discrimination, so long as it complied with the *Employment Standards Act*[4] and its regulations. The *Benefits Plans* regulation under the *ESA*, in turn, contained a definition of "age" that was the same as the pre-2006 version of the *Code*.[5] The combined effect of these provisions meant that a benefit plan could not discriminate against a worker on the basis of age up until they turned 64, but could do so when a worker turned 65 without violating the *Code*.[6] In other words, while making it discriminatory for employers to impose mandatory retirement at age 65 in most

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[2] *Human Rights Code*, RSO 1990, c H.19 [*Code*].
[3] More accurately, these amendments had the effect of making most mandatory retirement rule *prima face* in breach of the *Code*, but still subject to justification of a *bona fide* occupational requirement. There are also some professions, such as firefighters, who have specific rules regarding mandatory retirement: see *Fire Protection and Prevention Act, 1997*, SO 1997, c 4, s 53.1.
[4] *Employment Standards Act, 2000*, SO 2000, c 41 [*ESA*].
[5] *Benefit Plans*, O Reg 286/01, s 1, *sv* "age". See also *ESA*, s 44(1).
[6] Once again, this is an oversimplification. Sections 7 and 8 of O Reg 286/01 provide that, in limited circumstances an employer may also differentiate on the basis of age below 65, though they are required to justify such differences on an actuarial basis.

workplaces on the one hand, the Ontario government simultaneously made it possible for employers to cut off various benefits for older employees on the other hand.

The *Hansard* debates surrounding the 2006 amendments suggested that the reason for enacting s. 25(2.1) was, in effect, a *quid pro quo*. The belief amongst many employers was that the cost to providing benefits to older workers would become increasingly onerous with age. Mandatory retirement was once the means by which these costs could be controlled. Employers feared that removing the ability to require 65+ workers to retire would, absent further legislative action, impose unacceptable costs that would make benefit plans cost prohibitive and non-viable. Section 25(2.1) was thought to strike a balance by allowing employers to reduce or remove benefits from older workers who previously would not receive benefits in any event due to mandatory requirement rules.

The *Talos* Case

Wayne Talos was an experienced secondary school teacher with the Grand Erie District School Board who continued to work past age 65. Under the collective agreement negotiated between his employer and the OSSTF, his union, Talos's health benefits were cut off after he turned 65. This proved to be a hardship for Talos and his family. His wife was suffering from serious medical conditions and relied upon Talos's benefits package to cover the costs of various prescription medications. She did not have her own employment benefits and, because she was not yet 65 herself, did not have access to the various public benefits schemes available to older Canadians. She did have access to some means-based assistance under the *Trillium Drug Program*.

Talos applied to the Human Rights Tribunal of Ontario, alleging that his right against discrimination in employment on the basis of age was violated when his benefits were cut off under the terms of his collective agreement. The School Board responded by relying on s. 25(2.1) of the *Code* and its compliance with the benefits rules under the *ESA*.

Section 25(2.1) was on its face a full answer to Talos's complaint. Because his benefits were only cut off after he turned 65, this treatment was deemed not to constitute age discrimination under the *Code*. In order to maintain his claim, Talos therefore challenged the constitutionality of s. 25(2.1) under s. 15 of the *Charter*. In essence, his claim was that the *Code*'s rules concerning age discrimination were themselves a form of age discrimination that violated his constitutional right to equality under the law.

Talos was not the first person to claim that the *Code* itself was discriminatory in this manner. The previous version of the *Code*, which carved workers aged 65 and over from protections against age-based employment discrimination, were challenged by university and

college professors soon after s. 15 of the *Charter* came into force. In 1990 the Supreme Court of Canada found that this ceiling in the *Code* did infringe s. 15, but upheld the legislation under s. 1.[7] More recently, in 2010, s. 25(2.1) of the *Code* was challenged in the course of a labour arbitration as violating s. 15 of the *Charter*. Once again, the *Code*'s rules granting differential protections on the basis of age was found to violate s. 15 by the arbitrator, but was upheld under s. 1.[8] This decision, known as the *Chatham-Kent* award, stood for several years as the leading authority on the constitutionality of s. 25(2.1). However, it was not binding on the Human Rights Tribunal, and so Talos was entitled to re-litigate this legal question.

In response to Talos's constitutional claim, both the Attorney General for Ontario and the Ontario Human Rights Commission exercised their rights to intervene in the proceeding. The Attorney General sought to defend the constitutionality of the *Code*, while the Commission supported Talos. The Tribunal subsequently authorized three additional interveners to participate, all in support of Talos: The Ontario Confederation of University Faculty Associations,[9] the Ontario English Catholic Teachers Association, and the Elementary Teachers Federation of Ontario.[10] The various parties called a total of ten witnesses, including actuaries, sociologists, economists and labour relations experts, who provided a variety of expert reports and *viva voce* evidence.

On May 18, 2018 – more than six years after the application was originally filed – the Tribunal released its decision, finding that s. 25(2.1) of the *Code* violated s. 15 of the *Charter* and could not be saved under s. 1.[11]

At the s. 15 stage of the analysis the Tribunal found that permitting the removal of employer benefits at age 65 constituted substantive discrimination primarily because of a lack of correspondence with the needs of older workers. The Tribunal accepted the largely undisputed evidence that as workers age they have an increasing need for health benefits, but at the same time face increasingly prohibitive costs to obtain those benefits on an individual basis. In effect the *Code* authorizes employers to cut off benefits to workers at a time when they need them the most.[12] The Tribunal also noted that the differential treatment workers faced under s. 25(2.1) perpetuated the pre-existing adverse treatment that existed prior to 2006 when mandatory

[7] *McKinney v University of Guelph*, [1990] 3 SCR 229. In *McKinney*, the applicants challenged the imposition of mandatory retirement, not differentiation in benefits entitlement.
[8] *Chatham-Kent (Municipality) and ONA* (2010), 202 LAC (4th) 1 (Etherington). For a sustained discussion of this award, see *Danielle Bisnar & Elizabeth McIntyre*, "Lessons for Litigators from *ONA v Chatham-Kent*: A Union Perspective" (2013) 17 Can Lab & Emp LJ 225.
[9] *Talos v Grand Erie District School Board*, 2014 HRTO 1639 (CanLII).
[10] *Talos v Grand Erie District School Board*, 2015 HRTO 349 (CanLII).
[11] *Talos v Grand Erie District School Board*, 2018 HRTO 680 (CanLII) [*Talos*].
[12] *Talos* at paras. 232-233.

retirement still existed – treatment which the Supreme Court of Canada concluded was in violation of s. 15 nearly 30 years earlier.[13]

The Tribunal rejected arguments from the Employer and the Attorney General that cutting off benefits for an aged 65 worker did not constitute substantive discrimination due to the existence of other sources of benefits that kick in at the same age. While recognizing the existence of programs such as CPP, OAS and the Ontario Drug Benefit Program, the Tribunal held that these did not compensate for the loss of employer sponsored benefits.[14] The Tribunal noted that these programs were designed to act as supplements for earnings for all older persons, and not part of an integrated scheme of social benefits that also included employer sponsored benefits. In this way – the Tribunal reasoned – Talos's claim was fundamentally different than the scheme dealt with by the Supreme Court of Canada in *Withler*.[15] *Withler* addressed a death benefits scheme for public servants that reduced the value of payments based on the age at which the public servant died. The Supreme Court found that, while there may have appeared to be discrimination when the benefit was considered in isolation, viewed in the context of other public benefits, the treatment of spouses was essentially the same regardless of age. Importantly, the Court considered the impugned legislation to have been designed specifically to operate within the context of the wider range of federal public benefits.

In contrast, the Tribunal in *Talos* reasoned that employer-sponsored benefit packages were wholly different from the types of public schemes that the Attorney General and School Board relied upon. Unlike *Withler*, close integration of these various benefits was not the basis for s. 25(2.1) of the *Code*. Rather, it was the concern about plan cost and viability that lead to the enactment of the benefits carve out. The existence of public pensions and other benefits becoming available to workers at the same age was, in the Tribunal's view, legally irrelevant in determining whether the *Code*'s carve out perpetuated disadvantage for older workers.

On the s. 1 analysis, the Tribunal accepted that a rational connection exists between the impugned legislation and the goal of "preserving the financial viability of workplace benefits plans in the aftermath of the prohibition on voluntary retirement in 2006."[16] Indeed, neither Talos nor the Human Rights Commission suggested that such a rational connection was missing. Rather, the Tribunal's analysis turned on the minimal impairment test under *Oakes*.[17]

While controlling the costs of benefits plans was, in the abstract, a pressing and substantial objective, the Tribunal concluded that the government had failed to demonstrate that the concerns about rising costs – and thus the need for s. 25(2.1) – were real. The Tribunal referred

[13] *Talos* at paras. 237-238.
[14] *Talos* at paras. 221-229.
[15] *Withler v Canada (Attorney General)*, [2011] 1 SCR 396.
[16] *Talos* at para. 259.
[17] *R v Oakes*, [1986] 1 SCR 103.

to statements made by the Minister of Labour in 2006 to the effect that the government did not actually have any empirical evidence to demonstrate that extending benefits post-64 would be cost prohibitive. Rather, the government appeared only to have relied on broad and unsubstantiated concerns raised by industry:

> [Minster of Labour:] Independently, we could not find that there had been any major impact on the expense of pension plans, benefit plans or dental plans as the result of the ending of mandatory retirement. When the industry was asked to provide figures they may have that would assist us in that regard, my understanding, and to this date my knowledge, is that those figures were never provided. However, the advice that appeared to be coming from them is that there was a potential for increased expenses…[18]

The expert evidence before the Tribunal demonstrated that this perceived risk of increasing costs was unfounded. The actuarial evidence brought forward by Talos and the intervenors, and accepted by the Tribunal, did not substantiate the feared steep cost curve. For some group benefits, like dental, there was essentially no increasing cost based on age.[19] For health benefits, the evidence showed that costs to employer actually *dropped* initially when workers turned 65 due to government drug benefits kicking in.[20] Overall, financial sustainability for a range of group benefits was demonstrated to have an upper limit of 79, well beyond the 65 threshold for termination authorized under the *Code*.[21]

The Tribunal noted that the arbitrator in the *Chatham-Kent* case, which found s. 25(2.1) was "saved" under s. 1, had a fundamentally different evidentiary record before him, which explained the different result. That award, issued only 3 years after the end of mandatory retirement in Ontario, was still relying on weak and speculative data, while the Tribunal had a much larger and richer set of data to work from.[22]

The Tribunal also noted that other provinces – Manitoba and Quebec – had previously eliminated mandatory retirement and did not include any benefits carve out akin to s. 25(2.1).[23] This further called into question the Ontario Legislature's decision to permit the termination of benefits at 65 without any actuarial justification. The Tribunal concluded that the *Oakes* test could not be satisfied on the record before it:

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[18] *Talos* at para. 267 (quoting *Standing Committee on Justice Policy – Evidence*, 38th Parl, 2nd Sess., November 25, 2005 at JP-25).
[19] *Talos* at para. 275.
[20] *Talos* at para. 275.
[21] *Talos* at para. 269-271, 275.
[22] *Talos* at para. 270-271.
[23] *Talos* at para. 266.

> Given Ms. Whelan's actuarial evidence that it is not cost prohibitive to provide coverage to workers over age 65 and up to age 79, and given both actuaries' evidence that there are various ways to manage plan costs should increases become unsustainable, the Tribunal finds that the Legislature could have devised a less intrusive means to meet the objective of maintaining the financial viability of workplace group benefit plans. I am further persuaded that less intrusive means (other than the blanket denial of Code protection) was available to the Legislature (for example by requiring the exclusion or diminishment of benefits for workers 65 and older to be reasonable and bona fide, as is done in ss. 11 and 22 of the Code in other contexts). The AG and OHRC provided the Tribunal with examples of human rights protection in other provinces (e.g. Manitoba, Quebec, Alberta and British Columbia) where there was no "carve out" of workers age 65 and older in the context of workplace benefits, and examples of other provinces where age-differentiation in a benefits plan was permissible if it was bona fide (e.g. New Brunswick, Saskatchewan and Nova Scotia).
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> …
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> After considering all of the evidence, I conclude that the age 65 and older group need not be made vulnerable to the loss of employment benefits without recourse to a (quasi-constitutional) human rights claim in order to ensure the financial viability of workplace benefits plans. The government's age limit of 65 for protection from discrimination in the provision of benefit and insurance plans appears unacceptable given the cogent evidence to the contrary that there is no close link to costs and age. As stated above, there are other alternatives available to the Government that would less impair the rights of Mr. Talos and workers age 65 and older, such as requiring any age-based differentiation in a workplace benefits plan to be reasonable and bona fide with a protection against undue hardship available to employers.[24]

As a result, the Tribunal found s. 25(2.1) to be unconstitutional, and would not apply it if it went on to consider the merits of Talos's complaint.

As it turned out, this "interim" award of the Tribunal ended up being the final chapter of Mr. Talos's case. After the release of the decision, Talos and his employer reached a confidential settlement to his claim, and the Tribunal proceedings ended. No judicial review of the Tribunal's decision on the constitutionality of s. 25(2.1) was taken.

[24] *Talos* at para. 281, 283.

What *Talos* did not Decide

While broad in its terms, it is important to note that the Tribunal's decision did *not* decide a number of important questions.

First, the scope of Talos's claim was narrower than the class of all group benefits covered by s. 25(2.1). The Tribunal explicitly noted that its decision did not address long term disability insurance, pension plans or superannuation funds.[25] Whether the legislative carve out as applied to these types of benefits is constitutional would have to be left for another day.

Secondly, the *Talos* decision did not decide that cutting off the benefits that were at issue in the case, such as group health insurance, necessarily constituted a violation of the *Code*. Rather, the effect of the decision was simply that there is no *per se* rule permitting the cutting off of benefits. As a result of the Tribunal's decision, ending benefits for older workers will constitute a *prima face* violation of the right to non-discrimination in employment on the basis of age, but differential benefits entitlements can still be justified under doctrines of *bona fide* occupational requirement and/or undue hardship. With an adequate record, employers can still alter or remove benefits from workers as they grow older.

Finally, *Talos* did not answer the question of the constitutionality of s. 25(2.1) for all time. Indeed, the Tribunal's decision applies to Wayne Talos alone. This is not only due to the nature of *stare decisis*, but also because of important distinctions between the types of constitutional remedies that can be granted by administrative tribunals versus courts.

As a "trial" level body, the Human Rights Tribunal's decisions do not have the same "vertical *stare decisis*" effect that a decision of an appellate court would have.[26] While the *Talos* decision may be a persuasive authority on other courts and tribunals, it is not a binding one. Indeed, this is the reason why the Tribunal was not required to follow the arbitral award in *Chatham-Kent*.

However, this only partially explains why the *Talos* decision does not bind other decision makers. When a superior court, such as the Superior Court of Justice, finds a law to violate the *Charter*, it grants declaratory relief under s. 52(1) of the *Constitution Act, 1982*. A declaration that a law is unconstitutional is not limited to the parties themselves. It declares for all purposes the state of the law. As such, even a trial level superior court's finding that a law is

[25] *Talos* at para. 284.
[26] See *R. v. Comeau*, [2018] 1 SCR 342 at para. 26.

unconstitutional will render the law of no force or effect anywhere (or, at least within the province in which the declaration is made).[27]

But a tribunal, like the HTRO, is not a *superior* court. It is rather an *inferior* court, whose constitutional jurisdiction is far narrower. Not every inferior court even has the jurisdiction to consider *Charter* claims,[28] and for those – like the HRTO – that do, they lack the jurisdiction to grant declaratory relief. Rather, an inferior court like the Human Rights Tribunal only has the power to "decline to apply a provision of its enabling statute on the ground that the provision violates the *Charter*."[29] This is a far more limited remedy, which has no direct application in any other proceeding.

This is not to say that the Tribunal's decision did not have a broader impact than assisting Mr. Talos personally. The *Talos* case was carefully litigated before the Tribunal, with both sides calling extensive expert evidence and providing the Tribunal with a comprehensive record. The Tribunal's decision is lengthy, detailed, and well-reasoned. The persuasive weight of the decision may prove to be considerable. For example, it appears that in January 2019 the Hamilton Wentworth District School Board reinstated benefits for teachers over 64 years of age – retroactive to June 1, 2018 – as a result of the *Talos* decision.[30] Once cannot help but note that the retroactive date was the first full month following the release of the *Talos* decision. Whether formally binding or not, at least some employers view *Talos* as establishing the new reality for the provision of employee benefits.

What Next After *Talos*?

Of course, not every employer has responded in the same wat the Hamilton Wentworth District School Board has. *Talos* has resolved some disputes, but has also served as the prelude to further litigation in a variety of jurisdictions. Indeed, it is because *Talos* is both persuasive but *not* binding that there has been a number of attempts to re-litigate the question of benefit cut offs for older workers, both in Ontario, and across Canada.

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[27] In one author's experience, the Attorney General for Ontario has at times disputed this view, and taken the position that a trial court may disregard a superior *trial* court's declaration of invalidity of the latter court believes the first court's decision was clearly wrong. However, the weight of the law supports the description provided above: see the reasons of Strathy J. (as he then was) in *R v Scarlett*, 2013 ONSC 562 (CanLII) at paras. 33-44.
[28] *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, [2003] 2 SCR 504; *R v Conway*, [2010] 1 SCR 765. For example, the BC Human Rights Tribunal, unlike the Ontario Tribunal, does not have *Charter* jurisdiction. As a result, a BC Tribunal case dealing with the reduction of benefits at age 65 was unable to address the constitutionality of a provision of British Columbia's legislation that is similar to s. 25(2.1): see *Baker v Molson Coors Breweries and another (No. 3)*, 2019 BCHRT 192 (CanLII).
[29] *Martin, supra* at para. 33.
[30] See *Anderson v Hamilton Wentworth District School Board*, 2019 HRTO 938 (CanLII) at para. 3.

Since *Talos*, there has been one similar case that has resulted in a final decision. Roy Bently, a pilot with Air Canada, filed a complaint with the Canadian Human Rights Tribunal respecting a provision of his collective agreement that permitted his long-term disability benefits to be cut off when he turned 60, the point at which he qualified for an unreduced pension. Regulations made under the *Canadian Human Rights Act* provide that certain distinctions in benefit plans – including those based on age – do not constitute a discriminatory practice under the *Act*.[31] These provisions captured Bently's situation, and as a result he was required to challenge their constitutionality under s. 15 of the *Charter*, much like Talos did. While Bently's union initially opposed his application, after the *Talos* decision was rendered, it changed its position, and argued that the *Regulations* were unconstitutional.[32]

Following a four-day hearing, the Canadian Tribunal upheld the impugned provisions, finding no violation of s. 15.[33]

The Canadian Tribunal distinguished *Talos* on three main grounds. First, it noted that *Talos* did not address LTD benefits, which was the particular issue that was before it.[34]

Secondly, the Tribunal considered that the factual circumstances surrounding the overall package of benefits available to Mr. Bently was fundamentally different than that available to Mr. Talos. As discussed above, the Tribunal in *Talos* distinguished the Supreme Court's *Withler* decision by noting that the health and life insurance benefits lost by Mr. Talos were not part of an integrated package of benefits that resulted in no overall loss at age 65. The Canadian Tribunal concluded that the situation for Air Canada pilots was fundamentally different. Under their collective agreement, their long-term disability benefits were only lost at the point where they became entitled to an unreduced pension, and as a result, their need for a long term source of income – even in the event of illness or injury – was protected without the need to resort to LTD benefits. In this way, the Tribunal reasoned, their case was analogous to the scheme in *Withler*, where the Supreme Court found no s. 15 violation.[35]

Finally, the Tribunal noted that the factual record before it was much closer to that which was presented in the *Chatham-Kent* case. Unlike the evidence in *Talos*, the evidence before the Canadian Tribunal *did* show an increasingly steep cost curve for LTD benefits as workers aged past 60.[36] It is interesting to note that the Applicant in *Bently* did not present any expert evidence at all. Further, the Respondent's sole expert – an actuary – was also put forward by the Attorney General of Ontario in *Talos*, and his evidence was given very little weight by the Ontario

[31] *Canadian Human Rights Benefit Regulations*, SOR 80/68, ss 3(b), 5(b).
[32] *Bently v Air Canada and Air Canada Pilots Association*, 2019 CHRT 37 (CanLII) [*Bently*] at para. 8-9.
[33] *Bently*, supra.
[34] *Bently, supra* at para. 82.
[35] *Bently, supra* at paras. 83-85.
[36] *Bently, supra* at para. 86-87.

Tribunal due to several concerns regarding the data and methodology that he relied upon.[37] However, the Applicant in *Bently* did not challenge this expert's qualifications, and absent any competing expert evidence the Tribunal had no real basis to conclude that LTD benefits did not have a very different costing structure than the benefits at issue in *Talos*.

Given the importance of factual records, it is not surprising that this has been an important focus of cases following up on *Talos*. For example, in British Columbia the Okanagan College Faculty Association has an ongoing arbitration dealing with the constitutionality of s. 13(3)(b) of the British Columbia *Human Rights Code*,[38] which has a similar effect to s. 25(2.1) of the Ontario *Code*. In that case, the Faculty Association sought to introduce an expert report from Professor Michael Lynk, a law professor who provided similar evidence for the Human Rights Commission in *Talos.* Notwithstanding the fact that the Tribunal in *Talos* accepted Prof. Lynk's evidence, both Okanagan College and the Attorney General for British Columbia vigorously opposed the introduction of this evidence in the BC proceeding.

Arbitrator Peltz ultimately ruled that the evidence was admissible, but only after lengthy and costly proceedings:

> It bears mentioning that simply hearing and deciding the admissibility issue caused delay, expense and inconvenience. Collectively, the parties filed 57 pages of written argument, presented 74 authorities and consumed two full days of hearing time. The hearing schedule was interrupted, although other case management issues were involved as well. Given the comprehensive and forceful submissions, it was necessary to reserve my decision and prepare this full-fledged [116 paragraph] award. If Professor Lynk had been called and cross examined, along with an opposing expert, it is doubtful that more time and resources would have been expended.[39]

This signals that, absent agreement of the parties, follow on cases to *Talos* may need to fully re-litigate their factual records. This should not come as a significant surprise: attempts to "recycle" earlier factual records in large constitutional cases raising similar issues have been attempted, but failed.[40] That said, having to re-litigate the facts of *Talos* does represent a significant barrier to access to justice. Recall that Wayne Talos began this proceedings before the Tribunal as an individual, self-represented litigant, facing off against not only a relatively well resourced school board, but also the Government of Ontario. The extensive factual record, which was so key in distinguishing the earlier decision in *Chatham-Kent*, was only adduced as a result of the

[37] *Bently*, *supra* at paras. 54-58; *Talos*, *supra* at paras. 114-145, 153-157.
[38] *Human Rights Code*, RSBC 1996, c 210.
[39] *Okanagan College and Okanagan College Faculty Assn. (Re)* (2019), 298 LAC (4th) 369 (Peltz) at para. 111.
[40] *Lamb v Canada (Attorney General)*, 2018 BCCA 266 (CanLII).

commitment of resources by the Human Rights Commission and three trade union groups. Even if subsequent cases litigated by unions – like the Okanagan Faculty Association – could realistically be expected to produce the same kind of rich record of expert evidence, it seems unlikely that an individual older worker would have the capacity to do the same.

Given the persuasive value of *Talos*, but also the expense of relitigating the constitutional issues, parties considering similar challenges to the termination of benefit packages will need to consider key strategic questions: Are the benefits entitlements at issue similar or distinct to those considered by the Tribunal in *Talos*? Can the parties agree in advance to consider (even on a without prejudice basis) that s. 25(2.1) does not apply, and to focus on whether the employer is able to establish undue hardship if required to extend the same benefits to workers 65 and older? Are there particular demographic differences that distinguish employees in the relevant workplace, which would create a factual difference from the record in *Talos*? And, as always, is there room for mediation on a comprehensive factual record to avoid costly and length legal proceedings?

Similarly, employers facing complaints from older workers and trade unions should consider whether relying on s. 25(2.1) to justify cutting off benefits is a wise strategic decision. While extending benefits to older workers will occasion costs, so too would responding to a complex *Charter* challenge. Good labour or employee relations may cause at least some employers to re-think their approach to employee benefits.